

# INTERACTIVE

## R E S O U R C E S

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Planning

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September 30, 2016

Lisa LeBlanc, Associate Superintendent for Operations  
WCCUSD  
1400 Marina Way South  
Richmond, CA 94804

### **Subject: Bond Program Forensic Audit**

Dear Lisa:

I was told by a trustee that you are the official recipient of comments regarding the forensic audit. I may have more later, but this is my first, which addresses:

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>1</sup>

Three school projects were evaluated, one of which involved Interactive Resources (Wilson School). My comments specifically address Wilson School and Interactive Resources but general apply to all three of the projects tested.

### **Fees for Service**

The audit states:

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<sup>1</sup> Forensic Investigation F1(7) 253

- 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<sup>2</sup>

The audit went on to critique the fee based on hypothetical use of the OPSC fee schedule and intimated that the fee was too high.

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>3</sup>

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>4</sup>

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.<sup>5</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 architectural contracts were negotiated, and they moved away from using the OPSC fee schedule.<sup>6</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>7</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.<sup>8</sup>

I submit that the extensive discussion of the Office of Public School Construction (OPSC) fee schedule by VLS as a foundation for much of their fee analysis demonstrates a profound lack of understanding that renders any conclusions resulting therefrom erroneous and irrelevant.

The Office of Public School Construction - California Department of General Services is staff to the [State Allocation Board](#) (SAB), which implements and administers a \$35 billion voter-approved school facilities construction program. The OPSC fee schedule was crafted by OPSC not as a tool to set, evaluate or suggest architectural fees. It was solely a tool used to determine and provide some uniformity in the reimbursement amount for cost -sharing grants to local school districts participating in a lease-purchase program. In 1998, the grant program changed, and total control was given to local districts to determine both construction costs and design fees.

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<sup>2</sup> Ibid, 264

<sup>3</sup> Ibid, 265

<sup>4</sup> Ibid, 265

<sup>5</sup> Ibid, 265

<sup>6</sup> Ibid, 265-266

<sup>7</sup> Ibid 265 (footnote 332)

<sup>8</sup> Ibid, 265 (footnote 333)

Furthermore, the OPSC fee schedule was intended to calculate fee reimbursement only through the construction document phase of services. This was confirmed in a letter dated December 1, 2004, from Aneida Ramirez of OPSC to Marcus Hibser. She writes:

...the fee schedule was generated with the help of the American Institute of Architects<sup>9</sup> during the inception of the Lease Purchase Program (LPP). The fee schedule was used to determine the maximum eligible architect fees funded under the LPP. Currently it is used when an audit is being conducted for a project funded under the School Facilities Program. The services that the fee schedule is intended to cover are basic design services up to the point of approval of the plans by the Division of the State Architect. This applies to both program, LPP and SFP.<sup>10</sup>

Even with the use of the OPSC fee schedule discredited, VLS misused it by applying it to all phases of services. From the 1980's historical proportioning of A/E fees through construction administration, that would be a 25% increase to the assumed comparative fee curve compensation. In the current trend of fee proportioning, that would be an approximate 30 - 33% increase to the assumed comparative fee curve compensation.

I have discussed this at length with a current staff member of OPSC, Michael Watanabe (916/376-1646, [michael.watanabe@dgs.ca.gov](mailto:michael.watanabe@dgs.ca.gov)), and a former staff member of OPSC, Bill Savidge (510) 715-9089), who is also a former WCCUSD Engineering Officer. Both explained to me that not only was the fee schedule never intended to set or suggest fees and that it is obsolete, but since there have been so many changes in the design requirements for schools since 1998, such a fee schedule would be obsolete even if it was intended to set or suggest fees. In the last 20 years, the requirements for design of schools have become much more complex and time-consuming, including generally, the use of sustainability requirements such as CHPS or LEED, substantial structural building code changes, EPA requirements implemented by local water boards for storm water management, code required energy efficiency requirements and stricter oversight and plan checking by DSA, to name a few.

It is also noteworthy that the contract associated with the LPP program and the now discontinued OPSC fee schedule came with a brief three-page contract. Current architectural contracts generated by the WCCUSD now run to 60 pages or more, representing increased -- and increasingly specific -- deliverables and increased risk and liability on the part of the architects.

In the forensic audit, VLS belittles the design challenges for an elementary school, showing a fundamental lack of knowledge about elementary school design and construction:

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.<sup>11</sup>

The preceding statement is simply inaccurate. In the case of Wilson school, there is a school kitchen intended as part of a community function of the multi-purpose area. There is an elevator, sophisticated IT

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<sup>9</sup> Interestingly, the American Institute of Architects has been barred from suggesting fee schedules due to alleged violations of the Sherman Antitrust Act and consent decrees with the Justice Department in 1971 and 1990 ([http://www.architectmagazine.com/practice/a-better-value\\_o](http://www.architectmagazine.com/practice/a-better-value_o))

<sup>10</sup> Letter dated December 1, 2004, from Aneida Ramirez of DGS to Marcus A, Hibser

<sup>11</sup> Ibid, 266

systems, acoustical requirements, CHPS ( [Collaborative for High Performance Schools](#)) requirements, accessibility (ADA) requirements and site drainage requirements to meet EPA standards through Contra Costa Stormwater (C-3) regulations, all of which required specialty consultants or consultants with specialty skills. DSA also required a sophisticated dynamic structural model that required a special consultant.

Finally, the construction period is the time that, in our experience, the difference between the fee offered by the District and the actual cost of service is most challenging. Construction typically extends beyond the schedule estimated by the District resulting in substantial additional time required by the design team. Contractors specializing in school construction typically low-ball bids with the expectation of recovering losses through change orders, which they have perfected to a science. As a key component of change order science, contractors continually barrage architects with Requests for Information (RFIs) and demands for additional compensation to set up justifications for potential change orders. Contractors continually submit Change Order Requests based on alleged errors and omissions, delays caused by the architect or the WCCUSD, unknown site conditions and other creative justifications. Some, of course, are legitimate, but many are not. Each one has to be researched, defended and processed, taking up huge blocks of time.

Unfortunately, the people hired by the District to manage this process, employees of SGI, are typically incompetent, ineffective or co-opted by the contractor, making the architect's job even more challenging and time consuming and adversely impacting quality control and quality assurance. Inspectors of record (IOR) hired by the District also are typically ineffective in their charge to see that projects are constructed to comply with contract documents, and SGI has typically backed up the IOR's refusal to do their jobs. All this makes the architect's job more difficult, more challenging and more time consuming, and SGI gets paid more than the architect in spite of being ineffective.

Architects and experienced construction program administrators know that there is no reliable relationship between the construction cost of a project and the fee required to provide design services. If you took all the fees for a number of projects and divided them by the construction costs, you would get an average that might lie somewhere between 5% and 20%, but that doesn't mean a percentage is a reliable way to establish a fee.

VLS cited the widespread use of the OPSC fee schedule by school districts in California to validate its credibility. I submit that those who are using it are uninformed about its history, incompetent, or lazy, or all three.

The premise that architects are ripping off the District has no basis in fact, at least insofar as Interactive Resources is concerned. Instead of obsessing over an irrelevant and obsolete fee schedule, VLS could have looked at the relationship between fees and that actual cost to the architects for providing services. I can't address other architects, but for Interactive Resources, the fees received for bond program projects have been significantly less than the cost of providing the services. I shared with VLS the information below that shows the amount of money Interactive Resources has lost on the WCCUSD projects we have worked on. I left Wilson out because the project was abandoned before construction began, the phase that we typically lose the most money.

<b>Nystrom</b>	
Labor Billed	\$2,632,984.48
Cost of Labor	\$1,060,008.23
Breakeven Ratio	3.15

Break Even Amount	\$3,339,025.92
Loss	(\$706,041.44)

<b>Washington</b>	
Labor Billed	\$534,311.50
Cost of Labor	\$238,978.44
Breakeven Ratio	3.15
Break Even Amount	\$752,782.09
Loss	(\$218,470.59)

<b>Stewart</b>	
Labor Billed	\$576,175.97
Cost of Labor	\$279,532.60
Breakeven Ratio	3.15
Break Even Amount	\$880,527.69
Loss	(\$304,351.72)

<b>Hercules<sup>12</sup></b>	
Labor Billed	\$127,708.75
Cost of Labor	\$48,245.75
Breakeven Ratio	3.15
Break Even Amount	\$151,974.11
Loss	(\$24,265.36)

In their conclusion, VLS states:

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).<sup>13</sup>

As we have previously shown, this conclusion has no validity and is grossly inaccurate.

Elapsed Time

The audit also criticized architects for straying from the precise schedules defined in their original contracts and/or for doing design work out off phase without any evidence that this had any adverse impacts on the District or that the deviation from the schedule was the architect’s fault.

In the case of Interactive Resources, VLS conceded that they had not made any analysis of the reasons for alleged delays.

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

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<sup>12</sup> Interactive Resources services for Hercules Middle/High School were forensic in nature and included diagnosing leaks, establishing causation and recommending repairs.

<sup>13</sup> Ibid, 272

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.<sup>14</sup>

If VLS had actually looked into it, they would find that there were numerous and substantial delays by SGI responding to submittals and questions that had to be addressed before Interactive Resources could proceed. If there is no tangible impact to the District, and no effort by VLS to delve into the causes, why is this even being brought up?

### Cost Estimates

In the discussion of fee adjustments, VLS cites the following agreement language as a basis for concluding the architect’s responsibilities to design to a predetermined budget:

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].

Despite what any agreements with the District say, the practice of WCCUSD was to control the construction cost estimating process. The agreements do not require the architects to prepare or submit cost estimates, but in a catch-22 provision, the agreements require the architect to “reconcile the Construction Cost Budget” and “not exceed the Construction Cost Budget.”

As we have all seen, costs of Bond Program projects have never been substantially within the architects’ control. The District sets the program, the number and size of spaces, detailed characteristics of each space such as finishes, equipment and technology and specification requirements for virtually every component of the building. The buildings are also required to meet CHPS standards. The reality is that that there is very little left to the architect’s discretion other than space planning and design aesthetics. I am not critical of this because it results in uniform standards of function and quality among schools, a goal the board adopted to respond to public demands in a transparent public policy process at the beginning of the Bond Program.

In conclusion, VLS states:

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

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<sup>14</sup> Ibid, 285

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services. Because Interactive Resource 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. See recommendation FI7-4 related to this area.

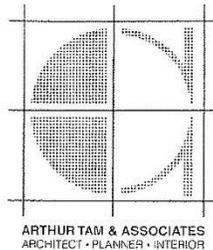
It is completely disingenuous for VLS to conclude that an architect should “design a school to a budget set by the District.”

As I have previously pointed out, the OPSC fee schedule is not a reliable tool for establishing architectural fees, but if it was used by WCCUSD, and if it was further misused by including post-design services in the fee, then an architect is entirely justified to seek additional compensation if the estimated cost of the project changes,

Sincerely,



Tom Butt, FAIA, LEED AP BD+C



August 16, 2004

Aneida Ramirez  
Office of Public School Construction  
1130 K Street, Suite 400  
Sacramento, CA 95814-2928

re: Fee Schedule for Architectural Services

Dear Ms. Ramirez

I have been looking for information regarding architectural fees and have had no success. Many School Districts utilize a formula for determining the fees t pay to architects who are providing design services. Occasionally this will be a fixed percentage of the construction cost, however more often it is a sliding scale wherein, on a modernization project for example, the fee is 12% of the first \$500K, 11.5% of the next \$500K, etc.

This fee schedule or formula is often referred to as the OPSC Schedule or the Leroy Green Formula. Many Districts in Northern California utilize this fee scale, however nowhere can I find any background information on this subject. I have tried the OPSC, CASH, CDE and AIA websites to no avail. Standard search engines likewise turn up no data.

From whence does this formula originate? What services is it intended to cover? Was it actually developed by Leroy Green?

This may seem trivial, however a history of this would help immensely to resolve some heated discussions related to fees and services. If anyone can help me by providing some documentation or directing me to a web site for information, it would be greatly appreciated. Thank you in advance. I look forward to hearing from you.

Very Truly Yours,

Marcus A. Hibser - Principal



State of California • Arnold Schwarzenegger, Governor  
State and Consumer Services Agency

**DEPARTMENT OF GENERAL SERVICES**  
Interagency Support Division • Office of Public School Construction

December 1, 2004

Mr. Marcus A. Hibser  
Principal  
Arthur Tam & Associates  
300 27<sup>th</sup> Street, 2<sup>nd</sup> floor  
Oakland, CA 94612

RECEIVED  
DEC 02 2004  
Arthur Tam & Assoc. Inc.  
Oakland

Dear Mr. Hibser:

Thank you for your letter dated August 16, 2004, regarding the schedule for architectural services. Please excuse this tardy written reply.

In your letter you request information with regards to where the formula originated, the services it is intended to cover, and if Senator Leroy F. Greene had developed the formula.

In response to your questions, the fee schedule was generated with the help of the American Institute of Architects during the inception of the Lease Purchase Program (LPP). The fee schedule was used to determine the maximum eligible architect fees funded under the LPP. Currently, it is used as a guide when an audit is being conducted for a project funded under the School Facilities Program (SFP). The services that the fee schedule is intended to cover are basic design services up to the point of approval of the plans by the Division of the State Architect. This applies for both programs, LPP and SFP.

Should you have any questions concerning this matter or need additional information, please feel free to contact me at [aramirez@dgs.ca.gov](mailto:aramirez@dgs.ca.gov) or (916) 324-5703 or Ms. Roxana Saravia at [rsaravia@dgs.ca.gov](mailto:rsaravia@dgs.ca.gov) or (916) 323-3871.

Sincerely,

A handwritten signature in cursive script that reads "Anaida Ramirez".

ANEIDA RAMIREZ  
Project Manager  
Office of Public School Construction

AR:lm

cc: Project File