



**VLS FORENSIC SERVICES DIVISION**  
**A PROFESSIONAL SERVICE OF VICENTI, LLOYD & STUTZMAN, LLP**

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Working together to build a culture of integrity and productivity within your workplace

**WEST CONTRA COSTA  
UNIFIED SCHOOL DISTRICT**

**BOND PROGRAM**

RESPECT  
FOR THE INDIVIDUAL



HIGH ETHICAL  
STANDARDS



INNOVATION  
CREATIVITY  
CHANGE



MUTUAL TRUST



UNEQUIVOCAL  
EXCELLENCE

**PHASE II**  
**REPORT OF FORENSIC ACCOUNTING INVESTIGATION**

September 16, 2016

**FINAL REPORT**

Prepared by:  
Vicenti, Lloyd & Stutzman LLP  
CPAs and Business Advisors



September 16, 2016

Subcommittee for the Clay Investigation  
West Contra Costa Unified School District  
1400 Marina Way South  
Richmond, CA 94804

Re: West Contra Costa Unified School District (WCCUSD) Board of Education Forensic Accounting for the Clay Investigation—Phase II

Dear Subcommittee for the Clay Investigation:

Vicenti, Lloyd & Stutzman, LLP (“VLS”) is pleased to deliver to the Subcommittee for the Clay Investigation (Subcommittee) the Phase II Final Report of Forensic Accounting Investigation (Report). This Report is prepared pursuant to the Phase II contract between VLS and the West Contra Costa Unified School District (WCCUSD) executed on February 9, 2016. VLS’s work was performed under the direction of Kawahara Law, APC, acting as special outside legal counsel to the Subcommittee.

VLS prepared a Preliminary Draft Report dated September 9, 2016. Subsequent to this Draft Report, VLS made a substantive modification that is reflected in the Final Report dated September 16, 2016. This modification was presented to the Subcommittee for the Clay Investigation on September 15, 2016. This modification was in section FI (2), work step B.

The overall scope of our work and approach was conducted utilizing standards in accordance with the American Institute of Certified Public Accountants (“AICPA”) *Statement on Standards for Consulting Services No. 1* (SSCS) and the Code of Professional Standards of the Association of Certified Fraud Examiners (ACFE). In accordance with these standards, no opinion is expressed by VLS regarding the legal guilt or innocence of any person, party, or organization.

In consulting engagements, the nature and scope of work is determined solely by the agreement between the practitioner (VLS) and the client (the District). This Report does not constitute an audit, compilation, or review, in accordance with standards of the AICPA, the objective of which would be the expression of an opinion on any specified elements, accounts, or items. Accordingly, VLS does not express such an opinion.

Attached to this cover letter is the Final Report dated September 16, 2016 and consists of the following:

- Section I of the Report: Executive Summary  
The Executive Summary of the Report highlights the key areas of the Report as detailed in the other sections. The Executive Summary summarizes all the recommendations made by VLS in the Report and details a specific action plan of the overall next steps for the District to consider in implementing the recommendations.
- Section II of the Report: The Final Risk Assessment Matrix Phase II  
As specified in the contract, the scope of work for Phase II was to assign a New Risk Score to the Risk Assessment Matrix prepared in Phase I. This Final Risk Assessment Matrix Phase II is the Risk Assessment Matrix completed in Phase I with the “New Risk Score” indicated in the last column. This “New Risk Score” is based on the results of the “Test of Controls” performed during Phase II. The methodology for completing the Final Risk Assessment Matrix Phase II is discussed in this section of the Report. Also included are the recommendations for the District to consider implementing in order to lower the New Risk Score to a Low risk. The Final Risk Assessment Matrix Phase II is located in **Exhibit II-B**.
- Section III of the Report: The “Test of Controls” (TC)  
As specified in the contract, the scope of work for Phase II was to perform a test of controls on sixteen High or Medium risk areas identified by VLS. This TC section consists of the results of the testing performed for the sixteen risk areas, which were identified in Phase I. The sixteen areas selected were directly related to the risk of fraud areas identified in the Phase I Risk Assessment Matrix. Section III contains the methodology and the results of the work performed by VLS for these sixteen TCs along with recommendations for the District to consider implementing in order to lower the New Risk Score to a Low risk.
- Section IV of the Report: The “Forensic Accounting Investigation” (FI)  
As specified in the contract, the scope of work for Phase II was to perform a forensic accounting investigation on eleven High or Medium risk areas identified by VLS. This FI section consists of the results of the testing performed for the eleven risk areas, which had been identified in Phase I. These eleven areas were related to the risk of fraud areas identified in the Phase I Risk Assessment Matrix and the allegations that initiated this engagement. The eleven FI’s involve primarily historical transactions. Section IV contains the methodology and results of the work performed by VLS for the eleven FIs.

Section IV also includes recommendations based on the results of work performed for the eleven FIs. These recommendations were made to assist the District in improving the overall efficiencies and effectiveness in the management and operation of the District Bond Program. Additionally, certain FI recommendations can also lower the New Risk Score to a Low risk, if implemented.

- Section V of the Report: Work Performed by VLS in Phase II  
This section of the Report details the work performed by VLS during Phase II. This includes interviews performed, documents and records requested, computer forensics analysis, and other procedures performed during Phase II.
- Section VI of the Report: Scope Limitations and Impact on Work Performed by VLS  
During the course of performing the work in Phase II, VLS requested interviews with and financial records from various organizations and individuals. However, certain organizations and/or individuals either failed to respond to VLS's request or responded in an untimely manner. In this section, VLS discusses the scope limitations that existed and the impact this had on the scope of our work. During the course of our work in Phase II, VLS worked directly with legal counsel James Kawahara, as Mr. Kawahara dealt directly with those organizations and/or individuals who retained legal counsel subsequent to being contacted by VLS during our work in Phase II.
- Section VII of the Report: Closing Statement  
This section recaps the recommendations made by VLS in the Report and provides four additional recommendations, the last of which details a specific action plan of next steps for the District to consider in implementing all recommendations.
- Section VIII of the Report: Exhibits  
This section includes a list of the Exhibits referenced throughout the report and a list of terms and acronyms used. The actual Exhibit documents immediately follow.

On behalf of VLS, we sincerely appreciate the opportunity to be of service and assist the Subcommittee during both Phase I and Phase II of this engagement.

Sincerely,



Ernest C. Cooper, CPA, CFE  
Vicenti, Lloyd & Stutzman LLP – Partner

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## I. Executive Summary

### Introduction

VLS is pleased to deliver to the Subcommittee for the Clay Investigation (Subcommittee) the Phase II Report of Forensic Accounting Investigation (Report). This Report is prepared pursuant to the Phase II contract between Vicenti, Lloyd & Stutzman, LLP (“VLS”) and the West Contra Costa Unified School District (WCCUSD) executed on February 9, 2016. VLS’s work was performed under the direction of Kawahara Law, APC, acting as special outside legal counsel to the Subcommittee for the Clay Investigation.

The overall scope of work and approach was conducted utilizing standards in accordance with the American Institute of Certified Public Accountants (“AICPA”) *Statement on Standards for Consulting Services No. 1 (SSCS)* and the Code of Professional Standards of the Association of Certified Fraud Examiners (ACFE). In consulting engagements, the nature and scope of work is determined solely by the agreement between the practitioner (VLS) and the client (the District). This Report does not constitute an audit, compilation, or review, in accordance with standards of the AICPA, the objective of which would be the expression of an opinion on any specified elements, accounts, or items. Accordingly, VLS does not express such an opinion.

In accordance with these standards, no opinion is expressed by VLS regarding the legal guilt or innocence of any person, party, or organization.

### Background

**Phase I:** On October 7, 2015, the District Board of Education approved awarding a contract to VLS to provide the Subcommittee with:

- A fraud risk assessment of a District employee’s complaint that alleged acts of gross mismanagement, negligence and malfeasance in the District’s bond program to identify highest risks of waste or improper expenditure; and
- To provide guidance to the Board’s Subcommittee in providing a scope for a forensic accounting investigation and develop a scope of work for completion of the forensic accounting investigation of high priority items for approval by the Board’s Subcommittee.

VLS performed the services for Phase I from October 2015 through December 2015 under the direction of Kawahara Law, APC, acting as special outside legal counsel to the Subcommittee.

On January 7, 2016, VLS delivered to the Subcommittee a two-part deliverable as contracted for in Phase I. This consisted of the Bond Program Fraud Risk Assessment Matrix and a Proposed

Scope of Work for Phase II forensic accounting services. The Risk Assessment Matrix identified a Risk Score of High, Medium, or Low to the identified Risk Areas. These risk scores measured the risk of waste, improper expenditure, or fraud (financial irregularity) to the District based on the internal controls in place at or near the time of the allegations by the complainant(s).

The Proposed Scope of Work for Phase II included sixteen areas identified for testing of the internal controls (TCs) which according to the District had been implemented since the time of the initial allegations and complaints.

The Proposed Scope of Work for Phase II also included performing appropriate forensic accounting investigation (FIs) for eleven specific work steps. The following criteria were used to determine which of the various historical transactions, allegations, and complaints were selected as FIs and were tested in Phase II:

- Allegations that called for a criminal, civil, or other potential legal opinion by VLS were not selected for testing, as VLS, by professional standards of the AICPA and the ACFE, is prohibited from rendering such opinions. For example, the allegation that a Board member received a kickback would require a criminal investigation and a legal proceeding. The allegation that a District employee was negligent in fulfilling his/her duties would also require a legal proceeding.
- Allegations were not chosen for Phase II FIs if, in VLS's professional judgment, the benefit to the District would be better served by testing the internal control processes associated with the risk of fraud. For example, an FI work step was not designed to investigate the allegation that the Board is not told if a project has sufficient budget for a contract; however, there was a TC work step designed to test the internal controls in this area.
- Allegations were taken into consideration when designing FI work steps when the allegation, if investigated, could result in the recovery of monies for expenditures paid by the District that it may not have been obligated to pay.
- Allegations deemed to be related to significant management functions of the District Bond Program were taken into consideration for designing FI work steps.
- Consideration was given to the overall potential cost of investigating any allegations where the allegation would be better served by addressing it through a test of the related internal controls.

**Phase II:** On January 20, 2016, the District Board of Education approved the proposal, which had been presented to the Subcommittee on January 7, 2016, for VLS to perform the Phase II

forensic accounting services related to the Bond Program review. The contract between the District and VLS was executed on February 9, 2016, with a total cost of \$725,224. VLS did not request any increases to this original amount.

The contract called for the Phase II Preliminary Report to be delivered to the Subcommittee approximately seven months from the date of the signed engagement letter, which was August 31, 2016, then modified to September 9, 2016, at the request of VLS.

### **Scope of Services for Phase II**

The approved scope of work for Phase II included:

- 1) *To assign a New Risk Score to the Risk Assessment Matrix based on VLS's analysis of the results of the sixteen "Test of Controls" (TC).*

The New Risk Score measures the level of risk to the District for waste, improper expenditure, or fraud (financial irregularity) related to the Bond Program expenditures based on the results of testing the internal controls. These are the internal controls that the District currently has in place and are directly related to the allegations and systemic risk areas as specified in the Risk Assessment Matrix Phase II.

If a New Risk Score is identified as a High risk, this indicates that the internal control(s) in place to minimize fraud, waste, or abuse for that particular allegation or concern are either not implemented or the internal control(s) has been implemented, but testing revealed that the internal control(s) is not functioning adequately. Therefore, a High likelihood exists that 1) the District may be at risk for waste, improper expenditure or fraud (financial irregularity) related to the Bond Program expenditures, 2) the dollar impact would be significant, and 3) the impact on public perception/trust would be significant.

- 2) *To perform the appropriate testing for each of the sixteen TC work steps. Then, based on VLS's analysis and the results of the work performed, assign the New Risk Score. If the New Risk Score identified is a Medium or High risk, report any recommendations for the District to consider implementing in order to lower the New Risk Score to a Low risk.*

During Phase II, the testing for the TCs generally involved a two-part process. The first part included understanding and documenting processes and procedures currently used. It also included verifying the internal controls in place for those processes and procedures being tested by the specific TCs. VLS then identified the significant internal controls that had been implemented and were being relied upon by the District to reduce the risk for waste, improper expenditure, or fraud (financial irregularity) related to the Bond Program expenditures. Once the significant internal controls were fully

identified, the populations of transactions related to those controls were identified, and samples were selected for testing.<sup>1</sup>

The second part of our testing involved obtaining and reviewing the supporting documentation for the samples selected to verify that the significant controls identified were in place and were being followed.

Based on a review and assessment of the results of testing, VLS assigned a New Risk Score and made specific recommendations for the District to consider implementing in order to lower the New Risk Score to a Low risk. VLS provided the TC recommendations to the District, in advance of this report, for their response. Other than some minor clarifications, the District was in agreement with VLS's recommendations and looks forward to implementing VLS's recommendations.

For each of the TCs, VLS documented the results of the work performed in the specific "Results of Testing" section for each of the sixteen TCs. The "Results of Testing" sections include the following:

- The specific work step.
- The results of the work VLS performed in testing the specific work step. This includes, where applicable, analyses and steps performed and other information relevant to the testing of the TC.
- The New Risk Score for the most significant internal control risk area impacted by the TC.
- The specific recommendations for the District to implement based on the analysis of work performed and conclusions reached for each TC work step.
- The District's response to VLS's recommendations.
- VLS's assessment of the response by the District.

- 3) *To conduct the appropriate forensic accounting investigation for the eleven specific FIs.* Then based on the results of work performed and conclusions reached for each FI, VLS made specific recommendations for the District to consider implementing for the purpose of improving the overall efficiencies and effectiveness in the management and operation of the District Bond Program, and lowering the New Risk Score where applicable.

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<sup>1</sup> In accordance with AICPA professional standards, VLS used a combination of random sampling and judgmental sampling in order to select the samples for testing in the Test of Controls section. A random sample is used so every unit in the population has an equal chance of being selected, while a judgmental sample relies on the auditor's professional judgment, meant to focus and confirm a condition that is reasonably thought to exist.

The work performed in Phase II for the FIs involved interviews, document gathering, analysis and examination, data analytics, and computer forensics and email review.

VLS provided the FI recommendations to the District, in advance of this report, for their response. Other than minor clarifications, the District was in agreement with VLS's recommendations and looks forward to implementing VLS's recommendations.

For each of the specific FIs, VLS documented the results of the work performed in the specific "Results of Testing" section. The "Results of Testing" sections include the following:

- The specific FI work step.
- The results of the work performed in testing the specific work step. This includes, where applicable, the analyses and steps performed, any scope limitations, and other information relevant to the testing of the FI section.
- Conclusions based on the results of the testing.
- Recommendations made for the District to implement.
- The District's response to VLS's recommendations.
- VLS's assessment of the response by the District.

### **Highlights of Work Performed**

VLS performed the work for Phase II from February 2016 through September 2016 under the direction of Kawahara Law, APC, acting as special outside legal counsel to the Subcommittee. In addition to extensive review, analysis, documenting work performed, and drafting of the Report, highlights of work performed include:

- Interviews of twenty-three individuals, including a combination of District employees, CBOC members, District vendors and contractors, and Board members.
- Numerous documents were obtained directly from the District and from third-party sources. These documents were specifically relevant to both the TC and the FI areas' scope of work. A "secure portal" protocol was utilized with the District to ensure that all documents, records, and information received were transferred securely and were appropriately maintained in accordance with legal, investigative, and/or consulting standards for this project. Throughout Phase II, the District was fully cooperative in working with VLS. Letters requesting documents and records from vendors were drafted by VLS and, in coordination with the District, were submitted directly to the vendors.
- Computer forensic procedures were performed that allowed VLS to obtain electronic information (emails, electronically created files, etc.). The results of the computer

forensic analysis were reviewed by VLS to identify information and evidence relevant to this investigation.

- A fraud hotline phone number and website link were established for the District to publish so that individuals with relevant information or knowledge regarding fraud, waste, or abuse within the District’s Bond Program had a means to contact VLS directly. This hotline was in existence for the duration of Phase II. Anonymous callers did contact the hotline during Phase II.
- Monthly status reports for the Subcommittee were provided to legal counsel throughout Phase II. The status reports included: investigative and testing steps completed or in progress, all work to be performed for the following month, project obstacles, and a summary of hours and costs to date. Subsequent to June, status updates were provided to legal counsel via phone conference calls. This medium was used to communicate status updates as the majority of fieldwork had been completed and VLS focused on concluding the test of controls assessments, and forensic accounting investigation testing. Also during the course of our work in Phase II, VLS communicated directly with legal counsel as appropriate.
- VLS attended a meeting with the Subcommittee for the Clay Investigation on 5/23/2016.

### **Highlights of Scope Limitations and Impact on Work Performed**

For purposes of this engagement, the meaning of scope limitation and impact on work performed is defined as follows:

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

### **Scope Limitations and Impact on Work Performed:**

- 1) District: The District was able to provide all the documents and records requested by VLS; therefore, there was no scope limitation from the District.<sup>2</sup>

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<sup>2</sup> There were limited documents available related to work step (G) in FI (7) due to the time period of the contract and project reviewed; however, this did not prevent VLS from reaching a conclusion on that work step.

- 2) Vendors (Other than SGI): VLS sent a letter requesting certain information and documents related to the work the vendors performed for the District, contributions made to District affiliated organizations, and gifts purchased on behalf of District employees and/or Board members. Of all the vendors where documents were requested, all but three vendors provided the documents requested by VLS. However, even with this scope limitation VLS was able to reach a conclusion on the applicable work step.<sup>3</sup>
- 3) SGI: SGI did not provide all the records requested by VLS, which resulted in VLS being unable to reach a conclusion for certain work steps in FI (3) Work Step. SGI retained legal counsel subsequent to VLS's request of documents. At such time, Mr. Kawahara, legal counsel to the Subcommittee for the Clay Investigation, was advised and VLS worked under the direction of Mr. Kawahara in communication with SGI from May 2016 through August 2016.

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

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

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<sup>3</sup> Four vendors contacted by VLS retained legal counsel. Three of these vendors ultimately provided VLS with the records requested. One of these vendors did not provide VLS with the records requested. Additionally, two other vendors failed to provide VLS with the records requested. One of these vendors indicated they needed additional time. The other vendor never acknowledged or responded to VLS's request.

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

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

### Highlights of the New Risk Scores Assigned to the Final Risk Assessment Matrix Phase II

The final Risk Assessment Matrix Phase II (Phase II Matrix) is located in Section II B. Included below is a chart that summarizes key information from the Phase II Matrix. This chart depicts the original Risk Scores from the Risk Assessment Matrix Phase I (Phase I Matrix) and the New Risk Scores assigned in Phase II. The last column of this chart identifies the number of recommendations to lower the New Risk Score for the applicable Risk Area.<sup>4</sup>

Risk Area	Score Level	Phase I Original Risk Score	Phase II New Risk Score	Number of Recommendations to Lower Risk Score
Conflict of Interest	High	8	0	6
	Medium	0	7	
	Low	0	1	
Compliance with Legal Requirements and Board Policies	High	3	1	9
	Medium	2	4	
	Low	1	1	
Budgeting Practices	High	6	5	15
	Medium	1	2	
	Low	1	1	
Vendor Contract Administration	High	7	2	13
	Medium	6	10	
	Low	3	4	
Billings and Performance of Outside Construction Manager	High	2	0	5
	Medium	5	7	
	Low	0	0	
Change Order Approval and Accounting Practices	High	4	0	10
	Medium	3	7	
	Low	0	0	
Project Accounting Systems - Munis	High	3	2	6
	Medium	3	4	
	Low	0	0	
Project Accounting Systems - Primavera	High	0	0	4
	Medium	3	3	
	Low	0	0	
Financial Reporting	High	3	0	10
	Medium	1	4	
	Low	0	0	
<b>TOTAL</b>	High	36	10	<b>78</b>
	Medium	24	48	
	Low	5	7	

<sup>4</sup> This includes all 75 TC recommendations and three FI recommendations that were deemed by VLS to be applicable to certain risk areas to assist in lowering the New Risk Score.

#### Key observations of the New Risk Scores:

- There has been a significant decrease in the number of High risk areas from Phase I. In Phase I, there were a total of 36 High risk area categories. For Phase II, the number decreased to 10. This result indicates that, overall, the District has significantly improved in addressing the High risk areas identified in Phase I. However, the District still needs to continue to address these High risk areas and implement the specific recommendations to lower the New Risk Score.
- VLS's assessment determined the majority of the High risk areas that decreased were assigned a New Risk Score of Medium. This indicates that the District still needs to continue to address these Medium risk areas and implement the specific recommendations to lower the New Risk Score.
- The one risk area category that remains High is "Budgeting Practices." There are five High risk areas. This is a decrease of just one from Phase I. The District has considerable work in this area to address lowering the risk scores. VLS has made 15 specific recommendations for the District to consider implementing to lower the New Risk Score in the "Budgeting Practices" area. VLS recommends that addressing the "Budgeting Practices" risk area category and the implementation of the related specific recommendations be a high priority of the District.
- VLS has made 78 specific recommendations for the District to consider implementing to lower the New Risk Score. The specific recommendations are located in Section II C. The last column of the final Risk Assessment Matrix Phase II, located in Section II B, identifies the specific recommendation(s) for each risk area.
- The District has already been provided these recommendations, and the District looks forward to implementing VLS's recommendations. In addition, VLS strongly encourages that a strict "**Recommendations Implementation Task Force**" be established so accountability measures are put in place by the District to ensure these recommendations are implemented. Considerable time, effort, costs, and resources have been invested by the District and the community for both Phase I and Phase II engagements. The District should ensure this momentum and attention continues. The "**Recommendations Implementation Task Force**" is a proven tool to ensure progress toward a Low risk environment continues.

#### High Level Summary of FIs and Recommendations

VLS has made 33 recommendations for the District based on the conclusions and results of work performed for the eleven FIs. These recommendations are for the District to consider

implementing as they are designed for the purpose of addressing any concerns noted in the conclusions from the work performed in the FIs, lowering the New Risk Score where applicable, and improving the overall efficiencies and effectiveness in the management and operation of the District Bond Program. Included below is a chart that indicates the number of recommendations by Risk Area.

Risk Area	Number of Recommendations Identified in the Forensic Investigation Testing
Conflict of Interest	5
Compliance with Legal Requirements and Board Policies	11
Budgeting Practices	4
Vendor Contract Administration	11
Billings and Performance of Outside Construction Manager	0
Change Order Approval and Accounting Practices	2
Project Accounting Systems - Munis	0
Project Accounting Systems - Primavera	0
Financial Reporting	0
<b>TOTAL</b>	<b>33</b>

The District has already been provided these FI recommendations, and the District looks forward to implementing VLS's recommendations. As noted for the previous 78 recommendations, VLS strongly encourages that these recommendations be addressed through the **"Recommendations Implementation Task Force"** suggested by VLS.

Included in the 33 FI recommendations are recommendations specific to the District's legal counsel, which relate to the following two categories:

- VLS recommends that the District's legal counsel provide guidance and counsel to the Subcommittee on Clay Investigation and the Board to determine whether this report should be referred to appropriate law enforcement agencies for appropriate action. See recommendation FI1-4.
- VLS recommends that the District consult with legal counsel to determine whether further course of action is appropriate in certain areas. For example, the failure of SGI to provide requested documents and allow interviews of SGI personnel resulted in a scope limitation of the work VLS was able to perform. Therefore, SGI may have been in breach of the Right to Audit Clause of the contract between the District and SGI by failing to provide VLS access to requested documents after reasonable notice was provided. See recommendations FI1-5, FI3-6, FI3-7, FI3-8, FI10-1 and FI10-2.

#### Closing Statement

In addition to assigning New Risk Scores to the Phase II Matrix, making 78 specific recommendations to lower New Risk Scores, and making 33 recommendations resulting from the work of the FI testing, VLS also makes the following four recommendations for the overall operational and administrative efficiencies of the Bond Program:

- The District should ensure that an effective FRAUD REPORTING MECHANISM is in place for reporting known or potential wrongdoing impacting the District Bond Program.
- The District should ensure ongoing FRAUD and ETHICS TRAINING is provided to all employees of the District, especially those associated with the Bond Program.
- The District should evaluate the adequacy of resources assigned to the INTERNAL AUDIT DEPARTMENT for review of the Bond Program.
- VLS strongly encourages the establishment of the **"Recommendations Implementation Task Force"** so accountability measures are put in place by the District to ensure all recommendations for work completed in Phase II are adequately assessed and implemented.

## II. Final Risk Assessment Matrix Phase II

### **(A) Methodology for Completing the Final Risk Assessment Matrix Phase II and Assigning the New Risk Score**

#### **Introduction**

At the end of Phase I, on January 20, 2016, VLS delivered to the District Board of Education the Risk Assessment Matrix. The last column of the Risk Assessment Matrix was intentionally left blank with a New Risk Score to be completed by VLS during Phase II.

The scope of work approved by the District based on the contract executed February 9, 2016, engaged VLS to assign a New Risk Score to the Phase I Risk Assessment Matrix based on the results of the “Test of Controls” (TCs 1-16).<sup>5</sup> The scope of work for Phase II also specified that if the New Risk Score identified was a Medium or High Risk, VLS would also report any recommendations for the District to consider implementing in order lower the New Risk Score to a Low risk.

This “Final Risk Assessment Matrix Phase II,” which is included as **Exhibit II-B**, now indicates the “New Risk Score” assigned by VLS in the last column. Additionally, beginning on page 19, VLS has listed the “Recommendations for the District to consider implementing in order to lower the New Risk Score to a Low risk.”

#### **Methodology for Completing the Final Risk Assessment Matrix Phase II and Assigning the New Risk Score**

By way of background, the Risk Assessment Matrix developed in Phase I had a total of eight columns. The first four columns (A-D) are identified as the Risk Areas based on the initial allegations and complaints by the whistleblower(s), which was the predication for the Phase I assessment. As a recap, the Risk Area section is divided into the following four columns:

- Number (Column A): This column identifies the number assigned by VLS. This number is not an indicator of priority, importance or value.
- Risk Category (Column B): This column identifies the Risk Area categories assigned by VLS based on the allegations, concerns, and questions provided to VLS in Phase I.
- Sub Category (Column C): This column summarizes the allegations, concerns, and questions as provided to VLS in Phase I. These are not findings of VLS.

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<sup>5</sup> See Section III for Test of Controls.

- Risk to the District (Column D): This column identifies, as defined by VLS in Phase I, the potential impact to the District if controls were not in place to prevent the allegation/concern identified in the risk subcategory. This is the potential impact based on the information that was provided to VLS in Phase I.

The remaining columns in the final Risk Assessment Matrix Phase II are as follows:

- Risk Score (Column E): Identified the Risk Score, as defined by VLS in Phase I, that was assigned based on the Phase I assessment performed by VLS. This represented the level of risk to the District for waste, improper expenditure, or fraud (financial irregularity) related to the Bond Program expenditures based on the internal control(s) or lack of internal controls in place, as communicated to VLS, at or near the time the allegation(s) were raised by complainant(s). This column is also labeled in the final Risk Assessment Matrix Phase II as “Risk to District (based on historical controls).”<sup>6</sup>
- Controls to Minimize Risk (Column F): Summarized the District’s internal controls identified by VLS during work performed in Phase I. This is not a comprehensive list of all internal controls that may be in place since the initial allegations, as there may be additional controls that the District adopted related to the risk areas that were not communicated to VLS during Phase I. During Phase I, VLS did not test these controls to ensure that they are implemented and functioning as intended.
- Phase II Scope of Work (Column G): Identified the TC work steps that were approved by the Board for VLS to test, as part of Phase II, to determine whether the internal controls as represented by the District to VLS in Phase I were in fact implemented and functioning properly.<sup>7</sup> FI work steps were also identified in this column.

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<sup>6</sup> To recap from Phase I, the level of risk is defined as follows:

- **Low** – There is a low likelihood that the District may be at risk for waste, improper expenditure or fraud (financial irregularity) related to the Bond Program expenditures, the dollar impact would be low, and the impact on public perception/trust would be low.
- **Medium** – It is possible that the District may be at risk for waste, improper expenditure or fraud (financial irregularity) related to the Bond Program expenditures, the dollar impact may be large, and there may be an impact on public perception/trust.
- **High** - There is a high likelihood that the District may be at risk for waste, improper expenditure or fraud (financial irregularity) related to the Bond Program expenditures, the dollar impact would be significant, and the impact on public perception/trust would be significant.

<sup>7</sup> See Section III for Test of Controls.

- New Risk Score (Column H): This New Risk Score measures the level of risk to the District for waste, improper expenditure or fraud (financial irregularity) related to the Bond Program expenditures based on the results of our testing of the internal controls in Phase II.<sup>8</sup>
- Recommendation (Column I): The recommendation number(s) for the District to consider implementing in order to lower the New Risk Score based on the results of VLS's work.

As noted previously, the last column (H) of the Risk Assessment Matrix Phase I was intentionally left blank with a New Risk Score to be completed by VLS during Phase II. VLS tested these sixteen TCs and, based on the results of the testing, VLS assigned a New Risk Score to the Risk Assessment Matrix Phase II (column H). This New Risk Score is related directly to the allegations and systemic risk areas (Risk Area columns A-D) as specified in the Risk Assessment Matrix Phase II.

For example, if a New Risk Score is identified as a High risk, this indicates that the internal control(s) in place to minimize fraud, waste, or abuse for that particular allegation or concern are either not implemented or the internal control(s) has been implemented, but testing revealed that the internal control(s) is not functioning adequately. Therefore, a High likelihood exists that 1) the District may be at risk for waste, improper expenditure, or fraud (financial irregularity) related to the Bond Program expenditures, 2) the dollar impact would be significant, and 3) the impact on public perception/trust would be significant. Section III, Test of Controls, specifically addresses the internal control areas that have not been implemented or are not functioning adequately.

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<sup>8</sup> As stated previously, each row in the final Risk Assessment Matrix Phase II identifies an issue or allegation communicated to VLS in Phase I. Some of the rows include multiple TC work steps in column G (Phase II Scope of Work), which indicates that the results of multiple TCs may affect the New Risk Score. In these instances, VLS determined the New Risk Score based on the results of the TC work step that was most relevant to the specific issue or allegation. The most relevant TC is identified in column G using colored font to match the New Risk Score.

**(B) Final Risk Assessment Matrix Phase II**

**See Exhibit II B for the  
Final Risk Assessment Matrix Phase II**

**(C) Recommendations for the District to Consider Implementing to lower the New Risk Score Based on the results of TC Testing**

**What TC Recommendations are and What They Mean**

As articulated in our scope of services for Phase II, the Board also requested that VLS make specific recommendations for the District to consider implementing in order to lower the New Risk Scores of High and Medium to a Low risk. VLS has completed this assessment, and these specific recommendations are listed on Table 1 and are categorized by the Risk Area.

**Table 1: List of TC Recommendations**

Number	Recommendation
TC 1-1	Employ methods of reaching out to the entire community to advertise the opportunity of membership in the CBOC. These methods may include posting the need on the District website, inclusion in newsletters already used to communicate with District families, and newspaper advertising (if this method does not prove to be cost prohibitive).
TC 2-1	Clarify language included in the “Additional Steps” of the Facilities Master Plan Implementation to provide for a specific time period in which the “period review” of the Facilities Master Plan will occur. For example, a statement that every five years the Facilities Master plan will be assessed with the involvement of the community provides specific timing that will increase transparency and accountability.
TC 2-2	When the District seeks the passage of a future bond measure(s), include language in the bond measure that specifically refers to the Board approved Long-Range Facilities Master Plan. Adding this language to the bond measure will afford the District increased transparency, allow the voters to better understand the projects and timeline of the projects that will be undertaken with the bond proceeds, and will hold the District and Board members accountable to the public. The language added to the bond measure should include a statement that provides the District with some flexibility in the event of an unforeseen or catastrophic event, requires that the Board approve revisions made to the Facilities Master Plan, and indicates the means by which the public could obtain a copy of the approved Facilities Master Plan.
TC 4-1	Include in the Governance Handbook examples of what would constitute the performance of a management function to help clarify the significance of the statement that Board members refrain from performing management functions. For example, include language to the effect that directing or attempting to direct the work of District vendors is not appropriate conduct for a Board Member. In addition, the Board should consider establishing a policy that restricts the frequency with which Board members may visit District offices or school facilities.
TC 4-2	Require that the Board members attend the Brown Act training workshop when attending the CSBA training or provide this training to Board members in-house.
TC 4-3	Include a conflict of interest section in the Governance Handbook that specifically defines the concept of conflict of interest, identifies restrictions placed on Board members related to conflict of interest issues, and provides examples of what a conflict of interest would be. Having this clear guidance stated in the Governance Handbook will ensure that all relevant policy information is in one location that is easy for Board members to reference.

Number	Recommendation
TC 4-4	Develop a Board policy on conflict of interest specific to Board member relationships with District vendors and contractors, and include this policy in the Governance Handbook. The District may consider the inclusion of a statement that reminds Board members that they shall, at all times, avoid the appearance of a conflict of interest. The statement may also mention that prior to participating in a discussion or vote on a proposed contract, a Board member shall disclose in open session the nature of any relationship that he/she may have with any proposed vendor/contractor, or the agent, employee, or subcontractor of any proposed vendor/contractor that may create an appearance of impropriety. It is important that this disclosure include, but not be limited to, the amount of campaign contributions over a certain amount received by the Board member during the campaign for their current term or contributions received during the current term.
TC 4-5	Provide guidance in the Governance Handbook and Board Policy related to the degree of authority Board members should have related to proposing amendments to vendor contracts. If this would be considered acceptable practice, a formal process should be designed and implemented to avoid vendor contract amendments that may not be in the best interest of the District. This policy should include the Board consulting with legal counsel whenever the Board desires modifications to be made to the terms of a contract.
TC 4-6	Develop and implement a Board member training calendar that is hosted directly by the District. This training calendar should be designed to ensure that all Board members receive the training at least annually and new Board members receive the training within one month of taking their position. The training should be presented by someone that is experienced with district board governance issues, such as an attorney. The training should cover all of the items included in the Governance Handbook. This would ensure that all Board members are receiving the necessary training and provide Board members with an opportunity to ask questions.
TC 5-1	Establish an annual, internal review of the Long Range Facilities Master Plan and make necessary revisions, based on internal and/or external factors that will affect the Master Plan, subject to the Board of Education approval. This annual review should take place to ensure that the District and Board are considering and addressing whether revisions are needed due to available funding, changes in critical needs, etc.
TC 5-2	Develop and implement written procedures related to the development of detailed, multi-year, line-item budgets for the twenty-one (21) priority schools based on the Implementation Plan. The written procedures should include the process and timing for when detailed budgets will be prepared, approved, and entered into Munis. The written procedures should also include the following: <ul style="list-style-type: none"> <li>a. The detailed, line-item budgets for projects should be entered in Munis as the beginning of each fiscal year so that project budgets with a projected construction period of more than one fiscal year can be tracked. Additionally, if estimated budgets are entered at the beginning of each fiscal year, there should be fewer budget revisions and transfers of funds throughout the fiscal year.</li> <li>b. The detailed, line-item budgets should be reviewed on a regular basis by management. The review should determine the accuracy and appropriateness of expenditures and if the remaining line-item budgets are sufficient to fund contract proposals and other projected costs related to the projects for the fiscal year.</li> </ul>

Number	Recommendation
TC 6-1	<p>Develop and implement written procedures related to budgeting practices that include, but are not limited to, budget preparation, tracking, reporting, and approval processes. The written procedures should:</p> <ol style="list-style-type: none"> <li>Identify all steps in the budgeting process, from the development of a budget for approved projects to the final reporting of budget to actual costs at project completion.</li> <li>Identify all forms to be used in the budgeting process, the purpose and workflow of the forms, and the proper review and approval signatures required on the forms.</li> <li>Identify all schedules and reports used in the budgeting process that will allow staff to adequately track, monitor, and report on project budgets. Identify who is responsible for creating, updating, reviewing, and approving each schedule and report.</li> <li>Identify how and when to perform certain steps, such as, the budget verification process and the formulation of the budget string.</li> <li>Incorporate appropriate sections in the written procedures to address all recommendations included below.</li> </ol>
TC 6-2	<p>Require that the budget verification performed in Munis by the Sr. Facilities Planning Specialist be performed <b>prior</b> to the approval of contracts and change orders by the Board. This will ensure that there is sufficient budget for a contract prior to Board approval. If funds must be transferred to increase the available budget, notify the Board of this transfer or budget revision at the time that the contract is approved for better transparency to the Board and public related to the impact of contract approvals. Additionally, as recommended in TC6-6, ensure that the appropriate Board action is taken to approve budget amendments/transfers. The recommended timing for these actions is as follows:</p> <ol style="list-style-type: none"> <li>Transfer between major object codes (no impact on ending fund balance) – at least monthly to satisfy the requirements of California Education Code.</li> <li>Transfer of fund balance (decrease/increase in ending fund balance) – as a separate agenda item at the same Board meeting at which the contract is presented for approval/ratification.</li> </ol>
TC 6-3	<p>Require the Sr. Facilities Planning Specialist to initial and date the <i>Munis Contract &amp; Purchase Order Form</i> to document that the budget verification function has been performed. This will provide the proper audit trail to document that the budget verification step took place.</p>
TC 6-4	<p>Require the Principal Accountant to initial and date the <i>Munis Contract &amp; Purchase Order Form</i> to document that the budget string was reviewed for accuracy. In addition, the Principal Accountant must verify that the affected general ledger account string is appropriate and accurate for the specific contract based on the assigned budget string. This will ensure that there is proper review and oversight in this step and provide the proper audit trail documentation.</p>
TC 6-5	<p>Require that the Principal Accountant continue the review of the <i>Project Budget Amendment/Transfer Form</i> to verify that the budget amount(s) is accurate and project string(s) is appropriate. Add a section to the form for the Principal Accountant's initials and date to document that this review occurred. Additionally, add a section where the funding source and total amount of the amendment/transfer(s) can be documented.</p>

Number	Recommendation
TC 6-6	Develop a form that can be used by the Bond Finance Department to reflect the budget amendment/transfer transactions entered into Munis from the <i>Project Budget Amendment/Transfer Form(s)</i> . The form can be used as the District's written resolution for budget amendments and transfers between expenditure classifications. Take the new form to the Board as budget revisions for ratification and certification at its regularly scheduled meetings on a timely and consistent basis (at least monthly). Maintain a log of budget revisions approved by the Board with totals for each expenditure classification. This log can be used in the preparation of Interim Reports as the Board Approved Operating Budget. This log can also be used to determine the ending fund balance for the Building Fund whenever there is an amendment (increase or decrease) to the project budget at any given time period.
TC 6-7	Develop and implement procedures related to the preparation and submission of Bond project budget reports that provide project budget status to the Board. District staff must decide whether it will create a new project budget report or continue the use of the EAW. However, the project budget status report should be a separate item from the approval of any budget increase or decrease to a project.
TC 6-8	Develop and implement procedures related to the preparation and submission of budget increase(s) or decrease(s) to a Bond project for Board approval. The submission must be separate from the approval of contracts and change orders. In addition, it must be prepared and submitted on a consistent and regular basis.
TC 6-9	Prepare and maintain a worksheet for each project that will provide budget history and applicable expenditures for the duration of the project. This worksheet can be used to assist in the financial decision making related to the project. This worksheet can also be used to prepare the project budget status to the Board. Furthermore, it is recommended that the District include in the worksheet a reconciliation between the project budgets reported in the SACS reports (prepared on a fiscal year basis) and the project budget status report (prepared based on the duration of the project).
TC 7-1	Ensure full implementation of the procedures related to construction contracts (as revised October 2015), including, but not limited to, completion of the Prequalification Evaluation Form and Proposal Approval Checklist.
TC 7-2	Ensure that the review of contractor's license information is documented and maintained for all construction contracts to demonstrate completion of this critical compliance step.
TC 7-3	Ensure full implementation of professional services contracting procedures (as revised October 2015), including, but not limited to, completion of management review prior to approval by the Board (where applicable), documentation indicating that this management review occurred, and completion of the Proposal Approval Checklist.
TC 7-4	Require formal documentation of the informal vendor proposal review and selection process for professional services contracts. Formal documents that should be retained include the rating of firms based on proposal documents received, the selection of firms for interviews and results of those interviews, the completion of background checks, and all other documentation relevant to justify the vendor selected.

Number	Recommendation
TC 7-5	<p>Incorporate a formal, documented process to perform a conflict of interest check for all vendors submitting proposals to the District for the bond program. In this process, the District should require vendors to disclose to the District as part of the proposal process the following information:</p> <ol style="list-style-type: none"> <li>a. Any potential familial relationships between the vendor or its employees and District Board members or employees,</li> <li>b. Any potential financial interests between the vendor and District Board members or employees, and</li> <li>c. Contributions made to and/or gifts and entertainment purchased on behalf of District employees, Board members, or individuals/entities related to or affiliated with Board members or employees.</li> </ol> <p>The disclosures made by the potential vendors should be reviewed by the District and compared to the District's conflict of interest policy. If potential conflicts are identified, the District must evaluate and determine whether (1) the potential conflict prohibits the vendor from conducting business with the District, or (2) if certain decision makers within the District must abstain or refrain from making decisions involving the vendor. If appropriate, the District should seek guidance from legal counsel.</p>
TC 8-1	Ensure the Proposal Approval Checklist is fully implemented and includes the final approval signature by the delegated authority.
TC 8-2	Add a budget review section on the Proposal Approval Checklist to document that a review of the project budget was performed by appropriate personnel as part of the proposal review and approval process. The signature should either (1) confirm that the contract will not result in the project exceeding budgeted amounts or (2) identify when the budget is not sufficient so that appropriate budget adjustment steps can be taken.
TC 8-3	Require that District legal counsel perform a regular review of contract templates to ensure that contracts include all necessary sections and language to adequately protect the District. Significant deviations from the contract template should be forwarded to the District's legal counsel for review.
TC 8-4	Require that vendors comply with District conflict of interest policies and disclose to the District, within an established time frame, when potential conflicts of interest arise. Update vendor contract templates to include language related to the District conflict of interest policies and what actions by the vendors are prohibited and reportable. Require that vendors sign acknowledgment forms indicating that they will comply with the District's conflict of interest policy and that there are no known relationships (or financial transactions) that would create a conflict.
TC 8-5	Update District policies to prohibit vendors from beginning work and receiving payment until all necessary documents have been submitted and the District executes the contract (except for work that qualifies as an emergency under California Public Contract Code). This will help protect the District and ensure that only appropriate vendor disbursements are made. The Payment Approval Form, which documents invoice approvals, should require that an executed contract is in place prior to payments being made.
TC 8-6	Add a section to the Notice to Proceed Checklist that documents the date the executed Notice to Proceed and executed contract was sent to the contractor.

Number	Recommendation
TC 8-7	Ensure that all recommendations included above are incorporated into the written policies and procedures. This will ensure that District staff has clear guidelines to follow, will assist in training during turnover, and will provide consistency in processes.
TC 8-8	Once the policies and procedures manual related to vendor contracting is complete and fully implemented, a review should be performed by the District's internal auditor (or an independent third party) to ensure that all procedures are being followed.
TC 9-1	Revise procedures to require that proof of publication for invitation(s) to bid is retained with the bidding documentation to ensure the complete bid package is kept intact.
TC 11-1	Revise the invoice payment procedures to establish a deadline for completing the invoice rejection letter within a specified number of days, such as 5 business days from receiving the invoice.
TC 11-2	Implement the invoice rejection letter as soon as practical.
TC 11-3	After full implementation of the vendor invoice rejection letter process, the District should perform a review of vendor payments exceeding the 30 day limit to determine (1) if the late payment was a result of a breakdown in District internal controls or vendor hindrance, and (2) if due to a vendor hindrance, was the invoice rejection letter used to support the reason for the late payment. This review should be performed approximately three months after full implementation of the vendor invoice rejection letter to ensure that the process is working and has improved the timeliness of vendor payments.
TC 11-4	Ensure that vendor invoice payments are processed only after all required signatures are present on the Payment Approval Form. Alternate signers should be identified in the event that a required signer is out on an extended absence and there is an urgent need for payment.
TC 11-5	Ensure the Payment History/Approval Form is signed by the District Project Manager. If the Project Manager initials/signs the invoice to document this approval, a statement indicating that approval is documented on the invoice should be included on the Payment History/Approval Form.
TC 12-1	Develop written procedures or a policy to address the District's involvement in the prequalification of individuals employed by professional services vendors and working on the District bond program or bond projects. This should include assigning District staff that is responsible for reviewing and approving staffing added throughout the term of the contract to ensure that the additional staffing is needed and is not a function that can be performed by the District. This becomes particularly important when certain functions are outsourced to a vendor, such as bond program management, and when fees are billed based on pre-established billing rates for actual hours incurred (rather than a fixed fee). Where possible, professional services contracts should identify anticipated staffing level details (number of individuals and titles).
TC 12-2	If the service provider requires an amendment to identify and approve staffing levels in the contract that will result in increased costs, the vendor should request an add service that routes through the normal add service approval process. If the staffing change does not result in a cost change, an internal form documenting the individual's qualifications and District approval is recommended.

Number	Recommendation
TC 13-1	<p>Develop detailed, written procedures for the change order review and approval process. The written procedures should:</p> <ol style="list-style-type: none"> <li>a. Identify each step in the review and approval process.</li> <li>b. Identify all forms to be used in the change order process, the purpose and work flow of the forms, and the proper review and approval signatures required on the forms.</li> <li>c. Identify what documents should be maintained as support with the change order packet.</li> <li>d. Incorporate appropriate sections in the written procedures to address all recommendations included below.</li> </ol> <p>Detailed, written procedure documents will provide clear guidelines for District staff to follow and consistency when there is staff turnover.</p>
TC 13-2	<p>Require the Director of Contract Administration and Chief Engineering Officer to initial and date the change order packet (or a separate, attached form) to document the review that is performed prior to the change order going to the Associate Superintendent of Operations and Bond Program in preparation for Board approval. This will provide the proper audit trail to document that this review took place.</p>
TC 13-3	<p>Create updated forms to reflect the approval signatures that are required. Some forms contain signature lines for individuals whose signature is not required nor typically given. For example, the PCO Summary form contains lines for the “Scheduler” and the “Deputy Program Manager,” neither of which seems to be part of the policies/procedures in practice.</p>
TC 13-4	<p>Consider including the Board Précis and Change Order Summary in the change order support packet to provide a clean audit trail.</p>
TC 13-5	<p>Consider implementing the use of a change order work flow check list that is completed with each change order. The check list would include a list of documents and signatures required at various steps in the process. This could assist District staff in ensuring that all necessary documents and signatures are obtained and document when key dates are entered into Munis.</p>
TC 13-6	<p>Develop detailed, written procedures for the add-service review and approval process. The written procedures should:</p> <ol style="list-style-type: none"> <li>a. Identify each step in the review and approval process.</li> <li>b. Identify all forms to be used in the add-service approval process, the purpose and work flow of the forms, and the proper review and approval signatures required on the forms.</li> <li>c. Identify what documents should be maintained as support with the add-service packet.</li> <li>d. Incorporate appropriate sections in the written procedures to address all recommendations included below.</li> </ol> <p>Detailed, written procedure documents will provide clear guidelines for District staff to follow and consistency when there is staff turnover.</p>

Number	Recommendation
TC 13-7	Ensure that the Proposal Approval Checklist Form is used with every add-service proposal. Add appropriate sections to the form to include the necessary signature/initials of the Associate Superintendent of Operations and Bond Program to allow documentation of recommendations TC13-8 and TC13-9.
TC 13-8	If the add-service proposal is over \$50,000, require the Associate Superintendent of Operations and Bond Program (ASO) to initial and date the add-service Proposal Approval Checklist Form (or a separate, attached form) to document the review that is performed prior the add-service going to the Board.
TC 13-9	When submitting an add-service request to the Board for approval, include historical information related to add-services that have previously been approved for the vendor contract.
TC 13-10	Within six months after full implementation of the updated processes and policies for change orders and add-services, the District should perform a follow-up review to determine whether procedures are being followed.
TC 13-11	Work with Tyler Technologies (the company that licenses the Munis software) to determine if there is a way to properly record credit (deductive) change orders and add-services. If this is not possible, develop one standard method that is used by all staff to enter and track all credit (deductive) change orders and add-services to provide consistency. Train all staff on this process to ensure that it is followed.
TC 14-1	Ensure that written budgeting procedures (recommended in TC6-1) include specific guidelines and instructions related to the use and maintenance of the multi-year function in Munis.
TC 14-2	Once the multi-year function in Munis is fully implemented, conduct an internal audit to ensure that it is implemented properly and to verify that there is a written process in place for the maintenance and revision of data entered for multi-year contracts. This internal audit could be conducted by the District's current internal auditor or by a third party.
TC 14-3	Work with Tyler Technologies (the company that licenses the Munis software) to modify the Contracts Module in Munis so that an invoice payment that is applied to the wrong contract can be corrected.
TC 14-4	<p>Ensure that the written budgeting procedures (recommended in TC6-1) include specific guidelines and instructions related to the creation of new bond projects in Munis, including the use of the <i>New Project Form</i>. The procedures should include, but are not limited to, the following areas:</p> <ul style="list-style-type: none"> <li>• The event that initiates the need for a new project in Munis</li> <li>• Instructions for completing the form and its workflow</li> <li>• List of authorized approvers</li> <li>• Type(s) of supporting documentation that must be attached to the form</li> <li>• A requirement for appropriate personnel to verify that the project number, funding source, and budget string are accurate</li> <li>• A requirement that the Principal Accountant initials and dates the form to document that the information has been entered in Munis</li> <li>• A requirement that the Executive Director of Bond Finance, or designee, reviews the Principal Accountant's coding in Munis for accuracy</li> </ul>

Number	Recommendation
TC 14-5	Cross-train other bond program staff on the responsibilities and tasks assigned to the Principal Accountant and Project Analyst so that there is an employee that can perform these functions in the event of employee absences.
TC 14-6	<p>Develop and implement written procedures related to the reconciliation process between the Munis General Ledger and Project Ledger that require the following:</p> <ul style="list-style-type: none"> <li>• Prepare a reconciliation worksheet on a regular and consistent basis (at least monthly)</li> <li>• Maintain the reconciliation worksheet and attach supporting documentation (such as reports used, payroll records, journal entries, etc.) to provide an appropriate audit trail</li> <li>• Require the preparer to initial and date the worksheet indicating the reconciliation was performed</li> <li>• The Executive Director of Bond Finance must review the reconciliation worksheet and initial and date the worksheet to document that the review has been performed</li> </ul>
TC 14-7	Determine whether the reports currently being prepared by the Project Analyst (such as Project Summary Ledger Reconciliation and Financial Summary Reports) are necessary for or valuable to the reconciliation process discussed in TC14-6. If these reports are valuable and will be utilized, include them in the written procedures recommended in TC14-6. The reports should be reviewed by the Executive Director of Bond Finance and included in the reconciliation process performed by the Principal Accountant. If the reports are not needed as part of the reconciliation done by the Principal Accountant, then determine whether they should be eliminated, revised to serve the purpose of reconciliation, or used for another purpose.
TC 14-8	Review and modify, if necessary, the job descriptions of the Principal Accountant and Project Analyst to reflect the appropriate responsibilities related to the reconciliation process between the Munis Project Ledger and General Ledger.
TC 14-9	Ensure procedures are in place requiring that access rights in Munis for all data entry points related to the bond program be monitored and updated on a regular basis. Ensure that only appropriate District employees have access rights other than inquiry.
TC 15-1	<p>Ensure that written procedures related to Primavera include all required steps and necessary documents in order to achieve and maintain the system's integrity and accuracy. Include the work flow and frequency with which certain steps are (or should be) performed. The written procedures should include, but not be limited to:</p> <ol style="list-style-type: none"> <li>a. The back-up system and process in place,</li> <li>b. The process for creating project numbers,</li> <li>c. The creation and use of the Munis-Primavera costs codes, and</li> <li>d. The process performed by the Master Scheduler to reconcile between Primavera and Munis.</li> </ol>
TC 15-2	Develop a process that ensures the Master Scheduler receives appropriate and sufficient information regarding new construction and professional services contracts that are approved by the Board of Education. Either a copy of the contract can be provided or a contract synopsis can be prepared and provided to the Master Scheduler. This information should be provided within a week of contract approval to ensure that Primavera is updated promptly. Establish a timeline for when the contract information should be entered after receipt by the Master Scheduler.

Number	Recommendation
TC 15-3	Develop and implement a process to ensure that bond program management and staff, construction managers, and third parties responsible for entering information in Primavera are adequately trained and cross-trained. This is particularly important when hiring new staff or consultants. Consider whether providing recurring training or refresher meetings would be appropriate to address deficiencies or problem areas, such as a delay in entering proposed change orders.
TC 15-4	Cross-train a District employee in the Primavera functions currently handled by the Master Scheduler, who is a District consultant.
TC 16-1	The financial reporting system(s) should include projections related not only to the construction related cost and master planning, but also cost related to the planning and administration associated with the bond program in order to provide a complete picture of projected expenditures.
TC 16-2	The District should ensure that as construction projects are delegated to program managers at the regional level, they are provided with the projections of cash receipts and expenditures related to their specific construction projects. As updates are made to these projections, those updates should be shared with the project managers at the regional level, as they will need sufficient information to enable them to manage the budget for the project.
TC 16-3	Share updates to program cash flow projections used in determining the schedule for the new Master Plan with the Board, the FSC, and the CBOC. This should be done on a periodic basis determined by the District in a format selected by the District. This report appears to be similar to the report number 13, which was requested by the CBOC as of the 6/22/2016 meeting.
TC 16-4	Once consensus is reached between the CBOC and the District regarding the report naming, presentation, format, and content; and once report development is finalized, develop written procedures for the preparation and distribution of reports so that processes can continue when there are changes in personnel. The written procedures should include the following: <ul style="list-style-type: none"> <li>a. Identify the type of reports to be generated.</li> <li>b. Indicate the interval with which reports should be generated, such as monthly.</li> <li>c. Require that the Executive Director of Business Services, Bond Finance reviews the reports prior to distribution to other management, staff, or other users.</li> <li>d. Identify the individuals that should receive the reports generated and the process for communicating questions or comments back to the Bond Finance department.</li> </ul>
TC 16-5	Include footnotes in the Financial Status Reports and Cash Flow Reports to explain any differences that can be expected when attempting to compare the beginning balances (for items such a beginning cash balance and beginning fund balance) listed in these reports to the same items' ending balances reported in the Bond Program compliance audit report for the prior year. Furthermore, include footnotes, notes, or legends necessary to help report readers understand information provided in the reports submitted to the FSC and the CBOC.

Number	Recommendation
TC 16-6	Include a footnote in the Monthly Warrant Listing reports to explain that the amounts listed in this report are not the total expenditure listed in the general ledger; as this report shows the amount of the check issued to the vendor and does not include not include retention withholdings piece of the expenditure. Additionally, this footnote should explain the meaning of retention withholdings.
TC 16-7	Implement a review process prior to finalizing reports. This process should include mathematical, spelling and grammar accuracy verification.
TC 16-8	Report the Common Core Technology budget in a consistent manner across reports.
TC 16-9	Consider using the term “commitments” instead of “encumbrances” when referring to amounts for contractual work the District is <u>currently committed to over the life of the project</u> .
TC 16-10	Review Cash Flow projection for Pinole Valley High School in light of the schedule of values from the contractor for this project to assess if adjustments may be necessary in presenting this projection.

### III. Test of Controls (TC) Results of Testing

#### (A) Methodology and Results of Testing for the Test of Controls (TCs 1-16)

As a result of the work performed in Phase I, the District approved for VLS to conduct test of controls (TCs) in sixteen specific internal control areas as part of Phase II. The process for selecting these sixteen TCs was as follows:

- TC work steps were developed for those risk areas assessed in Phase I as High or Medium risk.
- TC work steps were developed if, in VLS's professional judgment, the benefit to the District would be better served by testing the internal control processes associated with the risk of fraud rather than conducting a forensic accounting investigation. For example, a TC work step was designed to address the allegation that the Board is not told if a project has sufficient budget for a contract; however, an FI work step was not developed to address this allegation.

The purpose of the work performed by VLS in the TC section is to determine whether the internal controls as represented by the District to VLS during Phase I were in fact implemented and functioning properly. Based on the results of testing, a New Risk Score was assigned by VLS to the Risk Areas as detailed in the Risk Assessment Matrix Phase II section. The scope for Phase II also called for VLS to report any recommendations for the District to consider implementing in order to lower the New Risk Score to a Low risk.

The work performed by VLS during Phase II, testing of controls, was conducted in two parts. The first part included meetings with District staff and other appropriate individuals, including vendors, to understand and document processes and procedures currently used. This part also included verifying the internal controls in place for those processes and procedures being tested by the specific TCs.

VLS then identified the significant internal controls that had been implemented and that were being relied upon by the District to reduce the risk for waste, improper expenditure, or fraud (financial irregularity) related to the Bond Program expenditures. Once the significant internal controls were fully identified, the populations of transactions related to those controls were identified, and samples were selected for

testing.<sup>9</sup> In accordance with AICPA professional standards, VLS used a combination of random sampling and judgmental sampling in order to select the samples for testing in the Test of Controls section. A random sample is used so every unit in the population has an equal chance of being selected, while a judgmental sample relies on the auditor's professional judgment, meant to focus and confirm a condition that is reasonably thought to exist.

The second part of our testing involved obtaining and reviewing the supporting documentation for the samples selected to verify that the significant controls identified were in place and were being followed. In addition, VLS requested, obtained, and reviewed other relevant documents, including process and procedure manuals, Board policies, bond related documents, and construction related records.

Based on this review and assessment of the results of testing, VLS assigned a New Risk Score to the identified internal control for the applicable Risk Area as noted in the Risk Assessment Matrix Phase II. After the New Risk Score was assigned, VLS made recommendations for the District to consider implementing in order to lower the Risk Score to a Low risk.

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<sup>9</sup> Because the purpose of the TC work steps was to determine whether the District had adequate and functioning internal controls related to a risk area, the population and sample selected was from 2015/16 fiscal year transactions only. Additionally, VLS selected transactions based on when the District stated that it had implemented certain processes and/or controls.

**The Sixteen TCs Identified for Testing in Phase II are as Follows:**

<b>Conflict of Interest - CBOC</b>	
TC (1)	Determine whether the revised District/Board policy for the selection and appointment of the Citizens Bond Oversight Committee (CBOC) members is transparent, neutral, and free of possible conflicts or loyalties.
<b>Conflict of Interest - Steering/Prioritization Committees</b>	
TC (2)	Review the mission, goals and actions of the Steering Committee and Prioritization Committee to ensure they are adequate for meeting the objectives of analyzing school building conditions based on pre-established criteria that prevents political (or other) influence and pressure. Where appropriate, test the controls/process to determine overall effectiveness.
<b>Conflict of Interest - Bond Program Expenditures</b>	
TC (3)	Review and assess the adequacy of internal controls in place to ensure that bond program expenditures are incurred in compliance with voter approved bond measure language and whether schools identified for construction or modernization were actually constructed or modernized. Note those schools that were included in bond language, but never started. Perform a test of these internal controls to determine overall effectiveness.
<b>Compliance with Legal Requirements and Board Policies - Governance</b>	
TC (4)	<p>Test to determine whether the DRAFT of the Governance Handbook and related documentation are comprehensive, adequate and sufficient in addressing the duties and responsibilities of the Board and addresses the following areas.</p> <ul style="list-style-type: none"> <li>- Board is not involved in the operations of the Bond program</li> <li>- What is added as agenda items presented to the Board</li> <li>- Brown Acts requirements</li> <li>- Conflict of Interest rules</li> <li>- Conflict of Interest rules pertaining to vendors</li> <li>- Involvement with District decisions</li> <li>- Interactions with District employees and vendors</li> <li>- Proposing amendments to vendor contracts</li> </ul>
<b>Budgeting Practices - Master Planning</b>	
TC (5)	Review and assess the Master Planning budgeting process to determine whether appropriate steps have been put into place to adequately budget future school construction/modernization projects. Determine whether detailed budgets are prepared and approved by the Board, are shared with the Board and public where appropriate, and are used to track project performance and results. Perform a test of these internal controls to determine overall effectiveness. Determine whether remaining school projects can be completed with the remaining funding, and determine whether the architect(s) involved in the master planning process have a prior relationship with the District.
<b>Budgeting Practices - Adequacy/Completeness</b>	
TC (6)	Review and assess the adequacy of the internal controls related to budgeting practices. Ensure that the policies, procedures and overall accounting for budgeting practices is adequate and complete. Ensure that the process for detailed line-by-line budget preparation and reporting to the Board and relevant committee(s) is accurate, thorough, and comprehensive. Perform a test of these internal controls to assess overall effectiveness.

<b>Vendor Contract Administration - Vendor Due Diligence</b>	
TC (7)	Review and assess the current process to determine if there are adequate internal controls in place which allow for the District to perform the appropriate "Vendor Due Diligence" prior to contracting with vendor(s). Perform a test of these internal controls to determine overall effectiveness.
<b>Vendor Contract Administration - Vendor Contracts</b>	
TC (8)	<p>Review and assess the internal controls related to the overall administration of Bond and Vendor contracts to ensure these contracts:</p> <ul style="list-style-type: none"> <li>- Are thoroughly evaluated, appropriate and complete</li> <li>- Are now being memorialized and all administrative/regulatory guidelines and procedures are being followed</li> <li>- Are now being submitted to the Board for approval and are within the approved budget</li> </ul> <p>Ensure internal controls are in place which address communications with the Board related to budgeting and vendor contracting and are thorough and complete. Perform a test of these internal controls to determine overall effectiveness.</p>
<b>Vendor Contract Administration - Bidding Process</b>	
TC (9)	Review and assess the internal controls involving the District bond program bidding process to ensure it is in compliance with administrative/educational policies and procedures. Perform a test of these internal controls to assess overall effectiveness.
<b>Vendor Contract Administration - Reporting</b>	
TC (10)	Review and assess internal controls to ensure all reports generated and provided by SGI to the Board, District, CBOC and/or Facilities Subcommittee are in line with contract specifications. Perform a test of these internal controls to assess overall effectiveness.
<b>Vendor Contract Administration - Invoice Payments</b>	
TC (11)	Review and assess the internal controls over the District approval of invoices submitted by SGI and other vendors to ensure that controls are adequate, thorough, transparent and financially sound. Perform a test of these controls to assess overall effectiveness.
<b>Billings and Performance of Outside Construction Manager</b>	
TC (12)	Review and assess the internal controls over the District's involvement with the interviewing, hiring and promoting of SGI employees assigned to District projects to ensure they are adequate, thorough, transparent and financially sound. Perform a test of these controls to assess overall effectiveness.
<b>Change Order Approval and Accounting Practices</b>	
TC (13)	Review and assess the internal controls related to Change Orders and Vendor "Add Services" to ensure they are adequate, thorough, transparent and financially sound. Perform a test of these controls to assess overall effectiveness.

<b>Project Accounting Systems - Munis</b>	
TC (14)	<p>Review and assess the internal controls in place to ensure:</p> <ul style="list-style-type: none"> <li>- That the procedures for Munis tracking of budgets, including the multiyear functionality is adequate, reliable and accurate</li> <li>- That the reconciliation process between the project ledger and the general ledger in Munis is accurate and complete</li> <li>- That access rights in Munis for all data entry points related to the bond program are under the responsibility of the District only</li> </ul> <p>Will perform a detailed walkthrough of the process for entering bond program related information into Munis (contracts, change orders, etc.) to gain a detailed understanding of the process and ensure proper controls are in place. Perform a test of these internal controls to assess overall effectiveness.</p>
<b>Project Accounting Systems - Primavera</b>	
TC (15)	<p>Review and assess the internal controls in place to ensure:</p> <ul style="list-style-type: none"> <li>- Primavera is accurate, reliable, and appropriately updated</li> <li>- To ensure procedures and controls have been adequately implemented to recover any potential lost information</li> <li>- To ensure procedures and controls have been adequately implemented for recording of proposed change orders</li> <li>- To ensure procedures and controls have been adequately implemented</li> <li>- To ensure reconciliation between Munis and Primavera is accurate and complete</li> </ul> <p>Perform a test of these internal controls to assess overall effectiveness.</p>
<b>Financial Reporting</b>	
TC (16)	<p>Review and assess the internal controls concerning the District's preparation and distribution of the various financial reports summarizing program expenditures and encumbrances to ensure they are adequate, thorough, transparent and financially sound. Perform a test of these internal controls to assess overall effectiveness.</p> <p>Ensure the bond program financial reports produced by the Executive Director of Business Services (and staff) accurately and completely reflect the financial position of the bond program.</p>

### **(B) Results of Testing**

For each of the specific TCs, VLS documented the results of the work performed in the specific “Results of Testing” section for each of the sixteen TCs located beginning on page 37 of this report. The “Results of Testing” sections include the following:

- The specific TC work step.
- The results of the work VLS performed in testing the specific work step. This includes, where applicable, analyses and steps performed and other information relevant to the testing of the TC.

- The New Risk Score for the most significant internal control risk area impacted by the TC.
- The specific recommendations for the District to implement based on the analysis of work performed and conclusions reached for each TC work step.
- The District's response to VLS's recommendations.<sup>10</sup>
- VLS's assessment of the response by the District.

VLS work papers include detailed documents, financial records, schedules and all other work performed by VLS.

### **What TC Recommendations are and What They Mean**

Based on the results of testing for the sixteen TCs, VLS has made specific recommendations for the District to consider implementing in order to lower the New Risk Score of a High or Medium to a Low risk score.<sup>11</sup>

In addition, VLS also included recommendations for the District to consider even for those risk areas identified as Low risk. VLS made these recommendations because they will contribute to sustaining a Low risk score and improving the overall efficiencies and effectiveness in the operations of the District Bond Program.

All the TC recommendations are located in Section II, C.<sup>12</sup>

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<sup>10</sup> For the Test of Controls, VLS provided the District with VLS's results of testing and recommendations in advance of issuing this report. This was done in order to obtain a response from the District for all of the recommendations made by VLS.

<sup>11</sup> See Section II, B for New Risk Scores.

<sup>12</sup> The District was provided a draft of all TC and FI recommendations in advance of issuing this report, and the District's response is included in the specific TC and FI Sections.

**What Follows beginning on Page 37 are the  
Results of Testing for TC (1) - (16) Sections**

**TC (1) Work Step**

Determine whether the revised District/Board policy for the selection and appointment of the Citizens Bond Oversight Committee (CBOC) members is transparent, neutral, and free of possible conflicts or loyalties.

**Results of Testing**

The District has completed the process of revising its policy related to how members of the CBOC are appointed. Board members are no longer able to appoint members to the CBOC and the category of Board Member appointee has been retired per Board Policy 7214.2 effective 12/9/2015. The current policy for the selection and appointment of the CBOC members appears to be transparent, neutral, and free of possible conflict of interests or loyalties to Board members. VLS tested the use of the current policy and determined that the selection process is functioning as intended per Board Policy 7214.2 effective 12/9/2016.

The current policy for CBOC member selection is as follows:

- Nominations for the five positions required by law are made by the respective organization for each of the required positions
- All other nominations beyond the five required positions are be made by self-nomination
- All nominations are made using the CBOC approved application form and must include a resume and statement from the candidate
- Application packets are submitted to the Superintendent and the CBOC Chair
- Application packets are published in a regular Facilities Subcommittee agenda package and all candidates are interviewed by this subcommittee in a regular public meeting
- The Facilities Subcommittee makes a recommendation based on merit to the Board of Education for appointment to the CBOC
- The Board of Education appoints the CBOC members
- In the event of a CBOC vacancy, the process used to select the original CBOC member is followed.

**Advertising Open CBOC Positions:**

The CBOC website advertises the opportunity to “join the CBOC team” with a link in its home page. CBOC members actively communicate the opportunity to join the CBOC membership to the community by word of mouth, and the Superintendent communicates this opportunity to candidates he considers would be interested when he visits the school sites for meetings. However, no announcement is posted on the main District website and no communication is made to parents through a newsletter forum to advertise membership opportunities within the CBOC. Additionally, no newspaper advertising or article is published to inform the community at large of the opportunity to join the CBOC membership even at times when vacancies exist. See TC1-1 for recommendation related to this area.

**CBOC Membership Make-Up:**

Some individuals interviewed during Phase II expressed concern over two specific membership positions of the CBOC; the member of the Contra Costa Building and Construction Trades Council, and the member of the Public Employees Union Local 1 (who is not a District employee). The concern is that these two positions in the CBOC may appear, by the nature of their commitment to their council and union, to be biased in the performance of their duties as members of the CBOC.

Education Code 15282 prohibits District employees, officials, vendors, contractors, and consultants from being appointed to the CBOC. The member of the Contra Costa Building and Construction Trades Council, and the member of the Public Employees Union Local 1 (who is not a District employee) are not within the lists of individuals who are prohibited from being appointed to membership in the CBOC. Additionally, the CBOC performs a retrospective review and assessment of the expenditures of a bond program. Although the CBOC does not have the authority to approve bond issuances, determine how bond funds are to be spent and does not have the authority to negotiate, award or approve construction contracts, members of the CBOC should always represent the interest of the District in the performance of their duty to review and assess the expenditures of the bond program. Because the CBOC performs only a retrospective review and assessment of the expenditures of the Bond program, does not have the authority to approve bond issuances or determine how bond funds are to be used, and these membership positions are only two of seventeen positions in the CBOC, VLS is not making a recommendation to remove these two positions.

**New Score**

Low

**Recommendation**

TC1-1. Employ methods of reaching out to the entire community to advertise the opportunity of membership in the CBOC. These methods may include posting the need on the

District website, inclusion in newsletters already used to communicate with District families, and newspaper advertising (if this method does not prove to be cost prohibitive).

### **Response by District**

On March 18, 2016, the District's communications director shared with CBOC President, Tom Panas, ideas for advertising or publicizing openings on the committee. In that email, it was suggested that the CBOC do the following:

1. Request each city list the CBOC openings on its website under their Boards and Commissions openings.
2. The District send out an advisory to local media and community groups when openings occur on the CBOC.
3. Send flyers and ask that announcements be made in community gathering locations (libraries, senior centers).
4. Approach local Republican or Democratic clubs in order to recruit people who would be interested in the type of work the CBOC undertakes.
5. Encourage organizations that have a strong interest in schools to submit more than one applicant – for instance, a member of the PTA may be a city resident or a member of the Building Trades Council may also be a parent or resident of one of the five cities.

The District can and will post the need for CBOC members on the District website and include in newsletters already used to communicate with the District.

If necessary, the District can purchase paid advertising in local newspapers to solicit applications to the CBOC.

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

VLS reviewed the District's response and agrees that the response and planned action are appropriate to address the recommendation(s) made by VLS.

**TC (2) Work Step**

Review the mission, goals and actions of the Steering Committee and Prioritization Committee to ensure they are adequate for meeting the objectives of analyzing school building conditions based on pre-established criteria that prevents political (or other) influence and pressure. Where appropriate, test the controls/process to determine overall effectiveness.

**Results of Testing**

VLS reviewed the stated mission, goals, and actions of the Steering Committee and the stated mission, goals, and actions for the Prioritization Committee to ensure that they were adequate for meeting the objectives of analyzing school building conditions based on pre-established criteria that prevents political (or other) influence and pressure. VLS verified that an independent party, Darden Architects, assisted the District in the development of the Facilities Master Plan. This Architect firm has not previously worked with the District in any capacity related to its bond program. The development of the Facilities Master Plan was based on the results of an extensive review and assessment of the project sites performed by Darden Architects that included physically visiting each site.

In addition, Darden Architects utilized community input gathered during council site meetings and community meetings. Public advertisements for these council site and community meetings were done at all the schools and also on the Facilities Master Plan Web page. The Pre-established criteria were developed by the Prioritization Committee with input from the community and guidance from Darden Architects firm. The responsibility of the Prioritization Committee was to create criteria by which all sites would be prioritized for sequencing, and to establish a basis through which an overall option could be selected by the Board. The Prioritization Committee meetings were open to the public and advertised. The Prioritization Committee recommended the final criteria to the Board and it was approved by the Board on 12/9/2015.

The Steering Committee's responsibility was to help maintain an orderly process of developing the Facilities Master Plan and ensure that the process continued to move forward. The final Facilities Master Plan was presented to the Board by Darden Architects and was approved by the Board as presented by Darden Architects on 6/15/2016.

It appears that the Facilities Master Plan was developed using a public process that included gathering community input and a thorough assessment of the building conditions of the schools included in the Facilities Master Plan. The Facilities Master Plan, including the implementation plan, was approved by the Board of Education on 6/15/2016. At that time, an alternative scenario was developed in the event of a 2018 bond measure, which illustrates a modified timeline for the recommended projects. See TC2-1 and TC2-2 for recommendations related to this area. Additionally, refer to recommendation TC5-1 in section TC (5).

**New Score**

Low

**Recommendations**

- TC2-1. Clarify language included in the “Additional Steps” of the Facilities Master Plan Implementation to provide for a specific time period in which the “period review” of the Facilities Master Plan will occur. For example, a statement that every five years the Facilities Master plan will be assessed with the involvement of the community provides specific timing that will increase transparency and accountability.
- TC2-2. When the District seeks the passage of a future bond measure(s), include language in the bond measure that specifically refers to the Board approved Long-Range Facilities Master Plan. Adding this language to the bond measure will afford the District increased transparency, allow the voters to better understand the projects and timeline of the projects that will be undertaken with the bond proceeds, and will hold the District and Board members accountable to the public. The language added to the bond measure should include a statement that provides the District with some flexibility in the event of an unforeseen or catastrophic event, requires that the Board approve revisions made to the Facilities Master Plan, and indicates the means by which the public could obtain a copy of the approved Facilities Master Plan.

**Response by District**

Pursuant to the recommended implementation timeline in the Facilities Master Plan and subject to available funding and Board approval, District Staff will complete a comprehensive update of the Facilities Master Plan in 2020, which will include all District sites. Every five years thereafter, staff will recommend to the Board a comprehensive update of all District sites. If any event occurs that potentially could impact availability of funding resources or project timelines, updates will be provided to the Facilities Subcommittee and Board, if needed and/or required.

In the event of a future Bond Measure, District staff will recommend to the Board that the Facilities Master Plan is referenced in the bond measure language. The recommendation will also include that projects in the Facilities Master Plan whose construction schedules fit within the timeframe of the bond measure be placed in the bond measure language. Language shall be recommended to the Board to provide the District with flexibility in the event of a catastrophic event. The Facilities Master Plan contains specific projects with estimated costs and recommended schedules. Any revision of the recommended scope of the Facilities Master Plan will be recommended to and approved by the Board and those changes can be reflected in the bond measure language, if applicable.

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

VLS reviewed the District's response and agrees that the response and planned action are appropriate to address the recommendation(s) made by VLS.

**TC (3) Work Step**

Review and assess the adequacy of internal controls in place to ensure that bond program expenditures are incurred in compliance with voter approved bond measure language and whether schools identified for construction or modernization were actually constructed or modernized. Note those schools that were included in bond language, but never started. Perform a test of these internal controls to determine overall effectiveness.

**Results of Testing****Compliance with Voter Approved Bond Measure Language:**

For TC (3), VLS verified the adequacy of internal controls in place to ensure that bond program expenditures are incurred in compliance with voter approved measure language. Refer to section TC (2) for TC2-2 recommendation related to inclusion of language referring to the Board approved Long-Range Facilities master Plan into future bond measure(s).

California Constitution, Article XIII A, Section 1(b)(3)(C) requires the District to conduct annual, independent performance and financial audits until all of the bond proceeds are exhausted.<sup>13</sup> The purpose of the performance and financial audits is to ensure that the funds have been expended only on the projects specified in the ballot measure language. For the period under review (fiscal years 2008/09 through 2014/15) the District has conducted these annual, independent audits. Based on a review of the audit reports, there were no findings related to the appropriateness of the expenditures incurred.<sup>14</sup>

**Analysis of School Sites Identified In Bond Measures:**

The table included below identifies the bond measures passed by the District.

**Table 2: Bond Measures Passed by District**

No.	Bond Series	Approval Date	Approved Principal Amount
1	Measure E (1998)	6/2/1998	\$ 40,000,000
2	Measure M (2000)	11/7/2000	150,000,000
3	Measure D (2002)	3/5/2002	300,000,000
4	Measure J (2005)	11/8/2005	400,000,000
5	Measure D (2010)	6/8/2010	380,000,000
6	Measure E (2012)	11/6/2012	360,000,000
Total			<u>\$ 1,630,000,000</u>

<sup>13</sup> For bonds issued under California Proposition 39 passed by voters on 11/7/2000.

<sup>14</sup> Appropriate expenditures for a bond program are those incurred in accordance with the voter approved ballot language.

Measure E passed by voters in 1998 does not fall under the requirements of California Proposition 39; therefore, it is excluded from this analysis. However, it is included in the table above to fully account for the District’s bond program as it has often been referred to as a \$1.6 billion program.

VLS obtained and reviewed the bond measure language for bonds issued by the District under California Proposition 39 (numbers 2 through 6 in Table 2). Only two bond measures had language included in the ballot measure that identified school sites where work would be performed with the proceeds of the bond measure (numbers 3 and 4 in Table 2). The remaining ballot measures included language that was broad and identified types of projects rather than specific school sites; therefore, these bond measures were excluded from this analysis.

For the two bond measures that listed specific school sites, VLS identified the schools listed and reviewed the general ledger for the Bond Fund to assess whether these sites had work performed based on expenditures recorded to these sites.<sup>15</sup> The general ledger information reviewed was for the period from 7/1/2000 through 2/29/2016. The expenditures recorded to the school sites were allocated to categories such as new school, modernization, technology, furniture and equipment, network and technology, and other projects. For purposes of analyzing the expenditures, VLS categorized them into three main groups: new school, modernization, or other. The other category includes everything that is not new school or modernization. Based on the total dollar amount in each group for each site, the information known about the status of each school site, and the information contained in the Long-Range Facilities Master Plan, VLS determined the threshold of work performed at each site. See the sections below for additional details on the analysis performed.

2002 Measure D:

The language in this bond measure included three sections. Only Section II and Section III identified school sites.

- a. Section II was titled “Elementary School Projects” and stated, “Complete any remaining Measure M projects, as specified in the ‘West Contra Costa Unified School District Request for Qualifications (RFQ) B-0101 Master Architect/Engineer/Bond Program Management Team for \$150 Million Measure M General Obligation School Facilities Bond Program’ dated January 4, 2001, on file with the District...This scope would include projects specified in the ‘Long Range Master Plan dated October 2, 2000.’”<sup>16</sup>

<sup>15</sup> VLS relied solely on the descriptions and sites listed in the general ledger when performing this analysis. VLS did not request or review supporting documentation related to the expenditures used for this analysis.

<sup>16</sup> The Long Range Master Plan dated 10/2/2000, stated that all District schools, with the exception of Chavez Elementary School and Hannah Ranch Elementary School, were in disrepair and in need of

This section also identified specific projects to be completed at Harbour Way Community Day Academy.<sup>17</sup> This site appears to have had some work completed as there were expenditures recorded to the site in the District’s Bond Fund ledger.<sup>18</sup> VLS did not analyze the actual expenditures incurred to determine whether all the projects listed in the bond measure language were completed.

- b. Section III was titled “Secondary School Projects” and listed specific projects to be completed at the school sites shown in Table 3. The table lists the school sites and the main project type listed in the bond language (column titled “Project Type Listed in Bond Language”).<sup>19</sup> The column titled “Project Type Performed” lists the type of work that appears to have taken place at the school site listed.

The types of projects listed in this bond measure for these sites were, for the most part, labeled as Improvement/Rehabilitation and/or Construction/Renovation. However, it appears that six sites had a new school built, while the rest of the sites received either significant improvements or other work.<sup>20</sup> The classifications used by VLS have been simplified and are based on the total dollar amount expended and the classification of the expenditures listed in the general ledger. The purpose of this analysis is to identify

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modernization. The various options presented involved the modernization or replacement for all of the schools, except Chavez and Hannah Ranch, for under \$500 million. The document did not provide a specific timeline of when the modernization/replacement projects would be completed.

<sup>17</sup> The projects listed included: add water supply to portable classrooms, demolish and replace two portable classrooms, install one additional portable classroom, add play structures/playgrounds, and install or replace whiteboards, tackboards and counters.

<sup>18</sup> The general ledger shows that expenditures totaling \$121,944 were recorded to this location.

<sup>19</sup> For simplicity, only the main project type shown in the bond language is listed in the table. Each school site listed several project types (Major Building Systems, Improvements/Rehabilitation, etc.) and then identified specific projects to be completed under each project type. For example, one of the project types for Adams Middle School was “Improvements/Rehabilitation.” Within that category, the projects to be completed included: replace carpet, improve/replace floors, improve and paint stairwells and handrails, improve and paint interior walls, improve/replace ceilings, and demolish and replace one portable classroom. VLS included the project type that would provide a general sense of the scope of the work to be completed at each site.

<sup>20</sup> Pinole Valley High School is in the beginning stages of construction for a new school. The other sites identified as “New School” have expenditures in excess of \$55 million, and a significant portion of the expenditures recorded in the general ledger were classified as “New School.” The two sites classified as “Improvement” had total expenditures between \$20 million and \$34 million, of which a significant portion was classified to “Modernization” in the general ledger. The sites classified as “Other” had total expenditures of less than \$7.5 million that were listed in the general ledger as technology, furniture and equipment, network and technology, deferred capital projects, and additional projects, among others; these sites had little or no expenditures allocated to “New School” or “Modernization.”

whether schools listed in the bond measure language had work performed with the proceeds received from the bonds.<sup>21</sup>

**Table 3: 2002 Measure D, Section III, Project List**

Ref. No.	School Site	Project Type Listed in Bond Language	Project Type Performed
1	Pinole Valley High School and Sigma High School	Improvement/Rehabilitation; Construction/Renovation	New School (In Progress)
2	Helms Middle School	Improvement/Rehabilitation	New School
3	Pinole Middle School	Improvement/Rehabilitation	New School
4	Portola Middle School	Improvement/Rehabilitation	New School
5	El Cerrito High School	Improvement/Rehabilitation; Construction/Renovation	New School
6	De Anza High School and Delta High School	Improvement/Rehabilitation; Construction/Renovation	New School
7	Kennedy High School and Kappa High School	Improvement/Rehabilitation; Construction/Renovation	Improvement
8	Richmond High School and Omega High School	Improvement/Rehabilitation	Improvement
9	Adams Middle School	Improvement/Rehabilitation	Other
10	Juan Crespi Junior High School	Improvement/Rehabilitation	Other
11	Hercules Middle/High School	Improvement/Rehabilitation	Other
12	Richmond Middle School	Improvement/Rehabilitation	Other
13	Gompers High School	Improvement/Rehabilitation; Construction/Renovation	Other
14	North Campus High School and Transition Learning Center	Improvement/Rehabilitation; Construction/Renovation	Other
15	Vista Alternative High School	Construction/Renovation	Other
16	Middle College High School	Furnishing/Equipping	Other

Of the sites listed in this bond measure, Juan Crespi Junior High School and Hercules Middle/High School (numbers 10 and 11 in Table 3) are listed in the Long-Range Facilities Master Plan approved by the Board on 6/25/2016 as “Critical Needs” sites that will be addressed with the existing bonds (2010 Measure D and 2012 Measure E Bonds) and will be in need of future bond measures in order to replace or partially modify (see Figure 1).

2005 Measure J:

The 2005 Measure J bond language listed in some detail the projects that were to be completed and it included two sections. Section I broadly discussed the types of projects to be completed at all school sites for security and health/safety improvements, major facilities improvements, special education facilities, property, and site work. Section II stated that any remaining Measure M or Measure D projects would be completed. Section II also included a listing of

<sup>21</sup> The analysis includes all bond proceeds spent and not just the proceeds from the specific measure in which the project was listed.

school sites and identified the scope noted as either “Reconstruction/New Construction” or Reconstruction.”<sup>22</sup>

Table 4 lists the school sites and the project types listed in the bond language (column titled “Project Type Listed in Bond Language”).<sup>23</sup> The column titled “Project Type Performed” lists the type of work that appears to have taken place at the site listed.

The types of projects listed in this bond measure were labeled as Reconstruction or Reconstruction/New Construction. It appears that eight sites had a new school built (or are in the process of having a new school built), while the remaining sites received either significant improvements or other work.<sup>24</sup> The classifications used by VLS have been simplified and are based on the total dollar amount expended and the classification of the expenditures listed in the general ledger. The purpose of this analysis is to identify whether schools listed in the bond measure language had work performed with the proceeds received from the bonds.<sup>25</sup>

**Table 4: 2005 Measure J, Section II, Project List**

Ref. No.	School Site	Project Type Listed in Bond Language	Project Type Performed
1	De Anza High School	Reconstruction/New Construction	New School <sup>26</sup>
2	Coronado Elementary School	Reconstruction	New School
3	Nystrom Elementary School	Reconstruction	New School
4	Pinole Valley High School	Reconstruction/New Construction	New School - In progress <sup>26</sup>

<sup>22</sup> The bond measure language stated that the reconstruction program would be completed “as funds allow” and included: health and life safety improvements, technology improvements, systems upgrades, and instructional technology improvements. Additionally, “the reconstruction program includes the replacement of portable classrooms with permanent structures, the improvement or replacement of floors, walls, insulation, windows, roofs, ceilings, lighting, playgrounds, landscaping, and parking, as required or appropriate to meet programmatic requirements and depending on the availability of funding.”

<sup>23</sup> This is the scope specifically listed in the bond language.

<sup>24</sup> Pinole Valley High School is in the beginning stages of construction for a new school. The other sites identified as “New School” have expenditures in excess of \$25 million, and a significant portion of the expenditures recorded in the general ledger were classified as “New School.” The two sites classified as “Improvement” had total expenditures between \$20 million and \$35 million, of which a significant portion was classified to “Modernization” in the general ledger. The sites classified as “Other” had total expenditures of less than \$8.5 million that were listed in the general ledger as expenditures for technology, furniture and equipment, network and technology, deferred capital projects, and additional projects, among others; these sites had little or no expenditures allocated to “New School” or “Modernization.”

<sup>25</sup> The analysis includes all bond proceeds spent and not just the proceeds from the specific measure in which the project was listed.

<sup>26</sup> This school site was also listed in the 2002 Measure D bond language.

Ref. No.	School Site	Project Type Listed in Bond Language	Project Type Performed
5	Ohlone Elementary School	Reconstruction/New Construction	New School <sup>27</sup>
6	Dover Elementary School	Reconstruction	New School
7	Ford Elementary School	Reconstruction	New School
8	King Elementary School	Reconstruction	New School
9	Kennedy High School	Reconstruction/New Construction	Improvement <sup>26</sup>
10	Richmond High School	Reconstruction	Improvement <sup>26</sup>
11	Valley View Elementary School	Reconstruction	Other
12	Wilson Elementary School	Reconstruction	Other
13	Castro Elementary School	Reconstruction	Other
14	Fairmont Elementary School	Reconstruction	Other
15	Grant Elementary School	Reconstruction	Other
16	Highland Elementary School	Reconstruction	Other
17	Lake Elementary School	Reconstruction	Other

Of the sites listed in this bond measure, seven of the sites (numbers 9 through 11 and 13 through 16) are listed in the Long-Range Facilities Master Plan approved by the Board on 6/25/16 as “Critical Needs” sites that will be addressed with the existing bonds (2010 Measure D and 2012 Measure E Bonds) and will be in need of future bond measures in order to replace or partially modify (see Figure 1). Two of the schools (Wilson Elementary School and Lake Elementary School) are listed as “RS Replacement.”<sup>28</sup>

Figure 1 included below is the “Costs Option 1” presented in the Implementation Plan for the Facilities Master Plan, which identifies the school sites and scope of work using existing bond funds and potential future funding. The Implementation Plan was approved by the Board at the time the Facilities Master Plan was approved on 6/15/16.

<sup>27</sup> Although expenditures associated with Ohlone Elementary School were recorded as new school construction, it is included in the Facilities Master Plan as a “Critical Needs” project because the school was only partially built. At the end of the building project the old school had not been demolished. The critical needs listed in the Facilities Master Plan will include the demolition of the old school buildings and a reconfiguration of the older parking lot into a dedicated drop-off and pick up area as well as some additional parking spaces. Ohlone Elementary School is also listed in the Long-Term Plan of the Facilities Master Plan as a new classroom building, modernization, and addition to the existing multi-purpose room, which were not addressed as part of the prior replacement of the new school.

<sup>28</sup> The “RS” of “RS Replacement,” as listed in the Long-Range Facilities Master Plan, stands for Revised Standards, which indicates school replacement with revised standards. These were schools that had existing standards for construction that were revised as part of the Facilities Master Plan assessment.

Figure 1: Excerpt from Long-Range Facilities Master Plan Approved by the Board

Existing Bond			Future Funding		
School	Project Type	R.O.M. Cost (In Millions)	School	Project Type	R.O.M. Cost (In Millions)
Ed Specs & School Size		0.2	Alvarado Adult School	Critical Needs	4.2
Including All Sites In Master Plan		TBD	Serra Adult School	Critical Needs	3.4
Harmon Knolls Soils Testing		0.1	Stege ES	RS Replacement	86.4
Valley View ES	Critical Needs	1.0	Highland ES	RS Replacement	121.9
Crespi MS	Critical Needs	3.1	Valley View ES	RS Replacement	108.5
Riverside ES	Critical Needs	6.9	Grant ES	Mod/Partial Replacement	46.6
Richmond HS	Critical Needs	15.1	Richmond HS	Mod/Partial Replacement	119.2
Kennedy HS	Critical Needs	11.1	Shannon ES	Mod/Partial Replacement	28.1
Highland ES	Critical Needs	0.8	Olinda ES	RS Replacement	89.6
Grant ES	Critical Needs	0.9	Fairmont ES	RS Replacement	102.4
Olinda ES	Critical Needs	1.0	Crespi MS	Mod/Partial Replacement	65.5
Chavez ES	Critical Needs	0.6	Collins ES	Mod/Partial Replacement	37.2
Ohlone ES	Critical Needs	0.8	Kennedy HS	Mod/Partial Replacement	110.4
Harmon Knolls	Critical Needs	0.2	Riverside ES	Mod/Partial Replacement	58.1
Fairmont ES	Critical Needs	3.3	Chavez ES	Mod/Partial Replacement	24.6
Stege ES	Critical Needs	3.2	Hercules MS	Mod/Partial Replacement	7.2
Cameron School	Critical Needs	1.3	Hercules HS	Mod/Partial Replacement	15.9
Hercules MS	Critical Needs	7.5	Ohlone ES	Mod/Partial Replacement	10.2
Hercules HS	Critical Needs	7.2	Cameron School	Mod/Partial Replacement	37.4
Collins ES	Critical Needs	3.5	Alvarado Adult	Mod/Partial Replacement	25.7
Shannon ES	Critical Needs	7.1	Serra Adult	Mod/Partial Replacement	17.4
Wilson ES	RS Replacement	40.3			
Lake ES	RS Replacement	66.1			
<b>Sub Total</b>		<b>181.3</b>	<b>Sub Total</b>		<b>1,119.9</b>
			<b>Grand Total</b>		<b>1,301.2</b>



West Contra Costa Unified School District  
Long-Range Facilities Master Plan

9

**New Score**

Medium

**Recommendation**

See TC (2) Section for recommendations related to the Facilities Master Plan and future bond measures. No additional recommendations are made as part of this workstep.

**Response by District**

No District response as there were no recommendations made for TC (3).

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

No assessment by VLS of response by District as there were no recommendations made for TC (3).

**TC (4) Work Step**

Test to determine whether the DRAFT of the Governance Handbook and related documentation are comprehensive, adequate, and sufficient in addressing the duties and responsibilities of the Board and addresses the following areas.

- Board is not involved in the operations of the Bond program
- What is added as agenda items presented to the Board
- Brown Act requirements
- Conflict of Interest rules
- Conflict of Interest rules pertaining to vendors
- Involvement with District decisions
- Interactions with District employees and vendors
- Proposing amendments to vendor contracts

**Results of Testing**

The Governance Handbook was approved by the Board on 9/2/2015 and is no longer in draft form. Discussed below are the results of testing to determine whether the Governance Handbook and related documentation are adequate and sufficient in addressing the duties and responsibilities of the Board and addresses the areas of concern.

**Board Involvement in Operations of the Bond Program:**

The Governance Handbook addresses the topic of involvement of the Board in the operations of the Bond program on page nine as follows: Trustees “understand the distinctions between Board and staff roles, and refrain from performing management functions that are the responsibility of the superintendent and staff.” Board Policy 9005.7 also addresses this topic in the same manner. Additionally, Board members are required to attend an annual training hosted by the California School Board Association where they receive training related to their functions as Board members. See TC4-1 and TC4-6 recommendations for this area.

**Agenda Items Presented to the Board:**

The Governance Handbook addresses this area on page 10 as follows, “The Board President prepares with the superintendent and clerk the Board agendas.” Board Policy 9121 also addresses this topic in the same manner. In addition, the Governance Handbook addresses this area further on page 16 as follows: “The superintendent will prepare a draft agenda that is shared and discussed with the President and the Clerk of the Board approximately ten days prior to the meeting.” Board Policy 9322 also addresses this topic in the same manner. Per interviews conducted, the current process for inclusion of items to the Board agenda is to communicate these items to the Associate Superintendent for Operations. The Superintendent, Board President, and Board Clerk hold a meeting to prepare the agenda for the Board meeting. The items on the agenda are then scheduled to be discussed during a Facilities Subcommittee

meeting prior to presentation to the Board. The current process to include Board agenda items appears appropriate.

**Brown Act Requirements:**

The Governance Handbook addresses the Brown Act requirement on page 17 as follows: “The Brown Act prohibits a quorum of the Board from doing any of the following on a subject within the jurisdiction of the Board, whether through direct communications, personal intermediaries, or technological devices: 1) discussing the matter, 2) deliberating on the matter, 3) taking action. Board members should recognize that using the ‘reply all’ feature in response to an email creates the risk of a Brown Act violation.” An attachment to the Governance Handbook states that Brown Act training will be part of the Governance Calendar and will normally occur in the Month of July.

Per interviews conducted, the training mentioned in the Governance Handbook is a reference to participate in training through the California School Board Association (CSBA). The Board members normally attend the CSBA meetings but they are not required by the District or Board to attend the specific workshop for Brown Act training. Board members and the District are discussing whether the District may be able to bring the Brown Act training to the Board members and not simply rely on the fact that the training is available to them during the annual CSBA training. It appears that the concerns related to Brown Act requirements are appropriately addressed by the Governance Handbook. Improvements can be made to ensure that Board members are consistently receiving adequate and sufficient training related to Brown Act requirements. See TC4-2 recommendation for this area.

**Conflict of Interest Rules (General):**

The Governance Handbook does not address conflict of interest rules. However, the District uses Gamut Online, which is an online policy information service that incorporates the California School Board Association (CSBA) Policy Manual. The log-in credentials are displayed on the web page; therefore, all Board members can easily access this information.

Board Policy 9270 contains a comprehensive conflict of interest code. However, this conflict of interest code is not mentioned in the Governance Handbook. It appears that the basic requirements of a standard conflict of interest policy are included in the Board Policy; nevertheless, enhancements to this policy can be made and included in the Governance Handbook.<sup>29</sup> See TC4-3 recommendation for this area.

**Conflict of Interest Rules (Vendors):**

The Governance Handbook does not address conflict of interest rules pertaining to Board member interactions with vendors. However, Board Policy 9270 states, “Board members and designated employees shall not be financially interested in any contract made by the Board or in

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<sup>29</sup> Refer to recommendation FI1-1 which recommends a Business Ethics Expectations policy.

any contract they make in their capacity as Board members or designated employees (Government Code 1090).” It is additionally stated, “Board members and designated employees may accept gifts only under the conditions and limitations specified in Government Code 89503 and 2 CCR 18730.”

Per interviews conducted, the Governance Handbook is a living document that will be enhanced by additions in the future. Board members have contemplated implementing a Board policy surrounding campaign contributions and Board/vendor interactions; however, currently, this policy has not been implemented and no mention of this is made in the Governance Handbook. The basic requirements of a conflict of interest policy appear to be appropriately addressed in the District Board policy. Nevertheless, enhancements to this policy can be made and included in the Governance Handbook. See recommendation TC4-4 recommendation for this area. In addition, refer to section TC (7) for TC7-5 recommendation related to Conflict of Interest.

**Involvement with District Decisions:**

The Governance Handbook addresses the topic of involvement by Board members with District decisions on page nine as follows: Trustees “understand the distinctions between Board and staff roles, and refrain from performing management functions that are the responsibility of the superintendent and staff.” Board Policy 9005.7 also addresses this topic in the same manner. Additionally, the Board approved and has implemented Board Policy 9100 effective 9/16/15 that mandates a rotating Board presidency to ensure that one single individual does not hold the presidency of the Board indefinitely. This policy requires that a new Board Clerk be elected each year and after serving for one year in this capacity, the Board Clerk will replace the outgoing president who has served in this capacity for no more than one year. The intent of the Board in approving this policy was that no individual becomes so accustomed to the Board presidency that he or she becomes involved with District decisions that may overstep the Board President authority. The current guidance related to involvement of the Board with District decisions, and the additional control of a rotating presidency, appear appropriate; however, additional controls can be implemented in order to strengthen the Board members understanding of the distinctions between Board and staff roles. See TC4-5 recommendation for this area.

**Interactions with District Employees and Vendors:**

The Governance Handbook, while it addresses interactions with District staff, it does not address interaction of Board members with District vendors. The Governance Handbook instructs Board members on the process to follow for information requests or requests for staff support. Namely, these requests are to be made to the Superintendent, and the Handbook further describes that the requests should be relevant to the work of the Board and the current work in progress.

While the Handbook is silent about Board member interactions with Vendors, the Handbook states that Board trustees are to “understand the distinctions between Board and staff roles, and refrain from performing management functions that are the responsibility of the

superintendent and staff.” Board Policy 9005.7 also addresses this topic in the same manner. However, the policy does not specifically mention what type of interaction with vendors, if any, is or is not appropriate. Improvements can be made in this area.

**Proposing Amendments to Vendor Contracts:**

The Governance Handbook does not address proposing amendments to vendor contracts by Board members. Likewise, the Board policy does not address this area, as this area is very specific and refers exclusively to proposing amendments to vendor contracts.

The District has hired a Director of Contract Administration, who is working on improving processes and procedures related to contracting with vendors, and has implemented a stricter contract review process that includes drafting administrative regulations and procedures. The vendor contracting process was reviewed under TC (8).

**New Score**

Medium

**Recommendations**

- TC4-1. Include in the Governance Handbook examples of what would constitute the performance of a management function to help clarify the significance of the statement that Board members refrain from performing management functions. For example, include language to the effect that directing or attempting to direct the work of District vendors is not appropriate conduct for a Board Member. In addition, the Board should consider establishing a policy that restricts the frequency with which Board members may visit District offices or school facilities.
- TC4-2. Require that the Board members attend the Brown Act training workshop when attending the CSBA training or provide this training to Board members in-house.
- TC4-3. Include a conflict of interest section in the Governance Handbook that specifically defines the concept of conflict of interest, identifies restrictions placed on Board members related to conflict of interest issues, and provides examples of what a conflict of interest would be. Having this clear guidance stated in the Governance Handbook will ensure that all relevant policy information is in one location that is easy for Board members to reference.
- TC4-4. Develop a Board policy on conflict of interest specific to Board member relationships with District vendors and contractors, and include this policy in the Governance Handbook. The District may consider the inclusion of a statement that reminds Board members that they shall, at all times, avoid the appearance of a conflict of interest. The

statement may also mention that prior to participating in a discussion or vote on a proposed contract, a Board member shall disclose in open session the nature of any relationship that he/she may have with any proposed vendor/contractor, or the agent, employee, or subcontractor of any proposed vendor/contractor that may create an appearance of impropriety. It is important that this disclosure include, but not be limited to, the amount of campaign contributions over a certain amount received by the Board member during the campaign for their current term or contributions received during the current term.

- TC4-5. Provide guidance in the Governance Handbook and Board Policy related to the degree of authority Board members should have related to proposing amendments to vendor contracts. If this would be considered acceptable practice, a formal process should be designed and implemented to avoid vendor contract amendments that may not be in the best interest of the District. This policy should include the Board consulting with legal counsel whenever the Board desires modifications to be made to the terms of a contract.
- TC4-6. Develop and implement a Board member training calendar that is hosted directly by the District. This training calendar should be designed to ensure that all Board members receive the training at least annually and new Board members receive the training within one month of taking their position. The training should be presented by someone that is experienced with district board governance issues, such as an attorney. The training should cover all of the items included in the Governance Handbook. This would ensure that all Board members are receiving the necessary training and provide Board members with an opportunity to ask questions.

#### **Response by District**

District staff will recommend to the Board of Education's Governance Subcommittee that it include in its work for the 2016/17 year the consideration of the auditor's recommendations.

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

VLS reviewed the District's response and considers the course of action that these recommendations be made to the Board of Education's Governance Subcommittee to be appropriate.

**TC (5) Work Step**

Review and assess the **Master Planning budgeting process** to determine whether appropriate steps have been put into place to adequately budget future school construction/modernization projects. Determine whether detailed budgets are prepared and approved by the Board, are shared with the Board and public where appropriate, and are used to track project performance and results. Perform a test of these internal controls to determine overall effectiveness. Determine whether remaining school projects can be completed with the remaining funding. Determine whether the architect(s) involved in the master planning process have a prior relationship with the District.

**Results of Testing****Master Planning Budgeting Process:**

The District has developed a Facilities Long Range Master Plan with the assistance of Darden Architect (Consultant) that was approved by the Board of Education on 4/27/2016. The District presented an Implementation Plan, based on the Facilities Long Range Master Plan, on 5/25/2016, and approved at the 6/15/2016 Board meeting. The current process taken by the District appears appropriate. See TC5-1 recommendation for this area. Additionally, refer to section TC (2) for TC2-1 and TC2-2 recommendations related to this area.

According to the recommended schedule (on page 8 of the Implementation Plan) there are twelve (12) sites that will have bond project related activities (such as planning design, DSA review and approval, and construction) during the 2016/17 fiscal year of which four (4) sites are considered multi-year projects. According to the Executive Director of Bond Finance, the detailed line-by-line item budget for those sites are not yet prepared.

**Detailed Budgets Presented to and Approved by Board:**

The controls for budgeting practices are tested in TC (6) section.

**Assessment of Remaining Funding:**

According to the Long Range Facilities Master Plan, the District initially identified an estimated \$200,000,000 in funds available for the twenty (21) priority school sites. VLS was provided with supporting documentation that demonstrated how the District arrived at the \$200,000,000 estimated funds available as of February 2016.<sup>30</sup> With the budget increase of \$32,300,000 approved for the Pinole Valley High School Campus project, the District determined that the

<sup>30</sup> The available funds include available cash as of 1/1/2016, projected funds from the Office of Public School Construction, and remaining bond issuances for Measures D & E. It excludes state matching funds. The District then deducted from the available funds the estimated costs to complete various projects already in progress (including Pinole Valley High School), the cost of future bond issuances, and bond program overhead costs.

funds available were reduced to approximately \$164,700,000.<sup>31</sup> According to page 5 of the Implementation Plan, the funds of \$164,700,000 are not immediately available and are subject to the proposed bond issuances in 2018 and 2020. The project costs for the priority school sites are estimated at \$181,800,000; thereby creating a gap of approximately \$17,100,000. The District listed on page 6 of the Implementation Plan several solutions on how to address the gap (obtain state funding, change critical need expenditures, additional savings from revising educational specification/material standards, and change in escalation).

The available funding for future school construction projects is based on estimates; therefore, the District will be required to continually assess available funds as it moves forward with the approved Facilities Master Plan and Implementation Plan. See TC5-2 recommendation for this area.

**Master Planning Architects:**

Based on interviews conducted and a review of the District's Bond Fund general ledger, the architect involved in the master planning process does not appear to have a prior relationship with the District. According to Tim Haley, Master Planning Project manager for Darden Architects, neither he nor his firm have performed architectural services for the District in the past. VLS reviewed the Bond Fund general ledger and did not identify any payments to Darden Architects or Mr. Haley.

**New Score**

Medium

**Recommendations**

- TC5-1. Establish an annual, internal review of the Long Range Facilities Master Plan and make necessary revisions, based on internal and/or external factors that will affect the Master Plan, subject to the Board of Education approval. This annual review should take place to ensure that the District and Board are considering and addressing whether revisions are needed due to available funding, changes in critical needs, etc.
- TC5-2. Develop and implement written procedures related to the development of detailed, multi-year, line-item budgets for the twenty-one (21) priority schools based on the Implementation Plan. The written procedures should include the process and timing for when detailed budgets will be prepared, approved, and entered into Munis. The written procedures should also include the following:

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<sup>31</sup> \$200,000,000 less \$32,300,000 for Pinole Valley High School New Campus project equals \$167,700,000. The difference of \$3,000,000 appears to be the projected OPSC revenue.

- a. The detailed, line-item budgets for projects should be entered in Munis as the beginning of each fiscal year so that project budgets with a projected construction period of more than one fiscal year can be tracked. Additionally, if estimated budgets are entered at the beginning of each fiscal year, there should be fewer budget revisions and transfers of funds throughout the fiscal year.
- b. The detailed, line-item budgets should be reviewed on a regular basis by management. The review should determine the accuracy and appropriateness of expenditures and if the remaining line-item budgets are sufficient to fund contract proposals and other projected costs related to the projects for the fiscal year.

See TC (6) section for recommendations related to budgeting practices separate from the master planning process.

**Response by District**

The District agrees with the recommendations TC5-1 and TC5-2 to annually review the Master Plan with the Board of Education Facilities Sub-Committee. The District agrees to use the recommendations in TC14-4 in establishing budgets for the 21 priority schools. The District plans to present budget revisions regarding the new master plan projects in September 2016. The District is currently practicing the procedures outlined in TC5-2 a. and TC5-2 b. for the Pinole Valley High School Project. Line item budget have been entered and multi-year amounts have been established. The District has begun to assemble a binder of procedures and processes per this recommendation.

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

VLS reviewed the District's response and agrees that the response and planned action are appropriate to address the recommendation(s) made by VLS.

**TC (6) Work Step**

Review and assess the adequacy of the internal controls related to budgeting practices. Ensure that the policies, procedures and overall accounting for budgeting practices are adequate and complete. Ensure that the process for detailed line-by-line budget preparation and reporting to the Board and relevant committee(s) is accurate, thorough, and comprehensive. Perform a test of these internal controls to assess overall effectiveness.

**Results of Testing****Internal Controls Related to Budgeting:**

VLS identified deficiencies in the internal controls related to budgeting practices in the following areas:

- The budget verification for a contract proposal is done after the Board of Education (Board) approval; thereby, the obligation has been made prior to the determination if there is adequate budget in Munis. Additionally, budgets in Munis are revised to match the contract cost and entered after the contract has been approved by the Board. See recommendations TC6-1 and TC6-2 for recommendations related to this area.
- VLS noted, based on a review of the forms provided (such as *Proposal Approval Checklist Form* and *Munis Contract & Purchase Order Form*), that there was no documentation to show that the budget verification had been performed and no indication that the budget string had been reviewed by the Principal Accountant for accuracy.<sup>32</sup> See recommendations TC6-3, TC6-4, and TC6-5 for recommendations related to this area.
- VLS noted through interviews that budget reports from Munis are not distributed for review by management on a consistent and regular basis. Reports prepared by the Executive Director of Bond Finance are not reviewed by the Associate Superintendent of Business. See recommendation TC6-1.c for recommendation related to this area.

**Policies and Procedures for Budgeting:**

VLS identified deficiencies in the procedures established for budgeting practices. Written procedures provided are instructions related to entering data into Munis and not related to budgeting practices to address the areas including, but not limited to, the following:

- **Budget Amendments and Transfers:** A *Project Budget Amendment-Transfer Form* is completed and entered into Munis when there are insufficient funds for an approved contract. This form is used for transfers between major object codes or for budget

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<sup>32</sup> A budget string is the series of numbers indicating the fund, area, location, object code and in essence any identifying number characterizing the allocation of the expenditure.

amendments that decrease/increase the ending fund balance. The form is approved by the Executive Director of Bond Finance; however, there is no written resolution prepared for approval by the Board as required by Education Code Sections 42600-42603.<sup>33</sup> See recommendations TC6-1 and TC6-6 for recommendations related to this area.

- **Budget Reports:** Board Policy 3100 addresses the Governing Board’s responsibility for adopting a sound budget for each fiscal year. The policy also includes a statement that the approval of Interim Reports by the Board includes the action to adopt an amended budget in keeping with the financial projection in place for those periods. Although the Interim Reports are approved by the Board, the last reporting period is only through January 31 of each fiscal year. The District consistently makes budget amendments and transfers through the remainder of the fiscal year; however, there is no procedure in place for the Board to approve budget amendments and transfers that occur between Interim Reporting and thereafter. Therefore, those additional budget amendments and transfers have not been approved by the Board. See recommendations TC6-6 and TC6-8 for recommendations related to this area.

In the past, the District used Expenditure Authorization Worksheets (EAWs) to obtain Board approval of increase(s) or decrease(s) to a Bond project budget. These reports presented to the Board the current approved budget for each bond program project. The historical use of these reports is discussed in detail in the FI (2) Section. The last EAW presented to the Board was dated November 12, 2014, and there has been no document or report to replace it. See TC6-6 for recommendation for this area. See recommendations TC6-7 and TC6-8 for recommendations related to this area.

- **Multi-Year Project Budgets:** The multi-year function in Munis has been tested by the Principal Accountant; however, its full capabilities remain to be seen. The Bond Finance Department will be entering the multi-year contracts for Pinole Valley High School Campus Project after the Board approves its Adopted Budget for 2016/17. Refer to section TC (14) for TC14-1 and TC14-2 recommendations related to this area.

#### **Detailed Budget Preparation:**

Although the District prepared a detailed line-by-line budget for the Pinole Valley High School Campus project for 2016/17, VLS noted that there are no written procedures related to

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<sup>33</sup> According to Education Code Sections 42600-42603, transfers may be made from the designated fund balance or the unappropriated fund balance to any expenditure classifications (such as Certificated Salaries, Classified Salaries, Employee Benefits, Books and Supplies, Services, Capital Outlay, etc.) at any time by written resolution of the Board of Education.

budgeting practices that will be performed by staff in managing those budgets.<sup>34</sup> The written procedures provided to VLS are instructions related to entering data into Munis. See recommendations TC6-1 and TC6-6 for recommendations related to this area.

The SACS report for the 2016/17 budget for the Building Fund was reviewed and appears to include all of the necessary line items.

### **New Score**

High

### **Recommendations**

TC6-1. Develop and implement written procedures related to budgeting practices that include, but are not limited to, budget preparation, tracking, reporting, and approval processes.

The written procedures should:

- a. Identify all steps in the budgeting process, from the development of a budget for approved projects to the final reporting of budget to actual costs at project completion.
- b. Identify all forms to be used in the budgeting process, the purpose and workflow of the forms, and the proper review and approval signatures required on the forms.
- c. Identify all schedules and reports used in the budgeting process that will allow staff to adequately track, monitor, and report on project budgets. Identify who is responsible for creating, updating, reviewing, and approving each schedule and report.
- d. Identify how and when to perform certain steps, such as, the budget verification process and the formulation of the budget string.
- e. Incorporate appropriate sections in the written procedures to address all recommendations included below.

TC6-2. Require that the budget verification performed in Munis by the Sr. Facilities Planning Specialist be performed **prior** to the approval of contracts and change orders by the

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<sup>34</sup> The Pinole Valley High School construction project does have a detailed line-by-line budget. This construction project is not part of the Master Planning as discussed in TC (5) section. Within Master Planning discussion in TC (5), the statement is made that a detailed line-by-line item budget does not exist for the sites that are part of the Master Planning process.

Board. This will ensure that there is sufficient budget for a contract prior to Board approval. If funds must be transferred to increase the available budget, notify the Board of this transfer or budget revision at the time that the contract is approved for better transparency to the Board and public related to the impact of contract approvals. Additionally, as recommended in TC6-6, ensure that the appropriate Board action is taken to approve budget amendments/transfers.<sup>35</sup> The recommended timing for these actions is as follows:

- a. Transfer between major object codes (no impact on ending fund balance) – at least monthly to satisfy the requirements of California Education Code.
- b. Transfer of fund balance (decrease/increase in ending fund balance) – as a separate agenda item at the same Board meeting at which the contract is presented for approval/ratification.

TC6-3. Require the Sr. Facilities Planning Specialist to initial and date the *Munis Contract & Purchase Order Form* to document that the budget verification function has been performed. This will provide the proper audit trail to document that the budget verification step took place.

TC6-4. Require the Principal Accountant to initial and date the *Munis Contract & Purchase Order Form* to document that the budget string was reviewed for accuracy. In addition, the Principal Accountant must verify that the affected general ledger account string is appropriate and accurate for the specific contract based on the assigned budget string. This will ensure that there is proper review and oversight in this step and provide the proper audit trail documentation.

TC6-5. Require that the Principal Accountant continue the review of the *Project Budget Amendment/Transfer Form* to verify that the budget amount(s) is accurate and project string(s) is appropriate. Add a section to the form for the Principal Accountant's initials and date to document that this review occurred. Additionally, add a section where the funding source and total amount of the amendment/transfer(s) can be documented.

TC6-6. Develop a form that can be used by the Bond Finance Department to reflect the budget amendment/transfer transactions entered into Munis from the *Project Budget Amendment/Transfer Form(s)*. The form can be used as the District's written resolution for budget amendments and transfers between expenditure classifications. Take the new form to the Board as budget revisions for ratification and certification at its

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<sup>35</sup> Regardless of whether the appropriate process was followed previously to report to the Board any budget amendments/transfers, the District should ensure that moving forward (starting with fiscal year 2016/17), this process is followed.

regularly scheduled meetings on a timely and consistent basis (at least monthly). Maintain a log of budget revisions approved by the Board with totals for each expenditure classification. This log can be used in the preparation of Interim Reports as the Board Approved Operating Budget. This log can also be used to determine the ending fund balance for the Building Fund whenever there is an amendment (increase or decrease) to the project budget at any given time period.

TC6-7. Develop and implement procedures related to the preparation and submission of Bond project budget reports that provide project budget status to the Board. District staff must decide whether it will create a new project budget report or continue the use of the EAW. However, the project budget status report should be a separate item from the approval of any budget increase or decrease to a project.

TC6-8. Develop and implement procedures related to the preparation and submission of budget increase(s) or decrease(s) to a Bond project for Board approval. The submission must be separate from the approval of contracts and change orders. In addition, it must be prepared and submitted on a consistent and regular basis.

TC6-9. Prepare and maintain a worksheet for each project that will provide budget history and applicable expenditures for the duration of the project. This worksheet can be used to assist in the financial decision making related to the project. This worksheet can also be used to prepare the project budget status to the Board. Furthermore, it is recommended that the District include in the worksheet a reconciliation between the project budgets reported in the SACS reports (prepared on a fiscal year basis) and the project budget status report (prepared based on the duration of the project).

The preceding recommendations would strengthen the District's internal controls related to its budgeting practices. The staff members would have the process in writing that they could refer to when necessary, help temporary employees understand and know the process, and help with the consistency of workflow when there is staff turnover. In addition, it would provide transparency to the Board and the public when there are changes to the budget by major object code as well as how the changes will affect the ending fund balance(s). This practice will foster transparency and accountability about its budgeting practices; thereby promoting public trust. It would also comply with WCCUSD Board Policy 3100 and Education Code Sections 42600-42603.

### **Response by District**

The District agrees with all the recommendations concerning TC (6) and already has a written process for budget development and adoption. In February of the fiscal year the District evaluates its staffing needs and in March-April reviews the status of current and future projects with the Chief Engineering Officer to develop project budgets. The District will refine the budget development and adoption for Bond Program revenues and expenses unique to the program.

The District has reported budget and actuals on completed projects to the Board and initiated project budget revisions to the Board. Staff presented this project information on Sylvester Greenwood/LPS and Coronado Elementary School in May 2016. On June 15, 2016, the Governing Board approved project budget revisions for Sylvester Greenwood/LPS, Pinole Valley High School and the District Technology Plan. The District plans to present project information for Korematsu, El Cerrito High School and De Anza High School in the near future (by October 2016) and budget revisions if necessary. The District has reported budget information, including annual project budgets to the Facilities Sub-Committee of the Board.

The District, in practice, has met the recommendations of TC6-1, TC6-5, TC6-9; however, we need to document the recommended procedures and processes. With regard to TC6-2 the District will start to report Budget Increase/Decrease and Budget transfers to the Board by major object code. This practice will start with the first budget adjustment of 2016-17. The Executive Director of Business Services will ensure the processes and procedures are documented and will work with others to train staff as needed. The District has begun to assemble a binder of procedures and processes per this recommendation.

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

VLS has reviewed the District's response and agrees that the response and planned action are appropriate to address the recommendation(s) made by VLS. However, VLS has not seen nor reviewed the written process for budget development related to the District's evaluation of staffing needs and review of the status of current and future projects to develop project budgets. Additionally, VLS has not seen a binder of procedures and processes that the District has assembled.

**TC (7) Work Step**

Review and assess the current process to determine if there are adequate internal controls in place which allow for the District to perform the appropriate "Vendor Due Diligence" prior to contracting with vendor(s). Perform a test of these internal controls to determine overall effectiveness.

**Results of Testing**

The results included here relate only to the vendor due diligence performed as it pertains to the vetting of vendors retained for construction and professional services contracts. The results of testing for contracting and bidding are included in TC (8) and TC (9), respectively.

The Director of Contract Administration became a full-time employee with the District beginning in July 2015.<sup>36</sup> Since then, processes and procedures have been documented related to the review and approval of construction contracts under \$45,000, construction contracts over \$45,000 (informal/formal bidding requirements), and professional services contracts. The procedures require an informal evaluation of vendors, including registration and license verification. A web-based plan room is used to communicate project specific information to potential vendors, including specific requirements that vendors must satisfy in order to be considered for projects. The District has conducted trainings for local-based companies to inform them of the requirements and steps to follow to be eligible to work on District projects.

**Construction Contracts:<sup>37</sup>**

The District adopted procedures in October 2015 related to the vetting of vendors for construction contracts. These procedures require verification of vendor registration with the Department of Industrial Relations (DIR) and confirmation of the vendor's license with the Contractors State License Board (CSLB). Prequalification Evaluation Forms document the District's review of contractor qualifications, which includes reference checks for previous projects performed. Construction contracts exceeding \$175,000 require a formal bid process, which requires a thorough review of bid packages received. Bid information is summarized on the Bid Checklist, which documents vendor qualification information such as contractor license

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<sup>36</sup> This is a new job description approved by the Board on 5/20/2015 created to meet the operational and business needs of the District's maintenance, operations, construction, and facilities improvement program.

<sup>37</sup> The District has 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. Under CUPCAA, the District can negotiate construction contracts of \$45,000 and under and complete an informal bid process for construction contracts between \$45,000 and \$175,000.

verification. VLS selected a sample of construction contracts approved in fiscal year 2015/16 to determine whether the adopted procedures were followed.<sup>38</sup>

1. VLS tested five construction contracts under \$45,000. The following results were noted:
  - a. District procedures indicate that, prior to contracting with a vendor, management will document their evaluation of proposals via the Prequalification Evaluation Form. Two of the five construction contracts tested did not include this documentation. See TC7-1 recommendation for this area.
  - b. A Proposal Approval Checklist is used to document additional vendor vetting for specified contracts. All of the contracts tested did not include a Proposal Approval Checklist. See TC7-1 recommendation for this area.
2. VLS tested two construction contracts over \$175,000, which required formal bidding. The following results were noted:
  - a. District procedures require that verification of contractor's license information should occur. Although verification of contractor licenses was completed for the contracts tested, documentation that this occurred was not maintained. See TC7-2 recommendation for this area.

**Professional Services Contracts:**

The District adopted procedures in October 2015 related to the vetting of vendors for professional services contracts. Procedures for vendor selection include notice that proposals will be received via the District plan room (the link is available via the District website). Proposals received are reviewed by key bond program staff (Bond Program Manager, District Project Manager, Director of Contracts Administration, and Engineering Officer).<sup>39</sup> If accepted, an informal evaluation process is performed to ensure completeness. The informal evaluation includes the following key information: scope of project, dates expected for project, deliverables, expected staffing and cost information. Complete proposals will then be prepared for approval via the Proposal Approval Checklist. See TC7-4 recommendation for this area.

District procedures related to professional services contracts indicate that management review of proposals should occur and be documented via the Proposal Approval Checklist prior to ratification by the Board. For each of the thirteen professional services contracts tested for the 2015/16 fiscal year, a Proposal Approval Checklist form was not completed. According to the

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<sup>38</sup> The testing period for both construction and professional service contracts was for contracts entered into between July 2015 and February 2016.

<sup>39</sup> SGI has historically served as the District's bond program manager; however, the District has moved many of the program management functions in-house.

Contracts Administrator, the review and approvals were performed informally, and completion of the Proposal Approval Checklist began in April 2016. See TC7-3 recommendation for this area.

**All Contract Types:**

Although the District has procedures in place related to the due diligence of potential vendors, there is no documented mechanism in place to address potential conflicts of interest as part of the vendor vetting process. See TC7-5 recommendation for this area.

**New Score**

Medium

**Recommendations**

- TC7-1. Ensure full implementation of the procedures related to construction contracts (as revised October 2015), including, but not limited to, completion of the Prequalification Evaluation Form and Proposal Approval Checklist.
- TC7-2. Ensure that the review of contractor’s license information is documented and maintained for all construction contracts to demonstrate completion of this critical compliance step.
- TC7-3. Ensure full implementation of professional services contracting procedures (as revised October 2015), including, but not limited to, completion of management review prior to approval by the Board (where applicable), documentation indicating that this management review occurred, and completion of the Proposal Approval Checklist.
- TC7-4. Require formal documentation of the informal vendor proposal review and selection process for professional services contracts. Formal documents that should be retained include the rating of firms based on proposal documents received, the selection of firms for interviews and results of those interviews, the completion of background checks, and all other documentation relevant to justify the vendor selected.
- TC7-5. Incorporate a formal, documented process to perform a conflict of interest check for all vendors submitting proposals to the District for the bond program. In this process, the District should require vendors to disclose to the District as part of the proposal process the following information:
- a. Any potential familial relationships between the vendor or its employees and District Board members or employees,
  - b. Any potential financial interests between the vendor and District Board members or employees, and

- c. Contributions made to and/or gifts and entertainment purchased on behalf of District employees, Board members, or individuals/entities related to or affiliated with Board members or employees.

The disclosures made by the potential vendors should be reviewed by the District and compared to the District's conflict of interest policy. If potential conflicts are identified, the District must evaluate and determine whether (1) the potential conflict prohibits the vendor from conducting business with the District, or (2) if certain decision makers within the District must abstain or refrain from making decisions involving the vendor. If appropriate, the District should seek guidance from legal counsel.

### **Response by District**

- TC7-1. The District continues to implement the proposal approval checklist and keeps an electronic and hard copy on file.
- TC7-2. The District keeps a printed copy of license verification from the California State License Board website on file.
- TC7-3. The District transitioned from an older professional services coversheet to the Proposal Approval Checklist in April 2016 to create a uniform process for all proposals. The District continues to improve and implement the Proposal Approval Checklist for all contracts.
- TC7-4. The District uses the Request for Qualification and Request for Proposal process to formally document vendor proposal review and selection.
- TC7-5: The District currently mandates the use of the Non-Collusion Affidavit for construction firms providing a proposal to the District. The District's standard Post Bid Meeting questions include "Is your company or any of its employees affiliated with the other companies that bid this project?" District contracts include the following language: "Vendor represents that the vendor has no existing interest and will not acquire interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by the vendor." Furthermore, District contracts also include a covenant against contingent fees clause:

"Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other

consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the fee or consideration or to recover the full amount of such fee, commission, percentage fee, gift, or contingency.”

Finally, the District requires a written statement of conflict of interest in the standard RFQ/P forms:

“1.1.1. Conflicts of Interest. If applicable, provide a statement of any recent, current or anticipated contractual obligations that relate in any way to similar work, the Project, or the District that may have a potential conflict with the Firm’s ability to provide the Services described herein to the District. Firms cannot submit, propose, bid, contract, subcontract, consult, or have any other economic interests in the Project to which the Firm may provide Services. The Firm selected to provide the Services and any subsidiary, parent, holding company or affiliate of the selected Firm, may not perform any construction work or submit a bid for the Project.”

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

VLS reviewed the District’s responses for TC7-1 and TC7-3 and agrees that the response and planned action is appropriate to address the recommendations made by VLS. Additional information related to the District response for select recommendations follows:

- TC7-2. Per discussion with the Director of Contracts Administration, the District began printing and keeping a copy of the license verification form from the California State License Board with the project files following VLS’s request to review the documents during controls testing. VLS agrees that the action taken is appropriate to address the recommendations made by VLS
- TC7-4. Procedures for professional services contracts indicate that an informal review is performed. Per the Director of Contracts Administration, there is no formal threshold limit identifying the projects for which formal documentation of the proposal review and selection process is retained.
- TC7-5. The specific elements identified in the recommendation to perform a conflict of interest check, in conjunction with the information identified by the District in their response, would strengthen vendor due diligence procedures.

**TC (8) Work Step**

Review and assess the internal controls related to the overall administration of Bond and Vendor contracts to ensure these contracts:

- Are thoroughly evaluated, appropriate and complete
- Are now being memorialized and all administrative/regulatory guidelines and procedures are being followed
- Are now being submitted to the Board for approval and are within the approved budget

Ensure internal controls are in place, which address communications with the Board related to budgeting and vendor contracting and are thorough and complete. Perform a test of these internal controls to determine overall effectiveness.

**Results of Testing**

The results included here relate only to the approval, execution, and administration of vendor contracts. The results of testing for vendor due diligence and bidding are included in TC (7) and TC (9), respectively.

The Director of Contract Administration became a full-time employee with the District beginning in July 2015. Since then, processes and procedures have been documented that provide a step by step process of the requirements for contract approval. In addition, certain forms have been created to document the steps that occur as part of the contract approval process. The forms and their purpose are as follows:

- **Proposal Approval Checklist:** Serves as the proposal cover sheet and documents the review and approval of a proposal. The form identifies key project information related to the contract, including project information, contract number, funding source, vendor name, length of project, cost, and delegated authority approval, and serves as the budget review document. This form is used for construction contracts under \$45,000 and all professional services contracts.<sup>40</sup>
- **Notice of Award Checklist:** This form is completed once a proposal is approved (whether by delegated authority or by the Board). It documents the contract amount, estimated project dates, and approval or ratification by the Board. This form is required of all construction contracts over \$5,000.

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<sup>40</sup> The District has 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. Under CUPCAA, the District can negotiate construction contracts if \$45,000 and under and complete an informal bid process for construction contracts between \$45,000 and \$175,000.

- **Agreement Checklist:** Documents the receipt and review of necessary documents for vendor contracts, such as insurance certificates, contracting certificates, and criminal background check/fingerprinting results. This form is required for all construction contracts over \$5,000.
- **Notice to Proceed Checklist:** Documents confirmation of the project duration based on contract documents and receipt of the required documents prior to the Notice to Proceed being issued. This form is required of all contracts (construction and professional services) over \$5,000.

#### **Construction Contracts:**<sup>41</sup>

The District adopted procedures in October 2015 related to the letting of construction contracts. VLS selected a sample of construction contracts approved in fiscal year 2015/16 to determine whether the adopted procedures were followed. VLS selected seven construction contracts for testing (five under \$45,000, which can be negotiated, and two requiring formal bidding). The following results were noted:

- The five contracts under \$45,000 (which are negotiated contracts) did not include a Proposal Approval Checklist. According to the Director of Contract Administration, the approvals were performed informally, and completion of the Proposal Approval Checklist began in April 2016. Because the budget check is supposed to occur when this form is completed, it is not known if or when the budget check was performed. See TC8-1 recommendation for this area.
- District staff indicated that the Proposal Approval Checklist is used as the budget review document; however, there is no line item or section on the checklist to document that the budget review was performed.<sup>42</sup> See TC8-2 recommendation for this area.
- All contracts tested were over \$5,000 and required completion of a Notice to Proceed Checklist. Two contracts did not have a completed Notice to Proceed Checklist after the contract was signed. See TC8-6 recommendation for this area.
- The Notice to Proceed Checklist does not require District staff to document that the executed Notice to Proceed and contract was sent to the vendor. See TC8-6 recommendation for this area.

<sup>41</sup> The District has 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. Under CUPCAA, the District can negotiate construction contracts if \$45,000 and under and complete an informal bid process for construction contracts between \$45,000 and \$175,000.

<sup>42</sup> For construction contracts greater than \$45,000, budget verification occurs during the bid process.

- The five contracts under \$45,000 were not entered into the Primavera software. According to the Master Scheduler, who is responsible for entering data into Primavera, he does not receive a copy of the contract once approved to enter it into Primavera.<sup>43</sup> See the TC (15) Section for additional discussion regarding the process for entering data in Primavera.
- No discrepancies were noted with respect to contracts requiring formal bidding.

A total of nine contracts were originally selected; however two of the contracts in the sample were dated late September 2015. It was communicated to VLS that the documented procedures were revised effective October 2015; therefore, exceptions noted for these contracts were not included in the results above. Additionally, the sample size for this area was small as bond program activity has slowed and there were not many new construction contracts approved/executed during this time period.

**Professional Services Contracts:**

The District adopted procedures in October 2015 related to the letting of professional services contracts. For the thirteen professional services contracts tested for the 2015-16 fiscal year, the following results were noted:

- The contracts did not have a completed Proposal Approval Checklist form. According to the Director of Contracts Administration, the approvals were performed informally, and completion of the Proposal Approval Checklist began in April 2016. See TC8-1 recommendation for this area.
- Three contracts were not signed by management as of the time of testing. For two of these contracts, management had negotiated the contracts under the delegated signing authority.<sup>44</sup> Per the Director of Contract Administration, the signing of the contract is sometimes delayed when the vendor has not provided necessary documentation (for example, providing evidence of insurance coverage). At such times the contract will not be signed by management until all requirements have been met. For two of these contracts, payments had already been made to the vendors.<sup>45</sup> See TC8-5 recommendation for this area.

<sup>43</sup> The earliest construction contract tested was signed 9/22/2015, and the earliest professional services contract tested was signed 8/12/2015. At the time of testing in May 2016, 206 and 247 days, respectively, had passed since the contract signature dates.

<sup>44</sup> For professional services contracts under \$50,000, delegated authority (Associate Superintendent of Operations and Bond Program) approves the contract and the Board ratifies the contract. Professional service contracts over \$50,000 require Board approval.

<sup>45</sup> One contract was Board approved and the other was negotiated by management under delegated authority.

- None of the contracts tested were entered into the Primavera software. According to the Director of Contract Administration and the Master Scheduler, it takes time for the professional services contracts to be entered into Primavera. The Master Scheduler does not receive a copy of the contract when approved/executed to enter it into Primavera.

**All Contract Types:**

For contracts tested:

- All were noted to have been ratified or approved (based on contract threshold) by the District’s Board of Education.
- All were appropriately assigned a contract number in the MUNIS financial system only after the contract was approved.
- The approval process used (e.g., delegated authority, formal/informal bid) was appropriate based on the contract threshold amounts established.
- Contract amounts were within project budgets.<sup>46</sup>

Based on interviews with the Director of Contract Administration, procedures are in place for vendor approval, bidding approvals and contract administration; however, overall updated policies and manuals are a work in progress and, therefore, could not be fully evaluated. According to the Director of Contract Administration, once proposals are evaluated and a contract is recommended for approval, all of the information is captured in the Board précis. The précis includes all bids received including firm information, bid amounts, and recommendations by evaluating parties (for example, this could be from the Associate Superintendent of Operations and Bond Program, the Facilities Subcommittee, or other/multiple parties if recommendations differ). See TC8-7 and TC8-8 recommendations for this area.

The District is currently working on creating a universal template for contracts. The current contract template was noted to include sections related to contract timing, contract rates, and contract scope. Based on the review performed, there was a Financial Interest Certification document included as part of the agreement templates, however, acknowledgment from the vendor that they have reviewed, understand, and will comply with the District’s conflict of interest policy is also recommended.<sup>47</sup> See TC8-3 and TC8-4 recommendations for this area.

<sup>46</sup> Although all contracts tested were within budget, there is no line item or section on the Proposal Approval Checklist to document that the budget review was performed. See recommendation TC8-2.

<sup>47</sup> Refer to recommendation TC8-4.

**New Score**

Medium

**Recommendations**

See recommendation TC15-2 in the TC (15) section related to ensuring that contract information is entered into Primavera in a timely manner.

TC8-1. Ensure the Proposal Approval Checklist is fully implemented and includes the final approval signature by the delegated authority.

TC8-2. Add a budget review section on the Proposal Approval Checklist to document that a review of the project budget was performed by appropriate personnel as part of the proposal review and approval process. The signature should either (1) confirm that the contract will not result in the project exceeding budgeted amounts or (2) identify when the budget is not sufficient so that appropriate budget adjustment steps can be taken.

TC8-3. Require that District legal counsel perform a regular review of contract templates to ensure that contracts include all necessary sections and language to adequately protect the District. Significant deviations from the contract template should be forwarded to the District's legal counsel for review.

TC8-4. Require that vendors comply with District conflict of interest policies and disclose to the District, within an established time frame, when potential conflicts of interest arise. Update vendor contract templates to include language related to the District conflict of interest policies and what actions by the vendors are prohibited and reportable. Require that vendors sign acknowledgment forms indicating that they will comply with the District's conflict of interest policy and that there are no known relationships (or financial transactions) that would create a conflict.

TC8-5. Update District policies to prohibit vendors from beginning work and receiving payment until all necessary documents have been submitted and the District executes the contract (except for work that qualifies as an emergency under California Public Contract Code). This will help protect the District and ensure that only appropriate vendor disbursements are made. The Payment Approval Form, which documents invoice approvals, should require that an executed contract is in place prior to payments being made.<sup>48</sup>

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<sup>48</sup> This is the form used to approve payments to vendors. Refer to TC (11) Section for information pertaining to this form.

- TC8-6. Add a section to the Notice to Proceed Checklist that documents the date the executed Notice to Proceed and executed contract was sent to the contractor.
- TC8-7. Ensure that all recommendations included above are incorporated into the written policies and procedures. This will ensure that District staff has clear guidelines to follow, will assist in training during turnover, and will provide consistency in processes.
- TC8-8. Once the policies and procedures manual related to vendor contracting is complete and fully implemented, a review should be performed by the District's internal auditor (or an independent third party) to ensure that all procedures are being followed.

**Response by District**

- TC8-1. The District will update the Proposal Approval Checklist form to include the signature of the Associate Superintendent of Operations.
- TC8-2. The District will update the Proposal Approval Checklist form to include a budget review and action approval section as recommended.
- TC8-3. Legal counsel provides annual legislative updates to all contract forms. Legal also provides necessary revisions and updates as requested during the course of the year.
- TC8-4. The District will provide the recommendation to legal counsel to make the necessary revisions to our standard contract templates for disclosure of conflict of interest policies. Currently, the District requires a Non-Collusion Affidavit with Notary with all construction contracts greater than \$1,000.
- TC8-5. The District's implementation of a new process requiring that executed contracts are uploaded into the financial system prior to releasing the contract through workflow approval will prevent vendors from receiving payment until all necessary documents have been submitted and the District executes the contract.
- TC8-6. The District will update the Notice to Proceed Checklist to document the date the executed Notice to Proceed and Contract are sent to the contractor.
- TC8-7. The District will update the written procedure for construction contract review and approval.
- TC8-8. The District agrees.

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

VLS reviewed the District's response and agrees that the response and planned action is appropriate to address the recommendations made by VLS. Additional information related to the District response for select recommendation follows:

TC8-5. Per discussion with the Director of Contracts, the implementation of the new process went into full effect March 2016 after the addition of personnel to the department allowed for segregation of duties with respect to workflow processes in Munis.

**TC (9) Work Step**

Review and assess the internal controls involving the District bond program bidding process to ensure it is in compliance with administrative/educational policies and procedures. Perform a test of these internal controls to assess overall effectiveness.

**Results of Testing**

The results included here relate only to the informal and formal bidding process for construction contracts. The results of testing for vendor due diligence and vendor contracting are included in TC (7) and TC (8), respectively.<sup>49</sup> For the period tested (July 2015 to February 2016), bond program activity with respect to new projects was minimal. Therefore, the population of construction contracts subject to bidding requirements was small; consequently, only a small sample was tested.

The District is required to publicize a notification of informal (trade journal posting) and formal bidding (newspaper advertisements or trade journal postings) of construction contracts over \$45,000 and \$175,000, respectively. Evidence of proof of publication as part of the notification of bid was not located and therefore could not be provided for the two contracts tested. See TC9-1 recommendation for this area.

Testing of contracts requiring Board approval (construction contracts requiring formal bidding and professional services over \$50,000)<sup>50</sup> and ratification (construction contracts up to \$45,000 and professional services contracts up to \$50,000) indicates that the Board précis information agreed to the documentation obtained in the bidding and proposal process, and that the Board appropriately approved or ratified the contract award. For contracts requiring formal bidding, the recommendation to the Board and approval by the Board was for the lowest, responsive, responsible bidder. A notice of award checklist was completed, as required.

**New Score**

Low

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<sup>49</sup> The District has 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. Under CUPCAA, the District can negotiate construction contracts of \$45,000 and under and complete an informal bid process for construction contracts between \$45,000 and \$175,000.

<sup>50</sup> There were no proposals approved meeting the threshold for informal bidding requirements for the period tested.

**Recommendation**

TC9-1. Revise procedures to require that proof of publication for invitation(s) to bid is retained with the bidding documentation to ensure the complete bid package is kept intact.

**Response by District**

TC9-1. The District has transitioned from program-wide storage of all proof of publication affidavits to project-specific storage to provide easy access to files. The date of publication is published on the bid schedule.

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

VLS reviewed the District's response and agrees that the action taken is appropriate to address the recommendation made by VLS. According to the Director of Contracts, the project-specific storage was implemented following VLS's test of controls. Storage of proof of publication affidavits in a project-specific structure to minimize risk of missing/lost documentation is deemed reasonable; however, because this change was implemented after VLS's test of controls, VLS has not verified that this new process has been implemented.

**TC (10) Work Step**

Review and assess internal controls to ensure all reports generated and provided by SGI to the Board, District, CBOC and/or Facilities Subcommittee are in line with contract specifications. Perform a test of these internal controls to assess overall effectiveness.

**Results of Testing**

VLS reviewed the contract with SGI signed in October 2013. At that time, SGI was responsible for program and construction management services for the District's bond program. Since approximately late 2014, the District's bond program has been downsized due to reduced available funds and the failure of the District's last bond measure. SGI's role within the bond program has been reduced as the District has moved program management functions, including financial reporting, in-house. Additionally, the District has selected an alternate construction management firm for the Pinole Valley High School (PVHS) project, which is the primary, large construction project in progress. It was communicated to VLS by District staff that SGI's role is now limited to construction management for completion of several open projects.<sup>51</sup> The District's 6/30/2016 Project Status Reports, which provide the status of open projects, indicate SGI is still performing construction management services for the following projects:

- Nystrom Elementary – Classroom Building Rehabilitation with estimated completion date of 10/15/2016 (86% Complete)
- Richmond High School – Fire & Intrusion Alarm Upgrades with estimated completion date of 10/1/2016 (48% Complete)
- Korematsu Middle School – New Campus with Project Completion Date of 3/28/2016 (100% Complete)<sup>52</sup>
- El Cerrito High School – Stadium with project completion date of 5/31/2016 (100% Complete)<sup>53</sup>

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<sup>51</sup> There were three SGI staff that were assisting the Director of Contract Administration with contract management functions; however, they were not involved in any financial reporting functions. The three SGI staff ceased working with the District as of 8/31/2016. The construction Project Status Report is one of the reports that SGI prepared and presents to the Board. These reports are related to active construction projects.

<sup>52</sup> The project is listed as complete; however, the status report indicates there were minor fixes/replacements made in the current period. Anticipated progress to be made includes project close-out and final negotiation of change orders.

<sup>53</sup> The project is listed as complete. The status report indicates that the current period progress included completion of the punch-list and preparation of the Notice of Completion. Anticipated progress to be made includes project close-out and negotiation of Time Impact Analysis.

SGI contract responsibilities for the construction phase, project completion, final documents and warranty are enumerated in “Exhibit ‘A’ Responsibilities and Services of Construction Manager” of the 2013 contract. Each project has a District Manager to whom SGI staff report. District management oversight should provide sufficient direction of SGI staff on these projects.

The sharply reduced scope of SGI involvement in program management and related reporting responsibilities eliminates the District’s risk exposure to potential non-performance of SGI reporting responsibilities in these areas. Because the District has taken responsibility for financial reporting previously performed by SGI, it has not found it necessary to establish controls to enforce requirements related to reporting no longer performed by SGI.

**New Score**

Low

**Recommendation**

There are no recommendations as a result of the work performed.

**Response by District**

No District response as there were no recommendations made for TC (10)

**VLS’s Assessment of Response by District**

No assessment by VLS of response by District as there were no recommendations made for TC (10)

**TC (11) Work Step**

Review and assess the internal controls over the District approval of invoices submitted by SGI and other vendors to ensure that controls are adequate, thorough, transparent and financially sound. Perform a test of these controls to assess overall effectiveness.

**Results of Testing****Vendor Invoice Review & Approval:**

As of October 2015, the District updated the process for review and approval of vendor invoices (specific to the bond program). This documented process includes the following:

- Invoices received at the Facilities Operations Center (FOC) are date stamped, logged in a tracking spreadsheet, and scanned (to retain an electronic copy). The date stamp starts the 30-day period for invoice processing.
- Invoices are reviewed to ensure that they contain appropriate criteria for processing. Criteria include (but are not limited to): vendor name and address, site(s) to which the invoice pertains, corresponding contract numbers (an executed contract is on file), and a breakdown of amounts billed by site.
  - The absence of stated criteria will result in invoice rejections (see the section “Timeliness of Vendor Payments” included below for additional information regarding the implementation of the invoice rejection letter). Letters are prepared by District staff notifying the vendor that an invoice has been rejected and the reason for the rejection.
- Invoices containing the required criteria are circulated for signature approvals via the Invoice Approval Form. The Invoice Approval Form contains two pages: the Payment Approval Form and the Payment History/Approval Form.<sup>54</sup>
  - The **Payment Approval Form** requires the approval of the Bond Program Controls, Bond Program Director, Facilities, WCCUSD Fiscal Services, and the Associate Superintendent.<sup>55</sup>

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<sup>54</sup> For SGI invoices, the Invoice Approval Form is a one page District document that combines the information from the Payment Approval Form and the Payment History/Approval Form.

- The **Payment History/Approval Form** documents contract and invoice information, indicates that the payment is in accordance with contract terms, and includes a signature line for project manager approval.
- Once the required signatures are obtained from the bond program group, the invoice is routed to the District Fiscal Services department for final approvals and warrant processing.

The process for invoice review and approval appears sufficient and the signature requirements appear appropriate. Bond program staff is in the process of creating one manual for all policies and procedures related to bond program administration.

VLS tested a total of 73 vendor invoices and identified the following related to approval signatures:

- Six invoices did not have the signature of the Executive Director of Bond Finance on the Payment Approval Form (all non-SGI vendor invoices). See TC11-4 recommendation for this area.
- Twenty invoices did not have the signature of the District Project Manager on the Payment History/Approval Form.<sup>56</sup> See TC11-5 recommendation for this area.
- All other required signatures were present and matched the individuals listed on the Payment Approval Forms.

There were no discrepancies noted with respect to the following areas:

- The services provided and the time period covered, as listed on the invoice, agreed to the terms in the contract.<sup>57</sup>

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<sup>55</sup> These positions appear as signature lines on the Payment Approval Form, and the name of the individual required to sign is listed above each title. “Bond Program Controls” and “Bond Program Director” are positions held by the construction management firm whose signatures are required only for projects that they oversee. For our period of testing, this was SGI. The other signature lines are completed by the following bond program personnel: “Facilities” refers to the Engineering Officer. “WCCUSD Fiscal Services” refers to the Executive Director of Bond Finance. “Associate Superintendent” refers to the Associate Superintendent of Operations and Bond Program.

<sup>56</sup> As indicated in Footnote 54, for SGI invoices, the Invoice Approval Form is a one page document that combines the information from the Payment Approval Form and the Payment History/Approval Form. A signature line for the District Project Manager is included on this approval document. No discrepancies were noted with respect to the Project Manager’s signature for SGI invoices.

<sup>57</sup> VLS did not perform procedures to verify that the services provided as listed on the invoices were actually performed by the vendors.

- The amounts billed, including billing rates, appeared consistent with the contract.
- The lapse between approval of the invoice and when the vendor disbursement was made appeared appropriate (payments were made in a timely manner once approved).

SGL invoices were noted to be for SGL employees directly involved with the program, on the SGL staffing list, and time records included with the invoices indicated that payment was for work performed for projects only. Two out of thirty SGL invoices reviewed were observed to have some of the descriptions missing on the employee's time detail included with the invoice support.

#### **Timeliness of Vendor Payments:**

Based on Administrative Regulation #3314 and the District's invoice process, the District is required to pay vendors within 30 days of receiving an invoice. For invoice payment transactions tested, a total of 18 out of 73 invoices (17 non-SGL invoices and 1 SGL invoice) were paid more than 30 days after the invoice had been received. Without documentation to identify the reason for the delay in payment, it is not known whether the delay was caused by the District or the vendor. The District plans to implement an invoice rejection letter that will document the reason an invoice has been rejected for payment, which can potentially improve the timeliness of invoice payments while documenting the reason for any invoice payment delays beyond the established 30 day timeline. This will also provide for improved communication with the vendor. See TC11-1, TC11-2, and TC11-3 recommendations for this area.

#### **New Score**

Medium

#### **Recommendations**

TC11-1. Revise the invoice payment procedures to establish a deadline for completing the invoice rejection letter within a specified number of days, such as 5 business days from receiving the invoice.

TC11-2. Implement the invoice rejection letter as soon as practical.

TC11-3. After full implementation of the vendor invoice rejection letter process, the District should perform a review of vendor payments exceeding the 30 day limit to determine (1) if the late payment was a result of a breakdown in District internal controls or vendor hindrance, and (2) if due to a vendor hindrance, was the invoice rejection letter used to support the reason for the late payment. This review should be performed approximately three months after full implementation of the vendor invoice rejection

letter to ensure that the process is working and has improved the timeliness of vendor payments.

TC11-4. Ensure that vendor invoice payments are processed only after all required signatures are present on the Payment Approval Form. Alternate signers should be identified in the event that a required signer is out on an extended absence and there is an urgent need for payment.

TC11-5. Ensure the Payment History/Approval Form is signed by the District Project Manager. If the Project Manager initials/signs the invoice to document this approval, a statement indicating that approval is documented on the invoice should be included on the Payment History/Approval Form.

### **Response by District**

TC11-1. The District will update the invoice payment procedure to identify the number of business days that will be allowed for staff to reject an invoice. This will identify two specific deadlines: 1) the rejection of invoicing for missing required documentation (completed by administrative staff) and 2) the rejection of the invoicing based on the content of the submittal (completed by approval staff).

TC11-2. The District has implemented the rejection checklist.

TC11-3. The District agrees with the recommendation. Currently, the District reviews a weekly report detailing the aging status of all bond invoices. This is reviewed at the Director's meeting and identifies the status of all received bond invoices. Any invoice that exceeds the 30-day time period is discussed and reviewed in detail. The District has found that implementation of the rejection letter has reduced the number of outstanding vendor invoices.

TC11-4. The District agrees with this recommendation.

TC11-5. The District is updating the Payment Approval Form to include the Project Manager signature approval on the coversheet in place of the previous Bond Program Manager (SGI). For invoices that are not project-specific, the signature approval will be the Director of Contracts.

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

VLS reviewed the District's responses and agrees that the response and planned action is appropriate to address the recommendations made by VLS. Additional information related to the District response for select recommendations follows:

TC11-2. Per discussion with the Director of Contracts, partial implementation of the rejection checklist occurred mid-March 2016 with full implementation occurring April 2016. However, because this change was implemented after VLS's test of controls, VLS has not verified that this new process has been implemented.

TC11-3. The review of the weekly report, in conjunction with full implementation of the invoice rejection letter, is deemed as a reasonable control for monitoring timely payment of invoices. However, because this change was implemented after VLS's test of controls, VLS has not verified that this new process has been implemented.

TC11-5. Including the Project Manager/Director of Contracts signature approvals on the coversheet in conjunction with recommendation TC11-4 is deemed reasonable. However, because this change was implemented after VLS's test of controls, VLS has not verified that this new process has been implemented.

**TC (12) Work Step**

Review and assess the internal controls over the District's involvement with the interviewing, hiring, and promoting of SGI employees assigned to District projects to ensure they are adequate, thorough, transparent and financially sound. Perform a test of these controls to assess overall effectiveness.<sup>58</sup>

**Results of Testing**

The Chief Engineering Officer is actively reviewing and approving SGI invoices, which includes a review of employee time sheets included with the invoice that indicate a description of work performed on District projects. This review and approval is being documented via the Payment Approval Form, and the Chief Engineering Officer is one of the District employees signing this form along with the District Project Manager responsible for the project (see TC (11) Section for additional information regarding the invoice review process).

There has been no hiring and promotion of SGI employees working on District projects in the current 2015/16 fiscal period. In addition, the role of SGI in the bond program has been reduced as many of the program management functions previously performed by SGI are now performed internally by District staff. The District has retained a different company to perform the construction management of the Pinole Valley High School project, which is currently the only construction project with significant activity. Therefore, SGI's role in construction management activities has significantly decreased.

Oversight of vendor staffing levels has been assigned to the Engineering Officer; however, because of the circumstances noted above, the District has not adopted formal procedures related to the review or approval of staffing provided by vendors. The Director of Contracts provided templates of agreements used for professional services, and the agreements include a staff section that specifies the following key information: 1) key vendor personnel associated with the project along with each individual's specific capacity; 2) a requirement for the District to approve in writing any change in key personnel prior to the vendor making changes; and 3) the right for the District to interview and approve replacement personnel. See TC12-1 and TC12-2 for recommendations for this area.

**New Score**

Medium

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<sup>58</sup> The risk area for this work step of SGI billing in excess of actual employee qualifications is addressed in FI (3).

**Recommendations**

TC12-1. Develop written procedures or a policy to address the District’s involvement in the prequalification of individuals employed by professional services vendors and working on the District bond program or bond projects. This should include assigning District staff that is responsible for reviewing and approving staffing added throughout the term of the contract to ensure that the additional staffing is needed and is not a function that can be performed by the District. This becomes particularly important when certain functions are outsourced to a vendor, such as bond program management, and when fees are billed based on pre-established billing rates for actual hours incurred (rather than a fixed fee). Where possible, professional services contracts should identify anticipated staffing level details (number of individuals and titles).

TC12-2. If the service provider requires an amendment to identify and approve staffing levels in the contract that will result in increased costs, the vendor should request an add service that routes through the normal add service approval process. If the staffing change does not result in a cost change, an internal form documenting the individual’s qualifications and District approval is recommended.

**Response by District**

TC12-1. There are various processes to vet and approve individuals and sub consultants employed by professional services firms that provide services for the Bond Program. The initial vetting takes place during the procurement process. Upon selection of the firm, the District has the right to interview, approve or reject, and immediately remove assigned personnel. The District will develop written procedures to delineate the current process to approve staffing.

TC12-2. The District does require all amendments to route through the approval process including the Proposal Approval Checklist and submittal of the proposal/back up documentation included in the online agenda.

**VLS’s Assessment of Response by District**

VLS reviewed the District’s responses and agrees that the response and planned action is appropriate to address the recommendations made by VLS. Additional information related to the District response for select recommendations follows:

TC12-2. As indicated above, testing of this control could not be performed as no changes in staffing levels had taken place during the period under review for test of controls. However, requiring amendments that include changes to staffing levels to route through

the Proposal Approval Checklist and submission of the proposal/back up documentation as part of the online board agenda is deemed a reasonable control.

**TC (13) Work Step**

Review and assess the internal controls related to Change Orders and Vendor "Add Services" to ensure they are adequate, thorough, transparent and financially sound. Perform a test of these controls to assess overall effectiveness.

**Results of Testing****Construction Change Orders:**

The District has established an updated set of procedures and internal controls related to construction change orders. During interviews with District staff related to the change order process, it was communicated to VLS that the updated processes were implemented in approximately July 2015; therefore, the sample selected was from the period 7/1/2015 to 2/29/2016. However, based on the testing performed, although the controls had been designed, there were controls that had not yet been implemented. See TC13-1 recommendation for this area.

VLS tested 46 change orders and the following deficiencies were identified:<sup>59</sup>

- None of the change orders included documentation that indicates the Director of Contract Administration and the Chief Engineering Officer reviewed the change order prior to it going to the Board for approval. In practice, these positions review the packet prior to sending it to the Associate Superintendent of Operations and Bond Program, who prepares the document for the Board. According to discussions with District staff, these reviews are performed informally and are not documented within the change order packet. When the packet is emailed to the Associate Superintendent of Operations and Bond Program, this signifies that the review has occurred. See TC13-2 recommendation for this area.
- Eight of the change orders included Proposed Change Orders (PCOs) that were not signed by either the District Project Manager (for amounts up to \$20,000) or the Chief Engineering Officer (for amounts over \$20,000).<sup>60</sup> Without these signatures, there is no

<sup>59</sup> VLS had originally selected a total of 49 change orders. Two of the change orders were related to Information Technology (IT) and the documentation was never provided to VLS as this information was maintained outside of the control of the Bond Program department. VLS made multiple requests for the documentation; however, it was never provided. Additionally, one change order was voided and disbursements were never made to the vendor related to the change order.

<sup>60</sup> The forms provided and reviewed indicate that the District Project Manager can review and sign proposed change orders up to \$20,000. Additionally, based on the testing performed, it appears that this threshold amount is followed. However, during interviews conducted of District Project Managers, it was communicated that the dollar limit, in practice, is actually \$25,000.

evidence that these PCOs were properly reviewed by the District prior to inclusion as a change order.<sup>61</sup> See TC13-3 recommendation for this area.

- Thirty-four of the change orders did not contain the required signatures on the change order document or were not signed at the appropriate time:<sup>62</sup>
  - Twenty eight were signed by the Bond Program Manager (BPM), which was SGI, after Board approval. However, District policy states that the BPM should sign prior to the change order going to the Board for approval.
  - One change order was never signed by the BPM.
  - Four change orders were not signed by the Architect of Record (AOR).
  - One change order was signed by neither the Construction Manager nor the District Project Manager.
  - One change order was signed by the General Contractor after Board approval and not before, as policy states.
- The cover sheet retained with the change order support has a line reserved for the Board approval date. However, none of the change orders tested had the date of Board approval entered on the provided line. VLS verified the Board approval of the change orders by looking through Board minutes. See TC13-4 recommendation for this area.
- Five change orders were credit (deductive) change orders and were not properly recorded in Munis. According to discussions with District staff, Munis is not designed to accept credit (deductive) change orders. Preferably, a credit (deductive) change order should be entered so that it reduces the total contract amount while retaining the history of the original contract amount. VLS observed that the District used two alternative methods to record a credit (deductive) change order in Munis. The method used was determined by the person entering the information, and there are not clear guidelines/procedures established for District staff to follow.<sup>63</sup> See TC13-11 recommendation for this area.

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<sup>61</sup> A PCO is one proposed change that must be reviewed and approved by the District Project Manager as well as the Chief Engineering Officer (if it's over \$20,000). Once approved, a PCO can be moved forward as a single change order, or be combined with other PCOs to form one change order, that will eventually go to the Board for approval/ratification.

<sup>62</sup> Multiple deficiencies identified may exist on the same change order; therefore, the number of unique change orders may be fewer than the quantities listed in the bulleted list when summed.

<sup>63</sup> One method is used when there are multiple change orders being entered at the same time on one contract. The credit (deductive) change order is offset against the additive change orders, and the net

It was communicated to VLS by the District that the implementation of the updated controls has been slow and the strength of the controls will improve over time. VLS did note that there were fewer findings at the end of the testing period (March 2016) compared to the beginning of the testing period (July 2015). For example, all six of the change orders tested that were approved in July 2015 had findings. The five change orders tested that were approved in March 2016 had no findings related to a deviation from policy.<sup>64</sup> This demonstrates that the deviations from policy related to change orders decreased over time.

The controls tested were based on the process communicated to VLS during District staff interviews as the current change order process/procedure documents do not reflect current practices. District staff communicated that the goal was to have these documents updated by 6/30/2016.

**Professional Add-Services:**

The District has established an updated set of procedures and internal controls related to the approval of professional add-services (increases to professional services contracts). District staff communicated to VLS that the updated processes related to professional add-services were implemented in approximately July 2015; therefore, the sample selected was from the period 7/1/2015 to 2/29/2016. However, based on the testing performed, there are areas where these procedures were not implemented or followed. See TC13-6 recommendation for this area.

VLS tested 13 add-services and the following deficiencies were identified:<sup>65</sup>

- None of the add-service proposals were signed by the Bond Program Manager (SGI), the District Project Manager (PM), the Director of Contract Administration (CA), or the Chief Engineering Officer (EO). According to the process communicated to VLS by District staff, these individuals should receive and review the add-service proposals. The Proposal Approval Checklist Form, which is supposed to be completed for each proposal

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amount is entered into Munis. For example, if one contract has an additive change order of \$10,000 and a credit (deductive) change order of \$5,000, the net amount of \$5,000 is entered in Munis as the total change order amount. The other method used involves District staff reducing the original contract amount in Munis by the credit (deductive) change order amount so that only the net amount appears in Munis. This method does not retain the history of the original contract amount.

<sup>64</sup> While there were no findings that indicate a departure from policy, there are recommendations for improving the policies and processes that are used to approve change orders. For example, as mentioned above, the District process communicated to VLS did not require the Chief Engineering Officer and Director of Contract Administration to sign or initial the documents indicating their review of the change order prior to it going to the Associate Superintendent of Operations and Bond Program. Therefore, the lack of their signature or initial is not a deviation from policy; however, VLS has identified it as a deficiency in the process as any reviews performed that are relied upon by management should be documented.

<sup>65</sup> VLS had originally selected a total of 16 add-services. Two of the add-services were for SGI and the documentation was never provided to VLS. VLS made multiple requests for the documentation; however, it was never provided. One add-service was never approved as it was rejected by the vendor.

received, includes signature lines for the PM, CA, and EO. The add-services tested did not include the Proposal Approval Checklist Form as the process indicates, nor were signatures included on any of the support retained with the add-services. Therefore, there is no documentation that a review by these individuals was performed. See TC13-7 recommendation for this area.

- For add-services over \$50,000 (which must be Board approved), none of the add-services tested included the initials or signature of the Associate Superintendent of Operations and Bond Program (ASO) indicating that the add-service was reviewed prior to going to the Board for approval. In practice, the ASO will review the add-service packet prior to sending it to the Board; however, there is no location on the packet or the Proposal Approval Checklist Form for the ASO to initial and date that this review was performed. Therefore, VLS was unable to verify that this review occurred. See TC13-8 recommendation for this area.

It was communicated to VLS by the District that the implementation of the updated controls has been slow and the strength of the controls will improve over time. VLS did not see an improvement in the add-services documentation and controls during the period tested.<sup>66</sup>

The controls tested were based on the process communicated to VLS during District staff interviews as the current add-services process/procedure documents do not reflect the current practices. District staff communicated that the goal was to have these documents updated by 6/30/2016.

#### **Communication to the Board:**

The District has put processes in place to communicate to the Board the cumulative amount of construction change orders for each contract. This process includes providing the Board with a Change Order Summary that includes the dollar amount of construction change orders pending and the percent of cumulative change orders. This process was tested and found to be completed for all of the construction change orders tested. However, neither this process nor the Change Order Summary form is included in the written process/procedure documents.

At the time of testing, the process for communicating professional add-services to the Board had not been updated. The District included an add-service cover sheet when the add-service was provided to the Board for approval; however, this is an outdated form. The District should be including the Proposal Approval Checklist Form, which is the new form that should be used internally by the District when reviewing add-service proposals. The documentation included for the Board does not provide information on historical add-services for the vendor and contract.

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<sup>66</sup> VLS performed the control testing in April and May 2016.

**New Score**

Medium

**Recommendations****Construction Change Orders:**

TC13-1. Develop detailed, written procedures for the change order review and approval process. The written procedures should:

- a. Identify each step in the review and approval process.
- b. Identify all forms to be used in the change order process, the purpose and work flow of the forms, and the proper review and approval signatures required on the forms.
- c. Identify what documents should be maintained as support with the change order packet.
- d. Incorporate appropriate sections in the written procedures to address all recommendations included below.

Detailed, written procedure documents will provide clear guidelines for District staff to follow and consistency when there is staff turnover.

TC13-2. Require the Director of Contract Administration and Chief Engineering Officer to initial and date the change order packet (or a separate, attached form) to document the review that is performed prior to the change order going to the Associate Superintendent of Operations and Bond Program in preparation for Board approval. This will provide the proper audit trail to document that this review took place.

TC13-3. Create updated forms to reflect the approval signatures that are required. Some forms contain signature lines for individuals whose signature is not required nor typically given. For example, the PCO Summary form contains lines for the “Scheduler” and the “Deputy Program Manager,” neither of which seems to be part of the policies/procedures in practice.

TC13-4. Consider including the Board Précis and Change Order Summary in the change order support packet to provide a clean audit trail.

TC13-5. Consider implementing the use of a change order work flow check list that is completed with each change order. The check list would include a list of documents and signatures required at various steps in the process. This could assist District staff in ensuring that all necessary documents and signatures are obtained and document when key dates are entered into Munis.

**Professional Add–Services:**

TC13-6. Develop detailed, written procedures for the add-service review and approval process.

The written procedures should:

- a. Identify each step in the review and approval process.
- b. Identify all forms to be used in the add-service approval process, the purpose and work flow of the forms, and the proper review and approval signatures required on the forms.
- c. Identify what documents should be maintained as support with the add-service packet.
- d. Incorporate appropriate sections in the written procedures to address all recommendations included below.

Detailed, written procedure documents will provide clear guidelines for District staff to follow and consistency when there is staff turnover.

TC13-7. Ensure that the Proposal Approval Checklist Form is used with every add-service proposal. Add appropriate sections to the form to include the necessary signature/initials of the Associate Superintendent of Operations and Bond Program to allow documentation of recommendations TC13-8 and TC13-9.

TC13-8. If the add-service proposal is over \$50,000, require the Associate Superintendent of Operations and Bond Program (ASO) to initial and date the add-service Proposal Approval Checklist Form (or a separate, attached form) to document the review that is performed prior the add-service going to the Board.

TC13-9. When submitting an add-service request to the Board for approval, include historical information related to add-services that have previously been approved for the vendor contract.

**General:**

TC13-10. Within six months after full implementation of the updated processes and policies for change orders and add-services, the District should perform a follow-up review to determine whether procedures are being followed.

TC13-11. Work with Tyler Technologies (the company that licenses the Munis software) to determine if there is a way to properly record credit (deductive) change orders and add-services. If this is not possible, develop one standard method that is used by all staff to enter and track all credit (deductive) change orders and add-services to provide consistency. Train all staff on this process to ensure that it is followed.

**Response by District****Change Orders:**

TC13-1. The District will update the written procedure for change order review and approval. The District has implemented a change order checklist to ensure proper approvals are provided or a written explanation clarifies why the signature is not provided for example unilateral change orders are not signed by the general contractor.

TC13-2. The District will document the change order précis approval process by initialing the change order summary.

TC13-3. The Change order cover sheets are created within Primavera and print automatically. The District is working with the Master Scheduler to develop controls that will automatically populate signature approvals only when required by the process. For example, the scheduler's signature line will only be populated when there is a change in schedule.

TC13-4. The District is currently including the Change order summary in the change order support packet prior to circulating for signatures after Board Approval.

TC13-5. The change order checklist is currently being implemented by the District.

**Professional Add-Services:**

TC13-6. The District will update the written procedure for add-service review and approval.

TC13-7. The District will update the proposal approval checklist form to include the signature of the Associate Superintendent of Operations.

TC13-8. For add-service proposals greater than \$50,000, upon Board approval staff drafts a contract or amendment using standard contract forms prepared and approved by legal. The drafted agreement is sent to the vendor to complete along with required certifications and insurance. Once all required documents are received and accepted,

the agreement is prepared for the Associate Superintendent's signature using the Agreement checklist certifying that all required documents are on file. Once the agreement is signed by the Associate Superintendent it is executed and attached in the financial system so the contract can be released into workflow for contract approval.

TC13-9. The District is in the process of developing a more detailed add-service Board précis that will include historical information related to add-services that have previously been approved.

**General:**

TC13-10. The District agrees.

TC13-11. The Principal Accountant for the Bond Program sent out an email confirmation of the process on July 12, 2016 stating *"When Board approves the reduction of contract amount, we shall adjust the original amount or previous CO amount as below screen due to no negative amount can be entered in Munis Contract. This is confirmed by Luis Freese on 7/11/16, Mark Bonnett on 7/12/16, and Melissa Payne on 7/12/16."* The District will incorporate this email into the detailed process being updated for the change order process.

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

VLS reviewed the District's responses and agrees that the response and planned action is appropriate to address the recommendations made by VLS.

**TC (14) Work Step**

Review and assess the internal controls in place to ensure:

- That the procedures for Munis tracking of budgets, including the multiyear functionality is adequate, reliable and accurate
- That the reconciliation process between the project ledger and the general ledger in Munis is accurate and complete
- That access rights in Munis for all data entry points related to the bond program are under the responsibility of the District only

Will perform a detailed walkthrough of the process for entering bond program information into Munis<sup>67</sup> (contracts, change orders, etc.) to gain a detailed understanding of the process and ensure proper controls are in place. Perform a test of these internal controls to assess overall effectiveness.

**Results of Testing****Munis Tracking of Budgets:**

The written procedures provided by the District are related to entering data into Munis and not to the tracking of budgets within Munis. Although District staff makes changes to the budget through the use of the *Project Budget Amendment/Transfer Form*, there is no process in place to track those changes entered into Munis. Refer to TC6-1 and TC6-6 recommendations in TC (6) section.

The detailed, line-item budget prepared for the 2016/17 fiscal year, which includes the Pinole Valley High School Campus project, appears to be sufficiently detailed and include the necessary line items. In addition, the detailed multi-year, line-item budget for the Pinole Valley High School Campus project appears appropriate as it consists of approved contracts and projected costs that are allocated to appropriate object codes for the duration of the project. However, this data has not yet been entered into the multi-year function of the Contracts Module in Munis. The multi-year function in Munis has been tested by the Principal Accountant; however, its full capabilities remain to be seen. See TC14-1 and TC14-2 recommendations for this area.

The District informed VLS that the Contracts Module cannot be modified in order to correct an application of a payment to the wrong contract. Although the user may leave a note in the module regarding the error, another user could easily overlook the note attached to the payment. The District intends to enter into the module the approved, multi-year budgets for the

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<sup>67</sup> Munis is the District's financial accounting software.

Pinole Valley High School Campus now that the 2016/17 fiscal year budget was approved by the Board on 6/29/2016. See TC14-3 recommendation for this area.

The Project Analyst has created various reports that include project budget and cost information from the District server which contains Munis, Primavera, and Bitech data. The reports have been generated on an “as-needed” basis, and they are not reviewed by a supervisor or management before distribution. District staff has the ability to produce various reports from Munis using a report writer; however, there is no established procedure for preparing, reviewing or circulating routine budget reports. Historically, budget reports have been prepared as-needed and there is no established review process before the reports are disseminated. Refer to TC6-1 recommendation in TC (6) section. Also see TC14-7 recommendation for this area.

VLS tested, on a sample basis, the “New Project Form” completed by District Project Managers when there is a new project approved by the Board of Education. The form is signed and approved by the Chief Engineering Officer, and it is used to initiate the process for creating new projects in Munis. VLS noted that there are no written procedures in place related to creating new projects in Munis, and there is no documentation indicating that the project number and funding sources have been verified. See TC14-4 recommendation for this area.

#### **Reconciliation between Project Ledger and General Ledger:**

The Principal Accountant performs a reconciliation process between the Munis General Ledger and the Munis Project Ledger, but not on a regular basis. Although VLS was provided with a copy of a journal entry that was created to resolve differences identified through the reconciliation process (related to payroll), a worksheet is not prepared and maintained to document that the reconciliation occurred, what differences were identified, and how the differences were resolved.<sup>68</sup> The Project Analyst generates established reconciliation reports, but those reports are not reviewed by the Executive Director of Bond Finance nor are they considered in the reconciliation process performed by the Principal Accountant. Additionally, the reconciliation reports are not generated on a consistent basis (such as monthly). See TC14-5, TC14-6, TC14-7, and TC14-8 recommendations for this area.

#### **Review of Munis Access:**

Through a review of budget transactions exported from Munis, VLS identified a total of eight users with access to Munis. VLS determined that six of the users are current employees of the District. One user is a retired employee who assists the District when employees are absent and the last user is a District consultant (SGI) with inquiry access only. See TC14-9 recommendation for this area.

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<sup>68</sup> It is important that the process is documented and records are kept for the purpose of consistency and providing audit trail

**New Score**

High

**Recommendations**

Recommendations related to budgeting processes and procedures are included in the TC (6) Section. Additionally, the TC (5) Section includes a recommendation related to the development and implementation of multi-year bond project budgets based on the Implementation Plan for the Board approved Facilities Master Plan.

TC14-1. Ensure that written budgeting procedures (recommended in TC6-1) include specific guidelines and instructions related to the use and maintenance of the multi-year function in Munis.

TC14-2. Once the multi-year function in Munis is fully implemented, conduct an internal audit to ensure that it is implemented properly and to verify that there is a written process in place for the maintenance and revision of data entered for multi-year contracts. This internal audit could be conducted by the District's current internal auditor or by a third party.

TC14-3. Work with Tyler Technologies (the company that licenses the Munis software) to modify the Contracts Module in Munis so that an invoice payment that is applied to the wrong contract can be corrected.

TC14-4. Ensure that the written budgeting procedures (recommended in TC6-1) include specific guidelines and instructions related to the creation of new bond projects in Munis, including the use of the *New Project Form*. The procedures should include, but are not limited to, the following areas:

- The event that initiates the need for a new project in Munis
- Instructions for completing the form and its workflow
- List of authorized approvers
- Type(s) of supporting documentation that must be attached to the form
- A requirement for appropriate personnel to verify that the project number, funding source, and budget string are accurate

- A requirement that the Principal Accountant initials and dates the form to document that the information has been entered in Munis
- A requirement that the Executive Director of Bond Finance, or designee, reviews the Principal Accountant's coding in Munis for accuracy

TC14-5. Cross-train other bond program staff on the responsibilities and tasks assigned to the Principal Accountant and Project Analyst so that there is an employee that can perform these functions in the event of employee absences.

TC14-6. Develop and implement written procedures related to the reconciliation process between the Munis General Ledger and Project Ledger that require the following:

- Prepare a reconciliation worksheet on a regular and consistent basis (at least monthly)
- Maintain the reconciliation worksheet and attach supporting documentation (such as reports used, payroll records, journal entries, etc.) to provide an appropriate audit trail
- Require the preparer to initial and date the worksheet indicating the reconciliation was performed
- The Executive Director of Bond Finance must review the reconciliation worksheet and initial and date the worksheet to document that the review has been performed

TC14-7. Determine whether the reports currently being prepared by the Project Analyst (such as Project Summary Ledger Reconciliation and Financial Summary Reports) are necessary for or valuable to the reconciliation process discussed in TC14-6. If these reports are valuable and will be utilized, include them in the written procedures recommended in TC14-6. The reports should be reviewed by the Executive Director of Bond Finance and included in the reconciliation process performed by the Principal Accountant. If the reports are not needed as part of the reconciliation done by the Principal Accountant, then determine whether they should be eliminated, revised to serve the purpose of reconciliation, or used for another purpose.

TC14-8. Review and modify, if necessary, the job descriptions of the Principal Accountant and Project Analyst to reflect the appropriate responsibilities related to the reconciliation process between the Munis Project Ledger and General Ledger.

TC14-9. Ensure procedures are in place requiring that access rights in Munis for all data entry points related to the bond program be monitored and updated on a regular basis. Ensure that only appropriate District employees have access rights other than inquiry.

If implemented, these recommendations would strengthen the District's internal controls over the use of the Munis system related to the bond program, would provide clear instructions to the staff, and would provide for continuity when there is employee turnover or long-term absences in the department. There would be consistency within the reconciliation process and supporting documentation would provide an audit trail. In addition, the District would have more reliable and accurate information if the Contracts Module in Munis is modified to allow corrections when an invoice payment is applied to the wrong contract.

#### **Response by District**

The District agrees with the recommendations. The District will continue to add to the current budgeting procedure and process guidelines. The District has implemented the multi-year function in Munis and is in the process of developing written procedures to maintain and update this information. Regarding TC14-3, the District has consulted with Munis and they maintain the current fix is by journal entry for both the project ledger and the general ledger. The Executive Director of Business Services will ensure the processes and procedures are documented and will work with others to train staff as needed. At this time the District has determined what reports will be used to reconcile the project ledger and the general ledger and will include the information in the procedures of TC14-6. Also, at this time the District does not find it necessary to modify the job descriptions of the Principal Accountant and project Analyst. The responsibilities for the reconciliation process between the Munis Project Ledger and General Ledger will be defined in the procedures in response to TC14-6. The District has begun to assemble a binder of procedures and processes per this recommendation.

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

VLS reviewed the District's response and agrees that the response and planned action are appropriate to address the recommendation(s) made by VLS. VLS has not seen or reviewed the binder of procedures and process that the District has begun to assemble.

**TC (15) Work Step**

Review and assess the internal controls in place to ensure:

- **Primavera** is accurate, reliable, and appropriately updated
- To ensure procedures and controls have been adequately implemented to recover any potential lost information
- To ensure procedures and controls have been adequately implemented for recording of proposed change orders
- To ensure procedures and controls have been adequately implemented
- To ensure reconciliation between Munis and Primavera is accurate and complete

Perform a test of these internal controls to assess overall effectiveness.

**Results of Testing****Internal Controls Related to Primavera:**

The District provided VLS with several documents including, but not limited to, written procedures related to Primavera, project coding instructions, proposed change orders, and change order procedures. The District had developed a manual titled "2014 Construction Procedures Manual," however, based on the testing performed and discussion with District staff, it is outdated and inaccurate. See TC15-1 recommendation for this area.

Effective on 1/1/2016, the Master Scheduler, who is responsible for maintaining Primavera, is working as a consultant under the direction of the District and is no longer a subcontractor under SGI. The Master Scheduler now reports directly to the Engineering Officer. This change in structure provides the District with more control of the Primavera system.

VLS tested a total of 20 bond related contracts (construction and professional services), and 18 of the contracts had not been entered into Primavera at the time of testing. The Board approval of the contracts occurred between July 2015 and February 2016, and the VLS testing occurred in April 2016; therefore, there was up to a nine-month delay in entering contracts in the Primavera system. The Primavera Master Scheduler does not receive a copy of construction and professional services contracts after they are approved by the Board of Education. Therefore, Primavera is not updated with this information until the Master Scheduler generates certain reports from the District server containing the Munis General Ledger data to determine which contracts need to be entered in Primavera. Through this method, the Master Scheduler can determine which construction and professional services contracts are not currently in Primavera; however, the data from the Munis General Ledger only pertains to the current fiscal year. See TC15-2 recommendation for this area.

**Primavera Data Recovery:**

It appears that the Primavera system has an adequate back-up system and process that would allow the District to recover any information recorded within the system, should the system experience a lapse in performance.

The District has contracted the services of Temporal Logic Systems, a third party provider of hosting services for Primavera. The Primavera system is remotely backed-up nightly; a full back-up is done weekly; and a bare-metal back up is done monthly. A bare-metal back up is what would allow the District to “rebuild” the entire Primavera environment along with the operating system, drive content, databases, network connection, etc., should the system crash beyond any other type of recovery. Because the infrastructure rarely changes, the last weekly and daily back-ups can be applied to the monthly back-up, and the Primavera system would be completely functional and not have lost any information. VLS observed the back-up logs and verified that the back-ups are performed as described. See TC15-1 recommendation for this area.

**Recording of Proposed Change Orders;**

VLS was provided written procedures and a flow chart for proposed change orders (PCOs) and change orders (COs) and the Change Management overview section<sup>69</sup> from the Primavera training manual. The District has implemented procedures that require PCOs to be identified and entered into Primavera in a timely manner. Based on interviews conducted during Phase I and Phase II, it was communicated to VLS that the procedures were not being followed or enforced by SGI and their employees, which indicates that this may have been an issue with vendor performance. See TC15-3 recommendation for this area.

The District has taken the following steps to ensure that PCOs are identified and entered into Primavera as required:

- The procedures were discussed during a two-day training attended by SGI Construction Managers, District Project Managers and support staff.
- The District has assigned a Project Manager to each bond project, and the Project Managers have taken responsibility for understanding the status of each project and reviewing the PCOs.
- The District has retained the services of a different firm to provide construction management services for the Pinole Valley High School Campus project.

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<sup>69</sup> The Change Management overview section briefly discusses Primavera functions related to RFI, PCO, CO and flow of document(s). The documents mentioned were provided to VLS in order for VLS to gain an understanding of the processes that are followed for recording proposed change orders. FI (11) section assesses whether proposed change orders were recorded into Primavera.

- On 5/25/2016, the Master Scheduler provided Primavera training to the new construction management team. The training covered RFIs, submittals, and change orders.

**Reconciliation between Munis and Primavera:**

The Master Scheduler created a standard system for generating project numbers that provides consistency in communication between Munis and Primavera. The Bond program management team and support staff uses this standard system for project numbers. In addition, the Master Scheduler and Project Analyst developed a list of Munis-Primavera cost codes that are used by the Bond Finance Department in coding financial documents such as the *Munis Contract & Purchase Order Request Form* and the *Project Budget Amendment/Transfer Form*. This list of “cost codes” includes Primavera cost codes and their corresponding Munis cost codes, which assists the two systems in recognizing each other’s transactions. See TC15-1 and TC15-4 recommendations for this area.

As mentioned above, the Master Scheduler does not receive a copy of the construction or professional services contracts for bond projects. This makes it difficult for the Master Scheduler to capture all relevant contracts for bond projects. Although Primavera is able to access the Munis database stored on the District server, the Munis database provides only the current fiscal year expenditures and not the full amount of all approved contracts. The Master Scheduler has to conduct research to determine which contracts are not in Primavera, which may not be the most efficient process for identifying contracts that need to be entered in Primavera.

**New Score**

Medium

**Recommendations**

TC15-1. Ensure that written procedures related to Primavera include all required steps and necessary documents in order to achieve and maintain the system’s integrity and accuracy. Include the work flow and frequency with which certain steps are (or should be) performed. The written procedures should include, but not be limited to:

- a. The back-up system and process in place,
- b. The process for creating project numbers,
- c. The creation and use of the Munis-Primavera costs codes, and
- d. The process performed by the Master Scheduler to reconcile between Primavera and Munis.

- TC15-2. Develop a process that ensures the Master Scheduler receives appropriate and sufficient information regarding new construction and professional services contracts that are approved by the Board of Education. Either a copy of the contract can be provided or a contract synopsis can be prepared and provided to the Master Scheduler. This information should be provided within a week of contract approval to ensure that Primavera is updated promptly. Establish a timeline for when the contract information should be entered after receipt by the Master Scheduler.
- TC15-3. Develop and implement a process to ensure that bond program management and staff, construction managers, and third parties responsible for entering information in Primavera are adequately trained and cross-trained. This is particularly important when hiring new staff or consultants. Consider whether providing recurring training or refresher meetings would be appropriate to address deficiencies or problem areas, such as a delay in entering proposed change orders.
- TC15-4. Cross-train a District employee in the Primavera functions currently handled by the Master Scheduler, who is a District consultant.

**Response by District**

- TC15-1. The District will request that the Master Scheduler provide written procedures for the required steps and document as noted.
- TC15-2. All contracts are entered into Munis, the District's financial system, and require a hierarchy of approvals. Bond contracts are entered using the project string and Munis-Primavera cost codes that were developed to assist the systems in recognizing the transactions for reporting purposes. Currently, general contractor contracts are entered into Primavera to support the proposed change order and change order module, using the attached procedure. The District will develop a flow chart to outline the process for documenting every type of contract.
- TC15-3. The Master Scheduler is responsible for the training of all Primavera users. Primavera is a password protected system. The Master Scheduler provides user access and rights within the system. Primavera users are not provided with access or rights within Primavera until they have attended adequate training. The District supports ongoing training to all users and individual users as issues arise.
- TC15-4. The District will work with the Master Scheduler to outline the ongoing functions of Primavera and identify the activities that should be cross-trained with District staff. Once the activities are defined they will be assigned to staff with the skills and expertise required to support the functions. The District will request the Master Scheduler provide written procedures for the required activities that are identified as ongoing functions.

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

VLS reviewed the District's response and agrees that the response and planned action are appropriate to address the recommendation(s) made by VLS.

**TC (16) Work Step**

Review and assess the internal controls concerning the District’s preparation and distribution of the various financial reports summarizing program expenditures and encumbrances to ensure they are adequate, thorough, transparent and financially sound. Perform a test of these internal controls to assess overall effectiveness **(A)**.<sup>70</sup>

Ensure the bond program financial reports produced by the Executive Director of Business Services (and staff) accurately and completely reflect the financial position of the bond program **(B)**.<sup>70</sup>

**(A) Results of Testing – Preparation and Distribution of Financial Reports**

This review was limited to the financial reports prepared by and at the direction of the Executive Director of Business Services, Bond Finance (Executive Director).<sup>71</sup>

**Process for Creating Reports**

VLS reviewed the reports prepared by and at the direction of the Executive Director for February 2016 and then traced the reports’ distribution forward up to May 2016. During this time period, there was a significant increase in the number of monthly reports added.<sup>72</sup>

The District has taken the following steps to implement an adequate reporting system:<sup>73</sup>

- The District has set up the Munis project ledger to be used with the general ledger, and reconciliations between the two ledgers are being done. Performing these reconciliations and making any needed adjustments assures the project ledger is in agreement with the general ledger. However, as discussed in the TC (14) section, these are not performed on a set schedule, and written procedures for this process have not been established. Recommendation TC14-6 was made in section TC (14) related to this concern.

<sup>70</sup> The letters included in parentheses after each sentence provide a reference to the applicable section in the “Results of Testing.”

<sup>71</sup> Although this review was limited to the reports prepared by and at the direction of the Executive Director, because of their importance, Change Order Reports and KPI reports, were included in step A. However, these two reports are prepared by the District’s Chief Engineering Officer and not the Executive Director.

<sup>72</sup> The increase in the number of reports added was the result of the CBOC requesting additional reports from the Executive Director. Please refer to FI (6) section for recommendations related to assessing the value of proposed monthly reporting requested by the CBOC against the ongoing cost of report development and maintenance.

<sup>73</sup> The bullets are a summary of some of the results from the testing performed in TC (14). The information is included here for reference as it is directly related to the effective financial reporting of the bond program.

- A common project matrix is being used between Primavera and the Munis ledgers to allow information from these systems to be matched.
- The District has implemented the multi-year feature in Munis, but its functionality for project reporting purposes has not yet been determined. It may not have Facility project scheduling and projection capabilities; therefore, the Primavera scheduling and financial projection capabilities may continue to be needed.
- Currently, project reports are prepared by consolidating information from Munis, Primavera, and Bitech (the District's former accounting system) into a database referred to by District staff as the "Data Dump." This information is then used for project and special purpose reports.

#### Types of Reports Created for the CBOC

The responsibility of producing financial reports related to the bond program has been placed under the Executive Director, who is a District employee under the Finance Department. The Executive Director indicated that current efforts are primarily addressed to meet the CBOC report requests. Since March 2016 members of staff have been meeting with the CBOC Reports Subcommittee to address reporting requests from the CBOC.<sup>74</sup> The specific request from the CBOC in February 2016 stated:

"Request Motion: The eleven (11) reports listed below would be the most useful for the CBOC to review monthly at its meetings and that the District be requested to provide these reports monthly to the CBOC:<sup>75</sup>

1. Bond Program Project Status Report
2. Bonds KPI Summary
3. School KPI Budgeted Costs
4. Bond Program to Date
5. Budget Summary FY2016
6. Project Budget Report FY2016
7. Change Order Information – Sub Project Summary
8. Cash Flow FY2016 and FY2017
9. Bond Program Staffing FY2016
10. Bond Program Unencumbered Funds through December 2021
11. Accounts Payable"

Some of the reports listed by the CBOC were already being prepared on a monthly basis and presented to the Facilities Subcommittee (FSC) and to the CBOC. However, the requested reports had a different order of presentation and different names. Members of District staff

<sup>74</sup> The Reports Subcommittee is designated by the CBOC as an ad hoc subcommittee not subject to Brown Act requirements.

<sup>75</sup> This information was provided in the CBOC packet for 2/24/2016.

have been meeting approximately twice a month with the CBOC Report Subcommittee and both the number reports and changes to format and content have evolved.<sup>76</sup> By the 6/22/2016 CBOC meeting, the CBOC had requested that a total of thirteen reports be provided, twelve of the thirteen reports were provided to the CBOC at this meeting, with a note stating that report number 13 would be available in future meetings. This is a report that as of the June 2016, meeting was still being prepared. This report is discussed in more detail in the following section. Please refer to FI 6 section for recommendations related to assessing the value of proposed monthly reporting requested by the CBOC against the ongoing cost of report development and maintenance.

VLS reviewed the monthly reports presented to the CBOC and obtained a copy of the “crib sheet” prepared by a CBOC member to explain the thirteen reports the CBOC wanted presented as discussed in the 6/22/2016 CBOC meeting.<sup>77</sup> VLS noticed that the CBOC emphasized that it desired the titles of the reports to be as the CBOC had requested, and that the reports be in the order requested when included in the meeting packets. In addition, the CBOC expressed discontent about the budget figures not having been updated in the reports provided. The purpose of the meetings between members of District staff and the CBOC Report Subcommittee is to understand the requests of the CBOC in order to meet the CBOC’s requests for reports.

#### Types of Reports Created for the FSC and the Board

Some, but not all of the reports submitted to the CBOC are transmitted to the FSC. VLS’s review of Board minutes for March 2016 through June 2016 did not indicate that the financial reports prepared by the Executive Director are being presented to the Board. However, the first and second interim reports provided to the Board include the Building Fund Revenues, Expenditures, and Changes in Fund Balance Report, which is prepared by the Executive Director.<sup>78</sup> Other reports that the Board receives related to the Bond program that are not prepared by the Executive Director are Construction Project Status reports, and Change Order reports.

#### Summary and VLS’s Assessment of Adequacy of Reports for Bond Program

The reports prepared and their distribution for the months of February 2016 through May 2016 are outlined in Table 5. These reports included reports provided to the FSC and the CBOC. (The reports provided directly to the Board are discussed separately) The “Meeting Dates” are the

<sup>76</sup> The members of the District staff holding meetings with the CBOC Reports subcommittee are the following: Executive Director of Bond Finance, District Engineering Officer (attends only certain meetings), Project Analyst, and Facilities Planning and Construction Master Scheduler.

<sup>77</sup> A “crib sheet,” also known as a “cheat sheet,” is a concise set of notes used for quick reference.

<sup>78</sup> Local Education Agencies (LEA) such as WCCUSD are required to file two annual reports on the status of the LEA to the California Department of Education. The first interim report is due on December 15 of each year for the period ending on October 31, while the second interim report is due on March 17 for the period ending January 31.

dates when the CBOC or the FSC meeting took place. The “Financial Report Date” is the date of the financial report.

**Table 5: Summary of Reports Produced and Provided for Bond Program**<sup>79</sup>

Meeting Date	CBOC			Facilities Sub-Committee		
	3/23/2016	5/18/2016	6/22/2016	3/15/2016	5/17/2016	6/21/2016
Financial Report Date	2/29/2016	4/30/2016	5/31/2016	2/29/2016	4/30/2016	5/31/2016
<b>Current Year Financial Reports</b>						
Financial Status Report Fund 21	X	X	X	X	X	X
Financial Status Report Fund 25	X	X	X	X	X	X
Financial Status Report Fund 35	X	X	X	X	X	X
Project Budget Report	X	X	X	X	X	X
Budget Summary 11 Periods			X			X
<b>Special Reports</b>						
Cash Flow through June 2017	X	X	X	X	X	X
Monthly Warrant Listing <sup>80</sup>	X	X	X	X	X	X
Change Order Reports <sup>81</sup>			X			X
Fund 21 Position Budget for 15-16 and 16-17			X			
<b>Project Reports - Multi-Year</b>						
Bond Program Key Performance Indicator (KPI) Summary		X	X		X	X
School KPI Cost Report	X					
Bond Program Spending by School Site (School Report #2)			X			
Summarized Cost Codes (School Report #3)			X			
Bond Program Spending by Cost Code % Report #4			X			

Generally, the reports listed in Table 5 are categorized as follows:

- **Current Year Financial Reports** – These reports cover current fiscal year activities and not the full length of facilities projects.
  - Financial Status Report Fund 21: This report shows the Bond Fund year-to-date revised budget, month actuals, and year-to-date actuals for revenues, expenditures and fund balances. Information is presented similarly for Fund 25 which is Capital Facilities Fund, and Fund 35 which is County School Facility Fund. This report is adequate for providing a concise view of current year budget and actuals for the bond fund. (Fund 25 and 35 were not assessed as they are not part of the bond program. It is unusual for CBOCs to receive reports for funds outside of their Bond Programs. If the District decides to use the funds from Fund 25 and Fund 35 for expenditures related to the Bond Program, it

<sup>79</sup> There were inconsistencies in the naming of certain reports from one month to the next, VLS used the title first used for each report for the period reviewed.

<sup>80</sup> This report is also referred to as the Accounts Payable Check List.

<sup>81</sup> This report is not provided by the Executive Director, instead, this report is provided by the District Engineering Officer. The Facilities Subcommittee received a summarized version of this report.

must be cautious to follow the rules for the expenditures for these funds even if transferred to Fund 21, the Bond Program Fund.

- Project Budget Report: This report shows the Bond Fund year-to-date budget, actuals (expenditures), encumbrance, and balance as a financial summary by school site, project and cost code for expenditures. This is a very detailed report that is typically not provided to CBOCs at this level of detail.<sup>82</sup>
- Budget Summary 11 periods: This report shows Bond Fund for fiscal year 2015/16 through May 2016 listing budget, actuals (expenditures), encumbrances, and balance as a financial summary by object code for revenues and expenditures. This report was not part of the February 2016 report. This report was part of the June 2016 reporting and it appears to be a restatement of the Financial Status Report that drills down into details for revenues and expenses by object codes and sub-major object codes and includes encumbrances. This report is not something that is typically provided to CBOCs. This report appears to have too detailed information but if it were to be combined with the Financial Status Reports it would be easier to follow the details if this level of information is desired.
- **Special Reports** – These are reports showing activity for the Bond Fund for the months reported.
  - Cash Flow through June 2017:<sup>83</sup> This report shows cash flows by object code and ending cash balance for the month. All months of the year to date are listed beginning with beginning cash on July 1. This report shows the cash flows by major object of expenditure and includes a project to the end of the year and through the next fiscal year. This report appears to provide sufficient information on cash flows. It is a useful report for tracking cash flows and cash flow variances.
  - Monthly Warrant Listing: This report shows a listing of the checks (warrants) issued during the month. The warrants listed show the amount of the warrant and not necessarily the amount of the expenditures. For example, if the total expenditure includes amounts designated as contract retention, the warrant only lists the amount issued to the vendor in payment, the remainder of the expenditure (usually 10%) is held with a fiscal agent or in an escrow account

<sup>82</sup> At the July 2016 CBOC meeting it was stated in the “crib sheet” that these reports would no longer be requested to be provided to the CBOC.

<sup>83</sup> This report includes cash flow actuals to date and projected cash flow for future months for two fiscal years, 2015/16 and 2016/17.

depending on the contract terms with the vendor.<sup>84</sup> This report is, in the opinion of VLS, the most valuable report for the CBOC as it shows what is being spent by invoice. Having this information allows the CBOC to question a particular payment if necessary. VLS was informed that the CBOC's Audit Subcommittee normally selects two invoices related to the payment listed and requests the related support from the District for their review. VLS was informed that the District complies with this request.

- Change Order Report: This report lists change orders for the month by project. Instead of being a single report it is rather a series of reports provided by the District Engineering Officer together with the District Master Scheduler in order to convey change orders to contracts.<sup>85</sup> It also provides a code explaining the reason for the change order such as unforeseen conditions, owner initiated scope change, and design deficiency and outside agency. This report is useful to the CBOC as they may pose questions related to the reasoning for a change order and become aware of contract amount increases.<sup>86</sup>
- Fund 21 Position Budget for 15/16 and 16/17:<sup>87</sup> This report shows the District employee positions charged to the Bond Program, the FTE charged to the Bond program and the annual cost.<sup>88</sup> The report also shows the contract employees and their hourly rates. This report would be useful if there are concerns over the number of staff supporting the Bond Program. This report would be more useful on a quarterly basis rather than a monthly basis as it gives a snapshot of District staffing for program administration. It was noticed that the District Master Scheduler was not listed. If the CBOC is to receive this report moving forward, it would be prudent to include all District employees, District consultants working on the Bond Program, as well as contract employees providing services to the Bond program. For example, the master scheduler should be included in this report as well as the construction manager for any project such as Pinole Valley.

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<sup>84</sup> Retentions are explained in the KPI Summary report as follows: The District retains up to ten percent of payments on construction contracts, and frequently makes payments to vendor trust accounts for the retained amounts. The trust accounts are reported as cash on the District's financial records.

<sup>85</sup> This report is not prepared by the Executive Director.

<sup>86</sup> This report is not provided by the Executive Director, instead, this report is provided by the District Engineering Officer. The Facilities Subcommittee received a summarized version of this report.

<sup>87</sup> The CBOC in its request on 2/24/2016 had requested the title of this report to be "Bond Program Staffing FY2016."

<sup>88</sup> FTE stands for Full-Time Equivalent, for example one employee working full time equals one FTE.

It should be decided whether the construction manager for Pinole Valley High School project should be included in this report.<sup>89</sup>

- **Project Reports Multi-Year** – These reports reflect program activities for the full length of the Bond Program and require both the capture of prior year and current year data.
  - **Bond Key Performance Indicator (KPI) Summary:** This report shows details about the bond measures, such as what voters approved, bonds issued and bond payments. It also includes information about other non-bond sources of revenue that are eligible to use in the Bond Program. This report is prepared by the District Engineering Officer. This is a very useful and informative report as it shows the bonds that have been authorized, the debt payments, and the portions of the bond that have not yet been issued. It also shows funds from other sources for the year and prior years, gives a program summary, and also states the average monthly spending. This report is so informative that the District may consider displaying table one of this report on its website for the Bond Program.
  - **School KPI Cost:** This report shows by school site, the budget, actual expenditures, encumbrances, and balance. This report is a summary of spending by site.<sup>90</sup> If this report is continued to be provided, it may benefit from a revision by presenting the actual expenditures through the prior year in a separate column and an additional column for expenditures for year to date. Additionally, the report lists encumbrances for amounts that may instead be referenced as commitments.<sup>91</sup>
  - **Bond Program Spending by School Site (Report #2):** This report shows by school site, the original budget, current budget, actual expenditures, encumbrances, and balance. This report is not something that is typically provided by CBOCs. It appears to be a report that is provided as a topic of interest and it is not clear as to where this report will evolve as it seems to be in the developing stages.
  - **Bond Program Summarized Cost Codes (Report #3):** This report shows original budget, current budget, actual expenditures, and balance by cost codes. This report is not something that is typically provided to CBOCs. It appears to be a

<sup>89</sup> VLS was informed that although the report submitted in June failed to list certain positions, all positions were listed in this report as provided to the CBOC in the August 2016 meeting.

<sup>90</sup> This report was provided to the CBOC as of 2/29/2016. After this date it was not provided.

<sup>91</sup> As discussed in section B of this work step, a commitment listed in these types of reports usually should show the full contract commitment while the encumbrance is part of the commitment and includes the amounts committed for that fiscal year only.

report that is provided as a topic of interest and it is not clear as to where this report will evolve as it seems to be in the developing stages.

- Bond Program Spending by Cost Code (Report #4): This reports shows by cost codes the current budget, actual expenditures, and remaining balance. This report is not something that is typically provided to CBOCs. It appears to be a report that is provided as a topic of interest. The CBOC's reports subcommittee is working on providing greater clarity as to how this report could be used.

#### Summary of Reports Provided to the Board

The District Board is provided the first and second interim reports which include the Building Fund Revenues, Expenditures, and Changes in Fund Balance Report, which is prepared by the Executive Director. The first and second interim reports are high-level District-wide financial reports, which are provided two times during the year. Local Education Agencies (LEAs), such as WCCUSD, are required to file two annual reports on the status of the LEA to the California Department of Education. The first interim report is due on December 15 of each year for the period ending on October 31, while the second interim report is due on March 17 for the period ending January 31. As stated, a report for the Building Fund is part of this District-wide report.

The District Board is also provided a monthly construction Project Status reports. This report shows active construction projects and lists the location and name of the project, the scope, construction status, contract status, period progress, anticipated progress for next period, duration of project, and percentage of work completed. This report is prepared by the Construction Manager.<sup>92</sup>

One more report the District Board is provided is the monthly Change Order report which is also prepared by the District Engineering Officer. This report lists the monthly change orders that are over 10% of the original contract or are over \$250,000.

#### Status

As stated in the section above, some of the reports being prepared for the CBOC by and at the direction of the Executive Director are still in the development stage. Looking forward, the proposed schedule for the new Master Plan, which was presented to the FSC in July 2016, envisions incurring expenses on 12 school projects in addition to Pinole Valley High School in fiscal year 2016/17, with eight more projects planned through June 2023. In addition, there are two projects pending completion in October 2016, and there are pending potential change orders for the Korematsu Middle School project. There is also planning and administration associated with the bond program, and the financial reporting system(s) need to be able to accommodate these two areas. See TC16-1 for recommendation related to this area.

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<sup>92</sup> SGI is the Construction Manager for the remaining projects other than Pinole Valley High School. The Construction Manager for Pinole Valley High School is Roebbelen Contracting Inc.

The Master Plan schedule through June 2023 used projections of cash receipts and expenditures to test the viability of the proposed schedule with anticipated available resources. Since these are projections of future events, there will need to be updates to these projections as more current and better information becomes available. These projections are an important planning tool when updated on a regular basis and when major events occur that impact either revenues or expenditures. The District has about 20 projects that include Pinole Valley, which will have to be delegated to the program managers at the regional level. The vendor that is going to manage the Pinole valley project, for example, will need to have that information as the project manager should be held accountable for the budget, and she or he should have the necessary information to manage the budget. See TC16-2 for recommendation related to this area.

It appears that the projection of cash receipts and expenditures on which the proposed Master Plan schedule through June 2023 is based has not been shared with the FSC, or the CBOC. This is an important planning tool and should be presented to all three bodies since it underlies the basis and assumptions for implementing District plans. However, it should be recognized that projections will change, and the projections should be updated and re-shared periodically. The information in the projection of cash receipts and expenditures, on which the proposed Master Plan schedule is based, appears to be similar to the report requested by the CBOC as of the 6/22/2016 CBOC meeting. This report was requested to be provided on a monthly basis as report number 13 “Bond Program Unencumbered Funds Through December 2012.”<sup>93</sup> The request by the CBOC is that this report be provided on a monthly basis; however, VLS believes that a report of this nature provided on a monthly basis is too frequent to be useful. As readers may become accustomed to the budget figures in this report not changing monthly, they may stop paying attention to it. Instead, this report should be provided in the same frequency that the master planning projects are updated or annually. (More often if there are significant changes in funding or projected cost.) The District should decide on the format of the report and the timing for periodic updates. See TC16-3 recommendation for this area.

#### Assessment by VLS

- The District has set up the Munis project ledger to be used with the general ledger, and reconciliations between the two ledgers are being done. Performing these reconciliations and making any needed adjustments assures the project ledger is in agreement with the general ledger. However, as discussed in the TC (14) section, these are not performed on a set schedule, and written procedures for this have not been established. A related recommendation was made in TC14-6.
- It appears that the projection of cash receipts and expenditures on which the proposed Master Plan scheduled through June 2023 is based has not been shared with the Board, the FSC, or the CBOC. This is an important planning tool and should be presented to all

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<sup>93</sup> “2012” is not a typographical error by VLS. VLS believes that the title is supposed to be “...Through December 2021.”

three bodies since it underlies the basis and assumptions for implementing District plans. This report should be provided in the same frequency that the master planning projects are updated or annually. (More often if there are significant changes in funding or projected cost.) The District should decide on the format for the report and the timing for periodic updates. See TC16-3 recommendation for this area.

- The reports being prepared for the CBOC by and at the direction of the Executive Director are still in the development stage and report contents and distribution are subject to change as the processes and reports evolve. Based on the content of the 8/11/2016 CBOC agenda there is not yet consensus between the CBOC and the District regarding the reports naming, presentation, format, and content. Internal conflicts and personality clashes also seem to be slowing the development of reports. The report development process is ongoing and not yet ready for testing. See TC16-4 for recommendation related to this area. Please refer to FI 6 section for recommendations related to assessing the value of proposed monthly reporting requested by the CBOC against the ongoing cost of report development and maintenance.
- The types of reports and the frequency of the reports submitted to the FSC appear to be consistent and predictable.
- While VLS found that the monthly reports prepared by the Executive Director were not presented to the Board, it appears the Board does receive the first and second interim reports containing the Building Fund Revenues, Expenditures, and Changes in Fund Balance report along with substantial briefings and action items related to the Bonds Program.

**(B) Results of Testing - Assess Whether These Reports Accurately and Completely Reflect the Financial Position of the Bond Program**

Internal Consistency Tests

To test the internal consistency of the reports VLS performed the following tests on the reports submitted to the CBOC and the FSC in the month of May 2016.

- For the current year reports, VLS assessed whether total expenditures and encumbrances in the Fund 21 Financial Status, the Project Budget Report, and the Budget Summary 11 Periods Report were in agreement. For total expenditures we found the reports in agreement in all cases.

Accuracy Test

To test the accuracy of the reports provided by the Executive Director to the CBOC and the FSC, VLS tested the reports provided to the CBOC and the FSC in the month of March 2016.<sup>94</sup>

<sup>94</sup> These reports covered the period through 2/29/2016.

- Financial Status Report Fund 21:<sup>95</sup> VLS noticed that the beginning fund balance stated as of July 1, was \$84,274,449, and showed an audit adjustment of (\$2,403,615).<sup>96</sup> This indicates that the beginning balance at 7/1/2015 was \$81,870,884,<sup>97</sup> while the compliance audit report as of 6/30/2015 listed \$78,734,836 or a difference of \$3,136,049.<sup>98</sup> The reason for this difference is that the bond related revenues are not included in the Bond Program compliance audit, but they are shown in the Financial Status Report. The amount of Bond related revenues object code 9790 equals the difference of \$3,136,049. This is not an issue; however, in order for this information to be presented more clearly to the readers, the Financial Status Report should include an explanation. This explanation should indicate that the amounts listed for fund balance for July 1, are different from the amounts shown for fund balance in the Bond Program compliance audit report as of June 30, due to the inclusion of bond related revenues in the Financial Status Report. See TC16-5 recommendation for this area.
- Financial Status Report Fund 21:<sup>99</sup> The Year-to-Date actual revenue and expenditure amounts were compared to the general ledger that VLS had been provided. The general ledger included revenues and expenditures up to 2/29/2016, which was the same date of the report. VLS noticed that the amounts listed in the Year-to-Date actual revenue and expenditures reflected the amounts shown in the general ledger.
- Project Budget Report: The actual expenditures listed in this report were also compared to the general ledger and no differences for actual expenditures for the fiscal year were noticed between the general ledger and the Project Budget Report.
- Cash Flow through June 2017:<sup>100</sup> VLS noticed that the beginning fund balance stated as of July 1 was \$96,781,503, which was different from ending cash balance shown in the compliance audit report as of 6/30/2015 of \$95,180,264. This is a difference of \$1,601,239.<sup>101</sup> The reason for this difference is that the cash from bond related

<sup>95</sup> Only reports for Fund 21 were analyzed as only Fund 21 is part of the Bond Program. Reports for Fund 25 and 35 were not analyzed.

<sup>96</sup> It was noticed that the Financial Status Report Fund 21 for January 2016, had failed to include this audit adjustment.

<sup>97</sup> The calculation is the following:  $\$84,274,499 - \$2,403,615 = \$81,870,884$ .

<sup>98</sup> The beginning balance for the 2015/16 fiscal year should match the ending balance of the 2014/15 fiscal year. The calculation is the following:  $\$81,870,884 - \$78,734,836 = \$3,136,049$ .

<sup>99</sup> Only reports for Fund 21 were analyzed as only Fund 21 is part of the Bond Program. Reports for Fund 25 and 35 were not analyzed.

<sup>100</sup> This report includes cash flow actuals to date and projected for future months for two fiscal years, 2015/16 and 2016/17.

<sup>101</sup> The calculation is the following:  $\$96,781,503 - \$95,180,264 = \$1,601,239$ .

revenues, object code 9790 and the cash from “undistributed,” object code 0000, are not included in the Bond Program compliance audit, but they are shown in the Financial Status Report. The amount of cash in County Treasury for Bond related revenues, object code 9790 equaled \$3,136,049 as of 2/29/2016, while the Cash for “undistributed,” object code 0000 equaled (\$1,534,809) as of 2/29/2016. These amounts combined total the difference of  $\$3,136,049 + (\$1,534,809) = \$1,601,240$ .<sup>102</sup> This is not an issue, however, to be more clear, this report should include an explanation that the amounts for beginning cash for July 1, are different than the amounts shown in the Bond Program compliance audit report for year ended 6/30/2015, due to the inclusion of bond related revenues and undistributed amounts into this report.<sup>103</sup> See TC16-5 recommendation for this area.

- Cash Flow through June 2017: Within this report, VLS noticed that the ending cash as of the end of January 2016 did not match the beginning cash stated as of February 2016. Ending cash as of January 2016 showed \$36,091,406, while beginning cash as of February 2016 showed \$33,687,792. This is a difference of \$2,403,614.<sup>104</sup> This difference was due to an audit adjustment posted. Per discussion with the Executive director, this report was originally not designed to include audit adjustments, thus the reason for the difference noticed. According to the Executive Director, once this issue was discovered the format of this report was changed to include (audit) changes to Fund Balance that affected cash. See TC16-7 recommendation for this area.
- Monthly Warrant Listing (Accounts Payable Check List):<sup>105</sup> In this report, VLS noticed that the amount listed as a grand total for the month of February 2016 in the warrant listing did not match the total listed for expenditures in the general ledger for the same month. Upon further review it was noticed that the amount recorded in the warrant listing for payments to certain vendors was less by 10% than the amount recorded in the general ledger. It was communicated by the Executive Director that the warrant listing shows the amount of the check issued to the vendor while the general ledger shows the entire expenditure.<sup>106</sup> This is not an issue, however, the Monthly Warrant Listing, should

<sup>102</sup> There is a \$1 rounding difference.

<sup>103</sup> VLS did not review bank statements or bank statement reconciliations for the months listed in these reports.

<sup>104</sup> The calculation is as follows:  $\$36,091,406 - \$33,687,792 = \$2,403,614$ .

<sup>105</sup> The Monthly warrant listing includes only payments to vendors and does not include payments for Bond Program classified salaries or payments for employee benefits.

<sup>106</sup> Standard industry practice for construction contracts allows payment withholdings (retentions) to: 1) be deposited in an escrow account with a financial institution at the time progress payments are made or 2) be accumulated and held by the contracting party (the District). Additionally, Subsection “Payments and Contractors” of the District’s Administrative Regulation 3314 addresses retention withholdings.

make it clear that the amount shown does not include retention withholdings. See TC16-6 recommendation for this area.

#### Other Items Noticed

**Common Core Technology Budgets:** The District has allocated \$35 million for Common Core Technology and assigned budget responsibility outside the Facilities Department. VLS notes that this allocation is not consistently reported in project reports. In the Bond Program Spending to Date by School Site Report, the budget is shown under Administration/Other as Information Technology with a \$35 million budget and expenditures of \$12,137,437 as of the end of June 2016. See Figure 2 for this information as it was provided to the CBOC and the FSC for period ended 6/30/2016. The Bond Program Summarized Cost Codes Report does not appear to separate Common Core Technology and reports these costs within school sites combined with other technology expenditures. The Summarized Cost Code Report appears to show a budget of \$15 million with expenditures of \$17,218,841. See Figure 3 for this information as it was provided to the CBOC and the FSC for period ended 6/30/2016. Accountability would be improved if these costs and budgets were consistently grouped together in accordance with budget responsibility. See TC16-8 for recommendation related to this area.

Figure 2: Bond Program Spending to Date by School Site<sup>107</sup>

		<b>West Contra Costa Unified School District</b> <b>Bond Program Spending to Date by School Site</b> <b>June 30, 2016</b>			Report # 2
Schools	Original Budget	Current Budget	Actuals	Encumbered	Balance
<b>High Schools</b>					
De Anza HS	105,389,888	131,730,043	132,007,640	457,860	(735,457)
El Cerrito HS	93,605,815	149,047,560	144,429,810	252,451	4,365,299
Greenwood Academy / LPS	35,315,772	80,181,895	79,410,138	363,790	407,968
Hercules HS	12,603,343	30,403,028	4,068,686	18,000	26,316,342
Kennedy HS	89,403,130	38,395,795	34,408,975	687,942	3,298,878
Mid College HS	0	0	27,333	0	(27,333)
Pinole Valley HS	124,040,286	216,549,580	38,466,677	137,045,951	41,036,952
Richmond HS	94,720,910	58,523,927	20,530,283	2,368,815	35,624,829
Vista HS	3,568,208	6,701,320	7,481,165	0	(779,845)
<b>High Schools Total</b>	<b>558,645,352</b>	<b>711,533,148</b>	<b>460,830,709</b>	<b>141,194,808</b>	<b>109,507,632</b>
<b>Closed Schools/Programs</b>					
Adams MS	703,660	690,082	691,211	0	(1,129)
Cameron	284,012	284,012	242,138	0	41,874
Castro	11,901,504	651,957	620,944	0	31,013
Delta NSS	152,564	152,564	152,226	0	338
El Sobrante	187,343	505,382	536,231	0	(30,849)
Harbour Way Com Day	121,639	121,639	121,944	0	(305)
Kappa NSS	109,809	109,809	109,831	0	(22)
North Campus	169,849	201,662	492,569	0	(290,907)
Omega NSS	117,742	118,638	118,313	0	325
Seaview	178,534	510,649	499,116	0	11,533
Sigma NSS	110,728	110,728	110,949	0	(221)
Trans Learning Center	118,020	118,020	118,673	0	1,347
West Hercules Elementary	0	216,685	56,847	0	159,838
<b>Closed Schools/Programs Total</b>	<b>14,155,404</b>	<b>3,791,827</b>	<b>3,868,993</b>	<b>0</b>	<b>(77,166)</b>
<b>Administration/Other</b>					
Central	67,713,312	69,924,746	85,244,563	1,483,418	(16,803,235)
Information Technology	35,000,000	34,770,000	12,137,467	214,061	22,418,472
Alvarado Adult Ed	0	0	167,323	0	(167,323)
Richmond College Prep	8,148,550	4,663,308	4,415,204	0	248,104
Serra Adult Ed	0	0	204,212	0	(204,212)
<b>Administration/Other Total</b>	<b>110,861,862</b>	<b>109,358,054</b>	<b>102,168,769</b>	<b>1,697,479</b>	<b>5,491,807</b>
<b>Grand Total</b>	<b>1,261,854,248</b>	<b>1,793,765,815</b>	<b>1,340,322,589</b>	<b>150,414,683</b>	<b>303,028,543</b>

<sup>107</sup> As presented on Bond Program Spending to Date by School Site Report (Report #2) on 7/27/2016 to the CBOC.

Figure 3: Bond Program Summarized Cost codes<sup>108</sup>

West Contra Costa Unified School District					Report # 3
Bond Program Summarized Cost Codes					
June 30, 2016					
Projects	Original Budget	Current Budget	Actuals	Balance	
752 – Printing Costs	0	0	1,518,880	(1,518,880)	
756 – Security	0	0	215,395	(215,395)	
764 – Other Services	0	0	450,810	(450,810)	
<b>District Costs</b>	<b>0</b>	<b>0</b>	<b>21,220,838</b>	<b>(21,220,838)</b>	
832 – Supplies, FF&E	0	0	346,207	(346,207)	
840 – Consultants	0	0	1,286,294	(1,286,294)	
844 – Fiscal Audit	0	0	1,152,739	(1,152,739)	
848 – Performance Audit	0	0	2,806,156	(2,806,156)	
852 – Legal Fees	0	0	6,338,491	(6,338,491)	
856 – Bond Finance Consultant	0	0	407,089	(407,089)	
860 – Bond Issuance	0	0	4,926,232	(4,926,232)	
864 – Other Bond Costs	0	0	2,338,270	(2,338,270)	
868 – Other Services	0	0	1,819,382	(1,819,382)	
<b>Staff</b>	<b>0</b>	<b>0</b>	<b>16,914,737</b>	<b>(16,914,737)</b>	
828 – Administrative Support Staff	0	0	16,914,737	(16,914,737)	
<b>Technology</b>	<b>15,000,000</b>	<b>14,770,000</b>	<b>24,135,780</b>	<b>(9,365,780)</b>	
516 – Technology	0	(230,000)	2,847	(232,847)	
720 – Technology	0	0	6,914,092	(6,914,092)	
836 – Technology	15,000,000	15,000,000	17,218,841	(2,218,841)	
<b>Administration Total</b>	<b>102,713,312</b>	<b>104,694,746</b>	<b>97,382,030</b>	<b>7,312,716</b>	
<b>Grand Total</b>	<b>1,261,854,248</b>	<b>1,793,765,815</b>	<b>1,340,322,589</b>	<b>453,443,226</b>	

**Liabilities, Encumbrances and Commitments** - There may be some misunderstanding in the reports use of the term “encumbrances.” Both the current fiscal year reports and the multi-year reports use this term but there are significant differences in meaning. The “crib sheet” from the 6/22/2016 CBOC minutes, characterized encumbrances as “liabilities that are not yet actual expenditures.”<sup>109</sup> The more common accounting use is that encumbrances are for contractual work not yet done which is expected to be completed in the current fiscal year. This would be reflected in current year reports only. For multi-year reports the term “commitments” is normally used. This would include all the contractual work the District is currently committed to over the life of the project and not just what is expected to be completed during the current year. Multi-year project reports do not completely reflect the current position of the District if “commitments” are not included. For example, Figure 4 details the Bond Program Spending to Date by School Site report as of 6/30/2016 and lists the large Pinole Valley High School projected cost of \$137,045,951 as an encumbered amount, when this amount would be more appropriately listed as a “committed” amount. After assessing how to present commitment

<sup>108</sup> As presented on Bond Program Summarized Cost Codes (Report #3) on 7/27/2016 to the CBOC.

<sup>109</sup> As mentioned, the “crib sheet” was created by a CBOC member intending to provide clarity as to the meaning of the reports.

amounts, the District should consider providing a legend as to the meaning of each column listed in this report in order to provide the clarity needed for the report to be understood. See TC16-9 for recommendation related to this area.

**Figure 4: Example of the Use of the Term “Encumbered”**



**West Contra Costa Unified School District**  
**Bond Program Spending to Date by School Site**  
June 30, 2016

**Report # 2**

Schools	Original Budget	Current Budget	Actuals	Encumbered	Balance
<b>High Schools</b>					
De Anza HS	105,389,888	131,730,043	132,007,640	457,860	(735,457)
El Cerrito HS	93,805,815	149,047,560	144,429,810	252,451	4,365,299
Greenwood Academy / LPS	35,315,772	80,181,895	79,410,138	363,790	407,968
Hercules HS	12,603,343	30,403,028	4,068,866	18,000	26,316,342
Kennedy HS	89,403,130	38,395,795	34,408,975	687,942	3,298,878
Mid College HS	0	0	27,333	0	(27,333)
Pinole Valley HS	124,040,286	216,549,580	38,466,677	137,045,951	41,036,952
Richmond HS	94,720,910	58,523,927	20,530,283	2,368,815	35,624,829
Vista HS	3,566,208	6,701,320	7,481,165	0	(779,845)
<b>High Schools Total</b>	<b>558,645,352</b>	<b>711,533,148</b>	<b>460,830,709</b>	<b>141,194,808</b>	<b>109,507,632</b>

**Cash-Flow Projections-** It appears that the Cash flow projection for the large Pinole Valley project is based on the bid received. The bid price appears to be spread evenly over the 30 months of the project. Given the size of this project, it would be prudent for the Chief Engineer and the Construction Manager to review these projections in light of the schedule of values from the contractor and other more current information to assess if adjustments may be necessary. Figure 5 lists cash flow predictions for the January through June of fiscal year 2016/17. See TC16-10 for recommendation related to this area.

**Figure 5: Sample of Cash Flows for Disbursement for Part of Fiscal year 2017<sup>110</sup>**



**Fund 21 Cash Flow July 2016**  
Fiscal 2017

Object	January	February	March	April	May	June
<b>A. BEGINNING CASH</b>	\$ 89,998,534.23	\$ 83,906,152.85	\$ 77,776,271.46	\$ 71,650,390.08	\$ 66,353,841.70	\$ 60,336,793.31
<b>B. RECEIPTS</b>						
Other Local Revenue 8600-8799	37,500.00		4,000.00		29,500.00	0.00
All Other Financing Sources 8930-8999						
<b>TOTAL RECEIPTS</b>	37,500.00	0.00	4,000.00	0.00	29,500.00	0.00
<b>C. DISBURSEMENTS</b>						
Classified Salaries 2000-2999	124,518.00	124,518.00	124,518.00	124,518.00	124,518.00	124,518.00
Employee Benefits 3000-3999	57,038.00	57,038.00	57,038.00	57,038.00	57,038.00	57,038.00
Books & Supplies 4000-4999	627,916.00	627,916.00	627,916.00	627,916.00	627,916.00	627,916.00
Services 5000-5999	421,454.18	421,454.18	421,454.18	421,454.18	1,171,454.18	1,171,454.18
Capital Outlay 6000-6999	5,381,703.12	5,381,703.12	5,381,703.12	4,548,370.12	4,548,370.12	4,548,370.12
Interfund Transfers Out 7600-7629						
<b>TOTAL DISBURSEMENTS</b>	<b>6,129,881.38</b>	<b>6,129,881.38</b>	<b>6,129,881.38</b>	<b>5,296,548.38</b>	<b>6,046,548.38</b>	<b>6,046,548.38</b>
<b>D. BALANCE SHEET TRANSACTIONS</b>						

<sup>110</sup> This image was copied from the report as provided to CBOC on 7/27/2016. VLS acknowledges that the image quality is poor.

**Internal Controls Related to Budgeting** – For Discussion of whether budget figures reflect the financial position of the Bond Program, please refer to TC (6) section for a thorough discussion on detailed budget preparations. Refer to TC (5) section for a discussion on budget amounts as it pertains to the Master Planning budgeting process; and to FI (2) section for a discussion on budgets provided to the Board.

#### Assessments by VLS

- The reports tested for consistency all appeared to be in agreement.
- The beginning fund balance and beginning cash balance provided in the reports as of 2/29/16, appeared to be reflective of the ending balances shown in the Bond Program Compliance Audit, after accounting for items related to Bond related and undistributed revenue. (These two sources of revenue are not part of the Bond compliance Audit.
- Reports do not contain footnotes or legends that would help the reader understand the information provided. See TC16-6 for recommendation related to this area.
- The cash flows report contained one error in stating an ending cash balance for the month of January.<sup>111</sup> See TC16-7 for recommendation related to this area.
- Allocation for Common Core Technology budgets is not consistently reported between reports. See TC16-8 for recommendation related to this area.
- Reports use the term “encumbered” and/or “encumbrances” to refer to items that are more commonly reported in standard accounting definitions as “commitments.” See TC16-9 for recommendation related to this area.
- Cash flow projections for expenditures appear to be presented evenly or close to evenly, and may need to be assessed and adjusted based on schedule of values for existing contracts. See TC16-10 for recommendation related to this area.
- Refer to TC (6) section for discussion on detailed budget preparations; to TC (5) for a discussion on budget amounts as it pertains to the Master Planning budgeting process; and to FI (2) for a discussion on budgets provided to the Board.

#### New Score

Medium

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<sup>111</sup> Some of the reports tested also had the word “February” misspelled.

**Recommendations (A)**

- TC16-1. The financial reporting system(s) should include projections related not only to the construction related cost and master planning, but also cost related to the planning and administration associated with the bond program in order to provide a complete picture of projected expenditures.
- TC16-2. The District should ensure that as construction projects are delegated to program managers at the regional level, they are provided with the projections of cash receipts and expenditures related to their specific construction projects. As updates are made to these projections, those updates should be shared with the project managers at the regional level, as they will need sufficient information to enable them to manage the budget for the project.
- TC16-3. Share updates to program cash flow projections used in determining the schedule for the new Master Plan with the Board, the FSC, and the CBOC. This should be done on a periodic basis determined by the District in a format selected by the District. This report appears to be similar to the report number 13, which was requested by the CBOC as of the 6/22/2016 meeting.
- TC16-4. Once consensus is reached between the CBOC and the District regarding the report naming, presentation, format, and content; and once report development is finalized, develop written procedures for the preparation and distribution of reports so that processes can continue when there are changes in personnel. The written procedures should include the following:
- a. Identify the type of reports to be generated.
  - b. Indicate the interval with which reports should be generated, such as monthly.
  - c. Require that the Executive Director of Business Services, Bond Finance reviews the reports prior to distribution to other management, staff, or other users.
  - d. Identify the individuals that should receive the reports generated and the process for communicating questions or comments back to the Bond Finance department.

**Recommendations (B)**

- TC16-5. Include footnotes in the Financial Status Reports and Cash Flow Reports to explain any differences that can be expected when attempting to compare the beginning balances (for items such a beginning cash balance and beginning fund balance) listed in these reports to the same items' ending balances reported in the Bond Program compliance

audit report for the prior year.<sup>112</sup> Furthermore, include footnotes, notes, or legends necessary to help report readers understand information provided in the reports submitted to the FSC and the CBOC.

TC16-6. Include a footnote in the Monthly Warrant Listing reports to explain that the amounts listed in this report are not the total expenditure listed in the general ledger; as this report shows the amount of the check issued to the vendor and does not include not include retention withholdings piece of the expenditure. Additionally, this footnote should explain the meaning of retention withholdings.

TC16-7. Implement a review process prior to finalizing reports. This process should include mathematical, spelling and grammar accuracy verification.

TC16-8. Report the Common Core Technology budget in a consistent manner across reports

TC16-9. Consider using the term “commitments” instead of “encumbrances” when referring to amounts for contractual work the District is currently committed to over the life of the project.

TC16-10. Review Cash Flow projection for Pinole Valley High School in light of the schedule of values from the contractor for this project to assess if adjustments may be necessary in presenting this projection.

Additionally, refer to section TC (5) for TC5-1 and TC5-2 recommendations regarding budgeting procedures related to master planning.

Refer to section TC (6) for TC6-7, TC6-8, and TC6-9 recommendations related to budget preparation and reporting.

Refer to section FI (6) for FI6-1 recommendation related to assessing the value of proposed monthly reporting against the ongoing cost of development and maintenances.

Refer to section FI (6) for FI6-3 recommendation related to ensuring that Bond Program resources are not being used to support the CBOC.

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<sup>112</sup> As discussed in the Accuracy Test section of this work step, there were differences identified between these reports and the Performance Audit report. These differences are because the Financial Status Reports and Cash Flow Reports list the entire Fund 21 activity, which includes bond related revenues accounts and undistributed amounts accounts as well as Measures D and E accounts, while the Performance audit is strictly for Measures D and E only.

**Response by District****Recommendations (A)**

The District is in agreement with Recommendations (A) [TC16-1 through TC16-4].

**Recommendations (B)**

TC 16-5: The District has been very clear that the Financial Status Reports and the Cash Flow Reports represent Fund 21 in total. The Bond Program compliance audit has been presented as only including Measures D and E.

The District agrees with the recommendations. TC16-6 through TC16-10. The District has made the recommended changes in TC16-6.

**VLS's Assessment of District Response**

VLS acknowledges that the District is in agreement with the recommendations made by VLS for recommendations TC16-1 through TC16-4 and for recommendations TC16-6 through TC16-10.

VLS acknowledges the District response for TC16-5 that Financial Status Reports and the Cash Flow Reports represent Fund 21 in total, while the Bond Program compliance audit report clearly states being limited to Measures D and E. However, VLS continues to encourage the District to include footnotes, notes, or legends necessary to help report readers understand information provided in the reports submitted to the FSC and the CBOC. For example, a simple note stating that in addition to accounts for Measures D and E, which are the subject of the performance audit, Fund 21 includes bond related revenues accounts and undistributed amounts accounts.

VLS commends the District for having implemented recommendation TC16-6; however, VLS has not verified that this recommendation has been implemented.

#### **IV. Forensic Accounting Investigation (FI) Results of Investigation and Recommendations**

##### **(A) Methodology for Completing the Forensic Accounting Investigation (FIs 1 - 11)**

As a result of the work performed in Phase I, the District approved for VLS to conduct forensic accounting investigations (FIs) in eleven specific areas in Phase II. These eleven areas were specifically related to the risk of fraud areas identified in the Phase I Risk Assessment Matrix and the allegations that initiated this engagement. These eleven FIs involve primarily historical transactions.

In Phase I, eleven FIs were recommended by VLS and approved by the Board for forensic accounting investigation (FI) for Phase II. As articulated in Phase I, the following criteria was used by VLS to determine which of the various historical transactions, allegations, and complaints were selected as FIs and were tested in Phase II:

- Allegations that called for a criminal, civil, or other potential legal opinion by VLS were not selected for testing, as VLS, by professional standards of the AICPA and the ACFE, is prohibited from rendering such opinions. For example, the allegation that a Board member received a kickback would require a criminal investigation and a legal proceeding. The allegation that a District employee was negligent in fulfilling his/her duties would also require a legal proceeding.
- Allegations were not chosen for Phase II FIs if, in VLS's professional judgment, the benefit to the District would be better served by testing the internal control processes associated with the risk of fraud. For example, an FI work step was not designed to investigate the allegation that the Board is not told if a project has sufficient budget for a contract; however, there was a TC work step designed to test the internal controls in this area.
- Allegations were taken into consideration when designing FI work steps when the allegation, if investigated, could result in the recovery of monies for expenditures paid by the District that it may not have been obligated to pay.
- Allegations deemed to be related to significant management functions of the District Bond Program were taken into consideration for designing FI work steps.
- Consideration was given to the overall potential cost of investigating any allegations where the allegation would be better served by addressing it through a test of the related internal controls.

As defined in the scope of work for these eleven FIs, VLS was to perform appropriate investigative steps as specified for each of the individual FIs. The work performed by VLS for each of these FIs generally involved:

- Interviews: Interviews were conducted of select current and former District staff, third party vendors, and other individuals who had information that assisted VLS in the testing of the FIs.
- Document examination: VLS requested, obtained, organized, reviewed, and analyzed appropriate records, ledgers, and detailed accounting information. In some cases, vendors and/or individuals did not respond to VLS's requests, and these limitations are noted in Section VI of the report.
- Data analytics: Where appropriate, VLS used certain data analytics to assist in identifying sample sizes, to test for unusual transactions or data patterns, and assist in identifying transactions that should be reviewed or further examined.
- Computer forensics and email review: VLS performed a computer forensic review of certain appropriate email information.
- Public source database checks: VLS performed certain public database background checks on organizations and entities, as appropriate, to assist in testing of the FIs.

**The Eleven FIs Identified for Testing in Phase II are as Follows:**

<b>Conflict of Interest</b>	
FI (1)	Conduct appropriate investigative steps to identify contributions, gifts, or other payments made by District vendors to specific outside organizations, District Board members or District employees, which may have been given as a result of undue influence by District Board members or District employees
<b>Budgeting Practices</b>	
FI (2)	Conduct appropriate investigative steps to: <ul style="list-style-type: none"> <li>- Determine which projects had budgets approved by the Board or by an individual or committee authorized by the Board</li> <li>- On a sample basis, review past project expenditures and compare to identified budgets</li> <li>- Determine whether budgets submitted to the Board historically have been sufficient and free of errors</li> </ul>
<b>Vendor Contract Administration - SGI</b>	
FI (3)	Conduct appropriate investigative steps to determine: <ul style="list-style-type: none"> <li>- If Facilities Subcommittee recommended to the Board that SGI be selected contrary to staff recommendation</li> <li>- If SGI withheld or failed to make payments to subcontractors working on District projects through SGI</li> <li>- If SGI was paid inappropriately for sick and vacation time and if SGI billed the District for hours not worked by SGI employees</li> <li>- If District paid SGI for computers that were never received at the District office</li> <li>- If SGI employees possess the appropriate qualifications as stated in the terms specified in the SGI contract with the District</li> <li>- If sufficient supporting documentation was provided with invoices submitted by SGI to the District</li> <li>- If SGI communicated an incorrect and lower cost for change orders</li> </ul>
FI (4)	Construction expert to: <ul style="list-style-type: none"> <li>- Conduct industry benchmarking</li> <li>- Assess if the SGI contract is reasonable and within industry standards</li> <li>- Review staffing levels of SGI compared to services delivered and volume of projects</li> </ul>
<b>Vendor Contract Administration - Vendor Contracts and Payments</b>	
FI (5)	Conduct appropriate investigative steps to test a sample of vendor invoice payments to verify the following: <ul style="list-style-type: none"> <li>- Contracts were appropriately approved by the Board</li> <li>- Appropriate contracts were executed</li> <li>- Payment was made timely</li> <li>- Invoice contains the appropriate District approval for payment</li> <li>- Payment agrees with contract terms</li> <li>- No duplicate payments (or overpayments) were made to a vendor due to two purchase orders being created for one contract</li> </ul>
FI (6)	Assess the responsibilities of the CBOC based on California Education Code and the California State Constitution and determine what actions taken by the CBOC may overstep their responsibility
<b>Vendor Contract Administration - Architect Firms</b>	
FI (7)	Conduct appropriate investigative steps to: <ul style="list-style-type: none"> <li>- Evaluate if contracts with and payments to architect firms were appropriate</li> <li>- Evaluate the timing elapsed between commencement of design work and commencement of construction</li> <li>- Determine whether architects were approved for "add services" due to the need for updated designs</li> <li>- Determine whether "add service" of \$7 million approved for WLC was appropriate</li> <li>- Determine whether "add service" of \$800,000 approved for other architectural firm was appropriate</li> <li>- Benchmark against industry standards</li> <li>- 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</li> </ul>
<b>Vendor Contract Administration - Bidding</b>	
FI (8)	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

<b>Vendor Contract Administration - Retention Release Payments</b>	
FI (9)	<p>Conduct appropriate investigative steps to:</p> <ul style="list-style-type: none"> <li>- On a sample basis, test retention release payments to assess whether payment was made in accordance with the District's retention payment policy</li> <li>- Assess the claim that retention was released to a particular contractor prior to standard District policy/practice</li> </ul>
<b>Change Order Approval and Accounting Practices</b>	
FI (10)	Conduct appropriate instigative steps to test a sample of change orders to assess for appropriate Board approval
<b>Financial Reporting</b>	
FI (11)	<p>Conduct appropriate investigative steps to:</p> <ul style="list-style-type: none"> <li>- Determine whether Primavera has been fully adopted and is being updated as required</li> <li>- Review recent projects to determine whether PCOs have been entered into Primavera</li> <li>- Determine whether any change orders from the period when Primavera went down are currently not recorded in Primavera</li> <li>- Determine if multiple purchase orders were created for a single contract and determine the control deficiencies that allowed this to occur</li> <li>- Determine if the KPI and CAMP reports historically provided to the Board were inaccurate</li> </ul>

**(B) Results of Testing**

For each of the specific FIs, VLS performed the appropriate forensic accounting investigation. The results of the work performed are documented in the specific “Results of Testing” section for each of the eleven FIs. In accordance with AICPA professional standards, VLS used a combination of random sampling and judgmental sampling in order to select the samples for testing in the Forensic Accounting Investigation section. A random sample is used so every unit in the population has an equal chance of being selected, while a judgmental sample relies on the auditor’s professional judgment, meant to focus and confirm a condition that is reasonably thought to exist. These sections begin on page <sup>133</sup> and continue through page 359. The “Results of Testing” sections include the following:

- The specific FI work step.
- The results of the work performed in testing the specific work step. This includes, where applicable, the analyses and steps performed, any scope limitations, and other information relevant to the testing of the FI section.
- Conclusions VLS was able to make based on the results of the testing.
- Recommendations VLS has made for the District to implement based on the results of work performed and conclusions reached for each FI work step.
- District Response: VLS submitted to the District in advance of this report only the work step and recommendations related to the FI sections in order to receive a District response. The results of the work performed and the conclusions reached were not shared with the District in advance of this report.

**What FI Recommendations Are and What They Mean**

VLS has made specific recommendations based on the results of work performed and conclusions reached for the eleven FIs. These recommendations are for the District to consider implementing as they are designed for the purpose of:

- Improving the overall efficiencies and effectiveness in the management and operation of the District Bond Program, and
- Lowering the New Risk Score, where applicable.<sup>113</sup>

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<sup>113</sup> The following three FI recommendations were included in the “Recommendation” column in the final Risk Assessment Matrix Phase II: FI6-1, FI6-2, and FI6-3.

Additionally, as a result of the work performed, conclusions were reached for certain FI sections [FI (1), FI (3) and FI (10)]. VLS has made a recommendation for the Board to consider referring this report to law enforcement authorities for appropriate action. VLS also recommends that the Board consider consulting with legal counsel for further course of action.

FI recommendations are noted at the end of each FI section. In addition, VLS has listed these recommendations in Table 67 beginning on page 365.

**What follows starting on page 133 are the  
Results of Testing for FI (1) - (11)**

**FI (1) Work Step**

Conduct appropriate investigative steps to identify contributions, gifts, or other payments made by District vendors to specific outside organizations, District Board members, or District employees, which may have been given as a result of undue influence by District Board members or District employees.

**Related Allegation**

COI (3) – Allegations of kickbacks to Charles Ramsey

**Results of Testing**

As more fully articulated in Section V, Work Performed by VLS, VLS performed certain investigative steps to identify contributions, gifts, or other payments made by District vendors to specific outside organizations that are closely related or connected to the District, District Board members, or District employees, which may have been given as a result of undue influence by District Board members or District employees.<sup>114</sup>

A summary of investigative steps performed by VLS included interviews of certain District employees, both present and former; interviews of certain current and former vendors of the District Bond Program; and certain other individuals.

VLS also requested in writing specific financial information from vendors of the Bond program. Some vendors fully complied with the request. Other vendors, did not provide VLS with this information. Section VI of this report fully documents vendors who did not comply with VLS's request.

To meet this objective, VLS approached this in a three-part test.

- Part (A) is to determine whether vendors of the District Bond Program made any contributions to organizations related to campaigns and other organizations with some connection to the District and/or the District Bond Program.
- Part (B) is whether any Board member or District staff solicited either directly or indirectly any vendors to make these contributions.

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<sup>114</sup> Undue influence refers to whether vendor(s) felt any pressure either directly or indirectly to make a contribution.

- Part (C) is whether vendors felt any pressure (either directly or indirectly) to make these contributions in order to do business with the District or to continue to do business with the District.<sup>115</sup>

**(A) Contributions made by vendors to organizations related to campaigns and other organizations with some connection to the District and/or the District Bond Program.**

**Results of Work Performed**

Results of the work performed reveal that vendors of the District Bond Program did make contributions to organizations related to campaigns and other organizations with some connection to the District and/or the District Bond Program. The schedules that follow detail the vendors of the District Bond Program and the amount of the contributions they made to the various organizations listed.

Table 6 details the contributions made by District vendors/subcontractors to organizations related to campaigns and other organizations with some connection to the District for the fiscal years 2008/09 through 2014/15.<sup>116</sup> The columns have been numbered for reference as follows:

1. This column lists the vendor/subcontractor name. The companies/entities listed in this section were either District vendors or the subcontractors of the District vendors.<sup>117</sup>
2. This column represents the total amount paid by the District to the vendor listed in column (1).<sup>118</sup> These amounts were identified through the District general ledger.
3. This column lists the amounts contributed by District vendors to the Ivy League Connection. The contributions listed are according to the records provided to VLS by the Ivy League Connection's fiscal sponsor.

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<sup>115</sup> The professional standards promulgated by the American Institute of Certified Public Accountants (AICPA) and the Association of Certified Fraud Examiners (ACFE) prohibit VLS from rendering an opinion as to whether there has been any fraud, criminal activity, corruption or bribery by anyone associated with this engagement. Therefore, VLS renders no opinion as to whether there has been any fraud, criminal activity, corruption or bribery by anyone associated with this engagement.

<sup>116</sup> The source of the detail is stated in its respective summary below.

<sup>117</sup> Subcontractors of SGI were identified from a list provided by SGI and through their invoices to the District. Service providers of the vendors were identified through labor and expense detail reports provided by the vendors.

<sup>118</sup> There is no dollar amount included for subcontractors or service providers as the District did not pay them directly. There may be vendors listed that at one time were subcontractors to another District vendor.

4. This column lists the amounts contributed by District vendors to The West Contra Costa Public Education Fund (Ed Fund), who is the fiscal sponsor for the Ivy League Connection. The contributions listed are according to records provided to VLS by the Ed fund.
5. This column lists the amounts contributed by District vendors to For the Children of West County, which is a Political Action Committee (PAC) that represents the WCCUSD bond & parcel tax campaigns. These amounts were identified by VLS in the Contra Costa County “CampaignDocs Web Public Access” and reflect the amounts reported by the recipients on FPPC Form 460.<sup>119</sup>
6. This column lists the amounts contributed by District vendors to individual campaigns of District Board members. These amounts were identified by VLS in the Contra Costa County “CampaignDocs Web Public Access” and reflect the amounts reported by the recipients on FPPC Form 460.
7. This column lists total gifts from vendors/subcontractors to District employees or District Board members as reported by the Form 700.
8. This column shows the total amounts contributed by the District vendors/subcontractors.

Table 7 through Table 11, which follow Table 6, provide the detail related to columns three to seven within this table.

**Table 6: Contributions Made by District Bond Program Vendors/Subcontractors**

Vendor/ Subcontractor Name	Total Payments from District to Vendor/ Subcontractor	Total Vendor Contributions to Ivy League Connection	Total Vendor Contributions to Education Fund	Total Vendor Contributions to "For the Children of West County"	Total Vendor Contributions to all other Campaigns	Total Gifts from Vendor Reported on Form 700	Grand Total (Columns 3-7)
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>8</b>
WLC Architects, Inc.	\$ 17,011,399	\$ 268,500	\$ 17,583	\$ 296,000	\$ -	\$ 850	\$ 582,933
The Seville Group (SGI)	57,518,511	275,000	5,000	120,000	16,500	2,501	419,001
Deems Lewis McKinley	8,288,797	167,500	17,500	115,000	-	-	300,000
Hibser Yamauchi Architects	10,961,463	44,000	2,500	81,000	8,000	-	135,500
Powell & Partners Architects	8,521,565	38,000	-	61,000	20,250	-	119,250
Interactive Resources	5,381,284	57,000	-	55,250	2,500	-	114,750

<sup>119</sup> Form 460 is titled “Recipient Committee Campaign Statement” and is filed with the Contra Costa County Elections agency in accordance with Government Code Sections 84200-84216.54.

Vendor/ Subcontractor Name	Total Payments from District to Vendor/ Subcontractor	Total Vendor Contributions to Ivy League Connection	Total Vendor Contributions to Education Fund	Total Vendor Contributions to "For the Children of West County"	Total Vendor Contributions to all other Campaigns	Total Gifts from Vendor Reported on Form 700	Grand Total (Columns 3-7)
Quattrocchi Kwok Architects	1,871,249	34,000	-	65,000	2,500	-	101,500
Baker Vilar Architects	4,144,121	30,600	-	55,000	2,500	-	88,100
Orbach Huff & Suarez LLP	1,313,182	18,000	7,583	17,500	-	-	43,083
Davillier-Sloan, Inc.	2,437,102	32,500	-	4,000	4,000	-	40,500
John P Grossman & Associates	3,283,900	17,500	-	15,000	-	-	32,500
Amanco	-	5,000	-	12,500	7,325	425	25,250
HMC Architects	3,104,157	11,000	-	10,450	-	-	21,450
KNN Public Finance	222,189	8,000	-	12,000	-	931	20,931
Aeko Consulting	542,972	5,000	-	11,000	4,000	-	20,000
Lathrop Construction Associates Inc.	102,655,387	-	-	10,000	-	-	10,000
Sally Swanson Architects	1,302,852	3,250	1,500	2,500	400	75	7,725
AE3 Partners, Inc.	533,765	1,000	-	6,000	-	-	7,000
Kelling Northcross & Nobriga	15,359	2,000	-	4,000	-	-	6,000
Vallier Design Associates Inc.	28,568	-	-	4,000	-	-	4,000
Bothman Construction	6,518,570	-	-	-	-	1,747	1,747
ISSA Structural Engineers	13,300	400	-	1,000	-	-	1,400
RGA Environmental Inc.	1,265,043	-	-	1,250	-	-	1,250
Kleinfelder	2,066,718	-	-	1,000	-	-	1,000
Luk and Associates	98,591	-	-	300	-	-	300
Ninyo & Moore	466,031	-	-	100	-	-	100
<b>Total</b>	<b>\$ 239,566,074</b>	<b>\$ 1,018,250</b>	<b>\$ 51,666</b>	<b>\$ 960,850</b>	<b>\$ 67,975</b>	<b>\$ 6,529</b>	<b>\$ 2,105,270</b>

Table 7 contains the detail of total vendor contributions to the Ivy League Connection as shown in column 3 of Table 6. The Ivy League Connection (ILC) is a privately financed scholarship program designed to promote the college going culture in the high schools of the West Contra Costa Unified School District.<sup>120</sup> Records for the ILC were received for 7/1/2009 through

<sup>120</sup> The WCCUSD website, under student parent resources, has a link to the ILC website. The ILC website indicates that it was founded by school Board members Madeline Kronenberg and Charles Ramsey. It also states that the school administrators volunteer their time and efforts. The Ed Fund is the Fiscal Sponsor of the ILC.

2/29/2016.<sup>121</sup> ILC was founded by Board members Madeline Kronenberg and Charles Ramsey and it is administered by Ms. Kronenberg, Mr. Ramsey and Don Gosney.<sup>122</sup> Don Gosney and Madeline Kronenberg are currently the only two administrators of the ILC. Many District vendors have contributed to the ILC, as well as the Ed Fund, and some Board members have had their children benefit from this program. Specifically, Charles Ramsey’s two children benefitted from the program and Todd Groves’ daughter benefitted from the program.

**Table 7: Contributions Made to Ivy League Connection - Fiscal Years 2009/10-2015/16**

Vendor/Subcontractor Name	Fiscal Year 2009/10	Fiscal Year 2010/11	Fiscal Year 2011/12	Fiscal Year 2012/13	Fiscal Year 2013/14	Fiscal Year 2014/15	Fiscal Year 2015/16	Total Contributions to ILC
The Seville Group (SGI)	\$ 50,000	\$ 50,000	\$ 50,000	\$ 75,000	\$ 50,000	\$ -	\$ -	\$ 275,000
WLC Architects	3,500	45,000	50,000	40,000	105,000	25,000	-	268,500
Deems Lewis McKinley	12,500	25,000	25,000	25,000	25,000	25,000	30,000	167,500
Interactive Resources	7,500	7,500	7,500	11,000	20,000	3,500	-	57,000
Hibser Yamauchi Architects	8,500	17,000	10,000	-	5,000	3,500	-	44,000
Powell & Partners Architects	4,500	2,500	10,000	4,000	7,000	10,000	-	38,000
Quattrocchi Kwok Architects	2,000	-	10,000	10,000	10,000	2,000	-	34,000
Davilier-Sloan	10,000	5,000	7,500	5,000	-	5,000	-	32,500
Baker Vilar Architects	3,100	4,000	7,500	5,000	10,000	1,000	-	30,600
Orbach Huff & Suarez LLP	-	-	-	5,000	10,000	3,000	-	18,000
John P Grossman & Associates	-	2,500	5,000	5,000	5,000	-	-	17,500
HMC Architects	-	-	-	3,500	5,000	2,500	-	11,000
KNN Public Finance	-	2,000	2,000	2,000	2,000	-	-	8,000
Aeko Consulting	-	-	-	5,000	-	-	-	5,000
Sally Swanson Architects	-	1,500	750	500	-	500	-	3,250
Kelling Northcross & Nobriga	2,000	-	-	-	-	-	-	2,000
AE3 Partners Inc.	-	-	-	-	-	-	1,000	1,000
Amanco	-	-	5,000	-	-	-	-	5,000
ISSA Structural Engineers	400	-	-	-	-	-	-	400
<b>Total</b>	<b>\$104,000</b>	<b>\$162,000</b>	<b>\$190,250</b>	<b>\$196,000</b>	<b>\$254,000</b>	<b>\$ 81,000</b>	<b>\$ 31,000</b>	<b>\$ 1,018,250</b>

Table 8 contains the detail of total vendor and subcontractor contributions to the West Contra Costa Public Education Fund as shown in column 4 of Table 6. The West Contra Costa Public Education Fund is the fiscal sponsor for the Ivy League Connection. It became the fiscal sponsor in October 2009. **Exhibit FI1-01** shows a copy of the fiscal sponsor agreement between ILC and the Ed Fund.

<sup>121</sup>The records received for the ILC were received starting with fiscal year 2009/10, which is the time when the West Contra Costa Public Education became the ILC public sponsor.

<sup>122</sup>The names of funding members and administration for the ILC were identified through the ILC website.

**Table 8: Total Vendor Contributions to the Education Fund**

Vendor/Subcontractor Name	Date	Amount
WLC Architects, Inc.	5/25/2012	\$ 5,000
	6/6/2013	5,083
	3/31/2014	2,500
	4/10/2015	2,500
	3/4/2016	2,500
Total		\$ 17,583
Deems Lewis McKinley	2/19/2009	\$ 5,000
	4/16/2012	2,500
	1/11/2013	2,500
	4/15/2014	2,500
	3/19/2015	2,500
	1/21/2016	2,500
Total		\$ 17,500
Orbach Huff & Suarez LLP	4/15/2013	\$ 2,583
	3/20/2015	5,000
Total		\$ 7,583
The Seville Group (SGI)	12/27/2010	\$ 5,000
Hibser Yamauchi Architects	5/3/2012	\$ 1,500
	2/12/2016	1,000
Total		\$ 2,500
Sally Swanson Architects	5/31/2012	\$ 1,500

Table 9 contains the detail of vendor and subcontractor contributions to For the Children of West County as shown in column 5 of Table 6. For the Children of West County is a Political Action Committee (PAC) that represents the WCCUSD bond & parcel tax campaigns. Kenneth Pon CPA is the Treasurer.<sup>123</sup> Although not much more information is available related to this PAC, VLS obtained documentation that states that Charles Ramsey was the Fundraising Chair (**Exhibit FI1-02**).

**Table 9: Vendor Contributions to “For the Children of West County”**

Vendor/Subcontractor Name	Amount
WLC Architects, Inc.	\$ 296,000
The Seville Group (SGI)	120,000
Deems Lewis McKinley	115,000
Hibser Yamauchi Architects, Inc.	81,000
Quattrocchi Kwok Architects	65,000
Powell & Partners Architects	61,000
Interactive Resources	55,250
Baker Vilar Architects	55,000

<sup>123</sup> VLS obtained the contributions information from the Contra Costa County website “CampaignDocs Web Public Access”

[http://64.166.146.18/listimages.asp?orgid=63&currentpage=1&txtName=For+th&chkPartial=on&searchtype=1&yearid=2012&ballot\\_id=All&district\\_id=All&jurisdiction\\_id=All&electtype\\_id=All&election\\_id=All&form\\_id=All&startdate=&enddate=&firsttenter=0&nextbutton=0& backpage=searchresult.asp&checkforyearrange=0&yearrange](http://64.166.146.18/listimages.asp?orgid=63&currentpage=1&txtName=For+th&chkPartial=on&searchtype=1&yearid=2012&ballot_id=All&district_id=All&jurisdiction_id=All&electtype_id=All&election_id=All&form_id=All&startdate=&enddate=&firsttenter=0&nextbutton=0& backpage=searchresult.asp&checkforyearrange=0&yearrange)

Vendor/Subcontractor Name	Amount
Orbach Huff & Suarez LLP	17,500
John P Grossmann & Associates	15,000
Amanco	12,500
KNN Public Finance	12,000
Aeko Consulting	11,000
HMC Architects	10,450
Lathrop Construction Associates Inc.	10,000
AE3 Partners	6,000
Vallier Design Associates Inc.	4,000
Davillier Sloan, Inc.	4,000
Kelling Northcross & Nobriga	4,000
Sally Swanson Architects	2,500
RGA Enviromental Inc.	1,250
ISSA Structural Engineers	1,000
Kleinfelder	1,000
Luk and Associates	300
Ninyo & Moore	100
Total	<u>\$ 960,850</u>

Table 10 contains the detail of vendor and subcontractor contributions to campaigns as shown in column 6 of Table 6. District vendors contributed to individual campaigns of District Board members. This includes contributions to Madeline Kronenberg for School Board, Charles Ramsey for City Council, Charles Ramsey for Mayor of Richmond, Elaine Merriweather for School Board and Tony Thurmond for School Board.

**Table 10: Vendor Contributions to All Other Campaigns**

Vendor/Subcontractor Name	(Kronenberg for) School Board 2014	Charles Ramsey for City Council 2014	Charles Ramsey for Mayor of Richmond 2014	Elaine Merriweather for School Board	Tony Thurmond for School Board	Grand Total
Powell & Partners Architects	\$ 17,500	\$ -	\$ 2,750	\$ -	\$ -	\$ 20,250
The Seville Group (SGI)	7,500	-	2,500	4,000	2,500	16,500
Hibser Yamauchi Architects, Inc.	5,500	-	2,500	-	-	8,000
Amanco	3,525	-	2,500	1,100	200	7,325
Davillier Sloan, Inc.	2,000	500	-	-	1,500	4,000
Aeko Consulting	4,000	-	-	-	-	4,000
Baker Vilar Architects	-	-	2,500	-	-	2,500
Interactive Resources	2,500	-	-	-	-	2,500
Quattrocchi Kwok Architects	-	-	2,500	-	-	2,500
Sally Swanson Architects	250	-	-	-	150	400
Total	<u>\$ 42,775</u>	<u>\$ 500</u>	<u>\$ 15,250</u>	<u>\$ 5,100</u>	<u>\$ 4,350</u>	<u>\$ 67,975</u>

Table 11 contains the detail of gifts from vendors and subcontractors as reported by the recipients in Form 700s as shown in column 7 of Table 6. These are amounts of gifts from vendors/subcontractors to District employees or District Board members as reported on Form

700s filed with the county office.<sup>124</sup> Form 700s for District employees and District Board members were reviewed and the gifts as reported on these forms were summarized.<sup>125</sup> Every elected official and public employee who makes or influences governmental decisions is required to submit a Statement of Economic Interest, also known as the Form 700. The Form 700 provides transparency and ensures accountability.

**Table 11: Gifts from Vendors as Reported on Form 700**

Vendor/Contractor Name	Martin Coyne	Sheri Gamba	Madeline Kronenberg	Audrey Miles	Charles Ramsey	Grand Total
The Seville Group (SGI)	\$ -	\$ -	\$ 75	\$ 226	\$ 2,200	\$ 2,501
Bothman Construction	-	-	-	-	1,747	1,747
KNN Public Finance	170	158	128	-	475	931
WLC Architects, Inc.	-	-	-	-	850	850
Amanco	-	-	-	-	425	425
Sally Swanson Architects	-	-	-	-	75	75
Total	\$ 170	\$ 158	\$ 203	\$ 226	\$ 5,772	\$ 6,529

### **Conclusion**

This investigation revealed that certain vendors of the District Bond Program did in fact make contributions to organizations related to campaigns and other organizations with some connection to the District and/or the District Bond Program as documented and explained above. This is documented in Table 6 through Table 11.

### **(B) Whether any Board member or District staff solicited either directly or indirectly any vendors to make these contributions.**

### **Results of Work Performed**

Results of the work performed reveal that vendors were in fact directly or indirectly contacted by District Board members<sup>126</sup> and possibly other District staff to solicit contributions to the organizations identified in Part (A). Through VLS's interviews of vendors and others, and review and analysis of records and documents, the following was conveyed to VLS concerning the person(s) who solicited the organization for contributions and the method used by them to make the solicitation. See FI1-1 recommendation for this area.

<sup>124</sup> Except for one vendor who provided VLS with some information concerning gifts, no other vendors provided any financial information for VLS to review. As a result VLS's scope was limited concerning reviewing any gifts from vendors in terms of reconciling the amounts stated by vendors to the amounts reported by the recipients in Form 700s.

<sup>125</sup> Of the individuals for whom the Form 700 was reviewed, only five reported receiving gifts from District Vendors/subcontractors; therefore only these five were included in the corresponding summary schedules. These five individuals were: Sheri Gamba, Charles Ramsey, Madeline Kronenberg, Audrey Miles, and Martin Coyne.

<sup>126</sup> Board members at the time of the solicitation.

Ivy League Connection (ILC) and West Contra Costa Education Fund (Ed Fund)

It was conveyed to VLS consistently by the vendors and others interviewed that they were contacted primarily by then Board member Charles Ramsey. It was also conveyed to VLS that the fundraising solicitations more recently have been made primarily by Don Gosney. This was also corroborated by District Executives who advised that fundraising was done by Mr. Ramsey when he was on the Board. One vendor recalls being contacted in the early years when the ILC was starting by both Glenn Price and Mr. Ramsey, both Board members at the time the contributions were solicited. Some vendors stated that Madeline Kronenberg also has made requests of them for contributions. Ms. Kronenberg confirmed she did send out emails soliciting contributions to a list of individuals Mr. Ramsey had initiated. To her knowledge, the list came from people who had contributed to bond measures and people who had been interested in the ILC program. See FI1-2 and FI1-3 recommendations for this area.

It was conveyed to VLS consistently that the method used to solicit vendors for contributions was by either a letter mailed to them directly, an email, a personal phone call or a combination of these. Vendors stated that, generally, when Mr. Ramsey was involved in the fundraising, he would typically make a phone call soliciting a donation either before or after a letter or email had been sent to them. VLS did review an email correspondence to a vendor from Mr. Ramsey soliciting a contribution to the ILC and the request was in the names of Madeline Kronenberg and Charles T. Ramsey, Ivy League Connection (**Exhibit FI1-03**). This email correspondence states the contribution can be mailed to Ivy League Connection Attn: Charles T. Ramsey. More than one vendor stated that Mr. Ramsey would sometimes pick up the checks himself. One vendor recalled that they delivered a contribution check (they did not specify if the check was for the ILC or “For the Children of West County”) to the “superintendent who just retired last week.”

Some vendors recall attending a dinner on behalf of the ILC. In attendance were some of the architect vendors and some Board members.

For the Children of West County)

It was conveyed to VLS consistently by the vendors and others interviewed that Mr. Ramsey was the primary fundraiser for For the Children of West County. This was also corroborated by District Executives who advised that fundraising was done by Mr. Ramsey when he was on the Board. VLS also reviewed a letter from Mr. Ramsey on behalf of For the Children of West County to a vendor soliciting a contribution to For the Children of West County in the amount of \$20,000 (**Exhibit FI1-04**). This letter also mentioned to mail the check not to the address on the letterhead but to the address: For the Children of West County c/o Charles Ramsey, For the Children of West County, Fundraising Chair. The address listed for Mr. Ramsey in the letter is the same address that was listed as the mailing address for Mr. Ramsey on Form 700s.

It was consistently conveyed to VLS that the method used to solicit vendors for contributions was by mass emails, letters, and phone calls.

Additionally, more than one vendor conveyed to VLS that vendors were contacted by people who worked at the District or represented the District. The vendors advised VLS that, typically, the caller would emphasize that they were calling as a private citizen. One vendor explained,<sup>127</sup> “They don’t call from school phones. They don’t send letters on District letterhead. They kept it completely separate. The last request [I received] was a text from someone at the District that was from their personal cell and it said that they were contacting me as a private citizen. But it was mostly Charles Ramsey who was reaching out. And when he reached out, most of the time he said he was calling as a private citizen. Mr. Ramsey said he was taking off his Board of Trustee hat and needed to talk about the bond campaign.”

One vendor explained the process as: “When the bond campaign starts, they [the employees of the District] separate themselves from the District. These are people donating or volunteering time. They call you or you get a letter saying they have a bond. They go through marketing information. In some cases that request comes with a dollar amount. Requests have come by text, by email, by letter.”<sup>128</sup> One District Executive confirmed he/she has volunteered on campaigns when not on official business duty.

It was consistently conveyed that vendors were asked to participate in “Phone Banks,” typically a request made of the vendors by Mr. Ramsey who would say, “We really need the help - we really need to call these people.”<sup>129</sup> Volunteers were needed to make phone calls to get the word out to people to vote to pass the bond. These “Phone Banks” occurred when a bond measure was on the ballot, and some vendors recalled that the phone banking was held at the offices of Interactive Resources, a District vendor.

Vendors also conveyed attending a couple of fundraising events where other architects were there and Mr. Ramsey was there and they discussed participation in the phone banks and contributions. The architects were asked to come and bring a check. Mr. Ramsey would give his speech and a vendor recalls that WLC Architects, Inc. would provide a fruit plate.<sup>130</sup>

#### Campaign Contributions and Gifts

Very limited information was provided to VLS concerning whether Board members or District staff solicited them either directly or indirectly to make campaign contributions. One vendor

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<sup>127</sup> These statements represent summaries of some of the statements provided to VLS and are not meant to be exact quotes of individuals interviewed or documents reviewed.

<sup>128</sup> It was conveyed to VLS by other vendors that dollar amounts were sometimes included in the letter as a suggested amount. One vendor who wished to remain anonymous advised they were told by Mr. Ramsey of the specific amount to contribute and what he wanted them to contribute.

<sup>129</sup> These statements represent summaries of some of the statements provided to VLS and are not meant to be exact quotes of individuals interviewed or documents reviewed.

<sup>130</sup> VLS’s analysis revealed that most of the organizations that made contributions were SGI and architects and there were very few, if any, construction companies.

recalls being contacted by the professional manager of the various campaigns. One vendor recalls that Mr. Ramsey asked them directly for a contribution for Ramsey as Mayor, to which they did contribute.

Of the vendors that VLS requested financial information concerning any gifts provided to any District Board members or District staff, only a few vendors provided VLS with relevant financial information. Of the limited financial information provided from these vendors, VLS's limited testing identified some differences between the amount of the gifts and meals listed in the Form 700 and the amount provided by the vendors. For example, one vendor reported a meal and that meal was not listed in the Form 700. These differences were not fully investigated due to the limited amount of financial information provided.<sup>131</sup>

### **Conclusion**

The investigation by VLS revealed that certain Board members, and possibly District staff, did solicit, either directly or indirectly, vendors to make these contributions.

### **(C) Whether vendors felt any pressure (either direct or indirect) to make these contributions in order to do business with the District or to continue to do business with the District.**

### **Results of Work Performed**

Through interviews of vendors and others, and review and analysis of records and documents, the following was conveyed to VLS concerning whether vendors felt any pressure (either direct or indirect) to make these contributions in order to do business with the District or to continue to do business with the District.<sup>132</sup> See FI1-4 and FI1-5 recommendations for this area.

### **Ivy League Connection and West Contra Costa Education Fund**

Vendors provided information to VLS about the Ivy League Connection program and Ed Fund and commented as to whether they believed they were being pressured to contribute.<sup>133</sup>

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<sup>131</sup> As stated in the Scope Limitation section, SGI was one of the vendors that did not provide VLS with all of the financial information requested, including financial information concerning gifts, meals, and entertainment provided to Board members and District staff.

<sup>132</sup> Some individuals provided information and documentation to VLS but were reluctant to provide further detailed information. Some also requested to remain anonymous and not be identified in the report.

<sup>133</sup> The scope of the work by VLS in this engagement does not involve an audit of the financial statements of the ILC, Ed Fund, and the For the Children of West County or an assessment and review of the effectiveness, efficiency, or legality of these same organizations.

Some of the statements include:<sup>134</sup>

- ILC is something I feel a connection with. It gets kids from low-income areas exposed to these options to Ivy League schools. This is a program I'm personally attached to. I make a pitch in this firm to donate.
- I think it's a good program. It's more of a personal connection. I do this for personal reasons and not the business relationship.
- The ILC was something I really believed in and was happy to contribute. They take kids on field trips in the summer to Ivy League schools. They help encourage them to apply. They build relationships with those universities so they give special attention to the kids in this District. It's good publicity for the District. It's a good program because of what it does and it encourages students.
- I never felt that if I didn't give money they were going to give the work to someone else. I never saw a decrease in work based on not paying or a decrease in payments [contributions].
- I thought it was an amazing program, and I was happy to contribute.
- These guys are all friends of ours. Most things we contribute to as a business is because it's a personal connection. Someone calls you up and you do it. In the future, I may be making a call to them for one of my favorite charities. ILC is a favorite charity of Mr. Ramsey.
- I spoke with Ramsey and said that I have \$5,000 earmarked for WCCUSD this year. Asked him what he'd prefer – to ILC or to bond campaign or split it in half. He said to give it to ILC. He didn't flinch, he just said give it to ILC. He never said you need to give more or you're not getting any more work.

#### For the Children of West County

Vendors provided information to VLS about For the Children of West County and commented as to whether they believed they were being pressured to contribute.

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<sup>134</sup> These statements represent summaries of some of the statements provided to VLS and are not meant to be exact quotes of individuals interviewed or documents reviewed.

Some of the statements include:<sup>135</sup>

- We have an annual budget set aside for contributions to clients. We have policies about how much we donate. Generally, we don't donate to people we don't know. We make budgets at the beginning of the year. We are a big firm, and we get a lot of requests. We can't donate to all and not to the level they request. It's common for districts to contact the companies doing work for them. Other districts contact us and we donate to other school districts, so it didn't seem unusual.
- We do that with every school district we work with. It's a cost of doing business. Every district is told to go to vendors that benefit from the program and ask for contributions. It's something that we do. I'm sure every architect does the same thing. It's in our best interest to make sure these things pass.
- Whatever campaign contribution we gave, we never heard back from him [Ramsey] if it didn't match the suggested amount. He never said, "It wasn't enough." He's a smart guy and he knows where the boundaries are.
- The bond campaign is different. If vendors contribute, they do benefit. It's big business.
- The people that drive the campaigns are the bond consultants. They say that the people with the money are the vendors. That's who drives the process. In that respect, Ramsey is not the mastermind, he's the agent.
- Contributing to bond campaigns, it's normal. Every school district we work with operates in the same mode. They contact everyone who's worked for them before, everyone who wants to work for them. They work hard trying to get everyone to contribute to the campaigns. You just do it; it's what happens. It's a pain in the ass, but it's a cost of doing business.
- I've never seen any indication that making a contribution is tied to whether you get continued business with the District. I've never seen it happen. It's hard for people to understand this. They ask, why would you contribute if you didn't think there was going to be a quid-pro-quo? It's hard for people to understand. Short answer is no. I never felt that this was a quid pro quo for getting work from the District.

#### Other Statements made but not specific to any organization

Some of the statements include:<sup>136</sup>

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<sup>135</sup> These statements represent summaries of some of the statements provided to VLS and are not meant to be exact quotes of individuals interviewed or documents reviewed.

- Ramsey would call and say you are making money off the District so give back. It was more of I'm calling you because I need your help.
- We felt pressure to give money but not to the point that I worried I would lose business. I felt comfortable in pushing back because we didn't have the money.
- Felt pressure? Yes. Coercion? No.
- There was pressure yes, but coercion no. Ramsey would call and say, "You need to do these things."
- On contributions Ramsey would tell each of the contractors, I guess based on the amount of their contract, what he wanted them to contribute; he basically required every participant in the program to give to whatever political [cause] because he believed appropriate.
- He would extract from each of us what, in his mind, a contribution based on the value of service being provided to the district and the desire to remain working for the district.
- I will need a contribution check to take to this event. This is how we continue to get work from WCCUSD.
- He never hesitated to remind that you wouldn't be around here if you didn't come up with a certain amount.
- Every political season that the message came out. The message was always clear – here's what it costs to stay in.
- It was pretty well known that if didn't contribute to what Ramsey says; you're not going to get work with the district.
- Ramsey would ask you to pick up his meals tab – he would expect it
- He received a lot of tickets (Tickets)
- It was mostly just tickets...not meals, dinners, etc.

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<sup>136</sup> These statements represent summaries of some of the statements provided to VLS and are not meant to be exact quotes of individuals interviewed or documents reviewed.

**Conclusion**

The results of testing performed by VLS reveal that vendors/subcontractors of the District Bond Program were directly and indirectly solicited by District Board members and possibly other District staff to solicit contributions to organizations related to campaigns and other organizations with some connection to the District and/or the District Bond Program. In addition, more than one vendor conveyed that in making these contributions, they felt pressured (both directly and indirectly) to make these contributions in order to continue to do business with the District. Taking all these factors into consideration, this created at a minimum an environment where some vendors did feel undue influence to make these contributions when solicited.

As stated, VLS, by professional standards, makes no opinion as to whether there has been any fraud, criminal activity, corruption, bribery by anyone associated with this matter; this includes an opinion as to whether Mr. Ramsey was paid any kickbacks.<sup>137</sup>

**Recommendations**

Our recommendations in this area are best practices for the District in order to promote transparency, full disclosure, and minimize not only any actual conflicts of interest but also avoid any appearance of a conflict of interest by Board members and District staff. These recommendations also help to minimize any pressure and undue influence on vendors to make contributions to District related organizations.

FI1-1. Draft a “District Business Ethics Expectations” policy which articulates business ethics requirements for vendors, contractors and others doing business with the District Bond Program. Require all vendors, contractors, and subcontractors who will be doing business with the District Bond Program to implement a program requiring their employees sign acknowledgements that they have read and understand the “District’s Business Ethics Expectations” policy and the related obligations.<sup>138</sup> This policy can be incorporated within the existing Board policy 9270.

- a. Include language in this “District’s Business Ethics Expectations” policy which requires vendors, contractors and subcontractors, who will be doing business with the District Bond Program, to disclose in writing to the District when they

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<sup>137</sup> The professional standards promulgated by the American Institute of Certified Public Accountants (AICPA) and the Association of Certified Fraud Examiners (ACFE) prohibit VLS from rendering an opinion as to whether there has been any fraud, criminal activity, corruption or bribery by anyone in this matter. Therefore, VLS renders no opinion as to whether there has been any fraud, criminal activity, corruption, or bribery by anyone in this matter.

<sup>138</sup> This recommendation is complementary to TC7-5 and TC8-4 recommendation.

make any contribution or donation to any organizations or nonprofit charitable organizations in any way related or connected to the District or District Board member and any contributions to campaigns for District Board members and Bond campaigns.

- b. This “District’s Business Ethics Expectations” policy should also address:
  - i. District expectations that vendors, contractors, and subcontractors, while performing contract work, maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the District’s best interests.
  - ii. Vendors, contractors, and subcontractors shall permit interviews of employees, reviews and audits of accounting or other records by District representatives to evaluate compliance with the spirit of these business ethics expectations.<sup>139</sup>
- c. Require Board members and District staff to fully disclose to the Board in writing any solicitation of contributions from vendors, contractors, subcontractors doing business with the District organizations related to campaigns and other organizations with some connection to the District and/or the District Bond Program. Encouragement of full disclosure will discourage the potential for any improper influences and encourage the consideration of possible recusal by a Board member.<sup>140</sup>

FI1-2. Review any agreement(s), or policies with the ILC to ensure they are current, relevant and in compliance with all appropriate legal, administrative, and best business and ethical practices. Establish clear criteria with the ILC concerning eligibility of scholarships by children and family members of Board members or District Executives (including whether children of the same should be allowed to be recipients) and full disclosure to the public of these family recipients of ILC scholarships.<sup>141</sup>

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<sup>139</sup> See FI3-4 for further recommendations concerning the right to audit clause.

<sup>140</sup> See TC4-3 for further recommendations concerning governance and conflict of interest by Board members.

<sup>141</sup> VLS was advised that Mr. Ramsey’s and Mr. Groves’ children were recipients of scholarships of the ILC. The following is a summary of what Ms. Kronenberg advised VLS concerning the selection of Mr. Ramsey’s children: It was in approximately 2008 or 2009. I think they are both in college now. One is a senior and one is a sophomore. Concerning their selection, I did not see or ever hear anything concerning a conflict with their selection. I was present at the interview. I was just an observer. I was not on the committee for the interviews. The interview committee was comprised of community members, people involved in funding and alums of the universities they were going to. I said nothing. The people there did not know

- FI1-3. In coordination with the ILC, review and evaluate marketing materials and information brochures about the ILC to ensure these materials fully disclose information about the donors and their vendor relationship with the District Bond Program.
- FI1-4. As previously stated, the professional standards promulgated by the American Institute of Certified Public Accountants (AICPA) and the Association of Certified Fraud Examiners (ACFE) prohibit VLS from rendering an opinion as to whether there has been any fraud, criminal activity, corruption or bribery by anyone associated with this engagement. Therefore, VLS renders no opinion as to whether there has been any fraud, criminal activity, corruption, or bribery by anyone associated with this engagement. However, VLS recommends that legal counsel provide guidance and counsel to the Subcommittee for the Clay Investigation and the Board to determine whether this report should be referred to appropriate law enforcement agencies for appropriate action.
- FI1-5. The District should consult with legal counsel to determine whether further course of action is appropriate. Specifically, the failure of SGI to provide requested documents and allow interviews of SGI personnel, which resulted in a scope limitation of the work VLS was able to perform. Therefore, SGI may have been in breach of the Right to Audit Clause of the contract between the District and SGI by failing to provide VLS access to requested documents after reasonable notice was provided.

#### **Response by District**

- FI1-1. The District agrees with the recommendation that policy provisions are needed which further articulate business ethics requirements for vendors, contractors and others doing business with the District bond program. District staff will make a recommendation to the Board's Governance Subcommittee to review the audit firm's recommendations, together with the existing Board Policy 9270, and make a recommendation to the full Board for language revisions, if any.
- FI1-2. The District agrees with the recommendation to review policies regarding the Ivy League Connection to ensure that they are current, relevant, compliant and encourage best business and ethical practices.
- FI1-3. The District agrees with the recommendation.
- FI1-4. The District agrees with the recommendation.
- FI1-5. The District agrees with the recommendation.

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who those people were. It was all very open – it was completely known. The only thing that was not known was the people in the room. The information has only their first names.

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

VLS has reviewed the District response to VLS's recommendations and acknowledges the District's agreement with the recommendations provided.

**FI (2) Work Step**

Conduct appropriate investigative steps to determine which projects had budgets approved by the Board or by an individual or committee authorized by the Board **(A)**. On a sample basis, review past project expenditures and compare to identified budgets **(B)**. Determine whether budgets submitted to the Board historically have been sufficient and free of errors **(C)**.<sup>142</sup>

**Results of Testing**

**(A) Conduct appropriate investigative steps to determine which projects had budgets approved by the Board or by an individual or committee authorized by the Board.**

**Related Allegations**

BUD (1) – Unbudgeted/underbudgeted projects

BUD (2) – District increases budgets to match actual costs

**Results of Work Performed**

The Expenditure Authorization Worksheet (EAW), which was prepared by the Seville Group, Inc. (d.b.a. SGI Construction Management) or “SGI,” was the District’s mechanism for obtaining budget approval from the Board for a bond project and site. The EAW enumerates the bond projects and sites (Source) with their corresponding budget amounts that the Board had previously approved (Approved Expenditure Authority) and the proposed budget increase or decrease (Adjustments) for a bond project and/or site. Each EAW was presented to the Board at its regular meeting under section C. Business Items – Consent Items. When the Board approves the Consent Items, which includes the EAW, the Expenditure Authority amounts for the bond projects and sites are the “revised” approved budget amounts for the bond projects and sites. The EAW has the following format:

- 1) Source (name of the bond project or site)
- 2) Approved/or Planning Budget (also Approved Expenditure Authority)<sup>143</sup>
- 3) Adjustments (for the proposed budget increase or decrease)
- 4) Expenditure Authority<sup>144</sup> (sum of item 2 and item 3)
- 5) Reference<sup>145</sup>

<sup>142</sup> The letter included in parentheses after each sentence provides a reference to the applicable section in the “Results of Testing.”

<sup>143</sup> This is referred to as the “beginning project budget amount” in Work Step C of this section beginning on page 159.

<sup>144</sup> This is referred to as the “ending project budget amount” in Work Step C of this section.

Figure 6 includes an image of the columns included in the EAW reports.

**Figure 6: Excerpt from EAW Report**

WCCUSD BOND PROGRAM 2014 BUDGET EXPENDITURE ADJUSTMENTS				
EXPENDITURE AUTHORIZATION WORKSHEET				
SOURCE	APPR'D EXPEND. AUTHORITY	ADJUSTMENTS	EXPENDITURE AUTHORITY	REFERENCE
Downer ES Field	\$850,000	\$0	\$850,000	G.C. Bid (04/03/14)
Cameron ES	\$250,000	\$0	\$250,000	Architectural Planning Fees
Coronado ES	\$42,300,000	\$0	\$42,300,000	G.C. Bid - New Construction (10/23/13)
Dover ES	\$33,295,274	\$0	\$33,295,274	
Ford ES	\$31,154,828	\$0	\$31,154,828	Extended time, closeout, window shades
Fairmont ES*	\$34,677,605	\$0	\$34,677,605	
Highland ES*	\$54,600,000	\$0	\$54,600,000	

The District provided VLS a total of 10 EAWs approved by the Board during fiscal years 2010/11 through 2014/15. The EAWs were approved on the following Board meeting dates:

- 6/1/2011 (**Exhibit FI2-01**)
- 10/4/2011 (**Exhibit FI2-02**)
- 2/6/2013 (**Exhibit FI2-03**)
- 3/20/2013 (**Exhibit FI2-04**)
- 4/10/2013 (**Exhibit FI2-05**)
- 7/24/2013 (**Exhibit FI2-06**)
- 11/20/2013 (**Exhibit FI2-07**)
- 4/23/2014 (**Exhibit FI2-08**)
- 8/13/2014 (**Exhibit FI2-09**)
- 11/12/2014 – the last EAW approved by the Board (**Exhibit FI2-10**)

Starting with the EAW approved on 6/1/2011, Table 12 includes all of the bond projects and sites approved by the Board. The purpose of this table is to provide a summary of the various project/site budgets that were approved by the Board through the EAW reports identified above. The columns included in Table 12 are explained further below.

- Column (1) – Measure: The bond measure for which the budget was approved.<sup>146</sup>
- Column (2) – Source: Identifies the bond project and school site with an approved project budget.
- Column (3) – Approved Budget as of 6/1/2011: Identifies the approved budget amount for that school site as shown on the EAW report dated 6/1/2011.<sup>147</sup>

<sup>145</sup>This is a place for District comments (e.g., PO Close out, estimated cost to complete) for a specific bond project or site.

<sup>146</sup> Information provided by the District Project Analyst.

- Column (4) – Total Adjustments: The cumulative total of all adjustments for that bond project and school site identified in the EAWs provided to VLS.
- Column (5) – Approved Budget (Calculated): The sum of columns (3) and (4).<sup>148</sup>

**Table 12: Summary of All Bond Project and School Site Budgets**

Ref No.	(1) Measure	(2) Source	(3) Approved Budget as of 6/1/2011 (from EAW)	(4) Total Adjustments (from EAWs)	(5) Approved Budget (Calculated)
1	2000M	Modernization Phase 1A	\$ 126,012,682	\$ 311,657	\$ 126,324,339
2	2000M	Modernization Phase 1B	144,098,200	(105,576)	143,992,624
3	2000M	Expenditures Phase 2A Thru 3	2,097,201	-	2,097,201
4	2000M	Stewart ES Portable Classrooms	2,989,661	-	2,989,661
5	2000M	Quick Starts Projects	6,705,327	-	6,705,327
6	2000M	Chavez ES And Hanna Ranch ES	1,137,728	-	1,137,728
7	2000M	Program Coordination	8,035,760	-	8,035,760
8	2000M	Furniture And Equipment	6,221,107	-	6,221,107
9	2000M	Technology E-Rate Projects	5,718,001	-	5,718,001
10	2000M	Additional Bond Funded Projects	20,658,811	323,326	20,982,137
11	2000M	Community Kitchen Projects	4,724,945	-	4,724,945
12	2002D	Helms Middle	78,527,467	7,972,533	86,500,000
13	2002D	Pinole Middle	52,198,359	-	52,198,359
14	2002D	Portola Middle	56,429,054	12,570,946	69,000,000
15	2002D	El Cerrito High	123,381,967	1,618,033	125,000,000
16	2002D	Kennedy HS Track Field	3,181,061	-	3,181,061
17	2002D	PVHS Track & Field	1,657,106	-	1,657,106
18	2002D	Richmond HS Track Field	4,176,018	-	4,176,018
19	2002D	All Other Projects	4,805,068	-	4,805,068
20	2002D	Program Coordination	8,402,918	-	8,402,918
21	2002D	Furnishings/Equipment	4,952,897	-	4,952,897
22	2002D	Network Technology	5,944,408	-	5,944,408
23	2005J	Dover ES	32,028,548	-	32,028,548
24	2005J	Castro ES	350,000	-	350,000
25	2005J	Ford ES	27,519,240	2,230,760	29,750,000
26	2005J	King ES	23,731,084	-	23,731,084
27	2005J	Nystrom ES	32,481,474	14,888,526	47,370,000
28	2005J	Ohlone ES	33,231,437	-	33,231,437
29	2005J	De Anza High School	114,710,340	13,919,660	128,630,000
30	2005J	Richmond High School <sup>149</sup>	11,268,415	254,778	11,523,193

<sup>147</sup> Under the column labeled “2011 Master Plan Budget.”

<sup>148</sup> The calculated approved budget as shown in column (5) of the table does not equal the final approved budget as shown in the last EAW approved by the Board on 11/12/2014. The variances are discussed in detail in Work Step (C) beginning on page 159. Certain budget line items (such as technology) were reallocated to specific school sites; however, adjustments were not shown for the reallocations. Additionally, certain budgeted projects were removed from the EAW reports when they were completed.

Ref No.	(1) Measure	(2) Source	(3) Approved Budget as of 6/1/2011 (from EAW)	(4) Total Adjustments (from EAWs)	(5) Approved Budget (Calculated)
31	2005J	Kennedy High School (Quads)	13,469,486	-	13,469,486
32	2005J	Kennedy Science Building	-	7,500,000	7,500,000
33	2005J	Richmond College Prep	\$ 4,300,570	\$ 362,738	\$ 4,663,308
34	2005J	Master Planning	-	10,000	10,000
35	2005J	Additional Projects	1,072,997	(1,116,074)	(43,077)
36	2005J	Verde ES Site Work	167,316	-	167,316
37	2005J	Downer ES Soccer	-	850,000	850,000
38	2005J	Restroom Wall Finish Repair	-	6,005,781	6,005,781
39	2005J	Measure D Refund	1,600,000	-	1,600,000
40	2005J	Deferred Capital Projects	2,342,234	20,600	2,362,834
41	2005J	Program Coordination	9,741,819	2,635,006	12,376,825
42	2005J	Furnishings/Equipment	7,808,723	-	7,808,723
43	2005J	Network Technology	7,800,000	-	7,800,000
44	2005J	Program Contingency	5,320,462	(1,910,303)	3,410,159
45	2010D	Pinole Valley High School	120,000,000	60,000,000	180,000,000
46	2010D	Hercules Middle School	12,000,000	17,800,000	29,800,000
47	2010D	Richmond High School <sup>150</sup>	40,000,000	-	40,000,000
48	2010D	Kennedy High School (2010D Proj)	8,000,000	(5,600,000)	2,400,000
49	2010D	Kennedy - Richmond Swim Center	-	9,400,000	9,400,000
50	2010D	El Cerrito HS Stadium	7,000,000	14,000,000	21,000,000
51	2010D	Montalvin Manor	4,000,000	-	4,000,000
52	2010D	Coronado ES	32,000,000	9,500,000	41,500,000
53	2010D	Fairmont ES	33,877,605	-	33,877,605
54	2010D	Highland ES	34,500,000	19,300,000	53,800,000
55	2010D	Stege ES	30,000,000	-	30,000,000
56	2010D	Valley View ES	34,066,383	-	34,066,383
57	2010D	Wilson ES	34,000,000	15,000,000	49,000,000
58	2010D	Peres ES Renovation <sup>151</sup>	2,000,000	1,200,000	3,200,000
59	2010D	Leadership + Gompers	50,024,128	26,491,855	76,515,983
60	2010D	District Technology	5,000,000	-	5,000,000
61	2010D	Deferred Capital Projects	2,300,000	816,000	3,116,000
62	2010D	Program Cost <sup>152</sup>	8,000,000	7,000,000	15,000,000
63	2010D	Furnishings/Equipment	5,000,000	-	5,000,000
64	2010D	Program Technology	5,000,000	-	5,000,000
65	2010D	Program Contingency	6,000,000	-	6,000,000
66	2012E	Riverside ES Modernization	-	250,000	250,000
67	2012E	Cameron New School	-	250,000	250,000
68	2012E	Lake ES New School	-	500,000	500,000

<sup>149</sup> Budget for Richmond High School small projects and closeout.

<sup>150</sup> Budget for Richmond High School health center, gym, and CR/Library buildings.

<sup>151</sup> Includes Peres Elementary School Renovation and Peres Elementary School Renovation Phase II.

<sup>152</sup> Includes District-wide program costs and legal costs.

Ref No.	(1) Measure	(2) Source	(3) Approved Budget as of 6/1/2011 (from EAW)	(4) Total Adjustments (from EAWs)	(5) Approved Budget (Calculated)
69	2012E	Mira Vista ES ADA Access	-	100,000	100,000
70	2012E	Olinda ES New School	-	500,000	500,000
71	2012E	Shannon ES - New School	-	500,000	500,000
72	2012E	Program Contingency	-	6,000,000	6,000,000
73	2012E	Program Technology	-	20,000,000	20,000,000
Totals			\$ 1,473,768,007	\$ 271,350,246	\$ 1,745,118,253

### **Conclusion**

According to the analysis performed by VLS, the project budgets and sites enumerated in the EAWs were the only projects/school sites with budgets approved by the Board. See Table 12 above for projects/sites with approved budgets. Refer to TC (6) section for TC6-7 recommendation related to this area.

### **(B) On a sample basis, review past project expenditures and compare to identified budgets.**

### **Related Allegations**

BUD (1) – Unbudgeted/underbudgeted projects

BUD (2) – District increases budgets to match actual costs

### **Results of Work Performed**

VLS selected five schools from the last EAW approved on 11/12/2014 to compare the approved bond project budgets to their corresponding expenditures and encumbrances.<sup>153</sup> Table 13 includes the results of the comparison performed by VLS. The columns included in Table 13 are explained further below:

- Column (1) – School: Identifies the school site with an approved project budget.
- Column (2) – Expenditure Authority Per 11/12/2014 EAW: Identifies the budget amount approved by the Board on 11/12/2014.
- Column (3) – Expenditures: Amount of expenditures to date per *2016-Feb Summary Spending by School* report provided by the Project Analyst.

<sup>153</sup> Expenditures are the total amounts paid to-date for materials, supplies and/or services. Encumbrances are accounting transactions used to set aside funds for obligations made by the District (e.g., signed contracts) that have not been processed for payment. Encumbrances represent the total unpaid obligation to-date.

- Column (4) – Encumbrances: Amount of encumbrances to date per *2016-Feb Summary Spending by School* report provided by the Project Analyst.
- Column (5) – Balance as of 2/29/2016: The net of the “Expenditure Authority” approved by the Board on 11/12/2014 less the expenditures and encumbrances; net amount of column (2) less columns (3) and (4).

**Table 13: Comparison of Project Budgets and Expenditures**

Ref No.	(1) School	(2) Expenditure Authority Per 11/14/2014 EAW	(3) Expenditures	(4) Encumbrances	(5) Balance as of 2/29/2016 <sup>154</sup>
1	Coronado Elementary School	\$ 42,300,000	\$ 41,700,134	\$ 399,940	\$ 199,926
2	De Anza High School	132,000,000	130,622,363	1,492,499	(114,862)
3	Portola/Korematsu Middle School	69,776,223	64,201,525	4,990,113	584,585
4	Nystrom Elementary School	48,700,000	37,054,502	5,148,355	6,497,143
5	Sylvester Greenwood Academy/LPS	78,115,983	78,529,472	793,329	(1,206,818)

Additionally, project budget analyses were performed by the Bond Finance Department for Coronado Elementary School and Sylvester Greenwood Academy/LPS, and presented to the Facilities Subcommittee on 5/17/2016 (**Exhibit FI2-11**). The District compared the project budgets to the expenditures and encumbrances. This process assisted the District in identifying that the project budget for Sylvester Greenwood Academy/LPS was not sufficient, as shown in Table 13 (number 5); thereby, a budget adjustment was needed. On 6/15/2016, the Board approved a budget increase of \$1,350,000 to fund the additional expenditures and encumbrances incurred for the Sylvester Greenwood Academy/LPS project.<sup>155</sup> The project budget for Coronado Elementary School (number 1 in Table 13) was determined to be sufficient based on the District’s analysis; therefore, no budget adjustment was required. According to Table 13, De Anza High School has a deficit balance of \$114,862 as of 2/29/2016 (number 2). The project budget analysis for De Anza High School will be prepared by the District as mentioned in Work Step (D), Other Information. Refer to section TC (6) for TC6-9 recommendation for this area. Additionally, see FI2-1 recommendation for this area.

#### Budgets Matched to Actual Costs

Testing was performed by VLS related to the District’s budgeting practices to determine if the District increased budgets to match actual costs. The District provided VLS an export of budget

<sup>154</sup> This column equals the net of the project budget (column 2) less expenditures (column 3) and encumbrances (column 4).

<sup>155</sup> See item F.6 of the 6/15/2016 Board Agenda.

transactions from the District server for the 2015/16 fiscal year, and VLS tested nine bond project contracts approved by the Board. Out of nine contracts tested:

- The budgets for seven contracts were entered into the Munis financial system after the contracts were approved by the Board. Table 14 includes the seven contracts tested where the contract amounts matched the budget posted into Munis, except for numbers 2 and 7 which had budgets entered that were less than the contract amounts. Refer to section TC (6) for TC6-2 recommendation for this area. Additionally, see FI2-1 recommendation for this area.
- One contract tested appears to have no available budget (contract number 1000001762 for Sylvester Greenwood Academy/LPS).
- Only one contract tested appears to have sufficient budget available before the contract was approved (contract number 1000001729 for Coronado Elementary School) by the Board.

**Table 14: Summary of Contracts – Budgets Entered After Board Approval of Contract**

Ref No.	School	Vendor/Contract Number	Contract Amount	Board Approval Date	Budget Posting Date in Munis	Budget Amount
1	Coronado Elementary School	ERA Construction, Inc/ 1000001757	\$ 4,644	9/22/2015 <sup>156</sup>	12/29/2015	\$ 4,644
2	De Anza High School <sup>157</sup>	MLE Capital Management, Inc/1000001730	98,800	7/21/2015	9/21/2015	62,425
3	Korematsu Middle School	HY Architects, Inc/ 1000001802	111,345	9/02/2015	10/27/2015	111,345
4	Korematsu Middle School <sup>158</sup>	Moving Solutions Inc/ 1000001892	28,702	2/10/2016	2/23/2016	28,703
5	Nystrom Elementary School	MWC & Associates/ 1000001731	98,800	7/21/2015	8/13/2015	98,800
6	Ohlone Elementary School	Michael G. McKim Company/1000001722	239,950	7/16/2015 <sup>159</sup>	9/21/2015	239,950
7	Sylvester Greenwood/LPS	ABC Inspections, Inc/1000001728	98,800	7/21/2015	8/14/2015	96,925

<sup>156</sup> VLS used the contract date. The Board approval date was not available.

<sup>157</sup> Total contract amount is for De Anza High School, Pinole Valley High School, and Ohlone Elementary School. The District entered a budget amount of \$62,425 for De Anza High School.

<sup>158</sup> The actual contract amount was \$28,702.48; however, the District rounded the amount up to the next whole dollar when the budget was entered into Munis.

<sup>159</sup> Notice of Intent to Award Contract date.

During the review of the budget transactions exported by the District from the server, VLS identified several budget entries made by the Principal Accountant on 3/8/2016 into Munis with an effective date of 7/1/2015. The District stated that the entries assigned a project budget string to the previously adopted budget; therefore, the entries did not affect the budgeted amounts by object code in the Original Budget column of the Interim Reports. The District provided VLS with the 2015/16 general ledger budget detail transactions, and VLS confirmed that the entries did not affect the object codes that were part of the adopted budget.<sup>160</sup> Additionally, VLS confirmed that the Interim Reports were not affected by the backdated entries.<sup>161</sup>

### **Conclusions**

- 1) Table 13: Comparison of Project Budgets and Expenditures, the expenditures for the Sylvester Greenwood Academy/LPS project exceeded the Board approved project budget. Additionally, the project budget for De Anza High School appears to be sufficient as compared to the expenditures; however, the project budget will not be sufficient when encumbrances are considered. Refer to section TC (6) for TC6-1 and TC6-2 recommendations for this area. Additionally, see FI2-1 and FI2-4 recommendations for this area.
- 2) One contract tested for Sylvester Greenwood Academy/LPS has no available budget; therefore, it appears that the District approved the contract for a bond project that was underbudgeted. Refer to section TC (6) for TC6-1, TC6-2, and TC6-9 recommendations for this area. Additionally, see FI2-4 recommendation for this area.
- 3) Based on VLS's interview with District staff and the testing performed, it appears that the claim that the District increases budgets to match actual costs is substantiated as shown in Table 14: Summary of Contracts – Budgets Entered After Board Approval of Contract. Refer to section TC (6) for TC6-2 recommendation for this area. Additionally, see FI2-2 recommendation for this area.
- 4) The District posted budget data entries into the Munis general ledger on 3/8/2016 with an effective date of 7/1/2015. Although the entries did not affect the budgeted amounts by object code in the Original Budget column of the Interim Reports, there was an eight-month delay in the posting of the journal entries. See FI2-2 and FI2-3 recommendations for this area.

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<sup>160</sup> The District's adopted budget for 2015/16 fiscal year was approved by the Board on 6/24/2015; however, the adopted budget was posted into the Munis general ledger on 9/11/2015.

<sup>161</sup> The cut-off dates for preparation of the First and Second Interim Reports are October 31<sup>st</sup> and January 31<sup>st</sup> of each fiscal year, respectively.

**(C) Determine whether budgets submitted to the Board historically have been sufficient and free of errors.**

**Related Allegation**

**BUD (5)** - Bond program budgets submitted to the Board are one page summaries; The beginning balance does not match the prior report's ending balance.

**Results of Work Performed**

Starting with the EAW approved on 6/1/2011, VLS analyzed all the EAW reports for mathematical accuracy. VLS selected a sample of five schools to illustrate the analysis performed by VLS. The analysis is summarized in Table 15 and Table 16. The columns included in Table 15 are explained further below.

- Column (1) – School: Identifies the school site with an approved project budget.
- Column (2) – Approved Budget as of 6/1/2011: Identifies the approved budget amount for that school site as shown on the EAW report dated 6/1/2011.
- Column (3) – Total Adjustments: The cumulative total of all adjustments for that school site identified in the EAWs provided to VLS (and listed above).
- Column (4) – VLS Calculated Expenditure Authority as of 11/12/2014: The approved school site budget calculated by VLS based on the budget as of 6/1/2011 plus total adjustments – the sum of column (2) and column (3).

**Table 15: Summary of Bond Project Budgets for Selected Schools**

Ref No.	(1) School	(2) Approved Budget as of 6/1/2011	(3) Total Adjustments	(4) VLS Calculated Expenditure Authority as of 11/12/2014
1	Coronado Elementary School	\$ 32,000,000	\$ 9,500,000 <sup>162</sup>	\$ 41,500,000
2	De Anza High School	114,710,340	13,919,660 <sup>163</sup>	128,630,000
3	Portola/Korematsu Middle School	56,429,054	12,570,946 <sup>164</sup>	69,000,000
4	Nystrom Elementary School	32,481,474	14,888,526 <sup>165</sup>	47,370,000
5	Sylvester Greenwood/LPS	50,024,128	26,491,855 <sup>166</sup>	76,515,983

<sup>162</sup> Approved adjustment per EAW dated 11/20/2013.

<sup>163</sup> Approved adjustment per EAW dated 11/12/2014.

<sup>164</sup> Approved adjustment per EAW dated 4/10/2013.

<sup>165</sup> Approved adjustment per EAW dated 8/13/2014.

<sup>166</sup> Approved adjustment per EAW dated 2/6/2013.

Additionally, in order to provide assurance that the final EAW approved by the Board was mathematically accurate, VLS compared the amounts shown in column (4) of Table 15 to the “Expenditure Authority” shown in the EAW approved on 11/12/2014. The results of this comparison are included in Table 16, which shows that there are differences between the VLS recalculated approved budget and the budget that appeared in the last EAW report approved by the Board. The columns included in Table 16 are explained further below

- Column (1) – School: Identifies the school site with an approved project budget.
- Column (2) – EAW 11/12/2014: Identifies the “Expenditure Authority” shown on the EAW approved by the Board on 11/12/2014.
- Column (3) – VLS Calculated Expenditure Authority: The approved school site budget calculated by VLS as shown in Table 15.
- Column (4) – Difference: The difference between what VLS calculated as the approved “Expenditure Authority” based on the available EAWs and the amount shown on the last EAW approved by the Board – difference between Column (2) and Column (3).

**Table 16: Comparison of 11/12/2014 EAW and VLS Calculated Expenditure Authority**

Ref No.	(1) School	(2) EAW 11/12/2014	(3) VLS Calculated Expenditure Authority <i>(per Table 15)</i>	(4) Difference
1	Coronado Elementary School	\$ 42,300,000	\$ 41,500,000	\$ 800,000
2	De Anza High School	132,000,000	128,630,000	3,370,000
3	Portola/Korematsu Middle School	69,753,352	69,000,000	753,352
4	Nystrom Elementary School	48,700,000	47,370,000	1,330,000
5	Sylvester Greenwood/LPS	78,115,983	76,515,983	1,600,000

As shown in Figure 6, each EAW includes three columns of budget information. They represent the beginning project budget (“Approved Expenditure Authority”), budget adjustments (“Adjustments”), and the ending project budget (“Expenditure Authority”). The beginning project budget should be equal to the ending project budget of the prior EAW report. VLS compared the beginning project budget of each EAW report to the ending project budget of the preceding EAW report to determine if there were differences.

VLS identified several instances where the beginning project budget balances on the EAW did not match the previous ending project budget balances. These instances occurred on the following dates:

- From 6/1/2011 ending project budget to 10/4/2011 beginning project budget; net difference of \$0<sup>167</sup>
- From 10/4/2011 ending project budget to 2/6/2013 beginning project budget; total difference of \$129,070<sup>168</sup>
- From 7/24/2013 ending project budget to 11/20/2013 beginning project budget; total difference of \$16,810,991<sup>169</sup> (Refer to section TC (6) for TC6-7 recommendation for this area. Additionally, see FI2-1 recommendation for this area.)

Table 17 includes a sample of the differences from the 7/24/2013 ending project budget to the 11/20/2013 beginning project budget.

**Table 17: Summary of Project Budgets from 07/24/2013 and 11/20/2013 EAWs**

(1) Project Name	(2) 07/24/2013 EAW Ending Project Budget Amount	(3) 11/20/2013 EAW Beginning Project Budget Amount	(4) Difference
Coronado Elementary School	\$ 32,000,000	\$ 32,800,000	\$ 800,000
De Anza High School	114,710,340	118,080,340	3,370,000
Portola/Korematsu Middle School	69,000,000	69,753,352	753,352
Nystrom Elementary School	32,481,474	33,811,474	1,330,000
Sylvester Greenwood/LPS (Gompers)	76,515,983	78,115,983	1,600,000

The differences shown in column (4) of Table 17 appear to reflect the same budget amounts for Network Technology and Furniture & Equipment (F&E) for the selected schools as shown in Table 18. VLS obtained the budget amounts for Network Technology and F&E from the CAMP report dated 4/17/2013 (pages 52, 72, 73, 97 and 98).<sup>170</sup> See FI2-1 recommendation for this area.

<sup>167</sup> A total of 16 projects had beginning project budgets that did not match the prior Board approved ending project budgets. Several bond project budgets were overstated and several were understated; however, the net difference is zero, indicating that there was no impact to the overall program budget.

<sup>168</sup> This difference is related to one bond project, which is an increase to Kennedy High School's project budget.

<sup>169</sup> This difference is related to 23 different bond projects. Twenty-two bond project budgets increased and only one bond project budget decreased. Five out of the 22 bond project budgets that increased are included in Table 17.

<sup>170</sup> CAMP reports are discussed in the FI (11) Section, which addresses the area of Financial Reporting.

**Table 18: Sample of Network Technology and Furniture & Equipment Budgets**

(1) School	(2) Network Technology Budget	(3) Furniture & Equipment	(4) Total
Coronado Elementary	\$ 400,000	\$ 400,000	\$ 800,000
De Anza High School	1,300,000	2,070,000	3,370,000
Portola/Korematsu Middle School	-	753,344	753,344
Nystrom Elementary School	430,000	900,000	1,330,000
Sylvester Greenwood/LPS (Gompers)	800,000	800,000	1,600,000

Based on the information presented in Table 17 and Table 18, it appears that a portion of the differences identified between the 7/24/2013 and 11/20/2013 EAW reports are related to a reallocation of the budgets for “Network Technology” and “Furniture & Equipment.” See FI2-1 recommendation for this area.

VLS also received, in July 2016, worksheets prepared by the District Project Analyst that included all project budgets and corresponding increases and decreases (such as the *2013-2-6 Board Approved Budget* worksheet and *Board Budget Tracking* worksheet).<sup>171</sup> VLS verified that the project budgets for the five selected schools as shown in the worksheets were consistent with the budgets shown in the EAWs, without exception. Additionally, VLS identified the following:

- The \$5,000,000 budget for Project Technology,<sup>172</sup> funded by Measure D-2010, was distributed to 10 sites<sup>173</sup> on 11/20/2013. This distribution was partially responsible for the differences shown in Table 17 as the Project Technology budget amount continues to be reported in the EAW, and there was no indication in the EAW that the distribution had occurred. See FI2-1 recommendation for this area.
- Project budgets for Furnishing/Equipment and Network Technology, funded by Measure D-2002 and 2010 and Measure J, were also distributed to 18 sites<sup>174</sup> on

<sup>171</sup> The *2013-2-6 Board Approved Budget* worksheet listed all of the District’s project budgets by site, which included the budgets for Furniture & Equipment and Project Technology as of 10/4/2011, with the adjustments through 2/6/2013. The Project Analyst maintained this worksheet with subsequent budget adjustments and labeled it “Board Budget Tracking.” These worksheets supported the District’s School KPI reports. These worksheets are very large and, therefore, have not been included as exhibits.

<sup>172</sup> This information, labeled as Network Telecom Technology and Security Projects, was included in the CAMP Report dated 4/17/2013, page 97. See **Exhibit FI2-12**.

<sup>173</sup> Coronado ES, Highland ES, Fairmont ES, Stege ES, Valley View ES, Wilson ES, Hercules MS, Gompers/LPS, Pinole Valley HS and Richmond HS.

<sup>174</sup> Dover ES, Ford ES, King ES, Nystrom ES, Ohlone ES, De Anza HS, Kennedy HS, Program Project, Coronado ES, Highland ES, Fairmont ES, Stege ES, Valley View ES, Wilson ES, Pinole Valley HS, Richmond HS, Hercules Mid/High, Leadership Public Schools. This information, labeled as Network Telecom Technology and Furniture and Equipment, were included in the CAMP Report dated 4/17/2013, pages 52, 72, 73 and 98. See **Exhibit FI2-13**.

11/20/2013; however, there was no indication in the EAW that the distribution had occurred. See FI2-1 recommendation for this area.

### **Conclusion**

The results of VLS testing show that there was evidence supporting the claim that the beginning project budget balance does not match the prior report's ending project budget balance. It appears that the primary reason for the difference is the reallocation of budgets for Project Technology, Network Technology, or Furniture & Equipment to specific school sites. Additionally, the ending project budgets identified in the last EAW report approved by the Board are not equal to the sum of the beginning project budget plus all adjustments. These variances appear to be related to reallocations that were performed but never shown as adjustments. Refer to section TC (6) for TC6-7 recommendation for this area. Additionally, see FI2-1 recommendation for this area.

### **Other Information**

The District intends to prepare analyses for other bond project budgets, including De Anza High School. The analyses will include the review of all bond issuances<sup>175</sup> and a comparison of project budgets by site approved by the Board and their corresponding expenditures. Any remaining balance(s) (positive or negative) from completed project(s) will be eliminated; therefore, the project budget for each completed site project will equal the total expenditures. These analyses are expected to go to the Facilities Subcommittee for review and discussion in August, 2016 and then to the Board in September 2016 for approval. The results of the analyses will be the starting point for project budgets that are in progress and for the priority schools according to the Implementation Plan.

### **Recommendations**

FI2-1. Ensure that the written budgeting procedures (recommended in TC6-7) include specific guidelines and instructions related to bond project budgets. The written procedures should:

- Identify all steps in the tracking/updating process for bond project budgets. Include a list of all required documents (such as Board précis, purchase order, narrative, etc.) as supporting documentation to provide an audit trail.
- Identify all steps and the required documents in analyzing the bond project budgets to determine that the project budgets are sufficient to cover expenditures. Maintain a worksheet and attach appropriate reports to document that the analysis has been

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<sup>175</sup> Including future bond issuances in 2018 and 2020.

performed. Incorporate TC6-8 recommendation when a bond project budget is deemed insufficient.

- Identify who is responsible for tracking/updating, analyzing, reviewing, reporting and approving the bond project budgets and the timing for when these processes will be performed.

FI2-2. Ensure that the written budgeting procedures (recommended in TC6-1) include specific guidelines and instructions related to budget data entry in Munis. Written procedures should:

- Identify the timeline of budget entries for each accounting period.
- Require a reconciliation process be performed at the beginning of each fiscal year (July 1) to verify that the adopted budget per the SACS report matches with the budget entered into Munis. This practice will ensure that the budget in Munis reflects the Board approved budget. The District’s adopted budget is the starting point in preparing the First and Second Interim Reports.

FI2-3. Work with Tyler Technologies, the company that licenses the Munis software, to modify the budgeting function in Munis so that backdating of data entry is limited only to the prior accounting period.

FI2-4. Ensure that the written procedures (recommended in TC5-2 and TC6-2) related to the development of detailed, multi-year, line-item budgets for the approved bond projects (e.g. 21 priority schools) and the budget verification in Munis are implemented to prevent deficit spending (as shown in Table 13).

See the TC (6) Section for recommendations regarding bond project budgets. Specifically, refer to TC6-6 recommendation for developing a form that can be used to reflect budget amendments/transfers, which can be used as the District’s written resolution for approval by the Board as required by Education Code 42600-42603.

### **Response by District**

The District agrees with the recommendations.

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

VLS has reviewed the District response to VLS’s recommendations and acknowledge the District’s agreement.

**FI (3) Work Step**

Conduct appropriate investigative steps to determine:<sup>176</sup>

- If the Facilities Subcommittee recommended to the Board that SGI be selected contrary to staff recommendation **(A)**
- If SGI withheld or failed to make payments to subcontractors working on District projects through SGI **(B)**
- If SGI was paid inappropriately for sick and vacation time and if SGI billed the District for hours not worked by SGI employee **(C)**
- If District paid SGI for computers that were never received at the District office **(D)**
- If SGI employees possess the appropriate qualifications as stated in the terms specified in the SGI contract with the District **(E)**
- If sufficient supporting documentation was provided with invoices submitted by SGI to the District **(F)**
- If SGI communicated an incorrect and lower cost for change orders **(G)**

**Results of Testing**

A summary of investigative steps performed by VLS included review of certain documents, interviews of certain District employees, both current and former; interviews of certain current and former vendors of the District Bond Program. To meet the objective of this work step, VLS performed testing and investigative steps for each of the subsections (A) through (G).

**(A) Conduct appropriate investigative steps to determine if Facilities Subcommittee recommended to the Board that SGI be selected contrary to staff recommendation**

**Related Allegation**

VCA (3) - The Facilities Subcommittee recommended to the Board that SGI be selected against staff recommendation.

**Results of Work Performed****Documents reviewed**

VLS reviewed Board minutes, Board agenda packets, audio recordings of Facilities Subcommittee meetings, and video recordings of Board meetings in order to understand the process that took place leading up to the selection of SGI as the Project and Construction Manager in October 2013. In addition, VLS reviewed the related Request for Proposal (RFP), and the results of the evaluations of firms responding to the RFP.

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<sup>176</sup> The letter included in parentheses after each item in bullets provides reference to the applicable section in the “Results of Testing.”

Timeline Related to Selection of SGI as PM and CM in 2013

Table 19 provides a timeline of the relevant milestones related the selection of SGI for the 2013 contract for Project Manager (PM) and Construction Manager (CM). Additional details are presented after the table for the most critical milestones related to this process.

**Table 19: Timeline Related to Selection of SGI as PM and CM for 2013 Contract**

Date	Timeline
7/31/2012	District issued the Request for Proposals for program, project and construction management services; WCCUSD Measure D 2010 Bond Program was advertised
8/15/2012	District held an informational pre-proposal meeting
8/29/2012	District received six proposals by the due date
12/20/2012	Evaluation Committee evaluated the six proposals received
3/25/2013	Selection Committee interviewed the four firms with the highest scores
4/9/2013	Associate Superintendent of Operations and Bond Program presented the Selection Committee's recommendation to the Facilities Subcommittee (FSC) that SGI be selected as the PM and Roebbelen be selected as the CM. The FSC rejected the recommendation that Roebbelen be selected as the CM and decided that SGI would continue providing both PM and CM services (at the time, the FSC was composed of two members: Charles Ramsey and Madeline Kronenberg)
5/1/2013	On 5/1/13 the Board approved the FSC's recommendation to award the new contract to SGI for PM and CM services as consent item C.7
7/24/2013	Board approved the SGI 2013 contract as a consent item; at the time to discuss consent items Mr. Ramsey requested that the phrase "Shall be terminated only for cause" be included in the contract. The Board unanimously approved this request.
9/11/2013	Board approved the revision for SGI contract clause amendment
10/1/2013	Contract for PM/CM services was executed by SGI and WCCUSD

Evaluation of Proposals

On 12/20/2012, two District employees and two Chief Facilities Officers from other school districts, met to evaluate the six proposals received to determine the firms that would be invited to an interview. The Evaluation Committee was comprised of the following members:<sup>177</sup>

- a. Keith Holtslander, Director of Facilities & Construction for WCCUSD
- b. Luis Freese, Maintenance & Operations Executive Director for WCCUSD
- c. Lew Jones, Facilities Director for Berkeley Unified School District
- d. Steve Adamo, Director of Maintenance and Construction for San Jose Unified School District

Each committee member was provided a copy of the six proposals received, a copy of the Selection Criteria, and Evaluation Criteria, a Conflict of Interest Disclosure Form, and a Scoring Sheet. Committee members scored firms based on the criteria provided. Table 20 includes the scoring performed by the Evaluation Committee. **Exhibit FI3-01** includes a copy of the evaluations.

<sup>177</sup> The titles presented are the titles of the individuals at the time of the meeting on 12/20/2012.

**Table 20: Results of Evaluation Performed by the Evaluation Committee**

Evaluator Name	Roebbelen/ AECOM	DAGM	RGM	SGI	WLC	Miller & Assoc.
Keith Holtslander	130	132	99	96	91	80
Luis Freese	129	117	101	103	97	86
Lew Jones	130	112	104	111	74	69
Steve Adamo	145	140	145	135	135	88
Total Points Awarded	534	501	449	445	397	323
Difference to SGI	89	56	4	0	-48	-122

The four top scoring firms were invited to interview with the District's Selection Committee. The firms selected to interview were Roebbelen/AECOM, DACM, RGM, and SGI. During Phase I interviews, it was communicated to VLS that typically only the three top scoring firms are interviewed during the RFP process. However, in this case the top four firms were interviewed as SGI had come in a close fourth and because of its history with the District. According to a former District employee who was interviewed by VLS, Mr. Fay made the decision to include SGI in the interview process.

#### Interview of the Four Top Scoring Firms

On 3/25/2013, three District employees and two individuals from other school Districts (which made up the Selection Committee) interviewed the four top scoring firms. The Selection Committee was comprised of the following members:<sup>178</sup>

- a. Magdy Abdalla, Chief Engineering Officer, WCCUSD<sup>179</sup>
- b. Keith Holtslander, Director of Facilities & Construction, WCCUSD
- c. Luis Freese, Maintenance & Operations Executive Director, WCCUSD
- d. Lew Jones, Facilities Director Berkeley Unified School District
- e. David L. Goldin, Chief Facilities Officer, San Francisco Unified School District

After observing the presentations by the four firms, the Selection Committee asked questions of the candidates. According to a summary of the process provided to VLS the Selection Committee evaluated the candidate firms based on each firms' understanding of the requirements and needs of the District's Bond program as demonstrated by the four firms during the interview process. **Exhibit F13-02** includes this summary. The Selection Committee rated the candidates on the completeness of their understanding of the District's Bond program and their demonstrated

<sup>178</sup> The titles presented are the titles of the individuals at the time of the interviews on 3/25/2013.

<sup>179</sup> Mr. Abdalla is no longer employed by the District. Mr. Freese currently holds the position of Chief Engineering Officer.

ability to meet the District's capital program needs. Based on the Selection Committee's evaluation, the following recommendation was prepared to present to the FSC:<sup>180</sup>

*Given SGI's invaluable institutional knowledge regarding the District's Capital Program, SGI should be retained to perform Program Management services. Roebbelen should be retained to provide Construction Management services because it has greater demonstrated construction management experience and skills. The Selection Committee agreed that RGM could be appropriate for certain select, construction management projects, but RGM did not have sufficient experience or capacity to perform the entire Program/Construction Management services. Finally, the Selection Committee agreed that DACM was not sufficiently experienced to provide the services required by District's Capital Program.*

#### Staff Recommendation to FSC

On 4/9/2013, according to the audio recording of the FSC meeting, Cate Boskoff, the District's legal counsel from Orbach, Huff & Suarez, presented to the FSC the process undertaken to design the selection process to ensure that it complied with California Public Contract Code and relevant government code sections. She also detailed the evaluation process for the six firms responding, and the seven-hour interview process that took place on 3/25/2013. Bill Fay, Associate Superintendent of Operations, presented the staff recommendation to bifurcate the Project Management and the Construction Management by retaining SGI as the Program Manager and Roebbelen as the Construction Manager.<sup>181</sup> Mr. Ramsey stated that he did not see a performance issue with SGI and that he was not going to make that recommendation. He stated that he was glad the District went through that process because he is "a lawyer and the District wants to be able to stay legally sufficient, if somebody sues." Then he interjected "ain't nobody gonna sue anyway."<sup>182</sup>

Mr. Fay emphasized that part of the evaluation panel included "outside people," and the issue was not related to the performance of SGI. Mr. Fay then stated that a secondary recommendation was to install SGI as the PM and CM, set up a bench, and recommend that the Board give two contracts, with SGI being the prime.<sup>183</sup> Mr. Ramsey stated that this was not necessary. He stated, "I don't mean to bring Roebbelen in, I don't want to bring anybody in. I have a performance audit that says the marriage is working." Ms. Kronenberg added that she

<sup>180</sup> VLS was not provided any additional scoring of the firms after the interview process or any further records related to the interview process.

<sup>181</sup> Mr. Fay is no longer employed by the District. Currently, Lisa LeBlanc holds the position of Associate Superintendent of Operations.

<sup>182</sup> As per the audio recording of the FSC meeting.

<sup>183</sup> It did not appear by the review of the FSC recording that Mr. Fay was given an opportunity to present what he meant by setting up a bench and awarding two contracts with SGI as the primary.

did not see anything that persuaded her that the District should leave SGI. She stated that the performance audit showed that "we are doing a good job with our program" and that to suddenly decide to bifurcate even though it has been effective does not make any sense to her.

Mr. Ramsey stated that his recommendation would be to "keep the current situation with the Seville Group as the PM and CM." Mr. Ramsey told Ms. Boskoff, "You have gone through the RFP process, you've gone through an independent, neutral, --I didn't talk anybody into-I didn't get involved. No Board member got involved. They went throughout the process, you went through your own screening, you decided who you wanted to interview, they came in and they interviewed, you did your scoring, you did your recommendation, and you're giving us your recommendation. That's great. We reject it." Mr. Ramsey then concluded that the recommendation to the Board would be to keep SGI as the PM and reject the part of the staff recommendation to award Roebbelen the CM contract. Ms. Kronenberg agreed to make this recommendation to the Board.<sup>184</sup> **Exhibit FI3-03** shows the transcript of the voice recordings for this meeting.

#### FSC Recommendation to the Board and Approval by the Board

On 5/1/2013, the Board approved the FSC's recommendations to award a new contract to SGI for PM and CM services as consent item C.7 along with eleven other items. A consent item is considered a routine matter and is normally enacted, approved and adopted in one motion, unless a request for removal, discussion, or explanation is received from any Board member or member of the public in attendance.<sup>185</sup>

The Board was provided the following information related to the recommendation to select SGI as the PM and CM, which was included in the meeting Agenda and Board Packet (**Exhibit FI3-04** includes the relevant pages of the agenda packet for 5/1/2013):

*The District undertook an RFP/RFQ process for the Program and Construction Management of the WCCUSD Bond program. This process was adjunct to the Education Code provisions on contract terms.*

*Six firms submitted proposals that were screened by a committee that consisted of facility management professionals employed by WCCUSD and other Districts that have G.O. Bond programs. Four firms proceeded to the*

<sup>184</sup> It was noticed by VLS during review of contributions by vendors as discussed in FI (1), that on 4/3/2013, less than a week before this meeting where the recommendation by staff members was rejected, SGI had made a \$25,000 contribution to the ILC. It was also noticed that in years prior to 2012/13 and the year after it, the contributions to ILC by SGI had been \$50,000 annually, while in the 2012/13 year, the contribution for the fiscal year was \$75,000. Refer to FI (1) section for the entire listing of SGI contributions made to ILC.

<sup>185</sup> The meaning of a consent item is explained in the Board agenda packets at the beginning of the Business Items Section.

*interview phase by the panel that suggested an alternate approach for these services that was presented to the Facilities subcommittee on April 9, 2013.*

*The FSC felt that a change in course was not warranted, as the program was already well managed and there was no basis to introduce an alternate management solution. As such, the committee recommends maintaining the continuity by awarding a new contract to the Seville Group, Inc., to provide both Program and Construction Management Services.*

*Staff will negotiate a new contract to be executed by the Superintendent of Schools.*

The totality of the discussion during the Board meeting on 5/1/2013 related to this matter as shown in the video recording of this Board meeting was the following:<sup>186</sup>

*Ms. Kronenberg: Consent Calendar*

*Ms. Kronenberg: Have a motion?*

*Mr. Ramsey: Move forward with the Consent Calendar*

*Ms. Kronenberg: Was anything pulled from Consent Calendar?*

*Indistinct Voice: No*

*Mr. Ramsey: Move forward with Consent Calendar*

*Ms. Kronenberg, do we have a second?*

*Mr. Enos: Aye*

*Ms. Kronenberg: All in favor?*

*Unanimous: Aye (Mr. Enos, Mr. Groves, Ms. Merriweather, Mr. Ramsey, and Ms. Kronenberg)<sup>187</sup>*

#### Board Approval of SGI 2013 Contract and Addition of “Terminated Only for Cause” Clause

On 7/24/2013, the Board approved the SGI 2013 contract as a consent item. The video recording of this Board meeting shows that, at the time to discuss consent items, Mr. Ramsey interjected: “I do not want to pull it. I just want to add a clause or amendment to C.13.” Consent item C.13 was the agreement for Program, Project, and Construction Management Services between the District and SGI. The following paragraph was Mr. Ramsey’s recommendation to the Board that the “*shall be terminated only for cause.*” Clause be added to the SGI contract and his explanation as to why he believed it to be necessary:

<sup>186</sup> This group of consent items was approved by the Board at the 1:39:14 to 1:39:35 time mark of the recording, which is available at the following link:

[http://richmond.granicus.com/MediaPlayer.php?view\\_id=15&clip\\_id=3248](http://richmond.granicus.com/MediaPlayer.php?view_id=15&clip_id=3248)

<sup>187</sup> It was noticed by VLS during review of contributions by vendors as discussed in FI (1), that on 5/10/2013, less than two weeks after this meeting, SGI had made a \$25,000 contribution to the ILC, and had made another contribution of \$25,000 on 6/21/2013.

*The final clause should be that the agreement “shall be terminated only for cause.” This is an agreement that keeps the continuity of the program flowing, so that if there is a change of Board, change of administration, that we don’t take something that has been created over the last 15 years and dismantle on the whims of individuals. I’ve seen that happen all the time and this District can’t afford it. We’ve been running a smooth program and we need to have the continuity to make sure that happens. Now if it is for cause, fine then it is justifiable, but if it’s not then you can’t just be on the personal whims of someone coming in. I think the history of the program for the last fifteen years, it is too critical for that so, that is my request... I tell you, I was not happy with staff recommendation. I thought it was ludicrous. I thought it was ridiculous to basically dismantle a whole program, based on the whims of what? So, that made me even more committed to add something that something won’t become arbitrary other than change is needed. It would be complicated we are talking about people who have been ten years with the District.<sup>188</sup>*

The Board unanimously approved Mr. Ramsey’s recommendation that the SGI contract should include the phrase “shall be terminated only for cause.”

#### Board Approval of SGI Contract with Clause Amendment

On 9/11/2013, the Board approved the revision of the SGI contract clause amendment. The following clause was added to the contract:

*In no event shall the District have the right to terminate the Agreement for its own convenience. Construction Manager shall only be terminated for cause, as set-forth herein.*

The following clause was struck from the contract:

*District shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice the District and District shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Construction Manager’s if there is a termination for convenience.*

**Exhibit FI3-05** includes the relevant pages related to this item as presented in the Board packet.

<sup>188</sup> The discussion related to this item took place between the 0:5:04 – 0:8:33 recording times as shown in the video recording, of the Board meeting on 7/24/2013, which is available at the following link: [http://richmond.granicus.com/MediaPlayer.php?view\\_id=15&clip\\_id=3325](http://richmond.granicus.com/MediaPlayer.php?view_id=15&clip_id=3325)

## Analysis

The evaluation and selection process performed by District staff appears to have been an unbiased evaluation of the firms that responded to the RFP. Although the recommendation by the District staff that resulted from this process was rejected by the FSC, the FSC is not required to approve all of the staff recommendations; however, rejecting staff recommendations may not be prudent.

It appears that the FSC rejected the staff recommendation based on the FSC member's belief that there were no issues or problems with SGI's performance as the performance audit findings were not the results of SGI's poor performance. At the time the FSC made this decision the most current performance audit had been completed by TSS and a report had been issued on 3/21/2013. The objective of the performance audit as stated in the TSS audit report was the following: "Besides ensuring that the District uses bond proceeds from each bond measure in conformance with the provisions listed in the corresponding ballot language, the scope of the examination includes a review of design and construction schedules and cost budgets; change orders and claim avoidance procedures; compliance with state law and funding formulas; District policies and guidelines for facilities and procurement; and the effectiveness of communication channels among stakeholders, among other facilities-related issues." The findings in this report were related to the following:

- SGI not having an effective contract
- District staff awarding contracts for two construction projects without submitting staff action to the Board for approval or ratification
- District staff rejecting the bids in five construction projects without submitting staff action to the Board for approval or ratification
- Three checks not including all of the authorized signatures
- Twelve checks not including the date of signature approval

It appears that the FSC relied on the fact that the findings listed in the performance audit did not appear to be the responsibility of SGI but rather the responsibility of the District.

However, the performance audits did list some items that could be considered issues with the performance of SGI. These items were labeled as "observations" and not findings. Observations, according to the performance audit report, are items of evidence found during the audit that relates to the quality of the product, process, or system. Observations may or may not require

corrective action and do not rise to the level of a finding. The following are some examples of observations identified in the performance audit that may be attributed to SGI's performance:

- During the 2010/11 audit period it was reported that the transition to Primavera Expedition was 90 percent complete. As of the time of writing of the 2011/12 audit, this transition remained incomplete and was not expected to be completed until early 2013. This software was anticipated to be fully integrated with the District's budgeting software by September 2012, however, that transition remains incomplete.<sup>189</sup>
- Inaccuracies in one of the primary tools used in the monitoring and reporting of bond funds, the Capital Assets and Management Plan, have been reported by the District staff and have been noted in the past. This can lead to over budgeting for projects or lead to expenditures in excess of the established budgets.<sup>189</sup>
- The District consistently has an unusually high number of amendments to all their agreements for architectural services. Excessive amendments can lead to confusion with invoicing and payments.<sup>189</sup>
- In the 2011/12 performance audit, it was reported that the Program and Construction Management staff had increased significantly. Increases were observed again in the 2012/13 audit year. These increases do not appear to correlate to the workload as indicated by the Program Expenditure Report.<sup>190</sup>

During an interview with VLS, Ms. Kronenberg mentioned that she had asked District staff whether SGI had made mistakes and asked if there was something staff could identify as to why the District should not keep SGI. During interviews conducted by VLS it was communicated that there were concerns about SGI's performance; however, VLS was not provided with evidence that these concerns were formally communicated to the Board.

### **Conclusion**

The Facilities Subcommittee recommended to the Board that SGI be selected as Construction Manager, contrary to staff recommendation, even though District staff had followed a thorough process for examining each of the RFP respondents and had based their decision on a comprehensive evaluation process. The FSC, composed of Mr. Ramsey and Ms. Kronenberg at the time, expressed as their rationale for rejecting the staff recommendation (and selecting SGI to continue as both the PM and CM) that there were no problems with SGI's performance and

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<sup>189</sup> Source: Performance Audit Report for the 2011/12 fiscal year.

<sup>190</sup> Source: Performance Audit Report for the 2012/13 fiscal year.

they did not believe it was necessary to follow staff's recommendation to establish Roebbelen as the CM.

In addition, it was conveyed to VLS during interviews that the District had issued the RFP because of problems with SGI. Some of the problems mentioned included SGI billing the District for vacation time and holidays when these individuals were not actually working. However, as stated in the analysis section, VLS was not provided with evidence that these concerns were formally communicated to the Board. See FI 3-1 and FI3-6 recommendations for this area.

**(B) Conduct appropriate investigative steps to determine if SGI withheld or failed to make payments to subcontractors working on District projects through SGI**

**Related Allegation**

VCA (13) - SGI forced out subcontractors by not paying them

**Results of Work Performed**

**Documents reviewed**

VLS reviewed the Invoices SGI submitted to the District and the support attached to this invoices to identify SGI subcontractor invoices. VLS also reviewed the SGI's disbursement ledger where it recorded all payments made to subcontractors working on District projects for 7/1/2008 through 2/29/2016.<sup>191</sup>

VLS selected a sample of 70 invoices to test if SGI had paid the subcontractors in a timely manner.<sup>192</sup> VLS identified the subcontractor invoices submitted by SGI as support with its invoices to the District for General Conditions Reimbursements (GCR).<sup>193</sup> From the SGI Disbursement ledger, VLS identified the payment date for each subcontractor invoice selected to identify the number of days between the subcontractor's invoice date to the date the invoice was submitted to the District for payment, and the number of days for SGI to issue payment to subcontractors.<sup>194</sup> VLS does not know the payment terms SGI had with its subcontractors;

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<sup>191</sup> As stated in Section VI, VLS had selected a sample of SGI payments to subcontracts and requested that SGI provide supporting documentation for these items. After it was evident that SGI would not comply with this request, VLS devised the alternative method of testing used for this section.

<sup>192</sup> VLS judgmentally selected the sample of 70 subcontractor invoices to ensure that there was coverage across several different vendors throughout the years included in this review.

<sup>193</sup> Invoices for GCR contained billings for expenses incurred by SGI for the use of subcontractors' services, various office expenses, and certain classifications of SGI employee labor, such as office personnel. Billings for GCR will be explained and discussed further in subsection Work Step (F).

<sup>194</sup> This was an alternative procedure performed as VLS did not receive copies of the payment checks issued by SGI to its vendors (subcontractors) and relied instead on the disbursement ledger provided by SGI to VLS. It is possible that the payment dates reflected in the SGI disbursement ledger do not

therefore, VLS relied on construction industry standard. For four subcontractors, VLS identified subcontractor payment terms included in some of the invoices submitted by SGI. These payment terms mentioned that SGI was required to pay the subcontractor invoices within 30 days from the date the District paid SGI on the subcontractor invoice.<sup>195</sup> One subcontractor had payment terms that stated SGI was required to pay the subcontractor's invoice within 15 days from the date SGI was paid by the District on the subcontractor invoice. **Exhibit F13-06** includes examples of the SGI subcontractor payment terms.

#### Results of Invoice Testing

Based on the testing performed for the 70 subcontractors selected, VLS determined the following:

- A total of 29 (42%) subcontractor invoices were paid within 30 days of the date of subcontractor invoice. This is considered appropriate timing for payment of subcontractor's invoices based on industry standards.
- A total of 19 (27%) subcontractor invoices were paid after 30 days of the date of the subcontractor invoice, however, within 30 days of SGI receiving payment from the District for said invoice. SGI had billed the District within 30 days of receiving the subcontractor invoice (therefore, the total elapsed time was within 60 days). This is considered appropriate timing for payment of subcontractor's invoices based on industry standards.
- A total of 4 (6%) subcontractor invoices were paid after 30 days of the date of the subcontractor invoice, but within 30 days of SGI receiving payment from the District for said invoice. However, SGI had failed to bill the District within 30 days of the date of the subcontractor invoice. The invoice with the longest elapsed time to payment was 126 days after the date of the SGI subcontractor invoice. The payments on these invoices are considered to have been made late based on industry standards.
- A total of 18 (25%) subcontractor invoices were paid after 30 days of the date of the subcontractor invoice, and after 30 days of SGI receiving payment from the District for said invoice. Six of these invoices were paid by SGI more than 140 days after SGI received the District payment. The two invoices with the longest elapsed time to

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accurately reflect the dates on which the actual payments were made to the subcontractors. The only way to know exactly when the subcontractors were paid would be to review a copy of the check and SGI's bank statement to determine when the check was written and deposited by the vendor.

<sup>195</sup> The subcontractors for whom payment terms of 30 days from date paid by District, were stated within SGI invoices were CMR, MBCM and Miller and Associates.

payment were 183 and 195 days after SGI received payment from the District. This does not appear to be an appropriate length of time to pay subcontractor's invoices.

From this review, it appears that SGI submitted payments for all subcontractor invoices for which it had billed and been paid for by the District.

#### Results of Email Review

Through the review of email communication of certain SGI and District employees, and emails provided by individuals interviewed, some emails were identified where subcontractors document complaints about the delay in receiving payment from SGI. In an email to MBCM, an MBCM employee states "we've been 1-month plus as many as 4-additional-months behind current month due solely because of SGI's failure to pay MBCM." **Exhibit FI3-07** includes a copy of this email communication.

#### Conclusion

The results of VLS testing show that 48 out of 70 (69%) of subcontractor invoices appear to have been paid in a timely manner (based on industry standards) and/or according to the payment terms specified by the subcontractors on their invoices. Conversely, 22 (31%) subcontractor invoices appear to not have been paid in a timely manner (based on industry standards) and/or according to the payment terms specified by the subcontractors on their invoices.

Although over 30% of invoices tested appear to have delays, and email communication showed that SGI was not paying some of its subcontractors in a timely manner, the intent on SGI's part to "force subcontractors out" could not be substantiated as all of the invoices appeared to have been paid based on the information available to VLS.<sup>196</sup> See FI3-2 recommendation for this area.

**(C) Conduct appropriate investigative steps to determine if SGI was paid inappropriately for sick and vacation time and if SGI billed the District for hours not worked by SGI employees**

#### Related Allegation

BPO (2) - SGI Billed for time not worked, sick and vacation time

During interviews conducted during Phase I the following concerns related to this allegation were raised:

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<sup>196</sup> VLS did not receive copies of the payment checks issued by SGI to its vendors (subcontractors) and relied instead on the disbursement ledger provided by SGI to VLS. It is possible that the payment dates reflected in the SGI disbursement ledger do not accurately reflect the dates on which the actual payments were made to the subcontractors. The only way to know exactly when the subcontractors were paid would be to review a copy of the check and SGI's bank statement to determine when the check was written and deposited by the vendor.

1. SGI had been billing the District for sick and vacation time.
2. SGI was billing time for Lance Jackson for about 30 to 35 hours monthly; however, it was not believed that he was actually spending this time working on the District Bond Program. Claims were made that, as long as Magdy Abdalla, District Engineering Officer from 2011/12 through 2013/14, was there, SGI was not allowed to bill for Mr. Jackson’s time.
3. Gregory Smith, the SGI Construction Manager for the Greenwood/Gompers project, was often not at the construction site.

### **Results of Work Performed**

The District’s disbursement ledger for the Bond Program (Fund 21) listed 207 checks (warrants) issued to SGI for the fiscal years 2008/09 to 2014/15. VLS requested from the District that the support packets for these payments be provided.<sup>197</sup> All of the support packets were provided with the exception of four – one for 2008/09, two for 2009/10, and one for 2012/13. Table 21 provides a summary of the total warrant amount, number of warrants, amount for warrants not received, and number of warrants not received. In summary, VLS received support for 98% of the payments that the District made to SGI for the years that were part of the scope of Phase II.

**Table 21: Summary of Total Warrants Received for Payments to SGI**

Year	Amount	No. of Warrants	Amount for Warrants not Received	No. of Warrants Not Received
2008/09	\$ 4,625,300	24	\$ 383,674	1
2009/10	5,899,894	21	518,220	2
2010/11	7,561,009	28	-	-
2011/12	8,153,000	31	-	-
2012/13	8,347,602	34	303,438	1
2013/14	9,914,711	36	-	-
2014/15	9,959,336	33	-	-
Total	\$ 54,460,851	207	\$ 1,205,332	4

VLS used the information contained in these support packets to identify billings for sick and vacation time (or any other paid time off), Mr. Jackson’s time, and Mr. Smith’s time. VLS requested from SGI timecards and SGI payroll records for a sample of SGI employees working on District projects. This information would have allowed VLS to verify that the hours billed by SGI to the District were substantiated and appeared appropriate based on employee timecards and

<sup>197</sup> Support for these payments includes a copy of the check (warrant) issued along with all of the supporting invoices and other documentation that SGI would have submitted as part of its invoices.

payroll records. As stated previously, SGI replied via its legal counsel that it would not comply with VLS's request. Because VLS was not able to obtain these documents, this review was limited to the support SGI had provided the District with the submitted invoices.

## 1. *Billings for Sick and Vacation Time*

### Review of Contract Terms

According to the 2004 contract between the District and SGI, SGI "understands and agrees that the Program Manager's personnel are not and will not be eligible for...paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a District employee." The 2013 contract contains similar language.

### Review of Email Communication

During the review of emails performed by VLS, email messages on 7/2/2012 show that Mr. Fay directed Martin Coyne, Executive Director Business Services, to audit SGI invoices for vacation/illness and any other extraneous expenses billed to the District over the previous three years.<sup>198</sup> **Exhibit FI3-08** includes a copy of this email communication (Martin Coyne email inbox).

Based on the date of the emails and Mr. Fay's instructions, had Mr. Coyne conducted this review of SGI billings to identify sick and vacation time billed to the District, the time period covered would have likely been the fiscal years of 2009/10, 2010/11 and 2011/12. However, there was no documentation provided to VLS to support that this review actually took place at this time, that SGI was requested to reimburse the District for any billings related to sick and vacation time, or that this practice by SGI stopped at this time.

### Review of Audit Reports

In the 6/30/2013 fiscal year end performance audit, dated 2/11/2014, the following observation was made: "In TSS's review of SGI invoices, an invoice listed detailed personnel charges of SGI employee's vacation and sick hours that were charged to the District. Typically, contracting agencies do not compensate an independent contractor for their employee's vacation time, sick time, and other fringe benefits." The recommendation was made that the District "review SGI's management contract to determine whether SGI's employee's vacation and sick hours are valid charges in accordance with the contract." **Exhibit FI3-09** includes the relevant page from the performance audit.

### Review of District General Ledger and Warrant Support

VLS identified by the review of the general ledger a payment to SGI for \$1,396.62 with warrant number 115919 that was not associated with a contract number. VLS reviewed the

<sup>198</sup> Mr. Coyne is no longer employed by the District. Mark Bonnett currently holds this position.

warrant support related to this payment and noticed that this payment was a refund to SGI related to an alleged overpayment made by SGI when it refunded the District \$15,364 on 8/28/2014 for sick and vacation billings. SGI had submitted this payment to the District as a refund for billings made previously for sick and vacation time. The support for the refund to SGI provided the history behind the request from the District that SGI refund the District for prior billings of sick and vacation time. The support included with this warrant showed the months with invoices that billed for sick or vacation time were May 2012, June 2012, September 2012, November 2012, December 2012, and July 2013. **Exhibit FI3-10** includes the support included for this reimbursement to SGI.

Per VLS's review of the of the support included, it appears that the review performed by the District spanned from June 2012 to July 2013 (one fiscal year), and skipped July and August of 2012, as those months had billings for sick and vacation that were not captured in the review performed by the District. In addition, it appears that the District limited its review to the months previously stated and did not go further back more than one fiscal year in its review. The total for these billings related to sick and vacation time, as identified by the District, was \$13,966 plus an additional \$1,396 for the 10% service fee that SGI normally collected on the GCR billings.<sup>199</sup> The total amount SGI refunded the District was \$15,364. The support included with this warrant also showed that on 10/20/2014, Mr. Coyne communicated by email to Tomas Goco, who appeared to be in accounts payable, to prepare a reimbursement check to SGI for \$1,396 stating that this amount was an overpayment by SGI when refunding the District. After this refund to SGI, the net amount refunded to the District for these overbillings related to sick and vacation was \$13,966. This email is included in **Exhibit FI3-11**.

#### Review of SGI Invoices Support

VLS reviewed the support SGI provided to the District with its invoices and noticed that billings for labor of SGI employees under the GCR category were the only labor hours for which SGI had billed the District for sick and vacation time. Individuals billed in the GCR category typically worked at the central office and did not work at the construction sites and were not part of program management, design management or construction management.<sup>200</sup> Invoices for labor within the GCR invoices included time entry detail as support within the invoice. Other types of labor such as construction management and program management did not include time entry detail until about the 2014/15 fiscal year. The hours billed for construction management and program management, did not appear to always be the full 40 hours per week, which may indicate that employees' time off was accounted for and a reduction was made to reflect only the hours worked when billing the

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<sup>199</sup> The appropriateness of SGI billing an additional 10% for GCR labor is discussed in the FI (4) Section.

<sup>200</sup> SGI billed the District under a separate invoice for each area of work performed: GCR, construction management, program management, etc. What was included in each type of invoice from SGI is discussed in the subsection (F) starting on page 190.

District. However, VLS did not have access to time entry detail (time cards) or payroll records from SGI, which would have allowed VLS to state with certainty that no sick or vacation time was billed for construction management and program management.

SGI billed, and was paid by the District for a total of 2,857 hours of sick time, vacation time, and other types of paid time off as reflected in the detail provided for hours billed.<sup>201</sup> These hours amount to total billings of \$120,146, which includes \$10,922 for the 10% markup applied to GRC. Table 22 provides the total annual hours and amounts billed to the District for sick time, vacation time, and other types of paid time off.<sup>202</sup>

**Table 22: Annual Hours and Amounts Paid by District to SGI for Sick and Vacation Time**

Fiscal Year	Hours Billed	Amount Billed	Amount Billed plus 10% Mark up.
2008/09	536	\$ 18,990	\$ 20,889
2009/10	495	19,084	20,993
2010/11	695	26,033	28,637
2011/12	756	30,312	33,343
2012/13	343	13,699	15,069
2013/14	32	1,105	1,216
Total	2,857	\$ 109,224	\$ 120,146
Less Refund from SGI			(13,996)
Net Paid to SGI for Sick and Vacation			\$ 106,150

### Conclusion

SGI's contract with the District did not allow for SGI to bill for any paid time off, in the form of sick, vacation, holiday, or any other type of paid time off. Based on email communications identified, it appears that the Associate Superintendent of Operations at the time (Mr. Coyne) was aware that this was an issue as early as 6/18/2012. However, the practice of SGI billing the District for sick and vacation time continued and was revisited only after it was cited as a finding in the bond performance audit report for the fiscal year ended 6/30/2013.

<sup>201</sup> Other types of paid time off included items such as holiday, personal leave and medical leave.

<sup>202</sup> The District's general ledger shows that the payments made related to the four warrants that were not provided to VLS did not contain any billings for GCR. Because the inclusion of labor hours for sick and vacation time appears to be limited to the GCR labor, the missing invoices associated with these four warrants likely did not contain billings for sick time, vacation time or any other type of paid time off. Warrant number 458521 included billings for 96.5 hours of GCR labor that had been identified by the District as billings for sick and vacation time and for which SGI had reimbursed the District. The time entry detail for this GCR labor billing was five pages long; however, VLS received only three pages. The two pages not received would have contained the details for this overbilling. Because (1) the District identified it as an overbilling and (2) SGI reimbursed the District for this, VLS included these 96.5 hours in its analysis.

When the District conducted its review of the billings for sick and vacation time, it was done for only one fiscal year and two of the months in that year were missed.

From the warrant support received, it appears that SGI consistently billed the District for sick and vacation time within the GCR invoices for the period from July 2008 through July 2013. The inclusion of sick and vacation appears to cease after July 2013. The total number of hours for sick, vacation time and any other type of paid time off was 2,857 hours and totaled \$120,146. Because SGI reimbursed the District for \$13,996,<sup>203</sup> it appears that the District paid SGI \$106,150 for sick, vacation, and any other type of paid time off that was expressly not authorized under the contract.

## **2. *Billings for Lance Jackson's Time***

### Review of Contract Terms

The 2004 contract between the District and SGI lists Mr. Jackson in the capacity of Deputy Program Manager, and the 2013 contract lists Mr. Jackson in the capacity of Principal in Charge. Although the contract does not list the roles and responsibilities of either of these two positions, it is reasonable to expect that some hours would be billed to the District for the hours incurred by Mr. Jackson in the fulfillment of his duties.

### Interviews Conducted

According to the interview conducted with Mr. Abdalla during Phase I, he expressed concern that he would never see Mr. Jackson at the FOC building where the rest of the SGI office staff worked. Mr. Abdalla indicated that, because of this, he often rejected the billings that included Mr. Jackson's time. Mr. Abdalla also stated that Mr. Jackson was around perhaps visiting the construction sites and "driving Mr. Ramsey around."

### Review of SGI Invoices

VLS identified all billings made for Mr. Jackson and discovered that most of the billings for Mr. Jackson did not include time entry detail. However, time entry detail was not included as support for any other individual billed by SGI for the program management, construction management or design management until late in the 2014/15 fiscal year.<sup>204</sup> Even when SGI began to include time entry detail for other employees in the program management, construction management or design management, time entry detail was sometimes not provided as support with the billings for Mr. Jackson. VLS requested time entry detail such as time cards for Mr. Jackson; however, as stated earlier, SGI did not comply with VLS's

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<sup>203</sup> This is the net of the reimbursement from SGI to the District for the billing of sick and vacation time (\$15,362) less the reimbursement from the District to SGI for the SGI "overpayment" (\$1,396).

<sup>204</sup> The issue of SGI not submitting time entry detail as support with its invoices is discussed in section (F) of this works step.

request. Therefore, VLS was limited to performing analytical procedures, which are not as reliable as if a review of time cards and payroll records would have been conducted.

VLS noticed that, in the first half of 2008/09, the SGI billings included approximately 66 to 88 hours per month for Mr. Jackson’s time. After the first half of 2008/09, the billings for Mr. Jackson’s time decreased to an average of approximately 30 to 32 hours per month.<sup>205</sup> The billings for Mr. Jackson’s time, and the payment by the District for these billings, appeared consistent for the period of time that Mr. Abdalla was the District Engineering Officer compared to when he was not. The billings for Mr. Jackson’s time stopped after February 2015, which coincides with the timing that Mr. Jackson was named Interim Head of Facilities Planning and Management at Oakland Unified School District.<sup>206</sup> Table 23 provides the annual number of hours and the amount SGI billed the District for Mr. Jackson’s time.

**Table 23: Billings for Mr. Jackson’s Time**

Fiscal Year	Number of Hours	Amount
2008/2009	536	\$ 108,065
2009/2010	344	71,423
2010/2011	384	80,690
2011/2012	392	82,371
2012/2013	395	83,043
2013/2014	402	85,965
2014/2015	253	54,453
Total	2,706	\$ 566,010

#### Email Review

The District provided SGI employees working in the Bond program with a District email address; however, the use of District email was not required of SGI employees. VLS reviewed the District issued email for Mr. Jackson to assess the level of activity, which may be an indication of the amount of time that Mr. Jackson spent working on the District Bond Program. The assumption was that if he was emailing individuals under his supervision, VLS could reasonably assess that he was actually working on District projects. However, Mr. Jackson appeared not to use the District provided email, and, although he received emails to this email address, he never appeared to send any emails from this email address. In addition, VLS searched for Mr. Jackson’s SGI email address within the emails of certain other

<sup>205</sup> Per review of the general ledger for the Bond Fund (Fund 21), out of the four warrants for which support was not provided to VLS, three warrants were for invoices that would have likely included billings for Mr. Jackson’s time. It was assumed that the hours billed for Mr. Jackson in these missing invoices were close to the actual hours billed in the preceding and succeeding months. Therefore, VLS used the average of the hours billed in the three months just before and after the missing invoices to complete this analysis.

<sup>206</sup> **Exhibit FI3-12** includes a news article mentioning Mr. Jackson’s employment with Oakland Unified School District. **Exhibit FI3-13** includes an example of billings for Mr. Jackson’s time.

SGL employees and certain District employees to assess whether he was sending emails from his SGI email address. This search returned four emails that he sent to recipients with District emails (see table below).

**Table 24: Emails Sent by Mr. Jackson to District Email Addresses**

Date	To	Subject
3/31/2015	Melissa Payne	Re_Need More Info on Internship Opp
3/25/2015	Melissa Payne	Re_Summer Internship Program
1/22/2015	CCd Juan Garrahan	Re_Valley View Cost_Scope Review
6/19/2014	Bruce Harter	Re-Time to Meet

Based on these results, it appears that VLS was not able to assess the times he worked based on analysis of email activity.

### **Conclusion**

Based on the analytical procedures performed, it appears that billings for Mr. Jackson's time were to be expected as he performed his duties in the capacities listed in the 2004 and 2013 contract. Billings for Mr. Jackson's time were fairly consistent throughout the period of time analyzed, including the time that Mr. Abdalla was the District's Engineering Officer. Furthermore, billings for Mr. Jackson's time ended in February 2015, which was about the time he was named Interim Head of Facilities Planning and Management at Oakland Unified School District. However, because pursuant to VLS's request, SGI did not provide VLS with the requested documents and allow interviews of SGI personnel, it is not possible to formulate a conclusion on this allegation. This failure of SGI to provide requested documents and allow interviews of SGI personnel resulted in a scope limitation of the work VLS was able to perform for this work step. This has been stated in the Limitations Section of the report.

### **3. *Billings for Gregory Smith's Time***

#### **Interviews Conducted**

VLS interviewed Ray Moreno who was the Inspector of Record for the construction project where Mr. Smith was the Construction Manager. The Inspector of Record is an independent inspector required by the Division of the State Architect (DSA) and hired directly by the District. Mr. Moreno specified that his duties as the Inspector of Record did not include keeping track of when the Construction Manager was on site. However, he stated that, based on his many years as an inspector, he normally expects to see the construction manager on site approximately 90% to 100% of the time. Mr. Moreno recalled Tim Peel, who was the Construction Manager for this project prior to Mr. Smith, being at the construction site for the entire day and would often stay late or arrive early. Mr. Moreno stated that there was a noticeable difference in the days and hours that Mr. Smith was on

site. According to Mr. Moreno, Mr. Smith often arrived late or left the construction site early. He also recalled that Mr. Smith would occasionally take long weekends. Mr. Moreno estimated that, on average, Mr. Smith was on site for about 70% to 80% of the time.

VLS also interviewed John Gramling, an architect employed by HMC and who was the architect on this project. Mr. Gramling stated that he did not notice Mr. Smith being excessively absent or often not present at the construction site. Instead, he recalled that Mr. Smith was at the construction site the normal time that any other construction manager would have been.

#### Review of SGI Invoices

Per review of warrant support for invoices related to the Greenwood/Gompers construction project, Mr. Smith was not the original SGI Construction Manager.<sup>207</sup> Tim Peel was the original SGI Construction Manager for this project until 8/14/2013, and Mr. Smith began his duties as Construction Manager on 8/15/2013.<sup>208</sup>

VLS identified the hours billed by SGI to the District for Mr. Smith on the Greenwood/Gompers project through the end of the 2014/15 fiscal year. This covered the period from when he first became the Construction Manager in August 2013 to June 2015. Table 25 shows the available work hours for each month, the actual hours billed for Mr. Smith, and a percent of available hours billed.<sup>209</sup>

**Table 25: Billings for Mr. Smith for Greenwood Gompers Project**

Month	Available Work Hours for the Month	Hours Billed	Percent of Available Hours Billed
August 2013	96	96	100%
September 2013	168	160	95%
October 2013	94	184	196%
November 2013	168	152	90%
December 2013	176	160	91%
January 2014	184	160	87%
February 2014	160	152	95%
March 2014	168	168	100%
April 2014	176	176	100%
May 2014	176	168	95%
June 2014	168	168	100%
July 2014	184	176	96%

<sup>207</sup> At the commencement of this project, the school name was Greenwood, towards the end of this project the name of the school was changed to Gompers. For clarity VLS will refer to this school site as Greenwood/Gompers.

<sup>208</sup> 8/15/2013 was the first date when an invoice for this project included billings for Mr. Smith.

<sup>209</sup> **Exhibits FI3-14** includes a sample of invoices including the hours billed for Mr. Smith.

Month	Available Work Hours for the Month	Hours Billed	Percent of Available Hours Billed
August 2014	168	168	100%
September 2014	176	152	86%
October 2014	184	176	96%
November 2014	160	136	85%
December 2014	184	160	87%
January 2015	176	160	91%
February 2015	160	160	100%
March 2015	176	176	100%
April 2015	176	176	100%
May 2015	168	160	95%
June 2015	176	176	100%
Total	3,822	3,720	97%

### **Conclusion**

Although one of the independent witnesses confirmed the statement that Mr. Smith was often not at the construction site, VLS cannot conclude that the District paid SGI for hours that Mr. Smith did not work. SGI did not bill for 100% of the billable days available in the invoices for Mr. Smith's time, therefore it is reasonable that because he was not on site 100% of the time, it may have appeared as if he were often absent. However, because pursuant to VLS request, SGI did not provide VLS with the requested documents and allow interviews of SGI personnel, it is not possible to formulate a conclusion on this allegation. This failure of SGI to provide requested documents and allow interviews of SGI personnel resulted in a scope limitation of the work VLS was able to perform for this work step. This has been stated in the Limitations Section of the report. See FI3-3, FI3-4, FI3-7, and FI3-8 recommendations for this area.

### **(D) Work step - Conduct appropriate investigative steps to determine if the District paid SGI for computers that were never received at the District office**

#### **Related Allegation**

BPO (4) - SGI purchase of computers that were not delivered to WCCUSD but were billed to WCCUSD

#### **Results of Work Performed**

According to interviews conducted during Phase I, this may have occurred sometime in 2013.

### Interviews Conducted

VLS inquired of various current and former District and SGI employees regarding whether there was a specific invoice or a specific date when this had potentially occurred. No one at the District or SGI could provide specific details regarding this allegation.

### SGI Invoice Review

As a specific invoice(s) could not be isolated for this allegation, VLS reviewed all of the SGI invoices and support provided for General Conditions Reimbursements (GCR) billings for the 2012/13 and the 2013/14 fiscal years to attempt to identify when computers were billed to the District. Based on the terms of SGI's contracts, had computers been billed to the District, they would have been in a GCR invoice.

GCR includes certain types of SGI labor and items such as computer hardware, computer equipment maintenance, software upgrade, cost of printing, cost of estimating, cell phone services and various office supplies among others. In essence, all that is needed for SGI to perform its work for the District. SGI labels its invoices to the District for these costs with the identifier "GCR" within the invoice number.<sup>210</sup>

During VLS's review of the GCR invoices paid by the District, it was discovered that five laptop computers were purchased by SGI and reimbursed by the District during the time period relevant to the allegation. The support provided by SGI to the District for these computers included invoices from Dell. The "ship to" address listed on the Dell invoices was the District Facilities office at "1300 Potrero Ave, WCC USD Kaiser Bld. G Richmond, CA 94804." The invoices were stamped "received," which would indicate that the computer had been received.<sup>211</sup> The additional support provided with this invoice indicates that there was a purchase authorization process approved by the SGI Program Manager and the SGI Deputy Program Manager working with the District. Following is a description of the details of these purchases.

- Two laptops were purchased and delivered to the SGI office at the District office on 6/27/2012, at the cost of \$1,306 each for a total of \$4,164 inclusive of tax from Dell. Dell invoice number was XFTDFX278 and it was included as support for this reimbursable within SGI's Invoice number WCC J GCR-1213-01A. The District paid this invoice on 8/29/2012 with warrant number 455744.
- Three laptops were purchased and delivered to the SGI office at the District office on 8/29/2012, at the cost of \$1,581.58 each for a total of \$3,377.22 inclusive of tax from Dell. Dell invoice number was XFX9WKTF2 and it was included as support for

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<sup>210</sup> For example, invoice number "WCC J GCR-1314-07" represents an invoice to the District for Measure J general conditions reimbursement for the fiscal year 2013/14 for the month of January. In turn, the District's disbursement ledger always identified the invoice number.

<sup>211</sup> The received stamp is an SGI stamp, which was used on GCR invoices submitted to the District by SGI.

this reimbursable within SGI's Invoice number WCC J GCR – 1213-04. The District paid this invoice on 11/21/2012 with warrant number 458521.

### Analysis

The purchase order authorization for the purchase of these computers was signed by Karim Nassab, Program Director; and Juan Garrahan, Program Manager. Both Mr. Nassab and Mr. Garrahan were SGI employees. From the support included in the invoice it appears that no District representative authorized these purchase order authorizations prior to the purchase being made. However, the SGI contract allowed for SGI to purchase items such as these and then submit a GCR invoice for payment by the District. Per review of SGI's disbursement ledger, it is apparent that SGI issued payment to Dell for the purchase of these computers in advance of receiving payment from the District.

It was communicated to VLS by the District Engineering Officer that SGI was responsible for maintaining an inventory listing where the purchase of these laptop computers would have been recorded. The District did not maintain its own inventory listing for these items. Currently, as SGI projects with the District are in the finalizing stages, items that were purchased that have not exhausted their useful life will be returned to the District. Additionally, the District Engineering Officer explained that beginning in 2014 SGI was no longer responsible for purchasing equipment for its use and then submitting a GCR billing for these items. As of 2014, when items needed to be purchased for SGI's use, these items were purchased by the District and the normal District inventory tracking process was followed.

### Conclusion

Per review of the SGI invoices and supporting documentation for 2012/13 and 2013/14 for GCR billings, it appears that the District was billed for five laptop computers, for which the documentation for these purchases show a "ship to" address that belonged to the District, and the invoices for these purchases were stamped received. See FI3-5 recommendation for this area.

**(E) Conduct appropriate investigative steps to determine if SGI employees possess the appropriate qualifications as stated in the terms specified in the SGI contract with the District**

### Related Allegation

BPO (5) - SGI billed in excess of actual employee qualifications

## Results of Work Performed

In order for VLS to perform this review, additional information and documentation related to the qualifications of SGI employees working on District projects was necessary (for example, resumes, reference letters, and proof of degree completion, where appropriate). Because of the insufficiency of the information provided by the resumes included within the RFP response, VLS requested resumes of SGI employees working on District projects along with proof of degree completion if a professional degree was required for the specific position. As discussed in Section VI, SGI did not comply with VLS's request.

### Review of the SGI 2004 Contract

The 2004 contract between the District and SGI states that SGI was selected to perform the work specified in the contract because of the skills and expertise of key individuals. The key individuals' titles listed were Principal in Charge, Program Director, and Deputy Program Manager. Other titles such as Project Controls Engineer, Project Manager, and Construction Manager, are listed in the SGI staffing plan. However, there is no mention of minimum qualifications required for any of the positions listed.

### Review of the SGI 2013 Contract

The 2013 contract between the District and SGI states that SGI was selected to perform the work specified in the contract because of the skills and expertise of key individuals as set forth in the parameters of the RFP/RFQ, "Minimum District Requirement."<sup>212</sup> However, specific experience for each position is not expressly stated in the RFP/RFQ although some specific experience requirements were listed. On page 6 of the RFP, in the Required Information Section, the following experience related requirements are listed:

- Extensive experience with OPSC, CDE, DSA, Uniform Building Code ("UBC"), and Title 24 of the California Code of Regulations
- At least one principal of Firm must have a minimum of fifteen (15) years' experience in performing construction management services
- Firms must have employees certified with Primavera Project Management and Primavera Contract Management, with at least fifteen (15) years' experience in performing technical application/system support for both.

The District provided VLS a more extensive document titled Program, Project and Construction Requirements for RFP NO. 07-31-12-01 (**Exhibit FI3-16**). This document lists multiple positions

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<sup>212</sup> The RFP/RFQ referenced in the 2013 contract is the Request for Proposals for Program, Project, and Construction Management Services advertised by the District with RFP number 07-31-12-01 on 7/31/2012 (**Exhibit FI3-15**).

such as Program Manager, Deputy Program Manager, Project Manager I, etc. This document contains more specific requirements such as minimum years of experience, degrees, etc. for each position. According to the District, this is the document that was used to assess all of the four firms being interviewed prior to awarding SGI the 2013 contract. However, this document was not shared with the interviewing firms and it was rather a document that was compiled after receiving responses for the RFP. VLS planned to use this document to assess whether SGI employees possessed the appropriate qualifications.

#### Review of SGI Employee Resumes Included in SGI's Proposal

The District provided a copy of the proposal submitted by SGI where the resumes for 44 individuals were included. With the exception of the titles of Office Engineer III, Office Engineer II, and Office Engineer I, it appears that the resumes for most of the positions that were listed in the Program, Project and Construction Requirements for RFP NO. 07-31-12-01 were included. VLS compared the minimum requirements listed for each position in the Program, Project and Construction Requirements for RFP NO. 07-31-12-01 to the qualifications listed in the resumes included in the Proposal. It appears that the experience listed for many individuals was portrayed vaguely and not in a level of detail that would allow VLS to form a conclusion as to whether each individual possessed the required experience. For example, the minimum experience required for a Project Engineer is "Four years' experience in construction management of commercial and/or public facilities." The resume for one Project Engineer listed "has 13 years of experience in K-12 education, client relations, and more recently, construction management." The "more recently" is left to interpretation; therefore, further inquiry of SGI would have been needed to assess whether this individual met the minimum qualifications. The resumes that were sufficiently clear for VLS to make an assessment as to experience or education were compared to the minimum requirements, and it appears that all of the individuals possessed the appropriate experience and qualifications, with the following exceptions:

- Program Manager required a minimum of 15 years of experience in Educational Facility Construction – The resume for one Program Manager did not list the number of years of experience in this specific field.
- Deputy Program Manager required a minimum of 10 years of experience in Educational Facility Construction – The resume for one Deputy Program Manager did not list the number of years of experience in this specific field.
- Project Engineers required a minimum of four years of experience in construction management of commercial and/or public facilities. From eight Project Engineers resumes provided, the resume of two Project Engineers did not appear to meet the minimum years' experience requirement. One did not state the number of years

and instead mentioned “began with SGI as an intern.” Another stated “recent experience with construction management” (**Exhibit FI3-17** shows these resumes).

In addition, the Program, Project and Construction Requirements for RFP No. 07-31-12-01, provided by the District contained the assessment of some of the resumes. However, the titles under which the resumes appeared to be assessed were different from the title provided in the resumes. For example, a particular resume listed her as a Document Controls Engineer, while the assessment by the District appeared to have compared her experience and education requirements to those of a Project Engineer. The billings from SGI listed this employee as a Project Engineer.

### **Conclusion**

Because SGI did not provide VLS with the requested documents nor allow interviews of SGI personnel, it is not possible to formulate a conclusion on this allegation. This failure of SGI to provide requested documents and allow interviews of SGI personnel resulted in a scope limitation of the work VLS was able to perform for this work step. This has been stated in the Limitations Section of the report. See FI3-8 recommendation for this area.

### **(F) Conduct appropriate investigative steps to determine if sufficient supporting documentation was provided with invoices submitted by SGI to the District**

### **Related Allegation**

BPO (6) - Does SGI keep all records current and updated?

### **Results of Work Performed**

As stated in Work step (C), the District’s disbursement ledger for the Bond Program (Fund 21) listed 207 checks (warrants) issued to SGI for the fiscal years 2008/09 to 2014/15. Refer to page 176 of that section for additional details. These 207 warrants were issued in payment for 2,304 separate SGI invoices from 112 different purchase order numbers. VLS judgmentally selected a sample of 145 invoices from 83 different purchase orders paid with 103 different warrants. SGI presented the District with mainly three types of invoices as follows:

- Construction Management: These were invoices for SGI labor for construction management that was related directly to the construction sites. These invoices listed the construction site name.
- Program Management, Design Management: These were invoices for SGI labor for the overall management of the District Bond Program and not related directly to the construction sites. For the earlier years, SGI invoices allocated these costs to the

construction sites based on a percentage and around the middle of the 2012/13 fiscal year, SGI invoices allocated 100% of these costs to the central office.

- General Conditions Reimbursements (GCR): These were invoices for expenses incurred by SGI for the use of subcontractors' services, various office expenses, and certain types of SGI employee labor such as office personnel.<sup>213</sup> For the earlier years, SGI invoices allocated these costs to the construction sites based on a percentage and about mid 2012/13 fiscal year, SGI invoices allocated 100% of these costs to the central office.

The judgmental sample selection process was undertaken to ensure that all invoice types (Construction Management, Program Management, Design Management, and GCR) and a variety of District projects were selected.

Neither the 2004 nor the 2013 SGI contracts specified the type of supporting information that should have been included with SGI invoices. VLS assessed if the invoices submitted to the District by SGI contained sufficient supporting documentation according to best practices. As a reference, if the invoice was for payment of SGI employees' labor, appropriate documentation would include a summary of hours worked and time entry detail.<sup>214</sup> If the invoice was for reimbursement of expenses or payment of subcontractors, sufficient documentation would include copies of receipts for the purchase and/or invoices from the subcontractors.

#### Example of Sufficient Supporting Documentation for SGI Labor Invoices

As a reference, an invoice for SGI labor that would be considered to have sufficient supporting documentation would have included the following supporting documentation:

- Summary of work hours should include the type of invoice, site or location, employee name, employee position, hourly rate, and hours worked. Figure 7 is an example of a summary of work hours provided in an SGI invoice.

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<sup>213</sup> Not all of the invoice numbers for GCR were structured in the same manner; however, GCR invoices always included "GCR" within the invoice number.

<sup>214</sup> Time entry detail is, for example, a listing of days worked, the hours worked for each day, the site where the work was performed, and a short description of the work performed.

**Figure 7: Example of a Summary of Work Hours**<sup>215</sup>

		<b>Gompers HS</b>						
		<i>Details</i>						
Costa Unified School District <i>struction Management Fees</i>		Invoice Work Hours By Project Manager <i>For Period Covering June 1, 2015 to June 30, 2015</i>						
	2015 Billing Rates	1 June	2 June	3 June	4 June	5 June	Total Hours	Total Invoiced
	\$129.00	40	40	40	40	16	176	
near	Hours	40.0	32.0	40.0	24.0		136.0	
	Invoiced	\$5,160	\$4,128	\$5,160	\$3,096	\$0	\$17,544	\$17,544
	Non Billable	0.0	8.0	0.0	16.0	16.0	40.0	
	Total Hours	40.0	40.0	40.0	40.0	16.0	176.0	

- Time entry detail should include the location of the work performed or description of the task performed, the date when work was performed, the hours worked, and a short description of the work performed. This supports the summary of work hours mentioned above.

**Figure 8: Example of Time Entry Detail**<sup>216</sup>

Name	Task Name	Entry Date	Hrs	Comments
a	Gompers	Jun 1, 2015	8.00	Prepare PCO review with CM for District PM approval. COR Minute update PCO/COR to Excel log. Estimate for PCO/COR. Write up rejection letter.
	Gompers	Jun 2, 2015	8.00	Received approval PCO. Prepare Change Order. Coordination equipment meeting.
	Gompers	Jun 3, 2015	8.00	Collect Approved in to CO. Prepare Change Order package/collect signatures. Updated approved PCO/COR to excel log. write up rejection letter to GC. Send back-up Approved Change Order No.72 to Architect for DSA Close-out.

Analysis

Of the 145 invoices tested, 98 invoices failed to include sufficient supporting documentation.<sup>217</sup> The following table provides additional details related the type of support that was not included in these invoices and that according to best practices, should have been included. When an invoice failed to include sufficient supporting documentation, as required by best practices, this invoice was deemed deficient.

<sup>215</sup> The employee name has been cropped out of this image.

<sup>216</sup> The employee name has been cropped out of this image.

<sup>217</sup> One of these 98 invoices also appeared to reflect hourly rates for some individuals that were in excess of what the 10/1/2013 contract allowed. This issue is discussed in FI (4).

**Table 26: Insufficient Supporting Documentation**

Count	Description of Deficiency
70	The only support provided with the invoice was the summary of work hours by Project Manager. No time sheet, or other type of time entry detail, was provided. <b>Exhibit F13-18</b> includes an example of these invoices.
21	The only support provided with the invoice was a summary of work hours and time entry detail. However, the time entry detail did not list the work performed or the location where the work was performed. <b>Exhibit F13-19</b> includes an example of these invoices.
3	The support provided did not include a list of employee names or the number of hours worked by employee; only a grand total of fees for hours worked was provided. <b>Exhibit F13-20</b> includes an example of these invoices.
1	This invoice was for SGI labor only. The time entry summary is included as support. The time entry detail, which includes a description of location and work performed, was present for only one of three individuals billed within this invoice. <b>Exhibit F13-21</b> includes a copy of this invoice.
1	This invoice was for SGI labor only. There was no support attached to the invoice. <b>Exhibit F13-22</b> includes a copy of this invoice.
2	These invoices were for general conditions reimbursements, which should include invoices from subcontractors included in the SGI invoice. Both invoices were missing one subcontractor invoice that was part of the general conditions reimbursement invoice total. One SGI invoice of \$49,650 was missing subcontractor Parsons Brinkerhoff's invoice for \$13,200. The other SGI invoice was for \$243,017 and was missing subcontractor Silva Consulting's invoice for \$10,125.

98 Total Count

Based on the review of this sample of SGI invoices for GCR labor, most invoices contained the time entry detail. The invoices for program management and for construction management, generally, did not contain the time entry detail. It was not until late in the 2014/15 fiscal year that time entry detail was more consistently provided to the District with SGI invoices for program management and construction management services.

### **Conclusion**

Ninety-eight of the 145 invoices tested (68%) showed exceptions for failure to include sufficient supporting documentation as follows:<sup>218</sup> 96 of the exceptions were due to failure to include time entry detail, a description of the work performed, or the location of the work performed; and two of the exceptions were related to SGI not providing a subcontractor invoice to justify a billing included in the GCR invoice. The failure on SGI's part to provide what is considered by best practices to be sufficient supporting documentation does not indicate that SGI billings were incorrect or inappropriate. However, it does indicate that according to best practices, additional documentation should have been provided with SGI invoices for those 98 invoices identified as exceptions in this section. Furthermore, had SGI provided VLS with the time cards and payroll records for a sample of employee billings, VLS would have been in a better position to establish whether these billings were correct and appropriate.

<sup>218</sup> Of these 98 invoices showing exceptions for not providing sufficient supporting documentation, one also contained exceptions due SGI employees' labor time billed in excess of the appropriate hourly rate. This issue is discussed in FI (4).

Therefore, because pursuant to VLS's request, SGI did not provide VLS with the requested documents and allow interviews of SGI personnel, it is not possible to formulate a conclusion on this allegation. This failure of SGI to provide requested documents and allow interviews of SGI personnel resulted in a scope limitation of the work VLS was able to perform for this work step. This has been stated in the Limitations Section of the report. See FI3-8 recommendation for this area.

**(G) Conduct appropriate investigative steps to determine if SGI communicated an incorrect and lower cost for change orders**

**Related Allegation**

COA (5) - Change orders will be greater than what was communicated by the SGI Construction Manager

**Results of Work Performed**

The results of the work performed for this work step are discussed in the FI (10) Section.

**Conclusion**

The conclusion reached by VLS as a result of the work performed for this work step is discussed in the FI (10) Section.

**Recommendations**

- FI3-1. Establish a procedure that requires that additional information be provided to the Board whenever a subcommittee (such as the Facilities Subcommittee) makes a recommendation to the entire Board that is contrary to the District staff recommended to that subcommittee. The information presented to the full Board should clearly identify the staff's recommendation, the basis for that recommendation, and the reason(s) that the recommendation was rejected. For example, the same presentation packet that is provided to the Subcommittee by the staff in making the recommendation should be provided to the full Board in the agenda package.
- FI3-2. District contracts with vendors that use services of subcontractors should specify that the District vendor is required to pay its subcontractors within a certain number of days and include that these payments are subject to audit by the District or assigned representative.
- FI3-3. When vendors are paid based on actual hours incurred, require that the vendors submit employee time cards along with the billing invoices. This should require that time cards

include the date that work was performed, hours worked, location where work was performed, and a description of the work. This will provide the District with sufficient information to perform a detailed review of the invoices. Ensure that there is a District staff person assigned the responsibility for verifying that all supporting documentation is provided with invoices. Payment should be rejected if invoices do not have sufficient support. These requirements should be included in the vendor contracts.

FI3-4. Revise the current right to audit clause included in vendor contracts to include the following:

- At no additional cost to the District, vendor will provide the District, or its authorized representative(s), reasonable access to the vendor's facilities in order to conduct an audit
- At no additional cost to the District, vendor will provide the District, or its authorized representative, payroll files, copies of checks paid to subcontractors and any other type of documentation necessary in order to conduct an audit
- At no additional cost to the District, vendor will provide the District the right to interview all current or former employees to discuss matters pertinent to the performance of the contract
- At no additional cost to the District, vendor will provide the District adequate and appropriate work space, in order to conduct the audit as specified in the audit clause
- Vendor to agree that if an audit inspection or examination in accordance with the audit clause discovers overpricing or overcharging to the District by the vendor in excess of \$100,000 or any other reasonable amount, in addition to making the appropriate adjustment for the overcharges, the reasonable actual cost to the District for this audit shall be reimbursed by the vendor.

FI3-5. An appropriate approval process should be established for vendors who are allowed to make purchases of equipment items for which the District would normally keep equipment inventory. A District employee should be responsible for authorizing these purchases. Additionally, the District should tag these pieces of equipment and keep an inventory.

FI3-6. As previously stated, the professional standards promulgated by the American Institute of Certified Public Accountants (AICPA) and the Association of Certified Fraud Examiners (ACFE) prohibit VLS from rendering an opinion as to whether there has been any fraud,

- criminal activity, corruption or bribery by anyone associated with this engagement. Therefore, VLS renders no opinion as to whether there has been any fraud, criminal activity, corruption, or bribery by anyone associated with this engagement. However, VLS recommends that legal counsel provide guidance and counsel to the Subcommittee for the Clay Investigation and the Board to determine whether this report should be referred to the appropriate law enforcement agencies for appropriate action.
- FI3-7. The District should consult with legal counsel to determine whether further course of action is appropriate for work steps (C). Specifically, for work step C (Billings for Sick And Vacation Time) it appears that the District paid SGI \$106,150 for sick, vacation, and any other type of paid time off that was expressly not authorized under the contract. District may want to consider appropriate course of action including expanding scope for further testing and appropriate action to recoup any monies paid out to SGI and not authorized under the contract with SGI.
- FI3-8. The District should consult with legal counsel to determine whether further course of action is appropriate for work steps (C), (E), and (F). Specifically, the failure of SGI to provide requested documents and allow interviews of SGI personnel, which resulted in a scope limitation of the work VLS was able to perform for these work steps. Therefore, SGI may have been in breach of the Right to Audit Clause of the contract between the District and SGI by failing to provide VLS access to requested documents after reasonable notice was provided.

#### **Response by District**

- FI3-1. The District agrees with the recommendation.
- FI3-2. The District agrees with the recommendation and will confer with legal counsel regarding implementation.
- FI3-3. The District agrees with the recommendation and will confer with legal counsel regarding implementation.
- FI3-4. The District agrees with the recommendation and will confer with legal counsel regarding implementation.
- FI3-5. The District agrees with the recommendation.
- FI3-6. The District agrees with the recommendation to consult with legal counsel.
- FI3-7. The District agrees with the recommendation to consult with legal counsel.

FI3-8. The District agrees with the recommendation to consult with legal counsel.

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

VLS has reviewed the District response to VLS's recommendations and acknowledges the District's agreement with the recommendations provided.

**FI (4) Work Step**

Work Step: Construction expert to:<sup>219</sup>

- Conduct industry benchmarking **(A)**
- Assess if the SGI contract is reasonable and within industry standards **(B)**
- Review staffing levels of SGI compared to services delivered and volume of projects **(C)**

**Results of Testing**

VLS used the services of a construction consultant to perform the analyses and assessments provided in this section. Any reference to VLS includes the construction consultant.

**(A) Conduct Industry Benchmarking**

The VLS construction consultant conducted industry benchmarking in order to assess if the SGI contract is reasonable and within industry standards. This benchmarking was not necessarily a single discrete step but instead it provided a perspective and overarching background to this entire work step.

**(B) Assess if SGI Contract is Reasonable and within Industry Standards****Related Allegation**

VCA (8) - SGI using the District Facilities Operation Center without paying portion of lease. SGI contract may allow for some items that should not be allowed.

VCA (15) - Who paid for the Primavera system and who owns the rights to Primavera?

BPO (7) - Does SGI add a 5% billing charge? Is it authorized?

**Results of Work Performed**

In order to assess if the SGI contract is reasonable and within industry standards, the concerns expressed in the related allegations (questions) as well as other items that VLS believes should be mentioned in relation to the SGI contract are discussed under separate sub-headers below. See FI4-1 recommendation for this area.

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<sup>219</sup> The letters included in parentheses after each sentence provides a reference to the applicable section in the “Results of Testing” beginning on this page.

## SGI Using District Facilities Operation Center

### SGI Contracts Review

The 2004 SGI contract specifies that the District would be responsible for providing a central office to SGI.<sup>220</sup> In addition, the 2004 contract specifies that the District may provide job site trailers, with necessary appurtenances, or it may request that SGI provide the same, in which case those costs shall be charged to the District as reimbursable expenses. **Exhibit FI4-01** includes a copy of this contract.

Although the 2013 SGI contract did not clearly specify that the District would provide a central office for SGI, it states that general conditions expenses are not included in the hourly rates and would be billed to the District as incurred. The contract specifies that general conditions expenses typically include items such as expenses related to project office including rent, utilities, maintenance, furnishings, office equipment, data processing equipment/software and office supplies. This paragraph, although not directly stating that the District would be responsible for providing SGI with a central office, does state that any office and office related expenses would be ultimately the responsibility of the District. **Exhibit FI4-02** includes a copy of this contract.

### Visual Observations and Review of SGI Invoices

Based on information gathered during Phase I, and visual observations made during Phase I and II, SGI used the District Facilities Operation Center (FOC) as its central office for the performance of its work related to the District Bond Program. Per review of SGI invoices to the District and SGI's disbursement ledger, it appears that SGI used the District provided offices without paying a portion of the lease, without paying the District a rental fee, and without providing the District with a credit or adjustment in its fees for the use of the FOC.

### Conclusion

Even though SGI used the District provided offices located at the FOC without paying a portion of the lease, without paying the District a rental fee, and without providing the District with a credit or adjustment in its fees, it appears that this practice was intended and in line with both the 2004 and the 2103 SGI contracts.

Although the SGI contracts allowed for SGI to use the part of the District's FOC, as its central office for the performance of its work related to the District's Bond Program, In VLS's opinion, it is not typical for a district to provide the program manager with a central office without a corresponding adjustment in fees. Additionally, in an interview with the District's legal counsel, VLS was advised that she viewed the fact that SGI was occupying District office space rent free as not typical. The District's legal counsel further stated that she would recommend that SGI's

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<sup>220</sup> As stated in Article 5, section 5 of the 2004 contract.

fees be reduced or that a rent payment be made to the District by SGI for the use of the office space.

### **Who paid for the Primavera system and who owns the rights to Primavera?**

#### Who Paid for Primavera?

Primavera Project Planner (P3) software for costs control and Primavera Expedition for schedule control were used by SGI to manage District projects. Although the software was used by SGI to manage scheduling and cost controls for the District projects, the cost of the software license was paid for by the District. **Exhibit F14-03** includes the purchase order placed by the District to Oracle America Inc. on 2/7/2011. Oracle America Inc. is the owner of the software rights and the District purchased application user licenses. **Exhibit F14-04** includes the budgetary estimate that included the type and number of licenses provided to the District by Oracle America Inc.

#### Who Owns the Rights to Primavera?

Oracle America Inc., the company selling the District the user licenses, owns the exclusive rights to the Primavera software. Although Oracle America Inc. owns the software rights, the District has purchased user licenses that enable it to use the software. Although SGI was responsible for entering project information into Primavera, the project information recorded by SGI into Primavera is the property of the District. Article 8 of the 2013 contract with SGI titled “Ownership of Data” specifies the following: “After completion of the project or after termination of this agreement, Construction Manager [SGI] shall deliver to District a complete set of project records, including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other project participants, and all close out documents. All project records are the property of the District, whether or not those records are in the Construction manager's possession.” This paragraph encompasses the ownership of the information recorded in Primavera by SGI and indicates that the information recorded in Primavera is the property of the District.

#### Current Status of Primavera

At the time of original implementation of the Primavera software in the 2010/11 fiscal year, SGI was responsible for the implementation and for entering all project information into Primavera.<sup>221</sup> As of December 2015, the District has directly contracted with the Master Scheduler who was the main individual in charge of the implementation of Primavera; therefore, Primavera is currently being managed by the District and not by SGI.

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<sup>221</sup> The Master Scheduler was in charge of the Primavera implementation. He was employed by one of SGI’s subcontractors prior to joining the District as an independent contractor.

### Conclusion

The District owns the information recorded in Primavera Project Planner for cost control and Primavera Expedition for schedule control regardless of whether SGI entered this information into Primavera.

In the opinion of VLS, large project management and construction management firms such as SGI, normally possess the appropriate licenses for the use of project and construction management software (such as Primavera) and an additional cost is not commonly charged to their clients for the use of the software in the execution of project managers work. Instead, this cost is built into the hourly billing rates and the client (District) is not required to purchase the licenses necessary for the use of the software.<sup>222</sup>

### **Does SGI Add a 5% Billing Charge?**

#### SGI 2004 Contract Review

The 2004 SGI contract, listed the following for General Conditions Reimbursements (GCR) that were to be billed to the District at 110% of SGI's cost (10% mark-up):<sup>223</sup>

- a. Telephone service
- b. Office equipment
- c. Office supplies and furnishings
- d. Postage
- e. Mileage between sites
- f. Hard hats
- g. First aid equipment
- h. Project signage
- i. Other items approved by the District

The 2004 SGI contract also listed charges for subcontractor invoices as well as SGI employee labor for program office support for positions (such as Network Administrator, Receptionist, PS2 Administrator) as part of the GCR and thus subject to the 10% mark-up. Because GCR labor was billed to the District with a mark-up rather than with set billing rates, the hourly rates billed should have been based on SGI's actual cost for that labor. However because VLS could not review SGI's payroll records, VLS was unable to verify that the cost portion of the GCR labor billings before the mark-up was appropriate.

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<sup>222</sup> Prior to the use of Primavera, the software license used, PS2, was provided by SGI. However, according to an interview conducted with the Master Scheduler, this system was not fully implemented and thus not used to its full potential. Because of this, the District had issues identifying pending costs such as potential change orders, and decided to use Primavera instead. It does not appear that a rate reduction or any other type of fee adjustment was negotiated with SGI as a result.

<sup>223</sup> The terminology "mark-up" is used in this report to refer to the "billing charge."

SGL 2013 Contract Review

The 2013 contract similarly listed a 10% mark-up on GCR as follows:<sup>224</sup>

- a. Expenses related to project office including rent, utilities, maintenance, furnishings, office equipment, data processing equipment/software, office supplies, telephone systems and related charges
- b. Specialty consultants not included in staffing plans
- c. Insurance in excess of current coverage
- d. Transportation in connection with the project, authorized out of town travel and subsistence, and electronic communications
- e. Fees paid for securing approval of authorities having jurisdiction over the project
- f. Cost of bid advertising
- g. Cost/schedule control software and project management collaboration application software
- h. Prints plans or specifications required by the client or the client's other consultants and any other specialty consultants, including all reproductions required by approval authorities having jurisdiction over the program.

The 2013 SGI contract also stated that the mark-up on any approved item of "Extra Services" performed by sub consultants shall not exceed 5% of the invoice amount. However, what would constitute an "Extra Service" was not defined. How an "Extra Service" performed by a sub consultant differed from the services provided by a "specialty consultant not included in staffing plans" (letter "b" above) and who was considered to be part of GCR was also not defined.

Review of SGI Invoices

Based on a review of the SGI invoices submitted to the District for payment, all of the GCR invoices included the 10% mark-up fee and the subcontractor's invoice was submitted as support with the SGI invoice.<sup>225</sup> The only SGI invoices that included a 10% mark-up were GCR invoices.<sup>226</sup>

From the review of SGI invoices submitted to the District, it appears that Specialty Consultants included in the staffing plans were billed at the rates specified in the SGI contract for the specific

<sup>224</sup> SGI employee labor for office support, for positions such as Network Administrator, Receptionist, PS2 Administrator, which had been listed under GCR in the 2004 contract, were not included in GCR in the 2013 contract. Instead, these positions were listed in a comprehensive staffing plan included as Exhibit D in the 2013 SGI contract. These positions state an hourly rate and no longer were subject to a 10% mark-up.

<sup>225</sup> Refer to the FI (3) Section for a discussion on the sufficiency of support provided. In the FI (3) Section, it is stated that SGI submitted subcontractor invoices as support with its invoices with the exception of two instances where a single subcontractor invoice was not included in SGI's invoice support.

<sup>226</sup> There were different types of SGI invoices that were submitted to the District as explained in Work Step C. The invoices for GCR were identified by the invoice number, which always included the letters GCR.

position. These specialty consultants are different from the “Specialty Consultants” listed under GCR in letter “b” above. For example, a subcontractor (specialty consultant included in the SGI staffing plans) billed SGI for construction management work performed in June 2014 at the rate of \$144 per hour for 168 hours.<sup>227</sup> SGI in turn billed the District for the construction management work performed by this subcontractor for this month at the contract rate of \$152.80 per hour for 168 hours. In these instances, SGI did not submit the invoice it received from the subcontractor as support with its invoice and instead billed the District as it would have billed any other SGI employee.<sup>228</sup>

None of the SGI invoices included a 5% mark-up on subcontractor invoices.<sup>229</sup>

Normally, an added mark-up is supposed to cover overhead and profit. However, the contract between SGI and the District appears to have been structured in a way that the overhead costs for SGI were minimized, as the District appears to have been ultimately responsible for items that would have normally been the responsibility of the project manager.

#### Conclusion

SGI charged the District a 10% mark-up on all invoices for GCR. The 10% mark-up for GCR appears to be reflective of the conditions specified in the SGI contracts with the District.

Although the 10% mark-up charged on subcontractor’s invoices was in line with the contract, this 10% mark-up appears to be excessive because the District was already providing SGI with a central office and paying the salaries of the individuals who provided program office support. According to industry standards, a 0% to 10% mark-up is normally charged on general conditions; however, the higher rate is typically used when the program manager is using its own central office and paying the salary of the support staff. Because of the overhead costs incurred by the program managers, the higher mark-up rate is charged. Because SGI was provided a central office, was reimbursed for office expenses, and was paid for the labor of the SGI employees working on District related projects, a rate of 10% appears excessive. Ultimately, the negotiation of a percentage mark-up is an item that should be negotiated by the District or be vetted through the RFP process.<sup>230</sup>

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<sup>227</sup> VLS received these invoices directly from the subcontractor for SGI.

<sup>228</sup> Because SGI did not submit the invoices for specialty consultants with its invoices to the District, VLS obtained invoices from one subcontractor directly. The hours billed by the subcontractor matched the hours billed by SGI for that subcontractor’s work.

<sup>229</sup> VLS reviewed subcontractor invoices to determine if any were labeled as “Extra Services,” which possibly would have been subject to the 5% mark-up. VLS did not identify any subcontractor invoices labeled as “Extra Services,” and VLS did not identify any SGI invoices that included a mark-up of 5% on a subcontractor invoice.

<sup>230</sup> The RFP process undertaken prior to the 2013 SGI contract does not appear to have considered cost as part of the assessment. The assessment appears to have evaluated the responding firms based on their experience and qualifications. VLS received redacted copies of the RFP responses presented to the District

**SGI Contract May Allow for Some Items That Should Not Be Allowed**

The three subsections above discussed some items that the SGI contract included items that are not typical for these types of contracts.<sup>231</sup> In addition, the following paragraph identifies additional items that the SGI contracts included that are not typical.

Telephone services, office supplies, and furnishings were also allowed under the SGI contract. Based on a review of the SGI invoices to the District, it appears that SGI consistently billed the District for items under these categories. For example the GCR invoice for the month of August 2013 included invoices for Alhambra Sierra for \$209 (drinking water); Staples for \$1,011 (copy paper, markers, Splenda, and tea, among other items); Verizon Wireless for \$1,291 (cell phones access and equipment charges); and Costco for \$47 (coffee and artificial sweetener). The District not only paid for the cost of these items, the District paid a 10% mark-up on these items, as they were part of the GCR invoices. See **Exhibit FI4-05** for a copy of this invoice with the mentioned supporting invoices or receipt items.

**Conclusion**

The SGI contracts included items that are not typically included for these types of contracts. It is apparent that the SGI contract required the District to provide SGI a central office and pay for office expenses including computers, office supplies, coffee, cleaning supplies and essentially anything necessary to operate the SGI central office, which it used for the performance of its work as the program manager for the District. The items that the VLS believes should have not been included in the SGI contract as a responsibility of the District are the following:

- SGI’s central office for the performance of its duties as the District Program Manager<sup>232</sup>
- A 10% mark-up on GCR. Some mark-up would have been appropriate; however, a 10% mark-up appears excessive as discussed in the subsection above.
- Office furnishing and supplies
- Cellular phone services

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by the responding firms. The cost/fee schedule that had been part of the RFP response documents had been redacted from these documents.

<sup>231</sup> These three subsections were “SGI Using District Facilities Operation Center,” “Who Paid for the Primavera System and Who Owns the Rights to Primavera?” and “Does SGI Add a 5% Billing Charge?”

<sup>232</sup> Providing SGI with temporary offices for the physical construction site is considered to be appropriate. The permanent central office for the program management staff is the only type of office VLS believes would be considered an item that should have not been allowed in the SGI contracts.

Although VLS believes that the above listed items are typically the responsibility of the program/project manager and not the responsibility of the client (District), because the District agreed to the terms of this contract, it was appropriate for SGI to bill the District for such items.<sup>233</sup>

### **Other Items related to the 2004 contract**

#### Length of contract:

The 2004 contract did not specify the length of time of the contract. Typically, contracts of this nature include a clause stating the effective period with a beginning date and an ending date. Additionally, these types of contracts are usually effective for a five -year period. SGI appears to have performed work for the District under this contract for a period of eight years and ten months (11/1/2004 through 9/30/2013.) The performance audit report for the period ended 6/30/2012 (dated 3/21/2013) raised this as a finding (see page 44). Figure 9 displays the statement made by the Bond Program auditor in this report.

**Figure 9: Finding in Bond Program Performance Audit for Year Ended 6/30/2012**

<b><u>Finding</u></b>
<ul style="list-style-type: none"> <li>Although numerous requests were made for a current copy of the Agreement for Program, Project and Construction Management Services, the District and the Program Manager were only able to produce agreements that are no longer in effect and were not able to produce an agreement that is in effect for the two most recent bond programs, Measures J and D (2010).</li> </ul>

There were several contract amendments where the additional work to be performed by SGI was stated. For example, amendment #3 was executed on 10/30/2008, after Board approval on 2/6/2008. This amendment listed an increase of \$7,316,368 for increased compensation for Program Management services for Measure J projects not included in SGI’s original contract and for “SGI’s assumption for providing Program Management services for the remaining Measure M and D Projects at no additional cost to the District.” Amendment #3 also included the SGI Staffing Plan/Schedule, which listed one project that spanned into November 2013 (**Exhibit FI4-06** includes a copy of amendment #3). A new contract was executed in October 2013.

#### Conclusion

In 2004, the District and SGI entered into a contract that failed to include a clause stating the effective duration of the contract. As a result, SGI appears to have performed work for the District under this contract for a period of eight years and ten months. Contracts for professional

<sup>233</sup> Although not specified in the contract, the District was ultimately responsible for purchasing the licenses for cost control and schedule control software (Primavera), which is typically something that program managers will provide and the client (District) is normally not responsible for providing.

services are, according to industry practice, limited to five years. Additionally, California Education Code section 17596 states that continuing contracts for services to be performed are not to exceed five years. See FI4-2 recommendation for this area.

Rates for SGI Employee Labor under GCR:

The 2004 contract included three SGI staff positions within GCR, which were Network Administrator, Receptionist, and PS2 Administrator. A total dollar amount was presented for these positions for the period starting 11/1/2004 and ending 12/31/2008, instead of listing a specific hourly rate. This may have presented an issue to the District when approving invoices as the hourly rate for these positions was not specified. Figure 10 displays the SGI staff listed in the GCR plan that is part of the 2004 SGI contract as well as the total amount with the start and end dates for these positions.

**Figure 10: SGI Staff Listed in GCR Plan**

<b>The Seville Group, Inc. General Conditions / Reimbursables Plan</b>					
<b>West Contra Costa Unified School District</b>					
<b>Total Projected General Conditions</b>					<b>\$3,097,500</b>
<b>SGI Staff</b>					
	<b>Position</b>	<b>Amount</b>	<b>Start</b>	<b>End</b>	<b>FTE</b>
Labor	Network Administrator	\$744,200	11/1/2004	12/31/2008	1.00
	Receptionist	\$358,300	11/1/2004	12/31/2008	1.00
	PS2 Administrator	\$716,600	11/1/2004	12/31/2008	1.00
<b>Subtotal SGI Staff</b>		<b>\$1,819,100</b>			

Conclusion

The District and SGI entered into a contract that did not list hourly rates for three SGI staff positions within the GCR section. The contract should have included hourly rates for each position.

Other Items Related to the 2013 contract

Time and Material Basis Fee Structure

The 2013 contract states that SGI proposed to perform the assigned work scope on a time and material basis with a not-to-exceed amount based on the required level of effort, the actual timeline of assigned projects, and the stated fee schedule by position. However, the contract did not list a total contract amount. The Performance audit for the fiscal year ended 6/30/2013, which was dated 2/11/2014, included the following statement on page 45:<sup>234</sup>

<sup>234</sup> This was stated in the background information within the Program Management section. Prior to this statement the audit report stated that the date of this contract award is not within the timeframe of the 2012/13 audit, and, therefore, this agreement would be addressed in greater detail in the following year’s performance audit. However, a different audit firm conducted the performance audit in the following

*The new agreement includes a fee for services that is based on an hourly fee structure with no limit. It appears that there is not a mechanism established in the agreement to verify that the time spent on a task is appropriate to the task or if the task is necessary to the scope of the project.*

While the 2004 contract had stated a total contract amount of \$21,216,900, which was then increased by at least six different amendments, the 2013 contract did not specify a not-to-exceed amount. To complement the 2013 contract, there were several amendments that listed the work to be performed and included SGI fee proposals with timelines and staffing levels for the work to be performed. Figure 11 is an example of the proposals that complemented the 2013 contract.

**Figure 11: Sample of SGI Proposal for CM Services for Specific Site**

Thank you for giving us the opportunity to submit a proposal for Construction Management (CM) Services, including time and materials estimates for El Cerrito High School Stadium Replacement project.

Our Construction Management services include the following tasks/professional responsibilities:

1. Bid Support
2. Construction Management during the construction phase.
3. Coordinating Architects and Engineers in the development of final As-Built plans specifications.

SGI FEES

This time and materials proposal for the above mentioned work is in the amount of \$611,820.00 (2.6% of currently estimated construction value). Attached you will find a detailed time and materials breakdown for the months of November 1, 2013 through December 31, 2014.

### Conclusion

By simply stating hourly rates, the actual time related to specific projects is not clearly defined within the contract, which makes it difficult for the District to monitor costs related to this contract. Additionally, not including a not-to-exceed amount provides no incentive to SGI to be efficient in the performance of work. This would be true of any contract with a vendor for professional services.

### Hourly Rates Change for GCR Labor Before and After the 2013 Contract

Prior to the 2013 contract, SGI labor incurred under GCR was billed to the District at an hourly rate plus a 10% mark-up. In the 2013 contract, the positions that had previously been billed

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year and the scope of the performance audit did not include an assessment of Program Management. The following year's audit was limited to determining the District's compliance with the performance requirements of Proposition 39, which are outlined in Article XIII A, Section 1(b)(3)(C) of the California Constitution.

under GCR were included in the fee schedule for Program Management and were no longer subject to the 10% mark-up. New titles were assigned to these individuals and the hourly rates were increased. The increase was between 29% and 150% for these individuals. The following table includes the positions stated in the SGI invoices for these individuals prior to the 2013 contract, as well as the position assigned with the 2013 contract. Table 27 also includes the hourly rate (inclusive of the 10% mark-up) that was effective prior to the 2013 contract and the hourly rate effective after the 2013 contract was executed. The positions listed in the invoices prior to the 2013 and after the 2013 contract were identified by the employee names. VLS did not include the employee names in this table.

**Table 27: Rate Increase for Program Support Staff with SGI 2013 Contract**

Number	Position Prior to 2013 Contract	Position After 2013 Contract	Prior to 2013 Contract	After 2013 Contract	Hourly Rate Increase	Percentage Rate Increase
1	Office Engineer	Project Engineer - Apprentice	\$ 40.00	\$ 100.00	\$ 60.00	150%
2	Assistant Administrator	Project Engineer - Apprentice	45.00	100.00	55.00	122%
3	GCR Office Engineer I	Compliance Enforcement Coordinator - Apprentice	70.00	125.00	55.00	79%
4	Admin. Support/Receptionist	Office Engineer III - DISC (Apprentice)	35.65	62.40	26.75	75%
5	Office Engineer	Office Engineer III - Apprentice	45.00	78.00	33.00	73%
6	Office Engineer	Office Engineer III - Apprentice	45.00	78.00	33.00	73%
7	Admin. Support/Receptionist	Office Engineer I - Apprentice	35.65	58.00	22.35	63%
8	Admin. Support/Receptionist	Office Engineer I - Apprentice	35.65	58.00	22.35	63%
9	GCR Office Engineer I	Project Engineer - Apprentice	70.00	100.00	30.00	43%
10	Network Systems Administrator	Network Systems Administrator - Apprentice	48.96	64.00	15.04	31%
11	Receptionist	Contracts Engineer - Apprentice	45.00	58.00	13.00	29%
12	Office Engineer	Office Engineer I - Apprentice	45.00	58.00	13.00	29%

### Conclusion

The hourly rate for positions listed within GCR prior to the 2013 contract increased an average of 69%, which may be considered an excessive increase. It is unusual to have hourly rates for the same individuals' labor change so drastically when a new contract is signed. An average of 10% to 20% would have been reasonable. See FI4-1 recommendation for this area.

### **(C) Review staffing levels of SGI compared to services delivered and volume of projects**

#### **Related Allegation**

BPO (3) - SGI employee efficiencies and staffing levels

### **Results of Work Performed**

In order to analyze staffing levels of SGI compared to services delivered, VLS approached this analysis in a two-step process as follows:

- The first step included an analysis of SGI invoices to verify that (1) the amount of the SGI invoice reflected the amount paid by the District for the invoice, and (2) SGI employee labor was billed at the appropriate hourly rate for each employee's position.
- The second step included a vertical analysis of construction projects that compared the size and completion status of construction projects to the hours billed for SGI employee labor for the corresponding month.

### **Analysis of SGI Invoices**

SGI presented the District with three types of invoices for SGI labor as follows:

- **Construction Management:** These invoices included SGI labor for construction management that was related directly to the construction sites. These invoices listed the construction site name and allocated the cost to the specific site.
- **Program Management, Project Management, and Design Management:** These types of invoices included SGI labor for the management of the District's bond program and were not directly related to labor at the construction sites. For earlier years, the invoices submitted by SGI allocated the costs to specific projects/sites based on a percentage (**Exhibit FI4-07** includes an example of these invoices). Around the middle of the 2012/13 fiscal year, SGI invoices no longer listed the individual sites and instead allocated the cost of program, project, and design management to Program Management (central office) (**Exhibit FI4-08** includes an example of these invoices).
- **General Conditions Reimbursements (GCR):** These invoices included certain types of SGI employee labor such as Bond Program office support as well as other reimbursable expenses.<sup>235</sup> As discussed above, the GCR invoices included a 10% mark-up. The positions listed under the GCR section in the SGI 2004 contract and

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<sup>235</sup> Not all of the invoice numbers for GCR were structured in the same manner; however, GCR invoices always included "GCR" within the invoice number. The GCR invoices in addition to including SGI employee labor also included expenses incurred by SGI for the use of subcontractors' services as well as various office expenses.

contract amendments were no longer listed under the GCR section in the SGI 2013 contract and instead were listed under the Program Management.<sup>236</sup>

#### Sample of SGI Invoices

The District's disbursement ledger for the Bond Program (Fund 21) listed 207 checks (warrants) issued to SGI for the fiscal years 2008/09 to 2014/15. These 207 warrants were issued in payment for 2,304 separate SGI invoices from 112 different purchase order numbers. VLS judgmentally selected a sample of 145 invoices from 83 different purchase orders paid with 103 different warrants. VLS used a judgmental sample selection process to ensure that all invoice types (Construction Management; Program Management, Project Management, Design Management; and GCR) and a variety of District projects were selected in order to test the following:

1. The amount of the SGI invoice reflected the amount the District had paid for this invoice.
2. SGI employees' labor was billed at the appropriate hourly rate for the employee title or position.

#### Results of Testing of SGI Invoices

Below is a detailed summary of the results of the testing for this work step:<sup>237</sup>

1. All of the SGI invoices tested reflected the amount the District had paid for said invoices.
2. The following limitations or exceptions were noticed related to testing the appropriateness of hourly rates:
  - Limitation: Three invoices tested did not contain sufficient support, which presented a limitation. Three of the invoices tested did not include detail listing the employee names or titles, as the only documentation provided was the invoice itself listing the amount of the invoice and the project name. As a result, VLS was not able to verify that the appropriate hourly rates were billed for employees for these three invoices. This is a finding of

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<sup>236</sup> The rest of the GCR categories remained unchanged. The only change was that none of the SGI labor was considered to be part of GCR.

<sup>237</sup> The invoices presented by SGI to the District for Construction Management; Program and Project Management; and Design Management through September 2013 listed the name of the SGI employee but did not list the employee's title or position. VLS relied on a schedule provided by SGI that listed the names of SGI employees and their titles or positions. Starting with October 2013, the titles of employees appeared to be included with the SGI invoice.

insufficient support that is discussed in the FI (3) section. However, for the purposes of testing the appropriateness of hourly rates billed for employee positions, the insufficient support presents a limitation.

- Limitation: VLS was unable to test four invoices, as the hourly rates were not stated for GCR. As stated previously, the 2004 contract listed three positions within GCR: Network Systems Administrator, Receptionist, and PS2 Administrator. These positions were Bond Program office support staff. An hourly rate was not stated in the contract for these positions; instead, a total amount was listed for a specific period (refer to Figure 10 for SGI staff listed in GCR plan).
  - The position of Network Administrator was listed at \$744,200 for the period 11/1/2004 through 12/31/2008 at one full-time equivalent (FTE).<sup>238</sup> If a calculation is performed, it appears that this position should have been billed at an hourly rate of approximately \$85.87.<sup>239</sup> Per a review of the SGI invoices for July 2008 to December 2008, the period that falls within the scope of VLS’s investigation, it appears that the billing rate used for this position was \$43.75 per hour to which a 10% mark-up was added for a total of \$48.13.<sup>240</sup>
  - The position of Receptionist was listed at \$358,300 for the same period at one FTE. Performing the same calculation, this position should have been billed at an hourly rate of approximately \$41.34. Per a review of SGI invoices for July 2008 through December 2008, this position was billed as “Admin. Office Manager/Support” and “Admin. Support/Receptionist” interchangeably at the rate of \$29.23 per hour to which a 10% mark-up was added for a total of \$32.15 per hour.
  - The position of PS2 Administrator was listed at \$716,600 for the same period at one FTE. Performing the same calculation, this position should have been billed at an hourly rate of approximately

<sup>238</sup> One FTE equals one full-time employee. Based on the total dollar amount listed for the entire period and the hourly rate actually billed, it appears that two FTE was probably intended instead of one FTE.

<sup>239</sup> The calculation is  $\$744,200 \div 50 \text{ months} = \$14,884 \text{ per month}$ ;  $\$14,884 \text{ per month} \times 12 \text{ months} = \$178,608 \text{ annually}$ ;  $\$178,608 \div 2,080 \text{ hours in one year} = \$85.87$ . This amount is calculated without taking into account any annual increase or escalation in the rate. Additionally, the assumption that there are 2,080 hours available in a year excludes holidays, vacations, etc.

<sup>240</sup> See **Exhibit F14-09** for a copy of a GCR invoice including these positions for SGI labor billed under GCR.

\$82.68. Per a review of SGI invoices for July 2008 through December 2008, this position was billed as “Controls Specialist” at the hourly rate of \$34.08 to which a 10% mark-up was added for a total of \$37.48.

Because an hourly billing rate was not identified in the contract, and these positions were listed with a total cost for 11/1/2004 through 12/31/2008, VLS is unable to verify that the appropriate rates were billed for four of the 145 invoices tested.<sup>241</sup> However, based on the recalculations performed above, the rates billed appear appropriate.

- Limitation: VLS was unable to verify that the positions and rates billed were appropriate for 31 of the 145 invoices tested. As stated above, the 2004 SGI contract listed the three positions within GCR for the period from 11/1/2004 through 12/31/2008 with only a total cost identified without providing an hourly rate. For the period 12/31/2008 through 6/30/2013, there were amendments to SGI’s contract, which were approved by the Board, which listed these positions without providing either an hourly rate or even a total cost. SGI contract amendments submitted to the Board did not include staffing plans listing the positions and hourly rates for the positions that composed the amount of the amendment. Refer to **Exhibit F14-06**, which includes amendment #3 where these positions are listed. According to the District, these amendments would have included proposals that listed the hourly billing rates per position. However, the proposals that would have been part of the amendments could not be located by the District, and, therefore, were not provided to VLS for review in order for VLS to test the appropriateness of hourly rates billed under GCR.

The billing rates for the three positions included in GCR increased in July 2009 by 2% for Network Administrator and PS2 Administrator and 11% for Receptionist. After this increase in July, 2009 no other increase was noticed until the effective date of the 2013 contract. Additionally, in the later part of fiscal year 2011/12, additional positions started to be billed within the GCR.<sup>242</sup>

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<sup>241</sup> The period under review by VLS began on 7/1/2008. Thus, for the period stated for these GCR charges (11/1/2004 to 12/31/2008) only 7/1/2008 through 12/31/2008, were reviewed by VLS.

<sup>242</sup> These additional positions were GCR Office Engineer I, Office Engineer, and Assistant Administration. Additional positions were later added incrementally.

Because the proposals related to the amendments could not be located by the District, VLS was unable to verify that the positions and rates billed were appropriate for 31 of the 145 invoices tested.

- Exception: VLS identified differences between the hourly and total GCR rates billed compared to the hourly and total GCR rates stated in the SGI proposal. Although the District could not locate the proposals that would have accompanied amendments to the 2004 contract for the period prior to 6/30/13, a proposal that accompanied an amendment and listed GCR labor was located by the District for July 2013 through December 2013.<sup>243</sup> This proposal listed five positions at one FTE each within GCR for Program office support positions.<sup>244</sup> However, the invoice for GCR labor for July 2013 included billings for fourteen individuals, for a total of twelve FTE. The only title and hourly rate in the July 2013 invoice that was reflective of the titles and rates listed in the proposal for July 2013 was Network Administrator. The total amount included in the proposal for the month of July 2013 for Bond Program office support-type positions was \$35,466 while the actual amount billed for July 2013 for these positions was \$88,268, a difference of \$52,802. Table 28 includes the details from the proposal effective for July 2013 and Table 29 includes the detail from the July 2013 billings for GCR.

**Table 28: GCR Positions Listed in Proposal Effective 7/1/2013 – 6/30/2014**

No.	Position	Amount	Amount with 10% Mark-Up	Hours	Amount	Amount with 10% Mark-Up
1	Network Administrator	\$ 44.51	\$ 48.96	176	\$ 7,834	\$ 8,617
2	Project Controls Specialist	34.67	38.14	176	6,102	6,712
3	Receptionist	34.67	38.14	176	6,102	6,712
4	Administrative Assistant	34.67	38.14	176	6,102	6,712
5	Contracts Manager	34.67	38.14	176	6,102	6,712
Total					\$ 32,241	\$ 35,466

<sup>243</sup> Because the District was unable to locate other SGI proposals, it is a possibility that an additional proposal existed for this period that would have included the positions.

<sup>244</sup> **Exhibit FI4-10** includes the proposal. The positions listed in 1-5 of the GCR positions are office-type positions, while the positions listed in 6-12 (in the proposal) are positions such as Master Scheduler, Estimator, and Programmer. These were not office support-type positions but instead were positions for which SGI used subcontractors.

**Table 29: GCR Positions Listed in SGI July 2013 Invoice for GCR Labor**

No.	Position	Amount	Amount with 10% Mark-Up	Hours	Amount	Amount with 10% Mark-Up
1	Receptionist	\$ 40.91	\$ 45.00	176	\$ 7,200	\$ 7,920
2	Office Engineer	40.91	45.00	148	6,055	6,660
3	Admin. Support/Receptionist	32.41	35.65	162	5,250	5,775
4	Admin. Support/Receptionist	32.41	35.65	153	4,959	5,455
5	Admin. Support/Receptionist	32.41	35.65	24	778	856
6	Admin. Support/Receptionist	32.41	35.65	160	5,186	5,704
7	Admin. Support/Receptionist	32.41	35.65	152	4,926	5,419
8	GCR Office Engineer I	63.64	70.00	168	10,692	11,761
9	Admin. Support/Receptionist	32.41	35.65	160	5,186	5,704
10	GCR Office Engineer I	63.64	70.00	48	3,055	3,360
11	Office Engineer	40.91	45.00	164	6,709	7,380
12	Network Administrator	44.51	48.96	169	7,522	8,274
13	Assistant Administrator	40.91	45.00	176	7,200	7,920
14	Office Engineer	36.36	40.00	152	5,527	6,079
Total					\$ 80,244	\$ 88,268

Because of this finding, VLS tested the GCR billings for the period of 8/1/2013 through 9/30/2013, the period before the 2013 SGI contract was effective.<sup>245</sup> Similar issues were noticed in the GCR billings for SGI labor in August 2013 and September 2013.

For August 2013, the Proposal listed the same five positions for a total of \$31,792 (\$34,971 with the 10% mark-up). The invoice for GCR labor for August 2013 was \$91,643 inclusive of the 10% mark-up. This is a difference of \$56,663.

For September 2013, the Proposal listed the same five positions for a total of \$29,310 (\$32,241 with the 10% mark-up). The invoice for GCR labor for September 2013 was \$86,107 inclusive of the 10% mark-up. This is a difference of \$53,866.

<sup>245</sup> As stated in section "Other Items Related to the 2013 Contract," the 2013 SGI contract listed within Program Management, the positions that had been billed under GCR previously. These positions were no longer included in GCR invoices.

- Inconsistency in “Apprentice” Rates: Two of the 145 invoices tested, contained instances where the billing rates matched the title listed in the 2013 contract, however, the invoice listed this title followed by the word “apprentice.” For example, the title Office Engineer III was listed at \$78 per hour in the contract, while the invoice for the same title followed by the word “apprentice” was billed at \$78 per hour, the same hourly rate listed in the contract. Other similar invoices had specified a title followed by the word “apprentice” and the billing rate was lower than the title listed in the contract. It appeared reasonable to VLS that if the title were followed by the word “apprentice,” the hourly rate would have been lower than the rate listed for that title in the SGI 2013 contract.<sup>246</sup> **Exhibit FI4-11** includes an example of these billings. The titles or positions listing the word apprentice but displaying a reduced rate were not considered exceptions by VLS. For example, the title Contracts Engineer was listed as \$65 per hour in the contract, while the invoice for the same title followed by the word “apprentice” was billed at a reduced hourly rate of \$58.<sup>247</sup> SGI did not consistently discount the rates billed when the “apprentice” classification was added to a position.

Additionally, one of these same invoices billed in excess of the contracted rate plus appropriate escalation.<sup>248</sup> This invoice included billings for 14 different SGI employees. All employees who did not have the word apprentice following their title displayed the appropriate escalation rate. For example, the title “Program Engineer” was listed as \$149.70 per hour in the contract effective 10/1/13, and, in the invoice for June 2015, this rate was increased to \$154 per hour, thus appropriately including a one-year escalation ( $\$149.70 \times 3\% \text{ increase} = \$154.19$ ).<sup>249</sup> However, for the seven employees whose title was followed by “apprentice,” four did not have a discounted rate (for the “apprentice” classification), and the rate was higher than the original contract rate plus a one-year escalation. For example, the

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<sup>246</sup> For those positions or titles that were followed by the word “apprentice,” VLS noticed a 10% to 20% discount from the title without the word “apprentice.”

<sup>247</sup> According to industry standards, only skilled labor (such as electrician, carpenter, plumber, etc.) includes “apprentice” level employees. One would generally see apprentice-level positions billed at a discount of 10% to 35% compared to a licensed laborer. However, it is unusual for office administrative staff, such as an Office Engineer (which is an administrative staff position and not a licensed engineer), to include titles followed by the word “apprentice.”

<sup>248</sup> The 2004 contract specified a 2.5% annual escalation rate and the 2013 contract listed a 3% escalation rate.

<sup>249</sup> The period from 10/1/2013 to 9/30/2014 should reflect the rates as stated in the contract. The period from 10/1/2014 to 9/30/2015 should reflect the rates stated in the contract plus a three percent increase.

title of “Office Engineer III” listed an hourly rate of \$78 per hour in the 10/1/2013 contract. An appropriate one-year escalation would have provided for an hourly rate of \$80.34.<sup>250</sup> However, the billing rate included in this invoice for the same title followed by the word “apprentice” was listed at \$84, which is more than a one-year escalation rate for this title and displays no discount for the word “apprentice.” **Exhibit FI4-12** includes an example of these billings.

### **Conclusion**

- All of the SGI invoices tested reflected the amount the District had paid for said invoice.
- The 2004 contract did not list hourly rates for SGI staff listed under GCR; therefore, the District could not verify that the hourly rates billed were in line with the 2004 contract.
- SGI contract amendments submitted to the Board did not include staffing plans listing the positions and hourly rates for the positions that composed the amount of the amendment. Furthermore, the District was unable to provide VLS with this information in order for VLS to test the appropriateness of hourly rates billed under GCR.
- SGI appears to have billed the District in excess of what SGI had included in its proposals for GCR labor for 7/1/2013 through 9/30/2013. The excess billings identified through this review amount to \$163,331.<sup>251</sup>
- SGI billed the District within two invoices for employees whose titles were followed by the word “apprentice” without providing a discount or reduction to the contract rate. VLS did not quantify a difference, as VLS is not in a position to assign the appropriate discount for the “apprentice” classification added to employee titles. In addition, one invoice included rates that were higher than the original contract rate plus a one-year escalation for four individuals whose title included the word apprentice. Billing the contract rate plus a one-year escalation was appropriate; however, the rate used for these four individuals exceeded the appropriate escalation by a range of \$3 to \$6 per hour. The total amount due to this excess increase for these four individuals amounted to \$2,634 for this invoice.

### **Vertical Analysis of Construction Projects**

This second step included a vertical analysis of construction projects that compared the size and completion status of construction projects to the hours billed for SGI employee labor for the

<sup>250</sup> This calculation is as follows:  $\$78 \times 1.03 = \$80.34$ .

<sup>251</sup> \$52,802 for July 2013, \$56,663 for August 2013, and \$53,866 for September 2013. Calculation is as follows:  $\$52,802 + \$56,663 + \$53,866 = \$163,331$ .

corresponding month. This analysis is based solely on the hours billed compared to the construction/project activity at the time and is NOT based on a review of time cards or other supporting documentation. VLS assessed the efficiency and staffing levels of SGI and not the validity of the hours billed. Any conclusions reached do NOT assess whether those hours were actually worked and should have been billed to the District.

For this vertical analysis, VLS used the monthly construction Project Status Reports and the invoices SGI submitted to the District for payment.<sup>252</sup> The invoices include the number of hours billed for the month and describe the location of the work performed. The months of November 2008, September 2010, May 2012, June 2014, and February 2016 were selected to perform this analysis.

#### Project Status Reports

The Project Status Reports list the location and name of the construction project, the scope, construction status, contract status, period progress, anticipated progress for next period, duration of project, and percentage of work completed. As an example, **Exhibit FI4-13** includes the report for period ending 2/29/2016. Starting with September 2015, the Project Status Reports included a budget status that listed the project contract amount and approved change orders to provide an adjusted contract amount. For the months prior, VLS obtained total contract amount information from the District.

#### SGI Invoices

The types of invoices SGI presented to the District are discussed at the beginning of this section (see Work Step C – Analysis of SGI Invoices). As mentioned, the SGI invoices contained sufficient details to identify the construction projects corresponding to the invoices.

#### Analysis

The Project Status Reports listed the active projects at different percentages of completion. For all the months tested, except for June 2014, the SGI invoices included labor hours allocated to projects that were not listed on the Project Status Reports. According to the District, these reports list only active construction projects. If a project is in the design phase or has been completed, it is not reported in the Project Status Reports. These projects require additional work mostly within Program Management; however, they may require some minimal work related to Construction Management as well.

Invoices that included hours for projects that were in the design (or pre-construction) phase or had recently been completed were considered appropriate if limited hours were billed. For these projects, the contract values were included in the total contract value of work taking place

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<sup>252</sup> The Project Status reports are located in the WCCUSD Bond Program website and are the same that are submitted to the Board as part of the Engineering Report in the Board agenda packets.

(Source: <http://www.wccusdbondprogram.com/index.php?name=Content&pid=11>)

for the months selected for testing.<sup>253</sup> Table 30 includes details for each of the months selected for testing.<sup>254</sup> A description for each row of Table 30 is explained below.

1. **Construction Management:** This row lists the number of hours billed by SGI for Construction Management.
2. **Program/Project Management:** This row lists the number of hours billed by SGI for Program, Project, and Design Management.
3. **GCR (Bond Program Office Support):** This row lists the number of hours billed by SGI for GCR (Bond Program office support staff).
4. **Total Hours Billed:** This row lists the total number of hours billed for the month by SGI.
5. **Number of Staff CM:** This row lists the number of Construction Management staff billed for in the month.
6. **Number of Staff PM:** This row lists the number of Project, Program, and Design Management staff billed for in the month.
7. **Number of Staff GCR:** This row lists the number of GCR (Bond Program office support staff) billed for in the month.
8. **Total Number of Staff:** This row lists the total number of staff billed for in the month.
9. **Number of Active Construction Projects:** This row lists the number of active construction projects. These projects were reported in the Project Status Reports for the month analyzed.<sup>255</sup> Additionally, it also includes some projects that were not reported in the Project Status Reports because of what appears to be an oversight by SGI. The projects were included by VLS because they were in the pre-construction phase and construction was started soon after or they were completed in the few months prior to the month analyzed.<sup>256</sup>
10. **Number of Other Construction Projects:** This row lists projects that were not reported in Project Status Reports being analyzed, and they did not appear to be projects that had recent construction activity in the months preceding or succeeding the month analyzed. For the September 2010 month, these projects were never reported in a monthly Project Status Report, but were listed in a Weekly Status Report, which was a District’s internal document as these projects were very small

<sup>253</sup> The contract value of the projects represents the entire construction cost for the life of the project. This provides a perspective as to the overall size of the project.

<sup>254</sup> The contract value of the work taking place for the months selected was rounded to the nearest \$100,000 if the project was over \$1 million. Because the amount was not stated in the Project Status Reports, VLS obtained this information from the District.

<sup>255</sup> The Project Status Reports were monthly construction project status reports that detailed the active construction projects

<sup>256</sup> For these projects, VLS reviewed the Project Status reports for the four months prior and after the month analyzed.

in size and duration. For the May 2012 month, these projects were reported at 0% completion in September 2012, which was four months after the month analyzed.

11. **Total Number of Construction Projects:** This row lists the total number of construction projects taking place during the month as explained in numbers 9 and 10 above.
12. **Contract Value for Active Construction Projects:** This row lists the total construction contract value for the projects stated in number 9 above.
13. **Contract Value for Other Construction Projects:** This row lists the total construction contract value for the projects stated in number 10 above.
14. **Total Contract Value:** This row lists the total construction contract value for the projects listed in 12 and 13 above.
15. **Contract Value per Hour Billed by SGI:** This row is a calculation that divides the total contract value by the total hours billed by SGI for the month.

**Table 30: Contract Value of Work Taking Place per Hour Billed by SGI for Months Selected**

Row Number	Description	November 2008	September 2010	May 2012	June 2014	February 2016
1	Construction Management (CM)	952	2,122	2,415	2,673	784
2	Program/Project Management (PM)	735	1,161	1,309	1,116	861
3	GCR (Bond Program Office Support) <sup>257</sup>	483	528	1,280	2,483	974
4	<b>Total Hours Billed</b>	<b>2,170</b>	<b>3,811</b>	<b>5,004</b>	<b>6,272</b>	<b>2,619</b>
5	Number of Staff CM	8	14	16	18	7
6	Number of Staff PM	6	8	9	8	6
7	Number of Staff GCR <sup>257</sup>	3	3	7	17	7
8	<b>Total Number of Staff</b>	<b>17</b>	<b>25</b>	<b>32</b>	<b>43</b>	<b>20</b>
9	Number of Active Construction Projects	13	14	17	14	6
10	Number of Other Construction Projects	1	5	2	0	0
11	<b>Total Number of Construction Project</b>	<b>14</b>	<b>19</b>	<b>19</b>	<b>14</b>	<b>6</b>
12	Contract Value for Active Construction Projects	\$189,200,000	\$213,000,000	\$154,100,000	\$189,100,000	\$103,000,000
13	Contract Value for Other Construction Projects	-	1,000,000	69,900,000	-	-

<sup>257</sup> In June 2014, SGI no longer included labor hours within GCR, as discussed in subsection “Hourly Rates Change for GCR Labor before and after the 2013 Contract.” However, for clarity in this analysis, the hours billed for individuals billed under GCR before the 2013 contract, continued to be separated in the June 2014 and February 2016 analysis. These individuals were identified by the individuals’ names.

Row Number	Description	November 2008	September 2010	May 2012	June 2014	February 2016
14	Total Contract Value	189,200,000	214,000,000	224,000,000	189,100,000	103,000,000
15	Contract Value per Hour Billed by SGI	\$ 87,189	\$ 56,153	\$ 44,764	\$ 30,150	\$ 39,328

### Analysis for November 2008

Table 31 is a high-level summary of the extensive analysis performed for the month of November 2008. The complete analysis is too detailed to include in this report. Each of the other months analyzed are discussed in summary only. The November 2008 high-level summary is included in this report to provide an example of the process undertaken to analyze the efficiency of SGI based on the number of hours billed for the months selected.

Included below is a description of each column in Table 31:

- **No.:** This number was assigned by VLS for ease of reference in this report.
- **Name of Project:** This column represents the name of the project.
- **Contract Value:** This column represents the contract value of the project rounded to the nearest \$100,000 if the project was over one million dollars. Because the amount was not stated in the monthly construction Project Status Report, VLS obtained this information from the District.
- **Percent of Construction Completed:** This column represents the percentage of completion as of the date of the monthly construction Project Status Report for this month.
- **Days Duration of Project:** This column represents the total days scheduled for the project.
- **Days Used of Construction Duration:** These column represents the days used in construction as of the date of the monthly construction Project Status Report.
- **Hours Billed for CM:** This column represents the hours SGI billed for Construction Management Services. These are billings for SGI staff working directly at the construction site.
- **Hours Billed for PM:** This column represents the hours SGI billed for Program Management and Project Management. These are billings for SGI staff working at the central office and not working directly at the construction sites.
- **Total Hours:** This column represents the total hours billed for the project.

**Table 31: High-Level Summary of Analysis Performed to Compare Staffing Levels to Work Performed – November 2008**

From Construction Project Status Reports						From SGI Invoices		
No.	Name of Project	Contract Value	Percent of Construction Completed	Days Duration of Project	Days Used of Construction Duration	Hours Billed for CM	Hours Billed for PM	Total Hours Billed
1	De Anza HS - New Field Houses	\$ 3,500,000	80%	270	260	208	225	433
2	De Anza HS - Utilities, Gym, Demo and Site Work	2,700,000	85%	180	141	-	-	-
3	Downer ES - New Construction	23,100,000	92%	874	855	121	-	121
4	El Cerrito HS - Phase 1, Five Buildings - Classrooms, Etc.	57,300,000	97%	780	786	288	-	288
5	El Cerrito HS - Phase 2, One Building - 600 Seat Theater Etc.	23,600,000	83%	720	575	-	-	-
6	Ford ES - Transitional Housing Project @ Downer	1,100,000	40%	90	41	-	114	114
7	Kennedy HS - Painting of Exterior Walls and Canopy	18,000	80%	135	48	72	-	72
8	Richmond HS - New Bleacher & Field House Facilities	6,000,000	18%	372	195	80	10	90
9	King ES - Site Work	484,000	50%	120	66	-	115	115

From Construction Project Status Reports						From SGI Invoices		
No.	Name of Project	Contract Value	Percent of Construction Completed	Days Duration of Project	Days Used of Construction Duration	Hours Billed for CM	Hours Billed for PM	Total Hours Billed
10	Pinole MS <sup>258</sup>	20,000,000	98%	540	646	31	-	31
11	Helms <sup>259</sup>	50,100,000	55%	780	560	152	-	152
12	Dover <sup>260</sup>	446,918	95%	122	135	-	157	157
13	Nystrom <sup>261</sup>	21,100,000	0%		0	-	102	102
14	Richmond College Prep <sup>259</sup>	888,000	95%	85	89	-	13	13
Sub Total		\$210,336,918				952	735	1,687
						Hours Billed for GCR		483
						Total Hours Billed		<u>2,170</u>

November 2008 had nine active projects reported in the Project Status Report. However, there were SGI billings associated with four other projects that were not listed in the Project Status Report for November 2008 but were active and reported in other reports as explained in this section. One project had billings for Program and Project management, although this project did not commence until the year 2014. The total contract value of the construction projects taking place in November 2008 was just over \$210 million and the total hours billed was 2,170. Table 32 is a summary of hours billed by category for the month of November 2008.

**Table 32: Summary of Hours Billed for November 2008**

Category Billed	Hours Billed
Construction Management	952
Program/Project Management	735
GCR (Program Office Support)	483
Total Hours Billed	<u>2,170</u>

<sup>258</sup> This project was not reported in the November 2008 Project Status Report as it had been nearly completed. This project was reported in the August 2008 report. VLS used the information provided in the August 2008 report.

<sup>259</sup> This project was not reported in the November 2008 Project Status Report. This project was reported in the December 2008 report, because this project was reported only one month later at a 55% completion, it appears that it was not listed in the report as a result of an oversight. VLS used the information provided in the December 2008 report.

<sup>260</sup> This project was not reported in the November 2008 Project Status Report. This project was reported in the December 2008 report. VLS used the information provided in the December 2008 report.

<sup>261</sup> This project was not reported in the November 2008 Project Status Report. This project was not started until July 2014 (over six years later). Per discussion with the District, although this project was not started until six years later, the work performed by SGI at that time related to the long-term master planning for this project.

Construction Management – November 2008

A total of 952 hours were billed for Construction Management for November 2008 as discussed in detail below.

1. De Anza High School had two projects, No. 1, and No. 2, as listed in Table 31. The SGI invoices included billings for 208 hours for this site (combining each of the projects taking place at the time). These 208 hours were composed of 95 hours for a Construction Manager Sr., 72 hours for a Construction Manager II, and 41 hours for a Construction Manager I. The number of hours billed for this site appears reasonable for the contract value of the two projects and the percentage of completion at the time.
2. See number 1 above.
3. Downer Elementary School New Construction project had 121 hours billed for Construction Management. These 121 hours were composed of 49 hours for a Construction Manager Sr. and 72 hours for a Construction Manager II. The number of hours billed for this site appears appropriate for the contract value of the project and the percentage of completion at the time.
4. El Cerrito High School had two projects taking place at this time, No. 4, and No. 5. The SGI invoices included billings for 288 hours to this site not separating between each of the projects taking place at the time for this site. These 288 hours were composed of 144 hours for a Construction Manager Sr. and 144 hours for a Project Engineer. The number of hours billed for this site appears reasonable for the contract value of the two projects taking place and the percentage of completion at the time.
5. See number 4 above.
6. Ford Elementary School Transitional Housing project did not have any billings for the month for Construction Management. However, it does have billings for Project Management, which appears reasonable because this is a small project.
7. Kennedy High School Painting project had 72 hours for Construction Management for a Construction Manger I. This is a small project, and the number of hours billed for this site appears reasonable for the contract value of the project and the percentage of completion at the time.
8. Richmond High School project had 80 hours billed for Construction Management for a Construction Manager II. The number of hours billed for this site appears

reasonable for the contract value of the project and the percentage of completion at the time.

9. King Elementary School project does not have any billings for the month for Construction Management. However, it does have billings for Project Management, which appears reasonable because this is a small project.
10. Pinole Middle School project was not reported in the November 2008 Project Status Report as it had been nearly completed. The last time this project had been reported was in the August 2008 report at 98% completion. A total of 31 hours were billed this month for Construction Management for a Construction Manager I. This appears appropriate since it is a small number of hours, and it is expected that, after the completion of a project, there are certain items that may need to be addressed by the Construction Manager. The number of hours billed for Construction Management for this site appears reasonable.
11. Helms Middle School New Construction project was not reported in the November 2008 Project Status Report. However, this project was reported in the prior month's and following month's reports at 44% and 55% completion, respectively. It appears that the failure to report this project in the November 2008 report was an oversight and construction work was in fact taking place in the month of November 2008. Thus, it appears reasonable that 152 hours were billed for Construction Management. These 152 hours were composed of 144 hours for a Construction Manager and 8 hours for a Construction Manager I.
12. Dover Elementary School New Construction was not reported in the November 2008 report. However, this project was reported in the prior month's and following month's reports at 85% and 95% completion, respectively. It appears that the failure to report this project in the November 2008 report was an oversight and some minimal work may have been taking place in the month of November 2008. There were no billings for Construction Management; however, there were billings for Project Management, which appears reasonable for a project nearing completion.
13. Nystrom project was not reported in the November 2008 report. However, it did not have any billings for Construction Management, which appears appropriate. This project was not reported as started until July 2016, which is nearly six years later. Billings for Project Management are discussed in the Program and Project Management section below.
14. Richmond College Prep project was not reported in the November 2008 report. However, this project was reported in the following month's report at 95% completion. It appears that the failure to report this project in the November 2008

report was an oversight and some minimal work may have been taking place in the month of November 2008. This project did not have any billings for Construction Management; however, there were billings for Project Management, which appears reasonable for a project nearing completion.

Program and Project Management – November 2008

A total of 735 hours were billed for Program and Project Management for November 2008 as discussed in detail below.

1. De Anza High School had two projects, No. 1, and No. 2, as listed in Table 31. The SGI invoices listed billings for 225 hours for Program and Project Management. The total hours for Program Manager, Program Director, Program Engineer, Deputy Program Manager, Controls Engineer, and Project Controls, were allocated to this and other projects based on a percentage. Not all active projects had Program and Project Management hours allocated to them. It is unclear how this allocation took place. However, for the combined number of projects taking place at the time and the percentage of completion, the total billings for Program and Project Management appear reasonable for November 2008. This information is referenced as a footnote for the rest of the projects taking place for this month.
2. See number 1 above.
3. Downer Elementary School New Construction project had zero hours billed for Program and Project Management.<sup>262</sup>
4. El Cerrito High School had zero hours billed for Program and Project Management.<sup>262</sup>
5. See number 4 above.
6. Ford Elementary School Transitional Housing project had 114 hours billed for Program and Project Management.<sup>263</sup>

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<sup>262</sup> The total hours for Program Manager, Program Director, Program Engineer, Deputy Program Manager, Controls Engineer, and Project Controls were allocated to other projects based on a percentage and there were no hours were allocated to this project. Not all active projects had Program and Project Management hours allocated to them. It is unclear how this allocation took place. However, for the combined number of projects taking place and the percentage of completion, the total billings for Program and Project Management appear reasonable for November 2008.

<sup>263</sup> The total hours for Program Manager, Program Director, Program Engineer, Deputy Program Manager, Controls Engineer, and Project Controls, were allocated to this and other projects based on a percentage. Not all active projects had Program and Project Management hours allocated to them. It is unclear how this allocation took place. However, for the combined number of projects taking place at the time and the

7. Kennedy High School Painting project had zero hours billed for Program and Project Management.<sup>262</sup>
8. Richmond High School project had 10 hours billed for Program and Project Management.<sup>263</sup>
9. King Elementary School project had 115 hours billed for Program and Project Management I.<sup>263</sup>
10. Pinole Middle School project had zero hours billed for Program and Project Management.<sup>262</sup>
11. Helms Middle School New Construction project had zero hours billed for Program and Project Management.<sup>262</sup>
12. Dover Elementary School New Construction had 157 hours billed for Program and Project Management.<sup>263</sup>
13. Nystrom project was not reported in the November 2008 report, as previously stated in the section above. However, although it did not have any billings for Construction Management, it had 102 hours billed for Program and Project Management. This project was not reported as started until November 2014, which is nearly six years later. According to the District, these billings may have been for the long-term master planning taking place at that time. This appears reasonable as for the same time an architect firm was performing design services for this site, as was confirmed by review of the architect's time and activity summary provided to VLS by the architect Firm.
14. Richmond College Prep project had 13 hours billed for Program and Project Management.<sup>263</sup>

#### General Conditions Reimbursements (Labor Hours Only) – November 2008

A total of 483 hours were billed for labor under GCR. These are positions that provide Bond Program office support to Construction, Project, and Program Management. These 483 hours were composed of 163 hours for Network Administrator, 160 hours for Controls Specialist, and 160 hours for Administrative Office Manager/Support. As included in Table 31, the hours for GCR were listed in the SGI invoice as a total and not allocated in the invoice to a specific construction site. The hours billed for GCR are listed after the subtotal in Table 31, and before the total hours billed. VLS believes that having three full-time individuals provide Bond Program

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percentage of completion, the total billings for Program and Project Management appear reasonable for November 2008.

office support to Construction, Project and Program Management for the number of projects ongoing and the percentage of completion of those project is reasonable for November 2008.

However, although the maximum number of billable hours for the month of November 2008 was 144, each of these employees was billed at hours exceeding 144. This was the result of billings for 16 hours of holiday (Thanksgiving Day and the day after Thanksgiving Day) for each of these three employees plus an additional three hours for the Network Administrator. This issue is discussed and quantified as part of “Billings for Sick and Vacation Time” in the FI (3) section.

#### Conclusion for November 2008 Analysis

The number of hours billed for November 2008 for Construction Management, Program and Project Management, and GCR labor (program office support staff) appears appropriate and is in line with industry standards for the size of the projects taking place and the percentage of completion of the projects at the time.

#### **Analysis for September 2010**

As stated at the beginning of this section, the analysis for the months of September 2010 through February 2016 are provided in high-level summary only. September 2010 had ten different active projects reported in the Project Status Report. However, there were SGI billings associated with nine other projects that were not listed in the Project Status Report for September 2010, but were active and reported in the months following September 2010, or were in the final stages of completion or in pre-construction stages.<sup>264</sup> It is expected to see some billings for projects at these stages. The total value of the construction projects taking place in September 2010 was just over \$214 million, and the total number of hours billed by SGI was 3,811. Table 33 provides a summary of the hours billed by category for the month of September 2010.

**Table 33: Summary of Hours Billed for September 2010**

Category Billed	Hours Billed
Construction Management	2,122
Program/Project/Design Management	1,161
GCR (Program Office Support)	528
Total Hours Billed	3,811

<sup>264</sup> VLS obtained this information from the Project Status Report for October 2010 for one project. For seven other projects, VLS obtained the information from a weekly project status report dated 9/28/2010, as these projects were not reported in the Project Status Report.

Construction Management - September 2010

Billings for Construction Management were 2,122 hours for the fourteen<sup>265</sup> active projects and the five other projects that were not listed in the Project Status Report for September 2010, but were in the final stages of completion or in the pre-construction stage. There were fourteen different individuals listed in the billings for Construction Management for this month. The number of hours billed for Construction Management more than doubled from the hours billed in November 2008. However, more projects were in the mid-point of construction, which requires additional Construction Management hours. Additionally, in 2008 six active projects had no billings for Construction Management.<sup>266</sup> Based on the number of construction projects taking place for September 2010 (refer to Table 30) and the percentage of completion for these projects, the billings for each project appeared reasonable. Overall, the total hours billed for Construction Management is within industry standards based on the contract value of the projects billed for in this month and the percentage of completion of those projects in September 2010.

Program and Project Management - September 2010

Billings for Program Management, Project Management, and Design Management were 1,161 hours.<sup>267</sup> There were eight different individuals listed in the billings for Program Management, Project Management, and Design Management for this month. The total number of hours billed for this area increased by 426 from the hours billed in November 2008. Taking into account that Design Management was an added service beginning in July 2010; that hours for Design Management were 164 for this month; and the increase in construction projects, billings for this month appear to be within industry standards. This assessment is based on the contract value of the projects taking place and the percentage of completion of those projects in September 2010. Of the 164 hours billed for Design Management, there were some billings for Design Management allocated to four other projects that as of 2016 had not been started and are currently in the pre-construction stage or are currently included in the Facilities Master Plan approved in 2016 (less than 18 hours for each project).<sup>268</sup> Per a review of Board Minutes, the Board approved master planning contracts for three of these four projects on 6/22/2010.

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<sup>265</sup> Of these fourteen active projects, ten had been reported in the Project Status Report for September 2010 and one had been reported in the October 2010 report, and three had been reported in the weekly Status Report on 9/28/2010.

<sup>266</sup> It is not clear the reason why these six projects had zero hours billed for Construction Management in November 2008. The projects with zero hours billed for Construction Management in November 2008 were discussed in the Construction Management – November 2008 section in numbers 2, 5, 9, 12, 13, and 14.

<sup>267</sup> Design Management was not included in the November 2008 project billings. SGI had not been responsible for providing Design Management in the years prior to fiscal year 2010/11. The first full-time Design Manager started on 7/1/2010.

<sup>268</sup> These billings were for Fairmont at 13 hours, Wilson Elementary School at 15 hours, Pinole Valley High School at 4 hours, and Stege Elementary School at 18 hours. A total of 50 hours billings for all four locations combined.

Additionally, per a review of Board Minutes for 10/6/2010, the fourth project was approved for master planning by the Board in the spring of 2010. Therefore, the 50 hours for Design Management for these four projects appear reasonable.<sup>269</sup>

Overall, VLS believes that the number of hours billed for Program Management, Project Management, and Design Management appears appropriate for the contract value of the projects taking place and the percentage of completion in September 2010.

#### General Conditions Reimbursements (Labor Hours Only) - September 2010

Billings for labor hours within General Conditions Reimbursements were 528 hours. There were three different individuals listed in the billings for GCR labor hours. Although the billings for Construction Management and Program and Project Management hours increased from November 2008, the billings for hours in the GCR labor remained relatively close to those of November 2008. It is VLS's opinion that the number of hours billed for GCR labor hours appears reasonable for the contract value of the projects taking place and the percentage of completion of those projects in September 2010.

#### Conclusion for September 2010 Analysis

The number of hours billed for September 2010 for Construction Management, Program, and Project Management, Design Management, and GCR labor (program office support) appears reasonable and in line with industry standards for size of the projects taking place and the percentage of completion at the time.

#### Analysis for May 2012

May 2012 had nine different active projects reported in the Project Status Report. However, there were SGI billings associated with ten other projects that were not listed in the Project Status Report for May 2012, but were active and reported in the months following May 2012, or were in the final stages of completion or in pre-construction stages.<sup>270</sup> As stated at the beginning of this section, it is expected to see some billings for projects at these stages. The total value of the construction projects taking place in May 2012 was just over \$224 million and the total number of hours billed was 5,004. Table 34 is a summary of hours billed by category for the month of May 2012.

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<sup>269</sup> VLS identified that Design Management had been an added scope of services through review of the audit report for year ended 6/30/2011. However, VLS was not provided with an SGI contract amendment listing this added service.

<sup>270</sup> VLS obtained this information from the Project Status Report for April 2012 and September 2012.

**Table 34: Summary of Hours Billed for May 2012**

Category Billed	Hours Billed
Construction Management	2,415
Program/Project/Design Management	1,309
GCR (Program Office Support)	1,280
Total Hours Billed	5,004

Construction Management - May 2012

Billings for Construction Management for May 2012 were 2,415 hours for the seventeen<sup>271</sup> active projects and two other projects that were not listed in the Project Status Report for May 2012, but were in the final stages of completion or in pre-construction stages. There were sixteen different individuals listed in the billings for Construction Management for this month. The number of hours billed for Construction Management increased by close to 300 hours. The number of active construction projects increased by three. The number of hours billed for September 2010 is within industry standards based on the contract value of the projects taking place and the percentage of completion of those projects in May 2012.

Program and Project Management - May 2012

Billings for Program Management, Project Management, and Design Management were 1,309 hours. There were nine different individuals listed in the billings for Program Management, Project Management, and Design Management for this month. The number of hours billed for this category was close to the number of hours billed for September 2010, which is within industry standards based on the contract value of the projects taking place and the percentage of completion of those projects in May 2012. There were some billings (less than 18 hours for each project) for Design Management allocated to four other projects for which construction had not been started as of June 2016 and which are currently included in the Facilities Master Plan approved in 2016.<sup>272</sup> Per a review of Board Minutes, the Board approved master planning contracts for these sites on 6/22/2010. Therefore, it is reasonable that some hours were billed for Design Management.

It is VLS's opinion that the number of hours billed for Program Management, Project Management, and Design Management appears reasonable for the contract value and the percentage of completion of the projects taking place in May 2012.

<sup>271</sup> Nine of these projects were reported in the May 2012 Project Status report, the other eight had been reported in January 2012, April 2012, and September 2012 at more than 0%, but less than 100% completion.

<sup>272</sup> These billings were for Fairmont Elementary School at 15 hours, Wilson Elementary School at 18 hours, Stege Elementary School at 18 hours, and Valley View Elementary School at 18 hours. A total of 69 hours were billed by SGI for all four locations.

### General Conditions Reimbursements (Labor Hours Only) - May 2012

Billings for labor hours within GCR were 1,280 hours. There were seven different individuals listed in the billings for GCR labor hours. In the analysis for November 2008 and September 2010, only three individuals were billed for full-time hours; however, in May 2012, this increased by four individuals and 752 hours. The total cost of the ongoing projects was \$224 million in May 2012, while the projects taking place in November 2008 and September 2010 had a total cost of \$210 million and \$214 million, respectively. The number of hours billed for GCR labor hours appears to be excessive for the contract value of the projects taking place and the percentage of completion of the projects in September 2010. Additionally, as mentioned in the Results of Testing SGI Invoices section, the proposal that complemented contract amendments and would have listed these additional positions within GCR, were not located by the District. The titles listed for three of the four new positions added to GCR was Office Engineer.<sup>273</sup> The title for the other additional position was Office Engineer I.

### Conclusion for May 2012 Analysis

The number of hours billed for May 2012 for Construction Management, Program and Project Management, and Design Management appear reasonable and within industry standards for the size of the projects taking place and the percentage of completion of those projects at the time. However, billings for GCR labor (program office support staff) appears to be excessive for the size of the projects based on the hours billed for the other categories (Construction Management, Program and Project Management, and Design Management) and the total contract value of the projects taking place and the percentage of completion at the time. Although there was a small increase in construction activity (up \$10 million from the prior month tested), this additional activity would not justify these additional positions. The positions added were all Office Engineers, which would indicate that they all performed similar functions. This may suggest that there were inefficiencies within SGI staffing.

### Analysis for June 2014

June 2014 had fourteen different active projects reported in the Project Status Report. For this month, there were no billings associated with other projects that were not listed in the Project Status Report for June 2014. The total value of the construction projects taking place in June 2014 was just under \$190 million and the total number of hours billed was 6,272. In June 2014, SGI no longer included labor hours within GCR, as discussed in subsection “*Hourly Rates Change for GCR Labor before and after the 2013 Contract.*” Table 35 provides a summary of hours billed by category for the month of June 2014.

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<sup>273</sup> Office engineer is an entry-level position that can be considered an administrative-type position. These individuals may act as assistants to Program or Project Managers.

**Table 35: Summary of Hours Billed for June 2014**

Category Billed	Hours Billed
Construction Management	2,673
Program/Project/Design Management	1,116
GCR (Program Office Support) <sup>274</sup>	2,483
Total Hours Billed	6,272

Construction Management - June 2014

Billings for Construction Management for June 2014 were 2,673 hours for the 14 active projects that were listed in the Project Status Report for June 2014. The number of hours billed at the Construction Management was slightly higher than the number of hours billed for May 2012; however, the percentage of completion for most of these projects was at the midpoint (10% to 90% of completion), which would have required additional construction management hours.<sup>275</sup> The number of hours billed for this category is within industry standards based on the contract value of the projects taking place and the percentage of completion in June 2014.

Program and Project Management - June 2014

As stated at the beginning of this section, GCR no longer included any labor hours, and instead the individuals previously billed under GCR were billed under Program Management. However, to simplify the analysis, these two areas are discussed separately below. The total number of hours for June 2014 is 3,599 for this area, which includes 1,116 hours for the positions originally listed as Program and Project Management and 2,483 for positions previously listed under GCR.

Billings for Program Management, Project Management, and Design Management were 1,116 hours. There were eight different individuals listed in the billings for Program Management, Project Management, and Design Management for this month.<sup>276</sup> The number of hours billed for this category was slightly lower than the number of hours billed for May 2012. As stated in the analysis for Construction Management for May 2012, the percentage of completion for most of these projects was at the midpoint. Construction projects normally require more hours in this

<sup>274</sup> In June 2014, SGI no longer included labor hours within GCR, as discussed in subsection “Hourly Rates Change for GCR Labor before and after the 2013 Contract.” However, for clarity in this analysis, the hours billed for individuals billed under GCR before the 2013 contract, continued to be separated in the June 2014 and February 2016 analysis. These individuals were identified by the individuals’ names.

<sup>275</sup> A project in the ending stages of construction (over 90% completion) normally requires less construction management hours, while a construction project that is in the beginning or middle stages of completion normally requires a greater number of construction management hours.

<sup>276</sup> In the prior months analyzed for Program, Project, and Design management, the SGI invoices had allocated the hours billed for this category to individual projects. Beginning in June 2014, the SGI invoices did not allocate these hours by project and reported them all as “central office account.” This was not considered an issue by VLS.

category at the beginning and end of a project.<sup>277</sup> Because most of this projects were at the midpoint it appears reasonable that hours billed for this category would have been lower. The number of hour billed for this category was within industry standards based on the contract value and completion of projects taking place and the percentage of completion in June 2014.

General Conditions Reimbursements (Labor Hours) - June 2014<sup>278</sup>

Billings for labor hours for positions that had previously been billed under GCR were 2,483 hours. There were seventeen different individuals listed in this area. The analysis for November 2008 and September 2010 show only three individuals were billed for full-time hours. In May 2012, this increased to seven full-time individuals, and in June 2014 this increased by an additional 10 individuals and 1,203 hours. The total cost of the ongoing projects was just over \$189 million, which was lower than the total cost for construction from May 2012. Table 36 displays the titles or positions billed for this moth for positions previously included in GCR. It also includes the number of individuals billed for each of the positions.

**Table 36: Positions and Count of Labor**

Position	Count
Office Engineer (I – Apprentice and III Apprentice)	7
Project Engineer (Apprentice)	2
Contracts Engineer (Apprentice)	1
Network System Administrator	1
Compliance Enforcement Engineer	1
Cost Estimator	1
Program Engineer	1
Construction Manager	1
Deputy Program Manager	1
Administration	1
Total	17

The position of Office Engineer increased to seven individuals from zero in November 2008 and September 2010 and four in May 2012. Recall that the position of Office Engineer is an entry-

<sup>277</sup> At the beginning and the end of a project there is more work to be done at the program and project management category because of the number of items that need to be addressed at this point of the construction process. For example, at the beginning of a project several construction permits need to be secured, construction contract front end documents need to be completed, and overall planning needs to take place. At the end of construction, there are end of project inspections that need to be scheduled and coordinated, and a number of construction close out documents that need to be completed. For this reason, there is additional work at the Project Management level that takes place at the beginning and end of a construction project.

<sup>278</sup> In June 2014, SGI no longer included labor hours within GCR, as discussed in subsection “*Hourly Rates Change for GCR Labor before and after the 2013 Contract.*” However, for clarity in this analysis, the hours billed for individuals billed under GCR before the 2013 contract, continued to be separated in the June 2014 and February 2016 analysis. These individuals were identified by the individuals’ names.

level administrative type position. Some of the positions included in this category may have been related to added services SGI was providing at the time, such as the positions of Contracts Engineer and Cost Estimator. However, it appears excessive to have such a large number of individuals and hours charged to this category when the number of construction projects had decreased by three and the contract value for these projects had increased only slightly.

#### Conclusion for June 2014 Analysis

The number of hours billed for June 2014 for Construction Management, Program and Project Management, and Design Management appear reasonable and within industry standards for the size of the projects taking place and the percentage of completion of those projects at the time. However, billings for program office support staff, which were included in Program Management, appear to be excessive for the size of the projects. The size of the program had not changed significantly from 2012 (it actually got slightly smaller) and some positions billed appeared duplicative (such as the Office Engineer). Furthermore, it appears that the District could have instead hired for some of these positions directly at a lower cost to the District. Therefore, based on the hours billed for Construction Management and based on the total contract value of the projects taking place and the percentage of completion at the time, it appears that billings for program office support staff was excessive.

#### Analysis for February 2016

February 2016 had six different active projects reported in the Project Status Report. For this month, there were some billings associated with two other projects that were not listed in the Project Status Report for February 2016. These projects were reported at 99% completion at the end of August 2015 (five months before). Because these two projects had been completed more than four months prior to February 2016, the contract value of these two construction projects is not included in the total contract value of construction projects taking place in February 2016. Therefore, the total contract value of the construction projects taking place in February 2016 was just under \$103 million. The total number of hours billed for February 2016 was 2,619. Table 37 provides a summary of hours billed by category for February 2016.

**Table 37: Summary of Hours Billed for February 2016**

Category Billed	Hours Billed
Construction Management	784
Program/Project/Design Management and Program Support Office Staff	861
GCR (Program Office Support) <sup>279</sup>	974
Total Hours Billed	<u><u>2,619</u></u>

<sup>279</sup> In June 2014, SGI no longer included labor hours within GCR, as discussed in subsection “Hourly Rates Change for GCR Labor before and after the 2013 Contract.” However, for clarity in this analysis, the hours billed for individuals billed under GCR before the 2013 contract, continued to be separated in the June 2014 and February 2016 analysis. These individuals were identified by the individuals' names.

#### Construction Management - February 2016

Billings for Construction Management for February 2016 were 784 hours for the six active projects that were listed in the Project Status Report for February 2016. The number of hours billed for Construction Management decreased from June 2014, which coincided with the fact that there were fewer active construction projects with a lower total contract value, thus a lower number of individuals billed for Construction Management appears reasonable. There were six active projects for which seven individuals were billed under Construction Management, which appears reasonable. The hours billed for Construction Management appear reasonable and within industry standards based on the contract value of the projects taking place and the percentage of completion of those projects in February 2016.

#### Program and Project Management - February 2016

Billings for positions originally in Program Management, Project Management, and Design Management were 861 hours for six individuals. The number of hours billed as well as the number of individuals billed to this area is lower than those billed in September 2010, May 2012, and June 2014. This decrease appears reasonable, as there were only six active construction projects, which is significantly lower than the number of construction projects in the previous years. For the number of projects taking place during February 2016, it appears that the number of employees within this category should have decreased since there were fewer projects, and the hours billed for Construction Management had declined. However, because many of these projects were nearing the end of construction (average construction completion for these six projects was 94%), it appears reasonable that the number of hours billed for this area for February 2016 was 861 hours. Nearing the end of construction projects there is typically added work at the Project Management category as at the end of construction, there are end of project inspections that need to be scheduled and coordinated, and a number of construction close out documents that need to be completed.

#### General Conditions Reimbursements (Labor Hours) – February 2016<sup>280</sup>

Billings for labor hours for positions that had previously been billed under GCR were 974 hours for seven individuals. This was a significant decrease from June 2014. Although the number of individuals and hours billed are significantly lower than what was billed in May 2012 and June 2014, it appears that for the number of active projects the billings for the Program Office support staff should have been lower as the number of active projects had decreased to its lowest levels. This is also accounting for the fact that most of the projects were nearing the end of construction. The number of hours and employees billed to this area should have been similar to (or less than) those seen back in November 2008.<sup>281</sup> Table 38 includes the positions billed for

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<sup>280</sup> In June 2014, SGI no longer included labor hours within GCR, as discussed in subsection “*Hourly Rates Change for GCR Labor before and after the 2013 Contract.*” However, for clarity in this analysis, the hours billed for individuals billed under GCR before the 2013 contract, continued to be separated in the June 2014 and February 2016 analysis. These individuals were identified by the individuals’ names.

<sup>281</sup> In November 2008, three positions were billed for this area at a total of 483 hours.

this month for what used to be the GCR category. It also includes the number of individuals billed for each position.

**Table 38: Positions and Count of Employees Previously Listed as GCR**

Position	Count
Office Engineer I	1
Office Engineer II	1
Office Engineer III DISC Apprentice	1
Cost Estimator II	1
Office Manager III Apprentice	1
Controls Engineer Apprentice	1
Network System Administrator	1
Total	7

#### Conclusion for February 2016 Analysis

The number of hours billed for February 2016 for Construction Management, Program and Project Management, and Design Management appear reasonable and within industry standards for the size of the projects taking place and the percentage of completion of those projects at the time. However, billings for program office support staff (previously billed under GCR), which were included in Program Management, appear to be excessive for the size of the projects even though all the projects were near completion. Therefore, based on the hours billed for Construction Management and based on the total contract value of the projects taking place and the percentage of completion at the time, it appears that billings for program office support staff was excessive.

#### Conclusion

This analysis is based solely on the hours billed compared to the construction/project activity at the time and is NOT based on a review of time cards or other supporting documentation. VLS assessed the efficiency and staffing levels of SGI and not the validity of the hours billed. Any conclusions reached does NOT assess whether those hours were actually worked and should have been billed to the District. The following are the conclusions reached for this vertical analysis.

- The number of hours billed for Construction Management appears reasonable and within industry standards for all of the months reviewed.
- The number of hours billed for Program Management, Project Management, and Design Management services appear reasonable and within industry standards for November 2008, September 2010, May 2012.
- The number of hours billed for Program Management, Project Management and Design Management appear excessive for June 2014 as a the positions that had

previously been billed under GCR were in this month included under Project Management. The issue is not with the Program and Project management, instead the issue is with the positions previously billed under GCR to support the program office. These were 17 positions to support the program office (previously billed under GCR), at a time when the program had increased only slightly from May 2012. To provide a perspective, three positions were billed for GCR in November 2008 and September 2010, seven positions were billed in May 2012 while 17 positions were billed in June 2014. Billings for 17 positions for this area appear excessive based on the hours billed for Construction Management and based on the total contract value of the projects taking place and the percentage of completion at the time.

- The number of hours billed for Program Management, Project Management, and Design Management appear excessive for February 2016 as the positions that had previously been billed under GCR were in this month included under Project Management. The issue is not with the Program and Project management, instead the issue is with the positions previously billed under GCR to support the program office. For the number of projects taking place during February 2016, it appears that the number of employees within this category should have decreased to a number close to the levels seen in 2008 since there were fewer projects and the hours billed for Construction Management had declined as well. Although a significant decrease was noticed for positions previously billed under GCR, based on the total contract value of the projects taking place and the percentage of completion at the time, the number of positions and hours billed for program support staff (previously GCR) appears excessive for February 2016.
- The number of hours billed for Bond Program support office staff, which were billed within GCR, appear reasonable and within industry standard for November 2008 and September 2010. However, the number of hours billed for this category appears excessive in May 2012, extremely excessive in June 2014, and excessive in February 2016 as discussed in the two previous bullet points.

The issue of excessive hours billed for Program Office support staff was raised in the performance audit report for fiscal year 2012/13. The audit included an observation stating that in the 2011/12 performance audit, it was reported that Program and Construction Management staff had increased significantly and increases were observed again in the 2012/13 audit year. It further stated that these increases did not appear to correlate to the workload as indicated in the Program Expenditure Report.

SGI requested, and the Board had approved, several amendments to the 2004 contract and the 2013 contract that increased staffing levels. Furthermore, the 2013 contract allowed SGI to perform the assigned work scope based on a time and material basis without stating a total contract amount. Some of Bond Program support office staff, such as Office Engineers were

positions that the District may have been able to hire directly at a lower cost. The structure of the 2013 contract was such that SGI did not have an incentive to be efficient in the performance of its work. This is evidenced by the excessive hours billed for GCR staff in May 2012, June 2014, and, to some extent, February 2016.

### **Recommendations**

- FI 4-1. Ensure that a comprehensive analysis is performed, which includes a review by legal counsel prior to entering into contract negotiations to ensure that the terms of the contract are competitive and reflective of industry standards, includes the necessary contract language, and is in the best interest of the District. Additionally, any RFP process should include a review of costs, rates, and qualifications. Additionally, the District should perform a cost analysis prior to allowing vendors to add certain office support staff to evaluate if these positions can be filled directly by the District at a lower cost.
- FI 4-2. Ensure that all contracts contain a clause specifying the duration of the contract, which includes a specific start and end date as well as a not-to-exceed contract amount. Under no circumstance should the District enter into a contract that does not clearly state an end date and a contract amount. If a contract includes hourly labor rates, ensure that these rates are clearly specified in the contract and never stated simply as a total amount over a period of time. In addition, prior to paying an invoice, review the invoice to ensure that the hourly billing rates included in the invoice are reflective of the terms stated in the contract, which may include escalation rates.

### **Response by District**

The District agrees with the recommendations.

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

VLS has reviewed the District response to VLS's recommendations and acknowledges the District's agreement with the recommendations provided.

**FI (5) Work Step**

Conduct appropriate investigative steps to test a sample of vendor invoice payments to verify the following:<sup>282</sup>

- Contracts were appropriately approved by the Board **(A)**
- Appropriate contracts were executed **(A)**
- Payment was made timely **(B)**
- No duplicate payments (or overpayments) were made to a vendor due to two purchase orders being created for one contract **(C)**

**Results of Testing**

**(A) Conduct appropriate investigative steps to test a sample of vendor invoice payments to verify:**

- Contracts were appropriately approved by the Board.
- Appropriate contracts were executed.

**Related Allegation**

VCA (4) - Board does not approve contracts or approves contracts after they have been entered into Primavera.

**Results of Work Performed****Sample Selection**<sup>283</sup>

The District provided a disbursement ledger of bond fund activity that covered the 2008/09 through 2014/15 fiscal years.<sup>284</sup> From this data, information identifying contracts that had multiple purchase orders attached to the contract was summarized and evaluated. Contracts were selected from this data on a judgmental basis, specifically focusing on those contracts that had a large number of purchase orders. From each contract selected, a sample of disbursement transactions for different purchase order numbers was then chosen.<sup>285</sup> For each contract, the

<sup>282</sup> The letters included in parentheses after each item in bullets provides reference to the applicable section in the “Results of Testing” section.

<sup>283</sup> This sample selection process is applicable to Work Steps (A) and (B) in this section.

<sup>284</sup> The 2008/09 through 2012/13 fiscal year historical transaction data came from the Bi-Tech financial software system that the District previously used. The 2013/14 and 2014/15 fiscal year data came from the Munis financial software system that the District currently uses.

<sup>285</sup> A total of 62 disbursement transactions were selected comprising 24 contracts.

District provided supporting documentation for the disbursement, including a copy of the contract executed, a copy of the warrant issued, a copy of the corresponding invoice, and a copy of the payment approval documents.

### Analysis

For each contract selected, VLS verified that the contract was appropriately approved/ratified by the Board based on the nature of the contract and the dollar threshold.<sup>286</sup> This was verified through a review of the Board meeting minutes. The contract was also reviewed to verify that it was properly executed with the vendor. Contracts requiring Board approval were also reviewed to verify that they were executed after Board approval.

### Results

Except for the findings identified below, all contracts selected for testing were appropriately approved/ratified by the Board and the contracts were properly executed with the vendor.

VLS identified a construction contract that was executed before the date authorized by the Board in their ratification of the contract. The Board agenda documenting the approval of the DeAnza High School Main Campus Construction Project contract indicates that “staff will provide a recommendation for award at the meeting” and the “item is being presented prior to the expiration of the 5 working day Bid Protest period” for the Board to authorize staff to issue a Notice of Award effective at the end of the Bid Protest period to the lowest, responsive bidder in order to expedite the project. The results of the bids received and the lowest, responsive, responsible bidder were read to the Board and documented in the 4/14/2010 Board meeting minutes; however, the contract was executed on 4/15/2010, which was less than five days after the bid open date of 4/13/2010 (refer to **Exhibit FI5-01** for copies of the Board agenda and executed agreement). Therefore, the contract appears to have been executed prior to the expiration of the five-day Bid Protest period.<sup>287</sup> Refer to Section FI (8) for FI8-1 recommendation for this area.

Two contract copies provided to VLS for review for inspection services for various sites (one to Production Technical Services and one to Kris Gilbert) were unsigned copies.<sup>287</sup> The contract amounts agreed to the proposals submitted by the vendors and the amounts included in the Board précis for Board ratification of the awarded contracts.

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<sup>286</sup> Construction contracts over \$45,000 require informal/formal bidding procedures to be followed and approval of the bid by the Board. Professional service contracts under \$50,000 and construction contracts \$45,000 and under can be approved by delegated authority and ratified by the Board. Professional services contracts \$50,000 and over require Board approval.

<sup>287</sup> Refer to recommendations made (TC8-1 and TC8-5) regarding contract approvals and signatures included in the TC (8) Section.

The District was not able to locate contract copies for three of the transactions selected for testing.<sup>288</sup> Current District procedures require executed contracts to be electronically stored in the Munis system before invoices can be authorized for payment.

### **Conclusion**

For the sample tested, VLS did not identify contracts being awarded to a vendor prior to Board approval or without being presented to the Board for approval or ratification. VLS did identify one instance in which a contract was executed and awarded by District staff and ratified by the Board prior to the completion of the bid process.

### **(B) Conduct appropriate investigative steps to test a sample of vendor invoice payments to verify:**

- Payment was made timely.

### **Related Allegations**

- VCA (5) - Discrepancies in single contract amounts.
- VCA (9) - There is no mechanism to stop a purchase order, contract, or invoice from being paid if there is no Board approved budget for it.
- PAM (3) - Munis does not have the ability to control payments to contract amounts - multiple purchase orders were written for a single contract and there is no control to prevent this.

### **Results of Work Performed**

#### Sample Selection

Refer to the “Sample Selection” paragraph in the Work Step (A) section of “Results of Testing.”

#### Analysis

To determine timeliness of payments, the invoice was reviewed and the date of receipt by District FOC staff was used as a starting point in determining the calculation of days from invoice receipt to warrant date (when payment was issued). In addition, VLS verified the following: payments made were to the vendor indicated on the approved contract and for the approved project; payments were made after the contract was executed; proper District approval was included on the invoice; and payments made did not exceed contract amounts.

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<sup>288</sup> These were for payments made to: 1) Am Woo Construction for work performed at De Anza High School, 2) AM Woo Construction for work performed at Ellerhorst and Tara Hill Elementary Schools in August 2013, and 3) ERA Construction for work performed for the Gompers Continuation High School in March and August 2011.

## Results

All 62 disbursements tested were payments made for a contract after the contract was executed:

- Thirty-eight invoices were paid within 30 days of invoice receipt by the FOC staff.<sup>289</sup>
- Eighteen were not paid within 30 days of the FOC staff receiving the invoice. The average length of time until the invoice was paid was calculated for these disbursements as 45 days.<sup>290</sup> Refer to Table 39 for a listing of the 18 invoices identified that were not paid within 30 days. Refer to section TC (11) for TC11-1, TC11-2, and TC11-3 recommendations related to this area.
- Timeliness of invoice payments could not be assessed for six invoices as the District was not able to locate supporting documentation for these disbursements. For three of the six disbursements, the District was able to provide copies of the invoices from the construction management company (SGI); however, a warrant copy was not provided.

**Table 39: List of Warrants Paid After 30 Days of Receipt of Invoice**

Warrant #	Invoice #	Date Received	Date Paid	Days to Payment
00409643	1119	12/19/08	1/22/09	34
00424837	276-322204	3/4/10	4/21/10	48
00446271	201109248	10/31/11	12/14/11	44
00447479	201110232	12/6/11	1/25/12	50
00463724	201206096	9/17/12	4/16/13	273
00406397	Various (7 total)	9/8/08	10/15/08	37
00406397	2591612	9/4/08	10/15/08	41
00409293	10000287	12/10/08	1/14/09	35
00441481	ERA-AMWES	5/4/11	7/27/11	84
00460247	2012.180.03	12/13/12	1/15/13	33
00459087	OCT2012-19	11/9/12	12/12/12	33
00445178	ERA-RV PORT21	8/20/11	11/16/11	88
120828	DE.48	1/23/15	3/3/15	39

<sup>289</sup> District procedures require invoices to be paid within 30 days of receiving the invoice at the FOC. Therefore, this standard was used to determine timeliness of payments for samples tested.

<sup>290</sup> Two invoices were not factored into the calculation of average days until payment. The payments were made 273 and 228 days after receipt of the invoice and were deemed outliers when compared to the other payments considered untimely. If these two invoices are included in the calculation, the average length of time until payment is 61 days (when including only those invoices that were paid after 30 days). The invoices were payments made in 2012/13 and 2013/14 fiscal years. The supporting documents did not identify the reason for the delay in payment.

Warrant #	Invoice #	Date Received	Date Paid	Days to Payment
113436	A0348	6/19/14	8/12/14	54
102393	AUGUST25.2013	9/7/2013	10/30/13	53
102393	AUGUST21.2013	8/28/13	10/30/13	63
103365	251994	10/3/13	11/18/13	46
105896	1613	6/21/13	2/4/14	228

The description of work performed as identified on the invoice was consistent with the scope of work identified in the contract and Board approval documentation for all payments tested.<sup>291</sup>

### **Conclusion**

Based on the results of testing, some invoices were paid after 30 calendar days, which does not comply with the District's policy.<sup>292</sup> Recommendations have been made in the TC (11) Section related to timely payment of invoices; therefore, no recommendation is included for this work step.

### **(C) Conduct appropriate investigative steps to test a sample of vendor invoice payments to verify:**

- No duplicate payments (or overpayments) were made to a vendor due to two purchase orders being created for one contract.

### **Related Allegations**

- VCA (5) - Discrepancies in single contract amounts.
- VCA (9) - There is no mechanism to stop a purchase order, contract, or invoice from being paid if there is no Board approved budget for it.
- PAM (3) - Munis does not have the ability to control payments to contract amounts - multiple purchase orders were written for a single contract and there is no control to prevent this.

<sup>291</sup> During testing, VLS identified approval signatures missing from the Payment History/Approval document. Seventeen transactions did not have the approval signatures of the Executive Director of Bond Finance nor the Associate Superintendent of Operations and Bond Program. Thirty-four transactions did not have the approval signature of the Associate Superintendent (not including the 17 previously mentioned). The current approval process includes an electronic approval workflow, and VLS did not perform additional steps to verify electronic approval for these historical transactions as this was not within the scope of this work step. Refer to recommendations identified in the TC (11) Section related to approval signatures.

<sup>292</sup> Through the electronic document review process, VLS identified e-mails from vendors to the District or the construction management company (SGI) inquiring on the status of past due invoices.

## Results of Work Performed

### Sample Selection

Fifteen contracts were selected from the 2008/09 through 2012/13 fiscal years that had multiple purchase orders issued for the same contract. For each contract, a sample of disbursements charged to different purchase orders was selected to determine if payments made for different purchase orders were duplicate payments.<sup>293</sup>

In addition, VLS selected a sample of 30 contracts awarded prior to the 2013/14 fiscal year to review expenditures incurred in comparison to the contract award amount (plus add-services or change orders).<sup>294,295</sup> Of these 30 contracts, 12 had multiple purchase orders created.<sup>296</sup>

### Analysis

To determine that duplicate invoices were not paid as a result of multiple purchase orders issued on the same contract, the description of work performed according to invoice documents reviewed was compared across all payments tested for the same contract number to verify that they were payments for different time periods and/or aspects of a project.<sup>297</sup> In addition, the general ledger disbursement detail was reviewed to verify that invoice numbers and payment amounts were not repeated.<sup>298</sup>

For 30 contracts awarded prior to the 2013/14 fiscal year, VLS compared the total payments made under the contract (from the Bi-Tech and Munis historical disbursement data) to the total approved contract amount (from the Board award and ratification documents) to determine if payments exceeded the approved contract amount. Contracts identified as having excess

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<sup>293</sup> The sample of payments selected for testing was from the payments reviewed in Work Step (A) of the FI (5) Section. Refer to the “Sample Selection” section for additional information.

<sup>294</sup> Contracts awarded in the 2013/14 fiscal year and after were accounted for completely in the Munis system where multiple purchase orders are not assigned to a contract. Refer to the “Results” paragraph in this Work Step.

<sup>295</sup> The sample of contracts tested was from the same sample of contracts reviewed in Work Step (A) of the FI (5) and FI (8) Results Summaries. Refer to the “Sample Selection” section of each respective FI Section for additional information.

<sup>296</sup> VLS included contracts that did not have multiple purchase orders issued for this analysis to determine if instances of overpayments identified were isolated to contracts with multiple purchase orders.

<sup>297</sup> Multiple purchase orders were issued for a single contract when the District was using BiTech. Refer to the Results section of Work Step (C) for information related to this.

<sup>298</sup> There were instances in which invoice numbers for the same amounts were paid with one warrant. However, in testing a few of these and reviewing the account string, these instances were related to payments of the same service for multiple sites (such as inspection services). Therefore, the full invoice amount was allocated equally to different sites; however, the invoice was paid only once.

payments were reviewed to determine if these were limited to contracts subject to the issuance of multiple purchase orders.<sup>299</sup>

**Results**

Based on the sample of contracts reviewed, when multiple purchase orders were issued for one contract, each purchase order was for a different service within the one contract (such as furniture purchases for different buildings, data network services for different sites, different architectural services, etc.). When there were multiple invoice numbers for the same period, the invoices appeared to be for expenses associated with multiple sites. Based on a review of general ledger data, it appears that multiple purchase orders assigned to one contract was specific to the previous financial software system (Bi-Tech). Per discussion with purchasing department staff, the Bi-Tech software required issuance of new purchase order numbers if a contract rolled over into a new fiscal year.<sup>300</sup> In addition, District procedures for the Munis software require contracts to be issued as a purchase order number (not separately), and additions to contracts are administered by change order requests. General ledger reports generated from the new financial system (Munis) corroborate this as they identify only one field for contract/purchase order number.<sup>301</sup>

Of the 30 contracts reviewed, three were identified as having payments exceed the approved contract amounts.<sup>302</sup> Multiple purchase orders were issued for all three contracts.<sup>303</sup>

**Table 40: Table of Contracts**

Vendor	Project	Total Approved Contract Amount	Total Payments	Payments in Excess of Approved Contract Amount	Number of POs
WLC Architects	11201341-00	\$ 3,223,330	\$ 3,270,858	\$ 47,528	2
Baker Vilar Architects	21001101-00	1,082,218	1,206,865	124,648	4
Mobile Modular	21201102-00	114,757	409,337	294,580	10

<sup>299</sup> Payments were compared to contract amounts awarded through the 2014/15 fiscal year.

<sup>300</sup> There is a higher potential of duplicate or over payments when multiple purchase orders are assigned to one contract.

<sup>301</sup> Current process requires the vendor to identify the contract number (or purchase order number) on the invoice submitted to the District for payment. Invoices that do not specify this number will be rejected for payment.

<sup>302</sup> Including approved add-services or change orders.

<sup>303</sup> Due to the historical nature of these three contracts, the District is continuing to review storage records to determine if documents are available to explain these differences.

**Conclusion**

Three contracts out of 30 tested were identified as having payments exceed approved contract amounts, and all three had multiple purchase orders issued.<sup>304</sup> Although multiple purchase orders for single contracts were identified in the Bi-Tech ledger, this was not the case in the Munis ledger. In addition, the disbursement transactions tested where there were multiple purchase orders to one contract were found to be for services consistent with the scope of the contract and Board approval/ratification documentation and not for payment of duplicate invoices or unrelated services. Recommendations were not made related to this work step because the District now requires contracts to be issued as a purchase order number (not separately) in the Munis software.

**Recommendations**

Refer to recommendation number FI8-1 in the FI (8) Section for a recommendation related to Board approval of contracts.

Refer to the recommendation numbers TC11-1 through TC11-3 in the TC (11) Section for recommendations related to timely payment of invoices.

**Response by District**

See District responses to recommendations FI8-1 and TC11-1 through TC11-3.

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<sup>304</sup> Due to the historical nature of these three contracts, the District is continuing to review storage records to determine if documents are available to explain these differences.

**FI (6) Work step**

Assess the responsibilities of the CBOC based on California Education Code and the California State Constitution and determine what actions taken by the CBOC may overstep their responsibility.

**Related Allegation**

GOV (3) –The CBOC has overstepped its legal responsibilities in providing oversight of the bond program

**Results of Testing**

VLS reviewed the legal authorizations for CBOC operations in Education Code Sections 15278 to 15282 and 15286 along with the expansion of legal authorizations found in Board Policy 7214.2, Citizens Bond Oversight Committee (CBOC), and compared these to VLS’s understanding of current CBOC operations.

**Current Citizens Bond Oversight Committee Scope of Operations**

The CBOC appears to have an extensive operating structure. In addition to the main CBOC, the committee has nine active subcommittees. There are two types, ad hoc subcommittees and standing subcommittees. Only the standing subcommittees have “continuing subject matter jurisdiction” and are subject to the Brown Act Open meeting requirements. Table 41 lists the active subcommittee names along with the type, purpose, and number of members of subcommittees.

**Table 41: Listing of CBOC's Subcommittees as of April 2016**

Number	Subcommittee Name	Type	Purpose	Number of Members
1	Annual Report	Ad hoc	Prepare the annual calendar report for approval by the CBOC.	4
2	Audit	Standing	Receive and review annual bond performance audit and bond financial audit, and agreed upon procedures engagement reports. Monitor the implementations of recommendations made by the auditor. Review the District's plans for bond sales, review cost savings measures, construction costs, change orders and preventative facilities maintenance.  To understand the change order process, design and review reports that will assist the CBOC to understand and analyze "hard costs" on construction projects and make recommendations on how to reduce cost of change orders. <sup>305</sup>  Understanding and reviewing "soft costs," Reviewing efforts by the school district to maximize bond revenues by implementing cost-saving measures. <sup>306</sup>	7
3	Bylaws	Ad hoc	Draft and recommend By-laws amendments to the CBOC for approval.	4
4	Executive	Ad hoc	Prepare meeting agendas and minutes and provide leadership to achieve the CBOC's purpose.	3
5	Reports	Ad hoc	Work with the District staff to mutually agree on the reports and their formats to be reviewed monthly by the CBOC.	4
6	Pinole Valley HS	Ad hoc	Monitor the construction of Pinole Valley High School.	6
7	Site Tours	Ad hoc	Inspect school sites to ensure quality of construction, cost savings measures and change orders	5
8	Training	Ad hoc	Orient new members, prepare training materials and provide ongoing training for all CBOC Members.	2
9	Website	Ad hoc	Design, monitor design implementation by District staff, and maintain current the website contents	4

The CBOC and some of its Subcommittees have designated District staff liaisons that support it in conducting its oversight of the school construction Bond Program. However, District staff do not currently track time devoted to supporting CBOC. The CBOC Annual Report for 2015, dated 6/22/2016, lists 18 District staff members and outside consultants who provide support for CBOC activities to some degree.

<sup>305</sup> This purpose was stated for the Change Orders Subcommittee, which merged with Cost Savings Subcommittee in August 2015. The Cost Savings Subcommittee in turn merged with the Audit Subcommittee in October 2015.

<sup>306</sup> This purpose was stated for the Cost Savings Subcommittee, which merged with Audit Subcommittee in October 2015.

The main CBOC meets once a month. The Audit and the Reports Subcommittees each meet twice a month. The other Sub-Committees do not have set schedules. CBOC itself and the Audit Subcommittee are designated as standing committees subject to the Brown Act provisions regarding notice, transparency and public disclosure. The remaining subcommittees are designated as “Ad hoc” committees not subject to the Brown Act.

In addition to staff support, the CBOC also has an attorney assigned at District expense. The monthly agenda and packet for the CBOC meetings generally totals over 140 pages. Approximately 60 to 70 pages of this are staff reports to the CBOC. Several staff members have indicated that support to the CBOC requires a substantial commitment of time that may impact time devoted to the accomplishment of the objectives of the bond program. However, the amount of resources in the way of District Bond Program staff time used to support the CBOC request is not currently being tracked or quantified.

#### California Education Code and California State Constitution Requirements

Legal provisions regarding CBOC are as follows:

- **California Education Code:** The authority and requirement for the establishment and operation of CBOCs came in legislation that implemented Proposition 39 (the “Strict Accountability in Local School Construction Bonds Act of 2000”). This legislation dealt with a range of implementation issues such as maximum tax rates, ballot language, fraud prevention actions, etc., and it also dealt with the establishment and operations of CBOCs. There have been several amendments to the legislation over the years such as greater definition of Performance Audit requirements and delivery of audit reports to CBOCs. Specific code sections dealing directly with CBOCs are in Education Code Sections 15278 to 15282 and 15286.
- **California State Constitution:** Proposition 39 approved by the voters in 2000 amended Article 13 A of the State Constitution to allow for approval of District bonds with a 55% majority. It requires such bond measures to include a specific list of projects when presented to the voters. It also requires that expenditures of the proceeds shall only be spent on the projects approved by voters and not on salaries for teachers and administrators or other operating expenses. Proposition 39 also requires annual financial and performance audits until the bond funds are expended. There is no reference to CBOC committees in Article 13 A. Article 16, section 18(b) also includes reference to bonds approved by 55% of the voters but makes no reference to CBOCs either.

#### District Board Policy Governing CBOC Operations

Board Policy (BP) 7214.2 Citizens Oversight Committee (CBOC) is intended to provide an orderly framework for the operation and furtherance of CBOC’s purpose in the District. The current

policy on the GAMUT website where District policies are maintained indicates the last revision was in December 2015.

The Board Policy is required to be consistent with Education Code (EC) Sections 15278-15282 and 15286 governing CBOC formation and operation. A major part of the Board Policy restates the provisions of these Education Code sections. In addition, the policy provides tailoring and context for operation of the CBOC in the West Contra Costa County Unified School District. This additional direction, in some cases, expands the scope of CBOC requirements beyond the basic requirements enumerated in the Education Code. Examples include the following:

- **Size of CBOC:** Education Code Section (EC) 15282 requires a minimum of seven members representing selected groups. BP 7214.2 establishes the CBOC member size as seventeen including the required seven members enumerated in EC 15282. This is allowed under Education Code 15282.
- **CBOC Bylaws:** BP 7214.2 requires the CBOC to adopt bylaws and operating rules which are in conformance with Board policies and applicable laws. This is not addressed in Education Codes 15278-15286. However, this is widely considered good practice to allow greater cohesion and to avoid potential conflicts.
- **Role in Audit Report Review-** EC 15276 only provides for the CBOC receiving and reviewing the financial and performance audit reports and EC 15286 only provides for distribution of audit reports to the CBOC at the same time they are delivered to the District. BP 7214.2 expands this role to include:
  - 1) The Auditor shall deliver directly to the [CBOC's] Audit Subcommittee a draft copy of each audit report at the same time as delivery of the draft is made to the District.
  - 2) The Auditor shall deliver directly to the Committee progress reports at the same time as these reports are issued to the District.
  - 3) The Committee shall participate with the District in a yearly review of the Auditor's performance.

### **Conclusions**

VLS's review found three areas where the District may want to more effectively utilize District resources and add transparency in support of the CBOC's objectives.

In February 2016, the CBOC requested that the District develop 11 monthly reports in conjunction with its ad hoc Reports Subcommittee. As mentioned before, an ad hoc subcommittee is not subject to the provisions of the Brown Act. Subsection(c) of Education Code 15278, which enumerates the activities a CBOC may engage in, does not include such tailored

reports. Furthermore, the District Board Policy BP7214.2 states that the CBOC shall not have the authority to require the District to prepare reports or conduct audits more frequently than those required by law. District staff and the CBOC's Reports subcommittee have been meeting twice monthly and it appears the originally requested reports will change and grow over time. The District, with CBOC's input, should evaluate and determine whether the value of the reports is appropriate for the time and effort necessary to continue development and maintenance, and provision of these reports to the CBOC. See FI6-1 recommendation for this area.

Education Code Section 15280 (a) (1) provides that the governing board of the District shall, without expending bond funds, provide the CBOC with any necessary technical assistance and shall provide administrative assistance in furtherance of its purpose and sufficient resources to publicize the conclusions of the CBOC. Board Policy BP 7214.2 restates these provisions and provides that the Assistant Superintendent shall serve as a resource to the committee and assign such other District staff and professional service providers as needed to assist the committee in carrying out its duties. This provides sufficient authority for coordination of needed support. However, BP 7214.2 also contains a duplicative instruction which states that the committee shall have authority to contact District staff, District contractors or consultants including without limitation, accountants, auditors, architects, financial advisors, and legal counsel in coordination with the District Superintendent or designee. For the sake of clarity, the District should revise the policy to provide one clear statement for use of District staff and District vendors rather than two statements. It would also be prudent to remove the provision "without limitation" since the Education Code provides for necessary technical assistance. The "without limitation" wording could result in less than optimal use of public funds. See FI6-2 recommendation for this area.

The District may also consider establishing a separate visible budget for support of the CBOC and its Subcommittees under the direction of a District official and charge time and cost of support of the CBOC to that budget. This would provide a more transparent picture of operations for CBOC members, the District Board, and the public. The CBOC needs to have more effective accountability in ensuring that any requests and demands of time for District staff are an efficient and effective way of utilizing staff resources. See FI6-3 recommendation for this area.

### **Recommendations**

FI6-1. The District and CBOC should evaluate the value (frequency and type) of proposed monthly reporting against the ongoing cost of development and maintenance of the reports as this is not required under the Education Code enumerated duties of a CBOC and runs counter to the existing statement of Board policy.

FI6-2. The District should consider merging the two statements currently in board policy on use of District resources in support of CBOC into one clear statement. The District

should also consider removing the statement “without limit” from the policy to eliminate ambiguity about which District resources are committed to support the CBOC. Having a “without limit” statement in this policy can result in less than optimum use of District resources.

- FI6-3. As required by Education Code Section 15280 (a) (1), Bond Program resources should not be used to support the CBOC. The CBOC in conjunction with the District should establish a visible separate budget under a District official and charge District time and cost incurred by District staff to support the CBOC in order to provide a transparent and accountable picture to the CBOC members, the District Board, and the public.

**Response by District**

- FI6-1. The District agrees with the recommendation.
- FI6-2. District staff will make a recommendation to the Board’s Governance Subcommittee to review Board Policy 7214.2 and the auditor’s recommendations.
- FI6-3. The District agrees with this recommendation and will evaluate the resources needed to support the CBOC.

**VLS’s Assessment of Response by District**

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

**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)**<sup>307</sup>

**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**)<sup>308</sup> – 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.<sup>309</sup> The contract provided for a construction budget of \$84,641,487

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

<sup>308</sup> 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.

<sup>309</sup> 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.<sup>310</sup> 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.<sup>309</sup> 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.<sup>311</sup> 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).<sup>312</sup> 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.<sup>313</sup> The contract provided for a construction budget of \$23,340,313 and a total fee to WLC of \$1,716,087.<sup>314</sup> 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

<sup>310</sup> 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.

<sup>311</sup> 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.

<sup>312</sup> 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>).

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

<sup>314</sup> 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.<sup>315</sup> 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.<sup>316</sup> 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;

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

<sup>316</sup> 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”).<sup>317</sup>

**Figure 12: OPSC Architect Fee Schedule**<sup>318</sup>

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
	<b>TOTAL BASE COMPENSATION</b>	<b>\$84,641,487</b>	<b>\$8,451,539</b>

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

<sup>317</sup> 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.

<sup>318</sup> 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](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.<sup>319</sup>

**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.<sup>320</sup> The one new school construction project VLS identified did use the OPSC fee schedule

<sup>319</sup> 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.

<sup>320</sup> 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.<sup>321</sup> 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.<sup>322</sup>

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

<sup>321</sup> 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.

<sup>322</sup> 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.”<sup>323</sup> Included on the 16<sup>th</sup> 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.<sup>324</sup>

**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%

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

<sup>324</sup> 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.<sup>325</sup> 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

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<sup>325</sup> 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%.<sup>326</sup>

- 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.

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<sup>326</sup> 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.<sup>327</sup>
- 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.

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<sup>327</sup> 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 <sup>328</sup>	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 F17-06** 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

<sup>328</sup> 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 F17-01**).

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

**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.<sup>330</sup> VLS was unable to interview Mr. Fay to gather information regarding the negotiation of this contract at the time it was signed.

Fee Structure<sup>331</sup>

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**

<b>PERCENTAGE OF TOTAL FEE PER PHASE</b>	
<b>Phase</b>	<b>Phase Amount</b>
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%)
<b>TOTAL BASE COMPENSATION</b>	<b>\$2,400,000 (100%)</b>

<sup>329</sup> 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.

<sup>330</sup> 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.

<sup>331</sup> 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.<sup>332</sup>

**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.<sup>333</sup> 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

<sup>332</sup> 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.

<sup>333</sup> 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.<sup>334</sup>

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

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<sup>334</sup> 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**

PERCENTAGE OF TOTAL FEE PER PHASE	
Phase	Phase Amount
Pre-Design/Architectural Program Development Phase	8%
Schematic Design Phase	10%
Design Development Phase	12%
Construction Documents Phase	40%
Bidding Phase	5%
Construction Administration Phase*	23%
Close Out Phase	2%

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.<sup>335</sup> 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**).<sup>336</sup> 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.<sup>337</sup> The additional service request provided hourly rates for a Project Architect (\$150) and Drafter (\$100). A fee of \$5,000 was listed for landscape.

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<sup>335</sup> Four elementary schools and one high school.

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

<sup>337</sup> 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.”<sup>338</sup>
- 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**).<sup>339</sup> 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%.<sup>340</sup>

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.<sup>341</sup>

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.

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

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

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

<sup>341</sup> 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.<sup>342</sup> 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.<sup>343</sup> The actual payments to Interactive Resources include reimbursable expenses, which may be a contributing factor for the difference of \$11,628.

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<sup>342</sup> 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.

<sup>343</sup> 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
<b>Original Contract Plus Add-Service #2</b>				
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%	-
<b>Add-Service #1</b>	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.<sup>344</sup> 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

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<sup>344</sup> 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**

<p><b>B. Pinole Valley High School Schedule</b></p> <ol style="list-style-type: none"> <li>1. Architect shall complete all Services required under the Development of Architectural Program section within <b>60 calendar days</b> after written authorization from District to proceed.</li> <li>2. Architect shall complete all Services required under the Schematic Design Phase within <b>90 calendar days</b> after written authorization from District to proceed.</li> <li>3. Architect shall complete all Services required under the Design Development Phase within <b>153 calendar days</b> after receipt of a written authorization from District to proceed.</li> <li>4. Architect shall complete all Services required under Construction Documents Phase within <b>304 calendar days</b> 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. <ol style="list-style-type: none"> <li>a. Final Documents <b>607 calendar days</b></li> </ol> </li> </ol> <p><b>C. The durations stated above exclude the review periods required by the District and all other regulatory agencies.</b></p>
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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 F17-18** includes a summary of the hours by phase and month.<sup>345</sup> 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).

<sup>345</sup> 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.<sup>346</sup>
- **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.<sup>346</sup>
- **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).<sup>347</sup>
- **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).<sup>347</sup>

**Table 47: Summary of WLC Hours by Phase – Pinole Valley HS<sup>348</sup>**

Phase <sup>349</sup>	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:

<sup>346</sup> 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 1<sup>st</sup> of each month as the start and end dates.

<sup>347</sup> 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.

<sup>348</sup> 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.

<sup>349</sup> 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.<sup>350</sup> 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**).<sup>351</sup> 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.<sup>352</sup>
- 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**).<sup>353</sup> 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.

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<sup>350</sup> 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.

<sup>351</sup> 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).

<sup>352</sup> 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.

<sup>353</sup> 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.<sup>354</sup>

- 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. 15<sup>th</sup>” (**Exhibit F17-21**). 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 F17-23**). 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.<sup>355</sup>

- 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 F17-18**). VLS

<sup>354</sup> 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.

<sup>355</sup> 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.<sup>356</sup> 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.

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<sup>356</sup> 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.<sup>357</sup> 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 F17-18**.
- **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 F17-04**): (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 F17-01**). 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 F17-06** includes a copy of amendment #4 for the WLC contract, which identifies the eight phases.<sup>358</sup> 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 F17-24**).

It appears that, during the master planning, there was knowledge of geotechnical issues related to the site.<sup>359</sup> It is possible that these issues were related to the hillside stabilization (see recommendation F17-03 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

<sup>357</sup> 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.).

<sup>358</sup> 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.

<sup>359</sup> 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 F17-16**). 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.<sup>360</sup> 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.<sup>361</sup>

- **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

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<sup>360</sup> 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.

<sup>361</sup> 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.<sup>362</sup>

### 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 <b>63 calendar days</b> after written authorization from District to proceed.
2.	Architect shall complete all Services required under the Design Development Phase within <b>124 calendar days</b> after receipt of a written authorization from District to proceed.
3.	Architect shall complete all Services required under Construction Documents Phase within <b>155 calendar days</b> 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 <b>342 calendar days</b>
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.

<sup>362</sup> 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.<sup>363</sup>
- **Average Monthly Hours:** The average number of hours incurred by Interactive Resources for each month within the time period listed.<sup>363</sup>

**Table 49: Summary of Interactive Resources Hours by Phase – Wilson ES<sup>364</sup>**

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.<sup>365</sup> The Design Development phase took just two calendar days longer than specified in the contract.

<sup>363</sup> 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.

<sup>364</sup> 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 ES<sup>366</sup>**

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

<sup>365</sup> 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.

<sup>366</sup> 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.<sup>367</sup>

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

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<sup>367</sup> 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.<sup>368</sup> 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.<sup>369</sup>

<sup>368</sup> 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>)

<sup>369</sup> 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.<sup>370</sup> 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.<sup>371</sup> If the construction documents are in order and contain all the necessary components, DSA will accept the construction documents for plan review.<sup>372</sup> 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.<sup>373</sup> The architect can request an extension in order to make all the necessary corrections needed.<sup>374</sup> 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

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

<sup>371</sup> 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).

<sup>372</sup> 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.

<sup>373</sup> 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.

<sup>374</sup> 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.<sup>375</sup>
- 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.”<sup>375</sup>

<sup>375</sup> 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.<sup>376</sup> 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.<sup>377</sup> 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.<sup>378</sup> 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.

<sup>376</sup> 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.

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

<sup>378</sup> 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**).<sup>379</sup>

Interactive Resources confirmed that Wilson ES was designed and submitted to DSA using the 2010 building codes.<sup>380</sup> 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

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

<sup>380</sup> 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.<sup>381</sup>
- **11/2/2011:** The Board approved add-service #2 for an increased fee of \$39,450.<sup>381</sup>
- **9/10/2012:** WLC submitted a revised additional service request (labeled as #3) for an increased fee of \$2,858,621 (**Exhibit FI7-28**).<sup>382</sup> 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):

<sup>381</sup> See Table 52 for a brief description of this add-service.

<sup>382</sup> 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.”<sup>383</sup>
- **7/24/2013:** The Board approved add-service #3 for an increased fee of \$66,551.<sup>384</sup>

<sup>383</sup> 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%)).

<sup>384</sup> 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.<sup>385</sup> 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.

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<sup>385</sup> 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
<b>Total</b>	<b>\$8,586,140.00</b>	<b>\$8,586,140.00</b>	<b>\$7,538,880.80</b>	<b>\$16,125,020.80</b>

Analysis of WLC Add-Service #4

The additional approved \$7,538,881 fee is made up of two components, as mentioned previously.<sup>386</sup> 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

<sup>386</sup> 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.<sup>387</sup>

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.

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<sup>387</sup> 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 Costs<sup>388</sup>**

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	\$ 134,375,168		\$ 16,125,021

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:<sup>389</sup>

- 9.0% on the first \$500,000

<sup>388</sup> 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 F17-06).

<sup>389</sup> 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 \$10,000,000<sup>390</sup>

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 Schedule<sup>391</sup>**

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		<u>134,375,168</u>		<u>7,598,385</u>

<sup>390</sup> 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.

<sup>391</sup> 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 F17-28**).

**Table 57: WLC Revised Fee Based on Increased Construction Costs<sup>392</sup>**

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 F17-05**) and the contract (**Exhibit F17-01**) 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

<sup>392</sup> 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 F17-24**). 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 F17-28** – 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).<sup>393</sup>

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

<b>Phase 1 - Detention Basin, Utilities and Paving</b>	<b>Months</b>	<b>Hours/Mo</b>	<b>Total Hours</b>	<b>Rate</b>	<b>Subtotal</b>
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
<b>Additional Fees</b>				<b>\$</b>	<b>429,940</b>

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 ÷ 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**

<b>Professional Staff</b>	<b>Total Hours</b>	<b>Total Fees</b>
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
<b>Total</b>	<b>23,264</b>	<b>\$ 3,468,560</b>

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

<sup>393</sup> WLC’s request for additional service dated 9/11/2014 includes an attachment that shows the revised schedule with added phases and delays (**Exhibit F17-32** – 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 F17-34**). The plan review was completed by DSA on 6/5/2012 with a status of 85% complete (**Exhibit F17-35**). 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.<sup>394</sup> 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 F17-6** – 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

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<sup>394</sup> 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 appropriate**<sup>395</sup>

**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.<sup>396</sup>
- **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.<sup>397</sup>

<sup>395</sup> 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.

<sup>396</sup> 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.<sup>397</sup>
- **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.*

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<sup>397</sup> 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.<sup>398</sup>

#### 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,

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<sup>398</sup> 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.<sup>399</sup> 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)

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<sup>399</sup> 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 F17-03**). 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		
<b>1. BASIC SCOPE OF ARCHITECTURAL SERVICES (OPSC FEE SCHEDULE)</b>		
A. Credit to Client for Re-Use of Plans	\$(100,000.00)	
<b>SUBTOTAL</b>	<b>\$962,500</b>	<b>\$962,500</b>
<b>2. SCOPE OF EXPANDED ARCHITECTURAL SERVICES (LUMP SUM FEES)</b>		
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	
<b>SUBTOTAL</b>	<b>\$238,200.00</b>	<b>\$238,200.00</b>
<b>3. SCOPE OF PROJECT MANAGEMENT SERVICES</b>		
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	
<b>SUBTOTAL</b>	<b>\$515,387.00</b>	<b>\$515,387.00</b>
<b>TOTAL COMPENSATION</b>		<b>\$1,716,087</b>

**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>	
1.	Nine percent (9%) of the first five hundred thousand dollars (\$500,000.00) of computed cost.
2.	Eight and one-half percent (8.5%) of the next five hundred thousand dollars (\$500,000.00) of computed cost.
3.	Eight percent (8%) of the next one million dollars (\$1,000,000.00) of computed cost.
4.	Seven percent (7%) of the next four million dollars (\$4,000,000.00) of computed cost.
5.	Six percent (6%) of the next four million dollars (\$4,000,000.00) of computed cost.
6.	Five percent (5%) of computed cost in excess of ten million dollars (\$10,000,000.00).
7.	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.

**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 FI8-01**); however, the video of the Board meeting held 5/28/2014 did document the reading of the bid results information.<sup>406</sup> See FI8-1 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 FI5-01**).
- 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 FI8-02**)

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<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.

**FI (9) Work Step**

Conduct appropriate investigative steps to determine:<sup>412</sup>

- If contract retentions were released (paid) earlier than project completion. (A)
- If a change order was processed as a settlement to a contractor. (B)

**Results of Testing**

**(A) Work Step: Conduct appropriate investigative steps to determine if contract retentions were released (paid) earlier than project completion.**

**Related Allegation**

VCA (14) - Contract retention was released (paid) earlier than in the past (Gompers/Greenwood Project).

**Results of Work Performed****District Policy**

Subsection “Payments and Contractors” of the District’s Administrative Regulation 3314, *Payments for Goods and Services*, states “the District shall withhold at least five percent of the contract price until the final completion and acceptance of the project. However, any time after 50 percent of the work has been completed, the Board may make any of the remaining progress payments in full for actual work completed if the Board finds that satisfactory progress is being made.” Standard industry practice for construction contracts allows payment withholdings (retentions) to: 1) be deposited in an escrow account with a financial institution at the time progress payments are made or 2) be accumulated and held by the contracting party (the District). The retention method used by the District is determined and specified in each contract executed with contractors. Retentions to the contractor are released/paid upon completion of a project when: 1) the District formally notifies the financial institution by sending an authorization to release funds from the escrow account to the contractor or 2) the District issues payment directly to the contractor.

**Sample Selection**

VLS tested, on a sample basis, retention release payments to: 1) assess whether payments were made in accordance with the District's retention payment policy and 2) assess the claim that retention was released to a particular contractor prior to standard District policy/practice.

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<sup>412</sup> The letter included in parentheses after each item in bullets provides reference to the applicable section in the “Results of Testing.”

Population data identifying retentions withheld or paid was not available.<sup>413</sup> Therefore, from a disbursement ledger of bond fund activity provided by District staff,<sup>414</sup> a judgmental sample was selected based on the following key criteria:<sup>415</sup>

- 1) The disbursements were for the Gompers/Greenwood project.
- 2) For contracts that extended beyond a fiscal period, disbursements were selected from each fiscal period.
- 3) Selected expenditures in the 6XXX object codes were selected where construction project activity subject to progress payments (and retentions) is recorded. For each contract selected, multiple disbursements pertaining to that contract were selected, especially disbursements that appeared to be smaller in amount when compared to other disbursements identified for the same contract.<sup>416</sup>
- 4) Specifically requested from the District a summary of retention releases associated with the disbursements selected (if the disbursements themselves were not retention releases).
- 5) To compare retention release practices across projects, disbursements were also selected for projects other than Gompers/Greenwood using the criteria elements 2, 3, and 4 above.

### Analysis

In total, 11 projects were selected for testing of retention payments, which included the Gompers/Greenwood project. For these projects, a total of 42 transactions (disbursements) were tested to recalculate retention withholding percentages and to verify that payments were progress payments and not retention payments prior to project completion. The District provided the disbursement documents for each of the 42 transactions selected for testing.<sup>417</sup>

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<sup>413</sup> Based on discussion with District staff, a report that contains a listing of retention related payments only cannot be generated from the financial systems used by the District.

<sup>414</sup> The data provided by the District covered the 2008/09 fiscal year through the 2014/15 fiscal year. The Gompers/Greenwood project data began in the 2010/11 fiscal period.

<sup>415</sup> The criteria included here is not all inclusive of the judgmental decisions made when selecting the testing sample. The information presented here is meant to highlight key factors used for sample selection.

<sup>416</sup> This is based on the theory that the smaller payments would represent the retention payments, rather than a progress payment, made by the District on the contract.

<sup>417</sup> The disbursement documents included a copy of the warrant issued, the payment approval documents, the progress payment/invoice documentation, and additional documents to support the disbursement.

For contracts that required the District to deposit retention payments to an escrow account, the District provided a copy of the warrant issued to the financial institution for the corresponding progress payment selected for testing; this was recalculated and compared to the progress payment documentation to verify that the amount paid to the financial institution agreed to the retention recalculation for each transaction selected. For contracts that required the District to withhold the retention, the District warrant detail included the gross amount due for the progress payment and the amount of retention that was being withheld from the progress payment. This amount was recalculated to verify correct retention withholdings for each transaction selected.

In addition to verifying that the appropriate retention was withheld or paid to financial institutions with each progress payment, a review of total retention amounts paid to financial institutions or paid to contractors for each of the 11 projects was performed. The District financial system tracks invoice payments made for each project, including retention payments. Therefore, the District provided a listing of all the invoices paid for each project. For contracts in which the District simply withheld the retention payments, the total retention payments were compared to the final contract amount to verify that the total retention percentage was in accordance with District Policy. For projects whose retention was deposited into an escrow account, the District also provided all retention release notifications submitted to the financial institutions. The retention release notification amounts were added and the total was compared to the final contract amount to verify that the retention percentage was in agreement with retention payments made to the financial institution.<sup>418</sup>

### Results

For three of the 11 projects tested, partial retention releases occurred prior to completion of the project; however, the retention releases were a result of a change in the percentage of retention withholding from 10% to 5% for these projects.<sup>419</sup> The change in retention did not affect the District's compliance with the minimum 5% withholding required by the administrative regulation. Of the three projects with partial retention releases occurring prior to project completion, one was for the Gompers/Greenwood project; the other two retention releases were for the Pinole Middle School Soccer Field and Pinole Valley High School playfield and parking projects.<sup>420</sup> Therefore, no discrepancies with District policy were found when comparing retention withholdings and releases for the Gompers/Greenwood project and other projects.

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<sup>418</sup> There were instances where multiple retention releases were made for one project. This was due to a change in retention percentage. Refer to the first paragraph of the "Results" section for additional information.

<sup>419</sup> All transactions tested had a 10% retention withholding each time a progress payment was made.

<sup>420</sup> The contractors associated with these projects were Lathrop Construction (Gompers/Greenwood), Roebbelen Contracting (Pinole Middle School), and Maggiora & Ghilotto (Pinole Valley High School).

Calculation of retentions for each transaction tested was identified as accurate and in compliance with the minimum requirements as indicated in District policy. For projects whose retention was deposited into an escrow account, check payments made to the financial institution were made timely when compared to corresponding payments made to contractors. In addition, final retention payments were made to contractors and final retention release authorizations were sent to financial institutions after projects were completed.<sup>421</sup> Retention payments/release amounts, in total for each of the contracts tested, were for the appropriate retention percentage of final contract costs.

### **Conclusion**

Based on the results of samples tested, instances of partial retention release were in compliance with District policy. These instances of partial retention release were not limited to one specific contractor or project.

**(B) Work Step: Conduct appropriate investigative steps to determine if a change order was processed as a settlement to a contractor.**

### **Related Allegation**

COA (5) - A change order was processed as a settlement to a contractor; therefore, the amount paid to the contractor is not captured as change orders (Greenwood project).

### **Results of Work Performed**

From the disbursement detail provided by the District, VLS selected transactions identifying “settlement” (or a portion of the word thereof) in any part of the transaction record.<sup>422</sup> For fiscal years 2010/11 through 2014/15, only four such transactions were identified.<sup>423</sup> Three of those transactions were related to final settlement payments to West Bay Builders, Inc. for work performed on the Helms Middle School project and the bleachers project at Richmond High School. The fourth transaction was a payment to CF Contracting, Inc. for a settlement related to Kennedy High School projects. Although the nature of this payment to CF Contracting was related to disputes over change orders, there was a settlement agreement reached between the District and the contractor; therefore, the payment was appropriately recorded as a settlement. The settlement agreement indicated that the settlement funds were the final payment to CF Contracting for the projects.

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<sup>421</sup> VLS identified when projects were complete using the Notice of Completion document date.

<sup>422</sup> All vendor disbursements were included as VLS did not have a list of the vendors/contractors that specifically worked on the Gompers/Greenwood project.

<sup>423</sup> The Gompers/Greenwood project began in the 2010/11 fiscal year.

The District provided documentation for 94 change orders for the Gompers/Greenwood project. VLS reviewed the Proposed Change Order Summaries attached to these change orders and identified instances where settlements were reached related to disputed proposed change order requests. Table 60 provides a listing of these change orders.<sup>424</sup>

**Table 60: Settlements for Disputed Change Orders Identified for Gompers/Greenwood Project<sup>425</sup>**

Change Order (CO) Number	CO Date	CO Amount	Number of Proposed Change Orders (PCO) Included	Project Name	Change as Described on CO or PCO Summary
00061	12/22/2014	\$ 80,461	1	Gompers New CHS & LPS Rich School	There is a fundamental disagreement over the scope of work in the base contract documents. The settlement provides appropriate credit to offset the cost of the new design.
00073	5/15/2015	32,000	16	Sylvester Greenwood Academy & LPS	Global settlement of rejected, disputed and outstanding fire sprinkler change requests. Fire Sprinkler Dispute Resolution Meet and Confer Held 4/23/2015.
00074	5/20/2015	93,107	7	Sylvester Greenwood Academy & LPS	Site Winterization 2012/13 includes pad A repair, pads B & C treatment, and foundation rat slabs. Lathrop withdraws \$98,867 of disputed change order requests.
00085	9/15/2015	121,396	9	Sylvester Greenwood Academy & LPS	Final settlement of all millwork rejected, disputed and outstanding change order requests.
00088	10/12/2015	75,000	1	Sylvester Greenwood Academy & LPS	Graving and Paving Final Settlement.
00092	11/19/2015	79,985	11	Sylvester Greenwood Academy & LPS	Final settlement for all work and change related to Best Sheet Metal submitted or not. Final settlement includes all Lathrop costs related to the sheet metal work.

<sup>424</sup> For this section, VLS did not perform a detailed review of these documents for reasonableness or to determine if proper change order approval processes occurred. The purpose of this review was to determine if settlement payments were made. Refer to FI (10) Section for more detailed information regarding investigative steps for change orders.

<sup>425</sup> Items included are only those that identify settlements for multiple proposed change orders and not a resolution on discussions pertaining to only one proposed change order.

Change Order (CO) Number	CO Date	CO Amount	Number of Proposed Change Orders (PCO) Included	Project Name	Change as Described on CO or PCO Summary
00096	12/24/2015	75,000	25	Sylvester Greenwood Academy & LPS	Dispute Resolution of all remaining rejected and disputed change order requests. There are no other change requests remaining.

The settlements for dispute of change orders identified above were processed and tracked through the normal change order process and therefore appeared on the District change order report provided to VLS.

A Phase I interview conducted on 11/18/2015 with Lisa LeBlanc, Associate Superintendent of Operations and Bond Program, indicated that the contractor on the Gompers/Greenwood project was disputing an issue; therefore, the District did go to the Board and to mediation to move toward a settlement. However, Ms. LeBlanc indicated that during the process, the District discovered that there were outstanding change orders associated with the project. At that point, the settlement process was stopped. On 1/20/2016, a Notice of Completion for the project was executed and presented to the Board, and the Board ratified an action to accept a final settlement between the District and the contractor related to various proposed change orders. The final settlement was executed on 2/5/2016 and paid on 3/15/2016. This final settlement was included on the change orders report provided to VLS.

### **Conclusion**

Based on results of testing, disbursements identified as settlements were verified to be settlement funds paid to contractors as final project payments. Change orders for the Gompers/Greenwood project included settlements over disputed proposed change orders; however, these settlement payments were processed and tracked as change orders.

### **Recommendations**

There are no recommendations as a result of the work performed.

### **Response by District**

Not Applicable

**FI (10) Work Step**

Conduct appropriate investigative steps to test a sample of change orders to assess for appropriate Board approval

**Results of Testing****(A) Historical Change Order Review and Approval Process****Related Allegations**

COA (3) - Change orders are not approved by Board.

COA (4) – Has the District had a process in place to analyze and question change orders before approving?

**Results of Work Performed****Board Approval**

VLS selected a sample of 98 historical change orders and add-services to determine whether the items were approved by the Board.<sup>426,427</sup> The sample was selected from the period July 2009 through June 2015.<sup>428</sup> The results of testing are as follows:

- Ninety-six change orders and add-services were approved by the Board.<sup>429</sup>

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<sup>426</sup> The District is not able to run one report to produce all historical change orders and add-services. A report from Primavera with historical change order information was provided; however, the use of Primavera was implemented in recent years. Additionally, most professional services contracts are not entered into Primavera. The only other listing the District could provide was the change order summary and professional service contract summary that are presented to the Board in each Board packet. Because the purpose of this testing was to determine whether change orders were approved by the Board, VLS used the Primavera report provided to select the sample.

<sup>427</sup> When presented to the Board, all change orders and professional service contracts are listed in summary tables that are included in the agenda packet and are listed as consent items. Change orders and professional services contracts are presented separately. Additionally, the summary table included for professional services contracts includes new contracts as well as add-services, and there is no easy way to distinguish between a new contract or add-service. Because these are presented as consent items, the Board ratifies the approval of change orders and add-services. For purposes of this analysis and discussion, VLS uses the term “approve” or “approval” to indicate the Board action that is taken.

<sup>428</sup> The Primavera report included change order information going back to May 2009.

<sup>429</sup> VLS selected 58 change order line items from the Primavera report provided. Two of the line items selected included multiple separate change orders that were consolidated into one line item when entered into Primavera. VLS tested all of the change orders related to these two line items, which accounted for 42 change orders.

- Two add-services appeared to have information in Primavera that was inconsistent with the actual approvals by the Board. The dates listed in Primavera were subsequent to when the work was performed by that vendor for that particular contract, and the District was unable to provide an explanation as to the reason for the difference. Additionally, the add-service amounts listed in Primavera were less than the Board approved amounts. However, the revised contract amount reflected in Primavera, after adding the add-service, was close to the total amount approved by the Board.<sup>430</sup> The Board approved items and the information in Primavera appears to be for the same contract and add-service; however, because of the discrepancies noted, VLS is unable to conclude this with absolute certainty.

The information presented to the Board for professional add-services is limited and they are presented along with new professional service contracts. See an example of the summary schedule used at **Exhibit F110-01**. The summary does not consistently include a contract number, and there is no clear way to distinguish between new contracts and add-services. In some cases, a “Reference” column will include the language “additional,” which would likely indicate an add-service.

The most recent summary provided to the Board on 7/20/2016 (**Exhibit F110-02**) includes slightly more information than the summary provided in the past; however, there are still limitations to the information presented. See recommendation TC13-9 related to improvements in the information presented to the Board for professional add-services.

#### Change Order Review Process<sup>431</sup>

A proposed change order summary is prepared for each request from a contractor for increased fees. If the proposed change order is approved, it is converted into a change order. Multiple proposed change orders can be packaged into one single change order for approval (for the same vendor and contract). Both the proposed change order summary form and change order form have designated spots for certain SGI and District signatures (see example change order packet included at **Exhibit F110-03**).

In order to gain an understanding of the approval process used for proposed change orders and change orders prior to 7/1/2015, VLS requested that the District provide process and procedure documents that explain the historical process used. The District informed VLS that they did not have historical process and procedure documents related to the approval of change orders. It was suggested by the District that the Bond Program Manager, Karim Nassab, of SGI would have more information regarding the processes used to approve change orders prior to 7/1/2015.

<sup>430</sup> For one add-service, the total amount approved by the Board was \$360,000 and the revised contract amount in Primavera was \$352,675. For the other add-service, the total amount approved by the Board was \$146,500 and the revised contract amount in Primavera was \$149,123.

<sup>431</sup> This section discusses change orders only and does not include professional add-services.

Karim Nassab verbally explained the processes used by the two previous Chief Engineering Officers, Magdy Abdalla, who was in this position from October/November 2011 through December 2014, and Bill Savidge, who was in this position from August 2003 through October 2011.<sup>432</sup> The process used by each was different and Mr. Nassab felt that Mr. Abdalla was much more involved in the change order approval process than Mr. Savidge.

According to Mr. Nassab, under Mr. Savidge, the proposed change order approval process was more informal and took place in a weekly team meeting with a change order committee. This committee consisted of Mr. Savidge, Mr. Nassab, and the SGI Construction Manager and District Project Manager that were assigned to the project. The Construction Managers would bring the documents supporting the proposed change orders, and the documents would be discussed. There was no signature form or any other physical documentation that the meeting and approval had occurred. Mr. Savidge would verbally approve the proposed change orders and they would be combined into a change order packet, which would be routed through the normal change order approval process and ultimately taken to the Board for approval.

According to Mr. Nassab, under Mr. Abdalla, the proposed change order approval process changed to a more regimented process. The SGI Construction Manager would bring the proposed change order documentation and support to the Deputy Program Manager (SGI), who would then bring the documentation to Mr. Abdalla once a week. Mr. Abdalla would review the proposed change orders and, if he approved them, he would initial the proposed change order on the top corner. The approved proposed change orders would then be combined into a change order packet, which would be routed through the normal change order approval process and ultimately taken to the Board for approval.

The results of testing showed the following:

- For the time period that Mr. Savidge was the Chief Engineering Officer, VLS was unable to verify this verbal approval process of the proposed change orders by Mr. Savidge as there is no documentation that this occurred. Additionally, the change orders approved under Mr. Savidge did not contain the proposed change order summary form (see **Exhibit F110-04** for an example of a change order approved under Mr. Savidge).<sup>433</sup> Although it appears that an alternate form was sometimes used (called a PCO Justification), the location for the District representative signature was not signed.

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<sup>432</sup> These dates were provided by Mr. Abdalla and Mr. Savidge during their interviews in Phase I. Mr. Savidge was in the role of Chief Engineering Officer his entire time with the District. Mr. Abdalla started with the District in April 2011 as the Director of Facilities. After Mr. Savidge left, Mr. Abdalla filled the role of Chief Engineering Officer in approximately October/November 2011.

<sup>433</sup> It appears that the use of this form was implemented around the time that Mr. Abdalla became the Chief Engineering Officer.

- For the time period that Mr. Abdalla was the Chief Engineering Officer, VLS reviewed the proposed change orders for the signature or initials of Mr. Abdalla. VLS was able to verify what appeared to be Mr. Abdalla's signature/initials on some of the proposed change orders. The example change order packet included at **Exhibit FI10-03** includes a proposed change order summary sheet with what appears to be Mr. Abdalla's signature near the top-left of the document. Not all change orders selected for testing included the proposed change order summary in the packet.<sup>434</sup>
- For the period under Mr. Abdalla and the current Chief Engineering Officer, the same change order and proposed change order forms were used for the historical sample selected as were observed during the Test of Controls portion of testing (see TC (13) Section).
- If there was a proposed change order form attached to a change order, the SGI Construction Manager would usually sign the document; however, a District representative did not consistently sign this document.
- Once the proposed change orders were packaged into a change order, the General Contractor, SGI Construction Manager, Architect of Record, and Bond Program Manager would sign the change order document prior to it going to the Board for approval. After Board approval, the Chief Engineering Officer and the Associate Superintendent of Operations and Bond Program would sign the change order document.

Based on the testing performed, the signatures on the change orders and proposed change order cover sheets were sporadic in their completeness, similar to the beginning months of the Test of Controls period (see TC (13) Section).

### **Conclusion**

Based on the testing performed, change orders and add-services were being presented to the Board for approval. In two instances, VLS is unable to fully conclude that the add-services presented to the Board represented the add-services selected for testing as there were inconsistencies between the information in Primavera and the information presented to the Board.

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<sup>434</sup> The proposed change order summary form includes a location for the Chief Engineering Officer's signature; however, this was often left blank.

**(B) Gompers/Greenwood Construction Change Orders**

This section is included, although not a part of the original work step, because of additional information communicated to VLS by third-party sources during Phase II interviews. VLS has determined that it is important that this information be communicated to the District. A detailed investigation of all change orders on the Gompers/Greenwood project was not part of the scope of Phase II, although VLS attempted to gather as much information as possible to present to the District.

**Related Allegations**

COA (5) - Change orders will be greater than what was communicated by the SGI Construction Manager.

COA (7) - A change order was processed as a settlement to a contractor; therefore, the amount paid to the contractor is not captured as change orders (Greenwood project).

**Results of Work Performed**

The Sylvester Greenwood Academy, originally called the Gompers Continuation High School (construction project #3581366-05) began in July 2012 and continued through February 2016. VLS refers to this project as the Gompers/Greenwood project.

During Phase I interviews, the allegations communicated to VLS related to the Gompers/Greenwood project were:

- SGI was not submitting change orders on the Gompers/Greenwood project through Primavera as required by the District.
- SGI delayed processing change orders on the Gompers/Greenwood project, so there was a “build-up.” Because change orders took so long to come forward, the District negotiated a settlement. The settlement was done part-way through the project rather than at the end.
- The District did not process the settlement as a change order, so it will not “show up.”

During interviews conducted in Phase II, VLS inquired about the delay in submitting and processing change orders for the Gompers/Greenwood project. According to sources outside of the District, one of the issues with change orders on this project was that the most recent SGI Construction Manager, Gregory Smith, entertained some change orders from the General Contractor that should not have been, as outlined further below. During the course of this project, there were two different SGI Construction Managers. Tim Peel was the Construction

Manager from the start of the project through 8/14/2013.<sup>435</sup> From 8/15/2013 through the project's close in early 2016, Gregory Smith was the Construction Manager.

The following paragraphs summarize the statements made to VLS regarding the Gompers/Greenwood project change orders. These are not direct quotes and may include paraphrasing by VLS. Where possible, VLS attempted to use the same wording/phrasing as stated by the interviewee.

#### Individual with Knowledge of the Project #1 – First Interview

VLS interviewed this individual in person on 5/25/2016. This individual has knowledge of this project for the period from approximately February 2014 through September/October 2015 and was on the site full-time during this time. This individual communicated the following to VLS:

- Mr. Smith preceded this individual on the project by a short period of time.
- The main person responsible for justifying the appropriateness of a change order was the SGI Construction Manager, who was more involved in the negotiation of the change order on behalf of the District.
- Mr. Smith was entertaining anything that the contractor came forward with. There were many change orders that this individual thought SGI did not have to entertain. Ultimately, it was the Construction Manager's call.
- When this individual pointed out that some change orders were from two years prior, Mr. Smith told this individual that they were going to entertain them and it was their call.
- This individual felt that Mr. Smith had a sympathetic ear for the General Contractor.
- This individual recalled advising Mr. Smith that he could say "no" because something was already in the construction documents.
- This individual did not know why Mr. Smith was entertaining so many change orders from the General Contractor. When questioned about it, Mr. Smith said that he had to "pick his battles."
- This individual recalled that SGI put an additional person on the project for the last nine months to a year of construction. This person's role was to assist Mr. Smith with

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<sup>435</sup> According to SGI invoices and the hours billed for Mr. Peel and Mr. Smith.

processing change orders. Some weeks this person was on site full-time and other weeks this person spent a little time working on other projects.

#### Individual with Knowledge of the Project #2

VLS interviewed this individual by phone on 6/21/2016. This individual has knowledge of this project for the full duration of the project. In addition to the information shared below, this individual has additional documentation and information that could further identify questionable change orders. According to this individual, gathering this documentation would take significant time and this individual expects compensation for this time. Consequently, no further information or records were provided by this individual to VLS. This individual communicated the following to VLS during a phone call on 6/21/2016:

- This individual was not formally involved in the review and approval of change orders; however, this individual would provide an opinion if Mr. Smith asked. Ultimately, Mr. Smith would resolve change orders with Andrew Mixer, the District's Project Manager, and the District.
- Mr. Peel was not receptive to change orders and would argue with the General Contractor. This individual recalled that Mr. Peel said change orders were very low, less than 0.5%.
- Mr. Smith was very liberal when it came to approving change orders, and he tended to side with the General Contractor. This individual believed that change orders ended up totaling 7.5% to 8.0% by the end of the project.
- As a rule of thumb, new construction should have change orders in the range of 3.0% to 5.0%.
- The General Contractor brought forward change orders that Mr. Peel had previously rejected. In the last year, the General Contractor went all the way back to the Request for Information (RFI) to find anything that they could recover.
- In this individual's experience, the contract specifications give contractors up to 30 or 60 days to submit a claim. That was not in the front-end documents for this project.
- This individual believes that there were many change orders that were paid that were unfounded. One example was the pouring of a flag pole that was done without an inspection. It had been poured without rebar. It had to be excavated and replaced. This happened at Building A. Mr. Smith approved the change order to replace the flagpole, which this individual said was the contractor's mistake. This individual believed the

change order amount was \$20,000 to \$30,000.<sup>436</sup> There were several other change orders like this, but this individual would have to review project documents to identify them.

- Mr. Smith told this individual that he approved these change orders in order to keep open communication with the General Contractor.
- When asked why the District would have let these change orders be approved, this individual indicated that Mr. Smith was in control of what was presented to the District and the Project Manager, and Mr. Smith presented information that favored the contractor.

#### Project Manager – Current District Employee

VLS interviewed the Project Manager in person on 7/6/2016. This was the District Project Manager assigned to the Gompers/Greenwood project. The Project Manager communicated the following to VLS:

- The Project Manager became more actively involved in the Gompers/Greenwood project approximately six months after construction started when Mr. Abdalla directed the Project Managers to be more involved with the projects. That was when the Project Managers started attending the weekly meetings with SGI and the Architect of Record.
- The Project Manager did not direct the General Contractor's work but expressed comments and opinions as the District's representative on site. The actual work was being directed and handled by SGI. The Project Manager was involved in the meetings, with approving change orders, and being knowledgeable about the project.
- According to the Project Manager, each change order was different. It was not a situation in which Mr. Smith came in and started approving them. Some of the change orders that were approved by Mr. Smith had previously been rejected by Mr. Peel, but they did not go away. When a change order has not been approved or rejected and dropped, it is an open change order.
- Mr. Smith managed the whole process of the outstanding change orders and brought the project to a financial conclusion. There were a lot of intense meetings regarding this matter.

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<sup>436</sup> VLS attempted to identify this change order for further analysis but was not successful. VLS would require additional information from this individual in order to identify this change order.

- The District seeks the approval of the Architect of Record but is not required to have it before moving forward with a change order. The Project Manager recalled that there were instances in which the Architect of Record disagreed with a change order and said the item was in the drawings. According to the Project Manager, there is a difference of opinion on whether something is in the drawings and the completeness of the drawings.
- The Project Manager acknowledged that the change orders cost the District money; however, he did not believe that it cost the District money “unnecessarily.”
- The Project Manager indicated that there was a process for fully vetting change orders and an estimator was used by the District.
- The Project Manager believes that SGI was not sharing everything with the District, but he does not know that SGI was intentionally withholding information from the District.

#### Chief Engineering Officer – Current District Employee

VLS interviewed the current Chief Engineering Officer in person on 7/7/2016. The current Chief Engineering Officer has been in this role since mid-October 2014. The Chief Engineering Officer communicated the following to VLS:

- Mr. Peel was the Construction Manager on the project prior to the current Chief Engineering Officer; therefore, he was not able to speak to Mr. Peel’s time on the project.
- As projects wrap-up, change orders come up. As this project was wrapping up, change orders kept coming forward.
- The District started talking with the General Contractor regarding the change orders on this project starting in spring of 2015.
- The project was bid at a time when the market was at its lowest. The General Contractor had experienced losses through failed subcontractors, and they had to go get bids for those failed subcontractors. The names of a few failed subcontractors were provided. The Chief Engineering Officer acknowledged that it was not the District’s problem, but it was what the District was dealing with.
- The General Contractor had originally planned for a 24-month construction period. It ended up being 30 to 36 months.

- For this project, the District was willing to talk through these things with the General Contractor and reach a settlement. The Chief Engineering Officer did not believe the District “gave away the farm.”
- The Chief Engineering Officer believes that Mr. Smith did a great job in trying to understand the potential risk.
- There were times that the Architect of Record did not agree with the change orders but they were still processed. The architect may say that an item is in the drawings, but when the drawings are reviewed, there is some ambiguity and it cannot be proven. The District has to make a management decision.
- On this particular project, the District shared some costs related to the woodworking subcontractor that went bankrupt. The District had a commitment to open the school. It was a tight deadline and the District had already made the commitment to move. The District started to negotiate because things started to slow on the project. The General Contractor had cash flow problems. All of these factors came into play.
- When asked if the District entertained change orders to keep things moving forward, the Chief Engineering Officer responded affirmatively. There would have been delay claims and the District was trying to manage that.
- The delay in the processing of change orders did not have anything to do with the two different SGI Construction Managers. Early in a project, it is easy to deny change orders; however, they sometimes come back.
- The District set the framework and talked globally about the issues on the project. It was Mr. Smith and the General Contractor’s Project Manager that negotiated the change orders.
- Once a change order gets to the Chief Engineering Officer, it has usually been fully vetted.

#### Individual with Knowledge of the Project #1 – Second Interview

VLS interviewed this individual by phone on 7/27/2016, and the individual communicated the following to VLS:

- This individual confirmed that the District paid extra to help the General Contractor when there was a subcontractor that went out of business, when the General Contractor was low on capital and needed to “jump start” the project, for mistakes made by the subcontractors, and for coordination problems that were the responsibility

of the General Contractor. There were also legitimate change orders for additional scope of work, but there were a lot of change orders paid for which the District did not get added value.

- This individual stated that the change order documents (including proposed change order documentation) included descriptions stating that the change orders were to help the cash flow of the General Contractor or for subcontractors that had failed.
- This individual felt that Mr. Peel was looking out for the District’s best interests, and Mr. Smith sided with the General Contractor. This individual thought that Mr. Peel would intervene at some point because he became Mr. Smith’s supervisor, but he never did.
- Change orders that were rejected by Mr. Peel came back under Mr. Smith. This individual felt that they had legitimately been rejected and were closed.
- This individual believed that SGI did not meet the expectations of a “strong” construction management firm.
- The 36-month project was rushed at the end, and the General Contractor’s coordination was to blame.
- It is this individual’s recommendation that the change orders for this project be reviewed.

VLS identified the approved change orders for the Greenwood/Gompers project and performed limited analysis related to the allegations and statements made by interviewees. VLS observed the following:

- There were a total of 94 change orders approved for this project, which totaled \$3,689,508. The original construction contract amount was \$53,887,350; therefore, change orders totaled approximately 6.84% of the original contract.<sup>437</sup> See **Exhibit FI10-05** for a list of all the change orders.
- The volume of change orders approved under the two SGI Construction Managers was vastly different in both quantity and amount. While Mr. Peel was the Construction Manager, a total of 12 change orders were approved. These change orders amounted to \$29,749, which was less than 0.01% of the original contract price. While Mr. Smith was

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<sup>437</sup> This excludes a final settlement approved on 7/20/2016 for \$231,500.

the Construction Manager, a total of 82 change orders were approved. These change orders totaled \$3,659,759, which was 6.79% of the original contract price.<sup>438</sup>

- Most construction managers will attempt to keep total change orders under a couple percentage points.<sup>439</sup>
- As identified in the FI (9) Section, there were several negotiated settlement-type payments made during the course of the project (December 2014 through December 2015).
- Generally, the proposed change orders were signed by the Construction Manager (Mr. Peel or Mr. Smith), the estimator, and the Chief Engineering Officer (if the proposed change order was over \$20,000).
- VLS performed a review of a sample of the change orders and proposed change orders that were approved to attempt to identify any language that indicated the purpose was to assist the General Contractor with cash flow or due to failed subcontractors, as stated during interviews conducted. VLS did not identify this language in any of the documents reviewed.<sup>440</sup>

Based on VLS's experience in construction, it would not be appropriate or a prudent business practice to pay contractors to assist with cash flow problems or failed subcontractors, for the mistakes of the contractor/subcontractors, or for contractor coordination problems. When using the general contractor delivery method for construction projects, the general contractor is responsible for coordinating subcontractors and ensuring the accuracy of their work. If a subcontractor fails due to a struggling economy or low bid prices, this is typically the general contractor's responsibility. One of the claims made by the District was that the negotiations occurred to prevent delay claims. However, delays of subcontractors typically fall under the responsibility of the general contractor if they relate to coordination problems. When the District retains a construction management firm that serves as the construction manager on the

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<sup>438</sup> VLS determined which change orders were approved by Mr. Peel and Mr. Smith based on the time periods presented above and a review of the signatures on the change order documents.

<sup>439</sup> This is based on VLS experience. The most important component of a change order is that it provides added value to the owner, is not a result of architect error/omission, and is not the result of contractor/subcontractor mistakes. Added value, unforeseen circumstances, and other owner-directed changes will lead to a higher percentage of change orders.

<sup>440</sup> VLS reviewed the description on the change order form and the descriptions included on the list of proposed change orders. VLS did not read every page included in the change order packet as some of the packets contained over 200 pages.

job site, it is the construction manager's responsibility to represent the District in all matters related to the project.<sup>441</sup>

The allegation that Greenwood/Gompers change orders were paid as settlements is addressed in the FI (9) Section.

### **Conclusion**

The allegations that SGI was holding back or under-reporting change orders on the Gompers/Greenwood project may actually be an issue of inappropriate change orders that were entertained by the SGI Construction Manager. Based on the statements made by the Architect of Record and the Inspector of Record, both of which are sources outside of the District and SGI, there may be change orders that were approved that were not appropriate. Based on statements made by District employees, it appears that the District may not be aware of change orders submitted by the General Contractor and SGI Construction Manager that were due to contractor/subcontractor error or coordination problems. Additionally, the District negotiated certain change orders that it may not have been legally obligated to pay in order to assist the General Contractor with failed subcontractors and cash flow problems. However, this is based on verbal statements, and VLS has not been provided with evidence to support this claim.

Additional investigation and review of the change order documents on this project would be required to quantify the change orders that may be due to contractor/subcontractor errors and coordination problems. This would require the assistance of the Inspector of Record as he has claimed to have records that support his claims. These claims appear to be corroborated by the fact that the total percentage of change orders approved while Mr. Smith was the Construction Manager was 6.79%.

A detailed investigation of all change orders on the Gompers/Greenwood project was not part of the scope of Phase II, although VLS attempted to gather as much information as possible to present to the District.

See recommendations FI10-1 and FI10-2 related to this area.

### **Recommendations**

See the TC (13) Section for recommendations related to the change order and add-service review and approval process.

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<sup>441</sup> These statements are the opinion of VLS based on experience within the construction industry and the general understanding between districts, general contractor firms, and construction management firms. Whether the District has any legal claims would require a thorough review of the contracts and a legal opinion.

FI10-1. The District should consult with legal counsel to determine whether further investigation is appropriate regarding the claims that change orders on the Gompers/Greenwood project were related to contractor/subcontractor mistakes and coordination problems or were inappropriate.

FI10-2. The District should consult with legal counsel to determine whether further investigation is appropriate regarding the claims that the District entertained change orders to assist the General Contractor with cash flow and the costs related to failed subcontractors.

**Response by District**

FI10-1. District agrees with recommendation to further consult legal counsel on this matter.

FI10-2. District agrees with recommendation to further consult legal counsel on this matter.

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

VLS has reviewed the District responses to VLS's recommendations and acknowledges the District's agreement to the recommendations made by VLS.

**FI (11) Work Step**

Conduct appropriate investigative steps to:<sup>442</sup>

- Determine whether Primavera has been fully adopted and is being updated as required **(A)**.
- Review recent projects to determine whether PCOs have been entered into Primavera **(B)**.
- Determine whether any change orders from the period when Primavera went down are currently not recorded in Primavera **(C)**.
- Determine if multiple purchase orders were created for a single contract and determine the control deficiencies that allowed this to occur **(D)**.
- Determine if the KPI and CAMP reports historically provided to the Board were inaccurate **(E)**.

**Results of Testing**

**(A) Work Step - Conduct appropriate investigative steps to determine whether Primavera has been fully adopted and is being updated as required.**

**Related Allegations**

GOV (4) - SGI was slow to adopt and enforce the use of Primavera

PAP (3) - SGI is not inputting information accurately in Primavera

**Results of Work Performed**

The Primavera software is the District’s project management system that includes the P6 Module and PCM Module (see below for an explanation of these modules).<sup>443</sup> Based on interviews with the District, the Primavera system is used for master scheduling and tracking of project information. Additionally, the District obtains reports (such as the Change Order Log, the Proposed Change Order Log and Status Reports) from Primavera that are used to review the potential risk of projects related to the project objectives in terms of time and cost. The Primavera modules are explained below.

- The **P6 Module** is used for planning, managing, and scheduling projects and programs. The Master Scheduler creates a “Master Schedule” for a bond project, which enables the District and construction management firm to envision and assess the impact of their decisions on a project. A Master Schedule consists of several project activities

<sup>442</sup> The letters included in parenthesis after each sentence provides a reference to the applicable section within this work step.

<sup>443</sup> The District’s Primavera software license will expire in December 2016.

(stages) as listed below with estimated dates from start to finish. See **Exhibit F111-01** for a sample of the Master Schedule.

- 1A – Planning: In the planning stage (or predesign stage) for a project, the architect meets with key District personnel (such as the Chief Engineering Officer, Director of Facilities & Construction, school principals, etc.) to gather information to define the scope of the project.<sup>444</sup> The architect will then prepare a conceptual plan with rough cost estimates. The District and architect will review and revise the conceptual plan until an agreement is reached as to the scope of the project.
- 2A – Design: In this stage, the architect draws the architectural plans and specifications for the construction project based on the decisions made during the Planning stage.
- 2C – DSA: In this stage, the architectural drawings and specifications prepared by the architect are reviewed by the Division of the State Architect (DSA) under the supervision of the California Department of General Services (DGS).<sup>445</sup>
- 3A – Bid: In this stage, the District complies with Public Contract Code Section 20111(a) related to formal bidding procedures for public projects.<sup>446</sup> See FI (8) Section that addresses the District’s bidding procedures.
- 4A – Award: In this stage, the District, upon opening of all the bids for construction work, proposes to the Board of Education (Board) at its regular meeting to award a public project to the lowest responsible bidder or else reject all bids. Upon the award of a public project by the Board to the lowest responsible bidder, the District will issue a Notice to Proceed in order for the construction phase of the project to commence.
- 5A – Construction: In this stage, the licensed contractor begins the construction work for the public project based on the date specified in the Notice to Proceed. The

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<sup>444</sup> This includes information such as type of project, size of the building, number of classrooms, number of bathrooms, number of students, etc.

<sup>445</sup> The DGS has the responsibility of supervising the design and construction/reconstruction of any school building to ensure that plans and specifications comply with the rules and regulations according to the Education Code Sections 17280-17317 and building standards published in Title 24 of the California Code of Regulations.

<sup>446</sup> Public project means a project for the construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility per PCC Section 22002(c).

construction phase may occur in one fiscal year or across several fiscal years, depending on the scope of the project.

- 6A – Close Out: In this stage, the architect, District and contractor(s) conduct due diligence related to project closeout responsibilities.<sup>447</sup>
- The **PCM Module** (Project Construction Management) is used to keep track of approved contracts for a bond project once the master schedule is established in Primavera. The Module is also used by general contractors, Construction Managers and District Project Managers to enter data such as Requests for Information (RFI) or Proposed Change Orders (PCOs). See Work Step (B) included below for a detailed explanation of PCOs.

The TC (15) Section discusses the testing of 20 bond related professional service contracts in which 18 of the contracts had not been entered into Primavera at the time of testing.<sup>448</sup> The TC (15) Section further discusses the research that the Master Scheduler has to conduct in order to determine which bond related contracts (construction and professional services) are currently not in Primavera. Currently, the District intends to use Primavera only for the tracking of RFIs, PCOs, and COs and for monitoring the construction status of each project. Therefore, the District does not intend to enter professional services contracts in Primavera as they do not impact the construction portion of the projects. District staff will continue the current practice of entering only construction contracts into the Primavera system upon approval by the Board.

### **Conclusion**

The District is currently using the Primavera system for monitoring the construction status of projects and for tracking RFIs, PCOs, and COs. Therefore, the District does not intend to enter professional services contract in Primavera as they do not impact the construction portion of projects. This appears appropriate based on the current use of the Primavera system. Refer to section TC (15) for TC15-2 recommendation for this area.

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<sup>447</sup> Project closeout responsibilities have different meaning to each participant. To the contractor, as an example, it means resolving the punch list items, reconciling the job cost, compiling lien waivers from subcontractors and suppliers, submitting notice of completion, collecting the final payment, etc. To the architect, it means reviewing the contractor’s punch list, reviewing closeout materials for compliance, inspecting the project to determine final completion, etc. To the District, closeout means accepting the project as stipulated in the certification of completion and making the final payment, to name a few.

<sup>448</sup> VLS testing occurred in April 2016.

**(B) Conduct appropriate investigative steps to determine whether PCOs have been entered into Primavera**

**Related Allegations**

COA (2) - PCOs not in Primavera

**Results of Work Performed**

The General Contractor (GC), Construction Manager (CM) and District Project Manager (PM) enter data into the Primavera PCM Module, as mentioned previously. Below is a brief summary of the steps in the processing of Request for Information (RFIs), Proposed Change Orders (PCOs), and Change Orders (COs):

- When a GC requires clarification on a particular aspect of a project (or the construction drawings), he submits an RFI.<sup>449</sup>
- The RFI is entered into Primavera and the system automatically determines the required date for the response to the RFI, which is scheduled to be seven days from the receipt of the RFI.<sup>450</sup>
- The CM reviews the RFI and involves the PM and Architect of Record (AOR) where appropriate. For example, the RFI may require the AOR to respond to a specific question the GC has regarding the drawings.
- The AOR prepares a response to the RFI (within seven days from the receipt of the RFI).
- The CM and PM review the response and forward it to the GC.
- If the GC believes that the response to the RFI involves a scope change, the GC submits a PCO, which formally documents the GC's request for additional time or additional funds related to the scope change. The specification section 0070 under General Conditions

<sup>449</sup> An RFI is a communication tool to confirm or clarify the interpretation of a detail, specification, or note on the construction drawings, or to secure directive or clarification from the Architect of Record (AOR) or District that is needed to continue work. It is also used by subcontractors to state concern(s) related to the scope of work in terms of product quality or omission or misapplication of a product. See **Exhibit F111-03** for an example of an RFI.

<sup>450</sup> According to page 3 of 5 of the Construction Manual dated 3/4/2014 Section 1.8 Requests for Information, the CM is responsible for ensuring that RFIs that may affect progress of the work receive expedited responses within 14 calendar days of receipt of the RFI. According to the Master Scheduler, the Primavera system is set up to provide a seven-day window from the receipt date of the RFI in order to accelerate the process.

included in the contract with the GC discusses the requirement that the GC “*shall submit its PCO within five days of the date GC discovers or reasonably should discover the circumstances giving rise to the PCO, unless additional time to submit a PCO is granted in writing by the District.*” See **Exhibit FI11-02** for an example of a PCO.

Not all RFIs will result in a PCO as the response to the RFI does not always result in a scope change. However, some PCOs are the result of an RFI as that is the formal process for the GC to obtain clarification from the District and/or AOR regarding the scope of work and/or construction documents. The process for submitting, reviewing, and responding to RFIs and PCOs is tracked through the Primavera system.

- The PCO is then reviewed by the appropriate parties. The CM, DPM and GC meet to review the PCO’s proposed adjustments for labor, material, equipment costs and proposed adjustments to the contract. The DPM reviews a hard copy of the document(s) with the Engineering Officer and if approved, the document(s) is initialed by both District personnel.<sup>451</sup>
- If it is approved by the District, it must be incorporated into a CO within 7 days from the date of the agreement.<sup>452</sup>
- COs shall be processed for approval (by the Board) within 45 days from receipt of a PCO.<sup>452</sup>

The proper and timely processing of RFIs and PCOs are critical to the efficiency of construction management as PCOs may significantly affect the cost of construction and its completion.

VLS selected five schools with an approved budget to determine if PCOs were entered into Primavera within the time period required by the District.<sup>453</sup> It would be difficult to identify PCOs that were not entered in Primavera as they do not exist within the Primavera system; therefore, VLS tested the timeliness of when RFIs are “converted” to PCOs. The District provided VLS a list of RFIs (*Request Status Log*) and PCOs (*Proposed Change Order Log*) from Primavera for the 2013/14 fiscal year through April 2016. Figure 23 and Figure 24 include images of the data included in the *Request Status Log* and *Proposed Change Order Log*, respectively.

<sup>451</sup> See TC (13) Section for testing performed by VLS related to approval of PCOs.

<sup>452</sup> See page 2 of 10 of the Construction Manual dated 3/4/2014 Section 1.11 Change Order Procedures.

<sup>453</sup> The five schools selected were obtained from the last EAW approved by the Board on 11/12/2014.

Figure 23: Image from *Request Status Log*

West Contra Costa Unified School District		BOND MANAGEMENT PROGRAM		1300 Pobero Avenue Richmond, CA 94804 Main: (510) 412-5657 Fax: (510) 412-5661		SGI CONSTRUCTION MANAGEMENT		
Coronado ES* New School				<b>Request Status Log</b>				Date: 4/29/2016
Project No: 1121341-00								Page: 1 of 26
Priority	Number	Dated	Title	Required	BIC	Status	Responded	Elapsed
1	00001	12/30/2013	WF-1 Metering Valve	1/6/2014	CVP	CLO	1/8/2014	6
1	00002	1/9/2014	Project Control	1/16/2014	CVP	CLO	1/13/2014	3
1	00003	1/9/2014	Seismic Attach. @ Suspended Ceiling	1/16/2014	CVP	CLO	1/9/2014	-1
1	00003.1	1/17/2014	Seismic Attach. @ Suspended Ceiling	1/24/2014	JMR	CLO	1/22/2014	4
1	00004	1/10/2014	Bio Swale Invert Elevations	1/17/2014	CVP	CLO	1/13/2014	2
1	00005	1/16/2014	Abandoned Sewer Pipe	1/23/2014	CVP	CLO	1/17/2014	0
1	00005.1	1/24/2014	Abandoned Sewer Pipe	1/31/2014	JMR	CLO	2/10/2014	16

Figure 24: Image from *Proposed Change Order (PCO) Log*

West Contra Costa Unified School District		BOND MANAGEMENT PROGRAM		Coronado ES* New School					
<b>Proposed Change Order (PCO) Log</b>				Date: 5/2/2016					
Project No: 1121341-00				Page: 1 of 6					
PCO Number	To	Title	Issue	Status	Dates		Proposed Cost	Collected Into Change Number	Reason code
					Initiated	Required			
00001	WCCUSD	Existing subsurface sidewalk removal		CLO	3/5/2014	3/12/2014	\$5,100.00	00001	1
00002	WCCUSD	Existing Foundation		CLO	3/12/2014	3/19/2014	\$4,380.00	00001	
00003	WCCUSD	Audio Visual Floor Boxes		CLO	3/12/2014	3/19/2014	\$46,198.00	00001	1
00004	V006162	Over Excavation at Footing		CLO	3/20/2014	3/27/2014	\$851.00	00001	1
00005	WCCUSD	Unforeseen Brick Removal		CLO	4/7/2014	4/14/2014	\$16,581.00	00004	1
00006	V006162	Excavate, Mix and Place Wet Soils		CLO	4/7/2014	4/14/2014	\$3,593.00	00004	1
00007	V006162	Crush 60' of 8" SS Clay Pipe		CLO	4/7/2014	4/14/2014	\$810.00	00004	1
00008	WCCUSD	Revised Floorboxes at Speedline		CLO	4/18/2014	4/25/2014	\$969.00	00002	2
00009	WCCUSD	Block Out Bldg. M Footing For Well		CLO	5/15/2014	5/22/2014	\$922.00	00004	1

Table 61 includes a summary of the RFIs, PCOs, and the ratio of PCOs to RFIs for the selected projects. Out of 3,884 RFIs listed in the *Request Status Log* (column 3), there were 1,218 PCOs created in Primavera according to the *Proposed Change Order Log* (column 4) or an average of 31.4%. The columns included in Table 61 are explained below:

- Column (1) – School: Identifies the school site tested
- Column (2) – Project No.: Standard project number assigned by the District.<sup>454</sup>
- Column (3) – Number of RFIs: Total number of RFIs entered into Primavera per *Request Status Log*.
- Column (4) – Number of PCOs: Total number of PCOs entered into Primavera per *Proposed Change Order Log*.
- Column (5) – Ratio of PCOs to RFIs: Percentage of PCOs over RFIs – Column (4) divided by Column (3).

<sup>454</sup> This is discussed in TC (15) Section on page 101 and included in the TC15-1 recommendation.

**Table 61: Summary of RFIs and PCOs for Selected Schools for 2013/14 through April 2016**

(1) School	(2) Project No.	(3) Number of RFIs	(4) Number of PCOs	(5) Ratio of PCOs to RFIs
Coronado Elementary School	1121341-00	623	191	30.7%
De Anza High School	3521208-02	192	83	43.2%
Portola/Korematsu Middle School	2141103-06	1,246	353	28.3%
Nystrom Elementary School	1441205-02	520	129	24.8%
Sylvester Greenwood Academy/LPS	3581366-05	1,303	462	31.4%
<b>Total</b>		<b>3,884</b>	<b>1,218</b>	<b>31.4%</b>

Additionally, VLS analyzed the same lists of RFIs and PCOs provided by the District to determine the number of days that had lapsed between the RFI required date and PCOs initiated date in Primavera to determine if there appeared to be a lag in PCOs being created.<sup>455</sup> If there is a significant amount of time elapsed between the RFI required date and the PCO initiated date, this may indicate that PCOs are not being entered/created in a timely manner. VLS selected five PCOs from each school site; therefore, 25 PCOs were tested as shown in Table 62 column (7).

The columns included in Table 62 are explained below:

- Column (1) – School: Identifies the name of the school site tested.
- Column (2) – Days Lapsed < 30 Days: Number of days lapsed between the RFI required date and the PCO initiated date was less than 30 days.
- Column (3) – Days Lapsed > 30 Days: Number of days lapsed between the RFI required date and the PCO initiated date was more than 30 days but less than 60.
- Column (4) – Days Lapsed > 60 Days: Number of days lapsed between the RFI required date and the PCO initiated date was more than 60 days but less than 90.
- Column (5) – Days Lapsed > 90 Days: Number of days lapsed between the RFI required date and the PCO initiated date was more than 90 days.
- Column (6) – Not Applicable: Number of PCOs that VLS could not match with the corresponding RFIs.
- Column (7) – Total: Total number of PCOs tested for each site – sum of Columns (2) through (6).

<sup>455</sup> The RFI required date represents the date required for reviewer to respond to the initiator of the RFI. This date is automatically determined by Primavera and set to be 7 days after the RFI was entered into the system. The PCO initiated date represents the date of when the PCO was received from the GC.

**Table 62: Summary of Lapsed Time between RFI Required Date and PCO Initiated Date**

(1) School	(2) Days Lapsed < 30 Days	(3) Days Lapsed > 30 Days	(4) Days Lapsed > 60 Days	(5) Days Lapsed > 90 days	(6) Not Applicable	(7) Total
Coronado Elementary School	1	1	1	0	2	5
De Anza High School	3	0	0	0	2	5
Portola/Korematsu Middle School	1	0	0	3	1	5
Nystrom Elementary School	1	1	0	1	2	5
Sylvester Greenwood Academy/LPS	0	1	0	2	2	5
<b>Totals</b>	<b>6</b>	<b>3</b>	<b>1</b>	<b>6</b>	<b>9</b>	<b>25</b>

Based on Table 62, the results are the following:

- Six PCOs had initiated dates that were within 30 days of the RFI required dates (Column 2);
- Three PCOs had initiated dates between 30 and 60 days of the RFI required dates (Column 3);
- One PCO had an initiated date between 60 and 90 days of the RFI required date (Column 4);
- Six PCOs had initiated dates of more than 90 days of the RFI required dates (Column 5); and lastly,
- Nine PCOs had no corresponding RFIs (Column 6).

See Work Step (C) on page 354 of this report for additional testing performed by VLS pertaining to the completeness of PCOs in Primavera. Additionally, see TC (16) Section that discusses the Change Order Report provided by the District Chief Engineering Officer.

### **Conclusion**

There is often a significant delay between the RFI required date (when the District or AOR responds to an RFI) and the PCO initiated date. For approximately 76% of the PCOs tested, this delay was more than 30 days. It appears that the GC is not complying with Specification Section 0070 under General Conditions included in the contract with the GC, which requires that PCOs be submitted within five days of discovering the circumstances giving rise to the PCO. See FI11-1 recommendation for this area.

Based on the additional testing performed by VLS in Work Step (C), it appears that the PCOs for 30 approved COs have been entered into Primavera. Three approved COs were not recorded in

the PCO log. These three COs were for the lease of portable buildings. Because the lease of portable buildings is not a construction project, these COs were not tracked as a project in Primavera and therefore not part of the PCO log. This is not considered an issue and is discussed further in work step (C) below.

**(C) Determine whether any change orders from the period when Primavera went down are currently not recorded in Primavera**

**Related Allegation**

COA (6) - Information for expected COs was lost when the Primavera server went down. These expected change orders are currently uncoded

**Results of Work Performed**

According to the interviews with the Master Scheduler, the District encountered issues with the Primavera server between the period of 4/23/2014 and 5/13/2014. The dates and descriptions included below provide a timeline of the server issues that were experienced:

- 4/23/2014 – low memory
- 5/1/2014 – attachment failed
- 5/2/2014 – catastrophic system failure
- 5/9/2014 – system down for one week
- 5/10/2014 – Primavera Controls team allowed to take over the system to solve the problem
- 5/13/2014 – Primavera went back online at 8:00 p.m.

The District provided VLS a list of PCOs and COs that the Master Scheduler recaptured when the Primavera server went down (see **Exhibit FI11-04**). Based on the recaptured list of PCOs and COs, testing was performed by VLS to determine if the PCOs and COs were in Primavera (See Table 63). According to the Master Scheduler, the Primavera Controls team<sup>456</sup> rebuilt the production database that was corrupted due to the system failure. The team performed data verification and system testing. Additionally, the team performed a full backup of the repaired database before allowing users to access the Primavera system.

Table 63 includes a summary of the recaptured PCOs and COs. There were 18 PCOs (Column 3) and 11 COs (Column 5) that were recaptured during the period of 4/23/2014 through 5/13/2014. These recaptured PCOs and COs amounted to \$415,697.96 (sum of Column 3 plus Column 5).

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<sup>456</sup> The Primavera Controls team consisted of the Master Scheduler, District IT personnel, and the SGI Programming Engineer.

**Table 63: List of Projects with Recaptured PCOs and COs dated between 4/23/2014 and 5/13/2014**

Ref No.	(1) Project Name	(2) Project No.	(3) Number of PCOs	(4) Total Amount of PCOs	(5) Number Of COs	(6) Total Amount of COs
1	Helms MS Sports Field & Landscaping	2101101-16	2	\$ 1,426.44	0	\$ -
2	Hercules HS Health Center	3761395-00	2	5,344.05	0	-
3	Kennedy HS Science Wing Renovation	3601211-13	1	1,166.00	3	12,854.00
4	Korematsu MS New Building	2141103-06	0	-	2	34,122.64
5	Ohlone ES Phase 1 – New Classroom	1461206-04	3	59,348.00	6	241,147.00
6	Pinole Valley HS Ph1 Detention Basin	3621377-01	1	12,937.83	0	-
7	Pinole Valley HS Ph2A Interim Campus <sup>457</sup>	3621377-02	6	(254.00)	0	-
8	Sylvester Greenwood Academy/LPS	3581366-05	3	47,606.00	0	-
<b>Totals</b>			<b>18</b>	<b>\$ 127,574.32</b>	<b>11</b>	<b>\$ 288,123.64</b>

VLS verified that the PCOs and COs listed in Table 63 were included in the appropriate PCO Logs (indicating that they had been captured in Primavera). VLS verified that the COs included in Column 5 were included in a Board précis for approval. Sixteen PCOs were “converted” into twelve COs which were included in a Board précis dated between 1/29/2014 and 3/4/2015. One PCO was not converted into a CO and one PCO was rejected.<sup>458</sup>

#### **Additional Testing:**

To verify that the recaptured PCOs and COs were complete, VLS selected 33 approved COs from the Board Précis dated May 2014 through July 2014 and verified that the related PCOs were included in the appropriate PCO logs.<sup>459</sup> The results are listed below:

- Thirty approved COs were included in the PCO logs and the dollar amounts matched what was approved by the Board.

<sup>457</sup> The amount in Column 4 of Table 63 is the net amount of the six PCOs in Column 3. Five PCOs are additive (increases) for a total of \$34,536, and one PCO is a deduction (decrease) of \$34,790; therefore, the net difference is a decrease of \$254.00.

<sup>458</sup> PCO 00007 for Pinole Valley HS Ph2A-Interim Campus was rejected, and PCO 00071 for Helms MS Sports Field & Landscaping was not converted into a CO.

<sup>459</sup> The change order summary included in the Board Précis includes the CO number(s) and total CO amount; however, it does not list the related PCO numbers. One CO can consist of multiple PCOs. The PCO log lists the CO number for closed PCOs. VLS identified all PCOs with the CO number obtained from the Board Précis and verified that the total of the individual PCO amounts matched the CO amount approved by the Board. If the amounts matched, it was assumed that all corresponding PCOs were appropriately shown in the PCO log.

- Three COs were adjustments to a contract for a portable buildings lease and were not tracked as a project in Primavera; therefore, a PCO log is not available.

### **Conclusion**

According to the testing performed by VLS, all recaptured PCOs and COs identified by the Master Scheduler were recorded in Primavera. Based on the additional testing performed by VLS, 30 of 33 approved COs were included in the PCO logs and the dollar amount agreed to the amount that was approved by the Board. There were three COs that were approved by the Board for the lease of portable buildings for Pinole Valley HS. Since the lease of portable buildings is not tracked as a project in Primavera because it is not construction project, it is appropriate that a PCO log is not available.

### **(D) Work Step – Determine if multiple purchase orders were created for a single contract and determine the control deficiencies that allowed this to occur.**

### **Related Allegation**

PAM (3) – Munis does not have the ability to control payments to contract amounts – multiple purchase orders were written for a single contract and there is no control to prevent this.

### **Results of Work Performed**

VLS selected a sample of 55 invoices related to bond construction projects that were paid through BiTech during the 2008/09 through 2012/13 fiscal years to determine if multiple purchase orders were created for a single contract.<sup>460</sup> The sampled 55 invoices (Column 3 in Table 64) represent a total of 12 vendors and 14 separate contracts.<sup>461</sup> From the 14 contracts issued, the District created 43 purchase orders (Column 4 in Table 64) in order to make payments for 55 invoices. See FI (5) Section for further discussion of issuance of multiple purchase orders for a single contract.

Table 64 summarizes the results of the testing performed by VLS. The columns included in Table 64 are explained below.

- Column (1) – Vendor Name: Name of the vendor.
- Column (2) – Contract No.: The number assigned to the contract.

<sup>460</sup> BiTech is the District's previous financial accounting system.

<sup>461</sup> Two vendors (Young Office Solutions LLC and ERA Construction Inc.) were listed more than once with different contract numbers.

- Column (3) – Number of Invoices: The number of invoices sampled for the specific contract listed in Column 2.
- Column (4) – Number of Purchase Orders: The number of purchase orders created for the specific contract listed in Column 2.
- Column (5) – Total Amount Paid: The total amount paid for the sampled invoices included in Column 3.
- Column (6) – School: Identifies the school project/site for which the contract was issued.

**Table 64: Sample of Bond Project Contracts and Number of Purchase Orders Issued**

Ref No.	(1) Vendor Name	(2) Contract No.	(3) Number of Invoices	(4) Number of Purchase Orders	(5) Total Amount Paid	(6) School
1	Young Office Solutions LLC	3541110-20	6	6	\$ 480,732.16	El Cerrito HS
2	Young Office Solutions LLC	2121110-08	3	3	197,598.54	Pinole Valley MS
3	Dell Computer Corporation	6151221-17	2	2	56,698.17	Central
4	Young Office Solutions LLC	1321220-03	2	2	32,234.30	King ES
5	AT&T Internet Services	6151221-04	3	3	66,525.00	Central
6	RGA Environmental Inc.	1000000030	7	7	127,042.50	Gompers <sup>462</sup>
7	Mobile Modular Management Corp	2121102-28	9	2	139,536.82	Pinole Valley MS
8	ERA Construction Inc.	1151201-37	4	4	20,145.00	Dover ES
9	Production Technical Services	1000000016	5	4	59,062.00	Various <sup>463</sup>
10	Hamilton and Aitken Architects	1000000062	3	1	23,528.87	Vista Training Center
11	Davillier Sloan	1000000021	4	3	108,242.42	Various <sup>464</sup>
12	Ninyo and Moore Geotechnical	1000000025	2	2	40,000.00	Gompers
13	ERA Construction Inc.	1000000072	2	2	17,550.00	Gompers
14	HMC+Beverly Prior Architects	1000000084	3	2	54,962.50	Gompers
<b>Totals</b>			<b>55</b>	<b>43</b>	<b>\$ 1,423,858.28</b>	

Additionally, VLS selected a sample of 18 invoices related to bond construction projects that were paid through the Munis financial system during the 2013/14 through 2014/15 fiscal years. The 18 invoices represent a total of 13 vendors and 14 contracts.<sup>465</sup> In the Munis financial system, the contract number and purchase order number are the same. Since the District is using the Purchase Order Module in Munis, which generates the purchase order number, the District implemented a process that requires the use of the purchase order number as the

<sup>462</sup> Also known as Sylvester Greenwood Academy/LPS.

<sup>463</sup> Coronado ES, Ohlone ES and De Anza HS.

<sup>464</sup> Nystrom ES, Ohlone ES and De Anza HS.

<sup>465</sup> Two separate contracts were issued for AM Woo Construction.

contract number. In reviewing the invoices selected for testing, the invoices that related to the same contract had only one contract/purchase order number.

### **Conclusion**

According to the analysis performed by VLS, there were multiple purchase orders created by the District for a single contract. It appears that the District often issued a separate purchase order for each invoice received and paid. This process for creating multiple purchase orders for one contract was limited to when the District was on the BiTech financial system. Beginning with the 2013/14 fiscal year, when the Munis system was implemented, the District began assigning the same number for both the contract and purchase order. See FI (5) section for further discussion of issuance of multiple purchase orders for a single contract. See FI11-2 recommendation for this area.

**(E) Work Step – Determine if the KPI and CAMP reports historically provided to the Board were inaccurate.**

### **Related Allegation**

FRP (4) - KPI and CAMP reports prepared were not accurate

### **Results of Work Performed**

Construction Asset Management Program (CAMP) reports were prepared by SGI and used by the District to provide detailed financial and non-financial information related to the bond funded projects. According to the Agreed Upon Procedures report prepared by Vavrinek, Trine, Day & Company, LLP (VTD) as of 6/30/2014, the monthly CAMP reports were no longer provided to the Citizen’s Bond Oversight Committee (CBOC) as of April 2013. The District replaced this report with the Key Performance Indicator (KPI) report beginning with January 2015.

VLS selected six reports from the Citizens’ Bond Oversight Committee (CBOC) website for review:

- CAMP as of 1/28/2009<sup>466</sup>
- CAMP as of 8/24/2011
- CAMP as of 4/17/2013
- KPI as of 1/28/2015 (**Exhibit FI11-05**)
- KPI as of 7/15/2015
- KPI as of 2/29/2016

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<sup>466</sup> Due to the size of the CAMP report, it is not included as an exhibit.

Due to the size of the reports, VLS selected the same five sites from each report for closer examination. The selected sites are Coronado Elementary, De Anza High, Korematsu/Portola Middle, Nystrom Elementary and Sylvester Greenwood Academy/LPS.

#### Testing Mathematical Accuracy of Reports:

VLS identified instances where the subtotal and/or grand total was not equal to the sum of the individual line items listed for the sites (see Table 65). Table 65 includes the CAMP Report dates, page numbers in which the subtotal and/or grand total are not accurate, and the differences between the amounts reported and the VLS recalculated amounts. See **Exhibits FI11-06, FI11-07, and FI11-08** for copies of the individual pages listed in Column 3 of Table 65.<sup>467</sup> The columns included in Table 65 are explained below:

- Column (1) – School: Identifies the name of the school.
- Column (2) – Report and Date: Identifies the name and date of the report.
- Column (3) – Page No.: Identifies the page number in which the mathematical error was found.
- Column (4) – Project Budget Amount per Report: The project budget amount listed on the page in column 3 for the identified school.
- Column (5) – Project Budget Amount per VLS Calculation: The subtotal and grand total of the items listed on the page in column 3 as calculated by VLS.
- Column (6) – Difference: The difference between what VLS calculated as the project budget and the amount shown on the specific page – difference between columns 4 and 5.

**Table 65: List of CAMP Reports and Page Numbers with Errors**

Ref No.	(1) School	(2) Report and Date	(3) Page No.	(4) Project Budget Amount per Report	(5) Project Budget Amount per VLS Calculation	(6) Difference
1	De Anza High	CAMP 1/28/2009	IX	\$ 160,100,000	\$ 153,230,446	\$ 6,869,554
2	Coronado Elementary	CAMP 8/24/2011	83	32,000,000	31,965,587	34,413
3	Leadership and Gompers <sup>468</sup>	CAMP 8/24/2011	96	50,024,128	49,968,025	56,103
4	Coronado Elementary	CAMP 4/17/2013	83	32,000,000	31,965,587	34,413
5	Nystrom Elementary	CAMP 4/17/2013	I, 63	32,481,474	32,489,214	(7,740)

Each difference identified in Table 65 is discussed further in the bullets included below:

- De Anza High (#1): The total project budget reported for De Anza High on page IX of the CAMP Report dated 1/28/2009 is \$160,100,000; however, the sum of the individual line

<sup>467</sup> The notations made in red in the exhibits were added by VLS.

<sup>468</sup> Also known as Sylvester Greenwood Academy/LPS.

items included for the project equals \$153,230,446 (Exhibit FI11-06). The difference of \$6,869,554 was identified in the Design Phase Services category, and this difference carries through to the project budget total at the bottom of the page.<sup>469,470</sup> The subtotal listed on page IX for the Design Phase Services is \$26,343,150; however, the sum of the individual line items listed in this category is \$19,473,595; therefore, the difference is \$6,869,554.

- Additionally, VLS reviewed page 70 of the same CAMP Report for De Anza High. Page 70 listed expanded financial information, which includes the budgeted amount, approved commitments, pending commitments, approved COs, invoiced amount, and budget balance for each category of expenditures.<sup>470</sup> The subtotal reported on page 70 for the Design Phase Services is \$26,343,150, which is the sum of 11 individual line items. VLS compared the 11 individual line items reported under the Design Phase Services category listed on pages IX and 70 of the CAMP Report. Ten of the eleven line items have the same descriptions and budget amounts listed on both pages. One of the eleven line items on page IX has a description of “Bond Program Manager” with a reported amount of \$0; however, the “Construction Manager” description is listed on page 70 with a reported amount of \$6,869,555. Therefore, pages IX and 70 show different line item descriptions that resulted in the difference of \$6,869,555.
- Coronado Elementary (#2 and #4): Page 83 of the CAMP Report dated 8/24/2011 includes expanded information for Coronado Elementary (**Exhibit FI11-07**).<sup>471</sup> The difference of \$34,413 can be found in the total line for the “Budgeted” column. The reported subtotals for all categories are mathematically correct as verified by VLS. The sum of the subtotals is \$31,965,587; however, the total reported on page 83 is \$32,000,000; therefore, the net difference is \$34,413. This incorrect total for Coronado Elementary is also reported in the CAMP Report dated 4/17/2013 (**Exhibit FI11-08**).
- Leadership and Gompers (#3): Page 96 of the CAMP Report dated 8/24/2011 includes expanded information for Leadership Public Schools (**Exhibit FI11-07**).<sup>472</sup> The difference of \$56,103 can be found in the total line for the “Budgeted” column. The reported

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<sup>469</sup> Page IX of the CAMP Report dated 1/28/2009 listed a summary of secondary schools funded by Measure J which included De Anza HS. The Design Phase Services category listed 11 individual line items such as Bond Program Manager, Master Architect, Design Manager, etc. in which the Bond Program Manager line item is listed twice within the same category.

<sup>470</sup> The categories are Pre-Design Services, Design Phase Services, Construction Phase Services and Modernization/New Construction.

<sup>471</sup> The expanded financial information includes the budgeted amounts, approved commitments, pending commitments, approved COs, invoiced amounts and budget balance of individual line items for each category.

<sup>472</sup> Also known as Sylvester Greenwood Academy/LPS.

subtotals for all categories are mathematically correct as verified by VLS. The sum of the subtotals is \$49,968,025; however, the total reported on page 96 is \$50,024,128; therefore, the net difference is \$56,103.

- Nystrom Elementary (#5): Page I of the CAMP Report dated 4/17/2013 includes the Program Budget for each site and project, and page 63 includes expanded information for Nystrom Elementary. The program budget for Nystrom on page I is listed as \$32,481,474. The subtotals for all categories reported on page 63 are mathematically correct and the total reported, as verified by VLS, is \$32,489,214. There is a difference of \$7,740 between the amounts reported on pages I and 63. (**Exhibit FI11-08**)

#### **Testing Roll-Forward Balance of Project Budgets:**

VLS compared the project budget amounts for the selected reports and sites identified above with the previous report's project budget amounts to ensure that the correct amounts were brought forward to the subsequent monthly report. VLS found no exceptions on the three selected CAMP reports.

The transition from the CAMP report to the KPI report presented complexity in understanding the source of the amounts reported in the KPI report for the selected project budgets. Compared to the CAMP report, the information presented in the KPI report is at a much higher level and consolidates the various projects at each school site. The first KPI report, dated 1/28/2015, was only three pages long; contrary to the previous CAMP report dated 4/17/2013, which was 116 pages. The KPI Report was significantly different from the CAMP Report in terms of format. Below is a brief description of the differences between the two reports:

- The KPI report dated 1/28/2015 listed the school name, project types, number of sub-projects at school location, forecast and actual start dates (of construction), forecast and actual finish dates (of construction), current budget, revised commitment, and spent to date as shown in **Exhibit FI11-05**. The amounts are listed as totals for each school for current budget, revised commitment and spent to date.<sup>473</sup>
- The CAMP Report dated 4/17/2013 included a cost breakdown summary by bond measure, detailed information for each site by bond measure (such as budget and expenditures for each category), separate pages listing the budgets for Furniture and Equipment (F&E) and Network Technology, etc. as shown on the Table of Contents of **Exhibit FI11-09**.

VLS prepared a summary for the selected site project budgets based on the amounts reported in the last CAMP report dated 4/17/2013 for comparison to the project budgets reported in the

<sup>473</sup> See TC (16) Section, which discusses the School KPI Cost Report presented to the Citizens Oversight Bond Committee (CBOC).

first KPI report (subsequent report). See Exhibit **FI11-10** for the summary which includes the name of the selected sites, the construction project budgets for each site, budgets for Quick Start, Tech E-Rate, Additional Projects, Ph2A-3, F&E and Technology & Security and the approved adjustments from the EAWs dated 4/10/2013 and thereafter. The results of this summary are listed in Table 66.

**Table 66: Comparison of Project Budgets from 4/17/2013 CAMP to 1/28/2015 KPI**

Ref No.	School	Exhibit FI11-10 Prepared by VLS	KPI dated 1/28/2015	Difference
1	Coronado Elementary	\$ 42,778,309	\$ 42,778,309	\$ -
2	De Anza High	131,824,320	132,124,320	300,000
3	Korematsu/Portola Middle	70,781,527	70,781,527	-
4	Nystrom Elementary	49,486,844	49,486,844	-
5	Gompers/Leadership	78,831,895	78,831,895	-

De Anza High School had a \$300,000 budget reduction included in the 4/17/2013 CAMP report that resulted in the difference shown in Table 66. This reduction can be found on page I of the CAMP report under the adjustment column for De Anza High School (see **Exhibit FI11-08**). It appears that the \$300,000 reduction was not taken into consideration when the budget was brought forward to the KPI Report dated 1/28/2015. Furthermore, during the review of the Expenditure Authorization Worksheets (EAWs) discussed in the FI (2) Section, the reduction of \$300,000 for De Anza High was not included in the EAW dated 7/24/2013 and thereafter.

### **Conclusion**

The results of VLS testing show that there was evidence supporting the claim that the KPI and CAMP reports were not accurate. Several pages in the CAMP reports dated 1/28/2009, 8/24/2011, and 4/17/2013 include budget subtotals and totals for De Anza High, Coronado Elementary, Leadership and Gompers, and Nystrom Elementary that do not equal to the sum of the line items. The total budget for Nystrom Elementary included on two different pages of the report listed different amounts. Additionally, the budget reduction of \$300,000 for De Anza High School listed in the 4/17/2013 CAMP report was not taken into consideration when the budget was brought forward to the KPI Report dated 1/28/2015. The CAMP and KPI reports lack explanations necessary for the Board and public to completely understand the changes to the reports. The lack of clarification provides incomplete reports; thereby, inhibiting transparency and impeding public trust. Refer to section TC (16) for the current test of controls for this area.

### **Recommendations**

FI11-1. Enforce the guidelines included in “specification section 0070” of the General Conditions section of general contractor agreements, which requires that general contractors submit Proposed Change Orders within five days of the knowledge of the circumstances resulting in the Proposed Change Order. This will ensure that the District is made aware

of contractor requests in a timely manner and will result in more accurate reporting of potential project costs.

FI11-2. VLS acknowledges that the system the District was using when multiple purchase orders were issued for a single contract was BiTech, the District's former financial software, which is different from the current financial system. The District is currently using the purchase requisition/order and contract module in Munis. VLS recommends that the District continue the use of the **current** numbering system in the Munis financial software for the bond related contracts to prevent the occurrence of issuing multiple purchase orders for a single bond related contract.

See the TC (13) Section for recommendations related to documentation to be maintained as support and inclusion in the CO packet. See the TC (16) Section for recommendations related to bond report preparation, distribution, and presentation.

#### **Response by the District**

FI11-1. The District agrees with the recommendation and will continue to enforce the contract terms

FI11-2. The District agrees with the recommendation and will continue to use the current numbering system in the Munis financial software.

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

VLS reviewed the District's response and agrees that the response and planned action are appropriate to address the recommendation(s) made by VLS.

**(C) Recommendations for the District to Consider Implementing Based on the Results of FI Testing**

**What FI Recommendations Are and What They Mean**

VLS has made specific recommendations based on the results of work performed and conclusions reached for the eleven FIs. These recommendations are for the District to consider implementing as they are designed for the purpose of:

- Improving the overall efficiencies and effectiveness in the management and operation of the District Bond Program, and
- Lowering the New Risk Score, where applicable.<sup>474</sup>

Additionally, as a result of the work performed, conclusions were reached for certain FI sections [FI (1), FI (3) and FI (10)]. VLS has made a recommendation for the Board to consider referring this report to law enforcement authorities for appropriate action. VLS also recommends that the Board consider consulting with legal counsel for further course of action.

FI recommendations are noted at the end of each FI section. In addition, VLS has listed these recommendations in Table 67 beginning on page 365.

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<sup>474</sup> The following three FI recommendations were included in the “Recommendation” column in the final Risk Assessment Matrix Phase II: FI6-1, FI6-2, and FI6-3.

**Table 67: FI Recommendations**

Number	Recommendation
FI1-1	<p>Draft a “District Business Ethics Expectations” policy which articulates business ethics requirements for vendors, contractors and others doing business with the District Bond Program. Require all vendors, contractors, and subcontractors who will be doing business with the District Bond Program to implement a program requiring their employees sign acknowledgements that they have read and understand the “District’s Business Ethics Expectations” policy and the related obligations. This policy can be incorporated within the existing Board policy 9270.</p> <ol style="list-style-type: none"> <li>a. Include language in this “District’s Business Ethics Expectations” policy which requires vendors, contractors and subcontractors, who will be doing business with the District Bond Program, to disclose in writing to the District when they make any contribution or donation to any organizations or nonprofit charitable organizations in any way related or connected to the District or District Board member and any contributions to campaigns for District Board members and Bond campaigns.</li> <li>b. This “District’s Business Ethics Expectations” policy should also address: <ol style="list-style-type: none"> <li>i. District expectations that vendors, contractors, and subcontractors, while performing contract work, maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the District’s best interests.</li> <li>ii. Vendors, contractors, and subcontractors shall permit interviews of employees, reviews and audits of accounting or other records by District representatives to evaluate compliance with the spirit of these business ethics expectations.</li> </ol> </li> <li>c. Require Board members and District staff to fully disclose to the Board in writing any solicitation of contributions from vendors, contractors, subcontractors doing business with the District organizations related to campaigns and other organizations with some connection to the District and/or the District Bond Program. Encouragement of full disclosure will discourage the potential for any improper influences and encourage the consideration of possible recusal by a Board member.</li> </ol>
FI1-2	<p>Review any agreement(s), or policies with the ILC to ensure they are current, relevant and in compliance with all appropriate legal, administrative, and best business and ethical practices. Establish clear criteria with the ILC concerning eligibility of scholarships by children and family members of Board members or District Executives (including whether children of the same should be allowed to be recipients) and full disclosure to the public of these family recipients of ILC scholarships.</p>
FI1-3	<p>In coordination with the ILC, review and evaluate marketing materials and information brochures about the ILC to ensure these materials fully disclose information about the donors and their vendor relationship with the District Bond Program.</p>

Number	Recommendation
FI1-4	As previously stated, the professional standards promulgated by the American Institute of Certified Public Accountants (AICPA) and the Association of Certified Fraud Examiners (ACFE) prohibit VLS from rendering an opinion as to whether there has been any fraud, criminal activity, corruption or bribery by anyone associated with this engagement. Therefore, VLS renders no opinion as to whether there has been any fraud, criminal activity, corruption, or bribery by anyone associated with this engagement. However, VLS recommends that legal counsel provide guidance and counsel to the Subcommittee for the Clay Investigation and the Board to determine whether this report should be referred to appropriate law enforcement agencies for appropriate action.
FI1-5	The District should consult with legal counsel to determine whether further course of action is appropriate. Specifically, the failure of SGI to provide requested documents and allow interviews of SGI personnel, which resulted in a scope limitation of the work VLS was able to perform. Therefore, SGI may have been in breach of the Right to Audit Clause of the contract between the District and SGI by failing to provide VLS access to requested documents after reasonable notice was provided.
FI2-1	Ensure that the written budgeting procedures (recommended in TC6-7) include specific guidelines and instructions related to bond project budgets. The written procedures should: <ul style="list-style-type: none"> <li>• Identify all steps in the tracking/updating process for bond project budgets. Include a list of all required documents (such as Board précis, purchase order, narrative, etc.) as supporting documentation to provide an audit trail.</li> <li>• Identify all steps and the required documents in analyzing the bond project budgets to determine that the project budgets are sufficient to cover expenditures. Maintain a worksheet and attach appropriate reports to document that the analysis has been performed. Incorporate TC6-8 recommendation when a bond project budget is deemed insufficient.</li> <li>• Identify who is responsible for tracking/updating, analyzing, reviewing, reporting and approving the bond project budgets and the timing for when these processes will be performed.</li> </ul>
FI2-2	Ensure that the written budgeting procedures (recommended in TC6-1) include specific guidelines and instructions related to budget data entry in Munis. Written procedures should: <ul style="list-style-type: none"> <li>• Identify the timeline of budget entries for each accounting period.</li> <li>• Require a reconciliation process be performed at the beginning of each fiscal year (July 1) to verify that the adopted budget per the SACS report matches with the budget entered into Munis. This practice will ensure that the budget in Munis reflects the Board approved budget. The District’s adopted budget is the starting point in preparing the First and Second Interim Reports.</li> </ul>
FI2-3	Work with Tyler Technologies, the company that licenses the Munis software, to modify the budgeting function in Munis so that backdating of data entry is limited only to the prior accounting period.

Number	Recommendation
FI2-4	Ensure that the written procedures (recommended in TC5-2 and TC6-2) related to the development of detailed, multi-year, line-item budgets for the approved bond projects (e.g. 21 priority schools) and the budget verification in Munis are implemented to prevent deficit spending.
FI3-1	Establish a procedure that requires that additional information be provided to the Board whenever a subcommittee (such as the Facilities Subcommittee) makes a recommendation to the entire Board that is contrary to the District staff recommended to that subcommittee. The information presented to the full Board should clearly identify the staff's recommendation, the basis for that recommendation, and the reason(s) that the recommendation was rejected. For example, the same presentation packet that is provided to the Subcommittee by the staff in making the recommendation should be provided to the full Board in the agenda package.
FI3-2	District contracts with vendors that use services of subcontractors should specify that the District vendor is required to pay its subcontractors within a certain number of days and include that these payments are subject to audit by the District or assigned representative.
FI3-3	When vendors are paid based on actual hours incurred, require that the vendors submit employee time cards along with the billing invoices. This should require that time cards include the date that work was performed, hours worked, location where work was performed, and a description of the work. This will provide the District with sufficient information to perform a detailed review of the invoices. Ensure that there is a District staff person assigned the responsibility for verifying that all supporting documentation is provided with invoices. Payment should be rejected if invoices do not have sufficient support. These requirements should be included in the vendor contracts.
FI3-4	<p>Revise the current right to audit clause included in vendor contracts to include the following:</p> <ul style="list-style-type: none"> <li>• At no additional cost to the District, vendor will provide the District, or its authorized representative(s), reasonable access to the vendor's facilities in order to conduct an audit</li> <li>• At no additional cost to the District, vendor will provide the District, or its authorized representative, payroll files, copies of checks paid to subcontractors and any other type of documentation necessary in order to conduct an audit</li> <li>• At no additional cost to the District, vendor will provide the District the right to interview all current or former employees to discuss matters pertinent to the performance of the contract</li> <li>• At no additional cost to the District, vendor will provide the District adequate and appropriate work space, in order to conduct the audit as specified in the audit clause</li> <li>• Vendor to agree that if an audit inspection or examination in accordance with the audit clause discovers overpricing or overcharging to the District by the vendor in excess of \$100,000 or any other reasonable amount, in addition to making the appropriate adjustment for the overcharges, the reasonable actual cost to the District for this audit shall be reimbursed by the vendor.</li> </ul>
FI3-5	An appropriate approval process should be established for vendors who are allowed to make purchases of equipment items for which the District would normally keep equipment inventory. A District employee should be responsible for authorizing these purchases. Additionally, the District should tag these pieces of equipment and keep an inventory.

Number	Recommendation
FI3-6	As previously stated, the professional standards promulgated by the American Institute of Certified Public Accountants (AICPA) and the Association of Certified Fraud Examiners (ACFE) prohibit VLS from rendering an opinion as to whether there has been any fraud, criminal activity, corruption or bribery by anyone associated with this engagement. Therefore, VLS renders no opinion as to whether there has been any fraud, criminal activity, corruption, or bribery by anyone associated with this engagement. However, VLS recommends that legal counsel provide guidance and counsel to the Subcommittee for the Clay Investigation and the Board to determine whether this report should be referred to the appropriate law enforcement agencies for appropriate action.
FI3-7	The District should consult with legal counsel to determine whether further course of action is appropriate for work steps (C). Specifically, for work step C (Billings for Sick And Vacation Time) it appears that the District paid SGI \$106,150 for sick, vacation, and any other type of paid time off that was expressly not authorized under the contract. District may want to consider appropriate course of action including expanding scope for further testing and appropriate action to recoup any monies paid out to SGI and not authorized under the contract with SGI.
FI3-8	The District should consult with legal counsel to determine whether further course of action is appropriate for work steps (C), (E), and (F). Specifically, the failure of SGI to provide requested documents and allow interviews of SGI personnel, which resulted in a scope limitation of the work VLS was able to perform for these work steps. Therefore, SGI may have been in breach of the Right to Audit Clause of the contract between the District and SGI by failing to provide VLS access to requested documents after reasonable notice was provided.
FI4-1	Ensure that a comprehensive analysis is performed, which includes a review by legal counsel prior to entering into contract negotiations to ensure that the terms of the contract are competitive and reflective of industry standards, includes the necessary contract language, and is in the best interest of the District. Additionally, any RFP process should include a review of costs, rates, and qualifications. Additionally, the District should perform a cost analysis prior to allowing vendors to add certain office support staff to evaluate if these positions can be filled directly by the District at a lower cost.
FI4-2	Ensure that all contracts contain a clause specifying the duration of the contract, which includes a specific start and end date as well as a not-to-exceed contract amount. Under no circumstance should the District enter into a contract that does not clearly state an end date and a contract amount. If a contract includes hourly labor rates, ensure that these rates are clearly specified in the contract and never stated simply as a total amount over a period of time. In addition, prior to paying an invoice, review the invoice to ensure that the hourly billing rates included in the invoice are reflective of the terms stated in the contract, which may include escalation rates.
FI6-1	The District and CBOC should evaluate the value (frequency and type) of proposed monthly reporting against the ongoing cost of development and maintenance of the reports as this is not required under the Education Code enumerated duties of a CBOC and runs counter to the existing statement of Board policy.

Number	Recommendation
FI6-2	The District should consider merging the two statements currently in board policy on use of District resources in support of CBOC into one clear statement. The District should also consider removing the statement “without limit” from the policy to eliminate ambiguity about which District resources are committed to support the CBOC. Having a “without limit” statement in this policy can result in less than optimum use of District resources.
FI6-3	As required by Education Code Section 15280 (a) (1), Bond Program resources should not be used to support the CBOC. The CBOC in conjunction with the District should establish a visible separate budget under a District official and charge District time and cost incurred by District staff to support the CBOC in order to provide a transparent and accountable picture to the CBOC members, the District Board, and the public.
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: <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>c. When titles are included in certain contract provisions, ensure that the person(s) holding those titles are identified.</li> </ul>
FI7-6	Implement a competitive process for obtaining proposals related to master planning services to ensure that the District is obtaining reasonable fees.

Number	Recommendation
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.
FI10-1	The District should consult with legal counsel to determine whether further investigation is appropriate regarding the claims that change orders on the Gompers/Greenwood project were related to contractor/subcontractor mistakes and coordination problems or were inappropriate.
FI10-2	The District should consult with legal counsel to determine whether further investigation is appropriate regarding the claims that the District entertained change orders to assist the General Contractor with cash flow and the costs related to failed subcontractors.
FI11-1	Enforce the guidelines included in “specification section 0070” of the General Conditions section of general contractor agreements, which requires that general contractors submit Proposed Change Orders within five days of the knowledge of the circumstances resulting in the Proposed Change Order. This will ensure that the District is made aware of contractor requests in a timely manner and will result in more accurate reporting of potential project costs.
FI11-2	VLS acknowledges that the system the District was using when multiple purchase orders were issued for a single contract was BiTech, the District’s former financial software, which is different from the current financial system. The District is currently using the purchase requisition/order and contract module in Munis. VLS recommends that the District continue the use of the current numbering system in the Munis financial software for the bond related contracts to prevent the occurrence of issuing multiple purchase orders for a single bond related contract.

## V. Work Performed by VLS

### Interviews

During the weeks beginning 3/7/2016 and 3/14/2016, the VLS team conducted interviews of District staff, SGI staff, and other relevant individuals related to the TC areas. The purpose of these interviews was to understand, in detail, and document the processes and internal controls surrounding the TC areas. After the interviews were completed, the VLS team documented the detailed processes related to each TC area, identified significant internal controls, and selected a sample of transactions for testing the key controls.

In total, 46 different interviews were conducted with 23 different individuals. Table 68 lists the categories of individuals that were interviewed for the TC related areas.

**Table 68: Individuals Interviewed Related to TC Areas**

Category	Number of Individuals
District Employee	11
CBOC Member	4
District Vendor	3
SGI Employee	2
Board Member	2
District Contractor	1
Total	23

During the weeks beginning 5/23/2016, 6/27/2016, and 7/4/2016 the VLS team conducted the interviews of District vendors, employees, and Board members related to the FI areas. VLS conducted certain interviews with District vendors and a subcontractor by phone. The purpose of these interviews was to gain an understanding of specific FI related issues. In total 16 interviews were conducted for the FI area as listed in Table 69.

**Table 69: Individuals Interviewed Related to FI Areas**

Category	Number
District Vendor	10
District Employee	4
Subcontractor to District Vendor	1
Board Member	1
Total	16

In addition to the interviews conducted, follow-up phone calls and emails were made, as necessary, with certain District employees and vendors during the testing period for both TC and FI areas.

## Documents

### Documents Obtained from the District

VLS accessed multiple District documents from the District website including the following:

- Bond Program audit reports
- Board policies
- District Board meeting agendas, packets, and minutes
- Facilities Sub-Committee meeting agendas, minutes, and presentations
- Citizens' Bond Oversight Committee meeting minutes and agenda packets
- Facilities Master Plan documents
- Construction Project Status Reports

In addition to documents obtained from the District website, VLS requested and received from the District multiple documents relevant to both the TC and the FI areas, as discussed within each TC and FI section. A "secure portal" protocol was utilized to ensure that all documents, records, and information received during the course of this project were transferred securely and were appropriately maintained in accordance with any legal, investigative, and/or consulting standards for this project.

Many of the documents requested were specific historical documents related to certain allegations. These documents included items such as vendor contracts, vendor contract amendments, change order listings and documents, add-service listings and documents, and Requests For Proposals for certain projects, to name a few. In addition to these types of documents, VLS also requested the following Bond Program financial information:

- General ledger listing expenditures for the period starting with the 2000/01 fiscal year through the 2014/15 fiscal year; and for the 2015/16 fiscal year from 7/1/2015 through 2/29/2016
- Disbursement ledger listing disbursements for the period of 2008/09 through the 2014/15 fiscal year; and for the 2015/16 fiscal year from 7/1/2015 through 2/29/2016
- Vendor disbursement support for transactions selected for the TC and FI sections as detailed in the TC and FI sections

### Documents Obtained from Third Parties

For several of the FI areas VLS obtained documents from third parties as follows:

- Records of amounts contributed by District vendors to Ivy League Connection (ILC) were obtained from the ILC's fiscal Sponsor, the West Contra Costa Public Education Fund (Ed Fund).
- Records of amounts contributed by District vendors to the Ed Fund were obtained from the Ed Fund.
- Records of amounts contributed by District vendors to For the Children of West County and to individual campaigns of District Board members were obtained from the Contra Costa County "CampaignDocs Web Public Access."
- Records of gifts provided by District vendors to District employees or District Board members and reported in Form 700 (Statement of Economic Interest) by the recipient were obtained from the West Contra Costa County Clerk.
- District vendors' records for amounts contributed by District Vendors to ILC, Ed Fund, For the Children of West County, and other individual campaigns were obtained from some District vendors.
- Other appropriate financial records and documents from vendors, such as project cost reports, invoices, and lists of vendor staff assigned to the District's Bond Program projects.

### **Computer Forensics**

The investigative plan approved by the District Board included computer forensic procedures that allowed VLS to obtain electronic information (emails, electronically created files, etc.). On 3/23/2016, VLS's computer forensics expert traveled to the District's Information Technology Center (ITC) and obtained the server emails and "home folders" for certain current and former SGI employees and subcontractors. During a separate visit on 4/26/2016, VLS's computer forensics expert obtained server emails and "home folders" for certain District current and former employees and a Board member. VLS's computer forensics expert used AccessData Forensic Toolkit to index the electronic information obtained. The indexing allowed for keyword searching and other analysis to take place. The results of the keyword searches were reviewed by VLS to identify information and evidence relevant to this investigation.

### **Fraud Hot Line**

VLS provided to legal counsel of the Subcommittee for the Clay Investigation a fraud hotline phone number and website link for the District to publish so that individuals with relevant information or knowledge regarding fraud, waste, or abuse within the District's bond program

had a means to contact VLS directly. VLS also provided recommended language for the District to include with any publications of the hotline phone number and website link. Legal counsel then provided this information to the District. This hotline phone number was posted on the website for the Subcommittee for the Clay Investigation. VLS received, cataloged, and analyzed all information received through the website link and through the fraud hotline phone number.

### **Status Reports**

VLS provided status reports to legal counsel of the Subcommittee for the Clay Investigation regarding Phase II progress. The status reports included the following information:

- Phase II Activities Completed or In Process: This section conveyed information related to meetings held, interviews conducted for TC and FI areas, computer forensics updates, and status of document requests made to either the District or third parties, such as District Vendors.
- Phase II Next Steps: This section included information related to the following month's work plan.
- Project Obstacles: This section included information related to any obstacles presented to VLS in obtaining documents requested from the District, District vendors, or other third parties. This section also included information related to difficulties in securing interviews with District vendors.
- Summary of Hours and Costs Incurred: This section reported the budgeted hours and costs by area (TC and FI) compared to the actual hours and costs incurred by VLS for the period covered by the status report.

The dates of these status reports were the following:

- 3/14/2016 for the period covering February 9 through March 11
- 4/14/2016 for the period covering March 12 through April 10
- 5/13/2016 for the period covering April 11 through May 10
- 6/15/2016 for the period covering May 11 through June 10

After 6/15/2016, status updates were provided to legal counsel via phone conference calls. This medium was used to communicate status updates as, after the month of June, the majority of the fieldwork and interviews had been completed, and VLS focused on concluding the test of controls assessments and forensic accounting investigation testing.

During the course of VLS's work in Phase II, VLS communicated directly with legal counsel as appropriate.

**Dates of Meetings with the Subcommittee for the Clay Investigation**

During the course of Phase II, VLS attended a meeting with the Subcommittee for the Clay Investigation on 5/23/2016.

**Hours & Costs Incurred for Phase II**

As articulated in the engagement letter, the total cost of this engagement is \$725,224. VLS did not request any increases to this original contract amount.

## VI. Scope limitations and Impact on Work Performed

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

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

### Scope Limitations and Impact on Work Performed

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

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

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

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

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

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

VLS made the above-mentioned requests from SGI on 5/13/2016. SGI communicated through its legal counsel, Robert Nida, on 5/19/2016 that SGI would not continue to provide VLS with additional documentation unless the District agreed to compensate SGI for the time incurred to provide VLS with this information. Furthermore, legal counsel for SGI stated that SGI employee payroll registers, copies of resumes, and copies of degrees<sup>477</sup> would not be provided. He also stated that the audit provision of the contract did not provide the right for clarification or questions to be asked of SGI.

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

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

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

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

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

- SGI invoices provided by the District as support for payments made to SGI
- Independently obtained invoices from SGI subcontractors<sup>478</sup>
- SGI’s disbursement ledger, which was obtained from SGI prior to communication from SGI’s legal counsel

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

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

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

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

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

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

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

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

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

## VII. Closing Paragraph

In addition to assigning New Risk Scores to the Risk Matrix, making 78 specific recommendations to lower Medium and High risk scores, and making 33 recommendations resulting from the work of the FI testing, VLS also makes the following four recommendations for the District to consider that will benefit the overall operational and administrative efficiencies of the Bond Program:

- 1) The District should ensure that an effective FRAUD REPORTING MECHANISM is in place for reporting known or potential wrongdoing impacting the District Bond Program. Some key considerations in implementing should include:
  - There is an anonymous reporting channel available such as a third-party hotline.
  - The hotline should be available to not only District employees, but also any organization doing business with the District and the general public.
  - The hotline is advertised and communicated effectively.
  - Employees trust that they can report suspicious activity anonymously and/or confidentially and without fear of reprisal.
  - That reports of suspicious activity will be promptly and thoroughly evaluated.
  
- 2) The District should ensure ongoing FRAUD and ETHICS TRAINING is provided to all employees of the District, especially those associated with the Bond Program. Some key items to be addressed in the training should include:
  - Do employees understand what constitutes fraud?
  - Have the costs of fraud to the District and everyone in it — including lost resources, adverse publicity, job loss, and decreased morale and productivity — been made clear to employees?
  - Do employees know where to seek advice when faced with uncertain ethical decisions, and do they believe that they can speak freely?
  - Do employees know that a policy of zero-tolerance for fraud has been communicated to employees through words and actions?
  - Do employees, including senior management, have training ensuring the overall cultural atmosphere in the operations and management of the Bond Program is one of high ethics and integrity, also known as a positive “Tone at the Top”?
  
- 3) The District should evaluate the adequacy of resources assigned to the INTERNAL AUDIT DEPARTMENT for review of the Bond Program. Any Internal Audit Department should have adequate resources and authority to operate effectively and without undue influence from senior management. The Internal Audit Department should be responsible for conducting fraud risk assessments and can be instrumental in addressing and ensuring implementation of the many recommendations in this Report and be included as a member of the “Recommendations Implementation Task Force.”

- 4) VLS strongly encourages the establishment of a **“Recommendations Implementation Task Force”** so accountability measures are put in place by the District to ensure all recommendations from the work performed in Phase II are implemented. A Chairperson to “shepherd” the task force should be designated and key person(s) in areas impacted should be appointed as members of the task force. VLS has included in the Exhibits section, a detailed “List of all Recommendations” with reference to the applicable TC and FI work steps, which can be utilized as a starting point to establish an action plan for this task force. The task force concept has proven to be a best practice and a valuable and critical tool to ensure all recommendations from Phase II are adequately assessed and implemented.

To aid the District in moving forward, VLS has prepared a “Master List of Recommendations by Risk Area” located in the Exhibits Section (**Exhibit VII-1**). This master list includes the recommendations from all testing (TCs and FIs) as well as these four additional recommendations. The “Recommendations Implementation Task Force” as a means to track progress and ensure accountability in implementing the recommendations can utilize this master list.

VLS would like to thank the District staff for their assistance, patience, and cooperation during this lengthy test of controls and investigation process. Likewise, VLS would like to thank the Board, CBOC, and community members who agreed to be interviewed by VLS as well as the District vendors who provided VLS with requested documentation and agreed to be interviewed. Finally, VLS sincerely appreciates the opportunity to be of service to assist the Subcommittee for the Clay Investigation during both Phase I and Phase II of this engagement.

## VIII. Exhibits and Acronyms

### List of Exhibits

Exhibit Number	Description
II-B	Final Risk Assessment Matrix Phase II
FI1-01	Fiscal Sponsor Agreement between ILC and the Ed Fund
FI1-02	News Article: Charles Ramsey Was the Fundraising Chair for "For the Children of West County"
FI1-03	Email correspondence: Contributions Can be Mailed to Ivy League Connection Attn: Charles T. Ramsey
FI1-04	Letter from Mr. Ramsey on behalf of For the Children of West County to a vendor. Letters solicits a contribution to For the Children of West County in the amount of \$20,000
FI2-01	Expenditure Authorization Worksheet 6/1/2011
FI2-02	Expenditure Authorization Worksheet 10/4/2011
FI2-03	Expenditure Authorization Worksheet 2/6/2013
FI2-04	Expenditure Authorization Worksheet 3/20/2013
FI2-05	Expenditure Authorization Worksheet 4/10/2013
FI2-06	Expenditure Authorization Worksheet 7/24/2013
FI2-07	Expenditure Authorization Worksheet 11/20/2013
FI2-08	Expenditure Authorization Worksheet 4/23/2014
FI2-09	Expenditure Authorization Worksheet 8/13/2014
FI2-10	Expenditure Authorization Worksheet 11/12/2014
FI2-11	Project Budgets - Sylvester Greenwood/LPS and Coronado Elementary School
FI2-12	Network Technology and Security Projects per CAMP Report, page 97
FI2-13	Furniture & Equipment, Network Telecom Technology Projects per CAMP Report, pages 52, 72, 73 and 98
FI3-01	CM/PM Proposal Evaluations
FI3-02	Summary of Process for Selection
FI3-03	FSC Transcription -Board Minutes 4/9/2013
FI3-04	Board Meeting FSC Recommendation for SGI's 2013 Contract 5/1/2013
FI3-05	Relevant Pages of Board Packet Related to SGI 2013 Contract clause 9/11/2013
FI3-06	SGI Sub-Consultant Payment Terms (identified within warrant support)
FI3-07	Email Regarding SGI's Delays in Paying MBCM
FI3-08	Email from Bill Fay to Martin Coyne Regarding Sick and Vacation Time for SGI Employees.
FI3-09	Sick and Vacation - Relevant Pages of Performance Audit Report for Fiscal year 6/30/2013
FI3-10	Support included for Reimbursement to SGI Related to Sick and Vacation Time
FI3-11	Email Regarding Refund to SGI for Sick and Vacation Time
FI3-12	News Article: Lance Jackson - Oakland Unified School District -Post News Group
FI3-13	Sample for: Billings for Lance Jackson
FI3-14	Sample for: Billings for Gregory Smith
FI3-15	RFP Number 07-31-12-01
FI3-16	Selection Committee Evaluation Form 2013
FI3-17	Sample Project Engineers Experience - SGI
FI3-18	Sample for: Only summary of Work Hours Provided with SGI Invoices
FI3-19	Sample for: Time Entry Detail Did Not List the Work Performed
FI3-20	Sample for: No Summary Indicating Hourly Rate
FI3-21	Sample for: Time Entry Detail Support Provided for Only One of Three Employees
FI3-22	Sample for: No Support Provided other than Invoice
FI4-01	Copy of SGI 2004 Contract
FI4-02	Copy of SGI 2013 Contract
FI4-03	Purchase Order Placed by the District to Oracle America Inc. on 2/7/2011
FI4-04	Budgetary Estimate that Included the Type and Number of Licenses Provided to the District by Oracle America Inc.
FI4-05	GCR Invoice for the Month of August 2013
FI4-06	SGI Contract Amendment #3
FI4-07	Sample of Program Management Invoice Allocating Cost to Construction Sites

Exhibit Number	Description
FI4-08	Sample for Program Management Invoice Allocating Cost to Program Management (Central Office)
FI4-09	July 2008 GCR Invoice Including Positions for SGI Labor Billed under the GCR
FI4-10	SGI Proposal for Services for 7/1/2013 through 12/31/2013. Positions listed in 1-5 of the GCR Positions Are for Bond Program office Support
FI4-11	Sample for: Billings for Titles that Included the Word "Apprentice"
FI4-12	Sample for: Invoice Support for: Four individuals did not have a discounted rate and the rate was higher than the original contract rate plus a one year escalation
FI4-13	Monthly Construction Project Status report for period ending 2/29/2016
FI5-01	DeAnza High School Construction Project Board Agenda and Agreement
FI7-01	WLC Architects, Inc. Design Services Contract - Pinole Valley High School
FI7-02	Interactive Resources Design Services Contract - Wilson Elementary School
FI7-03	WLC Architects, Inc. Design Services Contract - Lovonya DeJean Middle School
FI7-04	Pinole Valley High School Master Plan Presentation - October 2010
FI7-05	WLC Proposal for Design Services - Pinole Valley High School - 11/18/2010
FI7-06	Amendment #4 - WLC Contract for Pinole Valley High School Design Services
FI7-07	Interactive Resources Master Planning Contract - Wilson Elementary School
FI7-08	Interactive Resources Proposal for Master Planning Services - Wilson Elementary School
FI7-09	Notice to Proceed - Wilson Elementary School - Master Planning
FI7-10	Amendment #1 - Interactive Resources Contract for Wilson Elementary School Master Planning services
FI7-11	Ratification of Engineering & Architectural Services Contracts - 6/22/2010
FI7-12	List of Payments Made to Interactive Resources on Master Planning Contract for Wilson Elementary School
FI7-13	Notice of Suspension - Interactive Resources - Wilson Elementary School Design Services
FI7-14	Board Action Item - Approval of WLC for Pinole Valley High School Master Planning - 12/6/2006
FI7-15	Board Action Item - Pinole Valley High School Reconstruction - 10/3/2007
FI7-16	WLC Proposal for Master Planning Services - Pinole Valley High School - 2/5/2010
FI7-17	Ratification of Engineering & Architectural Services Contracts - 3/3/2010
FI7-18	Summary of WLC Labor Hours - Pinole Valley High School New Campus
FI7-19	Excerpt from Board Packet and Meeting Minutes - 10/6/2010
FI7-20	Excerpt from Board Packet and Meeting Minutes - 12/8/2010
FI7-21	Pinole Valley High School Update - Facilities Subcommittee - 6/21/2016
FI7-22	DSA Submittal Information - Pinole Valley High School New Campus
FI7-23	DSA Service Review Status - Pinole Valley High School New Campus
FI7-24	Pinole Valley High School Update - Facilities Subcommittee - 6/9/2015
FI7-25	Pinole Valley High School Update - Facilities Subcommittee - 4/4/2016
FI7-26	DSA Submittal Information - Wilson Elementary School New Campus
FI7-27	DSA Service Review Status - Wilson Elementary School New Campus
FI7-28	WLC Additional Service Request - 3/10/2014
FI7-29	Amendment #1 - Interactive Resources Contract for Wilson Elementary School Design Services
FI7-30	Amendment #2 - Interactive Resources Contract for Wilson Elementary School Design Services
FI7-31	WLC Additional Service Request - 3/10/2014 Revised 8/7/2014
FI7-32	WLC Additional Service Request - 9/11/2014
FI7-33	Board Précis - Approval of WLC Amendment #4 - 12/3/2014
FI7-34	DSA Submittal Information - Pinole Valley High School Detention Basin
FI7-35	DSA Service Review Status - Pinole Valley High School Detention Basin
FI7-36	Board Approval of Interactive Resources Master Plan for Wilson Elementary School - 10/19/2011
FI7-37	Board Approval of Interactive Resources Contract for Wilson Elementary School Design Services - 11/16/2011
FI7-38	Notice of Rejection of Invoice No. 15113 - Interactive Resources
FI7-39	Interactive Resources Invoice No. 15113
FI8-01	Ohlone ES Interim Housing Project Board Agenda, Board Minutes, and Board Précis
FI8-02	Notices of Award issued before Board Approval for four projects.
FI8-03	Notices of Award issued before Board delegation to award
FI10-01	Example Board Agenda Item for Approval of Professional Services Contracts and Add-Services - 3/7/2012

Exhibit Number	Description
FI10-02	Example Board Agenda Item for Approval of Professional Services Contracts and Add-Services - 7/20/2016
FI10-03	Sample Change Order Packet
FI10-04	Sample Change Order Packet - Bill Savidge
FI10-05	List of Change Orders - Gompers/Greenwood Project - Lathrop Construction
FI11-01	Master Schedule
FI11-02	Proposed Change Order
FI11-03	Request for Information
FI11-04	April 23, 2014 and May 13, 2014 Recaptured PCOs
FI11-05	KPI as of 1/28/2015
FI11-06	CAMP Report 1/28/2009, pages IX and 70 for De Anza High
FI11-07	CAMP Report 8/24/2011, page 83 for Coronado Elementary and Page 96 for Leadership and Gompers
FI11-08	CAMP Report 4/17/2013, pages I and 63 for Nystrom Elementary and Page 83 for Coronado Elementary
FI11-09	Table of Contents for CAMP Report 4/17/2013
FI11-10	Summary of Selected Site Project Budget per CAMP Report 4/17/2013
VI-1	Copy of the letter sent to District vendors
VII-1	Master List of Recommendations by Risk Area

**List of Acronyms**

<b>Acronym</b>	<b>Definition</b>
ACFE	Association of Certified Fraud Examiners
AICPA	American Institute of Certified Public Accountants
AOR	Architect of Record
ASO	Associate Superintendent of Operations and Bond Program
Board	Board of Education
BPM	Bond Program Manager
BPO	Billings and Performance of Outside Construction Manager
BUD	Budgeting Practices
CA	Director of Contract Administration
CAMP	Construction Asset Management Program
CBOC	Citizens' Bond Oversight Committee
CHPS	Collaborative High Performance Schools
CM	Construction Manager
CM	Construction Management - for FI (4) only
CO	Change Order
COA	Change Order Approval and Accounting Practices
COI	Conflict of Interest
CUPCAA	California Uniform Public Construction Cost Accounting Act
CSBA	California School Board Association
DGS	Department of General Services
DPM	District Project Manager
DSA	Division of the State Architect
EAW	Expenditure Authorization Worksheet
EC	California Education Code
Ed Fund	The West Contra Costa Public Education Fund
EO	Engineering Officer
ES	Elementary School
F&E	Furniture & Equipment
FI	Forensic Accounting Investigation
FOC	Facilities Operation Center
FRP	Financial Reporting
FSC	Facilities Subcommittee
FTE	Full-Time Equivalent
GC	General Contactor
GCR	General Conditions Reimbursements
GOV	Compliance with Legal Requirements and Board Policies
HS	High School
ILC	Ivy League Connection
KPI	Key Performance Indicator
LEA	Local Education Agencies
MS	Middle School
OPSC	Office of Public School Construction
P3	Primavera Project Planner
PAC	Political Action Committee
PAM	Project Accounting Systems – Munis
PAP	Project Accounting Systems – Primavera
PCM Module	Project Construction Management Module
PCO	Proposed Change Orders
PM	Project Manager
PO	Purchase Order
PVHS	Pinole Valley High School
RFI	Request for Information
RFP	Request for Proposal

<b>Acronym</b>	<b>Definition</b>
RFQ	Request for Qualifications
SAB	State Allocation Board
SACS	Standardized Account Code Structure
SGI	Seville Group, Inc. d.b.a. SGI Construction Management
TC	Test of Controls
UBC	Uniform Building Code
VCA	Vendor Contract Administration
VLS	Vicenti, Lloyd & Stutzman, LLP
VTD	Vavrinek, Trine, Day & Company, LLP
WCCUSD	West Contra Costa Unified School District
WLC	WLC Architects, Inc.