

SANTA CLARA COUNTY

Audit Report

SEXUALLY VIOLENT PREDATORS PROGRAM

Chapters 762 and 763, Statutes of 1995, and
Chapter 4, Statutes of 1996

July 1, 1998, through June 30, 2001



STEVE WESTLY
California State Controller

July 2004



STEVE WESTLY
California State Controller

July 30, 2004

Mr. John V. Guthrie
Director of Finance
Santa Clara County
County Government Center, East Wing
70 West Hedding Street, 2nd Floor
San Jose, CA 95110

Dear Mr. Guthrie:

The State Controller's Office (SCO) has completed an audit of the claims filed by Santa Clara County for costs of the legislatively mandated Sexually Violent Predators Program (Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996) for the period of July 1, 1998, through June 30, 2001.

The county claimed and was paid \$1,228,958 (\$1,229,958 less \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$1,025,595 is allowable and \$203,363 is unallowable. The unallowable costs occurred because the county claimed costs that were overstated and non-reimbursable. The amount paid in excess of allowable costs claimed, totaling \$203,363, should be returned to the State.

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

Sincerely,

Original Signed By:

VINCENT P. BROWN
Chief Operating Officer

VPB:jj

cc: Dave Elledge
Controller-Treasurer
Santa Clara County
James Tilton, Program Budget Manager
Corrections and General Government
Department of Finance

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Audit Report

Summary

The State Controller's Office (SCO) has completed an audit of the claims filed by Santa Clara County for costs of the legislatively mandated Sexually Violent Predators Program (Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996) for the period of July 1, 1998, through June 30, 2001. The last day of fieldwork was September 29, 2003.

The county claimed and was paid \$1,228,958 (\$1,229,958 less \$1,000 penalty for filing late) for the mandated program. The audit disclosed that \$1,025,595 is allowable and \$203,363 is unallowable. The unallowable costs occurred because the county claimed costs that were overstated and non-reimbursable. The amount paid in excess of allowable costs claimed, totaling \$203,363, should be returned to the State.

Background

Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996, established new civil commitment procedures for the continued detention and treatment of sexually violent offenders following their completion of a prison term for certain sex-related offenses. Before detention and treatment are imposed, the county attorney is required to file a petition for civil commitment. A trial is then conducted to determine if the inmate is a sexually violent predator beyond a reasonable doubt. If the inmate accused of being a sexually violent predator is indigent, the test claim legislation requires counties to provide the indigent with the assistance of counsel and experts necessary to prepare the defense.

Chapters 762 and 763, Statutes of 1995, were enacted on October 11, 1995, and became operative on January 1, 1996. Chapter 4, Statutes of 1996, relating to the transportation and housing of potential sexually violent predators at a secured facility, was enacted as an urgency measure and became operative on January 25, 1996.

On June 25, 1998, the Commission on State Mandates (COSM) ruled that Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996, imposed a state mandate reimbursable under *Government Code* Section 17561.

Parameters and Guidelines, adopted by COSM, establishes the state mandate and defines criteria for reimbursement. In compliance with *Government Code* Section 17558, the SCO issues claiming instructions for each mandate requiring state reimbursement to assist counties in claiming reimbursable costs.

Objective, Scope, and Methodology

The audit objective was to determine whether costs claimed are increased costs incurred as a result of the legislatively mandated Sexually Violent Predators Program (Chapters 762 and 763, Statutes of 1995, and Chapter 4, Statutes of 1996) for the period of July 1, 1998, through June 30, 2001.

The auditor performed the following procedures:

- Reviewed the costs claimed to determine if they were increased costs resulting from the mandated program;
- Traced the costs claimed to the supporting documentation to determine whether the costs were properly supported;
- Confirmed that the costs claimed were not funded by another source; and
- Reviewed the costs claimed to determine that the costs were not unreasonable and/or excessive.

The SCO conducted the audit in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. The SCO did not audit the county's financial statements. The scope was limited to planning and performing audit procedures necessary to obtain reasonable assurance concerning the allowability of expenditures claimed for reimbursement. Accordingly, transactions were examined, on a test basis, to determine whether the amounts claimed for reimbursement were supported.

Review of the county's management controls was limited to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

The 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, Santa Clara County claimed and was paid \$1,228,958 (\$1,229,958 less \$1,000 penalty for filing late) for costs of the legislatively mandated Sexually Violent Predators Program. The audit disclosed that \$1,025,595 is allowable and \$203,363 is unallowable.

For fiscal year (FY) 1998-99, the county was paid \$248,744 by the State. The audit disclosed that \$241,108 is allowable. The amount paid in excess of allowable costs claimed, totaling \$7,636, should be returned to the State.

For FY 1999-2000, the county was paid \$531,117 (\$532,117 less \$1,000 late penalty for filing a late claim) by the State. The audit disclosed that \$444,897 is allowable. The amount paid in excess of allowable costs claimed, totaling \$86,220, should be returned to the State.

For FY 2000-01, the county was paid \$449,097 by the State. The audit disclosed that \$339,590 is allowable. The amount paid in excess of allowable costs claimed, totaling \$109,507, should be returned to the State.

**Views of
Responsible
Officials**

The SCO issued a draft audit report on January 30, 2004. David Elledge, Controller-Treasurer, responded by the attached letter dated March 10, 2004, agreeing with the audit results except for part of Finding 1. The county's response is included in this final audit report.

Restricted Use

This report is solely for the information and use of Santa Clara County, 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

**Schedule 1—
Summary of Program Costs
July 1, 1998, through June 30, 2001**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference ¹
<u>July 1, 1998, through June 30, 1999</u>				
Salaries	\$ 47,220	\$ 44,361	\$ (2,859)	Finding 1
Benefits	13,631	12,737	(894)	Finding 1
Services and supplies	<u>172,335</u>	<u>170,565</u>	<u>(1,770)</u>	Finding 2
Subtotals	233,186	227,663	(5,523)	
Indirect costs	<u>15,558</u>	<u>13,445</u>	<u>(2,113)</u>	Findings 1, 3
Total claimed cost	248,744	241,108	(7,636)	
Less late filing penalty	<u>—</u>	<u>—</u>	<u>—</u>	
Total net claim	<u>\$ 248,744</u>	241,108	<u>\$ (7,636)</u>	
Less amount paid by the State		<u>(248,744)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (7,636)</u>		
<u>July 1, 1999, through June 30, 2000</u>				
Salaries	\$ 158,129	\$ 111,517	\$ (46,612)	Finding 1
Benefits	35,444	24,555	(10,889)	Finding 1
Services and supplies	<u>272,002</u>	<u>264,193</u>	<u>(7,809)</u>	Finding 2
Subtotals	465,575	400,265	(65,310)	
Indirect costs	<u>66,542</u>	<u>45,632</u>	<u>(20,910)</u>	Findings 1, 3
Total claimed cost	532,117	445,897	(86,220)	
Less late filing penalty	<u>(1,000)</u>	<u>(1,000)</u>	<u>—</u>	
Total net claim	<u>\$ 531,117</u>	444,897	<u>\$ (86,220)</u>	
Less amount paid by the State		<u>(531,117)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (86,220)</u>		
<u>July 1, 2000, through June 30, 2001</u>				
Salaries	\$ 162,011	\$ 103,669	\$ (58,342)	Finding 1
Benefits	39,813	23,817	(15,996)	Finding 1
Services and supplies	<u>174,641</u>	<u>168,365</u>	<u>(6,276)</u>	Finding 2
Subtotals	376,465	295,851	(80,614)	
Indirect costs	<u>72,632</u>	<u>43,739</u>	<u>(28,893)</u>	Findings 1, 3
Total claimed cost	449,097	339,590	(109,507)	
Less late filing penalty	<u>—</u>	<u>—</u>	<u>—</u>	
Total net claim	<u>\$ 449,097</u>	339,590	<u>\$ (109,507)</u>	
Less amount paid by the State		<u>(449,097)</u>		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (109,507)</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustments	Reference ¹
Summary: July 1, 1998, through June 30, 2001				
Salaries	\$ 367,360	\$ 259,547	\$(107,813)	Finding 1
Benefits	88,888	61,109	(27,779)	Finding 1
Services and supplies	<u>618,978</u>	<u>603,123</u>	<u>(15,855)</u>	Finding 2
Subtotals	1,075,226	923,779	(151,447)	
Indirect costs	<u>154,732</u>	<u>102,816</u>	<u>(51,916)</u>	Findings 1, 3
Total claimed cost	1,229,958	1,026,595	(203,363)	
Less late filing penalty	<u>(1,000)</u>	<u>(1,000)</u>	<u>—</u>	
Total net claim	<u>\$1,228,958</u>	1,025,595	<u>\$(203,363)</u>	
Less amount paid by the State		<u>(1,228,958)</u>		
Total allowable costs claimed in excess of (less than) amount paid			<u>\$ (203,363)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Unsupported salaries and benefits costs

The county claimed \$135,592 (\$3,753 for FY 1998-99, \$57,501 for FY 1999-2000, and \$74,338 for FY 2000-01) in salaries and benefits that were not supported. The related indirect cost is \$48,531. Salaries and benefits consist of costs claimed for three departments: District Attorney, Public Defender, and Sheriff.

For FY 1999-2000 and FY 2000-01, the county overstated its costs because claimed productive hourly rates were overstated. The productive hourly rate consisted of two factors: annual average countywide productive hours and salary costs.

In calculating the countywide productive hours, the county included unallowable deductions for training and authorized break time. The county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than actual training hours attended. Furthermore, deducted training hours benefited specific departments' classifications rather than benefiting all departments. The county also deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period. Therefore, the county cannot deduct training and authorized break time from productive hours.

In calculating salaries, the county used an employee's pay as of the last pay period rather than what an employee earned for the fiscal year.

Consequently, the productive hourly rate used in the claim did not reflect actual costs. The adjustment is based on the SCO's recalculation of the productive hourly rate.

In addition, claimed costs were deemed unallowable due to the following:

District Attorney

The county claimed salaries and benefits totaling \$53,278 (\$1,331 for FY 1998-99, \$20,394 for FY 1999-2000, and \$31,553 for FY 2000-01) that were not supported. The related indirect cost is \$17,391. These costs were unallowable for the following reasons.

- The county claimed time for providing training for California District Attorney's Association (8 hours for FY 1998-99, 91 hours for FY 1999-2000, and 348 hours for FY 2000-01). Such costs are not reimbursable.
- The county claimed 6.88 hours (2.08 hours for FY 1998-99, 2.05 hours for FY 1999-2000, and 2.75 hours for FY 2000-01) in excess of hours per county records.
- For FY 1999-2000, the county claimed costs incurred for 33.75 hours spent by county staff members on mandate-related activities. The county erroneously claimed the same costs during FY 2000-01.

Public Defender

The county claimed salaries and benefits totaling \$48,318 (\$2,422 for FY 1998-99, \$33,296 for FY 1999-2000, and \$12,600 for FY 2000-01) that were not supported. The related indirect cost is \$17,786. These costs were deemed unallowable for the following reasons.

- For FY 1998-99, the county claimed 20 hours for “self-training” for one attorney. However, the county did not provide records to substantiate the costs claimed.
- For FY 1999-2000, the county claimed 8 hours for a statewide seminar. However, the county did not substantiate that the costs related to the mandate. The mandate allows costs for one-time training for each employee who works on the Sexually Violent Predators Program on the county’s internal policies and procedures.
- The county claimed 328.1 hours (6.5 for FY 1998-99, 274.85 for FY 1999-2000, and 46.75 for FY 2000-01) in excess of hours per county records.
- For FY 1999-2000, the county claimed costs incurred for 77.67 hours spent by the county staff on the mandate-related activities. The county erroneously claimed the same costs during FY 2000-01.

Sheriff

The county claimed salaries and benefits totaling \$33,996 (\$3,811 for FY 1999-2000 and \$30,185 for FY 2000-01) that were not supported. The related indirect cost is \$13,354.

The county claimed costs related to transportation of inmates from the state institution to the county jail and for transporting the sexually violent predator from the county jail to the courthouse. The county claimed estimated hours for each defendant it transported. In some instances, the county claimed eight hours per officer per defendant even though transportation logs showed that several defendants were transported during the same trip. In other instances, the county claimed a full eight hours for each officer when the transportation log showed that an inmate was transported and delivered to the facility and the officers continued to other facilities. (The transportation logs did not indicate the arrival and departure time.) In addition, the county claimed additional benefit costs when the hourly rate used already included benefit costs. Thus, the entire amount claimed for the Sheriff’s Department was deemed unallowable.

The SCO’s subsequent review and inquiry with the county’s Corrections Department revealed that the transportation costs were already included in the county’s jail rate and billed as costs incurred by the Corrections Department. County officials agreed that such costs were already included as part of Corrections Department costs.

A summary of unsupported salaries, benefits, and related indirect costs is as follows:

	Fiscal Year			Total
	1998-99	1999-2000	2000-01	
Salaries	\$ (2,859)	\$ (46,612)	\$ (58,342)	\$(107,813)
Benefits	(894)	(10,889)	(15,996)	(27,779)
Total salaries and benefits	(3,753)	(57,501)	(74,338)	(135,592)
Indirect costs	(929)	(20,151)	(27,451)	(48,531)
Total adjustment	<u>\$ (4,682)</u>	<u>\$ (77,652)</u>	<u>\$(101,789)</u>	<u>\$(184,123)</u>

Parameters and Guidelines states that one-time training for each employee who normally works on the Sexually Violent Predators Program on the county’s internal policies and procedures are eligible for reimbursement. The guidelines also state that transportation and housing costs for each potential sexually violent predator must be specifically identified to a defendant.

In addition, *Parameters and Guidelines* states that actual costs for one fiscal year shall be included in each claim and that all costs claimed are to be traceable to source documents that show evidence of the validity of such costs and their relationship to the mandated program.

Guidance in developing the productive hourly rate is provided in the SCO’s *Mandated Cost Manual for Local Agencies*. This manual states that a productive hourly rate may be computed for each job title (rather than for each individual) whose labor is directly related to claimed reimbursable costs.

Recommendation

The county should develop and implement an adequate recording and reporting system to ensure that all claimed costs are properly supported and reimbursable for the mandate in question. In addition, the county should review the claims to ensure that costs are not duplicated.

County’s Response

The county agrees with the finding, except for the usage of countywide productive hours for FY 2000-01. For a complete text of the county’s response, please refer to the Attachment.

The county states that it first implemented the countywide productive hours in FY 2000-01, which included deductions for training time and break time. The training time was based on collective bargaining agreements or rosters related to actual training sessions that were conducted. The training time excluded training time charged to programs to avoid double recovery of costs. The break times were calculated based on requirements of collective bargaining agreements and state law. All employees have been directed to limit the daily reporting of hours worked to 7.5 hours when preparing the SB 90 claims.

The county states that its automated payroll system can accommodate actual break-time; however, the additional time and costs incurred would not be cost effective. The county states that reporting authorized break time in lieu of actual break time is in accordance with OMB A-87 cost allocation principles. Furthermore, the county states that recording actual break time of county employees would not result in the determination of a materially different amount of break time that could be readily calculated pursuant to the 30-minute daily standard specified by the collective bargaining agreements.

The county states that its interpretation of the claiming instructions is that the time spent on training, authorized breaks, etc., should be removed from the calculation of productive hours to determine an accurate countywide productive hours. Furthermore, the county states that prior to the implementation of the countywide productive hour policy, the SCO was notified of the procedures related to the calculation of countywide productive hours. Since then, the county has submitted and the SCO has accepted more than 50 claims for which costs were claimed based on countywide productive hours.

SCO's Comment

The finding has been updated for clarity. The fiscal impact of the finding remains unchanged. The county only disagreed with the SCO exception relating to FY 2000-01 countywide productive hours. The SCO comments are discussed in the same order presented by the county in its response.

As discussed in the finding, the county deducted estimated training and break time for FY 2000-01. The deducted training time benefited specific departments or classifications within departments rather than general countywide training that benefited all departments. Departmental costs are more appropriately allocated as direct costs or as indirect costs through a departmental indirect cost rate proposal. In addition, the county's accounting system did not distinguish training time that was directly charged to program activities. Furthermore, the county deducted authorized rather than actual break time, and its accounting system did not separately account for actual break time taken. Limiting daily reporting of hours to 7.5 hours worked (which was not implemented during the current audit) does not address instances where staff works less than 8 hours a day or consistency of application to all program (mandates and non-mandates).

The development of productive hours based on estimated costs is not consistent with Office of Management and Budget Circular A-87, *Cost Principles for State, Local, and Indian Tribal Governments*.

The SCO's claiming instructions do not identify time spent on training and authorized breaks as deductions from total hours when computing the productive hours. If the county chooses to deduct the time spent for general countywide training that benefits all departments and actual break time taken in calculating productive hours, its accounting system must separately identify the actual time associated with these two

deductions. The countywide productive hours should be allowed based on the accuracy of the calculation rather than on past practices.

**FINDING 2—
Unsupported
services and
supplies costs**

The county claimed \$15,855 (\$1,770 for FY 1998-99, \$7,809 for FY 1999-2000, and \$6,276 for FY 2000-01) in services and supplies that were not supported. Services and supplies consist of costs claimed for the following four county departments: District Attorney, Public Defender, Corrections, and Sheriff.

District Attorney

The county claimed services and supplies totaling \$384 (\$318 for FY 1998-99 and \$66 for FY 2000-01) that the county was unable to support. The county did not substantiate that claimed supplies costs for training were mandate-related. These costs were claimed for providing statewide training. *Parameters and Guidelines* states that training is reimbursable for a one-time training on the county's policies and procedures.

Public Defender

The county claimed services and supplies totaling \$6,265 (\$4,867 for FY 1999-2000, and \$1,398 for FY 2000-01) that were not supported for the following reasons.

FY 1999-2000

- The county claimed \$4,597 under various costs in FY 1999-2000 that it erroneously claimed in FY 2000-01.
- The county did not substantiate that \$55 for training supplies claimed was mandate-related.
- The county overclaimed witness fees by \$215. The county claimed \$2,171 for witness fees, yet county records show the county paid \$1,956.

FY 2000-01

- The county claimed \$63 for defendants' shoes, which are not allowable costs.
- The county claimed \$283 for FY 1999-2000 that it erroneously claimed in FY 2000-01.
- The county claimed \$1,052 for attending training seminars. However, the county did not substantiate that the costs related to the mandate. The mandate allows costs incurred for one-time training for each employee who works on the Sexually Violent Predators Program on the county's internal policies and procedures.

Sheriff

The county claimed transportation costs totaling \$3,787 (\$460 for FY 1999-2000 and \$3,327 for FY 2000-01) that were not supported for the following reasons.

- The county claimed full round-trip miles for each defendant even if multiple defendants were transported during the same trip.
- In instances where sexually violent predators and non-sexually violent predator inmates were transported during the same trip, the county did not claim the increased mandated costs.
- The county claimed full round-trip mileage even though the inmate was delivered to the facility and the officers continued to other facilities to transport other non-mandate-related prisoners.

Corrections

The county overclaimed housing costs of \$5,419 (\$1,452 for FY 1998-99, \$2,482 for FY 1999-2000, and \$1,485 for FY 2000-01) that were not supported. The county did not reduce the housing costs by the reimbursements received.

A summary of unsupported services and supplies costs is as follows:

	Fiscal Year			Total
	1998-99	1999-2000	2000-01	
County department:				
District Attorney	\$ (318)	\$ —	\$ (66)	\$ (384)
Public Defender	—	(4,867)	(1,398)	(6,265)
Sheriff	—	(460)	(3,327)	(3,787)
Corrections	<u>(1,452)</u>	<u>(2,482)</u>	<u>(1,485)</u>	<u>(5,419)</u>
Total adjustment	<u>\$ (1,770)</u>	<u>\$ (7,809)</u>	<u>\$ (6,276)</u>	<u>\$ (15,855)</u>

Parameters and Guidelines states that one-time training costs for each employee who normally works on the Sexually Violent Predators Program on the county’s internal policies and procedures are eligible for reimbursement. The guidelines also state that transportation and housing costs for each potential sexually violent predator must be specifically identified to a defendant.

In addition, *Parameters and Guidelines* states that actual costs for one fiscal year shall be included in each claim and that all costs claimed are to be traceable to source documents that show evidence of the validity of such costs and their relationship to the mandated program.

Recommendation

The county should develop and implement an adequate recording and reporting system to ensure that all claimed costs are properly supported. In addition, the county should ensure that all applicable revenues are offset on its claim against its mandated program costs.

County’s Response

The county agrees with this finding.

SCO’s Comment

The finding remains unchanged.

**FINDING 3—
Overstated indirect costs**

The county claimed indirect costs using overstated indirect cost rates. For the entire audit period, the county had computed the indirect costs based on estimates. The actual costs were lower. Therefore, indirect salaries and benefits were overstated. As a result, the indirect cost rate was overstated.

A summary of overstated indirect costs is as follows:

	<u>Fiscal Year</u>			<u>Total</u>
	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>	
Supported indirect cost rate	23.83%	30.83%	31.49%	
Claimed indirect cost rate	<u>27.60%</u>	<u>31.80%</u>	<u>33.40%</u>	
Variance	(3.77)%	(0.97)%	(1.91)%	
Allowable costs	<u>\$ ×31,411</u>	<u>\$ ×78,289</u>	<u>\$ ×75,498</u>	
Difference in indirect cost	<u>\$ (1,184)</u>	<u>\$ (759)</u>	<u>\$ (1,442)</u>	<u>\$ (3,385)</u>

Parameters and Guidelines states that actual costs for one fiscal year shall be included in each claim and that all costs claimed are to be traceable to source documents that show evidence of the validity of such costs and their relationship to the mandated program.

Recommendation

The county should develop and implement an adequate recording and reporting system to ensure that all claimed costs are properly supported.

County’s Response

The county agrees with this finding.

SCO’s Comment

The finding remains unchanged.

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

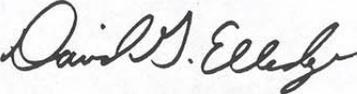
County of Santa Clara

Finance Agency
Controller-Treasurer Department
County Government Center
70 West Hedding Street, East Wing, 2nd Floor
San Jose, California 95110-1705
(408) 299-5200 FAX (408) 289-8629



DATE: March 10, 2004

TO: Jim L. Spano
Chief, Compliance Audits Bureau,
State Controller's Office, Division of audits,
Post Office Box 942850,
Sacramento, CA 94250-5874

FROM: David G. Elledge
Controller-Treasurer 

RE: SB90 mandate-Sexually Violent Predators Program-Draft audit report

Summary

Thank you for the audit report on the SB90 State Mandated Costs claim of the Sexually Violent Predators Program. We agree to all the findings mentioned in the report except the finding on usage of countywide productive hourly rate. We furnish our reply to the issue of countywide productive hourly rate for your reconsideration. We request your reconsideration of the disputed audit finding in light of our reply and request the State Controller's Office to rework the numbers in the report, accordingly.

FINDING 1- unsupported salaries, benefits costs

Response to calculation of Countywide Productive hour rates

The State Controller's draft audit report pertaining to the County's SB 90 Sexually Violent Predators states: -

In calculating the countywide productive hours, the county included unallowable deductions for training and authorized break time. The county deducted training time based on hours required by employees' bargaining unit agreement and /or continuing education requirements for licensure/certification rather than actual training hours attended. In addition the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period; therefore, the county cannot exclude those hours from productive hours.

We like to point out an anomaly in the above argument. The first part of the paragraph mentions that the training and authorized break time are both unallowable whereas the second part of the paragraph states that the County deducted training time pertaining to required licensure/certification rather than actual training hours. Therefore, the State has determined that the exclusion of training time from productive hours is appropriate, so long as the exclusion is documented based on actual training hours received. The comments proceed further to state that the County deducted authorized break time rather than actual break time taken. Therefore, as with training time, the State has agreed that the exclusion of actual break-time from the calculation of productive hours is allowable.

The County first implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for this fiscal year were based on calculations that included training time received by employees as reported by County departments, based on collective bargaining agreements or rosters related to actual training sessions that were conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County has modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

Regarding reporting of actual break-time taken by employees, while our automated payroll system can accommodate such a change, we believe the additional time and cost of recording such information would exceed the value of the information obtained, since it can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local governments to calculate indirect costs when such costs are "... not readily assignable...without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minute daily standard specified by the collective bargaining agreements. Further, because the County has directed all employees to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges.

According to our study and examination of the State Controller claiming instructions, the time spent on training, authorized breaks, etc., all of which are paid and form part of the total available hours, should be removed for the calculation of productive hours to get an accurate countywide productive hours as explained to the State Controller audit staff in several meetings. We produced the necessary documents in support of our calculation of the countywide productive hourly rate to the State audit staff. We believe that the State Controller's SB 90 claiming instructions explicitly approve the usage of the same by showing examples of excludable times one of which is informal time off. The worksheets were also provided to the State audit staff.

Further, before the introduction of countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed the State Controller that the County was electing to change its SB 90 claiming procedures related to the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitates the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using the countywide methodology. We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. During the audit of this claim, State auditors were unable to provide any written State procedures, regulations or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

Subsequent to the audit of selected SB 90 claims and the exit conference held on September 29, 2003, an email dated February 6, 2004 was sent from the Audit Division of the State Controller's Office in reply to our letter of response to the State's audit findings. The email stated that the State would accept the usage of a countywide productive hourly rate with certain conditions. For your ready reference the email from the Audit Division of the State Controller's Office dated February 6, 2004 is reproduced below.

Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara

Ram,

I reviewed the county's proposal dated December 19, 2001, to use countywide productive hours and have discussed your analysis with my staff and Division of Accounting and Reporting staff. The use of countywide productive hours would be acceptable to the State Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes guidelines for preparing mandated cost claims, does not identify the time spent on training and authorized breaks as deductions (excludable components) from total hours when computing productive hours. However, if a county chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable

deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.

If you would like to discuss the above further, please contact me.

Jim "Spano

In response to the issues raised by Mr. Spano in the above email, the recording of actual training time by the County's automated payroll system was accomplished approximately two years ago. Regarding the recording of actual daily break-time for all 15,000 county employees, we believe the implementation of this requirement would be an accounting exercise that would not result in a benefit to the State or the County commensurate with the required effort and cost. Lastly, all claiming departments stand advised of these procedures and the County Controller's Office is responsible for the annual calculation of County-wide productive hours and has done so for the past three fiscal years. These procedures are already a part of the County Controller's accounting policy manual and have been used on all SB 90 claims since FY 2000-01.

As mentioned by us in our communications to the State and our discussions with the State auditors, we reiterate that the State guidelines do permit the deduction of training and authorized breaks for calculation of productive hours. The State Manual states that 'Informal time off' as one item to be considered for calculation of local agency's average annual productive hours. We state that this item includes the authorized break time also. Regarding actual training hours as against the certification required training time; already our payroll accounting system identifies all the actual training time spent by all staff members of the county in the biweekly payroll procedure by separate cost codes. We do not include any training time directly charged to programs again in calculating the productive hours to ensure avoiding double recovery of costs. If State audit staff has identified any such charges included on timesheets of employees claiming against an SB 90 program, such cost should be disallowed rather than suggesting that the countywide productive hour analysis be materially amended.

We accept your statement that the use of countywide productive hours would be acceptable to the State Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandates and non-mandated). In addition to SB 90 claims, we are already using these productive hourly rates for fees and charges, grants and other cost claiming purposes.

We therefore request you to reconsider your views on the usage of countywide productive hourly rate policy and rework the numbers in the report to reflect the correct costs allowed. In respect of all other points we concur with the audit findings. We request you to recalculate the unallowable costs based on our reply.

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