

FI (7) Work Step

Conduct appropriate investigative steps to:

- Evaluate if contracts with and payments to architect firms were appropriate **(A)**
- Evaluate the timing elapsed between commencement of design work and commencement of construction **(B)**
- Determine whether architects were approved for “add services” due to the need for updated designs **(C)**
- Determine whether “add service” of \$7 million approved for WLC was appropriate **(D)**
- Determine whether “add service” of \$800,000 approved for other architectural firm was appropriate **(E)**
- Benchmark against industry standards **(F)**
- Assess the claim that Lovonya DeJean MS design was inappropriately billed as a new design and assess if this payment meets industry standards for this type of design **(G)**³⁰⁷

Results of Testing

For the review and analyses performed in this section, VLS used the following projects and related architectural design agreements:

- WLC Architects, Inc. – Pinole Valley High School Modernization Reconstruction **(Exhibit FI7-01)**
- Interactive Resources – Woodrow Wilson Elementary School Reconstruction **(Exhibit FI7-02)**
- WLC Architects, Inc. – Lovonya DeJean Middle School **(Exhibit FI7-03)**³⁰⁸ – for **Work Step G** only

A brief synopsis of each contract and project follows:

- **Pinole Valley High School (Pinole Valley HS) Modernization Reconstruction:**
The contract with WLC Architects, Inc. (WLC) is dated 12/29/2010 and was signed by WLC on 2/18/2011.³⁰⁹ The contract provided for a construction budget of \$84,641,487

³⁰⁷ The letters included in parentheses after each sentence provides a reference to the applicable section in the “Results of Testing” beginning on this page.

³⁰⁸ The site at which the middle school was constructed was formally known as Harry Ellis High School, which is the named site in the contract.

³⁰⁹ There is no date provided with the District signature.

and a total fee to WLC of \$8,451,539 (approximately 10%). There were four contract amendments approved by the District, which increased WLC's approved fees to \$16,125,021. The project grew from five construction phases to eight construction phases, and total construction costs as of the last fee increase for WLC were estimated at \$134,375,168.³¹⁰ The approved project costs were recently increased to \$214,200,000. This project is currently in the early stages of construction work for the main campus with estimated completion scheduled for December 2018. Phases 1 and 2 have been completed, phase 3 (new school construction) is in progress, and phases 4 and 5 will be completed in the future.

- **Woodrow Wilson Elementary School (Wilson ES) Reconstruction:**

The contract with Interactive Resources is dated 11/17/2011 and was signed by Interactive Resources on 11/23/2011.³⁰⁹ The contract provided for a construction budget of \$24,000,000 (see Exhibit A-1 of the contract) and a total fee to Interactive Resources of \$2,400,000. There were three contract amendments approved by the District, which increased Interactive Resources approved fees to \$3,412,000.³¹¹ The revised estimated construction cost, as stated in a letter attached to the second approved contract amendment, is \$33,800,000. This project was put on hold by the District, so that it could complete the new Facilities Master Plan, just prior to Interactive Resources getting final approval of the construction plans from the Division of the State Architect (DSA).³¹² The Board approved Facilities Master Plan and Implementation Plan indicate that this school is now slated for replacement to begin in January 2017. The estimated cost of replacement is \$40,300,000.

- **Lovonya DeJean Middle School (Lovonya DeJean MS) New School:**

The contract with WLC is dated 8/18/1999.³¹³ The contract provided for a construction budget of \$23,340,313 and a total fee to WLC of \$1,716,087.³¹⁴ Due to the time that has lapsed since this contract was executed and the work was performed, VLS was provided with limited information on this project. A letter dated 3/15/2000 from WLC to the

³¹⁰ The three additional phases were added as sub-phases. Phase 1 now consists of 1A, 1B, and 1C. Phase 2 now consists of 2A and 2B. Phases 3, 4, and 5 have remained the same.

³¹¹ A third contract amendment was signed on by the District on 6/1/2015; however, this amendment did not impact the scope of work or fees for Interactive Resources. It amended the indemnification terms and added a mandatory mediation clause.

³¹² The DSA provides design and construction oversight for K-12 schools, community colleges, and various other state-owned and leased facilities. The division also develops accessibility, structural safety, and historical building codes and standards utilized in various public and private buildings throughout the state of California (source: <https://www.dgs.ca.gov/dsa/Home.aspx>).

³¹³ There are no dates provided with the signatures so it is not known when it was signed.

³¹⁴ The contract includes a detailed fee schedule included on page 15 (**Exhibit FI7-03**).

District indicates that the project cost is now \$28,000,000 and the total fees for WLC increased to \$2,241,087.

VLS used the services of a construction consultant to perform the analyses and assessments provided in this section. This same construction consultant was included in the VLS proposal to the District. Any reference to VLS includes the construction consultant.

(A) Evaluate if contracts with and payments to architect firms were appropriate

Related Allegations

VCA (1) – Architects hired to begin conceptual plans for schools decades in advance

Results of Work Performed

VLS obtained and reviewed the contracts outlined above and assessed them against industry standards or typical practices for architect agreements. Identified for each contract below are the contract terms that appear to stray from industry standards/practices or are not recommended business practices.

WLC – Pinole Valley HS:

This analysis included a review of the contract, a review of other documents presented to the Board (or Facilities Subcommittee), and statements made by WLC during a phone interview. The District employee that signed the contract was Bill Fay, former Associate Superintendent of Operations and Bond Program.³¹⁵ VLS was unable to interview Mr. Fay to gather information regarding the negotiation of this contract at the time it was signed.

Fee Structure

The Office of Public School Construction (OPSC) has published an architect fee schedule (see Figure 12) that is used by most K-12 school districts in their architect agreements, although it is not required that this fee schedule be used.³¹⁶ The percentages identified in Figure 12 indicate the percentage of construction costs that the architect can charge as a fee. This is a sliding scale;

³¹⁵ The signature was shown to current District staff who confirmed that it belonged to Mr. Fay.

³¹⁶ The OPSC is under the authority of the state of California's Department of General Services. As staff to the State Allocation Board (SAB), the OPSC implements and administers a \$35 billion voter-approved school facilities construction program. Its responsibilities include processing and funding school facility construction grant applications, assisting school districts throughout the life cycle of a school facilities construction project, among other things (source: <http://www.dgs.ca.gov/opsc/AboutUs.aspx>).

therefore, the percentage is applied to the incremental construction costs as noted in the first column (“Contract Amount”).³¹⁷

Figure 12: OPSC Architect Fee Schedule³¹⁸

CONTRACT AMOUNT	NEW CONSTRUCTION PERCENTAGE RATE	MODERNIZATION PERCENTAGE RATE
First \$500,000	9 %	12 %
Next \$500,000	8 ½ %	11 ½ %
Next \$1,000,000	8 %	11 %
Next 4,000,000	7 %	10 %
Next \$4,000,000	6 %	9 %
Excess of \$10,000,000	5 %	8 %
Performance Specification Portables	4 %	NA

The contract between the District and WLC for the Pinole Valley HS new school does not use or make reference to this fee schedule or any other similar schedule. Instead, the fees due to WLC are shown as a flat dollar amount per construction phase as shown in Figure 13.

Figure 13: Excerpt from Exhibit D of WLC Contract for Pinole Valley HS

	Phase Scope	Const. Budget	Fee Amount
1.	Interim Housing	\$1,959,510	\$624,048
2.	Demolition of Existing Campus	\$4,339,235	\$99,195
3.	Construct New Campus	\$70,936,157	\$6,987,666
4.	Removal of Temporary Housing	\$70,286	\$70,327
5.	Sports Fields / Parking / Court Restoration	\$6,703,290	\$670,303
	TOTAL BASE COMPENSATION	\$84,641,487	\$8,451,539

The total fee of \$8,451,539 is approximately 10% of the total construction budget at the time. Because Pinole Valley HS is new construction, the applicable rates had the OPSC fee schedule been used would have started at 9% for the first \$500,000 of construction costs and would have

³¹⁷ The OPSC scale is used for standard architectural design services. These standard services would include architectural design along with work performed by consulting engineering firms such as electrical, mechanical, plumbing, and structural work. Any specialty services required for a design, such as a theatre, food service, and weatherproofing, are generally not included in the construction costs to which the sliding scale is applied. These specialty services are typically priced separately using another means, for example, the cost of the consultant plus a mark-up.

³¹⁸ Obtained from the OPSC website Applicant Handbook for State School Building Lease-Purchase Program dated April 1998.
(source: http://www.documents.dgs.ca.gov/opsc/Publications/Handbooks/LPP_Hdbk.pdf).

reduced to 5% for construction costs over \$10,000,000. Table 42 provides a summary of the estimated architect fees had the OPSC fee schedule been used.³¹⁹

Table 42: VLS Calculated Architect Fee for Pinole Valley HS Using OPSC Fee Schedule

Contract Amount	New Construction Percentage Rate	Pinole Valley HS Estimated Construction Costs	Estimated Architect Fee
First \$500,000	9.0%	\$ 500,000	\$ 45,000
Next \$500,000	8.5%	500,000	42,500
Next \$1,000,000	8.0%	1,000,000	80,000
Next \$4,000,000	7.0%	4,000,000	280,000
Next \$4,000,000	6.0%	4,000,000	240,000
Excess of \$10,000,000	5.0%	74,641,487	3,732,074
Totals		\$ 84,641,487	\$ 4,419,574

As stated previously, there is no requirement for the District to use the OPSC fee schedule in architect contracts; however, it is common practice within the school district environment to use this fee schedule or to negotiate a fee based around this schedule. In fact, a previous contract with WLC for the design services provided for the construction of Lovonya DeJean Middle School did use the OPSC fee schedule for the new school construction costs. A copy of the contract is included at **Exhibit F17-03**. Page 15 of the contract includes the fees for services provided. The “basic scope of architectural services” specifically references the OPSC fee schedule, which is included in Exhibit B of the contract. All other services provided are listed as lump-sum fees.

For benchmarking purposes, VLS identified three recent architect contracts with school districts in the area surrounding the District. Table 43 includes a summary of these architect contracts. As shown in the OPSC fee schedule (Figure 12), a higher percentage fee is assessed for modernization projects, which would include remodel projects. This is reflected in the architect fees shown for the two schools at Berkeley Unified, which had fees of 10.37% and 9.0% of estimated construction costs. VLS calculated an estimated fee for these two projects using the OPSC fee schedule, which resulted in similar architect fees as approved by this particular district.³²⁰ The one new school construction project VLS identified did use the OPSC fee schedule

³¹⁹ The table presented is an example of a typical fee that can be negotiated for architectural services. Each school design may have unique circumstances that will require additional fees beyond the OPSC fee scale; however, these are typically a small percentage of the overall fee to the architect.

³²⁰ VLS does not have copies of the contracts; therefore, it is not known if the OPSC fee schedule was actually used or referenced. The recalculation performed by VLS using the OPSC fee schedule for modernization projects resulted in fees of \$567,500 (Jefferson Elementary School) and \$527,500 (West Campus Charter).

for the basic services provided by the architect. Fees for additional services were based on fixed fees. The fees shown in the table below include all fees approved under the original contract.

Table 43: Sample Architect Fees for Surrounding Area

District	School	Service	Type of Construction	Estimated Construction Costs	Approved Architect Fees	Fees as a Percentage of Construction Costs	Notes
Berkeley Unified	Jefferson Elementary School	Design	Expansion/Modernization	\$ 5,400,000	\$ 560,000	10.37%	Information was taken from Board agenda packet as a copy of the contract was not available.
Berkeley Unified	West Campus Charter	Design	Remodel	\$ 5,000,000	\$ 450,000	9.00%	Information was taken from Board agenda packet as a copy of the contract was not available.
Milipitas Unified	New Elementary School	Design	New Construction	\$32,000,000	\$ 2,240,643	7.00%	Contract includes OPSC schedule as Attachment C, which is used to calculate fees for basic services. Fixed fees are included for other services.

When comparing the estimated architect fee shown in Table 42 (\$4,419,574) to the approved fee included in the WLC contract, as shown in Figure 13 (\$8,451,539), the fee approved for WLC is significantly higher.³²¹ No one currently working at the District has the historical knowledge to explain why WLC's contract did not use the OPSC fee schedule; therefore, VLS is not able to provide further information on the rationale for the fees included in the contract. However, it appears that, at some point, the District changed its philosophy on how architectural contracts were negotiated, and they moved away from using the OPSC fee schedule.³²²

The WLC contract for Pinole Valley HS also included acoustic for a theatre and food service. For simplicity of the analysis shown, all construction costs were included when estimating the fee using the OPSC scale. However, when districts do use the OPSC scale, a separate method is often used for pricing these types of specialty services. A recommended method for pricing these specialty services is to have the architect pass through the cost of the consultant hired and

³²¹ This analysis is shown as a point of comparison only and is not intended to suggest that the calculated amount of \$4,419,574 is the maximum or minimum that the District should have agreed to pay for these services.

³²² During their interview, Interactive Resources stated that they were instructed by the District to use 10% of the estimated construction costs for Wilson ES as the basis for their fee. It is not known if the District provided similar instructions to WLC for the Pinole Valley HS contract.

include a mark-up for the architect's coordination efforts. VLS did not separate these costs for purposes of this analysis.

Although the fee shown in the WLC contract equates to approximately 10%, this percentage is not mentioned anywhere in the contract nor is there any other basis for the fees listed other than the table included in Figure 13.

VLS was provided two additional documents that provide different construction cost estimates for the Pinole Valley HS project:

- **PowerPoint presentation dated October 2010 that looks to be prepared by WLC (Exhibit FI7-04):** The presentation is titled "Pinole Valley High School – West Contra Costa Unified School District – Master Plan Presentation – October 2010."³²³ Included on the 16th slide of the presentation is the estimated construction cost for Pinole Valley HS of \$102,500,000. VLS inquired with WLC regarding the difference in estimated construction costs included in this presentation compared to the contract, which was dated approximately two months later. WLC did not recall the reason for the difference.
- **WLC proposal, dated 11/18/2010, for the professional design services of Pinole Valley HS (Exhibit FI7-05):** Page 3 of the proposal includes a similar fee schedule as shown in the contract; however, the total estimated construction costs are \$90,988,622. Figure 14 includes the fee schedule presented in WLC's proposal.³²⁴

Figure 14: Excerpt from WLC Proposal for Pinole Valley HS

Phase	Professional Services	Est Const Cost	WLC Fees
1	Temporary Housing - Site, Utilities, Interiors	\$ 2,047,195.00	\$ 204,720.00
	Temporary Housing Lease at 6%	6,988,800.00	419,328.00
2	Demolition of Existing Campus	991,950.00	99,195.00
3	New Campus Design	73,554,380.00	6,987,666.00
4	Removal of Temporary Housing	703,269.00	70,327.00
5	Sports Fields/Parking/Courts Restoration	6,703,028.00	670,303.00
	Total	\$ 90,988,622.00	\$ 8,451,539.00

The WLC fees presented in Figure 14 are calculated at 10% of the estimated construction cost for each phase, except for "Temporary Housing Lease" which is at 6%

³²³ WLC was previously contracted by the District to perform master planning services for Pinole Valley HS.

³²⁴ VLS inquired with the District about whether proposals were received from any other architects for the Pinole Valley HS project. The District was unable to locate evidence that other proposals were obtained before selecting WLC for this work.

and “New Campus Design” which is at 9.5%. The total WLC fee is approximately 9.3% of the total estimated construction cost.

The line-item “Temporary Housing Lease at 6%,” which has an estimated construction cost of \$6,988,800, is excluded from the fee schedule included in the signed contract (see Figure 13). The removal of this line-item is one of the primary reasons for the difference in construction costs; however, other line-items also changed, with some increasing and some decreasing. Although the total estimated construction costs listed in the contract decreased from what was presented in the proposal, the fees to WLC remained unchanged.

It appears that the WLC fee for “Temporary Housing Lease at 6%” was consolidated with the fee for “Temporary Housing – Site, Utilities, Interiors.” In the proposal, the fees are \$419,328 and \$204,720, respectively. In the contract, the fee for “Interim Housing” is \$624,048, which is the sum of the two items from the proposal. However, the estimated construction cost for “Interim Housing” is only \$1,959,510.

The fee structure used by WLC is not consistent with the industry, which typically uses the OPSC fee schedule or negotiated rates/fees using the OPSC fee schedule as basis.³²⁵ The OPSC fee schedule, if used, should have been applied only to the “new school” construction costs. Because there were four other phases to the project, the District could have further negotiated the percentage fee associated with those particular phases. There are no published guidelines for the percentages that should be used for these other phases; however, industry practices have shown that other school districts (and even this District, historically) would negotiate fees in the following percentage ranges:

- Interim Housing – approximately 4-6%: There are two components associated with the interim housing, the lease for the portable buildings and the site work.
 - The OPSC fee schedule provides for a 4% fee for new portable buildings (see Figure 12). This is a reduced percentage because the architect does not have as much design work as the portable buildings are designed by the manufacturer. This fee is intended to cover the items that the architect’s consultants would do associated with the interior of the portable buildings, which includes electrical, fire alarm system, audio and visual systems, technology, and possibly mechanical and plumbing. Four percent is generally used when districts purchase the portable

³²⁵ During their interview, Interactive Resources stated that they were instructed by the District to use 10% of the estimated construction costs for Wilson ES as the basis for their fee. It is not known if the District provided similar instructions to WLC for the Pinole Valley HS contract.

buildings. When a district leases the portable buildings, this percentage may increase to 6%.³²⁶

- The site work associated with the placement of the portable buildings would include electrical, plumbing, and some design work by the architect. The fee associated with this portion of work would usually have a separate construction budget and fee. The fee can be negotiated down from the OPSC fee schedule as a starting point.
- Demolition of Existing Campus – approximately 4-6%: There is little architectural design required for demolition.
- Removal of Temporary Housing – approximately 4-6%: The architect and their consultants will have limited work to perform on a project with this type of scope and will generally get a reduced fee or very limited fee if the project requires any design or plans/specifications. The District may opt to perform this work on its own or with the assistance of their construction management firm, which would require no assistance of the architect.
- Sports Fields / Parking / Court Restoration – approximately 4-6%: There is little design requirements as outdoor fields do not include a lot of structures. This does generally require some architectural elements along with civil and electrical consultants.

The calculation performed by VLS using the OPSC fee schedule (Table 42) applies the sliding scale percentages (ranging from 9% down to 5%) to the total estimated construction cost, including the phases listed above. Therefore, the estimates in Table 42 are generous as they do not use the lower percentages as noted above.

Contract Language

VLS identified the following contract terms that are not recommended for use in architect contracts:

- Article 12.1 (page 9 of the contract) states, “The District shall examine the documents submitted by the Architect and shall render decisions so as to avoid **unreasonable delay** in the process of the Architect’s Services” [emphasis added]. The term “unreasonable” is open to interpretation by both the District and architect firm. The contract should specify a specific time frame for examining the documents and rendering decisions.

³²⁶ The percentage used by WLC in the proposal was 10% for site, utilities, and interiors and 6% for the lease. It appears that the lease construction costs were removed from the contract, but WLC’s related fee was not. This resulted in a fee of approximately 31.8% for the interim housing phase.

- Article 12.2 (page 9 of the contract) states, “The District shall **verbally** or in writing advise the Architect if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect’s documents” [emphasis added]. All communication between the District and the architect should be done in writing so that there is historical documentation of these communications.
- Exhibit A, Item B.2.f.ii. (page A-5 of the contract) states, “The Construction Cost Budget for the Project must at no point exceed the District’s Construction Budget for the Project. The accuracy of the Construction Cost Budget shall be the responsibility of the Program Manager and the Design Phase Manager.” SGI was the Program Manager at the time that this contract was signed; however, there is no indication of who the Design Phase Manager was and if that is a District position. The contract should provide more clarity on the responsible parties for the Construction Cost Budget.³²⁷
- Exhibit A, Item C.15.d.i. (page A-11 of the contract) states, “Where the Superintendent or the Board request **reasonable changes** to the project the Architect shall incorporate such changes as a part of Basic Services and prior to advancing to the next phase of work” [emphasis added]. The term “reasonable” is open to interpretation by both the District and architect firm, which could result in disputes or disagreements at a later date. The contract should specifically define the types of requests that are covered by the Basic Services. Additionally, the language “at no additional cost” should be added if this is the intent of this paragraph.
- Exhibit B (page B-1) addresses “Criteria and Billing for Extra Services” and includes vague terminology:
 - Item A.3. includes the statement, “Making revisions in drawings, specifications, or other documents when such revisions are: Due to changes required as a result of the District’s failure to respond to a written request from the Architect within a **reasonable time**, as requested by Architect” [emphasis added]. The term “reasonable time” is open to interpretation. The contract should specify a specific time frame for the District’s response.
 - Item B states, “Providing services required because of **significant** documented changes in the Project initiated by the District...” [emphasis added]. The term “significant” is open to interpretation.

See recommendation FI7-5 related to this area.

³²⁷ Work Steps (D) and (E) discuss the issue of the District not requiring architects to design the schools to the approved construction budgets.

Payments

The original contract for design services for Pinole Valley HS included a total fee of \$8,451,539. Four additional service requests were approved for a total of \$7,673,482, which brought the total approved fee for WLC's services to \$16,125,021. See Work Step (D) on page 292 for further information regarding the additional services.

As of 6/30/2016, the Pinole Valley HS project had completed the bidding phase and had just begun construction. Table 44 includes a recalculation of the fee earned by WLC based on the status of the project. This calculation is a high-level estimate only for comparison against actual payments made.

Table 44: Recalculation of WLC Fee Earned – Pinole Valley HS Design

Phase	Allocated Fee	Percentage Complete ³²⁸	Calculated Fee Due
Phase 1A - Temporary Housing	\$ 690,613	100%	\$ 690,613
Phase 1B - Detention Basin/Temp Housing Utilities/Paving	265,598	100%	265,598
Phase 1C - Hillside Stabilization	-	100%	-
Phase 2A - Demolition of Existing Campus	236,132	100%	236,132
Phase 2B - Earthwork for Hillside Stabilization	215,127	100%	215,127
Phase 3 - New Campus	12,796,346	70%	8,957,442
Phase 4 - Removal of Temporary Campus	144,742	10%	14,474
Phase 5 - Sports Fields/Parking/Courts Restoration	1,641,862	25%	410,465
Add-Service #1	28,600	100%	28,600
Add-Service #2	39,450	100%	39,450
Add-Service #3	66,551	100%	66,551
Totals	<u>\$ 16,125,021</u>		<u>\$ 10,924,453</u>

For Phase 3 – New Campus, VLS used a percentage of completion of 70%, which includes all architectural phases through bidding. It is assumed that WLC did not yet bill for construction administration on this phase as mobilization by the contractor started on 6/17/2016. For Phase 4, VLS used a percentage completion of 10% as amendment #4 indicated that the design development and construction documents would proceed; therefore, it was assumed that schematic design was completed. For Phase 5, VLS used a percentage of completion of 25% as amendment #4 indicated that the construction document effort would resume; therefore, it was assumed that schematic design and design development was completed. **Exhibit FI7-06** includes a copy of amendment #4, which was approved by the Board and signed by the District. Through 6/30/2016, the District has made payments to WLC totaling \$10,947,165. Based on the

³²⁸ The percentage complete is based on the status of each phase and the allocated percentage for architect fees, as follows: schematic design – 10%, design development – 15%, construction documents – 35%, DSA approval – 5%, bidding phase – 5%, construction administration – 25%, and close-out – 5%. These percentages are identified in WLC's contract (**Exhibit FI7-01**).

recalculation shown in Table 44, these fees seem to be in line with the current status of the project and various construction phases.³²⁹

Interactive Resources – Wilson ES:

This analysis included a review of the contract, a review of other documents presented to the Board (or Facilities Subcommittee), and statements made by Interactive Resources during a phone interview. The District employee that signed the contract was Bill Fay, former Associate Superintendent of Operations and Bond Program.³³⁰ VLS was unable to interview Mr. Fay to gather information regarding the negotiation of this contract at the time it was signed.

Fee Structure³³¹

As discussed previously, the OPSC has published an architect fee schedule (see Figure 12) that is used by most K-12 school districts in their architect agreements or as a starting point for negotiation. The contract between the District and Interactive Resources for the Wilson ES reconstruction project did not use or make reference to this fee schedule (see **Exhibit FI7-02** for a copy of the contract). Instead, the fee agreed to by the District was a fixed dollar amount of \$2,400,000 (see page 6 of the contract). The contract did not identify the basis for how this fixed fee was established. Exhibit A-1 of the contract appears to be a one-page proposal submitted by Interactive Resources to the District that indicates the construction budget for the school is \$24,000,000. This construction budget is not identified anywhere else in the contract.

Exhibit D of the contract (page D-1) includes the fee schedule included in Figure 15. The fee of \$2,400,000 is allocated amongst the various architectural design phases.

Figure 15: Excerpt from Exhibit D of Interactive Resources Contract for Wilson ES

PERCENTAGE OF TOTAL FEE PER PHASE	
Phase	Phase Amount
Schematic Design Phase	\$288,000 (12%)
Design Development Phase	\$336,000 (14%)
Construction Documents Phase	\$1,008,000 (42%)
Bidding Phase	\$120,000 (5%)
Construction Administration Phase*	\$600,000 (25%)
Close Out Phase	\$48,000 (2%)
TOTAL BASE COMPENSATION	\$2,400,000 (100%)

³²⁹ This is not a statement on the appropriateness of the contracted fees or additional services approved by the District. This is simply to show that the progress payments appear consistent with the phases outlined in the architectural agreement.

³³⁰ The signature on this contract matches the District signature on the WLC – Pinole Valley HS contract, which was confirmed by current District staff to belong to Mr. Fay.

³³¹ VLS inquired with the District about whether proposals were received from any other architects for the Wilson ES project. The District was unable to locate evidence that other proposals were obtained before selecting Interactive Resources for this work.

The total architect fee of \$2,400,000 is exactly 10% of the total construction budget at the time. Because Wilson ES is new construction, the applicable rates had the OPSC fee schedule been used would have started at 9% for the first \$500,000 of construction costs and would have reduced to 5% for construction costs over \$10,000,000. Table 45 provides a summary of the estimated architect fee had the OPSC fee schedule been used.³³²

Table 45: VLS Calculated Architect Fee for Wilson ES Using OPSC Fee Schedule

Contract Amount	New Construction Percentage Rate	Wilson ES Estimated Construction Costs	Estimated Architect Fee
First \$500,000	9.0%	\$ 500,000	\$ 45,000
Next \$500,000	8.5%	500,000	42,500
Next \$1,000,000	8.0%	1,000,000	80,000
Next \$4,000,000	7.0%	4,000,000	280,000
Next \$4,000,000	6.0%	4,000,000	240,000
Excess of \$10,000,000	5.0%	14,000,000	700,000
Totals		\$ 24,000,000	\$ 1,387,500

There is no requirement for the District to use the OPSC fee schedule when negotiating architect agreements; however, it is common practice within the school district environment to use this fee schedule or to negotiate a fixed fee based around this schedule. A previous contract with another architect firm used the OPSC fee schedule for new school construction costs. A copy of the contract is included at **Exhibit F17-03**. Page 15 of the contract includes the fees for services provided. The “basic scope of architectural services” specifically references the OPSC fee schedule, which is included in Exhibit B of the contract. All other services provided are listed as lump-sum fees.

See Table 43 on page 258, which provides a summary of recent architect contracts and fees for school districts in the surrounding area.

When comparing the estimated architect fee shown in Table 45 (\$1,387,500) to the approved fee included in the Interactive Resources contract (\$2,400,000), the fee approved for Interactive Resources is significantly higher.³³³ No one currently working at the District has the historical knowledge to explain why Interactive Resources’ contract did not use the OPSC fee schedule. However, it appears that, at some point, the District changed its philosophy on how

³³² The table presented is an example of a typical fee that can be negotiated for architectural services. Each school design may have unique circumstances that would require additional fees beyond the OPSC fee scale; however, these are typically a small percentage of the overall fee to the architect.

³³³ This analysis is shown as a point of comparison only and is not intended to suggest that the calculated amount of \$1,387,500 is the maximum or minimum that the District should have agreed to pay for these services.

architectural contracts were negotiated, and they moved away from using the OPSC fee schedule.³³⁴

The design of an elementary school does not usually require work of specialty consultants because they do not often include facilities such as a theatre, complex food service, science classrooms, etc. Therefore, using the OPSC scale should cover all architect fees associated with this type of project. Depending on how extensive the civil engineering work is (site drainage, ADA compliance, rain/storm prevention, etc.) the architect may include additional fees beyond the OPSC fee schedule to cover this additional work.

VLS spoke with Interactive Resources regarding the terms of this contract and the rationale for the fee used. According to Interactive Resources, the District provided the construction budget number of \$24,000,000 and told Interactive Resources to calculate their fee based on 10%. Interactive Resources tried to negotiate a fee based on time and expense estimates, but the District would not accept that method. According to Interactive Resources, the \$24,000,000 estimate was an unrealistic number, there was no basis for the amount, and it was known at the time that the District would not hold them to that estimate. Although the fee shown in the Interactive Resources contract is 10% of the construction costs, this percentage is not mentioned anywhere in the contract nor is there any other basis provided for the fee.

Interactive Resources was retained by the District to provide master planning services for this project, which is discussed further in the following section. Based on the scope of work provided in the master planning contract, Interactive Resources was responsible for working with the District in establishing the cost budget for this project (see **Exhibit FI7-07** for a copy of the contract). Specifically, Exhibit A-2 of the contract provides for the following scope of work:

- Item #5 – Cost Estimate: Work with District cost consultant to develop a cost model of each option by scope priorities – 5%
- Item #6 – Establish Project Phasing: Workshops with District Staff; Develop project phasing list with project costs – 5%

Because Interactive Resources provided master planning services, they should have been fully aware of the feasibility of the construction cost budget included in the design services contract at the time that the contract was signed. If they had concerns regarding the budget, they should have expressed those concerns at the time. The Interactive Resources design services contract includes certain provisions which require that they design the school according to the budget

³³⁴ During their interview, Interactive Resources stated that they were instructed by the District to use 10% of the estimated construction costs for Wilson ES as the basis for their fee. It is not known if the District provided similar instructions to WLC for the Pinole Valley HS contract.

established by the District and specified in the contract. This is discussed further in Work Step (E) beginning on page 308.

Master Planning

Interactive Resources was also retained by the District to perform the master planning of Wilson ES. VLS was provided with the following documents related to this contract:

- Bond Measure “D” Modernization of Woodrow Wilson Elementary School Pre-design & Site Master Planning proposal prepared by Interactive Resources and dated 4/22/2010 (**Exhibit FI7-08**)
- The Notice to Proceed issued on 5/27/2010 (**Exhibit FI7-09**)
- Agreement for Master Planning Services dated 9/30/2010 (**Exhibit FI7-07**)
- Amendment One for Master Planning Services dated 5/11/2011 (**Exhibit FI7-10**)

Timeline:

- On 4/22/2010, Interactive Resources issued a proposal for master planning services for Wilson ES. The proposal included the fee schedule as shown in Figure 16 (see page 40 of the proposal).

Figure 16: Excerpt from Interactive Resources Proposal for Wilson ES Master Planning

SCOPE OF WORK AND FEE PROPOSAL	
1. Our understanding is that the current budgeted construction cost for this project is \$24 million. Using the figures below and a 10% fee, the Site Master Planning/Pre-Design/Architectural Program Development Phase fee would be $(.08)(.10)(24,000,000) = \$192,000$.	
PERCENTAGE OF TOTAL FEE PER PHASE	
Phase	Phase Amount
Pre-Design/Architectural Program Development Phase	<u>8%</u>
Schematic Design Phase	<u>10%</u>
Design Development Phase	<u>12%</u>
Construction Documents Phase	<u>40%</u>
Bidding Phase	<u>5%</u>
Construction Administration Phase*	<u>23%</u>
Close Out Phase	<u>2%</u>

The fee schedule indicates that the “Site Master Planning/Pre-Design/Architectural Program Development Phase” was a fee of \$192,000.

- On 5/12/2010, the Board was presented with a recommendation from the Facilities Subcommittee that Interactive Resources be awarded the master planning contract for Wilson ES (**Exhibit FI7-09**). The recommendation included five other architect firms for five other schools for a total “fiscal impact” of \$1,000,000.³³⁵ Individual contract amounts were not provided.
- On 5/27/2010, the District sent a letter to Interactive Resources authorizing them to proceed with the services as reference in their proposal dated 4/22/2010 (**Exhibit FI7-09**). The letter stated, “Pending the new contract for services being negotiated and signed, IR is authorized to proceed under the terms and conditions of our Nystrom Elementary School contract for Architectural Services.”
- On 6/22/2010, consent item C.18 of the Board agenda included the ratification of engineering and architectural services contracts, which included the Interactive Resources contract for master planning of Wilson ES (**Exhibit FI7-11**).³³⁶ The Interactive Resources contract was listed at \$192,000 plus \$10,000 for reimbursement of expenses.
- On 1/24/2011, the contract with Interactive Resources for master planning services of Wilson ES was signed (**Exhibit FI7-07**). The cover page of the contract was dated 9/30/2010. The total fee listed in Exhibit D was \$192,000. The section for reimbursable expenses did not include a fee.
- On 4/13/2011, Interactive Resources submitted an “Additional Service Request and Authorization” for Wilson ES for a not-to-exceed amount of \$100,000 (**Exhibit FI7-10**). The request stated that they had completed the conceptual design of Wilson ES with direction from the District to design a new school for 780 students with the assumption that Grant Elementary School (Grant ES) would be closed and the Grant student attendance area would be absorbed by Wilson ES. After completion of the conceptual design, the District decided that Grant ES would not be closing and the conceptual design of Wilson ES would need to be redone for a projected attendance of approximately 500 students.³³⁷ The additional service request provided hourly rates for a Project Architect (\$150) and Drafter (\$100). A fee of \$5,000 was listed for landscape.

³³⁵ Four elementary schools and one high school.

³³⁶ Based on a review of the minutes for that meeting, the item was approved.

³³⁷ The additional service request also stated, “With District authorization, Interactive Resources proposes to revise the conceptual design and master plan to accommodate a smaller student population and building area, including: meeting weekly for approximately 3 months with staff and school site subcommittee to review program revisions, assumptions, and design options/alternatives, preparing design documentation and presentation of design to District Staff, school site subcommittee and facilities subcommittee, working with District staff and consultants to prepare new cost estimate and new phasing plan.”

- On 5/4/2011, consent item C.6 of the Board agenda included the ratification of engineering and architectural services contracts, which included the Interactive Resources additional service for an “hourly not to exceed” amount of \$100,000 (**Exhibit FI7-10**). The description said, “Architectural services to prepare a revised Master Plan based upon smaller student population.”³³⁸
- On 8/9/2011, the District signed an amendment with Interactive Resources for “Revision of Master Plan Based Upon Smaller Student Population” (**Exhibit FI7-10**).³³⁹ The total fee for master planning for Wilson ES was now \$302,000, including reimbursables of \$10,000.

Analysis of Fee Structure:

The proposal for master planning services includes the same estimated construction budget of \$24,000,000 (see Figure 16). The proposal provides for a 10% fee (which would be \$2,400,000) and indicates that the “Pre-Design/Architectural Program Development Phase” is 8% of the 10% fee, which totals \$192,000. Although this proposal is only for master planning services, it shows that the “pre-design” phase is one of seven phases that make up the total \$2,400,000 fee. However, when the architectural services contract is executed in November 2011, this phase is no longer shown in the fee schedule (see Figure 15), and the percentages allocated to the remaining six phases are increased to equal 100%.³⁴⁰

It appears that the 10% fee of \$2,400,000 was originally intended to include the “pre-design” phase; however, when the architectural services contract was signed for design work, the full \$2,400,000 was included as the fee without the master planning work. When VLS inquired with current District staff regarding this, an explanation could not be provided. Both contracts are signed by Mr. Fay; therefore, at the time that the contract for architectural design services was signed, the District should have been aware that the fee for master planning was initially included in the \$2,400,000 total fee.³⁴¹

Based on VLS’s experience with master planning associated with school districts, master planning/programming is typically contracted separately from design but can be included in the design fee. Master planning/programming is typically 1% or less of the estimated construction costs depending on the scope of work and services requested by a district.

³³⁸ Based on a review of the minutes for that meeting, the item was approved.

³³⁹ The cover sheet of the agreement was dated 5/11/2011.

³⁴⁰ The schematic design, design development, construction documents, and construction administration phases all increased by 2% in the contract.

³⁴¹ The District signatures on these two contracts are the same as the District signature on the WLC architectural design contract for Pinole Valley HS. Current District staff confirmed that the signature on the Pinole Valley HS contract was for Mr. Fay.

The total fee approved by the Board was \$302,000, including the add-service of \$100,000 and reimbursables. Based on labor reports provided by Interactive Resources to VLS for Wilson ES, Interactive Resources began their master planning work on 6/7/2010 and the last date labor hours were incurred was on 12/1/2011. A total of 1,779.25 hours was incurred by Interactive Resources for the master planning/programming associated with this project.³⁴² See recommendation FI7-6 related to this area.

Contract Language

The contract with Interactive Resources for design services is similar to the contract with WLC for Pinole Valley HS design services. The deficiencies identified for the WLC contract are also applicable to the Interactive Resources contract, except for Exhibit A item B.2.f.ii (which is actually labeled as section C in the Interactive Resources contract). This section, which is labeled *Pre-Design and Start-Up Services*, is identified as “not used” in the Interactive Resources contract. See recommendation FI7-5 related to this area.

Payments

For the master planning work on Wilson ES, Interactive Resources billed and was paid a total of \$294,181.09 of the approved \$302,000. **Exhibit FI7-12** includes a list of the applicable invoices and payments.

For the architectural design services, Interactive Resources billed and was paid a total of \$2,298,328. The original contract was for \$2,400,000 and the District approved two additional services of \$112,000 and \$900,000, which brought the total contract price to \$3,412,000. On 11/9/2015, the District sent a Notice of Suspension to Interactive Resources to request that they stop services on the project (**Exhibit FI7-13**). According to the District, the project was 95% complete at the construction documents phase. VLS confirmed this through a review of the DSA website.

Based on the fee schedule included in the contract (**Exhibit FI7-02**, page D-1) and the percentage completion for each phase, VLS calculated the estimated fees earned by Interactive Resources as shown in Table 46. Based on the documentation provided to VLS, it appears that Interactive Resources has already billed the District for 100% of add-service #1 as it was for a specific scope of selective demolition at Adams Middle School, which was not part of the design services of Wilson ES.³⁴³ The actual payments to Interactive Resources include reimbursable expenses, which may be a contributing factor for the difference of \$11,628.

³⁴² This includes hours under the categories of project set-up, preliminary design work, programming/pre-design, conceptual design, master planning, facility survey, establish project phasing, and prepare master plan. It also includes 454.50 hours identified under “Redo Conceptual Design,” which was incurred between 5/3/2011 and 12/1/2011.

³⁴³ This add-service is discussed further in Work Step (C).

Table 46: Recalculation of Interactive Resources Fee Earned – Wilson ES Design

Phase	Allocated Percentage	Allocated Fee	Percentage Complete	Calculated Fee Due
Original Contract Plus Add-Service #2				
Schematic Design	12%	\$ 396,000	100%	\$ 396,000
Design Development	14%	462,000	100%	462,000
Construction Documents	42%	1,386,000	95%	1,316,700
Bidding Phase	5%	165,000	0%	-
Construction Administration	25%	825,000	0%	-
Close Out	2%	66,000	0%	-
Add-Service #1	100%	112,000	100%	112,000
Total		<u>\$ 3,412,000</u>		<u>\$ 2,286,700</u>

WLC – Lovonya DeJean MS:

This analysis included a review of the contract, a letter from WLC requesting fees for additional services, and purchase order documentation from the District's financial systems. Due to the timing of these services, there were limited documents available for VLS's review. The District employee that signed the contract was former Superintendent, Dr. Gloria L. Johnston (see **Exhibit F17-03** for a copy of the contract). VLS did not attempt an interview of Dr. Johnston as she has not worked for the District since 2005.

Fee Structure

The contract between the District and WLC for the Lovonya DeJean MS project used the OPSC fee schedule to determine the architect fees related to the new school construction costs (see page 15 of the contract for a schedule of fees). Item #1 of the schedule of fees, Basic Scope of Architectural Services, makes reference to the OPSC fee schedule, which is included in Exhibit B of the contract. The fee schedule used in Exhibit B has the same percentages and dollar thresholds as shown in the OPSC fee schedule included at Figure 12.

Item B on page 16 of the contract states that WLC's fee for the basic architectural services "shall be based initially upon the Total Construction Cost until such time as the Client formally modifies the Total Construction Cost or the Contract for Construction is executed, whereupon it shall be based on the actual Contract Price, increased, by the dollar amounts of all approved contract change order items, where additive or deductive, with the exception of items resulting from errors and omissions on the part of the [WLC]." When using the OPSC fee schedule to determine an architect's compensation for design services, it is common to adjust the architect's fee based on the actual cost of construction. Because the estimated construction costs exceed \$10,000,000, any applicable additional construction costs would result in an additional fee to WLC of 5% of those costs.

Expanded architectural services are also included in the fee schedule included on page 15 of the contract. They are presented as lump-sum fees for each area of added scope, including project

management services. Because these are done as a lump-sum fee, the fee would not change at a later date unless there was a change in scope.

This structure for architect fees is what most K-12 school districts will use in their contracts, or they will use this as a starting point to negotiate contracts with architects.

Conclusion

The architectural design agreements executed between the District and WLC for Pinole Valley HS and Interactive Resources for Wilson ES are based on a fee of 10%, which is much higher than the OPSC fee schedule that is typically used in architect agreements (or as a starting point when negotiating architect fees). The District was unable to provide historical information related to the negotiation of these fees as the individuals involved are no longer employed by the District.³⁴⁴ The District was unable to provide evidence that additional architect proposals were obtained before selecting these firms. Based on industry experience, the District should have been able to negotiate a lower fee using the OPSC scale. See recommendations FI7-1 and FI7-2 related to this area.

It appears that the District, at one time, used the OPSC fee schedule for certain architect fees, as evidenced by the contract between the District and WLC for Lovonya DeJean MS. It is not known when or why the District stopped using the OPSC fee schedule in architect agreements.

For Interactive Resources, it appears that the original intent was that the master planning fee be a part of the \$2,400,000 total fee for Wilson ES architect services. A fee of 10% is higher than industry standards; therefore, it would be reasonable to expect that the total 10% fee would cover the master planning and design contracts. See recommendation FI7-5 related to this area.

(B) Evaluate the timing elapsed between commencement of design work and commencement of construction

Related Allegations

VCA (1) – Architects hired to begin conceptual plans for schools decades in advance

³⁴⁴ VLS attempted a Phase I interview of Mr. Fay and a Phase II interview of Mr. Abdalla, and they both declined.

Results of Work Performed

WLC – Pinole Valley HS:

Master Planning

The following bullets provide a brief summary of the master planning related to Pinole Valley HS based on documents available to VLS:

- On 12/6/2006, the Board approved a contract with WLC for \$324,125 to begin programming and master planning work for Pinole Valley HS (**Exhibit FI7-14**).
- On 10/3/2007, it appears that the Board took action to increase the budget for Pinole Valley HS (**Exhibit FI7-15**). The action items states that WLC has “worked closely with the Pinole Valley High School staff to develop a master plan for Measure J projects at the site....the Architects have prepared an overall Master Plan option for reconstruction of the Pinole Valley HS campus.”
- On 2/5/2010, WLC submitted a proposal to the District for “Pinole Valley High School Reconstruction Master Planning” (**Exhibit FI7-16**). In the proposal, WLC stated, “We will revise the May 29, 2007 master plan for the site, which we developed. We will utilize our July 9, 2007 master plan information including the assessment of the existing buildings, the existing as-built documentation, and the detailed space summary and education specification to meet the District Standards.” WLC proposed a fee of \$126,360.
- On 3/3/2010, the Board approved \$126,360 for WLC for “architectural planning services to update site master plan options” (**Exhibit FI7-17**).
- On 10/6/2010, WLC presented the master plan for Pinole Valley HS to the Board, which was accepted (**Exhibit FI7-04**).

Architectural Services

Exhibit C (page C-1) of the contract with WLC includes the Schedule of Services and identifies the number of calendar days provided to the WLC to complete each phase from schematic design to construction document. Figure 17 includes an image of the applicable section of Exhibit C.

Figure 17: Excerpt from Exhibit C of WLC Contract for Pinole Valley HS

B.	Pinole Valley High School Schedule
1.	Architect shall complete all Services required under the Development of Architectural Program section within 60 calendar days after written authorization from District to proceed.
2.	Architect shall complete all Services required under the Schematic Design Phase within 90 calendar days after written authorization from District to proceed.
3.	Architect shall complete all Services required under the Design Development Phase within 153 calendar days after receipt of a written authorization from District to proceed.
4.	Architect shall complete all Services required under Construction Documents Phase within 304 calendar days after written authorization from the District to proceed, and as more specifically indicated below. Excluded from this duration is the time associated with the Construction Documents back-check stage.
a.	Final Documents 607 calendar days
C.	The durations stated above exclude the review periods required by the District and all other regulatory agencies.

As shown in Figure 17, the architect schedule through the end of the construction documents phase (which is when the design plans are submitted to the DSA for final approval) is 607 calendar days, excluding review periods by the District and regulatory agencies (such as the DSA).

WLC provided to VLS a report of labor hours incurred for the Pinole Valley HS project. The report provides employee hours by phase and month. VLS summarized the data to identify the time periods for each architectural phase as well as how long the phases lasted. **Exhibit FI7-18** includes a summary of the hours by phase and month.³⁴⁵ Table 47 provides a summary of the number of calendar days that these three phases actually lasted compared to the calendar days listed in the contract. Table 47 includes the following columns:

- **Phase:** The phase of the architectural services to be provided as identified in the contract.
- **Calendar Days Per Contract:** The number of calendar days within which WLC was required to complete each phase according to the contract (Figure 17).

³⁴⁵ The original report provided by WLC to VLS is not included in this report as it contains employee names and numbers.

- **Approximate Start Date:** The month in which WLC started incurring significant hours related to that phase. WLC may have incurred hours prior to this month; however, the majority of activity started in this month.³⁴⁶
- **Approximate End Date:** The month in which the hours incurred by WLC for the phase dropped significantly. WLC may have incurred hours subsequent to this month; however, the majority of activity ended by this month.³⁴⁶
- **Approximate Actual Calendar Days:** The number of calendar days that passed between the Approximate Start Date and Approximate End Date for each phase.
- **Total Hours Incurred:** The total number of hours incurred by WLC for that phase within the months listed (e.g., June 2010 through April 2011).³⁴⁷
- **Average Monthly Hours:** The average number of hours incurred by WLC for each month within the months listed (e.g., June 2010 through April 2011).³⁴⁷

Table 47: Summary of WLC Hours by Phase – Pinole Valley HS³⁴⁸

Phase ³⁴⁹	Calendar Days Per Contract	Approximate Start Date	Approximate End Date	Approximate Actual Calendar Days	Total Hours Incurred	Average Monthly Hours
Schematic Design	90	6/1/2010	4/1/2011	300	6,312	574
Design Development	153	3/1/2011	12/1/2011	270	5,071	507
Construction Documents #1	304	11/1/2011	8/1/2013	630	10,237	465
Construction Documents #2	N/A	2/1/2014	9/1/2015	570	10,028	501

Based on the information presented in Table 47 and documents available, VLS observed the following:

³⁴⁶ The labor detail provided by WLC included total hours by month; therefore, VLS does not know the exact day when hours were incurred. For simplicity, VLS used the 1st of each month as the start and end dates.

³⁴⁷ The total hours incurred for the starting month and the ending month are included as VLS does not have specific dates for when the hours were incurred.

³⁴⁸ This table is not representative of all hours incurred by WLC as it is intended to show only when the majority of work was performed. Based on the labor reports provided by WLC, they incurred time in every month from June 2010 through December 2015. The summary table prepared from the labor hour report provided by WLC is included at **Exhibit FI7-18**. The highlighted cells in the summary table in **Exhibit FI7-18** correspond to the time periods identified in Table 47.

³⁴⁹ Included at **Exhibit FI7-18** is a summary of the total monthly hours incurred by WLC. This summary was used to identify the time period in which WLC incurred the most hours related to each phase to approximate the start and end dates.

- WLC began incurring hours for the Schematic Design phase prior to having a signed contract with the District. From June 2010 through November 2010, WLC incurred a total of 3,164 hours for this phase (see summary of hours by phase and month in **Exhibit FI7-18**). The contract was dated 12/29/2010 and was signed on 2/18/2011.³⁵⁰ These hours were also incurred prior to the proposal, dated 11/18/2010, that WLC submitted to the District for these services (see a copy of the proposal at **Exhibit FI7-05**).³⁵¹ On 12/8/2010, the Board approved (through a consent item) the contract with WLC (see **Exhibit FI7-20** for an excerpt of the agenda packet and meeting minutes).
- Although there was some overlap of phases (based on the hours incurred by WLC), it appears that each phase took longer than specified in WLC's contract. The **Approximate Actual Calendar Days** identified in Table 47 account only for days that WLC was incurring significant hours; therefore, these phases were in progress during the months shown (based on WLC's labor hour reports).
- Based on the master plan presented by WLC to the Board on 10/6/2010, the new campus construction was scheduled to begin in August 2013 (**Exhibit FI7-04**). Based on the schedule outlined in the WLC contract (Figure 17), which allowed for 607 calendar days, this would have been sufficient time to complete those three phases (schematic design, design development, and construction documents) barring any unforeseen circumstances or significant changes in scope. The new campus construction actually began in June 2016, almost three years later than originally planned.³⁵²
- Based on a review of project information on the DSA website, WLC submitted construction documents for pre-check on 8/1/2013 (**Exhibit FI7-22**).³⁵³ This was 932 calendar days from when the contract with WLC was dated (12/29/2010). The contract provided for a total of 607 calendar days, excluding wait time for District responses and DSA review. It is impossible to determine how much of this time may have been caused by District delays without reviewing all communications between WLC and the District.

³⁵⁰ A copy of the contract is included in **Exhibit FI7-01**. The date that the contract was signed is based off of the date included with WLC's signature as the District representative did not provide a date when signing.

³⁵¹ On 10/6/2010, WLC presented to the Board the master plan for Pinole Valley HS (**Exhibit FI7-04**). At that meeting, the Board approved the master plan and authorized the District to negotiate a full architectural services contract with WLC for the reconstruction of Pinole Valley HS (see **Exhibit FI7-19** for an excerpt of the agenda packet and meeting minutes).

³⁵² See Pinole Valley HS update presented to Facilities Subcommittee on 6/21/2016 (**Exhibit FI7-21**). A Notice to Proceed was issued to Lathrop Construction on 6/15/2016, and they began onsite mobilization on 6/17/2016.

³⁵³ Pre-check is when the DSA reviews the plan documents to make sure they are in order and have all the necessary sections for the official plan review. The pre-check is performed before the plans are submitted to the respective plan checkers (access compliance, fire and life safety, and structural safety).

However, based on the analysis presented in Table 47, WLC did not experience any “down-time” until after the construction documents were submitted to DSA for plan review in August 2013. If the District was delayed in providing responses to WLC, it was not apparent from the labor hours incurred by WLC.³⁵⁴

- The DSA website indicates that the construction documents were accepted on 10/2/2013 with “the understanding that certain structural items will be completed by Oct. 15th” (**Exhibit FI7-21**). It appears that the construction documents had to be revised before the DSA would accept them as the notes indicate “Project marked incomplete 8/23/13 w/email to WLC due to poor documents, printing problems. Restarted intake of new drawings on 9/5.” The DSA granted a six-month back check extension on 12/23/2014.
- The DSA review of architectural plans includes a review of access compliance, fire and life safety, and structural safety. The plan review start and finish dates and back-check review start and finish dates are listed on the DSA website (**Exhibit FI7-23**). Table 48 summarizes this information.

Table 48: Summary of DSA Plan Review Status – Pinole Valley HS

Services	Plan Review Start Date	Plan Review Finish Date	Returned Date	Back-Check Review Start	Back-Check Review Finish
Access Compliance	11/7/2013	9/10/2015	9/10/2015	9/23/2015	10/29/2015
Fire & Life Safety	10/9/2013	2/3/2014	[Blank]	9/1/2015	10/29/2015
Structural Safety	11/18/2013	6/2/2014 & 6/4/2014	6/20/2014	8/18/2015 & 8/27/2015	10/30/2015

The Plan Review Finish Date for access compliance appears to have not been updated properly by the DSA as the date listed is the same as the Returned Date. The plan review for fire and life safety was finished on 2/3/2014, and, although the Returned Date is not listed, the Back-Check Review Start date was 9/1/2015. Therefore, it appears that it took WLC from approximately February 2014 through September 2015 to address any issues identified by the DSA before resubmitting.³⁵⁵

- There are two peak periods of time in which WLC incurred significant hours for the Construction Documents phase (see labor hour summary included at **Exhibit FI7-18**). VLS

³⁵⁴ It is important that the contract specify what the turn-around time should be for the District to respond to submittals from the architect. The contract with WLC simply indicated “to avoid unreasonable delay.” This can be interpreted differently by both parties.

³⁵⁵ When VLS inquired with WLC regarding this time gap, they stated that the District had asked them to stop working on the project as there was uncertainty about whether the project would continue. However, based on the labor reports provided by WLC, they incurred significant hours in the construction documents phase during this time period (see Table 47).

identified these two time periods for the construction documents phase based on when WLC generally incurred at least 300 hours in one month. The slower period of time for WLC occurred from September 2013 through January 2014 (see Table 47). This coincides with the plan review period for the fire and life safety check. Once this plan review was completed (February 2014), WLC resumed an escalated work schedule until the plans were resubmitted for the back-check review in September 2015. It appears that, once the plan review was completed by DSA, WLC had many corrections to make to the construction documents. This is not unheard of for a project of this size; however, this is not something for which WLC could seek additional fees from the District.

- The back-check review by DSA was completed at the end of October 2015, at which time WLC was already incurring significant hours for the bidding phase (**Exhibit FI7-23**).

VLS interviewed WLC to inquire about the circumstances that caused the delay in these three phases of the project (schematic design through construction documents). According to WLC, the delays were caused by constant scope changes, delays in getting answers/responses from the District, and additional phases added to the project. Additionally, WLC stated that after DSA completed the plan review, the District asked WLC to delay on resubmitting to DSA as the District was not sure if they were going to continue with the project. The following summarizes VLS's assessment of these statements:

- **Delayed Communication by District:** To determine whether the District was delayed in providing responses to WLC would require a detailed review of all communications/submittals between WLC and the District, which would be a significant undertaking. Additionally, the contract between WLC and the District does not provide a specific time period for when the District must respond; it simply states to “avoid unreasonable delay.” This is subjective terminology and does not provide a basis for measurement/comparison. Based on the labor reports provided by WLC, there was only one period of time in which WLC did not incur significant hours (September 2013 to January 2014). As stated above, this was the time period when the construction documents were in plan review with DSA. WLC still incurred hours during this time period; however, it was on average much less than other months.³⁵⁶ Additionally, all other phases appear to overlap by at least a month or two, which would suggest that WLC did not have any significant down-time caused by delays of the District. It is likely that WLC submitted documents to the District in phases. If the District was slow in responding to WLC, it does not appear that this slowed WLC down in progressing in their work.

³⁵⁶ WLC incurred a total of 1,475 hours during this period, which is a monthly average of approximately 98 hours.

- District Requested Delay in Resubmittal of Construction Documents to DSA:** As mentioned previously, the only time period in which WLC had significantly fewer hours being incurred in the construction documents phase is from September 2013 through January 2014.³⁵⁷ This was the approximate time period that the construction documents were in plan review with DSA. After DSA finished their plan review of fire and life safety in early February 2014, WLC resumed an increased work schedule. If the District asked WLC to delay resubmittal of the construction documents to DSA, it is not apparent from WLC's labor hours as they incurred on average 501 hours per month from February 2014 through September 2015 for construction documents (see Table 47). A summary of WLCs hours by month and design phase is included at **Exhibit FI7-18**.
- Additional phases:** According to the master plan presented to the Board on 10/6/2010, the construction for Pinole Valley HS included five construction phases (**Exhibit FI7-04**): (1) build temporary campus, (2) demolish existing campus, (3) build new campus, (4) remove temporary campus, and (5) site work. These same five construction phases are shown in WLC's contract for design services (**Exhibit FI7-01**). These five phases were expanded into eight phases due to the addition of (1) detention basin and temporary housing utilities, (2) hillside stabilization, and (3) earthwork related to the hillside stabilization. **Exhibit FI7-06** includes a copy of amendment #4 for the WLC contract, which identifies the eight phases.³⁵⁸ The two most significant of these additions was the detention basin and hillside stabilization. Based on a Facilities Subcommittee presentation dated 6/9/2015, these two projects were completed in the summer of 2014 and cost \$3,121,600 and \$1,890,800, respectively (**Exhibit FI7-24**).

It appears that, during the master planning, there was knowledge of geotechnical issues related to the site.³⁵⁹ It is possible that these issues were related to the hillside stabilization (see recommendation FI7-03 related to this area). At some point, a decision was made to separate the hillside stabilization and detention basin into separate phases. This was most likely done to speed up the process of construction so that the resolution of these two issues did not have to wait until the construction documents for

³⁵⁷ WLC incurred a total of 439 hours for construction documents for these five months. An additional 1,036 hours was incurred for bidding, construction administration, and master planning. The hours incurred in these other phases are likely related to other construction phases of the project (e.g., hillside stabilization, detention basin, etc.).

³⁵⁸ Page 2 of amendment #4 indicates that the phase related to offsite parking and traffic design was removed from WLC's scope of work. Additionally, the work related to hillside stabilization and earthwork for hillside stabilization was consolidated.

³⁵⁹ The proposal from WLC dated 2/5/2010 for an add-service related to the Pinole Valley HS master plan indicated that one of the options was for reconstruction, which would include "possible demolition of existing buildings due to geotechnical issues on the site" (**Exhibit FI7-16**). The same document later states, "Our team will meet with the District and selected staff to complete the revised Master Plan which will be influenced by the geotechnical site issues."

the new school were approved by DSA. By separating these into new phases, the related construction work for them could be completed while WLC was working on the design for the new school. This would allow new school construction to begin as soon as the construction documents were approved by DSA. The design of the detention basin and hillside stabilization would be completed by the architect whether they would be constructed as one phase with the rest of the new school or as multiple phases.³⁶⁰ Therefore, although the detention basin and hillside stabilization were added as additional construction phases, they should not have extended the timeline of the whole project as the work was done while the new school design was in progress.³⁶¹

- Scope changes:** According to the master plan presented to the Board on 10/6/2010, the total construction cost for Pinole Valley HS was estimated at \$102,500,000 (**Exhibit FI7-04**). This estimate includes construction costs associated with the same five phases of construction provided for in WLC's contract (and listed above). Based on a presentation to the Facilities Subcommittee on 4/4/2016, this included an estimated construction cost for the new campus of \$84,600,000 (**Exhibit FI7-25**). The total estimated construction costs increased significantly since the master plan was presented in October 2010. In a presentation to the Facilities Subcommittee on 6/9/2015, the total estimated construction costs increased to \$136,700,000, which included an estimated budget of \$104,200,000 for just the new school construction (**Exhibit FI7-24**). This was an increase of \$19,600,000 to the new school construction budget. On 4/13/2016, the Board approved a construction contract for a total cost of \$129,894,002 for the new school construction. This was an additional increase of \$25,694,002 over the previous construction budget. Construction costs for just the new school increased a total of \$45,294,002 since the master plan presented in October 2009. Although a portion of this cost is attributable to inflation and a less competitive construction environment, these factors would not be the cause of the entire increase. It seems reasonable that design scope changes were a contributing factor to this increased construction budget. Depending on the nature and timing of the design and scope changes, these could also be a contributing factor to delays in the architect schedule. See Work Step (D) for additional discussion related to scope changes.

Based on information available to VLS, WLC was retained in 2006 to perform master planning services for Pinole Valley HS, and it appears that this work was completed in 2007. WLC was

³⁶⁰ Additional architect fees associated with splitting the project into multiple phases would be warranted to cover the additional labor hours required to separate the construction documents for submittal to DSA, bidding purposes, and construction administration. This usually requires minimal labor hours (approximately 40 hours per phase), and can be negotiated by a district as a flat fee or an hourly rate per hour.

³⁶¹ The assessment of the additional fee charged by WLC associated with these phases is discussed in Work Step (D).

then retained again in 2010 to update the master plans and options available to the District. This was completed in that same year, and WLC was retained to begin the design work for the project. The design work for the new school took from late 2010 until late 2013 (almost three years) to submit plans to the DSA, which was longer than the schedule in their contract and longer than typically seen in the industry. VLS did not attempt to identify all the reasons for this extended project schedule; however, some of this delay was likely caused by scope changes, additional construction phases, and possibly more time needed by WLC to complete the designs and construction documents. WLC has claimed that the District was delayed in providing responses; however, VLS did not see any significant periods of downtime in WLC's labor hours except for the time when the construction documents were in plan review with DSA. Final DSA approval was not received until October 2015, at which time the District moved forward with the appropriate steps to begin construction. The amount of time taken by DSA for plan review and back-check appear appropriate for the size of this project, which would indicate that they were not the cause of any delays.

Interactive Resources – Wilson ES:

Master Planning

The following bullets provide a brief summary of the master planning related to Wilson ES based on documents available to VLS:

- On 4/22/2010, Interactive Resources issued a proposal for master planning services for Wilson ES (**Exhibit FI7-08**). Interactive Resources proposed a fee of \$192,000 to perform this work.
- On 5/12/2010, the Board was presented with a recommendation from the Facilities Subcommittee that Interactive Resources be awarded the master planning contract for Wilson ES (**Exhibit FI7-09**). The Board approved this recommendation. Interactive Resources was issued a Notice to Proceed on 5/27/2010 (**Exhibit FI7-09**).
- On 6/22/2010, the Board ratified the contract with Interactive Resources for master planning of Wilson ES (**Exhibit FI7-11**). The Interactive Resources contract was listed at \$192,000 plus \$10,000 for reimbursement of expenses.
- On 5/4/2011, the Board approved an increase to Interactive Resources contract to prepare a revised master plan based upon a smaller student population (**Exhibit FI7-10**). The increase approved was not to exceed \$100,000.

- On 11/23/2011, the District and Interactive Resources executed a contract for Interactive Resources to provide architectural design services for Wilson ES.³⁶²

Architectural Services

Exhibit C (page C-1) of the contract with Interactive Resources include the Schedule of Services and identified the number of calendar days provided to Interactive Resources to complete each phase from schematic design to construction documents.

Figure 18: Excerpt from Exhibit C of Interactive Resources Contract for Wilson ES

B.	Woodrow Wilson Elementary School Reconstruction
1.	Architect shall complete all Services required under the Schematic Design Phase within 63 calendar days after written authorization from District to proceed.
2.	Architect shall complete all Services required under the Design Development Phase within 124 calendar days after receipt of a written authorization from District to proceed.
3.	Architect shall complete all Services required under Construction Documents Phase within 155 calendar days after written authorization from the District to proceed, and as more specifically indicated below. Excluded from this duration is the time associated with the Construction Documents back-check stage.
a.	Final Documents 342 calendar days
C.	The durations stated above exclude the review periods required by the District and all other regulatory agencies.

As shown in Figure 18, the architect schedule through the end of the construction documents phase (which is when the design plans are submitted to the DSA for final approval) is 342 calendar days, excluding review periods by the District and regulatory agencies (such as the DSA).

Interactive Resources provided reports of labor hours incurred for the Wilson ES project. The report provides employee hours by phase and day. Based on the reports provided, there is a clear delineation of when Interactive Resources completed one phase and moved into the next. Table 49 provides a summary of the number of calendar days that these three phases actually lasted compared to the calendar days listed in the contract. Table 49 includes the following columns:

- Phase:** The phase of the architectural services to be provided as identified in the contract.

³⁶² VLS was unable to identify documentation to show when Interactive Resources submitted the master plan for Wilson ES for approval by the Facilities Subcommittee and/or Board. This is the date that Interactive Resources signed the contract. The contract is dated 11/17/2011.

- **Calendar Days Per Contract:** The number of calendar days within which Interactive Resources was required to complete each phase according to the contract (Figure 18).
- **Approximate Start Date:** The date on which Interactive Resources started incurring significant hours related to that phase. Interactive Resources may have incurred hours prior to this date; however, the majority of activity started on this date.
- **Approximate End Date:** The date on which the hours incurred by Interactive Resources for the phase dropped significantly. Interactive Resources may have incurred hours subsequent to this date; however, the majority of activity ended by this date.
- **Approximate Actual Calendar Days:** The number of calendar days that passed between the Approximate Start Date and Approximate End Date for each phase.
- **Total Hours Incurred:** The total number of hours incurred by Interactive Resources for that phase within the time period listed.³⁶³
- **Average Monthly Hours:** The average number of hours incurred by Interactive Resources for each month within the time period listed.³⁶³

Table 49: Summary of Interactive Resources Hours by Phase – Wilson ES³⁶⁴

Phase	Calendar Days Per Contract	Approximate Start Date	Approximate End Date	Approximate Actual Calendar Days	Total Hours Incurred	Average Monthly Hours
Schematic Design	63	11/15/2011	3/30/2012	135	1,027	228
Design Development	124	9/25/2012	1/31/2013	126	1,592	379
Construction Documents	155	2/1/2013	10/30/2015	989	8,817	267

Based on the information presented in Table 49 and documents available, VLS observed the following:

- Interactive Resources began incurring hours for the Schematic Design phase around the time that the contract was executed.
- The Schematic Design and Construction Documents phases took significantly longer than specified in Interactive Resources' contract.³⁶⁵ The Design Development phase took just two calendar days longer than specified in the contract.

³⁶³ The labor hour reports provided by Interactive Resources did not include the period from 1/1/2012 through 2/13/2012; therefore, the hours for the Schematic Design phase are likely understated.

³⁶⁴ This table is not representative of all hours incurred by Interactive Resources as it is intended to show only when the majority of work was performed.

- There was a six-month delay in moving from the Schematic Design phase to the Design Development phase. This may be an indication that the District was delayed in responding to Interactive Resources’ submittals for schematic design and/or approving them to move forward with the next phase. This is discussed later in this section.
- Based on a review of project information on the DSA website, Interactive Resources submitted construction documents for pre-check on 12/31/2013 (**Exhibit FI7-26**). This was 764 days from the contract date with Interactive Resources (11/17/2011). Comparing this to the schedule outlined in the contract (342 days) plus a reasonable amount of time for the District to review submittals by Interactive Resources (60 days), barring any unforeseen circumstances or delays, the plans should have been to the DSA for pre-check within approximately 402 days.
- The DSA website indicates that the construction documents were accepted on 3/17/2014 (**Exhibit FI7-26**). It appears that the construction documents had to be revised before the DSA would accept them as the notes indicate “Incomplete due to architectural and structural items.”
- The DSA review of architectural plans includes a review of access compliance, fire and life safety, and structural safety. The plan review start and finish dates and back-check review start and finish dates are listed on the DSA website (**Exhibit FI7-27**). Table 50 summarizes this information.

Table 50: Summary of DSA Plan Review Status – Wilson ES³⁶⁶

Services	Plan Review Start Date	Plan Review Finish Date	Returned Date	Back-Check Review Start	Back-Check Review Finish
Access Compliance	4/3/2014	4/25/2014	4/28/2014	[Blank]	[Blank]
Fire & Life Safety	3/25/2014	5/16/2014	[Blank]	[Blank]	[Blank]
Structural Safety	4/30/2014	10/2/2015	10/10/2014	8/25/2015	10/14/2015

³⁶⁵ An additional 52.50 hours were incurred by Interactive Resources in the Schematic Design phase between April 2012 and mid-September 2012; however, the hours were sporadic and did not represent when a significant portion of the labor hours were incurred.

³⁶⁶ The Plan Review period is when DSA performs a detailed review of the construction documents and identifies any issues, concerns, or questions related to the documents. This is an extensive review performed by the various plan checkers for the three different areas identified in Table 50. Once the plan review is complete, DSA sends the documents and issues identified back to the architect for correction or to supply DSA with the necessary information. The Back-Check period is when DSA performs a review to verify that the architect corrected the issues identified during the Plan Review. This is performed after the architect has re-submitted the construction documents with the appropriate corrections/information. The back-check generally does not take as long as the DSA reviews only the areas that required corrections/information.

The Plan Review Finish Date for structural safety listed on the DSA website of 10/2/2015 may be an error. This was likely intended to be 10/2/2014. The amount of time taken by the DSA to complete plan review appears appropriate, which would indicate that they were not the cause of any delays.

The project was ultimately put on hold by the District when it issued a letter dated 11/9/2015 to Interactive Resources instructing them to suspend all work (**Exhibit FI7-13**). Around this time, the District had decided to suspend all new projects, except for Pinole Valley HS, pending the completion of an updated long-term facilities master plan.

VLS interviewed Interactive Resources and inquired about the circumstances that caused the delay and resulted in the plans not getting submitted to the DSA until almost 2014. Interactive Resources indicated that the District took a long time in responding to correspondence, and the District changed its mind about the size of the school.³⁶⁷

To determine whether the District delayed providing responses to Interactive Resources would require a detailed review of all communications/submittals between Interactive Resources and the District, which would be a significant undertaking. Additionally, the contract between Interactive Resources and the District does not provide a specific time period for when the District must respond; it simply states to “avoid unreasonable delay.” This is subjective terminology and does not provide a basis for measurement/comparison. Based on the labor reports provided by Interactive Resources, there was a period of approximately 175 calendar days between the schematic design and design document phases in which they incurred very few labor hours (see Table 49). This is the only time period in which it appears that Interactive Resources had any down-time, which could have been caused by District delays. Regarding the District changing its mind on the school size, it appears that this occurred during the master planning phase. **Exhibit FI7-10** includes a copy of an approved add-service for Interactive Resources for revising the conceptual plans to accommodate a smaller student population.

Based on information available to VLS, Interactive Resources was retained in May 2010 to perform master planning services for Wilson ES, and it appears that the original master plan was completed in approximately March or April 2011 (based on the labor reports provided to VLS). Interactive Resources then revised the conceptual design based upon direction from the District that there would be a reduced student population. This rework took place from May 2011 through November 2011 based on labor reports provided by Interactive Resources. Interactive Resources was then retained by the District in November 2011 to begin the design work for the project. The design work took from November 2011 until December 2013 (approximately two years) to submit plans to DSA, which was longer than the schedule in their contract and longer

³⁶⁷ VLS spoke with two representatives of Interactive Resources. One individual was unable to recall specific reasons for the delay, but thought that there were delays in getting responses from the District. The other individual affirmatively stated that the District took a long time to respond to correspondence.

than typically seen in the industry. This two-year time period includes 175 calendar days of down-time between the schematic design and design development phases. The project was suspended in November 2015, just prior to final submittal to the DSA.

Conclusion

The initial master planning work for Pinole Valley HS was performed in 2006/2007, approximately four years before the actual design work began and 10 years before construction began. Once design work was started in late 2010, it took almost three years for WLC to submit their initial plans to DSA. And it took another two years to get final approval from the DSA that would allow the District to move forward with construction.

For Wilson ES, the master planning did not begin until June 2010, and a rework of the conceptual design occurred in the summer/fall of 2011. Design work was initiated immediately after, in November 2011. The initial DSA submittal of design plans occurred two years later, in December 2013. The District ultimately suspended the project in November 2015 just prior to Interactive Resources' final back-check submittal to DSA.

(C) Determine whether architects were approved for “add services” due to the need for updated designs

Related Allegation

VCA (1) – Architects hired to begin conceptual plans for schools decades in advance

Results of Work Performed

The DSA reviews construction projects under its jurisdiction for Title 24 compliance.³⁶⁸ The majority of DSA's plan review and construction oversight focuses on new construction and alteration projects for California school and community college districts. DSA's oversight for structural safety of school facilities is governed by the provisions of the Field Act in the California Education Code (section 17280 for K-12 school districts). The Field Act imposes requirements on California schools that are not present in other types of construction approval processes. This includes that drawings and specifications have to be verified by DSA for compliance with applicable building codes prior to the commencement of construction.³⁶⁹

³⁶⁸ Title 24 of the California Code of Regulations contains the regulations that govern the construction of buildings in California. The 2013 edition of the California Building Standards Code (Title 24) became effective on 1/1/2014. Projects submitted to DSA on or after this date must be designed and constructed in compliance with the 2013 edition of Title 24.

(Source: <http://www.dgs.ca.gov/dsa/Programs/progCodes/title24.aspx>)

³⁶⁹ This information was taken from the DSA.

website: <http://www.dgs.ca.gov/dsa/Programs/progProject.aspx>.

California's building codes are published in their entirety every three years.³⁷⁰ The building codes that district designs must adhere to is based on when the plans are submitted to DSA. To ensure that design plans will meet the requirements of the current building codes, the architect must establish a timeline to ensure that they are designing to the correct codes for when they will be submitting to DSA. If there are delays in completing the designs and/or when the designs are submitted to DSA, the designs may require revision in order to meet new/updated buildings codes.

The applicable building code cycle is determined based on when the architect submits the construction documents to DSA for pre-check.³⁷¹ If the construction documents are in order and contain all the necessary components, DSA will accept the construction documents for plan review.³⁷² After DSA completes its plan review, comments are given to the architect for any corrections/explanations that are needed. The architect has six months to make all of the corrections needed and resubmit the construction documents to DSA for the back-check.³⁷³ The architect can request an extension in order to make all the necessary corrections needed.³⁷⁴ If the architect does not make all the corrections and resubmit 100% of the construction documents within the deadline, the DSA will void the project and the architect must resubmit the plans as a new project. Once the construction documents are approved by DSA, districts have four years to start construction before the approval expires. Before the four years expires, the architect can submit a request to DSA for an extension on the approval, which would have to be done on an annual basis.

During the master planning stage of a project, the architect typically prepares only conceptual plans and there is generally no design work performed. Therefore, the building code cycle

³⁷⁰ Source: <http://www.bsc.ca.gov/Home.aspx>

³⁷¹ Pre-check is when the DSA reviews the construction documents to make sure they are in order and have all the necessary sections for the official plan review. The pre-check is performed before the plans are submitted to the respective plan checkers (access compliance, fire and life safety, and structural safety).

³⁷² The Plan Review period is when DSA performs a detailed review of the construction documents and identifies any issues, concerns, or questions related to the documents. This is an extensive review performed by the various plan checkers for access compliance, fire and life safety, and structural safety. Once the plan review is complete, DSA sends comments, questions, and issues identified back to the architect for correction and/or answers.

³⁷³ The Back-Check period is when DSA performs a review to verify that the architect corrected the issues identified during the Plan Review. This is performed after the architect has re-submitted the construction documents with the appropriate corrections/information. The back-check generally does not take as long as the DSA reviews only the areas that required corrections or additional information.

³⁷⁴ If the architect is making an effort in getting the documents corrected and information to DSA, DSA will usually grant more time to complete the documents for back-check. However, if DSA feels that the architect is delaying the project and not making progress, DSA will likely enforce the original six-month deadline.

generally has no impact on the work performed in the master planning stage. If master planning is performed by an architect years in advance, changes in the building code cycle would not require an update to the master plans.

WLC – Pinole Valley HS:

Master Planning

Table 51 provides a summary of the fees approved by the District related to the master planning performed by WLC for Pinole Valley HS.

Table 51: Pinole Valley HS – WLC Fees (Master Planning)

Date	Amount	Description
12/6/2006	\$ 324,125	Original contract: Begin programming and master planning work.
3/3/2010	126,360	Add-service #1: Revise the master plan for the site.
	<u>\$ 450,485</u>	

Based upon the documentation available for the add-services approved for WLC, WLC was paid additional fees to update the master plan for Pinole Valley HS in 2010. VLS does not have information/documentation that explains why the Pinole Valley HS project did not move forward after WLC completed the master planning performed in 2006/07.

Based on a proposal from WLC dated 2/5/2010, the services covered by this add-service were to provide master planning services to help the District determine the scope of work for Pinole Valley HS (**Exhibit FI7-16**). According to the proposal, the District was exploring two options, both of which included temporary housing and phasing options:

- 1) Option 1: Reconstruction of the existing buildings which would include gutting the interior and replacement of the utility infrastructure; replacement of portables; increase size of administration area; new landscaping; and possible demolition of existing buildings due to geotechnical issues on the site.³⁷⁵
- 2) Option 2: Build a new school and demolish the existing school.

The proposal also stated, “WLC will revise the May 29, 2007 master plan for the site, which we developed. We will utilize our July 9, 2007 master plan information including the assessment of the existing buildings, the existing as-built documentation, and the detailed space summary and education specification to meet the District Standards. Our team will meet with the District and selected staff to complete the revised Master Plan which will be influenced by the geotechnical site issues.”³⁷⁵

³⁷⁵ It is possible that the geotechnical issues referenced here are related to the hillside stabilization work that was added as a separate phase of the construction work for Pinole Valley HS.

Design Services

Table 52 provides a summary of the fees approved by the District related to the design services performed by WLC for Pinole Valley HS.

Table 52: Pinole Valley HS – WLC Fees (Design Services)

Date	Amount	Description
12/8/2010	\$ 8,451,539	Original contract: Begin architectural design services.
6/28/2011	28,600	Add-service #1: Provide a supplemental topographic survey required for civil engineer's work.
11/2/2011	39,450	Add-service #2: Provide additional design services, as well as coordination and meetings, pertaining to mitigation of traffic on Pinole Valley Road.
7/24/2013	66,551	Add-service #3: Provide additional design services to incorporate scope revisions, including combining project phase utilities, redesigning to utilize City infrastructure, and incorporating City of Pinole requested items.
12/3/2014	7,538,881	Add-service #4: Fee increase based on revised construction cost estimate (project program, square footage, and scope increases); extended project duration for multiple phases.
	<u>\$ 16,125,021</u>	

WLC began their design services in late 2010 with the expectation that the plans would be submitted to DSA and be approved in the time period of June 2012 through February 2013 (see **Exhibit FI7-04** for a copy of the master plan proposed to the Board on 10/6/2010).

Based on a review of documentation available, add-services #1, #2, and #3 appear to be for specific changes or additions to the scope of work, and they do not appear to be for changes in design due to new/revised building codes.³⁷⁶ According to the documentation submitted by WLC (**Exhibit FI7-28**) and the amended agreement approved by the District (**Exhibit FI7-06**), add-service #4 was for the following: restore scope of work that was modified or eliminated by the Board on 9/19/2012; effort involved in project phases (four additional phases were added); scope and schedule changes; and effort required to support the execution of the balance of the project.³⁷⁷ Based on the information presented and justification provided by WLC, it does not appear that they requested increased fees due to new/revised building codes.

WLC confirmed that the Pinole Valley HS was designed and approved by DSA under the 2010 building codes.³⁷⁸ The necessary extensions from DSA were received throughout the DSA review and approval process that allowed the design to be approved under this code cycle and did not require an update to the designs for a new building code cycle.

³⁷⁶ This is not a statement as to the appropriateness of the add-services or whether these services (scope changes) should have been or were covered under the original contract.

³⁷⁷ The appropriateness of this particular add-service is assessed in Work Step (D).

³⁷⁸ The 2010 building codes would have become effective on 1/1/2011.

Interactive Resources – Wilson ES:Master Planning

Table 53 provides a summary of the fees approved by the District related to the master planning performed by Interactive Resources for Wilson ES.

Table 53: Wilson ES – Interactive Resources Fees (Master Planning)

Date	Amount	Description
5/12/2010	\$ 202,000	Original contract: Master planning work.
5/4/2011	100,000	Add-service #1: Revise the master plan based upon smaller student population.
	<u>\$ 302,000</u>	

Based upon the documentation available for the add-service approved for Interactive Resources, Interactive Resources was paid additional fees to revise the conceptual design and master plan to accommodate a smaller student population and building area (**Exhibit FI7-10**).

Based on the additional service request submitted by Interactive Resources dated 7/13/2011, which was attached to the approved add-service documentation, Interactive Resources had completed the conceptual design for Wilson ES with the direction from the District to design a new school for 780 students (**Exhibit FI7-10**). At the time, the assumption was that Grant Elementary School (Grant ES) would be closed, and the student population attending that school would be absorbed by Wilson ES. After completion of the conceptual design, the District decided that Grant ES would not be closed, and the conceptual design for Wilson ES had to be revised to accommodate a reduced population (approximately 500 students).

Design Services

Table 54 provides a summary of the fees approved by the District related to the architectural design services performed by Interactive Resources for Wilson ES.

Table 54: Wilson ES – Interactive Resources Fees (Design Services)

Date	Amount	Description
11/17/2011	\$ 2,400,000	Original contract: Begin architectural design services.
6/26/2013	112,000	Add-service #1: Provide construction documents for the Adams Middle School Selective Demolition Project in preparation for the Wilson Elementary School Temporary Campus.
12/11/2013	900,000	Add-service #2: Additional design fees related to complexity of project, current District standards, delayed review and feedback from District, current construction cost estimate.
	<u>\$ 3,412,000</u>	

Interactive Resources began their design services in late 2011. Based on the schedule outlined in Exhibit C of their contract, they expected to have construction documents completed in 342 calendar days, excluding review periods required by the District and other regulatory agencies

(**Exhibit FI7-02**). Barring any unforeseen circumstances, significant delays, or changes in scope, the construction documents should have been completed and submitted to DSA as early as December 2012, which would have been under the 2010 building codes.

Based on a review of the labor hours provided by Interactive Resources, the schematic design and construction documents phases took substantially longer than outlined in their contract (see Table 49). Additionally, there was a six-month delay between the schematic design and design development phases. This resulted in Interactive Resources submitting the plans to DSA on 12/31/2013, almost a year after the projected time period based on their contract. January 1, 2014 was the start date of the 2013 building code cycle; therefore, it appears that Interactive Resources submitted on 12/31/2013 so that the designs would fall into the 2010 building code cycle.

Based on a review of documentation available, add-service #1 appears to be for a specific scope addition related to the demolition of another school site in preparation for the Wilson ES temporary campus (**Exhibit FI7-29**). During interviews of Interactive Resources, different explanations were provided to VLS regarding this add-service. One statement made indicated that this add-service had nothing to do with the Wilson ES project. Another statement made indicated that this add-service was related to the Wilson ES project because the District, at one time, had planned to use this other location for the temporary campus of Wilson ES students.

Based on a review of documentation available for add-service #2, the justification provided by Interactive Resources for the increased fees included: complex structural system due to location near a fault line; total area of building is greater than initial District standards; complex parking/drive design due to site constrictions; current District standards are significantly more expensive and complex; complexity of site civil and landscaping design; delayed review and feedback from the District including significant changes to the design as a result; and increased construction cost estimate (**Exhibit FI7-30**).³⁷⁹

Interactive Resources confirmed that Wilson ES was designed and submitted to DSA using the 2010 building codes.³⁸⁰ Although the project was suspended just prior to the final submittals to DSA for approval, it appears that the work performed by Interactive Resources was always under the 2010 building code cycle; therefore, updates to the designs should not have been needed due to a changing building code cycle.

Based on the information presented and justification provided by Interactive Resources, it does not appear that they requested increased fees due to new/revised building codes. However, because the project was suspended before getting DSA approval, if or when the District decides

³⁷⁹ The appropriateness of this particular add-service is assessed in Work Step (E).

³⁸⁰ The 2010 building codes would have become effective on 1/1/2011 and continued through 12/31/2013.

to continue with the project, it is likely that additional design costs will be incurred to update the designs and resubmit to DSA.

Conclusion

Both WLC and Interactive Resources were paid additional fees to update the master plan/conceptual designs related to the Pinole Valley HS and Wilson ES projects, respectively. The add-service to WLC appears appropriate because of the timing of the first master plan prepared in 2007 and when the District decided to move forward with the project several years later. The add-service to Interactive Resources also appears appropriate because the scope (size of the school) was revised in the middle of master planning; therefore, Interactive Resources had to revise the conceptual plans. The add-services for WLC and Interactive Resources would not have been related to a change in building codes as master planning is conceptual only and does not involve the architect performing actual design work. Building code cycles become relevant once the architect begins actual design services. This is not a conclusion on the appropriateness of the cost of the original master planning fees plus add-service fees.

WLC and Interactive Resources were also approved for add-services for their design contracts. Based on the documentation available to VLS and discussions with the firms, these add-services were related to scope changes, increased construction costs, and longer project schedules. Both firms were designing the schools under the 2010 building code cycle, and Pinole Valley HS (WLC) was ultimately approved by DSA under the 2010 code cycle. Wilson ES was submitted to DSA under the 2010 code cycle; however, the project was ultimately suspended before getting final DSA approval. The add-services approved by the District do not appear to be related to additional costs for updated designs due to a different building code cycle. This is not a conclusion as to the appropriateness of the cost of the original design contract plus add-service fees. For a discussion related to the fees for design services according to the original contract, see Work Step (A) beginning on page 255. For a discussion related to the add-service fees, see Work Step (D) beginning on page 292.

(D) Determine whether “add service” of \$7 million approved for WLC was appropriate

Related Allegation

COA (1) – “Add services” approved for architectural firms were inappropriate (for example, \$7 Million “add service” approved for WLC Architects)

Results of Work Performed

Timeline

The bullets below provide a detailed timeline of the key dates and events surrounding the Pinole Valley HS project and architectural design services provided by WLC.

- **10/6/2010:** WLC presented the master plan for Pinole Valley HS to the Board, which included an estimated construction budget of \$102,500,000 for five phases (**Exhibit FI7-04**). This included an estimated construction cost of \$84,600,000 for the new school construction.
- **11/18/2010:** WLC submitted a proposal for Pinole Valley HS design services, which included estimated construction costs of \$90,988,622 (**Exhibit FI7-05**). This included temporary housing lease costs of \$6,988,800. WLC's fees were proposed at \$8,451,539.
- **12/8/2010:** The Board approved the contract with WLC to perform design services for Pinole Valley HS for a total fee of \$8,451,539 (**Exhibit FI7-20**).
- **12/29/2010:** A contract with WLC was executed for design services (**Exhibit FI7-01**). The total construction costs for five phases of construction were listed as \$84,641,487. The line-item for the temporary housing lease was removed (which was a cost of \$6,988,800); however, WLC's fees remained at \$8,451,539.
- **6/28/2011:** The Board approved add-service #1 for an increased fee of \$28,600.³⁸¹
- **11/2/2011:** The Board approved add-service #2 for an increased fee of \$39,450.³⁸¹
- **9/10/2012:** WLC submitted a revised additional service request (labeled as #3) for an increased fee of \$2,858,621 (**Exhibit FI7-28**).³⁸² The additional service request states, "Pursuant to the direction of the West Contra Costa Unified School District Facilities Subcommittee at their December 13, 2011 meeting, the new Pinole Valley High School (PVHS) project construction budget has been increased from \$84,641,487 to \$118,660,000. The primary reasons for the increase in budget are the building program has expended to accommodate additional school program requirements and non-building program cost impacts." The document identifies the new scope items as listed below (the bullets are numbered/lettered to coincide with the numbering/lettering included in the request for additional service):

³⁸¹ See Table 52 for a brief description of this add-service.

³⁸² The original date of the additional service request is 1/19/2012. It shows it was then revised on 9/6/2012 and 9/10/2012. See the page labeled "Attachment No. 2."

1. Phase 1 Temporary Housing:
 - c. Structural engineering design of structural piers for hillside stabilization.
 - d. Civil engineering design of off-site parking at the Church and Library to accommodate the temporary housing parking requirements.
2. Phase 2 Demolition of Existing Campus:
 - b. Civil engineering design of bench swales and hillside keyway drainage for hillside stabilization excavation work.
3. Phase 3 New Campus, Play Yard Areas and Parking Lots:
 - b. Civil and landscaping design of Pinole Valley Road street markings, bus pull-out, four new traffic signals, and street frontage furnishings.

On page 2 of the document, it states, “The District has directed WLC to remove or reduce the cost of Bidding, Construction Administration, and Closeout Services in Phases 3 and 5 per the attached invoice in order to maintain our current fee of \$8,519,589.00. At the point in time when the District chooses to proceed with Phases 3 and 5 Bidding, Construction Administration, and Closeout, an amendment to our contract for these services will be issued.”

Attached to the additional service request was a fee calculation showing a calculation of the increased estimated construction costs and the associated fee of \$2,858,621.

- **9/19/2012:** The Board approved a revision to the WLC contract to reduce and eliminate “construction administration services during the construction of the new campus, sports fields, parking, and courts restoration, phases III and V” (**Exhibit FI7-28** – see the page labeled “Attachment No. 1”). This scope reduction was done to cover the increased fee of \$2,858,589 requested by WLC for “extensive and comprehensive traffic, site access, seismic, and geotechnical issues [that] have required substantial coordination and design modifications by WLC and its consultants.”³⁸³
- **7/24/2013:** The Board approved add-service #3 for an increased fee of \$66,551.³⁸⁴

³⁸³ The additional service request from WLC indicated that the scope reduction would be for bidding, construction administration, and close-out for phases 3 and 5. However, the description of the scope change approved by the Board indicated that only construction administration for phase 3 and 5 would be removed from WLC’s scope. WLC’s fee for phase III (new school construction) was \$6,987,666. WLC’s fee for phase V (sports fields, parking, and courts restoration) was \$670,303. The fees associated with the construction administration portion of these phases are earned at a rate of 25% (see Exhibit D of contract). Therefore, the fee associated with this scope that was removed from the contract is \$1,914,493 (\$1,746,917 (\$6,987,666 x 25%) plus \$167,576 (\$670,303 x 25%)).

³⁸⁴ See Table 52 for a brief description of this add-service.

- **3/10/2014:** WLC submitted an additional service request labeled as #5 (**Exhibit FI7-28**). WLC requested the following additional fees:
 1. Construction administration services and scope increase - \$4,308,554
 2. Extended project schedule - \$3,468,560
 3. Full time on-site construction administration services - \$1,097,400

The document includes several attachments that are referenced by WLC to support the request for an additional \$8,874,514. This request was not approved by the District.

- **8/7/2014:** WLC submitted a revised additional service request #5 (**Exhibit FI7-31**). This revised document includes a request only for the construction administration services and scope increase of \$4,308,554. The document includes several attachments that are referenced by WLC to support the request. This request was not approved by the District.
- **9/11/2014:** WLC submitted an additional service request labeled as #6 (**Exhibit FI7-32**). This request included the fees of \$3,468,560 for the extended project schedule and \$1,097,400 for the full time on-site construction administration services. It appears that the three different fees requested by WLC on 3/10/2014 were separated into two separate requests; however, the total dollar amounts remained unchanged. Several attachments were included by WLC to support their request. This request was not approved by the District.
- **12/3/2014:** The Board approved additional architectural services for WLC for a total of \$7,538,881 (**Exhibit FI7-33**). This fee made up the following components:
 1. Construction administration services and scope increase - \$4,308,554
 2. Extended project schedule - \$3,230,327

The request for an increased fee for full time on-site construction administration services was not included in the total amount approved.³⁸⁵ The total fees for the extended project schedule were reduced by \$238,233 from the original proposed amount of \$3,468,560 (an approximate 6.8% decrease). The total fee approved for design services for Pinole Valley HS increased to \$16,125,021, including all approved add-services.

³⁸⁵ A revised copy of the additional service request #6 dated 11/18/2014 was attached (original date of 9/11/2014). According to the revised document, WLC revised their fee for full-time on-site construction administration services down to \$806,251.

- **3/11/2015:** The District executed amendment #4 with WLC for the approved fee increase based on the 12/3/2014 Board approval. Figure 19 includes the revised fee schedule.

Figure 19: WLC Payments Schedule – Amendment #4

PAYMENT SCHEDULE				
Phase	Original Fee Distribution	Previously Adjusted Fee Distribution*	Amendment 4 Fee Distribution	Revised Total Contract Fee
Phase 1A: Temporary Housing	\$624,048.00	\$129,240.00	\$561,373.44	\$690,613.44
Phase 1B - Detention Basin/Temp Housing Utilities/Paving	\$0.00	\$201,100.00	\$64,498.19	\$265,598.19
Phase 1C - Hillside Stabilization	\$0.00	\$107,800.00	-\$107,800.00	\$0.00
Phase 1D - Off-Site Temp Parking/Traffic Signal	\$0.00	\$3,200.00	-\$3,200.00	\$0.00
Phase 2A - Demolition of Existing Campus	\$99,195.00	\$201,400.00	\$34,732.35	\$236,132.35
Phase 2B - Earthwork for Hillside Stabilization	\$0.00	\$241,500.00	-\$26,373.29	\$215,126.71
Phase 3 - New Campus	\$6,987,666.00	\$6,246,745.00	\$6,549,600.86	\$12,796,345.86
Phase 4 - Removal of Temporary Housing	\$70,327.00	\$110,105.00	\$34,636.59	\$144,741.59
Phase 5 - Sports Fields/Parking/Courts Restoration	\$670,303.00	\$1,149,649.00	\$492,212.66	\$1,641,861.66
Unallocated	\$0.00	\$60,800.00	-\$60,800.00	\$0.00
Amendment No. 1	\$28,600.00	\$28,600.00	\$0.00	\$28,600.00
Amendment No. 2	\$39,450.00	\$39,450.00	\$0.00	\$39,450.00
Amendment No. 3	\$66,551.00	\$66,551.00	\$0.00	\$66,551.00
Total	\$8,586,140.00	\$8,586,140.00	\$7,538,880.80	\$16,125,020.80

Analysis of WLC Add-Service #4

The additional approved \$7,538,881 fee is made up of two components, as mentioned previously.³⁸⁶ WLC calculated revised fees based on the total estimated construction costs at that time. Additionally, WLC calculated additional fees based on the extended project schedule. Various schedules provided by WLC in the additional service requests discussed above identify how WLC calculated the revised fees/increase. Ultimately, when signing the amendment with the District, those fees were reallocated to the various construction phases as shown in Figure 19.

WLC's justification for requesting the additional fees included the following (**Exhibit FI7-28**):

- Increased estimated construction costs of \$49,733,681, for a revised estimated total construction cost of \$134,375,168. The fee associated with these costs was to restore

³⁸⁶ The two components included (1) restoration of construction administration services and scope increase fee of \$4,308,554 and (2) extended project schedule fee of \$3,230,327. The third component of full-time on-site construction administration was not approved by the District.

the scope of work that was previously removed from WLC’s contract to off-set additional design fees. Additionally, WLC indicated that the overall scope and phasing of the project increased. Page 21 of **Exhibit FI7-28** (see page labeled “Attachment No. 4”) includes the fee recalculation scheduled which is based on the revised estimated construction costs.

- The project duration increased from 5.5 years to 9.5 years, a four-year extension from the original plan. According to WLC, “the WLC team, including consultants, is involved in multiple phase activities providing services to WCCUSD continuously for ten years to successfully complete the new PVHS project.” The additional project duration had and will continue to have a significant impact on their work effort and the fee expenditure. WLC also claimed that the contract did not provide for cost of living increases over the period of time. Page 36 of **Exhibit FI7-28** (see page labeled “Attachment No. 11”) includes a schedule created by WLC to calculate the additional costs associated with the extended schedule.³⁸⁷

Based on the fee allocation provided in Figure 19, Table 55 provides a summary of WLC’s fees by construction phase. The column titled “WLC Fee %” is calculated by VLS by dividing the “Revised WLC Fees” by the “Revised Estimated Construction Cost” for each phase. The total fee of \$16,125,021 is 12% of the \$134,375,168 estimated construction cost.

³⁸⁷ The schedule shows a total cost of \$3,468,560. This is the fee originally proposed by WLC; however, when add-service #4 was approved by the Board, the fee was reduced to \$3,230,327 as shown in **Exhibit FI7-06**. It appears that WLC did not provide a revised schedule when this fee was reduced.

Table 55: WLC Fees Based on Estimated Construction Costs³⁸⁸

Phase	Professional Services	Revised Estimated Construction Cost	WLC Fee %	Revised WLC Fees
1A	Temp Housing Lease	\$ 2,121,800	32.55%	\$ 690,613
1B	Detention Basin / Temp Housing Utilities / Paving Package	5,257,723	5.05%	265,598
1C	Off-Site Temporary Parking	713,790	0.00%	-
2A	Demolition of Existing Campus	4,486,680	5.26%	236,132
2B	Earthwork for Hillside Stabilization	4,134,515	5.20%	215,127
3	Construction New Campus (Design)	104,234,610	12.28%	12,796,346
4	Removal of Temporary Housing	626,240	23.11%	144,742
5	Sports Fields / Parking / Court Restoration	12,799,810	12.83%	1,641,862
Add-Service #1		-	-	28,600
Add-Service #2		-	-	39,450
Add-Service #3		-	-	66,551
Total		<u>\$ 134,375,168</u>		<u>\$ 16,125,021</u>

As shown in Table 55, the total fee that WLC has allocated to certain phases results in a fee in excess of 12%, which is significantly above industry standards for that type of work. There are different fee structures that a district can negotiate for the type of work included in the phases above. It is rare to see an architect assess a fee based on actual labor hours incurred, and the fee is usually based on a percentage of construction costs. Most school districts will use the OPSC fee schedule as the basis for determining architect fees, particularly for the work associated with the new school design. For other phases or specialty services, the architect generally does not have as much work; therefore, the fees can be negotiated down from the OPSC fee schedule. Another option for certain specialty services is to have the architect pass through the actual costs of consultants and add a mark-up. The OPSC fee schedule should be on the high-end of fees assessed.

Table 56 includes a summary of the architect fees for Pinole Valley HS had the District used the OPSC fee schedule as the basis for WLC's fees, without negotiating any further reduction in the percentages associated with each phase. The calculation is based on the estimated construction costs included in WLC's various requests for additional services, which totaled \$134,375,168. The column "OPSC Schedule (Total Fee)" is the recalculated fee using the OPSC fee schedule. VLS applied the OPSC fee schedule percentages to each phase separately (except for the Temp Housing Lease), as follows:³⁸⁹

- 9.0% on the first \$500,000

³⁸⁸ The "off-site temporary parking" phase is included to arrive at the total estimated construction at the time of \$134,375,168; however, there is no fee listed for WLC as this phase was removed from WLC's scope of work. See page 2 of approved amendment #4 (**Exhibit FI7-06**).

³⁸⁹ The percentages used are for new school construction.

- 8.5% on the next \$500,000
- 8.0% on the next \$1,000,000
- 7.0% on the next \$4,000,000
- 6.0% on the next \$4,000,000
- 5.0% for costs in excess of \$10,000,000³⁹⁰

The OPSC fee schedule provides for a 4% fee for the purchase of new portable buildings (see Figure 12). When the portable buildings are leased by a district, the fee would likely increase to approximately 6%. The percentage fee is higher when a district leases the portable buildings rather than purchases them, as the District will generally incur lower costs with a lease; however, the architect will have the same amount of work whether the buildings are purchased or leased.

Table 56: Recalculation of Fee Based on OPSC Fee Schedule³⁹¹

Phase	Professional Services	Revised Estimated Construction Cost	OPSC Schedule (Total Percentage)	OPSC Schedule (Total Fee)
1A	Temp Housing Lease	\$ 2,121,800	6.00%	\$ 127,308
1B	Detention Basin / Temp Housing Utilities / Paving Package	5,257,723	7.52%	395,541
1C	Off-Site Temporary Parking	713,790	0.00%	-
2A	Demolition of Existing Campus	4,486,680	7.61%	341,568
2B	Earthwork for Hillside Stabilization	4,134,515	7.67%	316,916
3	Construction New Campus (Design)	104,234,610	5.18%	5,399,231
4	Removal of Temporary Housing	626,240	8.90%	55,730
5	Sports Fields / Parking / Court Restoration	12,799,810	6.46%	827,491
Add-Service #1		-	-	28,600
Add-Service #2		-	-	39,450
Add-Service #3		-	-	66,551
Total		\$ 134,375,168		\$ 7,598,385

³⁹⁰ Specialty construction work such as theatres and complex food service are typically excluded from the OPSC scale as they require specialty consultants. Based on a review of the scope of work for Pinole Valley HS, the project did include acoustic for a theatre and food service. A recommended method for pricing these specialty services is to have the architect pass through the cost of the consultant hired and include a mark-up for the architect's coordination time. VLS did not separate these costs for the purpose of this analysis; however, a separate fee would often be negotiated to cover these services.

³⁹¹ This recalculation excludes any compensation to WLC for separating the construction documents into additional phases for submittal to DSA (e.g., hillside stabilization and detention basin). Architects will usually seek additional fees when this is done to cover the labor hours required for this effort. This usually requires minimal labor hours (approximately 40 hours per phase), and can be negotiated by a district as a flat fee or an hourly rate per hour.

The OPSC fee schedule is the standard in the industry, and most school districts use it as the basis for architect fees or as a starting point for negotiation. For the various phases of construction besides the new school construction, districts can negotiate fees to be even lower as there is generally little work required of the architects for some of these other phases. The rationale for negotiating lower fees for each phase is discussed further below:

- **1A – Temp Housing Lease:** The portable buildings are designed by the manufacturer, and the architect designs only the layout of the portable buildings. The fee is intended to cover the work that the architect's consultants would do associated with the interior of the portable buildings, which includes electrical, fire alarm system, audio and visual systems, technology, and possibly mechanical and plumbing.
- **1B – Detention Basin / Temp Housing Utilities / Paving:** This phase is a combination of the detention basin and site-work related to the temporary campus. The site work associated with the placement of portable buildings would include electrical, plumbing, and some design work by the architect. A majority of the detention basin work would be performed by consultants of the architect.
- **2A – Demolition of Existing Campus:** There is little architectural design required for demolition.
- **2B – Earthwork for Hillside Stabilization:** A majority of this work would be performed by consultants (the civil engineer) and not the architects.
- **3 – Construction New Campus:** Most school districts use the OPSC fee schedule as the basis for architect fees or as a starting point for negotiation.
- **4 – Removal of Temporary Housing:** The architect and their consultants will have limited work for this particular scope and will generally get a reduced fee or very limited fee if the project requires any designs and/or plans. This scope could be managed directly by the District or construction management so that there is no fee to the architect.
- **5 – Sports Field / Parking / Court Restoration:** There is little design work required for outdoor fields and parking as they do not include a lot of structures. This scope would include some architectural elements along with civil engineer and electrical consultants. Based on the description of this phase, it appears that this does not include a sports stadium. A stadium would require more extensive work than an outdoor field; therefore, the OPSC fee schedule is on the high-end for this type of work.

Additional Fee for Increased Construction Costs:

A portion of the fee increase for WLC (\$4,308,554) was calculated by WLC based on updated estimated construction costs. The total estimated construction cost for this project was listed in the WLC contract as \$84,641,487. By June 2013, this estimate had increased to \$134,375,168, which is a total increase of \$49,733,681. Based on the documentation available, this increased fee is based on an increased scope of work and additional phases, such as the detention basin and hillside stabilization.

Excluding the fees associated with the extended period of time, WLC's fee for each phase of the project is shown in Table 57. This is taken from the fee calculation schedule included in their request for additional services dated 3/10/2014 (**Exhibit FI7-28**).

Table 57: WLC Revised Fee Based on Increased Construction Costs³⁹²

Phase	Professional Services	Revised Estimated Construction Cost	WLC Fee %	Revised WLC Fees
1A	Temp Housing Lease (for fee calc only)	\$ 2,121,800	6%	\$ 127,308
1B	Detention Basin / Temp Housing Utilities / Paving Package	5,257,723	10%	525,772
1C	Off-Site Temporary Parking	713,790	10%	-
2A	Demolition of Existing Campus	4,486,680	10%	448,668
2B	Earthwork for Hillside Stabilization	4,134,515	10%	413,452
3	Construction New Campus (Design)	104,234,610	10%	9,902,288
4	Removal of Temporary Housing	626,240	10%	62,624
5	Sports Fields / Parking / Court Restoration	12,799,810	10%	1,279,981
Total		<u>\$ 134,375,168</u>		<u>\$ 12,760,093</u>

The following sections analyze the increased fee based on increased construction costs compared to the terms of the contract with WLC.

Contract Does Not Provide for Increased Fee Based on Increased Construction Costs

The proposal from WLC (**Exhibit FI7-05**) and the contract (**Exhibit FI7-01**) provide the architect fees based on a fixed fee and do not provide any basis for how the fee is determined. This is not typical for architectural design contracts. As previously discussed, most architect agreements with school districts will use the OPSC fee schedule, which is based on a percentage of construction costs, or will negotiate a fee using the OPSC fee schedule as a starting point. When the OPSC scale is used, the architect generally does receive increased fees when the estimated

³⁹² VLS did not reconcile these estimated costs to the general ledger to determine what the actual construction costs were for completed phases. Based on a presentation to the Facilities Subcommittee on 6/9/2015, the actual construction costs for certain phases were as follows: detention basin, \$3,121,600 and temporary housing including off-site improvements, \$7,479,200 (**Exhibit FI7-24**). There is no indication in the presentation if this includes the costs of the temporary housing lease.

construction costs increase if these costs are driven by scope changes from the district or inflation. If the District had issued a contract using a percentage of construction costs that did not follow the OPSC scale, whether the architect received increased fees due to a change in construction costs would typically be negotiated between the parties and documented in the contract. The fee presented in WLC's contract was presented as a flat fee, and there is no language included in their contract that allows for increased fees due to increased construction costs. As a point of comparison, the WLC contract for Lovonya DeJean MS, which was based on the OPSC fee schedule, included the following statement:

Consultant's compensation for Basic Scope of Architectural Services...shall be based initially upon the Total Construction Cost until such time as the Client formally modifies the Total Construction Cost or the Contract for Construction is executed, whereupon it shall be based on the actual Contract Price, increased, by the dollar amounts of all approved contract change order items, whether additive or deductive, with the exception of items resulting from errors and omissions on the part of the Consultant.

The WLC contract for Pinole Valley HS included language in Exhibit B that allowed billing for extra services. Two of the criteria listed are: (1) Providing services required because of significant documented changes in the Project initiated by the District, including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction, and (2) Providing services as directed by the District that are not part of the Services of this Agreement.

Billing for extra services would require that the District or construction manager authorized the extra services in advance. However, there is no indication how the fees associated with the extra services are to be determined. Extra services are usually billed based on actual hours incurred at pre-established rates. The proposal from WLC includes a schedule of hourly rates ranging from \$80 per hour to \$220 per hour; however, a rate schedule was not included with the design contract.

Contract Required WLC to Design School to Approved Construction Budget

Standard architect contracts include language that requires the architect to design the school to the budget provided by the district. At each phase of the design work, a construction cost estimate is obtained to determine if the designs meet the budget established by the district. If the estimate indicates that the design will result in construction costs that are over the district's budget, the district has two options: (1) require that the architect revise the designs to the construction budget specified in the contract at no additional cost to the district or (2) accept the design as-is knowing that the construction costs will be higher, however, the architect would not receive an additional fee for the higher construction costs. Both of these scenarios assume that the district has not requested scope changes that would have increased the construction costs.

The contract with WLC includes language that required them to design a school to the budget specified by the District. Article 5 of the contract with WLC provides the following provisions:

5.1 Architect hereby accepts the District’s established Construction Cost Budget and Project scope. In accordance with the Exhibit “A,” **the Architect shall have responsibility to further develop, review and reconcile the Construction Cost Budget for the District at the beginning of the Project and at the completion of each design phase.** The District and the Construction Manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect [emphasis added].

5.2 Architect shall complete all Services as described in Exhibit “A,” including all plans, designs, drawings, specifications and other construction documents, **so that the cost to construct the work designed by the Architect will not exceed the Construction Cost Budget,** as adjusted subsequently with the District’s written approval. **The Architect shall maintain cost controls throughout the Project sufficient to deliver the Project within the Construction Cost Budget** [emphasis added].

In Exhibit A of the contract (page A-5), section “f” discusses the construction cost budget. The contract required that WLC review the construction cost budget established by the District, and the architect was to design a school within that budget. Excerpts from this section state the following:

- (i) Architect shall have responsibility to further review the Construction Cost Budget within the parameters of the construction Budget established in the District’s implementation plan.
- (ii) The Construction Cost Budget for the Project must at no point exceed the District’s Construction Budget for the Project. The accuracy of the Construction Cost Budget shall be the responsibility of the Program Manager and the Design Phase Manager. However, the Architect shall be responsible to provide review, and final acceptance of the Construction Cost Budget as the basis for continuing the proposed project design.

In order to control construction costs and architect fees, the District must enforce the terms of the architect agreement and require that the architect design the school to the construction cost budget established.

Based on the interviews conducted of District personnel and vendors, it seems that it was a known fact that the District did not adhere to budgets that were established and allowed the community to be a significant driver in the scope of school designs. This seems evident based on

the significantly higher costs related to the new school construction for Pinole Valley HS. See recommendation FI7-4 related to this area.

Increased Fee for Extended Schedule:

A portion of the fee increase for WLC (\$3,230,327) was calculated by WLC based on labor hours and rates over a 48-month period (**Exhibit FI7-28** – see page labeled “Attachment No. 11”). WLC claimed that the extended schedule required continuous hours by their design team, and their original contract did not account for inflation over the 10-year period.

Percentage Based Fees Cover Scope Changes and Inflation

Using a percentage basis for fees, such as WLC did in their proposal and previous add-service requests, would automatically account for changes in scope, inflation, and localized cost-of-living factors. This is why the percentage basis is typically used in architect contracts, and the OPSC scale is used regardless of the region. This is particularly true in the case of Pinole Valley HS as the original construction budget of \$84,641,487 was developed in 2010 when the California economy was struggling and there was greater competition in the school district construction market. As the years have passed, the California economy has improved and there is less competition in the construction market allowing contractors to bid higher margins for projects.

The portion of the fee approved for increased construction costs, discussed previously, is based on a percentage of construction costs. To the extent that the “continuous” design hours were incurred for changes in scope or additional phases, those hours are covered by the fee associated with the increased construction costs. Therefore, as the construction costs increased for Pinole Valley HS, whether by inflation or change in scope, it appears that WLC was appropriately compensated through the fee assessed on the higher construction cost of \$134,375,168. For example, if the District had given WLC another project under a separate contract, WLC would have performed the work for a percentage fee even though the project would have required “additional years” to perform. WLC would not have required the District to pay a percentage of construction costs plus the labor hours required to complete the work. The same analogy can be applied to the additional phasing. WLC assessed a fee as a percentage of construction costs, which covered the labor hours associated with the added scope, and accounts for inflation as the work is bid at then current construction costs.

WLC makes the claim that their contract did not account for 10 years of inflation, which is one of the reasons they have requested this additional fee. In their request for additional services, they include a calculation to show inflation of 3% for 10 years, which would equal 30% inflation (**Exhibit FI7-28** – see page 2). This claim does not hold much weight as their original contract was for an expected duration of 5.5 years, as they state themselves in the same document. Therefore, the fee included in their contract should have accounted for inflation over this 5.5-year period. And, as stated previously, inflation would be accounted for when assessing fees based on a percentage of construction costs as those construction costs increase with inflation.

Additional Labor Hours Claimed By WLC Do Not Appear Appropriate

The schedule of labor hours and rates used by WLC (**Exhibit FI7-28** – see page labeled “Attachment No. 11”) includes employee hours for 48 months (4 years). WLC allocated the 48 months across the various phases listed. For example, for the detention basin phase, WLC included five team members for seven months with hours totaling 2,716 (see Figure 20). This includes labor hours for what appears to be a majority of the duration of the design work associated with that particular phase and almost doubles WLC’s fee for this phase (see Table 57).³⁹³

Figure 20: Excerpt from WLC Additional Service Request dated 3/10/2014

Phase 1 - Detention Basin, Utilities and Paving	Months	Hours/Mo	Total Hours	Rate	Subtotal
Principal	7	32	224	\$ 220	\$ 49,280
Associate	7	120	840	\$ 195	\$ 163,800
Project Architect	7	140	980	\$ 155	\$ 151,900
Design Team	7	80	560	\$ 100	\$ 56,000
Tech Resources	7	16	112	\$ 80	\$ 8,960
Additional Fees				\$	429,940

The labor hour schedule prepared by WLC includes a total of 23,264 hours for the 48-month period, and the hours and fees are allocated to professional staff as shown in Table 58. Based on WLC’s allocation of hours to the various phases, this schedule indicates that their blended hourly rate is \$149 ($\$3,468,560 \div 23,264 = \149). A blended hourly rate provides a basis for the volume of hours incurred at various levels of professional staff. It is also a good indication of how many hours are actually being incurred for the fees assessed.

Table 58: Allocation of Hours/Fees from WLC Additional Service Request

Professional Staff	Total Hours	Total Fees
Principal	1,696	\$ 373,120
Associate	6,320	1,232,400
Project Architect	6,400	992,000
Design Team	8,160	816,000
Tech Resources	688	55,040
Total	23,264	\$ 3,468,560

Based on the labor reports provided to VLS by WLC, through 12/31/2015, WLC has incurred a total of 43,246 hours on the Pinole Valley HS project (excluding master planning). Based on the disbursement ledgers provided by the District to VLS, the District paid to WLC a total of

³⁹³ WLC’s request for additional service dated 9/11/2014 includes an attachment that shows the revised schedule with added phases and delays (**Exhibit FI7-32** – see page labeled “Attachment No. 10”). According to this schedule, the detention basin, utilities and paving work began in November 2011. According to the DSA website, the construction documents related to this phase were submitted to the DSA on 4/19/2012, approximately five months later (**Exhibit FI7-34**). The plan review was completed by DSA on 6/5/2012 with a status of 85% complete (**Exhibit FI7-35**). This five-month period from November 2011 through DSA submittal on 4/19/2012 should have accounted for a majority of the work performed by WLC. The back-check by DSA was completed on 1/31/2013.

\$10,557,646 through 12/31/2015.³⁹⁴ Based on these fees and actual hours incurred by WLC, this is an estimated blended rate of \$244 ($\$10,557,646 \div 43,246 = \244). This is a much higher blended rate, which would suggest that WLC has not incurred as many hours to complete each phase as they have claimed in the schedule provided to support this portion of the additional fee request.

It should be noted that WLC's contract does not provide that they will bill based on actual hours incurred. However, because they used hours incurred as a basis for this additional fee request, VLS analyzed the actual hours they have incurred compared to the hours they stated that they have or will incur.

The request by WLC to be compensated for these additional hours, on top of the fees already assessed for these phases, is unusual, appears excessive, and appears to duplicate their fees. It would seem appropriate that the District compensate WLC either a percentage of the increased construction costs or the additional labor hours, but not both.

This is an analysis of these fees based on the terms of the contract and experience with school district construction. This is not a legal analysis of the contract executed with WLC. Ultimately, it is the responsibility of the District to manage the contract and work of the architect. However, there is no industry basis for this portion of the fee requested and approved by the District, and the approved fees are significantly greater than what is typically paid for similar work.

WLC's Presentation to Facilities Subcommittee on 12/3/2014:

The presentation by WLC to the Facilities Subcommittee on 12/3/2014 summarizes the project scope increases, project phasing changes, and project schedule extensions (**Exhibit FI7-6** – beginning at page 7). The presentation outlines the various changes to the scope of the new high school, which included more portable buildings, additional teaching stations, increased classroom capacity, larger gymnasium capacity, larger square footage, etc. (see slides 5 and 6). Slides 7 through 11 provide lists of the increased building program costs.

On slide 19 of the presentation, WLC indicates that the extended schedule to seven years (an additional 1.5 years) is primarily due to funding concerns (see bullet #2). The next bullet then indicates that the 10-year project duration (another three years) is due to six project phases and nine separate bid packages (see bullet #3). The slide then summarizes that the project schedule was extended by four years.

Based on this presentation, the justification provided by WLC for the increased schedule is the delay in funding for the District, additional project phases, and additional bid packages. For the additional project phases and bid packages, WLC would be adequately compensated for these

³⁹⁴ The payments made by the District should represent actual work completed by WLC as their contract allows payments after the completion of certain phases; therefore, this is a good indicator of the progress made by WLC.

scope changes through the additional fees assessed for the increased construction costs of the entire project. If there was a delay associated with the District's project funding, this could possibly delay or slow down work; however, it would not require that WLC incur significantly more hours to complete their work as they have claimed.

Decision to Remove Construction Administration from Scope:

As mentioned previously, on 9/19/2012, the Board approved the removal of construction administration for two phases from the scope of WLC's work to offset increased design fees (**Exhibit FI7-28** – see page labeled "Attachment No. 1"). The Board item stated that WLC would "submit an additional service proposal for the deleted scope at the time of construction."

It appears that this was done at the time to save the District from having to increase budgeted costs for this project; however, this is not a recommended practice. There was very little information presented to the Board when this item was submitted for approval; therefore, it is not known if the full impact of this scope change was understood by the Board at the time. Additionally, this simply delayed the process for identifying and budgeting for the additional fees.

Conclusion

It appears that the District incurred significantly more in architect fees due to scope increases and changes, and the District did not require that the school be designed according to the construction budget established. In order to control construction costs and architect fees, the District must implement a system to adequately manage the work of architects and construction budgets. See recommendation FI7-4 related to this area.

The portion of add-serve #4 for the extended project schedule, which totaled \$3,230,327, is unusual and seems excessive. This amount was based on a schedule prepared by WLC showing labor hours for a 48-month period; however, WLC's contract is not based on actual labor hours incurred. Additionally, the total fee to WLC for the Pinole Valley HS is now at 12% when including add-service #4. This is significantly above industry standards, even for a project with an extended schedule. The labor hours incurred by WLC should have been covered by the additional fees associated with the increased construction costs and added phases, which is paid as a percentage and accounts for inflation and changes in scope.

All of the evidence presented by WLC indicates that the project had an increased scope, had additional phases, and took longer than expected. The fees for the increased/added construction costs cover the additional services provided by WLC. At most, the delayed construction schedule might warrant compensation for 4.5 years of inflation (the original contract was a duration of 5.5 years; therefore, inflation should have been accounted for during this period). Compensation for inflation would be limited to the incremental cost of labor rates

over the additional 4.5 years, and should not include the actual or claimed hours incurred by WLC during the period.

(E) Determine whether “add service” of \$800,000 approved for other architectural firm was appropriate³⁹⁵

Related Allegation

COA (1) – “Add services” approved for architectural firms were inappropriate (for example, \$7 Million “add service” approved for WLC Architects)

Results of Work Performed

Timeline

The bullets below provide a detailed timeline of the key dates and events surrounding the Wilson ES project and architectural design services provided by Interactive Resources.

- **10/11/2011:** Interactive Resources presented the Wilson ES master plan to the Facilities Subcommittee. **Exhibit F17-36** includes the Board agenda item on 10/19/2011 which references the action taken by the Facilities Subcommittee.³⁹⁶
- **10/19/2011:** Interactive Resources presented the Wilson ES master plan to the Board, which was approved (**Exhibit F17-36**). There was no attachment to the Board packet that contained the master plan that was presented; however, the information included in the agenda item indicates that the total project budget for Wilson ES is \$34,000,000.
- **11/16/2011:** The Board approved the contract with Interactive Resources to provide design services for Wilson ES for a total cost of \$2,400,000 (**Exhibit F17-37**).
- **11/17/2011:** A contract with Interactive Resources was executed for design services (**Exhibit F17-02**). The total construction cost of \$24,000,000 is identified in Exhibit A-1 of the contract. This exhibit also states that the approval is for a 73,450 square foot elementary school supporting 611 students. All consultants, including structural, civil, landscape, mechanical, electrical, plumbing, and fire protection, are included in the fee of \$2,400,000.
- **6/26/2013:** The Board approved add-service #1 for an increased fee of \$112,000.³⁹⁷

³⁹⁵ The original allegation as communicated to VLS during Phase I was that the add-service to Interactive Resources was \$800,000. Upon further inquiry during Phase II, it was confirmed to VLS that the referenced add-service was actually \$900,000.

³⁹⁶ The documents related to this meeting were not available on the District’s website.

- **12/11/2013:** The Board approved add-service #2 for an increased fee of \$900,000.³⁹⁷
- **11/9/2015:** The District issued a Notice of Suspension to Interactive Resources on the Wilson ES project (**Exhibit FI7-13**). According to Interactive Resources, this notice came just prior to submitting the final construction documents to DSA for review and approval.
- **7/6/2016:** The District issued a Notice of Rejection of Invoice No. 15113 to Interactive Resources (**Exhibit FI7-38**). The invoice submitted by Interactive Resources billed 100% for the construction documents phase (**Exhibit FI7-39**). According to the notice from the District, the contract allows for 100% payment of this phase “upon acceptance of the Construction Documents Phase by the DSA and the District...final Construction Documents were not accepted by either the DSA or the District...”

Analysis of Interactive Resources Add-Service Request #2

The approved amendment states “Provide additional architectural services, as listed in the attached fee proposal, dated November 21, 2013, for the Wilson Elementary School Campus Replacement Project” (**Exhibit FI7-30**). Attached to the amendment is a letter from Interactive Resources to Magdy Abdalla, the District Engineering Officer at the time. The bullets included below provide the justification from Interactive Resources regarding the need for increased fees.

- *Complex structural system required due to location of school site in proximity to Hayward faults and shape of site – required two-story construction, elevator, and DSA mandated dynamic analysis of structural design (requiring additional structural consultant specialist at significant additional cost).*
- *Total area of building is greater than [sic] initial District standard area calculation based on actual program specific to this school, and nature of 2-story construction and circulation.*
- *Complex parking/drive design due to site constrictions.*
- *The current District standards are significantly more expensive and complex than those in place at the time the initial budget was contemplated, adding both cost and complexity to the design that was not existing at the time our fee was proposed. These standards continue to change, despite the fact that we are well into construction documents.*

³⁹⁷ See Table 54 for a brief description of this add-service.

- *Complexity of site civil and landscaping design due to site specific conditions and CHPS requirements.*
- *Delayed review and feedback from District on our 100% DD submittal, and a number of fairly significant changes to the design as a result of these delayed reviews, including changes to the fire alarm system, mechanical system, trash requirements, kitchen design, and paving standards, among others.*
- *The most recent cost estimate at completion of Design Development appears to be in line with other District projects cost estimates of projects of similar size and scope. It is our belief that the original budgets were simply not reflective of the actual size, scope, and construction costs of these projects.*
- *Our proposed fee on November 11, 2011 was based on the design of a school estimated to be constructed at a cost of \$24M. This number is significantly less than the actual current cost estimate of \$33.8M, which appears to be in line with other similar District projects in design currently. We feel that in light of all of the above mentioned factors, it is fair that we seek an additional compensation commensurate with the project being designed, for an additional amount of \$900,000 or 10% of the difference between the originally budgeted \$24M and the DD estimate of \$33.8M. This would put the A/E fees at a total of 10% of current estimated cost, which we believe to be adequate to complete the design, and within the industry standard.*

Based on a review of this document from Interactive Resources, many of the items listed appeared to be items that should have been known by Interactive Resources as they performed the master planning on the project. Additionally, part of their master planning scope required that they work with the District in establishing the construction cost budget. Therefore, if Interactive Resources disagreed with the budget, they should have objected to it at the time. It is possible that Interactive Resources agreed to the lower cost budget because they were approved for a 10% fee, which is higher than the percentage fees had the OPSC fee schedule been used. However, this was not stated by Interactive Resources during the interview.

Statements During Interviews

The following statements were made by Interactive Resources during an interview. The District is “scope-driven” and not “cost-driven.” The District provided the construction budget of \$24,000,000 to Interactive Resources; however, this number was too low and an unrealistic budget. The District used the budget number just to negotiate the architect fees. The District instructed Interactive Resources to use 10% as the basis for their fee. This District is the only district to negotiate architect fees in this manner. Other districts work out a true construction budget with all parties and they force the architect to develop a design that stays within the budget. If the architect delivers a design that is above the established budget, other districts

make the architect redo the design. This District simply instructs the architects to go design the school and not worry about the cost. There are no checks and balances within this system. The \$24,000,000 cost budget was given to Interactive Resources as well as the \$33,800,000 that was the basis for the \$900,000 add-service. The justification included in the letter to Mr. Abdalla was to support the request for the add-service. They asked for the additional fees because they knew the District would not hold them to the budget specified in the contract.

The letter from Interactive Resources requesting the additional fees contained Mr. Abdalla's signature at the top of the document. Additionally, Mr. Abdalla signed the amendment. During Phase I, VLS spoke with Mr. Abdalla regarding this add-service. According to Mr. Abdalla, this add-service was approved when Bill Fay was the Associate Superintendent of Operations and Bond Program. Mr. Abdalla told Mr. Fay that this add-service was "not right;" however, Mr. Fay was "politically pushed into" approving it. During Phase II, VLS attempted to interview Mr. Abdalla again to inquire about his understanding of the justification provided by Interactive Resources. After several failed attempts, VLS was finally able to speak with Mr. Abdalla on the phone; however, he indicated that he was too busy to speak with us. Therefore, VLS was not able to gather additional information from Mr. Abdalla. During Phase I, VLS attempted an interview of Mr. Fay; however, he declined to be interviewed without compensation from the District, and the District denied his request for compensation.

Based on the statements made by Interactive Resources and a review of the letter requesting the add-service of \$900,000, it appears that this request for an additional fee was made to increase the architect fees based on the increased construction costs. Had the contract used the OPSC fee schedule, it is common for the architect's fees to increase with construction costs; however, for a contract of this size, the incremental fee is only 5% of the additional construction costs.³⁹⁸

Review of Interactive Resources' Contract

The fee presented in Interactive Resources' contract was presented as a flat fee, and there is no language included in their contract that allows for increased fees due to increased construction costs (**Exhibit FI7-02** includes a copy of the contract). As a point of comparison, the WLC contract for Lovonya DeJean MS, which was based on the OPSC fee schedule, included language that allowed for increased architect fees based on increased construction costs as long as the increased costs were not related to the architect's errors or omissions. However, the Interactive Resources contract was not structured in a similar manner.

The Interactive Resources contract for Wilson ES included language in Exhibit B of the contract that allowed billing for extra services. Two of the criteria listed are: (1) Providing services required because of significant documented changes in the Project initiated by the District,

³⁹⁸ Based on the OPSC fee schedule, the architect fee associated with construction costs over \$10,000,000 is at a rate of 5% (see Figure 12).

including but not limited to size, quality, complexity, the District's schedule, or method of bidding or negotiating and contracting for construction, and (2) Providing services as directed by the District that are not part of the Services of this Agreement. This exhibit also includes hourly rates that should be used by Interactive Resources when billing for extra services. Billing for extra services would require that the District or construction manager authorize the extra services in advance.

Based on a review of the contract, there does not appear to be a basis for Interactive Resources requesting an additional fee based solely on the increased construction costs. However, if Interactive Resources performed extra work as described in the contract, they would be due a fee based on actual hours incurred at the rates specified in the contract.

Additionally, certain provisions in the contract required that Interactive Resources design the school to the budget specified by the District. Article 5 of the contract includes the following provisions:

5.1 Architect hereby accepts the District's established Construction Cost Budget and Project scope. In accordance with the Exhibit "A" and "A-1," **the Architect shall have responsibility to further develop, review and reconcile the Construction Cost Budget for the District at the beginning of the Project and at the completion of each design phase.** The District and the Construction Manager shall also have responsibility to develop, review, and reconcile the Construction Cost Budget with the Architect [emphasis added].

5.2 Architect shall complete all Services as described in Exhibit "A" and "A-1," including all plans, designs, drawings, specifications and other construction documents, **so that the cost to construct the work designed by the Architect will not exceed the Construction Cost Budget,** as adjusted subsequently with the District's written approval. **The Architect shall maintain cost controls throughout the Project to deliver the Project within the Construction Cost Budget** [emphasis added].

In Exhibit A of the contract (page A-13), section E.8.b. states "The Construction Cost budget for the Project must at no point exceed the District's Construction Budget for the Project...The Architect shall participate in Estimate review and shall accept the Construction Cost Budget as reflected in the Cost Estimate updates at this and each phase. However, if Architect believes that the Design Phase Manager estimates are inaccurate, Architect shall inform the District of such belief. If the Cost Estimate exceeds the District's Construction Budget, Architect shall recommend revisions to bring the design within budget."

In order to control construction costs and architect fees, the District must enforce the terms of the architect agreement and require that the architect design the school to the construction cost budget established. See recommendation FI7-4 related to this area.

This is an analysis of the add-service fee based on the terms of the contract and experience with school district construction. This is not a legal analysis of the contract executed with Interactive Resources. Ultimately, it is the responsibility of the District to manage the contract and work of the architect.

Conclusion

Based on the master planning and design contracts, several of the reasons provided by Interactive Resources as justification for the increased fee of \$900,000 are questionable. Additionally, based on a review of the contract, there does not appear to be a basis for Interactive Resources receiving an increased fee based solely on the fact that construction costs increased. Interactive Resources had the responsibility to design a school to the budget set by the District, and several of the items listed by Interactive Resources in their letter should have been included in the scope of their basic services. Because Interactive Resources was so heavily involved in the master planning process, they should have been aware of the program requirements and site restrictions at the time they proposed a fee for the project. Additionally, based on the comments provided by Interactive Resources, the District never required the architects to design to the budgets provided in the contracts.³⁹⁹ See recommendation FI7-4 related to this area.

(F) Benchmark against industry standards

The VLS construction consultant used industry benchmarking in order to assess the various allegations and perform the analysis required of this section. The benchmarking was not a single discrete step but provided a point of comparison for the various analyses required.

(G) Assess the claim that Lovonya DeJean MS design was inappropriately billed as a new design and assess if this payment meets industry standards for this type of design

Related Allegation

COA (1) – “Add services” approved for architectural firms were inappropriate (for example, \$7 Million “add service” approved for WLC Architects)

³⁹⁹ Current District staff was not able to confirm this statement as the architect contracts were executed and managed prior to staff holding their current positions.

Results of Work Performed

Due to the time period in which the design services were provided by WLC, there was limited information available related to this contract and the services performed. The following sections summarize the documents available.

Contract for Design Services

The District signed a contract dated 8/18/1999 with WLC for design services of a new middle school at the site that was formerly Harry Ells High School (**Exhibit FI7-03**). The school that was designed is now Lovonya DeJean Middle School (Lovonya DeJean MS). According to the contract, the project budget was \$23,340,313. The approximate new building area was programmed to house 900 to 1,000 students and consist of 114,115 square feet.

Page 15 of the contract includes a schedule of the compensation for design services (see Figure 21 on page 315). According to this section, the total construction cost for the new school is \$17,500,000. The compensation for the basic scope of services is at the rate per Exhibit B - Fee Schedule. The fee schedule included at Exhibit B includes the same percentages and cost ranges as shown in the OPSC fee schedule for new schools discussed in Work Step (A) beginning at page 255. Figure 22 includes an image of the fee schedule included in Exhibit B of the contract.

Figure 21: Consultant's Compensation from WLC Contract for Lovonya DeJean MS

CONSULTANT'S COMPENSATION		
1. BASIC SCOPE OF ARCHITECTURAL SERVICES (OPSC FEE SCHEDULE)		
A. Credit to Client for Re-Use of Plans	\$1,062,500	
	\$(100,000.00)	
SUBTOTAL	\$962,500	\$962,500
2. SCOPE OF EXPANDED ARCHITECTURAL SERVICES (LUMP SUM FEES)		
A. Demolition Phase of Work	\$97,000.00	
B. Fast Track DSA Submittal & Re-approvals	\$78,500.00	
C. Corrosion Protection Engineering	\$3,200.00	
D. Acoustical Engineering	\$5,000.00	
E. Technology/Multi-Media Engineering	\$25,000.00	
F. Food Services Engineering	\$8,200.00	
G. Roofing & Waterproofing Specialist/Engineer	\$2,800.00	
H. Environmental Consultant/Engineer	\$5,000.00	
I. Project Model	\$7,000.00	
J. Professional Video of Construction Process	\$6,500.00	
SUBTOTAL	\$238,200.00	\$238,200.00
3. SCOPE OF PROJECT MANAGEMENT SERVICES		
A. Project Executive	\$56,925.00	
B. Estimates & Value Engineering	\$96,250.00	
C. Scheduling & Phasing Phase	\$16,500.00	
D. Project Manager	\$345,712.00	
SUBTOTAL	\$515,387.00	\$515,387.00
TOTAL COMPENSATION		\$1,716,087

Figure 22: Exhibit B from WLC Contract for Lovonya DeJean MS

FEE SCHEDULE
NEW CONSTRUCTION
<p>The following schedule will be utilized to determine fees for new construction. Additional project specific factors may result in adjustments in fee amounts.</p>
<ol style="list-style-type: none"> Nine percent (9%) of the first five hundred thousand dollars (\$500,000.00) of computed cost. Eight and one-half percent (8.5%) of the next five hundred thousand dollars (\$500,000.00) of computed cost. Eight percent (8%) of the next one million dollars (\$1,000,000.00) of computed cost. Seven percent (7%) of the next four million dollars (\$4,000,000.00) of computed cost. Six percent (6%) of the next four million dollars (\$4,000,000.00) of computed cost. Five percent (5%) of computed cost in excess of ten million dollars (\$10,000,000.00). Four percent (4%) on the cost of factory built portables. (Building cost only all other costs are included in calculation items (1) through (6) above).
<p>Computed Cost: The total award from the initial construction contract(s), plus the cost of all approved additive contract change orders with the exception of items resulting from errors and omissions on the part of the architect.</p>

Based on the budget of \$17,500,000 and the OPSC fee schedule provided, the fee for the “basic scope of architectural services” for the new school construction is \$1,062,500. WLC then includes a credit of \$100,000 for the re-use of plans. Expanded scope items are included as lump-sum fees as shown in sections 2 and 3 of Figure 21. These account for an additional \$753,587 in fees. Total fees are \$1,716,087 based on a total construction cost of \$17,500,000, which is a fee of 9.8%; however, this also includes project management services.

Request for Additional Services

On 3/15/2000, WLC sent a letter to the District requesting additional fees to account for the increased construction budget of \$28,000,000. According to the letter, the Board approved the decision to proceed with the design and construction costs based on total project costs of \$32,000,000, and the approved construction costs were \$28,000,000. WLC provided a recalculated fee of \$2,241,087, which was an increase of \$525,000 from the fee approved in the contract.

This fee increase was only on the basic services, which used the OPSC fee schedule as included in Exhibit B of the contract. Therefore, the additional fee was calculated at 5% of the increased construction costs of \$10,500,000.

Payment History

The District was unable to provide a history of all payments made to WLC related to this contract. The earliest payments provided are for the fiscal year 2001-02. Therefore, VLS is unable to determine whether the total payments on this contract appear appropriate.

Interviews

VLS inquired with WLC regarding how the credit of \$100,000 for the re-use of a design was established. According to WLC, they used only parts of a design from two different schools in southern California, which included the library design from one school and the gym/locker room from another school. WLC did not recall the basis for how the \$100,000 was determined; however, they stated that it was not a re-use of an entire school design. According to WLC, the District did not ask for this credit, but it was given in good faith.

The District representative that signed the contract is the Superintendent that preceded Dr. Bruce Harter, Dr. Gloria Johnston. Dr. Johnston left the District several years ago; therefore, VLS is unable to gather information from a District representative with the historical knowledge of this contract.

Conclusion

There are many factors that should be considered when negotiating fees related to the re-use of architectural designs, which would include when the original design was used and the building code cycle of the original plans. A reduction of fee is generally anticipated when architects re-

use plans. A typical fee would generally be between a flat rate of 5% and the OPSC fee schedule; however, the final fee depends on the negotiation between the District and the vendor.

Assuming that the statements made by WLC are correct, the re-use of designs was limited to two buildings from other schools. In this scenario, a credit would not be typical as it is a very limited re-use of designs, and WLC still had to prepare designs for the entire school and fit these two buildings into the designs. Ultimately, a credit of \$100,000 was given to the District for the plans that were re-used, which appears appropriate.

Recommendations

The following recommendations are based on the analysis performed as part of this work step. VLS did not review current architect agreements to determine whether new contracts comply with the following recommendations.

- FI7-1. When issuing Requests for Proposals (RFP) related to design services, require architects to submit their proposals using the OPSC fee schedule as a basis for their fees. For specialty services that may not fit within the OPSC fee schedule, require that architect proposals include the basis for their fee structure so that it can be analyzed along with qualifications of the architect. Ensure that the RFP process allows for competition with pricing.
- FI7-2. If the District wishes to continue using a pool of pre-qualified architects, require that multiple architects submit fee proposals for evaluation by the District. This will help ensure that the District is obtaining competitive prices for the services performed.
- FI7-3. If the District performs professional services, including, but not limited to, geotechnical, hazardous materials studies, and traffic mitigation, ensure that any reports or drawings related to those services are included in the project prior to going out to bid. If architect design services are required for the project, ensure these reports or drawings are provided to the architect early in the design process. This will help prevent claims from architects related to delays caused by unknown site or other conditions.
- FI7-4. Enforce the contract language that requires an architect to design a school (or other project) to a pre-established construction cost budget. If the architect delivers design plans that result in a higher construction cost budget, require that the architect revise the plans to meet the established budget. Should the District decide to continue with the plans that have a higher construction budget, document in writing with the architect that their fee will not increase as a result of the increased construction costs.
- FI7-5. Request that District legal counsel perform a thorough review of the architect contract template to ensure it contains provisions that are in the best interest of the District and

designed to save on architect fees. Update the architect contract template as necessary and incorporate the following:

- a. Revise provisions that include the terminology “reasonable,” “unreasonable,” or “significant” and provide specific time periods and/or definitions so that the contract is not subject to interpretation by the parties.
- b. Revise provisions that allow the District and architect to communicate instructions verbally. All communications and instructions related to the architect’s performance of work should be done in writing.
- c. When titles are included in certain contract provisions, ensure that the person(s) holding those titles are identified.

FI7-6. Implement a competitive process for obtaining proposals related to master planning services to ensure that the District is obtaining reasonable fees.

Response by District

FI7-1. The District will consider the recommendation and will continue to provide guidelines within the Architectural Request for Qualifications and Proposals (“RFQ/P”) requesting vendors to submit competitive pricing.

FI7-2. The District agrees with the recommendation and will continue to solicit competitive proposals using the RFQ/P process.

FI7-3. The District agrees with the recommendation and will continue to include specialty consultants in the design process.

FI7-4. The District agrees with the recommendation and will enforce the contract terms.

FI7-5. The District agrees with the recommendation and will consult with legal counsel.

FI7-6. The District agrees with the recommendation and will continue to solicit competitive proposals using the RFQ/P process.

VLS’s Assessment of Response by District

VLS has reviewed the District responses to VLS’s recommendations and acknowledges the District’s agreement.