

VI. Scope limitations and Impact on Work Performed

The purpose of this section is to identify any areas where VLS had scope limitations and explain how this limitation impacted the work performed. A scope limitation was presented when VLS requested certain documents from the District and District Bond Program vendors (vendors) and they did not comply with VLS's request. When presented with this scope limitation, VLS assessed the possibility of performing alternative testing procedures in order to reach a conclusion on the work step. The work performed was impacted by these limitations when VLS was unable to devise alternative and/or sufficient testing and investigation for the work step that would enable us to reach a conclusion related to the work step. The succinct meaning of Scope Limitations and Impact on Work Performed is explained below.

- Scope Limitation: VLS did not receive documents requested from the District, vendors, or other third parties.
- Impact on Work Performed: Indicates whether VLS was able to reach a conclusion of the work step by performing alternative and/or sufficient testing and investigation.

Scope Limitations and Impact on Work Performed

- 1) District: The District was able to provide all the documents and records requested by VLS; therefore, there was no scope limitation from the District.⁴⁷⁵
- 2) Vendors (Other than SGI): VLS sent a letter requesting certain information and documents related to the work the vendors performed for the District, contributions made to District affiliated organizations, and gifts purchased on behalf of District employees and/or Board members. A copy of the letter sent to these vendors is included in **Exhibit VI-1**. Of all the vendors where documents were requested, all but three vendors provided the documents requested by VLS. However, even with this scope limitation VLS was able to reach a conclusion on the applicable work step.⁴⁷⁶
- 3) SGI: SGI did not provide all the records requested by VLS, which resulted in VLS being unable to reach a conclusion for certain work steps in FI (3). SGI retained legal counsel

⁴⁷⁵ There were limited documents available related to work step (G) in FI (7) due to the time period of the contract and project reviewed; however, this did not prevent VLS from reaching a conclusion on that work step.

⁴⁷⁶ Four vendors contacted by VLS retained legal counsel. Three of these vendors ultimately provided VLS with the records requested. One of these vendors did not provide VLS with the records requested. Additionally, two other vendors failed to provide VLS with the records requested. One of these vendors indicated they needed additional time. The other vendor never acknowledged or responded to VLS's request.

subsequent to VLS's request of documents. At such time, Mr. Kawahara, legal counsel to the Subcommittee for the Clay Investigation, was advised and VLS worked under the direction of Mr. Kawahara in communication with SGI. What follows is a summary of key events with SGI and the impact on work step FI (3).

For the review and analysis performed in the FI (3) section, VLS made requests of both the District and SGI. The District provided VLS with the documents requested. SGI initially provided VLS with its disbursement ledger for District related payments and a listing of subcontractors working on District projects. VLS made further requests from SGI as follows:

- From the SGI disbursement ledger, VLS selected a sample of SGI payments to subcontractors and requested that SGI provide supporting documentation for these items. Supporting documentation for this request would have been copies of the subcontractor invoice and copies of the check issued in payment by SGI to the subcontractor.
- Payroll registers and time keeping records.
- Samples of SGI employees' resumes and degrees, if applicable.

VLS made the above-mentioned requests from SGI on 5/13/2016. SGI communicated through its legal counsel, Robert Nida, on 5/19/2016 that SGI would not continue to provide VLS with additional documentation unless the District agreed to compensate SGI for the time incurred to provide VLS with this information. Furthermore, legal counsel for SGI stated that SGI employee payroll registers, copies of resumes, and copies of degrees⁴⁷⁷ would not be provided. He also stated that the audit provision of the contract did not provide the right for clarification or questions to be asked of SGI.

The email communication from SGI's legal counsel contained the following. *"If the District seeks by this request the payroll records of individual employees, we find no right in the contract documents and/or law for SGI to produce such payroll or personnel records to the District."* Furthermore, SGI's legal counsel stated: *"As for your request for personnel files or partial personnel files/resumes, we are unable to provide such records. As you know, California law has specific requirements before we can release personnel information of any type, including the employee being provided lawful consumer notices. I believe the qualifications for those persons who were provided to the project as 'key personnel' under Article 3 of the contract were previously provided and approved. We*

⁴⁷⁷ Legal counsel for SGI referred to copies of resumes and copies of degrees as "partial personnel files/resumes."

are not authorized, however, to transmit other personnel information and there is nothing in the contract or law that requires SGI provides such information.”

Mr. Kawahara, legal counsel for the Subcommittee for the Clay Investigation, on behalf of the District communicated the following to SGI’s legal counsel: *“As I stated previously, the contract does not contemplate payment to SGI from the District when the District exercises the right to examine and audit the contractor’s records. The contract establishes an affirmative duty on SGI to maintain records in an orderly manner that complies with GAAP. The contract does not state that SGI can charge the District for giving it access to documents that must already be organized and maintained. Having restated my objections to your request for payment, in order to gather information, can you provide a more specific dollar amount or rates that you are requesting on behalf of SGI? How is this amount derived?”*

After Mr. Kawahara did not receive a response, he advised VLS on 6/16/2016 to move forward with alternative means of testing, if available. VLS performed the alternative testing procedures related to FI (3) section (B) work step - *Conduct appropriate investigative steps to determine if SGI withheld or failed to make payments to subcontractors working on District projects through SGI.* For this work step, VLS was able to use the following information in order to arrive at a conclusion for this work step:

- SGI invoices provided by the District as support for payments made to SGI
- Independently obtained invoices from SGI subcontractors⁴⁷⁸
- SGI’s disbursement ledger, which was obtained from SGI prior to communication from SGI’s legal counsel

On 8/1/2016, Mr. Kawahara received communication from SGI’s legal counsel stating that the SGI sample requested for payments of subcontractors would be provided via a flash drive that would be mailed to Mr. Kawahara. This is the information VLS had requested to conduct the testing related to FI (3) section (B) work step - *Conduct appropriate investigative steps to determine if SGI withheld or failed to make payments to subcontractors working on District projects through SGI.*

The communication from 8/1/2016 stated that SGI had “located the responsive documents” at SGI’s expense except for the documents that “required the production of personnel or payroll records.”

⁴⁷⁸ One SGI subcontractor provided VLS with copies of invoices sent to SGI for the fiscal years 2010/11 through 2014/15.

VLS received the flash drive on 8/11/2016. This flash drive contained support for 60 of the 80 sets of documents requested by VLS for FI (3) section (B) work step. VLS reviewed the documents received and determined that the copy of the checks written by SGI in payment to the Subcontractors reflected the same date that was listed as the payment date in the SGI disbursement ledger, which VLS had used as alternative means of testing.⁴⁷⁹

The sections that VLS was unable to conclude as a result of SGI's refusal to comply with VLS's request were the following:

- Sections for which payroll registers, and time keeping records were requested:
 - FI (3) section (C) work step - *Conduct appropriate investigative steps to determine if SGI was paid inappropriately for sick and vacation time and if SGI billed the District for hours not worked by SGI employee*
 - FI (3) section (F) work step - *Conduct appropriate investigative steps to determine if sufficient supporting documentation was provided with invoices submitted by SGI to the District*
- Section for which VLS requested samples of SGI employee resumes and degrees if applicable:
 - FI (3) section (E) work step - Conduct appropriate investigative steps to determine if SGI employees possess the appropriate qualifications as stated in the terms specified in the SGI contract with the District.

Finally, in addition to FI (3), SGI failed to provide VLS with documents and interviews of SGI personnel as requested by VLS for FI (1). Although VLS was allowed to interview SGI personnel for TC related work, VLS was not allowed to interview SGI personnel for FI related work. Additionally, SGI did not provide VLS with documents and financial information concerning any contributions made to organizations and any payments made by SGI for gifts or meals and entertainment to District Board members and District staff.

The failure of SGI to provide these requested documents and interviews of SGI personnel resulted in a scope limitation of the work VLS was able to perform for this work step. However, VLS was able to perform alternate and/or sufficient testing and investigative procedures to complete our work for FI (1).

⁴⁷⁹ This means that the conclusion (SGI did not appear to have paid its subcontractors in a timely manner for 30% of the invoices tested) by performing alternative means of testing for FI (3) section (B) work step was not changed by the review of the 60 sets of documents provided by SGI.