

CITY OF SAN JOSÉ

Audit Report

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

July 1, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

August 2009



JOHN CHIANG
California State Controller

August 5, 2009

The Honorable Chuck Reed
Mayor of the City of San José
200 East Santa Clara Drive
San José, CA 95113

Dear Mayor Reed:

The State Controller's Office audited the costs claimed by the City of San Jose 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, 2003, through June 30, 2006.

The city claimed \$235,320 for the mandated program. Our audit disclosed that \$135,158 is allowable and \$100,162 is unallowable. Our audit initially disclosed that \$37,186 was allowable and \$198,134 was unallowable. The costs are unallowable primarily because the city claimed allowable costs based only on estimates, claimed costs for ineligible activities, and claimed unsupported costs. However, we concurred with the city's request to apply a reasonable reimbursement methodology to the audit period. As a result, allowable costs increased by \$97,972, from \$37,186 to \$135,158. The State paid the city \$53,037. The State will pay allowable costs claimed that exceed the amount paid, totaling \$82,121 contingent upon available appropriations.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site link at www.csm.ca.gov/docs/IRCForm.pdf.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

cc: David Cavallaro, Deputy Chief
San José Police Department
Lieutenant Larry Esquivel
San José Police Department
Patrick Sawicki, Principal Accountant
City of San José
Mike Ryder, Principal Accountant
City of San José
Julia Weng, Senior Accountant
City of San José
Scott P. Johnson, Director of Finance
City of San José
Todd Jerue, Program Budget Manager
Corrections and General Government
Department of Finance
Carla Castaneda
Principal Program Budget Analyst
Department of Finance
Paula Higashi, Executive Director
Commission on State Mandates

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of San José 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, 2003, through June 30, 2006.

The city claimed \$235,320 for the mandated program. Our audit disclosed that \$135,158 is allowable and \$100,162 is unallowable. Our audit initially disclosed that \$37,186 was allowable and \$198,134 was unallowable. The costs are unallowable primarily because the city claimed allowable costs based on estimates, claimed costs for ineligible activities, and claimed unsupported costs. The city requested, and we concurred, that it be allowed to apply a reasonable reimbursement methodology to the audit period. As a result, allowable costs increased by \$97,972, from \$37,186 to \$135,158. The State paid the city \$53,037. The State will pay allowable costs claimed that exceed the amount paid, totaling \$82,121 contingent upon available appropriations.

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 and school districts 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 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 (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. The CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. The CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. The CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal, Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted this performance audit under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We limited our review of the city's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the City of San José claimed \$235,320 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$135,158 is allowable and \$100,162 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payment to the city. Our audit disclosed that \$43,037 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$43,037, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payment to the city. Our audit disclosed that \$44,116 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$44,116, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the city \$53,037. Our audit disclosed that \$48,005 is allowable. The State will offset \$5,032 from other mandated program payments due the city. Alternatively, the city may remit this amount to the State.

**Views of
Responsible
Officials**

We issued a draft audit report on November 25, 2008. Scott P. Johnson, Director of Finance, and David Cavallaro, Chief of Police, responded by letter dated January 29, 2009 (Attachment), disagreeing with the audit results for Finding 1, and agreeing with the audit results for Findings 2 and 3. This final audit report includes the city's response.

Restricted Use

This report is solely for the information and use of the City of San Jose, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

August 5, 2009

**Schedule 1—
Summary of Program Costs
July 1, 2003, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 55,747	\$ 4,158	\$ (51,589)	Findings 1, 2
Benefits	13,045	973	(12,072)	Findings 1, 2
Travel and training	—	1,020	1,020	Finding 3
Total direct costs	68,792	6,151	(62,641)	
Indirect costs	17,542	1,308	(16,234)	Findings 1, 2
Subtotal	86,334	7,459	(78,875)	
Adjust allowable costs to zero ²	—	(7,459)	(7,459)	
Subtotal	86,334	—	(86,334)	
Reasonable reimbursement methodology	—	43,037	43,037	Finding 4
Total program costs	<u>\$ 86,334</u>	43,037	<u>\$ (43,297)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 43,037</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Direct costs:				
Salaries	\$ 48,070	\$ 10,598	\$ (37,472)	Findings 1, 2
Benefits	15,719	3,465	(12,254)	Findings 1, 2
Travel and training	—	1,530	1,530	Finding 3
Total direct costs	63,789	15,593	(48,196)	
Indirect costs	12,594	2,777	(9,817)	Findings 1, 2
Subtotal	76,383	18,370	(58,013)	
Adjust allowable costs to zero ²	—	(18,370)	(18,370)	
Subtotal	76,383	—	(76,383)	
Reasonable reimbursement methodology	—	44,116	44,116	Finding 4
Total program costs	<u>\$ 76,383</u>	44,116	<u>\$ (32,267)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 44,116</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 46,480	\$ 6,618	\$ (39,862)	Findings 1, 2
Benefits	15,851	2,256	(13,595)	Findings 1, 2
Travel and training	—	1,020	1,020	Finding 3
Total direct costs	62,331	9,894	(52,437)	
Indirect costs	10,272	1,463	(8,809)	Findings 1, 2

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
Subtotal	72,603	11,357	(61,246)	
Adjust allowable costs to zero ²	—	(11,357)	(11,357)	
Subtotal	72,603	—	(72,603)	
Reasonable reimbursement methodology	—	48,005	48,005	Finding 4
Total program costs	<u>\$ 72,603</u>	48,005	<u>\$ (24,598)</u>	
Less amount paid by the State		(53,037)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (5,032)</u>		
<u>Summary: July 1, 2003, through June 30, 2006</u>				
Direct costs:				
Salaries	\$ 150,297	\$ 21,374	\$ (128,923)	
Benefits	44,615	6,694	(37,921)	
Travel and training	—	3,570	3,570	
Total direct costs	194,912	31,638	(163,274)	
Indirect costs	40,408	5,548	(34,860)	
Subtotal	235,320	37,186	(198,134)	
Adjust allowable costs to zero ²	—	(37,186)	(37,186)	
Subtotal	235,320	—	(235,320)	
Reasonable reimbursement methodology	—	135,158	135,158	
Total program costs	<u>\$ 235,320</u>	135,158	<u>\$ (100,162)</u>	
Less amount paid by the State		(53,037)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 82,121</u>		
<u>Summary by Cost Component</u>				
Administrative Activities	\$ 54,645	\$ 25,652	\$ (28,993)	
Administrative Appeal	1,444	—	(1,444)	
Interrogation	144,898	11,534	(133,364)	
Adverse Comment	34,333	—	(34,333)	
Subtotal	235,320	37,186	(198,134)	
Adjust allowable costs to zero ²	—	(37,186)	(37,186)	
Subtotal	235,320	—	(235,320)	
Reasonable reimbursement methodology	—	135,158	135,158	
Total program costs	<u>\$ 235,320</u>	<u>\$ 135,158</u>	<u>\$ (100,162)</u>	

¹ See the Findings and Recommendations section.

² Allowable costs based on actual costs reduced to zero prior to the application of a reasonable reimbursement rate (See Finding 4).

Findings and Recommendations

**FINDING 1—
Overstated salaries
and benefits**

The city claimed unallowable salaries and benefits totaling \$171,032 for the audit period. The unallowable costs consist of \$45,794 for activities that were not identified in the parameters and guidelines as reimbursable costs, \$122,373 for eligible activities that had been estimated and were not supported with adequate corroborating documentation, and \$2,865 for eligible activities that were not supported by any documentation. Related unallowable indirect costs totaled \$35,700.

The following table summarizes the audit adjustments by fiscal year:

	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries	\$ (52,237)	\$ (39,241)	\$ (40,639)	\$(132,117)
Benefits	(12,224)	(12,832)	(13,859)	(38,915)
Subtotal	(64,461)	(52,073)	(54,498)	(171,032)
Related indirect costs	(16,438)	(10,281)	(8,981)	(35,700)
Audit adjustment	<u>\$ (80,899)</u>	<u>\$ (62,354)</u>	<u>\$ (63,479)</u>	<u>\$(206,732)</u>

For each fiscal year, the city claimed costs for activities that did not exceed the duties of due process of law and, therefore, did not impose increased costs as a result of compliance with the mandate and are ineligible for reimbursement. The city also claimed eligible salaries and benefits based on estimates and did not provide any corroborating documentation to support the estimates.

If the city can subsequently provide corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the audit finding as appropriate.

The following details the audit findings for overstated salaries and benefits by individual cost component.

Administrative Activities

The city claimed \$46,040 in salaries and benefits for the audit period under the Administrative Activities cost component. Related indirect costs totaled \$8,605. We determined that \$30,439 was unallowable. Related indirect costs totaled \$5,581.

The parameters and guidelines allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

The city claimed \$1,143 for FY 2004-05 to revise and update internal policies, procedures, manuals, and/or other materials relating to Rights of Public Safety Officers. However, the costs claimed for this allowable activity were based entirely on estimates. The city did not provide corroborating documentation to support the estimates. Accordingly, the costs are unallowable.

The city claimed unallowable costs of \$2,865 for attending mandate-related training; the costs are unallowable because the city provided no supporting documentation. Unallowable costs include \$385 claimed for 8 hours of training during FY 2003-04 for an unidentified police officer and unsupported costs of \$2,480 claimed for 48 hours of training for during FY 2004-05.

The city also claimed \$26,431 for the audit period for the reimbursable activity of updating the status of POBOR cases. However, the costs were estimated and the city did not provide any corroborating documentation to support the estimates. Accordingly, the costs are unallowable.

The following table summarizes estimated costs and unsupported costs for the Administrative Activities cost component:

<u>Cost Category</u>	<u>Estimated Costs</u>	<u>Unsupported Costs</u>	<u>Total</u>
FY 2003-04:			
Training	\$ —	\$ 385	\$ 385
FY 2004-05:			
Training	—	2,480	2,480
Policies and procedures	1,143	—	1,143
Update status	12,604	—	12,604
Subtotal	<u>13,747</u>	<u>2,480</u>	<u>16,227</u>
FY 2005-06:			
Update status	<u>13,827</u>	<u>—</u>	<u>13,827</u>
Total	<u>\$ 27,574</u>	<u>\$ 2,865</u>	<u>\$ 30,439</u>

Administrative Appeal Activities

The city claimed \$1,206 in salaries and benefits for the audit period under the Administrative Appeals cost component. Related indirect costs totaled \$238. We determined that both amounts were unallowable because claimed costs do not meet the criteria for reimbursement per adopted parameters and guidelines.

The parameters and guidelines (section IV.B.2.) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police (Emphasis added) whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees (Emphasis added) for purposes of punishment;

- 3 Denial of promotion for permanent employees (Emphasis added) for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

The city incurred costs for providing and conducting administrative appeals under this cost component. However, the administrative appeals resulted from other actions against permanent employees, such as arbitration hearings and civil service appeals. In addition, the hearings and appeals took place as a result of non-reimbursable disciplinary outcomes (suspensions and dismissals), which fall under due process.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- o A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- o A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

If officers appeal actions such as transfers for purposes of punishment or denials of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.

Interrogation Activities

The city claimed \$118,851 in salaries and benefits for the audit period under the Interrogations cost component. Related indirect costs totaled \$26,047. We determined that \$110,572 was unallowable. Related indirect costs totaled \$24,363. The unallowable costs occurred because they were either not identified in the parameters and guidelines as reimbursable costs or were based on estimates and not supported with corroborating documentation. We determined that \$65,984 was claimed for costs that would have been reimbursable if they had been properly documented and \$44,588 was claimed for ineligible activities (interrogations that occurred during normal working hours).

The parameters and guidelines identify specific Interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C), Interrogation, identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines (section IV.C.) state that claimants are not eligible for interrogation activities when an interrogation of a peace officer is in the normal course of duty. This section further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code Section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBOR was enacted.

The parameters and guidelines (section IV.C.2, 3, and 5) also state that the following activities are reimbursable under the Interrogations cost component:

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation, determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of the notice or agency complaint to the peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. Included in the foregoing is the cost of tape and storage and the cost of transcription.
5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer. . . .

Included in the foregoing is the review of the complaints, notes, or tape recordings for issues of confidentiality by law enforcement, human relations, or counsel, cost of processing, service, and retention of copies.

The city claimed the following activities that would be reimbursable, but claimed costs were estimated and were not supported by any corroborating documentation:

- Compensating the officer for interrogations during off-duty time; and
- Notifying the peace officer, reviewing complaints to prepare the notice of interrogation, determining investigating officers, and redacting names.

The city also claimed the activity of interrogating accused and witnessing officers during regular working hours, which is ineligible for reimbursement.

During the audit exit conference, the city advised SCO that it was in the process of collecting information within a database of time spent performing certain POBOR-related activities during FY 2007-08. We indicated that when the city completed its database entries for the year, we would review the database for time spent on reimbursable activities and apply the results as appropriate to the audit period.

Subsequent to the issuance of the draft audit report, the city provided its database entries for the year. We reviewed the city's database and determined that it was used to track three things: the length of officer interviews; if the officers were on regular time or if they were overtime; and how long it took to send out the notices of interrogation.

The average time spent to prepare notices of interrogation was eligible for application to the audit period since this is an activity that is recurring in nature and appropriate for a time study. Accordingly, we determined that the city spent an average of 44 hours per year preparing notices of interrogation and applied these results to the audit period. As a result, allowable costs for salaries and benefits increased by \$8,279 (\$2,554 in FY 2003-04, \$2,747 in FY 2004-05, and \$2,978 in FY 2005-06). The related allowable indirect costs increased by \$1,684.

However, the activity of officer interrogations is only reimbursable for overtime costs incurred. In addition, the incurrence of overtime costs for interrogations is not a task that is repetitive in nature. Therefore, the actual costs incurred for this activity could not be applied to the audit period. Actual overtime costs for interrogations incurred during FY 2007-08 can only be included in the city's POBOR claim for that year.

The city has indicated that it does not have any plans to track time spent for any other reimbursable activities. However, if the city subsequently decides to track additional reimbursable activities, we will apply the results as appropriate to the audit period.

The following table summarizes the estimated and ineligible costs under the Interrogations cost component:

<u>Cost Category</u>	<u>Estimated Costs</u>	<u>Ineligible Costs</u>	<u>Total</u>
FY 2003-04:			
Salaries	\$ 25,407	\$ 22,896	\$ 48,303
Benefits	5,946	5,357	11,303
Subtotal	<u>31,353</u>	<u>28,253</u>	<u>59,606</u>
FY 2004-05:			
Salaries	11,128	6,521	17,649
Benefits	3,639	2,132	5,771
Subtotal	<u>14,767</u>	<u>8,653</u>	<u>23,420</u>
FY 2005-06:			
Salaries	14,813	5,728	20,541
Benefits	5,051	1,954	7,005
Subtotal	<u>19,864</u>	<u>7,682</u>	<u>27,546</u>
Total	<u>\$ 65,984</u>	<u>\$ 44,588</u>	<u>\$ 110,572</u>

Adverse Comment Activities

The city claimed \$28,815 in salaries and benefits for the audit period under the Adverse Comment cost component. Related indirect costs totaled \$5,518. We determined that all Adverse Comment costs were unallowable because they were estimated and the city did not provide any corroborating documentation to support the estimates.

Depending on the circumstances surrounding an Adverse Comment, the parameters and guidelines allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, Command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment, preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

The city claimed the following activities that were reimbursable, but all costs claimed were based upon estimates and were not corroborated by any supporting source documentation:

- Reviewing documentation;
- Reviewing and preparing adverse comment;
- Notifying and presenting adverse comment to the officer; and
- Obtaining signature or noting officer's refusal to sign.

Summary

The following table summarizes of the claimed, allowable, and unallowable costs for the audit period by individual cost component:

	Claimed Costs	Allowable Costs	Audit Adjustment
Salaries and benefits:			
Administrative Activities	\$ 46,040	\$ 15,601	\$ (30,439)
Administrative Appeals	1,206	—	(1,206)
Interrogations	118,851	8,279	(110,572)
Adverse Comment	28,815	—	(28,815)
Total salaries and benefits costs	194,912	23,880	(171,032)
Related indirect costs	40,408	4,708	(35,700)
Total	<u>\$ 235,320</u>	<u>\$ 28,588</u>	<u>\$ (206,732)</u>

The parameters and guidelines for POBOR adopted by the CSM on July 27, 2000, and corrected on August 17, 2000, define the criteria for procedural protections of the city's peace officers.

The parameters and guidelines (section IV, Reimbursable Activities) outline specific tasks that are deemed above the due process clause. The statement of decision on which the parameters and guidelines was based noted that due process activities were not reimbursable.

The parameters and guidelines (section V.A.1., Salaries and Benefits) require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

The parameters and guidelines (section VI, Supporting Data) require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

Regarding the eligible costs that were based only on estimates: If the city subsequently provides corroborating evidence to support the time it takes to perform additional individual reimbursable activities and the number of activities performed, we will revise the audit finding as appropriate.

City's Response

Estimates

The City does not dispute that a substantial portion of its time records are based on estimates. The City believes, however, that the estimates are very reasonable and conservative and actually understate the full costs of complying with the POBOR mandate. The Controller has stated in its draft audit report that "if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, it will revise its findings." One acceptable method of providing such evidence to support its costs would be to conduct time studies. The City has conducted a time study for one of the eligible activities contained in the "interrogation" component, which was reviewed by the State Controller's Office subsequent to the date of the draft audit report.

However, the City proposes that in lieu of spending additional staff time and effort to conduct further time studies of all activities, the Controller use the "reasonable reimbursement methodology" (RRM) formula adopted in March 2008 for settling these claims. The Commission on State Mandates adopted the RRM formula from claims audited by the Controller. The Commission's RRM for reimbursing local agencies was calculated as follows:

\$33.22 for FY 2004-05 – for each sworn officer
\$35.34 for FY 2005-06 – for each sworn officer
\$37.25 for FY 2006-07 – for each sworn officer

The City requests that these RRM rates and a rate \$31.56 (5% cost of living reduction from FY 2004-05) for the 2003-04 fiscal year be used by the Controller to calculate the amount due the City in order to resolve the audit. The City has submitted its FY 2006-07 POBOR reimbursement claim to the Controller based on the RRM for that year and also plans to submit its FY 2007-08 claim using the RRM methodology.

If the Controller is willing to accept this proposal, the City would in turn agree not to contest this aspect of the draft audit report.

The City does not believe it is in the public's interest to spend additional City or Controller staff resources to otherwise obtain a final settlement of these claims. While the City does not believe the RRM's fully reimburse the City for its mandated costs, it is willing to accept that method to resolve this matter.

Ineligible Activities

The Controller disallowed interrogation activities for interrogations that occurred during normal working hours. The City believes the costs incurred during normal business hours for completing the mandated interrogation activities in accordance with regular department procedures required by the seriousness of the investigation are eligible

costs. The City recommends the Controller re-examine the Commission on State Mandates Statement of Decision in which the Commission made the following finding with regard to interrogations:

Conducting the interrogation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts.

The use of the conjunctive “and” and the plural “requirements” refer to the fact that the Commission found that both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are reimbursable activities of the mandate.

The City requests that the Controller reconsider allowing for the reimbursement of these interrogation costs incurred by its Police Department during the audit period.

SCO’s Comment

The finding amount was updated to reflect our review of the city’s database entries subsequent to the issuance of the draft report, as noted below. In addition, we concur with the city’s proposal to apply a reasonable reimbursement methodology to the city’s claims. This issue is addressed separately in Finding 4.

Our comments to the city’s responses to the draft audit report will be addressed in the same order that they were presented by the city.

Estimates

As noted in the city’s response and in the final audit report, we reviewed the city’s database entries recorded during FY 2007-08 subsequent to the issuance of the draft audit report for the reimbursable activity of preparing notices of interrogation. We updated the finding for this adjustment. After applying the results to the audit period, total allowable costs increased by \$11,534 (\$9,578 in salaries and benefits and \$1,956 in related indirect costs), from \$25,652 to \$37,186. An increase of \$9,963 was attributable to the increase in allowable interrogation activities based on claimed productive hourly rates, as shown in the revised language of Finding 1 (Overstated Salaries and Benefits). An increase of \$1,571 was attributable to the city’s understated productive hourly rates, as identified in Finding 2.

While the city does not dispute that a substantial portion of its time records are based on estimates, the city contends that its time estimates “are very reasonable and conservative and actually understate the full costs of complying with the POBOR mandate.” Whether the time claimed was reasonable or not is not the issue. The parameters and guidelines require that claimants specify the actual time devoted to each reimbursable activity by each employee. By claiming estimated costs with no additional supporting or corroborating documentation, the city did not meet the requirement of reporting actual costs. In addition, in the absence of actual time records, there is no way for the SCO to verify whether the time claimed by the city was reasonable or not.

The city goes on to propose that in lieu of conducting further time studies to support time spent on reimbursable activities, it be allowed to re-file its POBOR claims for the audit period using the reasonable reimbursement methodology (RRM) adopted by the CSM on March 28, 2008. We concur that the city's request is reasonable. We applied reasonable reimbursement rates based on the number of sworn officers employed by the city during each year of the audit period. The specifics of the adjustments are included in Finding 4.

Ineligible Activities

The city objects to our finding that costs incurred for interrogations that occurred during normal working hours are unallowable. In its response, the city relies on specific language that appears on page 13 of the original statement of decision adopted by CSM on November 30, 1999. The city claims that the language cited in its response supports a CSM finding that interrogations conducted during on-duty hours are reimbursable and requests that we re-examine the statement of decision. However, the statement of decision does not define the reimbursable activities. These were written into regulation when CSM adopted the parameters and guidelines for POBOR on July 27, 2000, and corrected them on August 17, 2000.

As requested by the city, we did re-examine the statement of decision and noted that the city is taking the language cited in its response out of context. The language cited by the city is found in the section of the statement of decision titled "Compensation and Timing of an Interrogation." The purpose of this section is to address the test claimant's assertion that Government Code section 3303, subdivision (a) results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities.

The section begins on page 12 by stating that:

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do not apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor.

In addition, the parameters and guidelines (section IV.C., Interrogation) state that:

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or any other routine or unplanned contact with, a supervisor or any other public safety officer.

The document goes on to specify five activities that are reimbursable.

Section IV.C.1. describes the only reimbursable activity that relates to interrogations. It states “when required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.”

Further, the language used by the CSM staff in its analysis for Item #10 (page 912 of the Proposed Parameters and Guidelines for Peace Officers Procedural Bill of Rights) heard on July 27, 2000, contains reference to Government Code section 3303, subdivision (a). The CSM states that this section of the test claim legislation:

. . . addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses as implied by the claimant’s proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

The staff analysis goes on to state:

Based on the foregoing, staff has modified Section IV.C. as follows:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)

To state that interrogations conducted during an officer’s regular on-duty time are reimbursable is contrary to the other wording that appears in the statement of decision, the staff analysis for the proposed parameters and guidelines, and the adopted parameters and guidelines. Therefore, the preponderance of evidence on this issue does not support the city’s contention.

We also noted that at a subsequent CSM hearing, held on December 4, 2006, one of the agenda items (item #13) concerned Requests to Amend Parameters and Guidelines for the POBOR Program. During testimony for this item, a San Bernardino County representative testified that the county had submitted an amendment to clarify what was adopted in the original statement of decision. The county representative disagreed with the CSM staff’s conclusion regarding interrogations because it was supposedly inconsistent with the original statement of decision; the representative urged CSM to reconsider the amendment. The Chief Legal Counsel for the CSM responded that some statements in the original statement of decision were being taken out of context. She clarified that the test claim legislation does not mandate local agencies to interrogate an officer and it does not mandate local agencies to investigate. Rather, these activities are based on local policy and regulation.

**FINDING 2—
Understated productive
hourly rates**

The city understated allowable salaries and benefits by \$4,188 for the audit period because it understated productive hourly rates. Related indirect costs totaled \$840.

Productive hourly rates were understated because they were not based on individual employee salaries. Instead, rates were based on mid-range salary amounts taken from a basic salary schedule and were then divided by 2,080 standard productive hours. We recalculated allowable productive hourly rates per employee using individual salary amounts divided by 1,800 standard hours. Using 1,800 hours as a base for productive hourly rates is allowable as a standard amount per the *SCO Mandated Cost Manual for Local Agencies*. Accordingly, productive hours less than 1,800 hours must be supported with corroborating documentation.

The following table summarizes the audit adjustments by fiscal year:

<u>Fiscal Year</u>	<u>Salary Adjustment (PHR-related)</u>	<u>Benefit Adjustment</u>	<u>Related Indirect Cost Adjustment</u>	<u>Total</u>
2003-04	\$ 648	\$ 152	\$ 204	\$ 1,004
2004-05	1,769	578	464	2,811
2005-06	<u>777</u>	<u>264</u>	<u>172</u>	<u>1,213</u>
Total	<u>\$ 3,194</u>	<u>\$ 994</u>	<u>\$ 840</u>	<u>\$ 5,028</u>

The parameters and guidelines (Section V.A.1., Salaries and Benefits) require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee. Reimbursement includes compensation paid for salaries, wages, and employee benefits.

The following table summarizes the audit adjustment by individual cost component:

<u>Cost Component</u>	<u>Audit Adjustment</u>
Administrative Activities	\$ 2,889
Interrogations	<u>1,299</u>
Total salaries and benefits costs	4,188
Related indirect costs	<u>840</u>
Audit adjustment	<u>\$ 5,028</u>

The parameters and guidelines (section VI, Supporting Data) also require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

The city did not contest the finding.

SCO's Comment

Although the city did not contest this finding, we updated the finding based on our review of the city's database entries after the draft report was issued. As noted in Finding 1, allowable costs increased for the reimbursable activity of preparing notices of interrogation that were supported by the city's database entries. Accordingly, we also updated the finding for this adjustment. After applying the results to the audit period, total allowable costs for understated productive hourly rates increased by \$1,571 (\$1,299 in salaries and benefits, and \$272 in related indirect costs), from \$3,457 to \$5,028.

**FINDING 3—
Understated travel
and training**

The city did not claim eligible travel and training costs totaling \$3,570 for the audit period (\$1,020 for FY 2003-04, \$1,530 for FY 2004-05, and \$1,020 for FY 2005-06). The unclaimed costs were incurred for registration fees for training classes related to the POBOR mandate. Accordingly, we have included these as allowable costs under the Administrative Activities cost component.

The parameters and guidelines (section V.A.5., Claim Preparation and Submission—Supporting Documentation—Training) allow for reimbursement of training costs incurred for an employee to perform the mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

Recommendation

We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

The city did not contest the finding.

SCO's Comment

The finding and recommendation remain unchanged.

**FINDING 4—
Reasonable
reimbursement
methodology**

In its response to the draft audit report, the city stated the following:

However, the City proposes that in lieu of spending additional staff time and effort to conduct further time studies of all activities, the Controller use the “reasonable reimbursement methodology” (RRM) formula adopted in March, 2008 for settling these claims. The Commission on State Mandates adopted the RRM formula from claims audited by the Controller. The Commission’s RRM for reimbursing local agencies was calculated as follows:

- \$33.22 for FY 2004-05 – for each sworn officer
- \$35.34 for FY 2005-06 – for each sworn officer
- \$37.25 for FY 2006-07 – for each sworn officer

The City requests that these RRM rates and a rate of \$31.56 (5% cost of living reduction from FY 2004-05) for the 2003-04 fiscal year be used by the Controller to calculate the amount due the City in order to resolve the audit. The City has submitted its FY 2006-07 POBOR reimbursement claim to the Controller based on the RRM for that year and also plans to submit its FY 2007-08 claim using the RRM methodology.

If the Controller is willing to accept this proposal, the City would in turn agree not to contest this aspect of the draft audit report.

The City does not believe it is in the public’s interest to spend additional City or Controller staff resources to otherwise obtain a final settlement of these claims. While the City does not believe the RRM’s [sic] fully reimburse the City for its mandated costs, it is willing to accept that method to resolve this matter.

As previously stated in Finding 1, we concur that the city’s request is reasonable. Consequently, we allowed \$135,158 in costs using the FY 2006-07 CSM-adopted RRM as a basis to determine reimbursable costs for FY 2003-04 through FY 2005-06. We requested and the city provided support regarding the number of sworn officers that it employed during each year of the audit period.

The CSM adopted the FY 2006-07 RRM rate of \$37.25 on March 28, 2008 based on actual results of prior audits, as increased by the implicit price deflator (IPD) for state and local purchases. In calculating the FY 2006-07 RRM, the CSM final staff analysis for its March 28, 2008 hearing determined the RRM to be \$33.22 for FY 2004-05 and \$35.35 for FY 2005-06. We calculated the FY 2003-04 RRM of \$31.46 by discounting the FY 2004-05 rate by the IPD. These numbers differ slightly from the numbers presented by the city.

The following table summarizes the allowable cost for each fiscal year based on the methodology described above.

	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Number of sworn officers	1,368	1,328	1,358	
Reasonable reimbursement rate	× 31.46	× 33.22	× 35.35	
Total audit adjustment	<u>\$ 43,037</u>	<u>\$ 44,116</u>	<u>\$ 48,005</u>	<u>\$ 135,158</u>

**Attachment—
City’s Response to
Draft Audit Report**

January 29, 2009

Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Dear Mr. Spano:

The City of San José ("City") has reviewed the State Controller's draft audit report covering the City's Peace Officers Procedural Bill of Rights (POBOR) mandated cost claims for the three fiscal years between July 1, 2003 and June 30, 2006, in which the State Controller disallowed certain costs primarily because the City claimed allowable costs based only on estimates (\$130,652), claimed costs for ineligible activities (\$45,794), and claimed unsupported costs (\$2,865), as well as related indirect costs (\$37,384). In addition, the State Controller credited the City for understated productive hourly rates and indirect costs (\$3,457), and understated travel and training costs (\$3,570). The City appreciates the opportunity to respond to the draft audit report, specifically to the disallowance of allowable costs based on estimates, and ineligible activities.

Estimates

The City does not dispute that a substantial portion of its time records are based on estimates. The City believes, however, that the estimates are very reasonable and conservative and actually understate the full costs of complying with the POBOR mandate. The Controller has stated in its draft audit report that "if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, it will revise its findings." One acceptable method of providing such evidence to support its costs would be to conduct time studies. The City has conducted a time study for one of the eligible activities contained in the "interrogation" component, which was reviewed by the State Controller's Office subsequent to the date of the draft audit report.

However, the City proposes that in lieu of spending additional staff time and effort to conduct further time studies of all activities, the Controller use the "reasonable reimbursement methodology" (RRM) formula adopted in March 2008 for settling these

Jim L. Spano, Chief
Mandated Cost Audits Bureau

claims. The Commission on State Mandates adopted the RRM formula from claims audited by the Controller. The Commission's RRM for reimbursing local agencies was calculated as follows:

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The City requests that these RRM rates and a rate of \$31.56 (5% cost of living reduction from FY 2004-05) for the 2003-04 fiscal year be used by the Controller to calculate the amount due the City in order to resolve the audit. The City has submitted its FY 2006-07 POBOR reimbursement claim to the Controller based on the RRM for that year and also plans to submit its FY 2007-08 claim using the RRM methodology.

If the Controller is willing to accept this proposal, the City would in turn agree not to contest this aspect of the draft audit report.

The City does not believe it is in the public's interest to spend additional City or Controller staff resources to otherwise obtain a final settlement of these claims. While the City does not believe the RRM's fully reimburse the City for its mandated costs, it is willing to accept that method to resolve this matter.

Ineligible Activities

The Controller disallowed interrogation activities for interrogations that occurred during normal working hours. The City believes the costs incurred during normal business hours for completing the mandated interrogation activities in accordance with regular department procedures required by the seriousness of the investigation are eligible costs. The City recommends the Controller re-examine the Commission on State Mandates Statement of Decision in which the Commission made the following finding with regard to interrogations:

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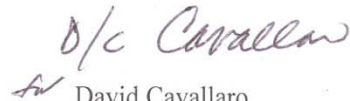
The City requests that the Controller reconsider allowing for the reimbursement of these interrogation costs incurred by its Police Department during the audit period.

Jim L. Spano, Chief
Mandated Cost Audits Bureau

The City believes the information provided is sufficient for the State Controller's Office to reverse those disallowed costs it has contested in this response. Should you have any further questions regarding this matter, or need clarification of any issue, please contact Patrick Sawicki, Principal Accountant, at (408) 535-7031.

Sincerely,


Scott P. Johnson
Director of Finance


David Cavallaro
Deputy Chief of Police

cc: Chief Robert L. Davis, Police Department
Lt. Larry Esquivel, Police Department
Sgt. Kathleen Lopez, Police Department
Lisa Perez, Police Department
Walter Rossmann, Finance Department
Mike Ryder, Finance Department
Patrick Sawicki, Finance Department
Julia Weng, Finance Department
Cindy Sconce, Maximus

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>