

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.⁴⁰
- **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.

⁴⁰ 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:⁴¹

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.⁴² 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.

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⁴² 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.⁴³ 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.⁴⁴ 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.⁴⁵ See TC8-5 recommendation for this area.

⁴³ 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.

⁴⁴ 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.

⁴⁵ 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.⁴⁶

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.⁴⁷ See TC8-3 and TC8-4 recommendations for this area.

⁴⁶ 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.

⁴⁷ 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.⁴⁸

⁴⁸ 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.