

CITY OF BERKELEY

Audit Report

OPEN MEETINGS ACT/BROWN ACT REFORM PROGRAM

Chapter 641, Statutes of 1986;
and Chapter 1136 through 1138, Statutes of 1993

July 1, 2005, through June 30, 2012



BETTY T. YEE
California State Controller

September 2020



BETTY T. YEE
California State Controller

September 23, 2020

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Henry Oyekanmi, Director of Finance
City of Berkeley Finance Department
2180 Milvia Street
Berkeley, CA 94704

Dear Mr. Oyekanmi:

The State Controller's Office audited the costs claimed by the City of Berkeley for the legislatively mandated Open Meetings Act/Brown Act Reform Program for the period of July 1, 2005, through June 30, 2012.

The city claimed \$658,311 for costs of the mandated program. Our audit found that \$618,061 is allowable and \$40,250 is unallowable because the city overstated its standard-time costs by applying incorrect blended productive hourly rates to eligible agenda items and claiming unsupported indirect costs; and overstated its flat-rate costs by claiming unsupported and ineligible meeting agendas. The State made no payments to the city. The State will pay \$618,061, contingent upon available appropriations.

Following issuance of this audit report, the Local Government Programs and Services Division of the State Controller's Office will notify the city of the adjustment to its claims via a system-generated letter for each fiscal year in the audit period with the exception of FY 2008-09, for which we determined that all costs claimed are allowable.

If you have any questions, please contact Lisa Kurokawa, Chief, Compliance Audits Bureau, by telephone at (916) 327-3138.

Sincerely,

Original signed by

JIM L. SPANO, CPA
Chief, Division of Audits

JLS/ac

cc: Leslie Harris, Administrative Secretary
City of Berkeley Finance Department
The Honorable Jesse Arreguin, Mayor
City of Berkeley
Chris Hill, Principal Program Budget Analyst
Local Government Unit
California Department of Finance
Steven Pavlov, Finance Budget Analyst
Local Government Unit
California Department of Finance
Debra Morton, Manager
Local Reimbursements Section
State Controller's Office

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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Berkeley for the legislatively mandated Open Meetings Act/Brown Act Reform Program for the period of July 1, 2005, through June 30, 2012.

The city claimed \$658,311 for costs of the mandated program. Our audit found that \$618,061 is allowable and \$40,250 is unallowable because the city overstated its standard-time costs by applying incorrect blended productive hourly rates (PHRs) to eligible agenda items and claiming unsupported indirect costs; and overstated its flat-rate costs by claiming unsupported and ineligible meeting agendas. The State made no payments to the city. The State will pay \$618,061, contingent upon available appropriations.

Background

Open Meetings Act Program

Chapter 641, Statutes of 1986, added Government Code (GC) sections 54954.2 and 54954.3. GC section 54954.2 requires the legislative body of a local agency, or its designee, to post an agenda containing a brief general description of each item or business to be transacted or discussed at the regular meeting, subject to exceptions stated therein, specifying the time and location of the regular meeting. It also requires that the agenda be posted at least 72 hours before the meeting in a location freely accessible to the public. GC section 54954.3 requires members of the public to be provided an opportunity to address the legislative body on specific agenda items or an item of interest that is within the subject matter jurisdiction of the legislative body. The legislation requires that this opportunity be stated on the posted agenda.

Open Meetings Act/Brown Act Reform Program

Chapters 1136 through 1138, Statutes of 1993, amended by GC sections 54952, 54954.2, 54957.1, and 54957.7, expanding the types of legislative bodies that are required to comply with the notice and agenda requirements of GC sections 54954.2 and 54954.3. These sections also require all legislative bodies to perform additional activities related to the closed session requirements of the Brown Act.

The Commission on State Mandates (Commission) determined that the Open Meetings Act Program (October 22, 1987) and the Open Meetings Act/Brown Act Reform Program (June 28, 2001) resulted in state-mandated costs that are reimbursable under GC section 17561.

The program's parameters and guidelines establish the State mandate and define the reimbursement criteria. The Commission adopted parameters and guidelines on September 22, 1988 (last amended on November 30, 2000) for the Open Meetings Act Program, and on April 25, 2002, for the Open Meetings Act/Brown Act Reform Program. In compliance with GC section 17558, the SCO issues claiming instructions to assist local agencies and schools in claiming mandated program reimbursable costs. The Open Meetings Act Program became effective August 29, 1986.

Commencing in fiscal year (FY) 1997-98, a local agency may claim costs using the actual-time reimbursement option, the standard-time reimbursement option, or the flat-rate reimbursement option as specified in the parameters and guidelines. The Open Meetings Act/Brown Act Reform Program became effective in FY 2001-02.

Based on the passage of Proposition 30, adopted by the voters on November 7, 2012, the Department of Finance filed a request for redetermination of the Open Meetings Act/Brown Act Reform Program. On January 23, 2015, the Commission found that the Open Meetings Act/Brown Act Reform Program no longer constitutes a reimbursable state-mandated program, effective November 7, 2012.

Objective, Scope, and Methodology

The objective of our audit was to determine whether costs claimed represent increased costs resulting from the legislatively mandated Open Meetings Act/Brown Act Reform Program. Specifically, we conducted this audit to determine whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.¹

The audit period was July 1, 2005, through June 30, 2012.

To achieve our objective, we:

- Reviewed the annual mandated cost claims filed by the city for the audit period and identified the material cost components claimed. For standard-time option costs, material cost components included the number of agenda items, the minutes per agenda item, and the blended PHRs for the employees who performed the reimbursable activities. For flat-rate costs, material cost components included the number of agenda items and the program's uniform cost allowance;
- Determined whether there were any mathematical errors or any unusual or unexpected variances from year to year, and whether the claims adhered to the SCO's claiming instructions and the program's parameters and guidelines;
- Completed an internal control questionnaire by interviewing key city staff members. Discussed the claim preparation process with city staff to determine what information was obtained, who obtained it, and how it was used;

Standard-time option

- Selected judgmental non-statistical samples of meeting agendas, representing the population of 4,523 meeting agenda items claimed for the City Council, ranging from 28% to 36% of claimed agenda items for each fiscal year of the audit period;

¹ Unreasonable and/or excessive costs include ineligible costs that are not identified in the program's parameters and guidelines as reimbursable costs.

- Counted the number of eligible agenda items identified on the sampled meeting agendas, compared the results to the number of agenda items claimed for that meeting, and determined an error percentage for each year of the audit period;
- Consistent with the American Institute of Certified Public Accountants' (AICPA) *Audit Sampling Guide*, projected the results from the sample by applying each fiscal year's error rate to the total population for that fiscal year;
- Held discussions with city representatives to determine which employee classifications performed the reimbursable activities and the extent of their involvement;
- Calculated blended PHRs for FY 2005-06 through FY 2011-12 for all city employee classifications that performed the mandated activities, using documentation from the city's payroll system;
- Determined whether indirect costs claimed separately were already included in the blended PHRs for FY 2005-06 through FY 2008-09 and were supported;

Flat-rate option

- Selected judgmental non-statistical samples of meeting agendas from the population of 3,007 agendas for various city departments, ranging from 33% to 40% of meeting agendas claimed for each fiscal year of the audit period;
- Determined the existence of meeting agendas claimed and compared the number of supported meetings to the number claimed (we excluded from consideration meetings that did not include a provision for public comment); and
- Developed error rates for each fiscal year based on the number of eligible meeting agendas. Consistent with the AICPA *Audit Sampling Guide*, we applied the error rate to the total costs claimed for that fiscal year.

GC sections 12410, 17558.5, and 17561 provide the legal authority to conduct this audit. We conducted this performance 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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. Our audit scope did not assess the efficiency or effectiveness of program operations. We did not audit the city's financial statements.

Conclusion

As a result of performing the audit procedures, we found instances of noncompliance with the requirements described in our audit objective. We found that the city did not claim costs funded by another source; however, the unallowable claimed costs are ineligible and unsupported, as quantified in Schedule 1 and described in the Findings and Recommendations section of this audit report.

For the audit period, the City of Berkeley claimed \$658,311 for costs of the legislatively mandated Open Meetings Act/Brown Act Reform Program. Our audit found that \$618,061 is allowable and \$40,250 is unallowable. The State made no payments to the city. The State will pay \$618,061, contingent upon available appropriations.

Following issuance of this audit report, the SCO's Local Government Programs and Services Division will notify the city of the adjustment to its claims via a system-generated letter for each fiscal year in the audit period with the exception of FY 2008-09, for which we determined that all costs claimed are allowable.

**Follow-up on
Prior Audit
Findings**

We have not previously conducted an audit of the city's legislatively mandated Open Meetings Act/Brown Act Reform Program.

**Views of
Responsible
Officials**

We discussed our audit results with the city's representatives during a status meeting conducted on May 26, 2020. Henry Oyekanmi, Director of Finance, responded by letter dated July 21, 2020 (Attachment). Mr. Oyekanmi stated that the city concurs with the findings, waived an exit conference, and requested that we issue the final audit report. The city's complete response is included as an attachment to this audit report.

Restricted Use

This audit report is solely for the information and use of the City of Berkeley, the California Department of Finance, and 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 audit report, which is a matter of public record and is available on the SCO website at www.sco.ca.gov.

Original signed by

JIM L. SPANO, CPA
Chief, Division of Audits

September 23, 2020

Schedule 1— Summary of Program Costs July 1, 2005, through June 30, 2012

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2005, through June 30, 2006</u>				
Standard time	\$ 23,444	\$ 24,429	\$ 985	Finding 1
Flat rate	64,981	57,113	(7,868)	Finding 2
Total direct costs	88,425	81,542	(6,883)	
Indirect costs ²	2,538	-	(2,538)	Finding 1
Total program costs	<u>\$ 90,963</u>	81,542	<u>\$ (9,421)</u>	
Less amount paid by the State ³		-		
Allowable costs claimed in excess of amount paid		<u>\$ 81,542</u>		
<u>July 1, 2006, through June 30, 2007</u>				
Standard time	\$ 17,446	\$ 22,070	\$ 4,624	Finding 1
Flat rate	75,842	64,282	(11,560)	Finding 2
Total direct costs	93,288	86,352	(6,936)	
Indirect costs ²	2,149	-	(2,149)	Finding 1
Total program costs	<u>\$ 95,437</u>	86,352	<u>\$ (9,085)</u>	
Less amount paid by the State ³		-		
Allowable costs claimed in excess of amount paid		<u>\$ 86,352</u>		
<u>July 1, 2007, through June 30, 2008</u>				
Standard time	\$ 20,060	\$ 24,371	\$ 4,311	Finding 1
Flat rate	64,888	59,907	(4,981)	Finding 2
Total direct costs	84,948	84,278	(670)	
Indirect costs ²	2,668	-	(2,668)	Finding 1
Total program costs	<u>\$ 87,616</u>	84,278	<u>\$ (3,338)</u>	
Less amount paid by the State ³		-		
Allowable costs claimed in excess of amount paid		<u>\$ 84,278</u>		
<u>July 1, 2008, through June 30, 2009</u>				
Standard time	\$ 18,839	\$ 30,203	\$ 11,364	Finding 1
Flat rate	70,160	64,430	(5,730)	Finding 2
Total direct costs	88,999	94,633	5,634	
Indirect costs ²	3,255	-	(3,255)	Finding 1
Total direct and indirect costs	92,254	94,633	2,379	
Less allowable costs that exceed costs claimed ⁴	-	(2,379)	(2,379)	
Total program costs	<u>\$ 92,254</u>	\$ 92,254	<u>\$ -</u>	
Less amount paid by the State ³		-		
Allowable costs claimed in excess of amount paid		<u>\$ 92,254</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2009, through June 30, 2010</u>				
Standard time	\$ 41,955	\$ 39,020	\$ (2,935)	Finding 1
Flat rate	69,550	68,614	(936)	Finding 2
Total direct costs	111,505	107,634	(3,871)	
Indirect costs	-	-	-	
Total program costs	<u>\$ 111,505</u>	107,634	<u>\$ (3,871)</u>	
Less amount paid by the State ³		-		
Allowable costs claimed in excess of amount paid		<u>\$ 107,634</u>		
<u>July 1, 2010, through June 30, 2011</u>				
Standard time	\$ 35,938	\$ 28,998	\$ (6,940)	Finding 1
Flat rate	53,463	52,984	(479)	Finding 2
Total direct costs	89,401	81,982	(7,419)	
Indirect costs	-	-	-	
Total program costs	<u>\$ 89,401</u>	81,982	<u>\$ (7,419)</u>	
Less amount paid by the State ³		-		
Allowable costs claimed in excess of amount paid		<u>\$ 81,982</u>		
<u>July 1, 2011, through June 30, 2012</u>				
Standard time	\$ 37,352	\$ 32,215	\$ (5,137)	Finding 1
Flat rate	53,783	51,804	(1,979)	Finding 2
Total direct costs	91,135	84,019	(7,116)	
Indirect costs	-	-	-	
Total program costs	<u>\$ 91,135</u>	84,019	<u>\$ (7,116)</u>	
Less amount paid by the State ³		-		
Allowable costs claimed in excess of amount paid		<u>\$ 84,019</u>		
<u>Summary: July 1, 2005, through June 30, 2012</u>				
Standard time	\$ 195,034	\$ 201,306	\$ 6,272	Finding 1
Flat rate	452,667	419,134	(33,533)	Finding 2
Total direct costs	647,701	620,440	(27,261)	
Indirect costs ²	10,610	-	(10,610)	Finding 1
Total direct and indirect costs	658,311	620,440	(37,871)	
Less allowable costs that exceed costs claimed ⁴	-	(2,379)	(2,379)	
Total program costs	<u>\$ 658,311</u>	618,061	<u>\$ (40,250)</u>	
Less amount paid by the State ³		-		
Allowable costs claimed in excess of amount paid		<u>\$ 618,061</u>		

¹ See the Findings and Recommendations section.

² Indirect costs were claimed separately from standard-time salaries.

³ Payment amount current as of September 17, 2020.

⁴ GC section of 17568 stipulates that the State will not reimburse any claim more than one year after the filing deadline specified in SCO's claiming instructions. That deadline has expired for FY 2008-09.

**Schedule 2—
Summary of Agenda Costs
July 1, 2005, through June 30, 2012**

City Department	Claimed Agendas	Allowable Agenda Variance (%)	Allowable Agendas	Unallowable Agendas	Flat Rate	Audit Adjustment ¹
<u>July 1, 2005, through June 30, 2006</u>						
Health and Human Services	72	100.00%	72	-	\$ 135.66	\$ -
City Manager	70	91.30%	64	(6)	135.66	(814)
Planning and Development	149	73.17%	109	(40)	135.66	(5,426)
Public Works	31	90.91%	28	(3)	135.66	(407)
Transportation	18	66.67%	12	(6)	135.66	(814)
Housing and Community Services	67	100.00%	67	-	135.66	-
City Attorney	5	100.00%	5	-	135.66	-
Mental Health	12	100.00%	12	-	135.66	-
Parks and Waterfront	34	91.67%	31	(3)	135.66	(407)
Police and Fire	21	100.00%	21	-	135.66	-
Total	<u>479</u>		<u>421</u>	<u>(58)</u>		<u>\$ (7,868)</u>
<u>July 1, 2006, through June 30, 2007</u>						
Health and Human Services	85	100.00%	85	-	\$ 140.97	\$ -
City Manager	67	86.36%	61	(6)	140.97	(846)
Planning and Development	132	68.52%	90	(42)	140.97	(5,921)
Public Works	32	100.00%	32	-	140.97	-
Transportation	22	50.00%	11	(11)	140.97	(1,551)
Housing and Community Services	78	85.71%	67	(8)	140.97	(1,128)
City Attorney	7	100.00%	7	-	140.97	-
Mental Health	32	72.73%	23	(9)	140.97	(1,269)
Parks and Waterfront	33	90.00%	30	(3)	140.97	(423)
Police and Fire	50	94.12%	47	(3)	140.97	(423)
Rounding adjustment	-		-	-		1
Total	<u>538</u>		<u>453</u>	<u>(82)</u>		<u>\$ (11,560)</u>
<u>July 1, 2007, through June 30, 2008</u>						
Health and Human Services	65	100.00%	65	-	\$ 150.90	\$ -
City Manager	49	88.89%	44	(5)	150.90	(755)
Planning and Development	85	90.63%	77	(8)	150.90	(1,207)
Public Works	33	90.91%	30	(3)	150.90	(453)
Transportation	23	85.71%	20	(3)	150.90	(453)
Housing and Community Services	56	95.00%	53	(3)	150.90	(453)
City Attorney	8	100.00%	8	-	150.90	-
Mental Health	22	50.00%	11	(11)	150.90	(1,660)
Parks and Waterfront	39	100.00%	39	-	150.90	-
Police and Fire	50	100.00%	50	-	150.90	-
Total	<u>430</u>		<u>397</u>	<u>(33)</u>		<u>\$ (4,981)</u>

Schedule 2 (continued)

City Department	Claimed Agendas	Allowable Agenda Variance (%)	Allowable Agendas	Unallowable Agendas	Flat Rate	Audit Adjustment ¹
<u>July 1, 2008, through June 30, 2009</u>						
Health and Human Services	57	95.45%	54	(3)	\$ 154.88	\$ (465)
City Manager	69	95.83%	66	(3)	154.88	(465)
Planning and Development	81	100.00%	81	-	154.88	-
Public Works	32	81.82%	26	(6)	154.88	(929)
Transportation	20	100.00%	20	-	154.88	-
Housing and Community Services	77	88.89%	68	(9)	154.88	(1,394)
City Attorney	8	100.00%	8	-	154.88	-
Mental Health	22	85.71%	19	(3)	154.88	(465)
Parks and Waterfront	41	83.33%	34	(7)	154.88	(1,084)
Police and Fire	46	86.67%	40	(6)	154.88	(929)
Total	453		416	(37)		\$ (5,731)
<u>July 1, 2009, through June 30, 2010</u>						
Health and Human Services	55	100.00%	55	-	\$ 155.94	\$ -
City Manager	63	100.00%	63	-	155.94	-
Planning and Development	89	100.00%	89	-	155.94	-
Public Works	33	100.00%	33	-	155.94	-
Transportation	16	100.00%	16	-	155.94	-
Housing and Community Services	76	96.15%	73	(3)	155.94	(468)
City Attorney	5	100.00%	5	-	155.94	-
Mental Health	28	100.00%	28	-	155.94	-
Parks and Waterfront	39	100.00%	39	-	155.94	-
Police and Fire	42	92.86%	39	(3)	155.94	(468)
Total	446		440	(6)		\$ (936)
<u>July 1, 2010, through June 30, 2011</u>						
Health & Human Services	46	100.00%	46	-	\$ 159.59	\$ -
Health and Human Services	46	100.00%	46	-	159.59	-
Planning and Development	63	100.00%	63	-	159.59	-
Public Works	29	90.00%	26	(3)	159.59	(479)
Transportation	9	100.00%	9	-	159.59	-
Housing and Community Services	66	100.00%	66	-	159.59	-
City Attorney	9	100.00%	9	-	159.59	-
Mental Health	10	100.00%	10	-	159.59	-
Parks and Waterfront	30	100.00%	30	-	159.59	-
Police and Fire	27	100.00%	27	-	159.59	-
Total	335		332	(3)		(479)

Schedule 2 (continued)

City Department	Claimed Agendas	Allowable Agenda Variance (%)	Allowable Agendas	Unallowable Agendas	Flat Rate	Audit Adjustment ¹
<u>July 1, 2011, through June 30, 2012</u>						
Health and Human Services	38	100.00%	38	-	\$ 164.98	\$ -
City Manager	45	100.00%	45	-	164.98	-
Planning and Development	69	100.00%	69	-	164.98	-
Public Works	27	100.00%	27	-	164.98	-
Transportation	11	75.00%	8	(3)	164.98	(495)
Housing and Community Services	58	100.00%	58	-	164.98	-
City Attorney	10	100.00%	10	-	164.98	-
Mental Health	10	100.00%	10	-	164.98	-
Parks and Waterfront	28	66.67%	19	(9)	164.98	(1,485)
Police and Fire	30	100.00%	30	-	164.98	-
Rounding Adjustment	-		-	-		1
Total	<u>-</u>		<u>-</u>	<u>-</u>		<u>1</u>
Grand Total	<u>3,007</u>		<u>2,776</u>	<u>(231)</u>		<u>\$ (33,533)</u>

¹ See Finding 2 – Overstated flat rate costs.

Findings and Recommendations

FINDING 1— Overstated standard-time option and related indirect costs

The city claimed \$205,644 under the standard-time option for the Open Meetings Act/Brown Act Reform Program for the audit period. Claimed standard-time costs include \$195,034 for the preparation and posting of agenda items, and \$10,610 of related indirect costs.

The city calculated standard-time costs by multiplying the number of Berkeley City Council meeting agenda items by the standard time allowance of 30 minutes per agenda item, then multiplying the product by the blended PHR. The blended PHR includes related benefits and indirect costs for the employee classifications that performed the reimbursable activity.

During testing, we found that \$201,306 is allowable and \$4,338 is unallowable. The costs are unallowable because the city applied incorrect PHRs to eligible agenda items and claimed unsupported indirect costs.

Testing Methodology

We used non-statistical sampling to test meeting agendas claimed during the audit period under the standard-time option. This included:

- Determining that the population of items for testing included 4,523 agenda items;
- Judgmentally selecting claimed meeting agendas as follows:
 - FY 2005-06: 199 out of 714 agenda items
 - FY 2006-07: 221 out of 611 agenda items
 - FY 2007-08: 221 out of 666 agenda items
 - FY 2008-09: 202 out of 606 agenda items
 - FY 2009-10: 203 out of 679 agenda items
 - FY 2010-11: 178 out of 629 agenda items
 - FY 2011-12: 195 out of 618 agenda items;
- Reviewing as many of these meeting agendas as possible, available on the city's website or requested from the city;
- Counting the number of eligible agenda items for meeting agendas provided under the standard-time option based on the requirements of the parameters and guidelines. Compared the testing results to the number of agenda items claimed per fiscal year; and
- Projecting the results from the samples selected from each year by applying each year's error percentage to the total population for that year.

City Council

The city claimed \$203,106 under the standard-time option for preparing and posting 4,523 agenda items, and \$10,610 of related indirect costs for the City Council during the audit period. We found that \$201,306 is allowable and \$4,338 is unallowable. The costs are unallowable because the city understated the number of eligible agenda items by 312 items and overstated the blended PHRs for the entire audit period.

The city misstated the elements of the blended PHR calculations (employee annual salaries and benefits, productive hours, and the percentage of various staff members’ involvement in the reimbursable activities). Furthermore, the city claimed related indirect costs of \$10,610 for FY 2005-06 through FY 2008-09, although the city already included a component for indirect costs in its blended PHR calculations.

The following table summarizes the claimed, allowable, and audit adjustment amounts for the City Council for the standard-time option costs claimed by fiscal year:

	Fiscal Year							Total
	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	
Number of claimed agenda items	714	611	666	606	679	629	618	
Standard time (hour) per agenda	x 0.50	x 0.50	x 0.50	x 0.50	x 0.50	x 0.50	x 0.50	
Total claimed hours	357.00	305.50	333.00	303.00	339.50	314.50	309.00	
Claimed PHR	x 65.67	x 64.14	x 68.25	x 72.92	x 123.58	x 114.27	x 120.88	
Total direct costs	\$ 23,444	\$ 19,595	\$ 22,727	\$ 22,095	\$ 41,955	\$ 35,938	\$ 37,352	\$ 203,106
Claim Error Adjustment	-	(2,149)	(2,668)	(3,255)	-	-	-	(8,072)
Total direct costs claimed	\$ 23,444	\$ 17,446	\$ 20,059	\$ 18,840	\$ 41,955	\$ 35,938	\$ 37,352	\$ 195,034
Related indirect costs ¹	2,538	2,149	2,668	3,255	-	-	-	10,610
Total claimed costs	\$ 25,982	\$ 19,595	\$ 22,727	\$ 22,095	\$ 41,955	\$ 35,938	\$ 37,352	\$ 205,644
Number of allowable agenda items	745	655	675	675	729	678	678	
Standard time (hour) per agenda	x 0.50	x 0.50	x 0.50	x 0.50	x 0.50	x 0.50	x 0.50	
Total allowable hours	372.50	327.50	337.50	337.50	364.50	339.00	339.00	
Allowable blended PHR	x 65.58	x 67.39	x 72.21	x 89.49	x 107.05	x 85.54	x 95.03	
Total allowable direct costs	\$ 24,429	\$ 22,070	\$ 24,371	\$ 30,203	\$ 39,020	\$ 28,998	\$ 32,215	\$ 201,306
Allowable related indirect costs ¹	-	-	-	-	-	-	-	-
Total allowable costs	\$ 24,429	\$ 22,070	\$ 24,371	\$ 30,203	\$ 39,020	\$ 28,998	\$ 32,215	\$ 201,306
Audit adjustment ²	\$ (1,553)	\$ 2,475	\$ 1,644	\$ 8,108	\$ (2,935)	\$ (6,940)	\$ (5,137)	\$ (4,338)

¹ Indirect costs for FY 2005-06 through FY 2008-09 claimed separate from Blended PHRs are unsupported.

² Claimed amounts do not reconcile with claimed agenda items and blended PHRs due to claiming error.

Misstated Agenda Items

The city claimed costs for preparing 4,523 agenda items for its City Council meetings during the audit period. We found that 4,835 are allowable and the city understated the number of eligible agenda items by 312 during the audit period. We judgmentally selected agendas from City Council meetings during each year of the audit period, which comprised agenda items ranging from 28% to 36% of the number of agenda items claimed per year. We reviewed the board meeting agendas to determine the number of eligible items. Following the requirements of the parameters and guidelines, we did not count items such as “public comments,” “next meeting,” “adjournment,” and general discussion matters, as these are regular repetitive items.

We followed guidance contained in the AICPA's *Audit Sampling Guide* (May 1, 2017 edition) to apply audit sampling in accordance with AU-C Section 530, *Audit Sampling*. The objective of our testing was to determine whether the count of eligible agenda items (4,267) claimed under the standard-time option were correct. We defined deviations as agenda items ineligible for reimbursement per the parameters and guidelines.

The population consisted of the 4,523 agenda items claimed for the City Council meetings during the seven-year audit period. We determined that the City Council was an eligible city agency to claim costs under the standard-time option. We judgmentally selected approximately 31% of City Council standard-time agendas for testing, which comprised 1,419 agenda items. The number of claimed agenda items remained constant throughout the audit period (ranging from 606 to 714). Therefore, we selected 178 to 221 agenda items per year for testing.

The tolerable misstatement, or error variance, is an error rate of ineligible agenda items within 15%. Our initial testing and discussions with city staff members revealed that the claimed agenda items were reasonable and not excessive; therefore, we accepted the count of claimed agenda items. In addition, we counted and included an additional 326 agenda items that the city did not initially claim.

Overstated Productive Hourly Rates

The city claimed blended PHRs and applied them to the following employee job classifications for all years of the audit period:

- City Clerk
- Assistant City Clerk
- Office Specialist III
- Assistant Management Analyst
- City Manager
- Deputy City Managers

We met with representatives of the City Clerk's Office and, based on these discussions, we determined which employee classifications performed the reimbursable activities and the extent of their involvement. We also requested actual payroll information from the Payroll Office for the staff performing the reimbursable activities during the audit period, and used this information to re-calculate blended PHRs. We found that the city overstated the claimed rates for all years of the audit period.

The following table summarizes the actual participation percentages for city staff members performing the reimbursable activities during the audit period:

Employee Classification	Fiscal Year						
	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
<u>Actual percentages:</u>							
City Clerk A	5%	2%	5%	40%	40%	5%	3%
City Clerk B	0%	3%	0%	0%	0%	0%	2%
IS Specialist A	75%	75%	0%	0%	0%	0%	0%
IS Specialist B	20%	20%	0%	0%	0%	0%	0%
Assistant City Clerk	0%	0%	35%	0%	0%	35%	35%
Office Specialist III	0%	0%	25%	25%	25%	25%	25%
Assistant Management Analyst	0%	0%	35%	35%	35%	35%	35%

We used salary, benefit, and indirect cost information that the city provided to re-calculate its PHRs. We then multiplied the PHRs by the actual participation percentages to compute blended PHRs for the audit period.

The following table shows the calculation of the blended PHR used to calculate allowable costs for FY 2008-09:

Employee Classification	Annual Salary [a]	Productive Hours [b]	PHR [c=(a/b)]	Indirect Costs Rate [d=(c x 22.9%)]	Benefits [e]	Total PHR [f=(c+d+e)]	Activity % [g]	Blended PHR [f x g]
City Clerk	\$ 132,107.02	1,738.0	\$ 76.01	\$ 17.41	\$ 37.32	\$ 130.74	40%	\$ 52.30
Asistant Management Analyst	60,955.51	1,777.0	34.30	7.85	20.95	63.10	35%	22.09
Office Specialist III	60,055.71	1,727.0	34.77	7.96	17.67	60.40	25%	15.10
Totals								<u>\$ 89.49</u>

We performed a similar calculation for all of the other years of the audit period. We then applied allowable blended PHRs to allowable agenda items for each fiscal year.

The following table presents the calculation of total allowable costs under the standard-time option during the audit period by fiscal year:

Fiscal Year	Allowable Agenda Items [a]	Standard Time Allowance [b]	Claimed Blended PHR	Audited / Allowable Blended PHR [c]	Total Allowable Costs [a] x [b] x [c]
2005-06	745	0.5	\$ 65.67	\$ 65.58	\$ 24,429
2006-07	655	0.5	64.14	67.39	22,070
2007-08	675	0.5	68.25	72.21	24,371
2008-09	675	0.5	72.92	89.49	30,203
2009-10	729	0.5	123.58	107.05	39,020
2010-11	678	0.5	114.27	85.54	28,998
2011-12	678	0.5	120.88	95.03	32,215
Totals	<u>4,835</u>				<u>\$ 201,306</u>

Criteria

Section IV. (A) (Reimbursable Activities – Agenda Preparation and Posting Activities) of the parameters and guidelines lists reimbursable activities including “Prepare a single agenda for a regular meeting of a legislative body of a local agency...” and “Post a single agenda 72 hours before a meeting”

Section V. (A) (2) (a) (Claim Preparation and Submission – Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items – Standard Time – Main Legislative Body Meetings of Counties and Cities) of the parameters and guidelines states:

List the meeting name and dates. For each meeting, multiply the number of agenda items, *excluding standard agenda items* [emphasis added] such as “adjournment”, “call to order”, “flag salute”, and “public comments”, by 30 minutes and then by the blended productive hourly rate of the involved employees.

Section VI. (A) (Supporting Data – Source Documents) of the parameters and guidelines require that “all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities.” Section VI. (A) also states:

For those entities that elect reimbursement pursuant to the standard time methodology, option 2 in section V.A, documents showing the calculation of the blended productive hourly rate and copies of agendas shall be sufficient evidence.

Recommendation

No recommendation is applicable for this finding, as the period of reimbursement for the legislatively mandated Open Meetings Act/Brown Act Reform Program ended on November 7, 2012, with the passage of Proposition 30. For other mandated programs, we recommend that the city:

- Follow the mandated program’s parameters and guidelines and claiming instructions when preparing its reimbursement claims; and
- Ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

FINDING 2— Overstated flat-rate costs

The city claimed \$452,667 under the flat-rate option for the Open Meetings Act/Brown Act Reform Program for the audit period. During testing, we found that \$419,134 is allowable and \$33,533 is unallowable.

The city calculated costs under the flat-rate option by multiplying an annual uniform cost allowance by the number of Berkeley City Council meetings. The uniform cost allowance is adjusted each year by the Implicit Price Deflator, as referenced in GC section 17523.

The costs are unallowable because the city overstated the number of meetings claimed in all years of the audit period. We worked with city representatives and searched the city’s website, but neither the city nor its departments were able to locate some of the meeting agendas claimed. In addition, some meeting agendas were ineligible for claiming purposes because the meetings did not include an agenda item for public comment, were canceled, or were claimed by multiple departments. The city could not identify how these errors occurred because the city relied on a mandated-cost consultant to prepare its claims.

The following table summarizes the claimed, allowable, and audit adjustment amounts for the flat-rate option by fiscal year:

	Fiscal Year							Total
	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	
Claimed agendas	479	538	430	453	446	335	326	3,007
Flat rate	x 135.66	x 140.97	x 150.90	x 154.88	x 155.94	x 159.59	x 164.98	
Totals	64,981	75,842	64,887	70,161	69,549	53,463	53,783	
Claim calculation errors ¹	-	-	1	(1)	1	-	-	
Total claimed costs	<u>\$ 64,981</u>	<u>\$ 75,842</u>	<u>\$ 64,888</u>	<u>\$ 70,160</u>	<u>\$ 69,550</u>	<u>\$ 53,463</u>	<u>\$ 53,783</u>	<u>\$ 452,667</u>
Allowable agendas	421	456	397	416	440	332	314	2,776
Flat rate	x 135.66	x 140.97	x 150.90	x 154.88	x 155.94	x 159.59	x 164.98	
Total allowable costs	<u>\$ 57,113</u>	<u>\$ 64,282</u>	<u>\$ 59,907</u>	<u>\$ 64,430</u>	<u>\$ 68,614</u>	<u>\$ 52,984</u>	<u>\$ 51,804</u>	<u>419,134</u>
Audit adjustment	<u>\$ (7,868)</u>	<u>\$ (11,560)</u>	<u>\$ (4,981)</u>	<u>\$ (5,730)</u>	<u>\$ (936)</u>	<u>\$ (479)</u>	<u>\$ (1,979)</u>	<u>\$ (33,533)</u>

¹Minor claim calculation variances due to rounding errors

Overstated Agendas

The city claimed costs for preparing 3,007 meeting agendas during the audit period. We found that 2,776 agendas are allowable and 231 are unallowable.

The city claimed agendas related to 10 city departments during the audit period. We judgmentally selected 35.41% of meeting agendas for legislative bodies within those departments during the audit period for testing. We used non-statistical sampling to test meeting agendas claimed during the audit period under the flat-rate option. This included:

- Determining that the population of items for testing included 3,007 meeting agendas;
- Judgmentally selecting claimed meeting agendas as follows:
 - 192 out of 479 agendas for FY 2005-06
 - 191 out of 538 agendas for FY 2006-07
 - 152 out of 430 agendas for FY 2007-08
 - 152 out of 453 agendas for FY 2008-09
 - 156 out of 446 agendas for FY 2009-10
 - 114 out of 335 agendas for FY 2010-11
 - 112 out of 326 agendas for FY 2011-12

- Reviewing as many of these meeting agendas as possible, available on the city’s website or requested from the city;
- Determining the existence of meeting agendas for the meetings claimed under the flat-rate option and comparing the number of supported meetings to the number claimed. We excluded from consideration meetings that did not include a provision for public comment; and
- Projecting the results from the samples selected from each year by applying each department year’s allowable agenda variance to the total population for each department for that year.

Allowable agendas are for meetings that actually occurred and were supported. Unallowable agendas are for meetings that were not supported, or that were canceled, claimed by multiple departments, or lacked availability for public comment or public hearings. Based on the testing results, we developed allowable agenda variances for each of the eight departments based on the number of eligible agendas that the city provided compared to the number claimed. We applied these variance to the number of agendas claimed by each city department for each fiscal year of the audit period.

Schedule 2 presents the number of agendas claimed, the allowable agenda variance percentage, the number of allowable agendas, the number of unallowable agendas, and the audit adjustment for each fiscal year during the audit period.

Criteria

Section I. (Summary of Mandate) of the parameters and guidelines states, in part:

Statutes of 1986, chapter 641 also added Government Code section 54954.3 to provide an opportunity for members of the public to address the legislative body on specific agenda items or any item of interest that is within the subject matter jurisdiction of the legislative body, and this opportunity for comment must be stated on the posted agenda.

Section IV. (A) (Reimbursable Activities – Agenda Preparation and Posting Activities) of the parameters and guidelines, lists reimbursable activities including “Prepare a single agenda for a regular meeting of a legislative body of a local agency...” and “Post a single agenda 72 hours before a meeting....”

Section V. (A) (3) (Claim Preparation and Submission – Reimbursement Options for Agenda Preparation and Posting, Including Closed Session Agenda Items – Flat Rate Option) of the parameters and guidelines states “List the meeting names and dates. Multiply the uniform cost allowance...by the number of meetings.”

Section VI. (A) (Supporting Data – Source Documents) of the parameters and guidelines states that “all incurred costs claimed must be traceable to source documents that show evidence of their validity and relationship to

the reimbursable activities.” Section VI. (A) also states, “For those entities that elect reimbursement pursuant to the flat-rate methodology, option 3 in section V.A, copies of agendas shall be sufficient evidence.”

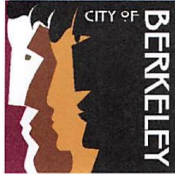
Recommendation

No recommendation is applicable for this finding, as reimbursement under the Open Meetings Act/Brown Act Reform Program ended on November 7, 2012, with the passage of Proposition 30.

For other mandated programs, we recommend that the city:

- Follow the mandated program’s parameters and guidelines and claiming instructions when filing its reimbursement claims; and
- Ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

**Attachment—
City's Comments Regarding the Audit Results**



Department of Finance

July 21, 2020

Vladimir Goncharenko
c/o Office of State Controller Betty T. Yee
Division of Audits, Compliance Audits Bureau
3301 C Street, Suite 725,
Sacramento, CA 95816 / (916) 323-4206

Dear Vladimir,

I have read the report and concur with the findings. As we do not have any questions, we would like to waive the exit conference. Please proceed with issuing the final report.

Thank you,

Henry Oyekanmi
Director of Finance

**State Controller's Office
Division of Audits
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Sacramento, CA 94250**

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