

WCCUSD Subcommittee on Clay Investigation

Alvarado Adult Education Campus

August 10, 2015

Approved September 10, 2015

A. OPENING PROCEDURES

A.1 Call to Order

The meeting was called to order at 3:00 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; Phyllis Rosen, Clerical Staff; James K. Kawahara, Special Counsel.

A.3 Approval of Agenda

MOTION: Ms. Block moved to approve the Agenda inserting Item B.1 “Introductory Comments from Mr. Kawahara” and renumbering original Items B.1 through B.4 to B.2 through B.5, consecutively. 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: July 20, 2015

MOTION: Ms. Cuevas moved to approve the minutes of the July 20, 2015 meeting. 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. DISCUSSION / APPROVAL ITEMS

B.1 Introductory Comments from Mr. Kawahara

Mr. Kawahara provided background detail to the Draft Request for Proposals for the Board of Education Forensic Accounting Investigation. He said they are trying to address a whistleblower allegation which is far reaching with a variety of different allegations, and that in order to properly scope the investigation he recommends that they engage a professional to study all the allegations and to assess whether there is a risk of fraud that has taken place, and then also to prioritize the allegations to see what the biggest risk is to the district. After the risk assessment is completed, the deliverable will be a risk assessment document that will be provided to the Committee to use to decide the scope of the investigation upon advice of the forensic accountant. The Committee will then engage that firm to investigate those things that require merit.

Mr. Kawahara said that with a whistleblower allegation, it is important to keep in mind that for legal reasons they do not republicize an allegation that has not been investigated.

Mr. Kawahara recommended that the Committee be available for a call-in conference for all those firms who would bid for the work to answer all questions at one time prior to submitting a proposal.

Committee Comment:

Ms. Cuevas asked for clarification regarding details of the forensic accountant's role in Phase I and Phase II. Mr. Kawahara provided further clarification. Mr. Kawahara agreed to revise the RFP to clearly identify the deliverables for both Phase I and Phase II.

B.2 Discuss Scope of Forensic Investigation

Public Comment:

Anton Jungherr provided three documents to the Subcommittee with recommendations. Regarding the Draft Request for Proposals (RFP), he said he supports the attorney's comments on Phase I and II, but suggested that there be a clear description of the role and deliverables for each phase. Regarding section IIB, he suggested that the audit reports referred to be specifically spelled out. Regarding section III, he did not think a vendor could provide an estimate for phase II until Phase I was completed. In Section VII, he suggested that the information be made to the Chair of the Subcommittee. He added that he agrees with Mr. Kawahara's proposal for a pre proposal conference call. Mr. Jungherr also spoke about the need to interview former employees, and recommended that any prohibitions against discussing these matters contained in separation agreements be waived. He recommended interviewing staff and subcontractors who manage Primavera, and also contacting the Contra Costa Grand Jury.

Ms. Block inquired about Primavera. Ms. LeBlanc responded that it is software utilized by SGI for construction management and scheduling and that district staff has access to it.

Ben Steinberg commented on the use of "accountant" in the RFP noting that we are really referencing a "team" of forensic accountants, and that the team needs to have knowledge of school district construction and should have access to expertise on data recovery. He added that he supports everything Mr. Jungherr said and expressed concern that people have been directed not to speak to the audit team as there needs to be accountability and transparency in the investigation.

Linda Lozito said she was surprised to learn that some people may have been threatened not to speak and asked for clarification from the Committee, especially because former employees who have nondisclosure agreements might have pertinent information.

Tom Panas spoke about the need to be transparent and restore the trust that has been lost in the district.

Committee Comment:

Ms. Block asked Mr. Kawahara what obligation people have to respond to the questions of the auditor. Mr. Kawahara commented that in general terms, school district's normally require that "right to audit" clauses are placed in a contractor's contract that permits a school district -- the recipient of services -- to audit them. For former employees with a nondisparagement clause in their separation agreement, in general, that is typically a restriction on public comments to a third party as opposed to reporting factual information back to the District. He also pointed out there are different situations for various categories of present and former employees and contractors.

Ms. Cuevas asked Mr. Kawahara for clarification about Mr. Jungherr's comments regarding Phase I and II. Mr. Kawahara clarified that the proposed list in the circulated draft RFP, section IIA, was listed in chronological order and encompassed both phases. Mr. Jungherr suggested having separate descriptions for each of the two phases.

Ms. Cuevas inquired about Mr. Jungherr's comments regarding the different costs involved in Phase I and II. Ms. LeBlanc said that the proposal was focused on cost associated with Phase I only. Phase I will have a set cost and for Phase II we would have to negotiate with the accountants at a later date with regard to the scope and the cost based upon hourly rates in an "amount not to exceed" for particular deliverables and scope.

Mr. Kawahara suggested the firms could list personnel and hourly rates in their proposals for both phases.

Ms. Cuevas referred to Section VII and asked where to send questions or requests for information. Ms. LeBlanc suggested she could be the clearing house for questions and she could coordinate the questions with Ms. Block, and then distribute the questions to others. Ms. Cuevas asked Mr. Kawahara whether it was common that there is a "forensic team," and Mr. Kawahara answered yes.

Ms. Block asked if the team would have expertise in data recovery and school district construction. Mr. Kawahara said that would be someone in the firm. He said that those could be added to the relevant experience section.

Discussion / Approval of RFP was continued to Item B.4.

B.3 Discuss / Approve list of auditors to invite to respond to Request for Proposal (RFP)

Mr. Kawahara provided a handout containing a list of 25 possible audit firms that he compiled with detailed contact information.

Committee Comment:

Ms. Block asked Mr. Kawahara about the availability of auditing firms capable of doing this type of investigation. Mr. Kawahara referred to the list of 25 firms he identified and explained how he obtained the names. He said he excluded firms he has worked with in the past, with the exception of Deloitte LLP, because that was one of the Big Four. He also recommended sending out the RFP to the San Francisco and Sacramento Chapters of the Association of Certified Fraud Examiners.

Public Comment:

Mr. Jungherr provided the names of three firms for inclusion with the list of possible forensic auditors: Fiscal Crisis & Management Assistance Team, Government Financial Strategies, Inc. and Macias, Gini & O'Connell LLP.

MOTION: Ms. Block moved to approve the list of auditors provided by Mr. Kawahara, adding Government Financial Strategies, Inc. and Macias, Gini & O'Connell LLP, and sending out the RFP to the San Francisco and Sacramento Chapters of the Association of Certified Fraud Examiners. Ms. Cuevas seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

B.4 Discussion / Approval RFP including selection process, timeline for selection, and audit timeline

Committee Comment:

Ms. Ricco questioned the use of “reasonable timeframe” in Section V.1. The committee members discussed alternative language and agreed the existing language was appropriate.

Ms. LeBlanc and Mr. Kawahara provided a handout entitled “RFP Timeline for Clay Investigation.” Ms. LeBlanc suggested creating a timeline to coincide with bringing a recommendation to the Board at the September 30th Board meeting, indicating they would need to reach an agreement quickly on the first phase.

Ms. Cuevas suggested including a reference to the phone conference in the RFP and Mr. Kawahara agreed to put that in the schedule.

Ms. Block asked how many firms should be brought in to be interviewed within the suggested one-week timeframe. Ms. LeBlanc suggested limiting it to three to five firms.

Ms. LeBlanc said the timeline would include receiving and reviewing proposals and then meeting to decide on a recommendation. She suggested the week of September 7th to review proposals and then make a selection in a meeting. The Committee members agreed they would be available September 10, at 3:00 PM for the next meeting.

Mr. Kawahara confirmed he would revise the RFP to require expertise in data recovery and school district construction in the Relevant Experience section, add the pre proposal call-in conference to the schedule and send it out electronically on August 13, with proposals due by September 4.

Mr. Kawahara suggested a pre proposal conference call at 3:00 PM on August 24. Ms. Cuevas suggested that Mr. Kawahara, Ms. LeBlanc and Ms. Block be present for the conference call and Ms. Ricco and Ms. Block agreed.

Ms. Block inquired about the remaining audit timeline. Mr. Kawahara said that regarding the actual deliverable – the Fraud Risk Assessment Report – he estimates that will be available October or November.

Ms. Ricco asked what will occur at the September 10th meeting. Ms. LeBlanc suggested that each committee member choose their top five firms. She also suggested that the committee members use a similar scoring guide template as the one used for the attorney selection.

Ms. Block, Ms. Cuevas and Ms. Ricco discussed use of the prior scoring guide and issues they encountered.

Mr. Panas commented to remind the Committee members to think about the weightings.

Ms. Ricco suggested they each have their own unique way of determining the top five.

Ms. Block, Ms. Cuevas and Ms. Ricco agreed to use a simple rating system of 1 to 10, with 10 as the highest rating.

Ms. LeBlanc agreed to adapt the template for the forensic auditor firm selection and to align it with the RFP, which would be delivered to Committee members with the proposals.

MOTION: Ms. Ricco moved to approve the RFP, selection process and timeline for selection as follows:

Mr. Kawahara will provide a revised RFP by August 11, issue the RFP on August 12, and hold a pre proposal call-in conference at 3:00 PM on August 24, with proposals due on September 4. The Subcommittee members will review Audit Proposals September 5 – 9, 2015, with each Committee member bringing their top five to seven firms for selection to the September 10, 2015 meeting to select firms for Interview. Firm Interviews will be held September 14 – 18, 2015, with the Board of Education Award of Contract at the September 30, 2015 meeting. 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.5 Discussion / Approval of next steps

Public Comment:

Mr. Jungherr requested that the Committee take action today by sending clear directives to staff and consultants to cooperate with the forensics auditor.

Committee Comment:

Ms. Block responded to Mr. Jungherr and said they have not yet discussed how to address that issue. She said that first she would like have the Board's approval of the audit firm contract and that it would be good to have the Board make a statement on this issue at a Board meeting.

Ms. Cuevas added that this is a matter of timing and that logically this issue should be addressed after the audit firm is on board.

Mr. Kawahara commented that we do not yet know whether a right to audit clause is contained in any contracts, and that we will need to investigate that and come back with recommendations at the September 10th Committee meeting.

Ms. Block said she would also like to look at the verbiage in SGI contracts.

Mr. Kawahara agreed to develop material for the September 10th meeting so that the Committee can make a recommendation to the Board regarding cooperation with the forensic investigation.

MOTION: Ms. Cuevas moved to place the following on the agenda for the September 10th meeting: Discuss/Approve Subcommittee Selection of a Forensic Accountant to be Interviewed, Discuss/Approve Subcommittee Recommendation to the Board of Education regarding cooperation with the Forensic Investigation, and Discuss/Approve Next Steps. Ms. Block seconded. Ms. Block, Ms. Cuevas and Ms. Ricco voted yes, with no abstentions and no absences. Motion carried 3-0-0-0.

Committee Comment:

Ms. Cuevas raised the issue of what documents to make public.

Ms. LeBlanc commented that with the attorney RFP, the firm names were posted on the district website.

Ms. Block suggested to follow the same procedure as with the attorney selection.

Ms. Cuevas commented that they want to minimize any advantage of one firm over the other.

Ms. LeBlanc said she will release a list of all the firms who submitted proposals when they post the agenda for the September 10th Committee meeting, and at the time of the interviews, they will release the proposals.

Mr. Kawahara suggested they let the firms know that their names will be made public and that proposals of those interviewed will be made public at the time of the interviews. He also suggested the firms submit their questions for the pre proposal conference call in advance of the call. A date for receiving and distributing the questions needs to be clarified.

Mr. Kawahara advised against the District republicizing or providing the complaint as it names individuals. He suggested they could let the potential firms know the information is in the public domain. Ms. Block, Ms. Cuevas and Ms. Ricco agreed with Mr. Kawahara's suggestions.

Ms. Block asked if they will be interviewing a team. Mr. Kawahara said they will be looking to identify the actual team who will do the work, and so he will make it a requirement of the RFP that the team members who will be doing the work are present at the interview.

C. FUTURE MEETINGS

C.1 Discuss Next Meeting Date

The next meeting of the Subcommittee on Clay Investigation is Thursday, September 10, 2015 at 3:00 PM.

D. ADJOURNMENT

Chairperson Block adjourned the meeting at 4:50 PM.