

WCCUSD Subcommittee on Clay Investigation

Alvarado Adult Education Campus

January 11, 2016

Minutes

Approved May 23, 2016

A. OPENING PROCEDURES

A.1 Call to Order

The meeting was called to order at 7:03 PM by Chairperson Liz Block.

A.2 Roll Call

Committee Members Present: Liz Block, Valerie Cuevas, Ivette Ricco.

Staff Attendees: Lisa LeBlanc, Associate Superintendent for Operations; James K. Kawahara, Special Counsel; Phyllis Rosen, Clerical Staff.

Others Present: Ernie Cooper of Vicenti Lloyd Stutzman LLP (“VLS”) was present via conference call for a portion of the meeting.

A.3 Approval of Agenda

MOTION: Ms. Cuevas moved to approve the Agenda. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

A.4 Approval of Minutes: January 7, 2016

Board Comment:

Ms. Cuevas asked to include an additional comment she made on the top of page 3, adding that the cost proposed by VLS was less than 1% of the entire bond program.

Tom Panas commented that the percentage amount of .49% that had been reported was inaccurate and that the correct number is .05%.

MOTION: Ms. Ricco moved to approve the minutes of January 7, 2016, as amended. Ms. Block seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

B. DISCUSSION / APPROVAL ITEMS

B.1 Discussion of Phase II Scope of Work, not-to-exceed contract amount for forensic accounting services, not-to-exceed contract amount for related legal counsel services and timeline for completion of Phase II

Public Comment:

Mr. Panas said we need to invest more time reviewing how bond money has been spent, and asked the Subcommittee to include Forensic Investigation (“FI”) items FI-1, 3 and 7 in the recommendation. He said that pursuing civil litigation would be a mistake because of the time and energy the District would expend which would detract from the number one priority of improving academic performance.

Mr. Panas handed out two documents from Anton Jungherr who was not present, entitled *Recommendations* and *Proposed Scope of Work – Phase II*.

Jack Weir, President Contra Costa Taxpayers Association, said their Executive Committee favored spending whatever time and money it takes to find out what happened, adding that the information could be useful from a statewide perspective.

Linda Ruiz-Lozito recommended moving forward with all of the Forensic Investigation items, excluding FI-6. She said it was necessary to know the specific details of what happened and then after the forensic investigation they will have the knowledge to know what controls to test. She spoke about the possibility of obtaining reimbursement for unfinished or new projects where fraud was uncovered.

Ben Steinberg said that it is the responsibility of the subcommittee and community to establish thorough transparency and accountability for what happened. He recommended doing all the forensic pieces except for FI-6. He said that testing controls was important but secondary.

Antonio Medrano spoke about conversations he had with community members who said they wanted the subcommittee to be thorough and honest with the community.

Board Comment:

Mr. Kawahara said that with the Test of Controls (“TC”) Section each item has to be addressed, whether or not VLS is assigned the work, because VLS was hired as independent outside accountants to provide an opinion to the District regarding high risk. He commented that the proposed cost is not extreme given the parameters of Phase I and the tremendous value to the District and community to make sure that the District going forward has addressed all the high risk areas.

Mr. Kawahara said that for the Forensic Investigation items, he recommended going forward with all of the items related to third-party vendors because that would address the accusations that have been made public related to inappropriate billing and inappropriate relationships with vendors. As requested by the subcommittee, he identified those items related to third-party vendors as FI-3, 4, 5, 7, 8, 9 and 10, and related to potential criminal referral as item FI-1.

Ms. LeBlanc handed out the Vavrinek, Trine, Day & Company, LLP (“VTD”) performance audit (November 14, 2015) which she believed could be useful as it outlines the performance audit and Agreed Upon Procedures (“AUPs”) and the eighteen areas which are similar with regards to the audit today.

Discussion followed regarding whether there was overlap between the work performed for the performance audit and the testing of controls in the forensic audit.

Mr. Kawahara said that the list on page 7 of the VTD audit was generic, and while it listed some topics similar to VLS’s audit it did not provide the detail of the work steps needed in order to make a comparison. Mr. Kawahara said that he would like to get VLS’s opinion on their procedures.

Ms. Cuevas asked to clarify the difference between the forensic audit that the Board authorized and the VTD performance audit. Mr. Kawahara said the Prop 39

performance audit is to essentially make sure the dollars are spent for the purpose for which the bonds have been authorized. In addition to that audit, AUPs have been negotiated between the District and the auditing firm which will provide a special enhanced audit on these topics. Ms. LeBlanc added that although AUPs, according to the Yellow Book, do not generally have a conclusion or an opinion, our auditor has agreed to give us a conclusion.

Ms. Cuevas asked whether the testing of controls in the performance audit is also structured around the questions posed based on the Clay allegations. Ms. LeBlanc said they are very similar because the scope that is somewhat limited on the VTD proposal was vetted at great length with the CBOC.

Ms. Block asked whether the performance audit will include interviews of staff and SGI. Ms. Ricco clarified that the performance audits in the past have in no way compared to the testing of controls in the forensic audit. She said that ideally some of these issues should have been discovered. Ms. Ricco added that although there are aspects of the performance audit we can link to the forensic audit, they are not what our goal is which is based on the allegations presented to the community. She thinks there is a big difference between past performance audits and the testing of controls and forensic investigation.

Ms. Cuevas asked whether the performance audit provided opinion. Ms. LeBlanc said VTD would not provide an opinion regarding AUPs. Mr. Kawahara clarified that VLS's goal is to make factual findings, not draw conclusions regarding culpability of parties.

Ms. Cuevas said she feels the two audits are different because they fall under two different sets of circumstances and so she favors keeping the two separate. Mr. Kawahara noted language in the VTD audit regarding professional standards that reads "attestation standards established by the American Institute of Certified Public Accountants." Ms. Block noted that VLS operated in accordance with the "code of professional standards of the Association of Certified Fraud Examiners."

Ms. Ricco recommended limiting the number of testing controls to save money saying that some items are redundant and encompassed in portions of the performance audit. She listed recent changes made to mitigate some of the high risk areas: a new Director of Contract Administration position, CBOC has requested changes in financial reporting and the District has made progress in that area, and the Board has taken a more proactive approach with regard to change orders.

Ms. Block added that even if we have new procedures we would want to test them.

Ms. Cuevas said she is wary of pulling items out in terms of being able to make an accurate comparison of the work performed. She said she is in favor of following the advice of independent counsel and doing the entire list.

Ms. Ricco said she wanted to exclude TC-1, 2, 4, 7, 9 and 12. TC-1 refers to the selection of the CBOC which has been recently revised and TC-2 refers to the steering/prioritization committee. Ms. Cuevas commented there are parts of the community that believe there has been unfairness in prioritization. Ms. Ricco said that is a past issue. Ms. Ricco added that TC-7, 9 and 12 could be excluded because they were part of the forensic investigation portion.

Ms. Block said she is in favor of doing all the TCs.

Ms. LeBlanc noted that there is approximately \$200 million remaining for upcoming projects, and any amount spent would be taken away from future projects.

Ms. Cuevas asked if any of Ms. Ricco's list would be considered part of the performance audit by VTD. Ms. LeBlanc said TC-1, 2 and 4 are very current and are not part of the VTD performance audit.

Ms. Ricco added that much of TC-7, 9 and 12 will be part of the performance audit. She referred back to the Clay allegations and asked what were the critical points and what does the community expect to hear. Ms. LeBlanc agreed that TC-7, 9 and 12 overlap with the VTD performance audit.

Ms. Block inquired whether the audits are conducted according to different standards. Ms. LeBlanc said that was a question for VLS.

Ms. Ricco said that 62% of VLS's fees are for travel, oversight, communication and reports, and so, if you reduce the number of test controls by a significant portion you save a lot of money. She recommends negotiating the 62% fee and asking that they can complete the work in a four month time.

Ernie Cooper of VLS was brought into the conversation via speaker phone.

Mr. Kawahara asked if the standards used by VTD in the AUPs were the same used by VLS in the testing of controls. Mr. Cooper responded that the AUPs are typically specific steps that the District and auditor agree need to be done. He said he reviewed the VTD audit report, but the specific work they will do is not apparent.

Ms. Block asked if there was any overlap with some of the testing of controls. Mr. Cooper said that strictly looking at the titles, AUP 10 was the same area as TC-8 and 9, AUP 11 appeared to be the same category as TC-13, AUP 13 seemed to be the same area as TC-11, and AUP 17 appeared the same category as TC-1.

Mr. Cooper said he did not know the type of steps VTD will use or if they will be looking at the same set of controls. He said that if the District chose to have VTD do an area in place of VLS, it is necessary to be sure the work covers the areas VLS identified in the risk assessment and that the District is satisfied the issues raised are being addressed. He added that VLS will only be able to comment on the TCs they work on and for the others VLS would report that VTD was retained to do additional work and VLS was advised by the District that area was being covered by VTD during AUPs. VLS would not be able to provide a color code and would leave that area blank.

Mr. Cooper said that VLS works by the Code of Professional Standards of Certified Fraud Examiners for both TCs and FIs, along with AICPA which deals with their code of ethics, etc. He said that the standards used for the AUPs would be different as they are specific steps VTD will cover.

Referring to page 7 of the performance audit, Mr. Cooper said that "attestation standards" typically applied to doing an audit and is another name for "audit

standards.” He said that attestation is a broad category and AUP is a category under the attestation. Mr. Cooper clarified that VLS’s work was entirely influenced by the Clay allegations.

Ms. Cuevas said she was in favor of having VLS do all the items, but was concerned that 62% of the proposal is tied into administrative costs. Mr. Cooper provided a detailed explanation of the charges for project oversight, travel, communications and reporting.

Mr. Cooper suggested that if the District is cutting down areas, VLS could look at costs and come back with whatever “discount” they can. Mr. Kawahara suggested reducing weekly reporting to monthly. Mr. Cooper said he could do that adding there could be other things they could do to bring costs down.

Discussion followed regarding VLS’s timeline. Mr. Cooper said it would take six months for forensic investigation and four months for testing controls, but if everything was done the total time would be eight months to deliver the final report.

Ms. Block left the dais at 8:51 PM. A break was taken at 8:52 PM and the call with Mr. Cooper concluded. The meeting resumed at 8:58 PM.

Discussion followed regarding approval of the forensic investigation items.

Ms. Ricco said the forensic investigation is a critical element to determine what has transpired and recommended focusing on the allegations that impact waste, abuse or fraud and how the money was handled. She strongly recommended doing only three areas: FI-1 Conflict of Interest; FI-3 Vendor Contract Administration SGI; and FI-7 Vendor Contract Administration Architectural, with total projected costs of \$219,520 plus the costs for project oversight, travel, communications and reporting.

Mr. Kawahara provided his list for those areas of potential third-party restitution and criminal referral. He said third-party areas are F3, 4, 5, 7, 8, 9, 10. The potential criminal referral was item FI-1.

Ms. Cuevas asked for clarification on follow up steps and costs once Phase II was completed. Mr. Kawahara clarified that law enforcement agencies have discretion as to what they decide to prosecute. Regarding claims against third parties, the governing board has jurisdiction over an entity that may have a contract with a third party and could enforce that contract in state court. The Phase II portion is to find facts, and then what follows is a policy decision for the Board. If findings of a false claim is documented, he would recommend that the District retain counsel to prosecute that claim in a contingency lawsuit.

Ms. Block said that initially she hesitated on including item FI-2, but decided this is important because going forward she would want to know if there were pitfalls to avoid for the future. She said she now thinks they should do all of the items.

Ms. Cuevas said she is okay having VLS do all the items. She said she believes she does not have the capacity to say which items are not needed.

Ms. Block thinks it makes more sense to look at the costs as a percentage of total bond fund rather than of remaining funds.

Ms. Ricco said she is troubled by the cost and timeframe and that the most critical aspects are triggered by Mr. Clay who did not address the CBOC.

Ms. Cuevas asked about excluding items that are not high risk. Mr. Kawahara said items FI-4, TC-10 and TC-12 were not high risk. Ms. Cuevas said this could be a reason for excluding some items, with a savings of approximately \$40,000 plus the administrative costs.

Ms. Ricco said she would go along with excluding items that are not high risk and moved to eliminate those items from the scope of work for the testing of controls.

B.2 Approve recommendation for (a) Phase II Scope of Work, (b) not-to-exceed contract amount for forensic accounting services, (c) not-to-exceed contract amount for related legal counsel services and (d) proposed timeline for completion of Phase II.

Public Comment:

Tom Panas said that with AUPs the District and the auditor jointly agree to test things and with a more conventional audit it is the auditor's responsibility to identify how they are going to test things without any input from the District. He added that the CBOC was not in favor of the AUPs and would have preferred a conventional audit. He said he believes that spending money now would save money later. He commented that Mr. Jungherr was taking a more saving money stance.

Linda Ruiz-Lozito said that the AUPs are less reliable because the scope of the audit is dictated by the District rather than the auditor. The auditor does not have to give an opinion. She said she has seen so much waste over the years and by comparison the costs for the forensic audit were a "drop in the bucket." She believed that FI-1, 3 and 7 have the most potential to show fraud.

Ben Steinberg agreed with the proposed amended scope with one concern that FI-4, regarding SGI, is important given all the rumors and allegations circulating in the community.

Jack Weir expressed concern about the performance audit conversation as it was not on the agenda. He said the two audits were "apples and oranges" and that the Clay investigation was outside of a standard, routine performance audit. He believed the Subcommittee was making a lot of assumptions about cost benefit based on the likelihood of risk in particular with regard to fact finding and they could find an even higher risk than presupposed in the preliminary assessment.

Board Comment:

Ms. Cuevas said the stark reality is that there is not enough money to make things right, and if we ever want to go back and ask for future bonds we have to do this entire thing. She said she needs a reason to say to the public come back and trust us again so we can fund it all to give the students what they need.

MOTION: Ms. Cuevas moved to do the entire Proposed Scope of Work for Phase II. Ms. Block seconded. Ms. Block and Ms. Cuevas voted yes. Ms. Ricco voted no, with no abstentions and no absences. Motion carried 2-1-0-0.

Mr. Kawahara provided copies of his *Legal Counsel Estimate of Hours and Expenses for Phase II*, and provided clarification.

Ms. LeBlanc explained that this estimate needs to go to the Board for approval and that the expenses will come from the General Fund.

MOTION: Ms. Cuevas moved approval of Mr. Kawahara's Legal Counsel Estimate of Hours and Expenses for Phase II for \$168,724.00. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

Mr. Kawahara commented that Mr. Cooper committed to a six-month timeframe to provide an oral report, and eight months to provide the written report.

The subcommittee agreed by consensus with VLS's timeline and added to change the reporting from weekly to monthly to save costs.

Ms. LeBlanc mentioned that at the last meeting Mr. Cooper said there would be some costs savings if the District did both TCs and FIs.

MOTION: Ms. Block moved to direct Mr. Kawahara to negotiate costs with Mr. Cooper for Phase II. Ms. Ricco seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

B.3 Discuss and approve recommendation to the Board regarding the continuing role of the subcommittee during the course of the investigation to (1) oversee the forensic accounting investigation and (2) with assistance of legal counsel combine the findings from the forensic audit with a report of legal findings to the Board of Education.

Mr. Kawahara said he was asked to bring this matter to the subcommittee for review to see if there is a need to ask for clarification from the Board. He provided a handout of the Board's approved role for the subcommittee from the July 21, 2015 meeting. He said that role (3) was still an outstanding item ("assisting the special counsel and audit firm in combining the findings from the forensic audit with a report of legal findings to the Board of Education.").

Discussion followed and Ms. LeBlanc said she did not think it was necessary to bring this item back to the Board as item (3) was still outstanding.

Ms. Block reiterated that the subcommittee will continue with its duties in the same capacity, and will meet on an as-needed basis.

Ms. Block said she would inform Ms. Ruiz-Lozito of the next meeting.

C. FUTURE MEETINGS: To be determined by the course of the investigation.

D. ADJOURNMENT

Chairperson Block adjourned the meeting at 9:53 PM.