

**FI (8) Work Step**

Conduct appropriate investigative steps to test a sample of contracts and trace these contracts to bidding documentation to verify that appropriate bidding processes took place, if appropriate.

**Related Allegation**

VCA (7) – No Board approval of bidding and/or no Board action to approve one award and rescind another.

**Results of Testing****Contract Approval Requirements**

California Public Contract Code (PCC) 20111 gives the governing Board of school districts the authority to let any contracts involving expenditures for public projects of \$15,000 or more to the lowest responsible bidder.<sup>400</sup> The “Contracts” section of the District’s Board Policy 3312 *Business and Noninstructional Operation*, in accordance with California Education Code 17604, states that “the Board may, by a majority vote, delegate this power to the Superintendent or designee. To be valid or to constitute an enforceable obligation against the District, all contracts must be approved and/or ratified by the Board.” Therefore, all contracts must be approved or ratified by the Board. Furthermore, the “Expenditures And Purchases” section of the District’s Administrative Regulation 3300 *Business and Noninstructional Operation* states that Board action requires for “all bids received [to be] listed by bidder and the amount of the bid, and submitted to the Board for approval prior to letting of the contract. The Board, by separate action, lets the bid to the lowest responsible bidder.”

The District adopted and follows the California Uniform Public Construction Cost Accounting Act (CUPCAA) which raises and simplifies informal quote thresholds and expedites bidding processes for construction contracts. Therefore contract approval thresholds for the District are as follows:

**Table 59: Contract Approval Thresholds**

<b>Contract Type</b>	<b>Contract Approval By</b>	<b>Board Ratification</b>
Construction Contract Under \$45,000	District Delegated Authority	Yes
Construction Contract Between \$45,000 and \$174,999	Board Approval (informal bidding procedures)	Inherent in Board Approval
Construction Contract \$175,000 and over	Board Approval (formal bidding procedures)	Inherent in Board Approval
Professional Services Contract Below \$50,000	District Delegated Authority	Yes
Professional Services Contract Above \$50,000	Board Approval	Inherent in Board Approval

<sup>400</sup> This does not include contracts for professional services.

### Sample Selection

A total of 62 contracts were selected for testing.<sup>401</sup> The sample selected consisted of 20 construction contracts over \$175,000, 15 construction contracts under \$45,000, and 27 professional service contracts. No construction contracts between \$45,000 and \$175,000 were selected for testing. The sample was selected from three data sources provided by the District:

- The District provided bond program disbursement transactions for the fiscal periods 2008/09 through 2014/15.<sup>402</sup> These historical transactions were totaled by contract number for each fiscal period included in the testing period. From the resulting list, a total of 20 construction contracts and 12 professional service contracts were judgmentally selected.<sup>403</sup> Inclusion of each fiscal period was considered as part of the sample selection process.
- The District provided a listing of executed construction contracts under \$45,000 from July 2013 through June 2015. From this list, 15 construction contracts were judgmentally selected.
- The District provided a listing of executed professional services contracts from January 2011 through June 2015. From the list, 15 professional service contracts were judgmentally selected.

### Analysis

The main emphasis of the testing for the sample selected was to verify: 1) if the Board approved contractors for construction projects that exceeded \$175,000, 2) if the Board ratified construction contracts under \$45,000, and 3) if professional service contracts were presented to the Board for ratification or approval.<sup>404</sup> Verifying the above indicates that the District followed requirements for Board approval of contractors based on bid information received and reported to the Board contracts awarded by delegated authority, as required.

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<sup>401</sup> The original sample total was 69. The District could not locate seven of the contracts because the information from the general ledger data was not an identifiable contract number, and the data was from the former financial accounting system (BiTech).

<sup>402</sup> The District initially provided a historical list of posted projects out to bid; however, the listing was not inclusive of all fiscal periods desired for the investigative steps. In addition, the list did not have additional information needed to fulfill the testing (such as Board ratification/approval or contractor selected); therefore, using a sample selection based on actual bond program expenditures (identified through disbursements) was deemed more appropriate.

<sup>403</sup> The sample included the contracts selected for testing as part of FI (5). Refer to the FI (5) Section for an explanation of the sample selection process for that particular area.

<sup>404</sup> The work step addresses bidding requirements which does not apply to professional services contracts. Therefore, testing for professional services contracts was limited to evaluation of whether contracts were presented to the Board for approval/ratification.

For construction contracts requiring formal bids (\$175,000 and over), the District provided the bid tally (which identifies each contractor who submitted a bid and the amount of the bid submitted), Board approval documentation (Board minutes documenting the Board précis presented for Board approval and the motion to approve the bid award), and the Notice of Award. The bid tally information was compared to the Board précis to verify that information presented to the Board agreed to the bid tally documentation. The Board précis was reviewed to verify that the award was approved to the lowest, responsive, responsible bidder.<sup>405</sup> The Notice of Award was compared to the Board approval date to determine if contractors were appropriately notified of bid award only after the Board approval. To verify that work on a project began, and the contractor was paid, only after the Board approved bid awards, the first payment for the contract was compared to the Board approval date.

For construction contracts under \$45,000, the Board ratification documentation (Board minutes documenting the Board précis presented for Board ratification and the motion to approve the ratification) and the Notice of Award were reviewed to verify that the amount, contractor, and project indicated on the Notice of Award agreed to the ratification by the Board. In addition, the number of Board meetings that occurred between the Notice of Award being issued and ratification of the contract by the Board were reviewed to determine that the Board was notified within a reasonable time period of contracts awarded by District staff. To verify that work on a project began, and the contractor was paid, after the contract was awarded by the District the first payment for the contract was compared to the Notice of Award date.

For professional services contracts, the Board ratification documentation (Board minutes documenting the Board précis presented for Board ratification and the motion to approve the ratification) and the vendor's proposal were reviewed to verify that the amount, vendor, and project ratified by the Board agreed to the proposal. To verify that work on a project began and the vendor was paid only for contracts awarded and ratified by the Board, the first payment for the contract was compared to the Notice of Award date.

### Results

The sample of 20 construction contracts over \$175,000 were awarded to the lowest, responsive, responsible bidder based on information presented on the bid tally. The information presented on the bid tally agreed to the information summarized in the Board précis, and Notices of Award were issued after Board approval with the following exceptions:

- VLS identified two instances in which the Board approved District staff to award a contract to the lowest bidder at the end of the bid protest period (five days). There was no information included in the Board précis that identified the contractor bids

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<sup>405</sup> If the Board did not approve the lowest, responsive, responsible bidder, Board minutes were reviewed to verify that they documented a reason for deviation from this requirement. The reason was assessed by VLS for reasonableness.

submitted nor did it identify the lowest, responsive, responsible bidder; however, in both instances the approved Board minutes indicated that a revision to the précis was read into the record identifying the results of the bid process. For one of these awards, the Board minutes did not include the bid results information that was read into the record (**Exhibit F18-01**); however, the video of the Board meeting held 5/28/2014 did document the reading of the bid results information.<sup>406</sup> See F18-1 recommendation for this area.

- The Notice of Award for one of the staff awarded contracts identified above was issued prior to the end of the bid protest period. The bid protest period is typically five days and the bid date was 4/13/2010; therefore, the Notice of Award should have been issued on or after 4/18/2010. The Notice of Award was actually issued on 4/15/2010; therefore, it was issued prior to the end of the bid protest period (**Exhibit F15-01**).
- In addition to the Notice of Award mentioned in the previous bullet, six additional Notices of Award were issued and dated prior to the date of Board approval.<sup>407</sup> Construction contracts over \$45,000 require the Board to approve the contract, unless they delegate by majority vote this power to the Superintendent or designee. The Board précis for each of the six contracts indicated that the Board took action to ratify contracts awarded by staff. Review of the Board ratification documents identified the following:
  - For one of the contracts, a Board action prior to the bid date approved the award to the lowest, responsive, responsible bidder at the expiration of the bid protest period. At the subsequent Board meeting, after the bid protest period, the Board appropriately ratified the staff awarded contract and presented the results of the bid process. The Notice of Award was issued after the Board approved the award and after the expiration of the bid protest period; therefore, there is no finding for this contract.
  - For three of the contracts, VLS was unable to identify an action by the Board to delegate the authority to award the contracts. The Board therefore ratified contracts that it should have awarded, and the Notices of Award were issued without the required award approval. (**Exhibit F18-02**)

<sup>406</sup> The video is available via a third-party (KCRT Television) website [www.kcrt.com](http://www.kcrt.com) under the “WCCUSD Meetings” link. The “Board” section of the District website contains a link to [www.kcrt.com](http://www.kcrt.com).

<sup>407</sup> When the Board grants District staff delegated authority to award a contract, a Notice of Award can be issued prior to Board ratification. Contracts requiring Board approval can only be issued a Notice of Award after Board approval has occurred.

- For two of the contracts, the Board recognized the need to have the District staff award the contract in consideration of the need to complete the work expeditiously. For one contract, the Notice of Award was issued after the Board delegated authority to District staff to award the contract; therefore, there is no finding for this contract. For the second contract, Board delegation to District staff to award the contract appears to occur when the award was ratified. Therefore, the Notice of Award was issued prior to Board approval of delegation of authority. (**Exhibit F18-03**)
- For all six contracts, Board ratification appropriately identified the results of the bid process and the lowest, responsive, responsible bidder.
- The District was unable to locate Notices of Award for two of the contracts selected for testing; therefore, VLS could not verify that the Notice of Award was issued after Board approval.

Payments made to the contractor for the contracts tested occurred after the Board approval date.<sup>408</sup>

Construction contracts under \$45,000 were issued Notices of Award prior to Board ratification, which is appropriate under the District's policies.<sup>409</sup> Of the 15 contracts reviewed, three were presented to the Board for ratification at the meeting subsequent to the issuance of the Notice of Award. Nine were presented to the Board for ratification between four and 12 Board meetings later.<sup>410</sup> The District did not provide Board ratification documentation for three contracts, and VLS could not locate the Board ratification documentation in the review of Board minutes. Payments made to the contractors for the contracts tested occurred after the Notice of Award date.

Professional services contracts selected for testing were all reported to the Board for approval or ratification. The information in the Board précis agreed to the amount, vendor, and project

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<sup>408</sup> There were three contracts that were approved prior to the start of the 2008/09 fiscal period; therefore, VLS was unable to verify the date of the first payment for these contracts.

<sup>409</sup> These contracts can be awarded by District staff delegated authority (the Notice of Award specifies that delegated authority approved the award). Current procedures (revised October 2015) require Board ratification prior to issuance of a Notice of Award; therefore, no recommendation is issued here.

<sup>410</sup> Based on a review of Board meeting minutes, it appears that the District began presenting these contracts for ratification every six months. A list of District awarded construction contracts under \$45,000 is presented as part of the Board précis and Board packet.

indicated on the proposals submitted by the vendors to the District.<sup>411</sup> Payments made to the vendors for the contracts tested occurred after the Board ratification date.

### **Conclusion**

Based on testing performed, there were four instances in which Notices of Award for construction contracts subject to formal bidding requirements were issued prior to Board approval of the award which indicates noncompliance with Board policy and California Education Code requirements:

- Three Notices of Award were issued prior to Board approval of the award and it does not appear that the Board delegated to District staff the authority to award the contracts.
- One Notice of Award was issued prior to the Board delegating authority to District staff to award the contract.

There was one instance where a contract was awarded prior to the approved award date. The Board granted District staff the authority to award a construction contract subject to bid requirements at a future date in an effort to expedite the start of work; however, the Notice of Award was issued prior to the award date identified as part of Board ratification.

The testing performed and documented in the TC (8) Section related to contracts awarded in the 2015/16 fiscal year identified no findings related to Notices of Award; therefore, there is no recommendation made as a result of these findings.

Construction contracts under \$45,000 are ratified by the Board; however, Board ratification for most items tested occurred months after the initial award date, and Board ratification was not identified for three of the awarded contracts. Although most contracts were eventually ratified, best practices dictate that ratification occurs as soon as practicable to avoid potential issues regarding enforceability. Current procedures now require that a Board précis be prepared and ratification by the Board occur prior to issuance of the Notice of Award. The District requires completion of a Notice of Award checklist once a proposal or bid is approved. Refer to the TC (8) Section for the testing performed and results related to the current process for vendor contract approval.

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<sup>411</sup> Professional service contracts requiring approval are presented to the Board as either (1) individual consent items or (2) in a combined approval and ratification list titled “Engineering & Architectural Service Contracts.” The combined list indicates that the listed contracts are presented for “ratification and approval.” According to the District, how a professional services contract would be presented to the Board for approval or ratification varied depending on the type and size of the contract; however, there were no specific guidelines followed.

For the construction contracts awarded, the appropriate Board approval/ratification was made based on the dollar threshold and type of contract except for two contracts. Two contracts requiring bids were subject to bid procedures and were awarded to the lowest bidder; however, District staff awarded the contract, but there was no indication in Board documents that the Board had delegated authority to staff to award the contract. Based on contract approval procedures and bidding procedures identified and tested in the TC (8) Section and TC (9) Section, the District has mechanisms in place to minimize the risk of noncompliance with contract approval requirements identified above.

### **Recommendations**

FI8-1. Ensure that contractors for projects requiring bid procedures are always approved by the Board only when the bid process, including conclusion of the bid protest period, has been completed. Ensure that information regarding bids received and selection of the lowest, responsive, responsible bidder is appropriately documented in Board meeting minutes and that the selection of the contractor is identified in the Board minutes.

### **Response by District**

FI8-1. On all formal bids, the District currently ensures that the Board considers approval of those contracts that have completed the bid process, including the bid protest period. The Board documents include the successful bidder and bid amount with the action taken set forth in the Board minutes.

### **VLS's Assessment of Response by District**

VLS reviewed the District's response and agrees that the response and action taken is appropriate to address the recommendation made by VLS.