



BETTY T. YEE
California State Controller

May 21, 2018

Onyx Jones, Finance Manager
City of Pomona
505 South Garey Avenue
Pomona, CA 91766

Dear Ms. Jones:

The State Controller's Office (SCO) performed a review of costs claimed by the City of Pomona for the legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program (Los Angeles Regional Water Quality Control Board, Order No. 01-182, Permit CAS004001, Part 4F5c3) for the period of July 1, 2002, through June 30, 2012. We conducted our review under the authority of Government Code (GC) sections 12410, 17558.5, and 17561. Our review was limited to ensuring that costs claimed were incurred during the reimbursement period and that restricted revenues were properly offset.

The city claimed \$272,474 for the mandated program. Our review found that the entire amount is unallowable because the city claimed costs incurred outside of the reimbursement period and did not offset the restricted revenues used to fund the mandated activities, as described in the attached Summary of Program Costs and Review Results. The State made no payments to the city. Following issuance of this report, the SCO's Local Government Programs and Services Division will notify the city of the adjustments via a system-generated letter for each fiscal year in the audit period.

We issued a draft letter on March 16, 2018. You responded by letter (Attachment 3), acknowledging Finding 1 and disagreeing with the premise of Finding 2. This final letter includes the city's response.

This final letter contains an adjustment to costs claimed by the city. If you disagree with the review findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (Commission). Pursuant to Section 1185, subdivision (c), of the Commission's regulations (*California Code of Regulations*, Title 3), an IRC challenging this adjustment must be filed with the Commission no later than three years following the date of this letter, regardless of whether this letter is subsequently supplemented, superseded, or otherwise amended. You may obtain IRC information on the Commission's website at www.csm.ca.gov/forms/IRCFORM.pdf.

If you have any questions, please contact Jim Spano, Assistant Division Chief, by telephone at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/as

Attachments

RE: S18-MCC-9002

cc: Meg McWade, Public Works Director
City of Pomona
Linda Poliakon, Accounting Manager
City of Pomona
Dustin Andolsen, CPA, Accounting Supervisor
City of Pomona
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
California State Controller's Office

Attachment 1— Summary of Program Costs July 1, 2002, through June 30, 2012

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
One-time costs:				
Salaries and benefits	\$ 1,148	\$ -	\$ (1,148)	
Materials and supplies	6,713	-	(6,713)	
Indirect costs	98	-	(98)	
Total one-time costs	7,959	-	(7,959)	Finding 1
Ongoing costs	1,402	1,402	-	
Total one-time costs and ongoing costs	9,361	1,402	(7,959)	
Less offsetting revenues and reimbursements	-	(1,402)	(1,402)	Finding 2
Total program costs	<u>\$ 9,361</u>	-	<u>\$ (9,361)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Ongoing costs	\$ 1,402	\$ 1,402	\$ -	
Less offsetting revenues and reimbursements	-	(1,402)	(1,402)	Finding 2
Total program costs	<u>\$ 1,402</u>	-	<u>\$ (1,402)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Ongoing costs	\$ 1,402	\$ 1,402	\$ -	
Less offsetting revenues and reimbursements	-	(1,402)	(1,402)	Finding 2
Total program costs	<u>\$ 1,402</u>	-	<u>\$ (1,402)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Ongoing costs	\$ 1,402	\$ 1,402	\$ -	
Less offsetting revenues and reimbursements	-	(1,402)	(1,402)	Finding 2
Total program costs	<u>\$ 1,402</u>	-	<u>\$ (1,402)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment	Reference ¹
<u>July 1, 2006, through June 30, 2007</u>				
Ongoing costs	\$ 1,402	\$ 1,402	\$ -	
Less offsetting revenues and reimbursements	-	(1,402)	(1,402)	Finding 2
Total program costs	<u>\$ 1,402</u>	-	<u>\$ (1,402)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		
<u>July 1, 2007, through June 30, 2008</u>				
One-time costs				
Materials and supplies	\$ 81,392	\$ 81,392	\$ -	
Total one-time costs	81,392	81,392	-	
Ongoing costs	34,698	34,698	-	
Total one-time costs and ongoing costs	116,090	116,090	-	
Less offsetting revenues and reimbursements	-	(116,090)	(116,090)	Finding 2
Total program costs	<u>\$ 116,090</u>	-	<u>\$ (116,090)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		
<u>July 1, 2008, through June 30, 2009</u>				
Ongoing costs	\$ 34,698	\$ 34,698	\$ -	
Less offsetting revenues and reimbursements	-	(34,698)	(34,698)	Finding 2
Total program costs	<u>\$ 34,698</u>	-	<u>\$ (34,698)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		
<u>July 1, 2009, through June 30, 2010</u>				
Ongoing costs	\$ 34,903	\$ 34,903	\$ -	
Less offsetting revenues and reimbursements	-	(34,903)	(34,903)	Finding 2
Total program costs	<u>\$ 34,903</u>	-	<u>\$ (34,903)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		
<u>July 1, 2010, through June 30, 2011</u>				
Ongoing costs	\$ 35,006	\$ 35,006	\$ -	
Less offsetting revenues and reimbursements	-	(35,006)	(35,006)	Finding 2
Total program costs	<u>\$ 35,006</u>	-	<u>\$ (35,006)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment	Reference ¹
<u>July 1, 2011, through June 30, 2012</u>				
Ongoing costs	\$ 36,808	\$ 36,808	\$ -	
Less offsetting revenues and reimbursements	-	(36,808)	(36,808)	Finding 2
Total program costs	<u>\$ 36,808</u>	-	<u>\$ (36,808)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		
<u>Summary: July 1, 2002, through June 30, 2012</u>				
One-time costs	\$ 89,351	\$ 81,392	\$ (7,959)	Finding 1
Ongoing costs	183,123	183,123	-	
Total one-time costs and ongoing costs	272,474	264,515	(7,959)	
Less offsetting revenues and reimbursements	-	(264,515)	(264,515)	Finding 2
Total program costs	<u>\$ 272,474</u>	-	<u>\$ (272,474)</u>	
Less amount paid by the State ²		-		
Allowable costs claimed in excess of amount paid		<u>\$ -</u>		

¹ See Attachment 2, Review Results.

² Payment information current as of January 3, 2018.

Attachment 2— Review Results July 1, 2002, through June 30, 2012

BACKGROUND—

The California Regional Water Quality Control Board, Los Angeles Region (Board) adopted a 2001 storm water permit (Permit CAS004001) that requires local jurisdictions to:

Place trash receptacles at all transit stops within its jurisdiction that have shelters no later than August 1, 2002, and at all other transit stops within its jurisdiction no later than February 3, 2003. All trash receptacles shall be maintained as necessary.

On July 31, 2009, the Commission determined that Part 4F5c3 of the permit imposes a state mandate reimbursable under GC section 17561 and adopted the Statement of Decision. The Commission further clarified that each local agency subject to the permit and not subject to a trash total maximum daily load is entitled to reimbursement.

The Commission also determined that the period of reimbursement for the mandated activities begins July 1, 2002, and continues until a new National Pollutant Discharge Elimination System (NPDES) permit issued by the Board is adopted. On November 8, 2012, the Board adopted a new permit, Order No. R4-2012-0175, which became effective on December 28, 2012. As such, this legislatively mandated Municipal Storm Water and Urban Runoff Discharges Program ended on December 27, 2012.

The program's parameters and guidelines establish the state mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on March 24, 2011. In compliance with GC section 17558, the SCO issues claiming instructions to assist local agencies in claiming mandated program reimbursable costs.

FINDING 1— Ineligible one-time costs claimed for FY 2002-03

The city claimed \$7,959 in one-time costs for activities related to the purchase and installation of transit-stop trash receptacles for fiscal year (FY) 2002-03. We found that none of the costs claimed are allowable, as the costs were incurred prior to the beginning of the reimbursement period on July 1, 2002.

Section III. (Period of Reimbursement) of the parameters and guidelines states:

The filing dates of these test claims establish eligibility for reimbursement beginning July 1, 2002, pursuant to Government Code section 17557, subdivision (e), and continues until a new NPDES permit issued by the Regional Water Quality Control Board for Los Angeles is adopted.

Purchase or Construction and Installation of Receptacles and Pads cost component

The city provided an invoice, dated December 31, 2001, from Vido Samarzich, Inc., a general engineering contractor, for the purchase and installation of four transit-stop trash receptacles totaling \$6,400. The purchase order was dated June 11, 2001, and the city’s final payment to the contractor was approved on February 5, 2002, which was well before the reimbursement period began on July 1, 2002.

Selection, Evaluation, and Preparation of Specifications and Drawings cost component

The city claimed \$1,246 in salaries, benefits, and related indirect costs, and \$313 in miscellaneous costs (such as postage, advertising, and printing charges). The documentation provided to support the salaries, benefits, and miscellaneous costs claimed did not identify when the costs were incurred; however, as the costs of furnishing and installing receptacles were incurred prior to December 31, 2001—which was the date of the last invoice from the contractor—the costs related to the “selection, evaluation, and preparation of specifications and drawings” must also have been incurred prior to the reimbursement period, which began on July 1, 2002.

Recommendation

No recommendation is applicable for this mandated program, as the period of reimbursement expired on December 27, 2012. When claiming reimbursement for other mandated programs, we recommend that the city claim reimbursement for costs incurred during the eligibility period.

City’s Response

Finding 1 – The City acknowledges that the one-time costs claims were outside of the eligibility period per the parameters and guidelines of the program. The claims were prepared in house at the time by staff that are no longer with the City. The City has since contracted a third party to prepare the SB90 State Mandate Claims reimbursements to maximize collectability in all aspects of the claims.

**FINDING 2—
Unreported offsetting revenues and reimbursements**

The city did not offset any revenues or reimbursements on its claim forms for the review period. We found that the city should have offset \$264,515 in Proposition A Local Return funds used to pay \$81,392 in one-time costs and \$183,123 in ongoing maintenance costs.

The following table summarizes the review adjustment:

	Offsetting Revenue Reported	Unreported Offsetting Revenue	Review Adjustment
One-time costs claimed in FY 2007-08	\$ -	\$ (81,392)	\$ (81,392)
Ongoing maintenance costs, FY 2002-03 through FY 2011-12	-	(183,123)	(183,123)
	<u>\$ -</u>	<u>\$ (264,515)</u>	<u>\$ (264,515)</u>

Proposition A is a half-cent sales tax measure approved by Los Angeles County voters in 1980 to finance transit programs. Twenty-five percent of the sales tax revenue is dedicated to the Local Return Program to be used by cities for the developing and/or improving public transit and related transportation infrastructure.

Section II. (Project Eligibility) of the Proposition A and Proposition C Local Return Guidelines identifies reimbursement for ongoing trash receptacle maintenance as follows:

2. BUS STOP IMPROVEMENTS AND MAINTENANCE (Code 150, 160 & 170)

Examples of eligible Bus Stop Improvement and Maintenance projects include installation/replacement and/or maintenance of:

- Concrete landings – in street for buses and at sidewalk for passengers
- Bus turn-outs
- Benches
- Shelters
- Trash Receptacles
- Curb cuts
- Concrete or electrical work directly associated with the above items

Section VIII. (Offsetting Revenues and Reimbursements) of the parameters and guidelines states:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

Recommendation

No recommendation is applicable for this mandated program, as the period of reimbursement expired on December 27, 2012. When claiming reimbursement for other mandated programs, we recommend that the city offset all revenues and reimbursements used to fund mandated activities on its claim forms.

City's Response

Finding 2 – The City disagrees with the premise of the Finding. The City used Prop A funding at the time the program was mandated in 2002 due to the eligibility and purpose of Prop A funds. There was not guidance from the state at the time in regards to the appropriate source of funding that was required in order to be eligible for reimbursement. It wasn't until March 2011 when the programs parameters and guidelines became published and reimbursement claims were eligible to be submitted, approximately 9 years after the mandate. These parameters and guidelines stated that any non-General fund monies used are not eligible for reimbursement. If this was known by the City at the time the program was mandated, General Fund monies would have been used and Prop A

funds would have been used on much needed transit related activities. The City feels that State is overreaching on its power of mandated programs and that the parameters and guidelines should be written for a program at the time it is mandated by the State. A program mandated by the State and implemented by the City, should be reimbursed for their costs regardless of the funding source used. Ultimately these funds could have been used for much need programming. Going forward, the City has contracted a third party to prepare the SB90 State Mandated Claims reimbursements to maximize the collectability in all aspects of the claims.

SCO Comment

Our finding and recommendation remain unchanged.

The city states that it should be reimbursed for state mandates “regardless of the funding source used.” This statement contradicts the California Supreme Court ruling in *County of Fresno v. State of California*, which states that mandate reimbursement is limited to costs incurred solely from tax revenues, as follows:

Section 6 was included in article XIII B in recognition that article XIII A of the Constitution severely restricted the taxing powers of local governments. The provision was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that that were ill equipped to handle the task. Specifically, it was designed to protect the tax revenues of local governments from states mandates that would require expenditures of such revenues. **Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse...local governments for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered *solely from tax revenues*.** [Emphasis added]

The city chose, at its discretion, to use the Proposition A Local Return funds for ongoing maintenance costs of the transit-stop trash receptacles. As such, reimbursement for mandated costs is not required to the extent that the city used its Proposition A Local Return funds to fund the mandated activities.

The city states that the “State is overreaching on its power of mandated programs.” We disagree. Our authority to conduct this engagement is outlined in GC section 17561, which states that our responsibility is to ensure that claimed costs represent increased costs resulting from the mandated program. Furthermore, we have the authority to reduce any claim determined to be excessive and unreasonable.

The city states “that the parameters and guidelines should be written for a program at the time it was mandated by the State.” To clarify, the process of developing the parameters and guidelines began in the fall of 2003, when Los Angeles County and 14 cities in Los Angeles County filed a test claim with the Commission alleging that the various sections of the 2001 storm water permit imposed increased costs upon local agencies. The Statement of Decision was not adopted until 2009, due to a lengthy rebuttal period for the claimants and interested parties.

**Attachment 3—
City's Response to Draft Letter**

THE CITY OF
POMONA

Finance Department



March 29, 2018

Mr. Jim L. Spano, CPA
Office of the State Controller Betty T. Yee
Division of Audits
3301 C Street, Suite 715A
Sacramento, CA 95816

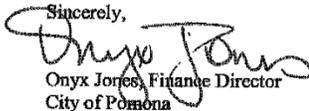
Dear Mr. Spano,

Thank you for the opportunity to provide comments on the State Controller's Office (SCO) draft audit report of the Municipal Stormwater and Urban Runoff Discharges Program in relation to the City of Pomona. See our responses below:

Finding 1 – The City acknowledges that the one-time cost claims were outside of the eligibility period per the parameters and guidelines of the program. The claims were prepared in house at the time by staff that are no longer with the City. The City has since contracted a third party to prepare the SB90 State Mandate Claims reimbursements to maximize collectability in all aspects of the claims.

Finding 2 – The City disagrees with the premise of the Finding. The City used Prop A funding at the time the program was mandated in 2002 due to the eligibility and purpose of the Prop A funds. There was no guidance from the state at the time in regards to appropriate source of funding that was required in order to be eligible for reimbursement. It wasn't until March 2011 when the programs parameters and guidelines became published and reimbursement claims were eligible to be submitted, approximately 9 years after the mandate. These parameters and guidelines stated that any non-General Fund monies used are not eligible for reimbursement. If this was known by the City at the time the program was mandated, General Fund monies would have been used and Prop A funds would have been used on much needed transit related activities. The City feels the State is overreaching on its power of mandated programs and that the parameters and guidelines should be written for a program at the time it is mandated by the State. A program mandated by the State and implemented by the City, should be reimbursed for their costs regardless of the funding source used. Ultimately these funds could have been used for much need programming. Going forward, the City has contracted a third party to prepare the SB90 State Mandate Claims reimbursements to maximize collectability in all aspects of the claims.

Sincerely,


Onyx Jones, Finance Director
City of Pomona

City Hall, 505 S. Garey Ave., Box 660, Pomona, CA 91769

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