

CITY OF SAN DIEGO

Audit Report

OPEN MEETINGS ACT/BROWN ACT REFORM PROGRAM

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

July 1, 2009, through June 30, 2012



BETTY T. YEE
California State Controller

May 2017



BETTY T. YEE
California State Controller

May 1, 2017

The Honorable Kevin L. Faulconer, Mayor
City of San Diego
202 C Street, 11th Floor
San Diego, CA 92101

Dear Mayor Faulconer:

The State Controller's Office audited the costs claimed by the City of San Diego for the legislatively mandated Open Meetings Act/Brown Act Reform Program (Chapter 641, Statutes of 1986; and Chapter 1136 through 1138, Statutes of 1993) for the period of July 1, 2009, through June 30, 2012.

The city claimed \$869,747 for the mandated program. Our audit found that \$128,392 is allowable and \$741,355 is unallowable. The costs are unallowable primarily because the city overstated its actual time costs by claiming costs for ineligible legislative bodies and meetings and claiming unsupported costs. The city understated net flat-rate costs by omitting eligible costs, claiming costs that are outside of the audit period, and including duplicated costs. The city also overstated its indirect costs by making computational errors and applying the rates to unallowable costs. The State made no payments to the city. The State will pay allowable costs claimed that exceed the amount paid, totaling \$128,392, contingent upon available appropriations.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/rg

The Honorable Kevin L. Faulconer,
Mayor

-2-

May 1, 2017

cc: Mary Lewis, Chief Financial Officer
City of San Diego
Tracy McCraner, Director of Financial Management
Department of Financial Management
City of San Diego
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
Anita Dagan, Manager
Local Government Programs and Services Division
State Controller's Office

Contents

Audit Report

Summary	1
Background	1
Objectives, Scope, and Methodology	2
Conclusion	3
Views of Responsible Officials.....	3
Restricted Use	3
Schedule—Summary of Program Costs	4
Findings and Recommendations.....	5
Attachment—City’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of San Diego for the legislatively mandated Open Meetings Act/Brown Act Reform Program (Chapter 641, Statutes of 1986; and Chapter 1136 through 1138, Statutes of 1993) for the period of July 1, 2009, through June 30, 2012.

The city claimed \$869,747 for the mandated program. Our audit found that \$128,392 is allowable and \$741,355 is unallowable. The costs are unallowable primarily because the city overstated its actual time costs by claiming costs for ineligible legislative bodies and meetings and claiming unsupported costs. The city understated net flat-rate costs by omitting eligible costs, claiming costs that are outside of the audit period, and including duplicated costs. The city also overstated its indirect costs by making computational errors and applying the rates to unallowable costs. The State made no payments to the city. The State will pay allowable costs claimed that exceed the amount paid, totaling \$128,392, contingent upon available appropriations.

Background

Open Meetings Act Program

Chapter 641, Statutes of 1986, added Government Code (GC) sections 54954.2 and 54954.3. 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 the agenda to be posted at least 72 hours before the meeting in a location freely accessible to the public. 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 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 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 school districts in claiming mandated program reimbursable costs.

The Open Meetings Act Program was 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 parameters and guidelines. The Open Meetings Act/Brown Act Reform Program was effective for 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 and 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.

Objectives, Scope, and Methodology

We conducted this performance audit to determine whether costs claimed represent increased costs resulting from the Open Meetings Act/Brown Act Reform Program for the period of July 1, 2009, through June 30, 2012.

The legal authority to conduct this audit is provided by GC sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We conducted this 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. Our audit scope did not assess the efficiency or effectiveness of program operations. We did not audit the city's financial statements.

The objectives of our audit were to determine whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

To achieve our audit objectives, we:

- Reviewed annual claims filed with SCO to identify any mathematical errors and performed analytical procedures to determine any unusual or unexpected variances from year-to-year;

- Completed an internal control questionnaire and performed a walk-through of the claim preparation process to determine what information was used, who obtained it, and how it was obtained;
- Judgmentally selected a haphazard sample of agenda preparation and posting costs claimed and traced the costs to documentation to determine that the costs were supported and related to the mandated program;
- Traced blended productive hourly rate calculations for city employees to supporting documentation in the city's payroll system;
- Inquired whether the city realized any offsetting savings or reimbursements from the statutes which created the mandated program; and
- Reviewed indirect cost rates claimed to determine whether they were properly computed and applied.

Conclusion

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

For the audit period, the City of San Diego claimed \$869,747 for costs of the Open Meetings Act/Brown Act Reform Program. Our audit found that \$128,392 is allowable and \$741,355 is unallowable.

The State made no payments to the city. Our audit found that \$128,392 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$128,392, contingent upon available appropriations.

Views of Responsible Officials

We issued a draft audit report on March 28, 2017. Tracy McCraner, Director of Financial Management, responded by letter dated April 14, 2017 (Attachment), accepting the audit results. This report includes the city's response.

Restricted Use

This report is solely for the information and use of the City of San Diego, 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, CPA
Chief, Division of Audits

May 1, 2017

Schedule— Summary of Program Costs July 1, 2009, through June 30, 2012

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2009, through June 30, 2010</u>				
Actual time	\$ 199,266	\$ 3,084	\$ (196,182)	Finding 1
Standard time	19,789	19,789	-	
Flat rate	14,970	18,712	3,742	Finding 2
Total direct costs	234,025	41,585	(192,440)	
Indirect costs	11,448	193	(11,255)	Finding 3
Total program costs	<u>\$ 245,473</u>	41,778	<u>\$ (203,695)</u>	
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 41,778</u>		
<u>July 1, 2010, through June 30, 2011</u>				
Actual time	\$ 220,616	\$ 2,904	\$ (217,712)	Finding 1
Standard time	23,912	23,912	-	
Flat rate	12,608	15,959	3,351	Finding 2
Total direct costs	257,136	42,775	(214,361)	
Indirect costs	12,819	205	(12,614)	Finding 3
Total program costs ²	<u>\$ 269,955</u>	42,980	<u>\$ (226,975)</u>	
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 42,980</u>		
<u>July 1, 2011, through June 30, 2012</u>				
Actual time	\$ 310,185	\$ 3,788	\$ (306,397)	Finding 1
Standard time	21,318	21,318	-	
Flat rate	19,633	18,314	(1,319)	Finding 2
Total direct costs	351,136	43,420	(307,716)	
Indirect costs	3,183	214	(2,969)	Finding 3
Total program costs	<u>\$ 354,319</u>	43,634	<u>\$ (310,685)</u>	
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 43,634</u>		
<u>Summary: July 1, 2009, through June 30, 2012</u>				
Actual time	\$ 730,067	\$ 9,776	\$ (720,291)	Finding 1
Standard time	65,019	65,019	-	
Flat rate	47,211	52,985	5,774	Finding 2
Total direct costs	842,297	127,780	(714,517)	
Indirect costs	27,450	612	(26,838)	Finding 3
Total program costs	<u>\$ 869,747</u>	128,392	<u>\$ (741,355)</u>	
Less amount paid by the State		-		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 128,392</u>		

¹See the Findings and Recommendations section.

²The city mistakenly omitted \$482 from the total claimed amount on its FAM-27 form. We corrected the mathematical error and revised the claimed amount.

Findings and Recommendations

**FINDING 1—
Ineligible and
unsupported actual
time costs**

The city overstated agenda preparation and posting costs by \$720,291 under the actual-time reimbursement option for the audit period. The city claimed costs for legislative bodies related to its Personnel Department and the Development Services Department – Planning Division. In its claims, the city included costs for ineligible legislative bodies and meetings totaling \$485,441, and unsupported costs totaling \$234,850.

The following table summarizes the ineligible and unsupported actual time costs:

<u>Fiscal Year</u>	<u>Claimed Costs</u>	<u>Allowable Costs</u>	<u>Audit Adjustment</u>
2009-10	\$ 199,266	\$ 3,084	\$ (196,182)
2010-11	220,616	2,904	(217,712)
2011-12	<u>310,185</u>	<u>3,788</u>	<u>(306,397)</u>
Total	<u>\$ 730,067</u>	<u>\$ 9,776</u>	<u>\$ (720,291)</u>

Ineligible Legislative Bodies and Meetings

For the audit period, the city claimed \$485,441 for ineligible legislative bodies and meetings. The following ineligible costs resulted from claiming legislative bodies that do not prepare and post public agendas for meetings, or meetings that are not open to the public:

- The city claimed \$29,160 in meeting costs for its Personnel Department’s Joint Apprenticeship Committee. The committee’s meetings are not open to the public and, therefore, are not reimbursable in accordance with the mandate program.
- The city claimed \$456,281 in pre-hearing and hearing costs for its Personnel Department’s Civil Service Commission. The commission does not prepare and post a public agenda for pre-hearings. For hearings, the commission produces a public notice but the public is not allowed to provide comment. In addition, the pre-hearings and hearings are not presided over by the legislative body, which is the case for the routine commission meetings. Instead, a representative for the commission presides over the hearings that take place subsequent to personnel-related actions. The legislative body does not preside over the hearings and the hearings are not open for public comment. Therefore, the costs claimed are not eligible for reimbursement in accordance with the mandate program.

Unsupported Actual Costs

For the audit period, the city claimed \$234,850 in unsupported costs. The city did not maintain time records to support the agenda preparation and posting activities. However, the city did prepare and post agendas of eligible legislative bodies. Due to the lack of time records, the city requested that we consider these eligible agendas under the flat-rate cost component. The flat-rate method provides reimbursement for each eligible agenda based on a uniform cost allowance. We agreed and considered the agendas of the following legislative bodies under the flat-rate cost component (see Finding 2):

- The city claimed \$157,745 in costs for its Personnel Department's Civil Service Commission and Salary Setting Committee. The department did not maintain time records to support eligible agenda preparation and posting activities. Costs claimed were based on estimated hours to perform mandate activities. As a result, costs claimed are not eligible in accordance with the requirements of the actual time cost method.
- The city claimed \$77,105 in costs for its Development Services Department – Planning Division's Community Planning Committees. The department tracked time spent performing mandate activities, however, the time was comingled with non-mandate related activities. The ineligible activities include, but are not limited to, preparing for and conducting meetings. As the city did not identify time spent performing mandate activities, the costs claimed are not eligible for reimbursement in accordance with the requirements of the actual time cost method.

Criteria

The program's parameters and guidelines (section VI (A)) require that all costs claimed be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities.

The parameters and guidelines (section IV (A)) provide that eligible activities include the preparation of a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body.

Under the actual time option, the parameters and guidelines (section V (A) (1)) specify that the claimant is to identify the reimbursable activities performed and the time associated with each. In addition, the claimant must list the meetings and dates, and report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate.

Recommendation

No recommendation is applicable for this audit, as the Open Meetings Act/Brown Act Reform Program is no longer mandated.

**FINDING 2—
Understated flat-rate
costs**

The city understated net flat-rate costs by \$5,774 for the audit period. The city overstated and understated costs during the audit period. The net adjustment results from the city’s overstatement of claimed costs by including costs outside of the audit period and duplicate costs; and the city’s understatement of costs results from its omission of agendas from eligible legislative bodies.

The following table summarizes the adjustments to flat-rate costs:

Fiscal Year	Claimed Costs	Allowable Costs	Audit Adjustment
2009-10	\$ 14,970	\$ 18,712	\$ 3,742
2010-11	12,608	15,959	3,351
2011-12	19,633	18,314	(1,319)
Total	<u>\$ 47,211</u>	<u>\$ 52,985</u>	<u>\$ 5,774</u>

Costs claimed outside of the audit period

For FY 2011-12, the city claimed costs for meetings that took place outside of the audit period. In total, the city claimed 34 agendas for meetings that took place in the subsequent fiscal year. As a result, we recalculated allowable costs excluding the ineligible agendas. By claiming costs outside of the audit period, the city overstated costs by \$5,609.

Duplicate costs

For FY 2009-10, the city claimed costs twice for a meeting of the Committee on Public Safety and Neighborhood Services. The duplicate resulted in an overstatement of \$156.

Omitted costs

As noted in Finding 1, the city claimed agendas of eligible legislative bodies under the actual time cost component. However, the city did not provide support to identify the time spent on eligible activities. In lieu of providing time records, the city requested that we consider the agendas of the eligible legislative bodies under the flat-rate cost component. We agreed and considered the agendas prepared and posted for meetings of Civil Service Commission, Salary Setting Committee, and the Community Planner’s Committee. The flat-rate method provides reimbursement for each eligible agenda based on a uniform cost allowance. We recalculated costs for the audit period including the omitted agendas, resulting in an understatement of \$11,539.

Criteria

The parameters and guidelines (section VI (A)) require that all costs claimed be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities.

The parameters and guidelines (section III) specify that only actual costs for one fiscal year shall be included in each claim.

The parameters and guidelines (section IV (A)) provide that eligible activities include the preparation of a single agenda for a regular meeting of a legislative body of a local agency or school district containing a brief description of each item of business to be transacted or discussed at a regular meeting. Further, every agenda must state that there is an opportunity for members of the public to comment on matters that are within the subject matter jurisdiction of the legislative body.

Under the flat-rate option, the parameters and guidelines (section V (A) (3)) specify that the claimant is to identify the meetings and dates, then multiply the number of meetings by the uniform cost allowance.

Recommendation

No recommendation is applicable for this audit, as the Open Meetings Act/Brown Act Reform Program is no longer mandated.

**FINDING 3—
Overstated indirect costs**

The city overstated indirect costs by \$26,838 for the audit period. The city overstated indirect costs by computing its costs based on unsupported actual time costs, applying an unsupported indirect rate, and miscalculating indirect costs. For the audit period, the city overstated indirect costs by applying its rates to unsupported actual time costs. For FY 2011-12, the city claimed an indirect cost rate of 20%. However, on its claim it applied a rate of less than 2% to compute indirect costs. The city did not provide support for the indirect rate claimed, so we applied the rate of 10% to eligible direct salaries costs. For the audit period, we recalculated indirect costs using the 10% rate applied to eligible direct salaries costs.

The following table summarizes the adjustments to indirect costs:

<u>Fiscal Year</u>	<u>Allowable Indirect Cost Rate</u>	<u>Allowable Direct Costs (Salaries Only)</u>	<u>Allowable Indirect Costs</u>	<u>Claimed Indirect Costs</u>	<u>Audit Adjustment</u>
2009-10	10%	\$ 1,927	\$ 193	\$ 11,448	\$ (11,255)
2010-11	10%	2,050	205	12,819	(12,614)
2011-12	10%	2,143	214	3,183	(2,969)
Total		<u>\$ 6,120</u>	<u>\$ 612</u>	<u>\$ 27,450</u>	<u>\$ (26,838)</u>

Criteria

The parameters and guidelines specify that indirect costs incurred in the performance of the mandated activities and adequately documented are reimbursable. Further, the parameters and guidelines (section V) state that counties and cities may claim indirect costs for the actual time and standard time options; no provision is included for the flat-rate option. In determining indirect costs, claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an indirect cost rate proposal using the procedure provided in Office of Management and Budget Circular A-87.

Recommendation

No recommendation is applicable for this audit, as the Open Meetings Act/Brown Act Reform Program is no longer mandated.

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



Financial Management Department

April 14, 2017

Mr. Jim L. Spano, Chief, Mandated Costs Audit Bureau
State Controller's Office
Division of Audits
PO Box 942850
Sacramento, CA 94250-5874

Dear Mr. Spano:

The City of San Diego has received, reviewed, and accepted the findings of the City of San Diego Audit Report regarding Open Meetings Act / Brown Act Reform Program dated March 2017. The City acknowledges that \$741,355 of the original \$869,747 claim for the period of July 1, 2009 through June 30, 2012 is ineligible and that, contingent upon available appropriations, the State will pay the City of San Diego \$128,392 in allowable program costs.

We appreciate the cooperation and assistance that your office provided to City staff with regard to the claim and audit findings. Although no recommendations are applicable, as the Open Meetings Act/Brown Act Reform Program is no longer considered a reimbursable state-mandated program, the audit provided staff an opportunity to review City procedures in regard to other state-mandated programs, and improvements to our existing processes will be implemented based on the results of this review.

Should you require any further assistance, please feel free to contact me at (619) 236-6218 or via email at TMcCraner@sandiego.gov.

Sincerely,



Tracy McCraner
Financial Management Director

TM/do

cc: Mary Lewis, Chief Financial Officer
Rolando Charvel, City Comptroller
Hadi Deghani, Personnel Director
Elizabeth Maland, City Clerk
Matthew Vespi, Deputy Director, Financial Management Department
David Onate, Interim Budget Coordinator, Financial Management Department

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

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