

**Performance Audit of  
The Beverly Hills Unified School District  
Measure E Program**

**Prepared for:**

**Beverly Hills Unified School District**

**Harvey M. Rose Associates, LLC**

<http://www.harveyrose.com>

**March 20, 2015**

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LaTanya Kirk-Carter  
Chief Administrative Officer  
Beverly Hills Unified School District  
255 S. Lasky Drive  
Beverly Hills, CA 90212

Dear Ms. Kirk-Carter:

Harvey M. Rose Associates, LLC is pleased to present this *Performance Audit of the Beverly Hills Unified School District Measure E Program*. This report was prepared in compliance with the State of California requirement for an annual independent performance audit of bond-funded school facility improvement programs adopted by 55 percent or more of the voters (Proposition 39 requirement). This performance audit report contains 13 recommendations for improvements to the District's Measure E program.

This audit was conducted in compliance with Generally Accepted Government Auditing Standards for performance audits promulgated by the U.S. Government Accountability Office, with one limitation: the views and responses of all responsible District officials to the report could not be obtained due to the departure of the previous Chief Facilities Official in January 2014 as well as the former Executive Director for Budget and Food Services and former Chief Administrative Officer later in 2014. However, other District officials familiar with and responsible for the Measure E program provided input, reviewed the draft, and provided responses.

Thank you for providing our firm with the opportunity to conduct this performance audit for the Beverly Hills Unified School District.

Sincerely,



Daniel Goncher  
Project Manager

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# Executive Summary

The Beverly Hills Unified School District retained Harvey M. Rose Associates, LLC to conduct an annual performance audit for Fiscal Year 2013-14 of the District's Measure E school facilities program. The objectives of the performance audit were:

- To ensure that Measure E funds are expended on specific projects only and not on school operating expenses such as teacher and administrator salaries in accordance with Proposition 39.
- Assess policies, procedures and communication effectiveness.
- Evaluate master planning and facility programming activities, including the use of green technology.
- Review Measure E staffing and costs, scheduling, budget management, and expenditure control processes.
- Evaluate District cash flow requirements and compare with the adequacy and timing of bond sales.
- Review contract solicitation and award processes as well as contract administration, including change order management.
- Evaluate the management of contractor claims and liens.

The performance audit was conducted in compliance with Generally Accepted Government Auditing Standards (GAGAS) promulgated by the U.S. Government Accountability Office, as required by the District. Those standards cover procedures for performance audit planning and execution, including requirements for evidence, audit independence, auditor competence, and reporting requirements.

## Performance Audit Findings and Recommendations

A summary of the detailed findings and recommendations contained in this report is presented below.

### Section 1: Program Management and Master Planning

#### *Summary of Findings:*

- The District has had considerable turnover and extended vacancies in the Facilities and Planning Department and in other positions with oversight of the Department. The Board and District staff should focus on recruiting qualified facilities and planning staff to ensure that the District has sufficient resources to manage the Measure E program, especially as the amount and complexity of construction activity increases.
- In September 2014 (after the audit scope period of FY 2013-14), the Board certified a list of specific school facilities projects to be funded by Measure E as recommended in the previous two performance audits. Our review of funds expended in FY 2013-14 found that they were spent only on the specific projects listed, with one exception. Although costs associated with efforts to participate in the State's Seismic Mitigation Program are listed on the Board approved list of projects, they are only listed as a source of revenue. While some costs associated with

preparing the District's application for Seismic Mitigation Program funding would have eventually been incurred by the District for other Measure E projects anyway, not all costs associated with the application would have been incurred in FY 2013-14 and therefore should be listed as expenses under a separate project on the list or separately tracked and reported.

- In August 2014 (after the audit scope period of FY 2013-14), the District commenced its largest Measure E funded project yet with the construction of the Horace Mann "Building B" classroom facility. The commencement of this project, although delayed, is a significant step forward for the District's Measure E program.
- In September 2013, the Board gave District staff authorization to pursue State bond funds for seismic repair, reconstruction, or replacement of school facilities under the Seismic Mitigation Program. Application for these funds could result in several million dollars of additional revenue to the District for critical seismic safety repairs at several school sites, however there are no definitive cost or revenue estimates at this time and only about 44 percent of the original funding is still available. The District should track and report all new costs associated with this program to ensure funds are pursued in the most efficient, effective, and transparent method possible.
- The Measure E Bond Fund, as currently structured, is unlikely to meet all of the District's critical capital needs. As noted in the previous two performance audit reports, the costs of the projects identified in the 2012 Facilities Master Plan ranged from approximately \$494 million to \$581 million, which is about \$160 to \$248 million more than the \$334 million that the District has assumed would be available from all Measure E bond issuances. The Board should strongly consider all legal policy options available to maximize the District's bond authority, including allowing the combined bond-supporting tax rate to increase beyond \$49.71 per \$100,000 of assessed property value.
- While the District has taken some steps to address the findings and recommendations made in the FY 2011-12 and FY 2012-13 performance audits, only six of the recommendations from the previous performance audit have been at least partially implemented. Further, under SB 581, starting with the FY 2012-13 audit, the Board was required to provide the Citizens' Oversight Committee (COC) with responses to any and all findings, recommendations and concerns addressed in the annual performance audit, but did not do so. The Board should direct the Chief Administrative Officer to oversee the efforts of the Facilities Director and staff to provide a written response within three months of receiving this audit to ensure compliance with State law.

*Based on the above findings, the following is recommended.*

The Board of Education should:

- 1.1 Direct the Chief Administrative Officer to initiate efforts to recruit and hire a Chief Facilities Official and, if necessary, a Director of Facilities and Planning so that the District has in-house staff that are able to focus on the day-to-day management of the Measure E program.
- 1.2 Instruct the Interim Director of Facilities, under the direction of the Chief Administrative Officer, to either: (a) amend the Board certified list of projects to be funded by Measure E to include costs incurred by the District to apply for Seismic Mitigation Program funding (including

application fees, additional engineering work, and other professional service fees) as a separate project or (b) separately track and report such costs on at least a quarterly basis to the Board and Citizens' Oversight Committee to ensure that bond funds are spent efficiently, effectively, and transparently.

- 1.3 Strongly consider all legal policy options for maximizing the District's bond authority to best meet the critical infrastructure needs of the District, including allowing the District's tax rate to rise above a self-imposed cap of \$49.71 per \$100,000 of assessed value.
- 1.4 Instruct Facilities staff, under the direction of the Chief Administrative Officer to lead the effort to respond to all findings, recommendations, and concerns of this audit report to the Citizens' Oversight Committee within three months of receiving the report as required by State law. This response should also ensure that all recommendations from the FY 2012-13 performance audit are either fully implemented or, if not fully implemented, a response is provided to the Citizens' Oversight Committee as to why the District does not feel it is appropriate.
- 1.5 Instruct Facilities staff, under the direction of the Chief Administrative Officer to address the master planning recommendations from the FY 2011-12 and FY 2012-13 performance audits including to:
  - a. Draft an amendment to the Facilities Master Plan to include best practice elements as outlined by the State Allocation Board including District priorities, educational goals, and others as appropriate; and
  - b. Initiate a revision of the proposed educational specifications considering feedback from the Board of Education and to present the revised educational specifications to the Board of Education within three months for approval.

## **Section 2: Measure E Budgeting and Communication Effectiveness**

### *Summary of Findings:*

- As of June 30, 2014, the District had spent approximately \$39.3 million, or 34 percent of the \$117 million issued, and 12 percent of the \$334 million total authorized by Measure E. The District spent \$7,941,171 in Measure E funds in FY 2013-14, or approximately 18 percent less than in the prior fiscal year.
- The majority of FY 2013-14 Measure E expenditures was for capital outlay, including architectural services, building improvement and construction, construction management, and geotechnical/seismic investigation and testing. A little more than half of this spending was for architectural services for the High School modernization project, reflecting a shift toward focusing more Measure E resources to that campus. Spending on legal services, almost entirely related to the Los Angeles County Metropolitan Transportation Authority (MTA) Westside subway expansion proposal, was also a large expenditure accounting for approximately 29 percent of overall FY 2013-14 Measure E spending.
- Actual District Measure E expenditures in FY 2013-14 were 54 percent less than the original budget adopted by the Board of Education in June 2013. Spending was particularly lower for school renovation and modernization projects. This was primarily related to the delay in construction at Horace Mann due to an extended bidding process as well as the absence of

approval of other projects beyond the conceptual design phase. The Measure E budget was revised in interim budget statements to reflect these changes in project plans as recommended in the previous two performance audits.

- The District has improved the reporting of Measure E budget and expenditure information, but further improvements are still necessary for better transparency. The improvements made include (1) a more accurate presentation of projected year total expenditures based on spending patterns to date for the two interim budget statements and (2) the presentation of budgetary information consistent with the way funds are programmed (by project and school site) accompanied by graphical representations. The District should continue to present budgetary information in this more transparent manner and include more detailed information with budget updates.
- The District's Measure E web pages and progress reports still need improvement and consistent updates to ensure that information is sufficient for the Citizens' Oversight Committee and the general public to understand program and site-specific progress.

*Based on the above findings, the following is recommended.*

The Board of Education should:

- 2.1. Direct the Facilities Fiscal Director, under the direction of the Interim Facilities Director and Chief Administrative Officer, with the involvement of District stakeholders as appropriate, to revise and expand the budgeting procedures in the Facilities and Planning Procedures Manual to include requirements to continue providing more detailed Measure E budget information at least as often as it would officially report the District's financial position (at least three times per year) to better inform the Board, the Citizens Oversight Committee and the public. These revisions should include disclosing the project or site level budgets and quarterly evaluations of adopted vs. actual budgetary information (for the current fiscal year as well as for the life of the project) with explanations for deviations.
- 2.2. Direct the Facilities Fiscal Director, under the direction of the Interim Facilities Director and Chief Administrative Officer, to provide more detailed information and improve the quality of Measure E districtwide and site-specific updates by including current year adopted vs. actual budgetary information, current amount expended vs. total project budget, project milestones met, and the use of accompanying narratives, charts, and graphics to clearly illustrate progress to the general public.

### **Section 3: Contract Award**

*Summary of Findings:*

- The District does not have well-defined procedures for awarding professional services contracts through a competitive process. State law requires competitive bid for construction contracts and recommends, but does not require, competitive selection of professional services. The District awarded 14 construction and professional services contracts for the Measure E Program in FY 2013-14, with total contract amounts of \$9.3 million. The District awarded all three construction contracts and eight of eleven professional services contracts through a competitive process, and awarded three contracts, two for legal services and one for professional business/facilities consultant service, without a competitive process.

- The District cannot be sure that it is paying the best rates for quality services when professional services are selected without a competitive process. For example, the District has five Measure E contracts for legal services with widely varying rates. The rates for associate attorneys range from \$225 to \$1,075 per hour. Also, the District's architectural services contract, which was selected through a competitive process, had rates ranging from \$140 per hour for professional architect services to \$225 per hour for lead architect services. The District's contract for professional business/facilities consultant services, which was not selected through a competitive process, had rates ranging from \$225 to \$295 per hour.
- The FY 2011-12 and FY 2012-13 performance audits recommended revisions to the Measure E Program procedures to specify competitive selection of construction and professional services contracts, criteria for awarding sole source contracts in the event of an emergency or exceptional circumstances, and inclusion in contracts of standard language for insurance requirements, performance bonds, dispute resolution and other standard provisions. The District assigned preparation of draft Measure E Program procedures to the Measure E Program construction management firm, Totum, who completed draft procedures in November 2014. These draft procedures have not yet been adopted by the Board. District staff reported that the new Measure E Program procedures would not be adopted until a full-time Chief Facilities Official is hired. However, the adoption of the new procedures should not be dependent upon filling this vacancy due to the history of high turnover in this position.

*Based on the above findings, the following is recommended.*

The Board of Education should:

- 3.1 Review and adopt the draft Measure E Program procedures prepared by the construction management firm, Totum, in November 2014.
- 3.2 Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, to revise the Measure E Program procedures within six months of acceptance of the FY 2013-14 performance audit to specify:
  - (a) Criteria for awarding sole source contracts due to emergency or other exceptional circumstances;
  - (b) Required signatures for construction contracts;
  - (c) Standard requirements for insurance, liquidated damages, and payment by the contractor to the District for increased costs caused by project delays not initiated by the District; changes in project scope not initiated by the District; violations of laws and regulations; future claims, disputes or stop notices; and any other costs related to negligence, recklessness, or willful misconduct of the contractor.



## Section 4: Contract Administration and Expenditure Controls

### *Summary of Findings:*

- Although the District sets maximum contract amounts for most of its professional services contracts for the Measure E Program, the District’s contracts for legal services often do not have maximum amounts. Public agencies typically set maximum (or not-to-exceed) contract amounts to control contract costs, which usually require contractors to bear the cost of contract expenditures that exceed the maximum amount unless the scope of contract services increases.
- Also, the District does not routinely include services provided by subcontractors, subcontractor hourly rates, or total subcontractor fees in the Measure E Program’s legal services contracts. Legal services firms pass through all subcontractor costs, including reimbursable expenses, to the District sometimes without complete documentation. In FY 2013-14, legal services firms passed through \$534,568 in subcontractor charges for geotechnical and other work. The District pays higher than necessary rates for subcontractors. For example, one firm provided services to the Measure E Program as both a contractor and as a subcontractor to two legal services firms. The legal services firms charged the District subcontractor rates ranging from \$350 to \$450 per hour. The same contractor, when directly billing the District, charged \$295 per hour.
- According to the District’s General Counsel, subsequent to the performance audit period of FY 2013-14, the District’s professional services contracts were amended to include not-to-exceed amounts, and a professional services agreement template has been created that limits reimbursable expenses. Also, the District developed a professional services agreement template that states “special services work shall be performed only with the express direction and approval of the Board of Education, the Superintendent, or designee”.
- Due to staff turnover in the Facilities Office, Measure E Program invoices or payments to vendors do not always document approval by the Chief Facilities Official, as required by the Measure E Program Manual to ensure review by Facilities Office staff that payments are appropriate. 22 of 87 sample invoices, or 25 percent, lacked the required signatures. Also, as noted in prior performance audits, the District does not always insure that purchase orders for goods and services are approved prior to the expenditure being incurred. 10 of the 94 sample transactions had invoices dated before purchase orders were approved in FY 2013-14.

*Based on the above findings, the following is recommended.*

The Board of Education should:

- 4.1. Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, within six months of the acceptance of the performance audit to develop a written policy for the Measure E Program and to amend existing construction and professional services contracts as necessary to require (a) not-to-exceed amounts, (b) limits on reimbursable expenses, and (c) all authorized subcontractor services, hourly rates and total fees.
- 4.2. Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, to develop a written policy, within six months of the acceptance of the FY 2013-14 performance audit, that requires the appropriate District staff (in-house Chief Facilities Official, general counsel, Assistant Superintendent for Business Services) to review and compare all invoices

from contractors operating under multiple contracts for the District to ensure that services provided are:

- a. Within the contract amount and term;
  - b. Within the contract scope of services; and,
  - c. Without duplication of services being provided through other contracts.
- 4.3. Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, to revise the Measure E Procedures Manual, within six months of the acceptance of the FY 2013-14 performance audit, to include procedures that are considered best practices for change orders to the scope of services, project amounts, and fees, for construction and professional services contracts paid for with Measure E bond funds, including:
- a. A structured approval process for changes beyond the agreed terms of a contract, with varying levels of approval authority depending on the magnitude of the change;
  - b. Written approval prior to original or additional services being provided; and,
- 4.4. Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, to develop procedures within six months of the acceptance of the FY 2013-14 performance audit requiring purchase requisitions to be submitted and purchase orders approved within certain deadlines, such as within a week of a contract being signed.

# Introduction

Harvey M. Rose Associates, LLC (HMR) was retained by the Beverly Hills Unified School District to conduct the *2013-14 Annual Proposition 39 Performance Audit of the Beverly Hills Unified School District Measure E Program*. This performance audit was conducted for the Beverly Hills Unified School District in accordance with Generally Accepted Government Auditing Standards (GAGAS).

## Project Purpose and Scope

The 2013-14 Annual Proposition 39 Performance Audit of the Beverly Hills Unified School District Measure E School Facilities Program was designed by the District to accomplish the following objectives:

- To ensure that Measure E funds are expended on specific projects only and not on school operating expenses such as teacher and administrator salaries in accordance with Proposition 39.
- Assess policies, procedures and communication effectiveness.
- Evaluate master planning and facility programming activities, including the use of green technology.
- Review Measure E staffing and costs, scheduling, budget management, and expenditure control processes.
- Evaluate District cash flow requirements and compare with the adequacy and timing of bond sales.
- Review contract solicitation and award processes as well as contract administration, including change order management.
- Evaluate the management of contractor claims and liens.

## Methodology

This performance audit was conducted in accordance with Generally Accepted Government Auditing Standards for performance audits, issued by the United States Comptroller General and promulgated by the United States Government Accountability Office (USGAO), with one exception. The USGAO standards require obtaining the views of responsible officials of the audited entity. Due to the departure of the Chief Facilities Official who managed the Measure E program until January 2014, we were not able to obtain her views and responses to the audit report. In addition, the Chief Administrative Officer and Executive Director of Budget/Fiscal Services/Food Services, who had substantial responsibility for the Measure E program in FY 2013-14 also left the District, but were available for follow up questions if needed. However, other District officials familiar with the program did review the draft report and provide responses. Otherwise, all USGAO standards were complied with for this performance audit. Also known as generally accepted government auditing standards (GAGAS), these standards provide a framework for performing high-quality audit work with competence, integrity, objectivity, and independence.

This performance audit was conducted in two phases. Phase 1 involved an initial assessment and profile of the state of the Beverly Hills Unified School District Measure E program to identify areas of high risk. Phase 2 consisted of detailed field work to evaluate policies and procedures; master planning; staffing

and costs, scheduling, budget management, and expenditure control; cash flow requirements compared to the adequacy and timing of bond sales; contract solicitation and award; contract administration; management of contractor claims and liens; and, compliance with applicable laws, regulations, and policy. Specific field work activities included:

- Entrance conference with representatives from the Beverly Hills Unified School District and the Citizens' Oversight Committee.
- Compilation of key documents to profile the District finances and organization.
- Interviews with members of the Board of Education, the Citizens' Oversight Committee, and other stakeholders, as well as District managers and staff.
- Site visits to all Measure E project sites to gain an understanding of the scope, progress, and complexity of planned improvements at each site.
- Assessment of the status of prior year audit exceptions.
- Assessment of policies, procedures, and communication effectiveness.
- Transaction testing and file review for change orders, purchase orders, payments, contracts, bidding processes, and claims and liens.
- Evaluation of master planning efforts and facility programming activities, including the use of green technology.
- Review of Measure E staffing and costs, scheduling, budget management, and expenditure control processes.
- Evaluation of District cash flow requirements with a comparison with the adequacy and timing of bond sales.
- Evaluation of agendas, minutes, and reports for Board of Education meetings.

A draft version of this report was provided to the Beverly Hills Unified School District for review, factual clarifications, and comments. The audit team received written feedback from District management on the draft report on March 3<sup>rd</sup>, 2015 in lieu of a formal exit conference. The audit team revised the report based on new information provided by the District, and submitted the final document jointly to the Beverly Hills Unified School District Board of Education and Citizens' Oversight Committee.

## **Overview of the Beverly Hills Unified School District**

The Beverly Hills Unified School District consists of four K-8 elementary schools and one 9-12 high school. The K-12 enrollment is approximately 4,200. The District's K-12 schools include:

- **Beverly Hills High School**, which was built in 1927 and partially rebuilt in 1936. Its Swim Gym was constructed in 1940 followed by several more moderate to large scale renovations and addition projects in the 1950s, 1960s, and 1970s including extensive additional alterations completed in early 1970. The last major change to the High School campus was the 2007 completion of the Science and Technology Center, a four story building housing 18 math classrooms, 12 science labs, a lecture hall, faculty work areas, and a multi-purpose Educational Development Center.

- **Beverly Vista Elementary School**, which was initially constructed in the 1920's, renovated and partially rebuilt in 1933, and rebuilt again from 2002 to 2006 following damage due to the 1994 Northridge earthquake.
- **El Rodeo Elementary School**, which was built in 1927 and renovated for earthquake safety in 1934. A two story addition was completed in 1963, which included a gymnasium, a new shop, and music rooms. There were a series of additions in the late 1960s, which included a three story structure and additional classrooms.
- **Hawthorne School**, which was originally constructed around 1913. An auditorium was added in 1921 followed by the addition of several structures between 1922 and 1929 and again after the 1933 earthquake. Further renovations and additions were completed in 1953, 1961, and undertaken again in the late 1960s and early 1970s.
- **Horace Mann Elementary School**, which was initially constructed in 1929 and was renovated and expanded several times in the 1930s. Later, extensive expansions were undertaken, including a three story tower that was completed in 1968 and a new garage and classroom facility, which were completed in 1976. Smaller scale modernization and renovation projects occurred from 2001 through 2008. A renovation of the auditorium was completed in 2013 and the construction of a new classroom building commenced in 2014.

## Overview of Measure E

Measure E was passed by a supermajority of District voters on November 4, 2008.<sup>1</sup> The measure allows the District to issue up to \$334 million in bonds. The purpose of the Measure, as stated on the ballot was:

To provide safe and modernized school facilities, make necessary structural seismic safety repairs, upgrade, repair, and reconstruct aging classrooms, infrastructure, multiuse, gyms, libraries, science, technology, & labs; roofing, plumbing, heating, ventilation and electrical systems; renovate Beverly Hills Unified School District schools to better protect student/staff from unauthorized entry, security risks and natural disasters.

The first Measure E bond issuance occurred in 2009, with \$72,044,664 in bonds issued comprised of \$12,460,000 in current interest bonds and \$59,584,664 in capital appreciation bonds. A second issuance of \$45 million (\$33,660,000 in capital appreciation bonds and \$11,340,000 in current interest bonds) took place in December 2013, resulting in issuance of \$117 million of the \$334 million in authorized bonds.

## Measure E Accomplishments

Since the first Measure E bond issuance in 2009, the District established policies and procedures for selecting architects for each school site, solicited qualifications and proposals from qualified firms and retained a lead architectural firm for each school site. The District also retained a contractor to oversee administration of the program.

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<sup>1</sup> State Proposition 39 allows 55 percent voter approval of bonds for school districts and community college districts, rather than two-thirds approval required for other general obligation bonds.

The District's former Chief Facilities Official, who retired from the District in January 2013, developed written procurement policies, procedures and systems for Measure E contractors retained by the District. He also developed a project monitoring and reporting system for each project.

The District conducted an extensive review of the mechanical, electrical, plumbing and civil equipment, systems and utilities at all school sites to identify and prioritize work needing to be done to meet the goals of Measure E. Numerous proposals and summaries of possible renovations and upgrades have been prepared for review by District staff and the Board of Education.

A Facilities Master Plan update was completed in 2012 and adopted by the Board of Education.

The renovation of the Horace Mann Elementary School auditorium commenced in 2012 and was completed in 2013. The construction of a new classroom building at Horace Mann commenced in August 2014.

Numerous alternative project proposals and plans have been developed, analyzed and presented to the Board of Education for review. Budgets have been developed for potential projects to assist in decision-making about which projects to approve.

Consistent with State law, a Measure E Citizens' Oversight Committee has been established that, along with its subcommittees, meets regularly to review Measure E activity and summarize those results in annual reports.

Financial and performance audits of the Measure E program have been conducted each year, pursuant to State law.

## **Audit Challenges**

The audit team did not have access to the most recent former Chief Facilities Official, who was in place for a portion of FY 2013-14, but left the District in January 2014 with no availability for further questions or discussions. Additionally, the former Chief Administrative Officer and former Executive Director for Budget/Fiscal Services/Food Services, two key District contacts for the Measure E program during the audit scope period, left the District prior to the initiation of the audit. Although these former officials were no longer with the District when the audit commenced, District management informed the audit team that these individuals would be available for questions if necessary.

## **Acknowledgements**

Harvey M. Rose Associates, LLC would like to thank the Chief Administrative Officer and her staff for their time and assistance in conducting this performance audit.

# 1. Program Management and Master Planning

- The District has had considerable turnover and extended vacancies in the Facilities and Planning Department and in other positions with oversight of the Department. The Board and District staff should focus on recruiting qualified facilities and planning staff to ensure that the District has sufficient resources to manage the Measure E program, especially as the amount and complexity of construction activity increases.
- In September 2014 (after the audit scope period of FY 2013-14), the Board certified a list of specific school facilities projects to be funded by Measure E as recommended in the previous two performance audits. Our review of funds expended in FY 2013-14 found that they were spent only on the specific projects listed, with one exception. Although costs associated with efforts to participate in the State’s Seismic Mitigation Program are listed on the Board approved list of projects, they are only listed as a source of revenue. While some costs associated with preparing the District’s application for Seismic Mitigation Program funding would have eventually been incurred by the District for other Measure E projects anyway, not all costs associated with the application would have been incurred in FY 2013-14 and therefore should be listed as expenses under a separate project on the list or separately tracked and reported.
- In August 2014 (after the audit scope period of FY 2013-14), the District commenced its largest Measure E funded project yet with the construction of the Horace Mann “Building B” classroom facility. The commencement of this project, although delayed, is a significant step forward for the District’s Measure E program.
- In September 2013, the Board gave District staff authorization to pursue State bond funds for seismic repair, reconstruction, or replacement of school facilities under the Seismic Mitigation Program. Application for these funds could result in several million dollars of additional revenue to the District for critical seismic safety repairs at several school sites, however there are no definitive cost or revenue estimates at this time and only about 44 percent of the original funding is still available. The District should track and report all new costs associated with this program to ensure funds are pursued in the most efficient, effective, and transparent method possible.
- The Measure E Bond Fund, as currently structured, is unlikely to meet all of the District’s critical capital needs. As noted in the previous two performance audit reports, the costs of the projects identified in the 2012 Facilities Master Plan ranged from approximately \$494 million to \$581 million, which is about \$160 to \$248 million more than the \$334 million that the District has assumed would be available from all Measure E bond issuances. The Board should strongly consider all legal policy options available to maximize the District’s bond authority, including allowing the combined bond-supporting tax rate to increase beyond \$49.71 per \$100,000 of assessed property value.
- While the District has taken some steps to address the findings and recommendations made in the FY 2011-12 and FY 2012-13 performance audits, only six of the recommendations from the previous performance audit have been at least partially implemented. Further, under SB 581, starting with the FY 2012-13 audit, the Board was required to provide the Citizens’ Oversight Committee (COC) with responses to any and all findings, recommendations and concerns addressed in the annual performance audit, but did not do so. The Board should direct the Chief Administrative Officer to oversee the efforts of the Facilities Director and staff to provide a written response within three months of receiving this audit to ensure compliance with State law.

**Facilities and Planning Department has Incurred Significant Turnover and Vacancies**

The District has had considerable turnover and extended vacancies for the Chief Facilities Officer position and the Director of Facilities and Planning position since the middle of FY 2012-13. Specifically, the Chief Facilities Officer position became vacant in January 2013 when the incumbent retired from the District. The position was filled briefly in early FY 2013-14, but was vacated again in January 2014 and filled temporarily with a contractor. The Director of Facilities and Planning, a position that reports to the Chief Facilities Officer, has been vacant since December 2012. A new position, the Measure E Fiscal Director, was created in June 2014, and filled in November 2014. The purpose of the position is to ensure strong control over budgets and expenditures in the Measure E Facilities program.

While the District has made use of an outside contractor to provide program management services since November 2013 and attempted to fill the Chief Facilities Officer position during FY 2013-14, the Board and District staff should continue to focus on recruiting qualified facilities and planning staff to ensure that the District has sufficient in-house resources to manage the Measure E program on a day to day basis. This is especially important as the level and complexity of construction activity increases. The Measure E program is a \$334 million, multi-year endeavor that will require significant and consistent capital programming expertise and institutional knowledge to minimize inefficiencies and risk to the District.

**Board Certified a List of Projects in September 2014; Changes Should be Considered to Reflect Seismic Mitigation Project**

In September 2014 (after the audit scope period of FY 2013-14), the Board certified a list of specific school facilities projects to be funded by Measure E as recommended in the previous two performance audits. By taking this step, the District is now in compliance with State law (Proposition 39, passed by voters in November 2000), which requires a Board certified list of specific school facility projects to be funded by bond proceeds passed with a minimum 55 percent voter approval. While Measure E expenditures and contracts were individually approved for specific projects by the Board of Education, the absence of an overall implementation plan, or a comprehensive list of approved specific projects, made it impossible to compare the use of Measure E funds against a list of specific projects for previous performance audits as required by the State Constitution. Measure E itself provided a general description of uses of the funds, but did not include a specific list of projects with budgets or timelines.

Although there was no Board certified list of specific projects in place during FY 2013-14, our review of Measure E funds expended in FY 2013-14 compared against the project list certified in September 2014 found that they were expended only on the projects listed with one exception. Although efforts to participate in the State’s Seismic Mitigation Program<sup>1</sup> are listed on the Board approved list of projects, they are only listed as a source of revenues. While some of the costs incurred by the District to apply for funding under this program likely would have been incurred eventually anyway under site-specific projects, the timing and intent of the District’s efforts are specific to the program requirements.<sup>2</sup> As discussed in more detail later in this section, since the expenditures related to efforts to obtain State Seismic Mitigation Program funding is intentional to the program’s requirements, the District should

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<sup>1</sup> The California Seismic Mitigation Program was established by the November 2006 voter approved Proposition 1D, which provided about \$200 million of State matching funds for seismic mitigation programs for public school facilities.

<sup>2</sup> On September 24, 2013, the Board gave authorization to District staff to appropriate \$154,800 to issue design contract amendments to contracted architects in order to prepare, submit and negotiate initial eligibility documents to the Division of the State Architect.



## **1. Program Management and Master Planning**

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either list such efforts as a separate project cost on the Board certified list or separately track and report such costs so that the Citizen's Oversight Committee and community have a full understanding of the costs and benefits of the efforts.

### **District Commenced Construction of New Horace Mann Classroom Facility in August 2014**

In August 2014 (after the audit scope period of FY 2013-14), the District commenced its largest Measure E funded project to date with the construction of the Horace Mann "Building B" classroom facility. The commencement of this project, although delayed a few months by challenges in the bidding process, is a significant step forward for the District's Measure E program.

During FY 2013-14 (the audit scope period), Measure E construction activity was limited to small projects focused on replacing outdated or inoperable equipment. These projects included: (1) the replacement of a chiller, a sanitary sewer, and emergency lighting at El Rodeo; (2) the replacement of a kitchen hood in the culinary classroom at the High School; (3) construction of a new shade structure and replacement of a chiller pump at Beverly Vista; and, (4) replacement of an electrical distribution panel at Hawthorne.

At the end of FY 2013-14, the District had focused its future remaining Measure E funds primarily on: (1) a major modernization of the High School campus and (2) construction of a new classroom building and modernization of an existing building at Horace Mann. Modernization projects at other school sites have largely either been delayed or limited to design work pending the potential award of State Seismic Mitigation funding.

### **District Initiated Efforts to Apply for State Seismic Upgrade Matching Funds**

In September 2013, the Board gave District staff authorization to pursue State bond funds for seismic repair, reconstruction, or replacement of school facilities under the Seismic Mitigation Program. State Proposition 1D, passed by voters in November 2006, provided \$199.5 million of state matching funds for seismic mitigation projects. Of this amount, \$88.5 million, or about 44 percent of the total anticipated bond authority was remaining as of February 2015.<sup>3</sup> Although the District's applications have passed initial eligibility approval for Seismic Mitigation Program funding, District staff and contractors do not yet have a definitive estimate of the costs required or the amount of funding that would be provided by the State should subsequent applications be approved.

In July 2014, the State sent official notification to the District that nine buildings had received Phase One approval, which means that the buildings meet the basic eligibility criteria for funding. The District's construction managers estimate that \$25 million in matching funds could be recovered if final approval is received on those nine buildings. Later, the District received notification from the State that an additional five buildings meet the basic eligibility requirements. The District's contract Facilities Officer estimates that as much as \$40 million in matching funds could be obtained through the Seismic Mitigation Program based on the 14 buildings that have received Phase One approvals and additional buildings for which the District is also pursuing funding.

State Allocation Board staff has noted to the audit team that funding awards are strictly limited to the minimum amount necessary to mitigate identified seismic issues and that continued funding for the

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<sup>3</sup> This amount accounts for projects whose applications have been completed, administrative costs, applications in process at the Office of Public School Construction, and projects that have received State Allocation Board conceptual approval and require final submittal from the applicants before award of funds.

## **1. Program Management and Master Planning**

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program is not guaranteed. Further, State Allocation Board staff has noted that the average award has been approximately \$750,000 for rehabilitation projects and approximately \$5 million for replacement projects. Given that two of the 14 applications submitted by the District would be for building replacement and the remaining 12 applications would be for rehabilitation work, the District could expect to receive about \$19 million if the State were to award an amount equivalent to the averages provided to other districts across the State. Further, State Allocation Board staff noted that the minimum amount of time that a District should anticipate for funding from Phase 1 initial approval to the provision of matching funds is about 28 months<sup>4</sup>.

### ***District Should Track All Costs Associated with State Seismic Mitigation Program Applications and Report Regularly on Progress to the Board and Citizens' Oversight Committee***

The District has not been separately tracking or reporting to oversight bodies such as the Board of Education and Citizens' Oversight Committee on the costs involved with applying for State Seismic Mitigation Program funding. While some costs have been avoided due to previous preliminary seismic evaluations and other architectural and engineering work, the District has incurred additional engineering costs, State fees, and other professional service fees in order to apply for these funds. We estimate that these costs have been about \$135,000 for engineering services and \$6,000 in State fees. We are unable to estimate the amount of professional service fees incurred as of the writing of this report. In order to proceed in a transparent fashion and to ensure that Measure E bond funds are used efficiently and effectively, the District should track all costs incurred directly as a result of its pursuit of Seismic Mitigation Program funding and report this amount and milestones met at least quarterly to the Board and the Citizens' Oversight Committee.

### **Measure E Funding Unlikely to Meet All of District's Critical Needs as Currently Structured**

The Measure E Bond Fund, as currently structured, is unlikely to meet all of the District's critical capital needs. As noted in the previous two performance audit reports, the costs of the projects identified in the 2012 Facilities Master Plan ranged from approximately \$494 million to approximately \$581 million<sup>5</sup>, which is about \$160 to \$248 million more than the \$334 million that the District has assumed would be available from all Measure E bond issuances. Even with the potential addition of several million in State Seismic Mitigation Program funding,<sup>6</sup> Measure E will still fall well short of the District's needs. Further, many District officials have acknowledged that the District has so far planned its bond issuances so that the total bond-supporting tax rate will not exceed the implied promise to voters by previous Board members of \$49.71 per \$100,000 of assessed property value<sup>7</sup>. By adhering to this cap, the District will be

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<sup>4</sup> This timeframe is considered a best case scenario and includes an estimated 6 months for determining whether a project should be for rehabilitation or replacement, 2 months to provide a cost estimate based on schematic designs, 6 months to prepare final drawings, 4 months for DSA review of final drawings, 3 months for a review of funding by the Office of Public School Construction, 1 month for approval by the State Allocation Board, and 6 months to potentially wait for the State to issue bonds (funding is otherwise held in bond authority with issuances scheduled for twice per year).

<sup>5</sup> This figure includes the least and most expensive options at each school site, all recommended improvements from the mechanical, electrical, plumbing, and civil equipment, systems and utilities study (MEPC study), and estimated costs from the educational adequacy study.

<sup>6</sup> State Allocation Board staff note that several school districts have overestimated the amount of Seismic Mitigation Program funding that they are eligible for and that program awards are strictly limited to the minimum amount necessary to mitigate the identified seismic issues.

<sup>7</sup> There was a one year increase in the BHUSD in FY 2013-14 to \$100 per \$100,000 of assessed property value.

required to delay future bond issuances by at least several years, which would dilute the value of the bond funds and further delay critical infrastructure projects.

The Board should strongly consider all legal policy options available, including allowing the combined bond-supporting tax rate to increase beyond \$49.71 per \$100,000 of assessed property value. Under Proposition 39, each individual local measure can have a supporting tax rate up to \$60 per \$100,000 of assessed value. The District therefore has the legal right to raise the tax rate, which would allow for additional Measure E bond issuances more immediately to better meet its capital needs. The District could also request a new bond measure (with a new \$60 tax rate) in the next election cycle<sup>8</sup> or hold a special election at any time, but the measure would require a 2/3 majority to pass.

### **Some Recommendations from Previous Performance Audits Have Been Implemented, Follow Up Required by District Staff on Most**

While the District has taken some steps to address the findings and recommendations made in the FY 2011-12 and FY 2012-13 performance audits, most of those recommendations have not been implemented. Although Board members were receptive to the findings and recommendations of the FY 2012-13 report when it was presented in April 2014, there is no apparent District staff member who has been assigned primary responsibility for implementation of the recommendations. Further, although 16 of the 18 recommendations in the FY 2012-13 report stated that the Board of Education should direct the Chief Administrative Officer (CAO) to take action, the efforts to respond to the report have been primarily delegated to the District's contracted construction management firm. Some of this delay may be related to the departure and replacement of the previous CAO in September 2014.

As shown in the Appendix, which summarizes the recommendations made in the previous performance audit report, the District has at least partially implemented only six of the 18 recommendations, or about 33 percent. Some steps have been made to respond to most of the remaining recommendations, but these efforts have been primarily taken by the District's contracted construction managers and General Counsel with little follow up by District staff. Specific actions taken include:

- The District's contracted construction managers have: (1) developed a matrix of the report's findings and recommendations including the construction manager's proposed actions, designee assigned to respond to the recommendation, and a completion date; (2) drafted revised Measure E procedures; (3) developed a master list of projects, which was approved by the Board; and, (4) presented project level budgetary information to the Board in a public hearing.
- The District's General Counsel has: (1) written a professional services agreement template, which includes a not-to-exceed fee clause, a clause that "special services work shall be performed only with the express direction from the Board of Education, the Superintendent, or designee," and specific limits on certain reimbursable out-of-pocket expenses; (2) reviewed all existing professional service contracts to add a not-to-exceed clause and to restrict the use of block billing (e.g. billing in increments greater than 1.5 hours for a single task); and, (3) limit the number of law firms the District uses in an attempt to lower costs for legal services.

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<sup>8</sup> For Prop 39 bonds, which require a minimum of 55 percent, rather than a 2/3 majority, can only be scheduled as part of regular election cycles.

## **1. Program Management and Master Planning**

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- In FY 2013-14 District staff provided state-mandated interim budget presentations to the Board with updated actual to date expenditures and projected year totals based on actual expenditures.

### ***Board Did Not Provide Responses to Previous Performance Audit Findings to COC as Required***

The Board did not provide a written response to the previous performance audit as required by State law. Under SB 581, starting with the FY 2012-13 audit, the Board is required to “provide the citizens’ oversight committee with responses to any and all findings, recommendations, and concerns addressed in the annual, independent financial and performance audits within three months of receiving the audits.” The Board should direct the Chief Administrative Officer to oversee efforts by the Facilities Director and staff to respond to all findings, recommendations, and concerns of this audit report to the Citizens’ Oversight Committee within three months of receiving the report. This response should also ensure that all recommendations from the FY 2012-13 performance audit are either fully implemented or, if not fully implemented, a response is provided to the Citizens’ Oversight Committee as to why the District does not feel the recommendation is appropriate.

### **Master Planning at BHUSD**

The California Department of Education defines a facility master plan as “a compilation of information, policies, and statistical data about a school district’s facilities.” The California Department of Education recommends developing a facility master plan to “create a process for the continuous planning of educational facilities that will meet the changing needs of a community” and to identify “alternatives and priorities in the allocation of facility resources to achieve district goals and objectives.” The Beverly Hills Unified School District developed a facilities master plan in August 2008 just before Measure E was approved by District voters. A second facilities master plan was developed and accepted in August 2012.

The previous two performance audits reviewed master planning at the District and found that the 2012 Facility Master Plan included some improvements from the 2008 plan, but was still incomplete as it was missing elements considered best practices by the State Allocation Board. The missing elements included District priorities, community needs, and potential legal issues. Further, the District’s educational goals and educational specifications were included in a section that was never formally approved by the Board. The Board should instruct Facilities staff, under the direction of the Chief Administrative Officer, to address this finding, described in more detail in the FY 2011-12 and FY 2012-13 reports to ensure the District is adhering to best practices.

### **BHUSD Followed Established Measure E Sustainability Standards for Horace Mann Modernization Project**

BHUSD architects adhered to two sustainability programs as required by the District’s Design and Construction Standards for the Horace Mann Modernization Project. The District’s Design and Construction Standards require that all capital improvement projects to adhere to: (1) the statewide High Performance Incentive (HPI) program<sup>9</sup> and (2) the Savings by Design (SBD) program<sup>10</sup>. The

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<sup>9</sup> HPI is a state-run program that promotes the use of sustainable elements in new construction and modernization projects for K-12 schools. These elements include using design and materials that promote energy and water efficiency, minimize and treat runoff after construction, maximize the use of natural lighting, minimize parking lots,

architects adhered to these programs, which require builders to exceed California's Title 24 Energy Code standards, by reaching or exceeding the program's minimum criteria. For example, the District exceeded the HPI program minimum score of 20 points (out of a total of 84 points) by achieving 34 points with some extra points coming from energy efficiency and water efficiency efforts. Further, the District utilized the results of a June 2012 Feasibility Energy Analysis to design several changes that will improve the sustainability of the new and modernized buildings at Horace Mann. The District anticipates long term energy and cost savings from participation in these programs.

The District did not adhere to these programs for the Horace Mann Auditorium project because the design and construction document phases as well as the subsequent submittal to the Division of the State Architect were completed prior to the issuance of the District's sustainability standards and therefore were designed to meet, rather than exceed, California Title 24 Energy Code standards. Additionally, the District's standards allow for projects to adhere to the Leadership in Energy and Environmental Design (LEED) for Schools Program as an alternative to the HPI program. A scorecard was developed for adherence to LEED for Schools for the Horace Mann Modernization project and presented to the District as a comparison to the HPI program guidelines and received a total score of 38, which was below the minimum certification level of 40 points out of a total possible score of 110. Project architects noted that the project had achieved a higher score initially, but the District deleted the requirements for Green Power.

## **Conclusions**

The District has had considerable turnover and extended vacancies in the Facilities and Planning Department. While the District has made use of an independent contractor to provide program management services since November 2013, the Board and District staff should focus on recruiting qualified facilities and planning staff to ensure that the District has sufficient resources to manage the Measure E program on a day to day basis, especially as the level and complexity of construction activity increases.

In September 2014 (after the audit scope period of FY 2013-14), the Board certified a list of specific school facilities projects to be funded by Measure E as recommended in the previous two performance audits. Our review of funds expended in FY 2013-14 found that they were expended only on the specific projects listed, with one exception. Although efforts to participate in the State's Seismic Mitigation Program<sup>11</sup> are listed on the Board approved list of projects, they are only listed as a source of revenue. Not all costs associated with the application would have been incurred in FY 2013-14 and therefore should be listed as expenses under a separate project or separately tracked and reported.

In September 2013, the Board gave District staff authorization to pursue State bond funds for seismic repair, reconstruction, or replacement of school facilities under the Seismic Mitigation Program. Although Contract Facilities staff estimate that the District could receive upwards of \$25 million of matching funds for critical seismic safety repairs at several school sites, State Allocation Board staff caution that funds are strictly limited to the minimum amount of work necessary to mitigate the

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improve indoor air quality, use recycled materials and materials that emit a minimum of toxic substances, and employ acoustics that aid in teaching and learning.

<sup>10</sup> SBD, administered in Beverly Hills by Southern California Edison, encourages energy efficiency in the design and construction of non-residential buildings.

<sup>11</sup> The California Seismic Mitigation Program was established by the November 2006 voter approved Proposition 1D, which provided about \$200 million of state matching funds for seismic mitigation programs for public school facilities.

identified deficiencies. Further, based on the average award amounts provided to other districts throughout the State, the District could anticipate receiving about \$19 million if all applications were approved and funding were still available at the time the District's applications are finalized. The District should track and report all new costs associated with this program to ensure funds are pursued in the most efficient, effective, and transparent method possible.

The Measure E Bond Fund, as currently structured, is unlikely to meet all of the District's critical capital needs. As noted in the previous two performance audit reports, the costs of the projects identified in the 2012 Facilities Master Plan ranged from approximately \$494 million to approximately \$581 million, which is about \$160 to \$248 million more than the \$334 million that the District has assumed would be available from all Measure E bond issuances. The Board should strongly consider all legal policy options available, including allowing the combined bond-supporting tax rate to increase beyond \$49.71 per \$100,000 of assessed property value.

While the District has taken some steps to address the findings and recommendations made in the FY 2011-12 and FY 2012-13 performance audits, most of the recommendations have not been implemented. Further, under SB 581, starting with the FY 2013-14 audit, the Board was required to provide the Citizens' Oversight Committee (COC) with responses to any and all findings, recommendations and concerns addressed in the annual performance audit, but did not do so. The Board should instruct Facilities staff, under the direction of the Chief Administrative Officer, to implement the recommendations from this audit and the FY 2012-13 audit and provide a formal response to the COC within three months of receiving this audit to ensure compliance with State law.

## **Recommendations**

The Board of Education should:

- 1.1 Direct the Chief Administrative Officer to initiate efforts to recruit and hire a Chief Facilities Official and, if necessary, a Director of Facilities and Planning so that the District has in-house staff that are able to focus on the day-to-day management of the Measure E program.
- 1.2 Instruct the Interim Director of Facilities, under the direction of the Chief Administrative Officer, to either: (a) amend the Board certified list of projects to be funded by Measure E to include costs incurred by the District to apply for Seismic Mitigation Program funding (including application fees, additional engineering work, and other professional service fees) as a separate project or (b) separately track and report such costs on at least a quarterly basis to the Board and Citizens' Oversight Committee to ensure that bond funds are spent efficiently, effectively, and transparently.
- 1.3 Strongly consider all legal policy options for maximizing the District's bond authority to best meet the critical infrastructure needs of the District, including allowing the District's tax rate to rise above a self-imposed cap of \$49.71 per \$100,000 of assessed value.
- 1.4 Instruct Facilities staff, under the direction of the Chief Administrative Officer to lead the effort to respond to all findings, recommendations, and concerns of this audit report to the Citizens' Oversight Committee within three months of receiving the report as required by State law. This response should also ensure that all recommendations from the FY 2012-13 performance audit are either fully implemented or, if not fully implemented, a response is provided to the Citizens' Oversight Committee as to why the District does not feel it is appropriate.

- 1.5 Instruct Facilities staff, under the direction of the Chief Administrative Officer to address the master planning recommendations from the FY 2011-12 and FY 2012-13 performance audits including to:
- a. Draft an amendment to the Facilities Master Plan to include best practice elements as outlined by the State Allocation Board including District priorities, educational goals, and others as appropriate; and
  - b. Initiate a revision of the proposed educational specifications considering feedback from the Board of Education and to present the revised educational specifications to the Board of Education within three months for approval.

## **Costs and Benefits**

The costs of these recommendations include additional staff time to recruit for the vacant Chief Facilities Officer position, amend the certified list of projects or track and report costs associated with the Seismic Mitigation Program, and lead the effort to formally respond to the findings and recommendations to this report. The benefits of these recommendations include in-house staff that can focus on the day-to-day management of the Measure E program, a fully transparent effort to obtain State Seismic Mitigation funding, compliance with State law regarding a formal response to the annual performance audit, a complete and more useful Facilities Master Plan, and useful educational specifications that can serve as guidance to designers.

## 2. Budgeting and Communication Effectiveness

- As of June 30, 2014, the District had spent approximately \$39.3 million, or 34 percent of the \$117 million issued, and 12 percent of the \$334 million total authorized by Measure E. The District spent \$7,941,171 in Measure E funds in FY 2013-14, or approximately 18 percent less than in the prior fiscal year.
- The majority of FY 2013-14 Measure E expenditures was for capital outlay, including architectural services, building improvement and construction, construction management, and geotechnical/seismic investigation and testing. A little more than half of this spending was for architectural services for the High School modernization project, reflecting a shift toward focusing more Measure E resources to that campus. Spending on legal services, almost entirely related to the Los Angeles County Metropolitan Transportation Authority (MTA) Westside subway expansion proposal, was also a large expenditure accounting for approximately 29 percent of overall FY 2013-14 Measure E spending.
- Actual District Measure E expenditures in FY 2013-14 were 54 percent less than the original budget adopted by the Board of Education in June 2013. Spending was particularly lower for school renovation and modernization projects. This was primarily related to the delay in construction at Horace Mann due to an extended bidding process as well as the absence of approval of other projects beyond the conceptual design phase. The Measure E budget was revised in interim budget statements to reflect these changes in project plans as recommended in the previous two performance audits.
- The District has improved the reporting of Measure E budget and expenditure information, but further improvements are still necessary for better transparency. The improvements made include (1) a more accurate presentation of projected year total expenditures based on spending patterns to date for the two interim budget statements and (2) the presentation of budgetary information consistent with the way funds are programmed (by project and school site) accompanied by graphical representations. The District should continue to present budgetary information in this more transparent manner and include more detailed information with budget updates.
- The District's Measure E web pages and progress reports still need improvement and consistent updates to ensure that information is sufficient for the Citizens' Oversight Committee and the general public to understand program and site-specific progress.

### **Measure E Spending Decreased in FY 2013-14, Primarily Due to Completion of Horace Mann Auditorium and Lack of Other Active Construction**

The Beverly Hills Unified School District (BHUSD or District) spent \$7,941,171 of Measure E bond funds in FY 2013-14, which was \$1,701,797 or approximately 18 percent, less than the amount spent in FY 2012-13. Overall, the District spent approximately \$39.3 million, or 34 percent, of the \$117 million of Measure E bond issuances and 12 percent of the \$334 million authorized by Measure E as of June 30, 2014 (not including earned interest, which has increased available funds by a moderate amount).



## 2. Budgeting and Communication Effectiveness

Nearly all major categories of spending decreased in FY 2013-14 from FY 2012-13. The largest categorical decrease in Measure E bond fund spending was for Capital Outlay. This decrease was primarily due to the completion of the Horace Mann auditorium renovation project, a six month delay in commencing construction of the Horace Mann new classroom facility, and the lack of other major active construction projects.

The largest increase in spending in FY 2013-14 as compared to FY 2012-13 by major budgetary category (Major Object) was approximately \$2.6 million spent on services and other operating expenses, an increase of approximately \$820,000, or 46.8 percent more than in FY 2012-13 as shown in Exhibit 2.1 below. These expenditures were primarily for legal fees related to the MTA Westside subway expansion proposal and independent consultant services (contracted facilities consulting and auditing services). There was also a small increase of \$5,180 spent on supplies.

<b>Exhibit 2.1: Measure E Expenditures by Major Object, FY 2012-13 vs. FY 2013-14</b>					
<b>Budgetary Category</b>	<b>FY 2012-13 Actual</b>	<b>FY 2013-14 Actual</b>	<b>Percent of Total FY 2013-14</b>	<b>Change from FY 2012-13</b>	<b>Percent Change from FY 2012-13</b>
Capital Outlay (architectural, building construction, construction mgmt., etc.)	\$7,512,809	\$5,210,649	65.6%	(\$2,302,160)	(30.6%)
Services & Other Operating Expenditures (legal and other professional services)	\$1,753,204	\$2,573,174	32.4%	\$819,970	46.8%
Classified Salaries	\$298,918	\$111,340	1.4%	(\$187,578)	(62.8%)
Employee Benefits	\$71,549	\$34,340	0.4%	(\$37,209)	(52.0%)
Books and Supplies	\$6,488	\$11,668	0.1%	\$5,180	79.8%
<b>Total</b>	<b>\$9,642,966</b>	<b>\$7,941,171</b>	<b>100%</b>	<b>(\$1,701,797)</b>	<b>(17.6%)</b>

Sources: FY 2013-14 and FY 2012-13 Measure E expenditure data provided by District Fiscal and Facilities staff.

As shown in Exhibit 2.2, the largest subcategory (budgetary sub-object) of Measure E spending in FY 2013-14 was approximately \$3 million, or 38 percent of total expenditures, on architectural services for District school sites. Most of these funds, approximately \$2.5 million, were for design and engineering services for the High School modernization project. Approximately \$440,000 was spent on architectural services at Horace Mann with significantly smaller amounts spent at the other school sites.

The second largest subcategory of Measure E spending in FY 2013-14 was for legal fees at approximately \$2.3 million, or 28.8 percent of total expenditures, as shown in Exhibit 2.2. These legal fees were almost entirely (95 percent) related to the MTA Westside subway expansion proposal. Further details of the top Measure E expenditures in FY 2013-14 are shown in Exhibit 2.2 below.

<b>Exhibit 2.2: Top Measure E Expenditures by Sub-object, FY 2013-14</b>			
<b>Budgetary Category (Sub-object)</b>	<b>FY 2013-14 Actual</b>	<b>Percent of FY 2013-14</b>	<b>Amount Change from FY 2012-13</b>
Architectural Services	\$2,995,935	37.7%	\$1,189,599
Legal Services (mostly MTA-related)	\$2,288,567	28.8%	\$821,978
Building Construction/Improvements	\$979,856	12.3%	(\$2,974,876)
Construction Management	\$699,695	8.8%	(\$201,828)
Consultants/Independent Contractors <sup>1</sup>	\$257,265	3.2%	See note below
Geotechnical Investigations and Soils Testing	\$173,173	2.2%	\$124,071
All Other Sub-object Categories	\$546,680	0.3%	\$309,141
<b>Total</b>	<b>\$7,941,171</b>	<b>100%</b>	<b>(\$1,701,797)</b>

Sources: FY 2013-14 and FY 2012-13 Measure E expenditure data provided by District Fiscal and Facilities staff.

<sup>1</sup> Consultants/Independent Contractors was previously included in another budget category (“Other Services”), which totaled \$237,539 in FY 2012-13

### **Most FY 2013-14 Measure E Expenditures were for Districtwide Administration/Initiatives and Architectural Services at the High School**

The highest amount of Measure E expenditures by location in FY 2013-14 was for Facilities and District Administration, as shown in Exhibit 2.3 below. Approximately \$3 million, or about 38 percent of total FY 2013-14 Measure E expenditures, was spent on districtwide administration and initiatives, primarily for efforts related to the MTA proposal to build a subway tunnel underneath District property and the administration of the Facilities and Planning program as detailed in Exhibit 2.4 below.

The location with the second highest amount of expenditures in FY 2013-14 was the High School as detailed in Exhibit 2.4 below. Approximately \$2.8 million, or about 35 percent of total FY 2013-14 Measure E expenditures, was spent at the High School, primarily for architectural services related to the modernization project and for the installation of a new kitchen hood in the culinary classroom.

The District spent the remaining expenditures, approximately \$2.1 million, or 27 percent of overall FY 2013-14 spending, at the other school sites as shown in Exhibit 2.3 below. The District spent less Measure E funds at Horace Mann in FY 2013-14 compared to FY 2012-13 due to the completion of the auditorium renovation as well as a delay in the new classroom facility and less at Hawthorne due to the completion of the chiller/cooling tower replacement project and the delay of the auditorium ceiling upgrades. Spending increased at El Rodeo and Beverly Vista due to active projects including the replacement of emergency lighting, a sanitary sewer, and a chilling and cooling tower at El Rodeo and the construction of a shade structure and the replacement of a chiller pump at Beverly Vista.

## 2. Budgeting and Communication Effectiveness

<b>Exhibit 2.3: Measure E Expenditures by School Site/Location</b>						
<b>School Site/Location</b>	<b>FY 2012-13 Actual Expenditures</b>	<b>Percent of FY 2012-13</b>	<b>FY 2013-14 Actual Expenditures</b>	<b>Percent of FY 2013-14</b>	<b>Change from FY 2012-13 Expenditures</b>	<b>Percent Change from FY 2012-13 Expenditures</b>
District/Facilities Administration & Related	\$2,404,451	24.9%	\$3,016,709	38.0%	\$612,258	25.5%
High School	\$526,970	5.5%	\$2,780,477	35.0%	\$2,253,507	427.6%
El Rodeo	\$146,770	1.5%	\$994,318	12.5%	\$847,548	577.5%
Horace Mann	\$5,936,778	61.6%	\$909,523	11.5%	\$(5,027,255)	-84.7%
Beverly Vista	\$79,001	0.8%	\$122,722	1.5%	\$43,721	55.3%
Hawthorne	\$548,997	5.7%	\$117,422	1.5%	\$(431,575)	-78.6%
<b>Grand Total</b>	<b>\$9,642,967</b>	<b>100.0%</b>	<b>\$7,941,171</b>	<b>100.0%</b>	<b>\$(1,701,796)</b>	<b>-17.6%</b>

Sources: FY 2013-14 and FY 2012-13 Measure E expenditure data provided by District Fiscal and Facilities staff.

Exhibit 2.4 below provides greater detail on the project expenditures at each location. Two major project expenditures in FY 2013-14 beyond districtwide administration and design services for the High School were costs associated with the replacement of emergency lighting at El Rodeo (approximately \$806,000) and new construction at Horace Mann (approximately \$663,000).

Exhibit 2.4: Measure E Expenditures by Project and School Site/Location						
Location	Location Expenditures by Project	FY 2012-13 Actual Expenditures	FY 2013-14 Actual Expenditures	Percent of FY 2013-14 Expenditures at Location	Change from FY 2012-13 Expenditures	Percent Change from FY 2012-13 Expenditures
District/ Facilities Administration	MTA	\$1,420,081	\$2,282,945	75.7%	\$862,864	60.8%
	Facilities & Planning	\$935,441	\$692,564	23.0%	(\$242,877)	-26.0%
	Horace Mann- New Construction	\$0	\$41,200	1.4%	\$41,200	N/A
	Facilities Master Plan	\$26,482	\$0	0.0%	(\$26,482)	-100.0%
	District Administration (legal fees)*	\$22,447	\$0	0.0%	(\$22,447)	-100.0%
	<b>District/Facilities Administration Total</b>	<b>\$2,404,451</b>	<b>\$3,016,709</b>	<b>100.0%</b>	<b>\$612,258</b>	<b>25.5%</b>
High School	High School Modernization	\$526,970	\$2,605,720	93.7%	\$2,078,750	394.5%
	New Kitchen Hood in Culinary Classroom	\$0	\$177,789	6.4%	\$177,789	N/A
	MTA	\$0	-\$3,032	-0.1%	(\$3,032)	N/A
	<b>High School Total</b>	<b>\$526,970</b>	<b>\$2,780,477</b>	<b>100.0%</b>	<b>\$2,253,507</b>	<b>427.6%</b>
El Rodeo	Emergency Lighting/ Sanitary Sewer/ Chiller and Cooler Tower	\$75,019	\$806,503	81.1%	\$731,484	975.1%
	El Rodeo Modernization/New Construction	\$47,294	\$173,094	17.4%	\$125,800	266.0%
	ER Auditorium Ceiling Upgrades	\$305	\$13,981	1.4%	\$13,676	4483.9%
	Division of the State Architect Closeout	\$24,152	\$740	0.1%	(\$23,412)	-96.9%
	<b>El Rodeo Total</b>	<b>\$146,770</b>	<b>\$994,318</b>	<b>100.0%</b>	<b>\$847,548</b>	<b>577.5%</b>
Horace Mann	New Construction (Classroom Facility)	\$1,337,267	\$663,061	73%	(\$674,206)	-50.4%
	HM Modernization (Building A Renovation)	\$497,889	\$141,456	16%	(\$356,433)	-71.6%
	Interim Classroom	\$56,122	\$63,033	7%	\$6,911	12.3%
	Auditorium Ceiling Upgrades	\$4,022,449	\$41,972	5%	(\$3,980,477)	-99.0%
	Lunch shelter, Courtyard & Central Plant	\$22,741	\$0	0%	(\$22,741)	-100.0%
	Rotunda Demolition	\$201	\$0	0%	(\$201)	-100.0%
	Division of the State Architect Closeout	\$108	\$0	0%	(\$108)	-100.0%
	<b>Horace Mann Total</b>	<b>\$5,936,777</b>	<b>\$909,522</b>	<b>100%</b>	<b>(\$5,027,255)</b>	<b>-84.7%</b>
Beverly Vista	BV Shade Structure	\$10,532	\$64,022	52.2%	\$53,490	507.9%
	Chiller Pump Replacement	\$17,347	\$57,784	47.1%	\$40,437	233.1%
	Beverly Vista Modernization	\$50,192	\$915	0.7%	(\$49,277)	-98.2%
	Division of the State Architect Closeout	\$930	\$0	0.0%	(\$930)	-100.0%
	<b>Beverly Vista Total</b>	<b>\$79,001</b>	<b>\$122,721</b>	<b>100.0%</b>	<b>\$43,720</b>	<b>55.3%</b>
Hawthorne	Electrical Distribution & Sewer Replacement	\$39,660	\$98,395	83.8%	\$58,735	148.1%
	Hawthorne Modernization	\$36,365	\$19,028	16.2%	(\$17,337)	-47.7%
	Chiller/Cooler Tower Replacement	\$470,227	\$0	0.0%	(\$470,227)	-100.0%
	Auditorium Ceiling Upgrades	\$2,745	\$0	0.0%	(\$2,745)	-100.0%
	Division of the State Architect Closeout	\$0	\$0	0.0%	\$0	N/A
	<b>Hawthorne Total</b>	<b>\$548,997</b>	<b>\$117,423</b>	<b>100.0%</b>	<b>(\$431,574)</b>	<b>-78.6%</b>
<b>Grand Total</b>		<b>\$9,642,966</b>	<b>\$7,941,170</b>	<b>N/A</b>	<b>(\$1,701,796)</b>	<b>-17.6%</b>

Sources: FY 2013-14 and FY 2012-13 Measure E expenditure data provided by District Fiscal and Facilities staff.

\* The legal fees expended under District Administration were related to the termination and prosecution of a former District facilities official.

As shown in Exhibit 2.5 below, the District spent most Measure E funds on a mix of legal services, architectural services, and construction work. Construction spending in FY 2013-14 took place at:

- The **High School** for the replacement of a kitchen hood in the culinary classroom;
- **El Rodeo** for replacement of a chiller, a sanitary sewer, and emergency lighting;
- **Beverly Vista** for a new shade structure and the replacement of a chiller pump; and,
- **Hawthorne** for replacement of an electrical distribution panel.

<b>Exhibit 2.5: Top Measure E Expenditures by Location</b>			
<b>Location</b>	<b>Location Expenditures by Budgetary Sub-category</b>	<b>FY 2013-14 Actual Expenditures</b>	<b>Percent of FY 2013-14 Expenditures at Location</b>
District/Facilities Administration & Related	Legal Fees <sup>a</sup>	\$2,283,254	75.7%
	Consultants/Independent Contractors	\$257,265	8.5%
	Construction Management	\$240,193	8.0%
	Other	\$235,998	7.8%
	<b>District/Facilities Administration Total</b>	<b>\$3,016,710</b>	<b>100%</b>
High School	Architectural Services	\$2,474,955	89.0%
	Building Construction/Improvements	\$122,690	4.4%
	Geotechnical Investigations/Soils Testing	\$67,300	2.4%
	Other	\$115,532	4.2%
	<b>High School Total</b>	<b>\$2,780,477</b>	<b>100%</b>
El Rodeo	Building Construction/Improvements	\$694,579	69.9%
	Geotechnical Investigations/Soils Testing	\$99,740	10.0%
	Construction Management	\$79,081	8.0%
	Other	\$120,918	12.2%
	<b>El Rodeo Total</b>	<b>\$994,318</b>	<b>100%</b>
Horace Mann	Architectural Services	\$441,227	49%
	Construction Management	\$282,511	31%
	Direct Costs (Purchase Orders)	\$49,148	5%
	Other	\$136,637	15%
	<b>Horace Mann Total</b>	<b>\$909,523</b>	<b>100%</b>
Beverly Vista	Building Construction/Improvements	\$92,080	75.0%
	Construction Management	\$22,692	18.5%
	Materials Testing and Certification/Inspection	\$4,328	3.5%
	Other	\$3,622	3.0%
	<b>Beverly Vista Total</b>	<b>\$122,722</b>	<b>100%</b>
Hawthorne	Building Construction/Improvements	\$55,599	47.3%
	Construction Management	\$22,271	19.0%
	Architectural Services	\$13,500	11.5%
	Other	\$26,052	22.2%
	<b>Hawthorne Total</b>	<b>\$117,422</b>	<b>100%</b>
<b>Grand Total</b>		<b>\$7,941,172</b>	

Sources: FY 2013-14 and FY 2012-13 Measure E expenditure data provided by District Fiscal and Facilities staff.

<sup>a</sup> Most (approximately 95 percent) of these legal fees were related to the MTA Westside subway extension with the remainder for litigation resulting from the termination and prosecution of a former facilities official.

**The District Spent Less Than Original Budget in FY 2013-14 for Most Categories**

The District’s actual Measure E spending in FY 2013-14 was 54 percent less than the adopted FY 2013-14 budget. Spending was particularly lower than budgeted on school renovation and modernization projects. The District spent \$7,941,171 of Measure E funds in FY 2013-14, which is \$9,162,156 less than the \$17,103,327 budget that was adopted by the Board. As seen in Exhibit 2.6 below, the negative difference between the adopted and actual expenditures was primarily for construction projects (Capital Outlay) for which the District spent \$5,210,649, or \$10,636,456 less than the \$15,847,105 that was adopted by the Board prior to the start of the fiscal year.

However, as seen in Exhibit 2.6, the District’s actual expenditures for Services and Other Operating Expenditures exceeded the budgeted amount by \$1,834,227 or nearly two and a half as much as budgeted. These expenditures were primarily due to approximately \$2.5 million in spending mostly on legal and technical services related to the MTA’s proposal to construct a tunnel under BHUSD property. This amount also includes about \$257,000 spent on program management consultants and independent auditing services.

<b>Exhibit 2.6: Measure E Budget vs. Actual Expenditures, FY 2013-14 by Major Object</b>				
<b>Major Budget Object Category</b>	<b>Original Budget Adopted by Board</b>	<b>FY 2013-14 Actual Expenditures</b>	<b>Over/(Under) Adopted Original Budget</b>	<b>% Over/(Under) Adopted Original Budget</b>
Capital Outlay (construction, architectural, construction mgmt., etc.)	\$15,847,105	\$5,210,649	(\$10,636,456)	-67%
Services and Other Operating Expenditures	\$738,947	\$2,573,174	\$1,834,227	248%
Classified Salaries	\$430,000	\$111,340	(\$318,660)	-74%
Employee Benefits	\$67,275	\$34,340	(\$32,935)	-49%
Books and Supplies	\$20,000	\$11,668	(\$8,332)	-42%
<b>Grand Total</b>	<b>\$17,103,327</b>	<b>\$7,941,171</b>	<b>(\$9,162,156)</b>	<b>-54%</b>

Sources: FY 2013-14 and FY 2012-13 Measure E expenditure data provided by District Fiscal and Facilities staff.

**The District Spent \$2.3 Million in Measure E Bond Funds on MTA-Related Legal Services**

The District spent approximately \$2.3 million, or 28.9 percent of all Measure E funds spent in FY 2013-14, on legal and other professional services, related to the MTA’s plans to construct a subway tunnel underneath BHUSD property. According to District Administration and members of the Board of Education, these expenditures were necessary due to the assertions by Los Angeles County MTA that there were major active faults crossing the high school property.

Of this amount, the District spent approximately \$126,000 in FY 2013-14, initially paid from the Measure E bond fund, to an outside firm for legal services related to the MTA subway project. This same firm has provided lobbying services to the District, but according to District Administration these services are paid for with general fund monies. Our sample review of Measure E expenditures included invoices from this firm and found no evidence that Measure E funds were used for lobbying services.

### **The District Should Continue to Report More Detailed Information on Projects Funded by Measure E as Begun in September 2014**

In September 2014 District staff began reporting more detailed interim Measure E budget information to the Board. Although this report occurred after the timeframe for the scope of this audit, it partially implemented recommendations made in the FY 2011-12 and FY 2012-13 performance audits to make budget information more transparent. Those audits found that the District Measure E budget reports, while conforming to the State's required twice annual Interim Reports<sup>1</sup>, did not contain sufficient information for the Board of Education, the Citizen's Oversight Committee and the public to understand Measure E projects' budgeted and expended amounts. The official Interim Reports did not reflect budgeted and expended amounts based by project or school site, which is how the District programs funds. Further, the official original and interim budgets do not provide narrative reports explaining the basis for the proposed budget and do not use charts or graphs to help illustrate the status and plans for Measure E funding.

The report presented to the Board in September 2014, although brief, included a breakdown of spending patterns by school site for FY 2014-15 to date and for the entirety of the Measure E bond allowance. The report also included graphical descriptions of the allocation of funds overall and the change in funds expended from original budgeted to projected. District staff should continue to include this supplemental budget information to the Board and the public at least as often as it would officially report the District's financial position (at least three times per year). District staff should also consider including more detailed information in these supplemental reports such as the source of data used, dates associated with data tables, and brief narrative comments highlighting actual or proposed capital projects to put the numbers into context.

#### ***Interim Budget Presentations Updated to Reflect Actual Spending Patterns***

In FY 2013-14 District staff provided state-mandated interim budget presentations to the Board with updated actual to date expenditures and projected year totals based on actual expenditures, as recommended in the previous two performance audits. These presentations are an improvement from previous years reports, which had projected year totals that were not revised based on actual spending.

District staff appears to be providing Measure E budget information in a more transparent method, which is consistent with recommended practices for state and local government entity budgeting issued by the Government Finance Officers Association (GFOA) and the National Advisory Council on State and Local Budgeting. Specifically, the GFOA recommends that local government agencies regularly evaluate their financial performance relative to the adopted budget with budget-to-actual and budget-to-projected actual comparisons of revenues, expenditures, cash flow, and fund balance periodically during the budget period. The GFOA also recommends that agencies, such as school districts:

- Have procedures in place to determine when deviations from the budget plan merit amendments to the adopted budget;
- Make budget adjustments, whether to programs or to revenues and expenditures, as appropriate, periodically throughout the year; and,

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<sup>1</sup> The District is required to provide two interim reports on its financial position every year pursuant to AB 1200 and Education Code Sections 35035(g), 42130, and 42131.

- Accompany financial overview presentations with narrative, charts, and graphics and provide clear information about capital plans and funding, with key assumptions for revenues and expenditures highlighted.

### **Measure E Progress Reports are Helpful, But Should be More Detailed and Updated Regularly**

Measure E progress reports posted on the District's website are a helpful tool for keeping the public informed on the advancement of the Measure E program, but need to be updated regularly and include more detailed information to remain relevant. The District's website has two main sections devoted to project updates: (1) a page for District-wide updates and master calendars; and (2) pages devoted to each school site. These documents are also used by the Citizens' Oversight Committee to fulfill their oversight role.

While the districtwide updates provide narrative summaries of overall activities and for each school site, the amounts budgeted vs. expended are not shown for the current fiscal year and are not shown by project, which is how the District develops and spends the Measure E budget. Further, no districtwide updates were provided for the first 10 months of FY 2013-14. Districtwide updates began to be posted again in May 2014 and have been consistently posted on a monthly basis through the time of the writing of this report (into FY 2014-15).

In addition, the districtwide Measure E updates do not make use of charts, graphs or timelines, which could help distill information on the current state of the Measure E program. As District construction projects continue to ramp up as anticipated in FY 2014-15 and beyond, clearly presented information on the progress of each project will be more critical for the Citizens' Oversight Committee and the public to get a full understanding on the status the program.

The site-specific pages of the update reports include short narratives, and, to a varying degree, attached EIR documents, minutes of meetings with consultants, and previous progress updates, but not budgetary information. Further, as of the writing of this report, the site-specific pages had not been consistently updated in FY 2013-14. While there have been no site-specific Measure E updates since July 2012 (some sites had not been updated since October 2011), the District has posted other, more recent, information for Horace Mann and the High School. Specifically, the District has posted weekly photos of the Horace Mann construction site and power point slides with updated building designs, but not other information previously included in site-specific updates. The District should include budgetary information in its site specific updates, regularly update its website to keep the public informed about the progress made under Measure E, and consider simplifying the Measure E website pages to make it easier for the public to find relevant information about the program.

## **Conclusions**

The Beverly Hills Unified School District (District) spent \$7,941,171 of Measure E bond funds in FY 2013-14, primarily for architectural services (mostly at the high school) and legal services (mostly related to the MTA Westside subway proposal). This amount is approximately 18 percent less than what was spent in FY 2012-13 and approximately 54 percent less than what was anticipated when the Board of Education adopted the annual Measure E budget in June 2013.

The District has improved the reporting of Measure E budget and expenditure information, but further improvements are still necessary. These improvements included a more accurate presentation of projected year total expenditures based on spending patterns to date for the two interim budget



statements. Also, in September 2014 (in FY 2014-15) the District began presenting budgetary information consistent with the way it programs funds (by project and school site) and with graphical representations. The District should continue to present budgetary information in a transparent manner and include more detailed information with budget updates. Additionally, the District's Measure E web pages and progress reports still need improvement and consistent updates to ensure that information is sufficient for the Citizens' Oversight Committee and the general public to understand program and project-specific status.

### **Recommendations**

The Board of Education should:

- 2.1 Direct the Facilities Fiscal Director, under the direction of the Interim Facilities Director and Chief Administrative Officer, with the involvement of District stakeholders as appropriate, to revise and expand the budgeting procedures in the Facilities and Planning Procedures Manual to include requirements to continue providing more detailed Measure E budget information at least as often as it would officially report the District's financial position (at least three times per year) to better inform the Board, the Citizens Oversight Committee and the public. These revisions should include disclosing the project or site level budgets and quarterly evaluations of adopted vs. actual budgetary information (for the current fiscal year as well as for the life of the project) with explanations for deviations.
- 2.2 Direct the Facilities Fiscal Director, under the direction of the Interim Facilities Director and Chief Administrative Officer, to provide more detailed information and improve the quality of Measure E districtwide and site-specific updates by including current year adopted vs. actual budgetary information, current amount expended vs. total project budget, project milestones met, and the use of accompanying narratives, charts, and graphics to clearly illustrate progress to the general public.

### **Costs and Benefits**

The costs of these recommendations include additional staff time to draft and present revised policies and to comply with them. The benefits of these recommendations include greater transparency of the Measure E program's budgeting processes and progress.

### 3. Contract Award

- The District does not have well-defined procedures for awarding professional services contracts through a competitive process. State law requires competitive bid for construction contracts and recommends, but does not require, competitive selection of professional services. The District awarded 14 construction and professional services contracts for the Measure E Program in FY 2013-14, with total contract amounts of \$9.3 million. The District awarded all three construction contracts and eight of eleven professional services contracts through a competitive process, and awarded three contracts, two for legal services and one for professional business/facilities consultant service, without a competitive process.
- The District cannot be sure that it is paying the best rates for quality services when professional services are selected without a competitive process. For example, the District has five Measure E contracts for legal services with widely varying rates. The rates for associate attorneys range from \$225 to \$750 per hour and the rates for partners range from \$275 to \$1,075 per hour. Also, the District's architectural services contract, which was selected through a competitive process, had rates ranging from \$140 per hour for professional architect services to \$225 per hour for lead architect services. The District's contract for professional business/facilities consultant services, which was not selected through a competitive process, had rates ranging from \$225 to \$295 per hour.
- The FY 2011-12 and FY 2012-13 performance audits recommended revisions to the Measure E Program procedures to specify competitive selection of construction and professional services contracts, criteria for awarding sole source contracts in the event of an emergency or exceptional circumstances, and inclusion in contracts of standard language for insurance requirements, performance bonds, dispute resolution and other standard provisions. The District assigned preparation of draft Measure E Program procedures to the Measure E Program construction management firm, Totum, who completed draft procedures in November 2014. These draft procedures have not yet been adopted by the Board. District staff reported that the new Measure E Program procedures would not be adopted until a full-time Chief Facilities Official is hired. However, the adoption of the new procedures should not be dependent upon filling this vacancy due to the history of high turnover in this position.

#### **The District does Not Consistently Select Professional Services through a Competitive Process**

The Board of Education approved 14 Measure E program contracts in FY 2013-14, of which three were construction contracts and 11 were professional services contracts.<sup>1</sup> As shown in Exhibit 3.1 below, the 14 contracts were originally approved in FY 2013-14 for \$9,140,514. As some contracts were modified with Board approval during the year, the contracts totaled \$9,326,085 at the end of FY 2013-14. The District spent \$142,105 on one contract for legal services, which was approved by the Board but without

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<sup>1</sup> We obtained a list of 14 contracts newly executed in FY 2013-14 through a review Board minutes. Three contracts were for public projects over \$15,000, while 11 were for professional service contracts. Of the 11 professional service contracts, one was for architect and engineering services, one for construction management, four for geotechnical services, two for legal services, two for mechanical, electrical, plumbing, and civil engineering services, and one was for professional (business/facilities consultant) services.

### 3. Contract Award

a not-to-exceed amount. Furthermore, one contract for professional services (business/facilities consultant services) saw an increase from an original contract amount of \$110,500 approved on February 25, 2014, to \$295,650 on June 12, 2014, an increase of \$185,150, or 168%, in less than four months.

Exhibit 3.1: FY 2013-14 Construction and Professional Services Contracts					
Type of Contract	Board Approval Date	Original Contract Amount	Approved Contract Amount at FY 13-14 Year's End	Expenditure in FY 13-14	Expenditures Under/(Over) Current Contract Amount
<u>Construction</u>					
1. Construction	7/16/2013	\$40,659	\$41,580	\$41,580	\$0
2. Construction	7/16/2013	\$430,469	\$430,469	\$430,469	\$0
3. Construction	3/18/2014	\$326,048	\$326,048	\$0	\$326,048
Subtotal Construction		\$797,176	\$798,097	\$472,049	\$326,048
<u>Professional Services</u>					
4. Architect and engineer	1/21/2014	\$2,098,450	\$2,098,450	\$1,547,465	\$550,985
5. Construction management	6/26/2014	\$5,222,233	\$5,222,233	\$0	\$5,222,233
6. Geotechnical	2/4/2014	\$4,000	\$4,000	\$3,993	\$7
7. Geotechnical	3/11/2014	\$344,100	\$344,100	\$6,133	\$337,967
8. Geotechnical	4/22/2014	\$67,300	\$67,300	\$0	\$67,300
9. Geotechnical	6/2/2014	\$397,755	\$397,755	\$0	\$397,755
10. Legal*	3/11/2014	\$35,000	\$35,000	\$0	\$35,000
11. Legal*	9/10/2013	\$0	\$0	\$142,105	(\$142,105)
12. Engineering services	8/13/2013	\$16,000	\$15,500	\$12,400	\$3,100
13. Engineering services	2/4/2014	\$48,000	\$48,000	\$19,200	\$28,800
14. Professional services*	2/25/2014	\$110,500	\$295,650	\$177,489	\$118,161
Subtotal		\$8,343,338	\$8,527,988	\$1,908,785	\$6,619,203
<b>Total</b>		<b>\$9,140,514</b>	<b>\$9,326,085</b>	<b>\$2,380,834</b>	<b>\$6,945,251</b>

Source: Measure E Agreement List in FY 2013-14, Measure E Expenditures in FY 2013-14, District Office and Facilities and Planning Department

\*Contracts were not competitively bid.

The District awarded the three construction contracts in FY 2013-14 through a competitive bid, and awarded eight of the 11 professional services contracts through a competitive Request for Qualifications (RFQ) process<sup>2</sup>.

#### ***The State Requires Competitive Bid for Construction Contracts, and Recommends but Does Not Require competitive Selection of Professional Services***

The California Public Contract Code requires competitive bid and selection of the lowest responsive bidder<sup>3</sup> for public projects<sup>4</sup> involving an expenditure of \$15,000 or more.<sup>5</sup>

<sup>2</sup> In an RFQ process, the District requests firms to submit their qualifications; the District may then request qualified firms to submit proposals through a Request for Proposals (RFP).

<sup>3</sup> The lowest responsible bidder is the most qualified vendor that meets bid specifications at the lowest cost.

<sup>4</sup> A public project is defined by Public Contract Code 22002 as construction, reconstruction, erection, alteration, renovation, improvement, painting, repainting, demolition and repair work involving a publicly owned, leased, or operated facility.

The California Public Contract Code does not require competitive selection of professional services.<sup>6</sup> However, the State Allocation Board in its Public School Construction Cost Reduction Guidelines<sup>7</sup> recommends the selection of highly qualified professionals through a formal competitive selection to reduce the costs of professional consultants, without reducing the quality of the completed project. According to the State Allocation Board's Public School Construction Cost Reduction Guidelines, school districts should seek highly qualified professionals because there is a potential cost impact due to the use of inexperienced professionals that may be "friends" or "readily available," which may be "masked on the surface by lower fees or other enticements."

#### ***The District's Policies for Competitive Selection of Professional Services are Not Well-Defined***

Procurement of services, materials and supplies using Measure E funds are governed by two sets of District policies and procedures:

- (1) The Facilities and Planning Procedures Manual for the Measure E Bond Program (Measure E Procedures Manual), which was completed in May 2011 and adopted by the Board of Education (Board) on June 9, 2011; and
- (2) The District's Purchasing Procedure Manual (District Purchasing Manual) governing districtwide procurement of supplies, materials and services, whether they are funded by the General Fund, Measure E Bond Fund, or any other fund. The District Purchasing Manual is dated August 14, 2012, but adoption by the Board could not be verified through a review of Board agendas and minutes.

The Measure E Procedures Manual has procedures for selecting contractors for architectural services<sup>8</sup> but not for other professional services, such as engineering, construction management or legal services.

The District Purchasing Manual includes broad language regarding the solicitation of "services." Specifically, the District Purchasing Manual states that competitive bids shall be sought through advertisement for contracts exceeding \$83,400 (effective January 1, 2013 to December 31, 2013) and \$84,100 (effective January 1, 2014), and must be awarded to the lowest responsible bidder.

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<sup>5</sup> Public Contract Code Article 3 Section 20111(b)

<sup>6</sup> California Public Contract Code 20111(c) states that its contract solicitation and awarding processes do not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from the competitive bidding requirement, as is, or to any work done by labor or by force account pursuant to Section 20114 of the Public Contract Code.

<sup>7</sup> The State Allocation Board is responsible for determining the apportionment of State bond proceeds and other funding sources for new construction and modernization of public school facilities for school districts across California. As the policy body for the Office of Public School Construction, the Board adopts policies and regulations pertaining to school construction activities. Because of its statewide reach, the Board's policies can be considered best practices for any California school district's construction program, whether or not they receive funds from the State.

<sup>8</sup> According to the Measure E Facilities and Planning Procedures Manual, architectural services are selected through a Request for Qualifications (RFQ) process, in which firms submit their qualifications and a committee chaired by the Chief Facilities Official recommends the best qualified firm to the Board; and construction contracts are awarded to the lowest responsible bidder.

***The District Pays High Costs for Not Selecting Professional Services Contracts through a Competitive Process***

The eight professional contracts in FY 2013-14 selected through a competitive RFQ process were:

- A \$2.1 million contract for architectural services for Beverly Hills High School. The District had previously awarded a contract to this firm for architectural services at Beverly Hills High School following a competitive RFQ process in 2011. The District awarded a new contract to this firm in 2014 without a further competitive process.
- A \$5.2 million contract for construction management services following a competitive RFQ/RFP process in 2014.
- Four contracts to provide geotechnical services; the firm providing these services was originally selected through a competitive RFQ process in 2011.
- Two contracts for engineering services; the firm providing these services was originally selected through a competitive RFQ process in 2011.

The District awarded three contracts in FY 2013-14, two for legal services and one for professional business/facilities consultant services, without a competitive process. Two of these three contracts exceeded the District's threshold of \$84,100 for competitive selection of professional services firms.

- The contract for professional business/facilities consultant services was originally approved for \$110,500, and increased by \$185,150 or 168% to \$295,650.
- One contract for legal services to support litigation did not have a specified contract amount, but the District spent \$142,105 on this contract in FY 2013-14.

The District cannot be sure that it is paying the best rates for quality services when professional services are selected without a competitive process. For example, the District has five Measure E contracts for legal services with widely varying rates.<sup>9</sup> The rates for associate attorneys range from \$225 to \$750 per hour and the rates for partners range from \$275 to \$1,075 per hour. The District's architectural services contract, which was selected through a competitive process, had rates ranging from \$140 per hour for professional architect services to \$225 per hour for lead architect services. The District's construction management contract, which was selected through a competitive process, had rates of \$180 per hour for program manager, program director, and principal-in-charge services. The District's contract for professional business/facilities consultant services, which was not selected through a competitive process, had rates ranging from \$225 per hour to \$295 per hour.

The District assigned responsibility for implementing the FY 2012-13 performance audit recommendation to develop policies and procedures for selecting professional services contractors to the Measure E construction management firm, Totum. Totum drafted procedures, stating that "all professional services (environmental, architectural, engineering, geotechnical, and planning among others) for vendors/consultants that will result in an agreement for greater than \$84,000 shall be selected through a competitive solicitation process." These draft procedures have not yet been adopted by the Board. District staff reported that the new Measure E Program procedures would not be adopted

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<sup>9</sup> These five contracts do not include the District's General Counsel contract.

until a full-time Chief Facilities Official is hired. However, the adoption of the manual should not be dependent upon filling this vacancy due to the history of high turnover in this position. Also, the District needs to set criteria for when sole source contracts can be awarded due to emergencies or exceptional circumstances.

**The District has Not Yet Adopted Written Procedures for Standard Contract Provisions and Practices**

The FY 2011-12 and FY 2012-13 performance audits found that the District did not have written policies and procedures regarding standard contract language to be included for all contracts paid for with Measure E bond funds, or for certain standard contract procedures.

***Insurance Provisions***

The FY 2012-13 performance audit recommended the following standard contract language, which the District has not yet implemented.

- Standard insurance requirements and payment by the contractor to the District for increased costs caused by (a) project delays not initiated by the District; (b) changes in project scope not initiated by the District; (c) violations of laws and regulations; (d) future claims, disputes or stop notices; and (e) any other costs related to negligence, recklessness, or willful misconduct of the contractor.
- Inclusion in the Statewide Educational Wrap Up Program (SEWUP) Joint Powers Authority (JPA) and recently implemented practice of purchasing insurance for prime and subcontractors for construction projects to provide additional safeguards and potentially reduce bid costs.

The Board approved the District's inclusion in the Statewide Educational Wrap Up Program Joint Powers Authority in November 2012. As a member of the SEWUP JPA, the District could purchase insurance necessary to cover all contractors and subcontractors for construction projects, eliminating the need for potential contractors to include the cost of insurance and any profit margin associated with those costs in their bids.

District staff reported that SEWUP was implemented on one of the public project contracts and SEWUP insurance language was used on the other two public project contracts that went out to bid, but the District has not formally adopted procedures to include SEWUP in contract language. Also, draft Measure E Program procedures prepared by the Measure E Program construction management firm, Totum, in November 2014 state that the District has hired Keenan & Associates as the program administrator for SEWUP.

***Contract Approval Process***

Totum also drafted procedures for approving construction and professional services contracts in the November 2014 Measure E Program manual that have not yet been adopted by the District.

The approval process for the new Measure E professional services contracts executed in FY 2013-14 was inconsistent. Of the 13 non-architectural services contracts, the Superintendent signed nine of the 13 contracts, the previous Chief Administrative Officer signed 12 of the 13 contracts, and the former Food and Budget Director signed two of the 13 contracts. Furthermore, one legal contract had Board approval

on the contract, one contract had the Business/Facilities consultant's signature, one had the former Chief Facilities Officer's signature, and one had the General Counsel's signature. The inconsistency can be attributed to the absence of District's policies and procedures specifying the appropriate approval signatures required for all services besides architectural services as well as the vacancy of the Chief Facilities Officer starting in January 2014.

The draft procedures prepared by Totum indicate that the Chief Facilities Official and Assistant Superintendent of Business sign the final contract. According to the draft procedures, "Once a (professional services contract) proposal has been accepted by the District, and approved by the Board of Education, a formal contract is prepared and routed for signatures. Then the Consultant, the Chief Facilities Official, and the Assistant Superintendent of Business Services will execute the contract."

Also, the current and draft Measure E procedures state that the Chief Facilities Officer must approve the Notice to Proceed for construction contracts, but does not specify who must approve the contract itself. The Measure E Manual should specify that the Chief Facilities Official and/or Assistant Superintendent of Business Services should sign the construction contract.

***Future Claims, Liens and Stop Notices***

The draft Measure E procedures prepared by Totum address the District's response to future claims, liens, and stop notices, consistent with performance audit recommendations in FY 2011-12 and FY 2012-13. These draft procedures outline the dispute resolution process, typical causes for disputes or claims, resolution of issues prior to claim, and senior management review. As noted above and in Section 1, the District has not yet adopted the draft Measure E procedures.

The professional service contracts awarded in FY 2013-14 included language regarding actions that result in disputes and claims. However, these contracts were inconsistent in their language regarding increased costs to the District. Some contracts specified that extra work could be performed and increased costs could be incurred if consultants received written approval from the District, while other contracts made no mention of any procedures or consequences for increased costs to the District. The District should thus formulate policies and procedures that require standard contract language in order to ensure consistency in controls amongst contracts.

***Standard Provisions in Construction Contracts***

The three new construction contracts awarded in FY 2013-14 included standard safeguard language, consistent with best practices, including liquidated damages for delays in project completion, a performance bond guaranteeing the quality of work and materials for up to one year after completion of the project such that District is not liable for any loss or damage resulting from any defects or faulty workmanship, and a payment bond in the event the principal or any of its subcontractors fail to pay for any materials, provisions, equipment, labor, or other fees. The draft Measure E program procedures prepared by Totum reference performance bond and payment bond requirements for construction contracts but do not specify liquidated damages.

## **Conclusions**

The District assigned the Measure E Program construction management firm, Totum, to draft procedures implementing many of the FY 2011-12 and FY 2012-13 performance audit recommendations but has not yet adopted the procedures prepared by Totum in November 2014. The draft Measure E Program procedures state that all professional services contracts should be selected through a competitive process; and outline construction and professional services contract requirements recommended by prior performance audits. The District should move forward with approval of the draft Measure E Program procedures.

## **Recommendations**

The Board of Education should:

- 3.1 Review and adopt the draft Measure E Program procedures prepared by the construction management firm, Totum, in November 2014.
- 3.2 Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, to revise the Measure E Program procedures within six months of acceptance of the FY 2013-14 performance audit to specify:
  - (a) Criteria for awarding sole source contracts due to emergency or other exceptional circumstances;
  - (b) Required signatures for construction contracts;
  - (c) Standard requirements for insurance, liquidated damages, and payment by the contractor to the District for increased costs caused by project delays not initiated by the District; changes in project scope not initiated by the District; violations of laws and regulations; future claims, disputes or stop notices; and any other costs related to negligence, recklessness, or willful misconduct of the contractor.

## **Costs and Benefits**

Adoption of new Measure E Program procedures, which have largely been drafted, would result in minimal costs to the District. Well-defined requirements for competitive selection of professional services contractors would result in savings to the Measure E Program due to the high rates charged by professional services contractors that are not competitively selected.



## 4. Contract Administration and Expenditure Controls

- Although the District sets maximum contract amounts for most of its professional services contracts for the Measure E Program, the District's contracts for legal services often do not have maximum amounts. Public agencies typically set maximum (or not-to-exceed) contract amounts to control contract costs, which usually require contractors to bear the cost of contract expenditures that exceed the maximum amount unless the scope of contract services increases.
- Also, the District does not routinely include services provided by subcontractors, subcontractor hourly rates, or total subcontractor fees in the Measure E Program's legal services contracts. Legal services firms pass through all subcontractor costs, including reimbursable expenses, to the District sometimes without complete documentation. In FY 2013-14, legal services firms passed through \$534,568 in subcontractor charges for geotechnical and other work. The District pays higher than necessary rates for subcontractors. For example, one firm provided services to the Measure E Program as both a contractor and as a subcontractor to two legal services firms. The legal services firms charged the District subcontractor rates ranging from \$350 to \$450 per hour. The same contractor, when directly billing the District, charged \$295 per hour.
- According to the District's General Counsel, subsequent to the performance audit period of FY 2013-14, the District's professional services contracts were amended to include not-to-exceed amounts, and a professional services agreement template has been created that limits reimbursable expenses. Also, the District developed a professional services agreement template that states "special services work shall be performed only with the express direction and approval of the Board of Education, the Superintendent, or designee".
- Due to staff turnover in the Facilities Office, Measure E Program invoices or payments to vendors do not always document approval by the Chief Facilities Official, as required by the Measure E Program Manual to ensure review by Facilities Office staff that payments are appropriate. 22 of 87 sample invoices, or 25 percent, lacked the required signatures. Also, as noted in prior performance audits, the District does not always insure that purchase orders for goods and services are approved prior to the expenditure being incurred. 10 of the 94 sample transactions had invoices dated before purchase orders were approved in FY 2013-14.

The District incurred \$7,941,171 in Measure E bond fund expenditures in FY 2013-14. Of these expenditures, \$145,680, or 1.8 percent was spent on salaries and benefits and \$11,668 was spent on supplies for Facilities Administration. The remaining \$7,783,823, or 98 percent of expenditures, was paid directly to individual vendors.

The audit team reviewed payments of \$3,581,959, as shown in Table 4.1 below. These payments represent 46 percent of the total \$7,783,823 paid to vendors in FY 2013-14.<sup>1</sup>

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<sup>1</sup> The audit team selected samples from Prolog, the District's accounting system for Measure E bond expenditures, to test the adequacy of contract administration and expenditure controls. Contract administration refers to the way contracts are

#### 4. Contract Administration and Expenditure Controls

<b>Exhibit 4.1: Sample of Payments to Vendors in FY 2013-14</b>				
Vendor	Service	Number of Transactions	Number of Contracts with Transactions	Total Expenditures
<u>Construction</u>				
1) Energy Options, Inc.	Construction	6	1	\$472,049
2) JR Universal	Construction	3	2	\$106,099
3) Excel Paving Co.	Paving company	1	1	\$13,915
Construction Subtotal		<i>10</i>	<i>4</i>	<i>\$592,063</i>
<u>Professional Services</u>				
4) Best, Best & Krieger	Legal services	1	1	\$3,423
5) Hill, Farrer, & Burrill LLP	Legal services	4	1	\$237,672
6) Murphy & Evertz LLP	Legal services	5	1	\$694,811
7) Quinn Emmanuel	Legal services	2	1	\$111,801
Legal Services Subtotal		<i>12</i>	<i>4</i>	<i>\$1,047,707</i>
8) HMC Architects	Architect	1	1	\$19,734
9) WLC Architects	Architect	5	2	\$49,190
10) DLR Group	Architect and Engineer	15	4	\$1,560,965
11) Bernards	Construction Mgmt	8	1	\$32,495
12) Leighton Consulting	Geotechnical	1	1	\$598
13) Henrikson Owen	Engineering	12	4	\$63,421
14) Prime Source Consulting	Professional consulting	8	2	\$177,489
Other Services Subtotal		<i>50</i>	<i>15</i>	<i>\$1,903,892</i>
<b>Contracts Total</b>		<b><i>72</i></b>	<b><i>23</i></b>	<b><i>\$3,543,662</i></b>
<u>Purchase Orders</u>				
1) Beverly Hills Courier	Bid advertisement	1	1	\$2,800
2) Moody's Investors Services	Financial services	1	1	\$24,000
3) Haulaway	Moving company	1	1	\$62
4) Office Depot	Office equipment	5	1	\$833
5) C2 Reprographics	Reprographics	3	1	\$734
6) BHUSD	State fees	1	1	\$9,563
7) Mobile Mini, LLC	Storage Company	1	1	\$90
8) William Scotsman	Temporary building services	2	1	\$215
Purchase Orders Subtotal		<i>15</i>	<i>8</i>	<i>\$38,297</i>
<b>Total</b>		<b><i>87</i></b>	<b><i>31</i></b>	<b><i>\$3,581,959</i></b>

Source: FY 2013-14 Measure E Expenditures FY 2013-14, provided by the District Facilities staff

### **While All Construction and Most Professional Services Contracts have Standard Controls in Place; Legal Services Contracts Do Not Have Such Controls**

As part of the performance audit, we reviewed other California school districts' contracting procedures to identify standard expenditure controls. These included the San Diego Unified School District's "Guide to Bidding and Contracting for School Districts and Community College Districts," dated March 22, 2013; and sample professional consultant agreements with the Irvine Unified School District and the San Francisco Unified School District. The three school districts' standards included contract not-to-exceed amounts, hourly fees, and term of contract.

structured and expenditures are reviewed and authorized to ensure that: (a) there are sufficient funds to pay for supplies, materials and services and (b) expenditures are in accordance with the terms of a contract.

*Harvey M. Rose Associates, LLC*

#### 4. Contract Administration and Expenditure Controls

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##### ***The District Does Not Consistently Set Maximum Contract Amounts for All Professional Services Contracts***

Public agencies typically set maximum (or not-to-exceed) contract amounts to control contract costs; contractors bear the cost of contract expenditures that exceed the maximum amount.<sup>2</sup> Four contracts with four legal vendors did not have contract not-to-exceed amounts, while 15 contracts with seven other professional service vendors had contract not-to-exceed amounts. Eight vendors did not have contracts but instead had purchase orders authorizing expenditures and were thus not reviewed for standard contract expenditure language. According to the District's General Counsel, subsequent to the performance audit period of FY 2013-14, the District's professional services contracts were amended to include not-to-exceed amounts, and a professional services agreement template has been created that limits reimbursable expenses.

##### ***The District Did Not Include Subcontractor Hourly Rates and Total Fees in its Contracts with Legal Firms in FY 2013-14, and May Have Incurred Higher than Necessary Expenditures for Subcontractor Services***

Only the District's contract for architectural services specified subcontractor fees in FY 2013-14. While many of the District's contracts did not use subcontractors, two legal firms subcontracted work in FY 2013-14. Both firms were retained to represent the District in connection to the Metropolitan Transportation Authority's (MTA) proposed Westside Subway Extension. The first firm had a contract with the District dated March 2, 2011, and the second firm had an engagement letter with the District dated January 2, 2014. Both contracts had clauses that allow the firms to bill the District for subcontractor services in addition to attorney fees. Neither contract identifies the subcontractors, their hourly rates or total fees. Additionally, the contracts do not include a not-to-exceed amount for either the attorney or subcontracting work.

The legal firms billed the District in FY 2013-14 for geotechnical, engineering and other professional services. Invoices from the subcontractors were submitted to the legal firm, which were then included in the legal firm's bill and a copy of the subcontractor's invoice was forwarded to the District for payment.

A significant portion of the fees paid to legal firms were for subcontractor services. The FY 2012-13 performance audit reported that the District paid \$969,607<sup>3</sup> to one legal firm in FY 2012-13, of which \$799,429, or 82 percent, was for the services of subcontractors under the direction of the attorneys. Similarly, the audit team examined the subcontractor charges in FY 2013-14 on the second legal contract. As shown in Exhibit 4.2 below, of the \$695,661 paid to this legal firm in FY 2013-14, \$534,568, or 77 percent, was for the services of subcontractors under the direction of the attorneys.

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<sup>2</sup> Contractors typically bear the costs of excess expenditures for the approved scope of the project. Public agencies can agree to a contract change order if the project scope changes.

<sup>3</sup> This amount is for 26 checks paid directly to the legal firm with a District contract. It does not include any subsequent adjustments made by the District for incorrect amounts billed, double payment, or amounts billed to the Measure E Fund which should have been billed to the General Fund (this attorney also does work for the District that is paid for with General Fund monies).

#### 4. Contract Administration and Expenditure Controls

<b>Exhibit 4.2: Attorney and Subcontractor Payments in FY 2013-14</b>		
	<b>Amount</b>	<b>Percent</b>
Subcontractor Consultant Services	\$534,568	77%
Attorney Fee	\$161,093	23%
<b>Total</b>	<b>\$695,661<sup>4</sup></b>	<b>100%</b>

Source: Measure E checks and invoices in District files

In the absence of contract provisions for subcontractors, the District has no control over the selection, qualifications, and licenses of the subcontractors, nor over hourly rates, total fees, or reimbursable costs. Invoices from the legal services providers did not always include required documentation for reimbursable expenses. The District did not have limits on the amount of billings that were authorized as the two primary contracts under which the subcontractors billed the District lacked not-to-exceed amounts.

According to the District’s General Counsel, subsequent to the performance audit period of FY 2013-14, the District developed a professional services agreement template that states “special services work shall be performed only with the express direction and approval of the Board of Education, the Superintendent, or designee.”

In addition, one contractor for professional consulting services had a direct contract with the District and also billed as a subcontractor to the two legal contracts with the District. A geotechnical services consultant that had a direct contract with the District also billed as a subcontractor to the two legal contracts. The District’s total payments to the professional consulting services contractor were \$895,168 in FY 2013-14, of which \$717,680 or 80% was paid as a subcontractor to the two legal firms.

<b>Exhibit 4.3: Rates Charged by Professional Services Contractor under Direct Contract with the District and Under Sub-Contract with the Legal Firms</b>		
	<b>Amount</b>	<b>Percent of Total FY 2013-14 billing</b>
Subcontractor billing	\$717,680	80%
Direct billing	\$177,488	20%
<b>TOTAL FY 2013-14 billing</b>	<b>\$895,168</b>	<b>100%</b>

Source: Measure E contract expenditure files

The professional consulting services contractor provided services to the District as a consultant on the legal contract dated March 2, 2011, on MTA related work at \$400 per hour then as a consultant on the legal contract dated January 2, 2014, at \$440 or \$350 an hour. The professional consulting services contractor also provided services as a direct consultant to the Board on other facilities related issues at

<sup>4</sup> The Measure E expenditure report shows that \$694,811 was paid on the legal contract dated January 2, 2014, in FY 2013-14. However, the disaggregated fees were obtained through a review of the checks and invoices and thus the total from the checks and invoices were used.

#### 4. Contract Administration and Expenditure Controls

\$225 or \$295 per hour. The District is paying the same contractor three different rates on three separate contracts, which heightens the risk of fraudulent billing.

Additionally, the District is at risk of being double billed without sufficient controls on subcontractor consultants. The professional consulting services contractor must interact with the same people on the same days making it difficult to fully detect duplicate billing for the same work. For example, a side by side review of invoices submitted on the legal contract dated January 2, 2014, and to the District found similar phrases for work on the same days such as “prepare for and attend Board meeting,” prepare “email correspondence” regarding similar topics, “attend closed session,” and review “contracting guidelines.” A side-by-side review of invoices submitted on the legal contract dated March 2, 2011, and to the District also found similar phrases for work on the same days regarding emailing agendas for the same Board member and briefing memos for “closed sessions”. Presumably, the professional consulting services contractor would have billed the portion of a Board meeting related to MTA work to the legal contractors and all other facilities related work to the District. While the Superintendent reviews and approves both sets of invoices and could verify if duplicate billing exists, such ambiguities could be avoided if the professional consulting services contractor has a single contract with the District for all services paid for with Measure E funds and for the same rate.

#### ***Invoices Are Not Consistently Approved by the Appropriate Staff***

The Measure E Procedures Manual specifies procedures for creating and approving requisitions and purchase orders, approving invoices submitted by construction and professional services contractors, and approving payments to construction contractors. The Measure E Procedures Manual states that when invoices are received for payment, invoices should be signed and approved by at least one of the following in order to ensure that services were provided in accordance with the vendors’ contracts, including compliance with applicable laws and regulations: the Chief Facilities Official, Facilities Director, and/or Facilities Consultant in Facilities Planning. Originals are then routed to the Chief Business [Administrative] Official (or the Executive Director of Budget and Food Services, if the Chief Business Official is unavailable) for signature.

Of the 87 invoices reviewed, 20 lacked signed approval by the Facilities Office and two lacked signed approval by both the Facilities Office and the Business Office, as shown in Exhibit 4.4 below. The Chief Facilities Official position was vacant beginning in January 2014 and the Director of Facilities position was vacant during the entire year.

<b>Exhibit 4.4: Summary of Invoice Approvals of Sample Transaction for FY 2013-14</b>		
	<b>Number of Transactions</b>	<b>Percent of Total 87 Transactions Reviewed</b>
<i>Business Office Approval Only (No Facilities Approval)</i>	20	23%
<i>No Facilities Office and No Business Office Approval</i>	2	2%
<b>Subtotal of invoices without sufficient approvals</b>	<b>22</b>	<b>25%</b>
<b>Subtotal of invoices with sufficient approvals</b>	<b>65</b>	<b>75%</b>
<b>Total number of invoices reviewed</b>	<b>87</b>	<b>100%</b>

Source: Measure E contract files

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#### **4. Contract Administration and Expenditure Controls**

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The District should take greater efforts to obtain the appropriate signatures in compliance with the Measure E Procedures Manual and should ensure that reviews by both the Facilities Office and the Business Office are conducted.

##### ***Purchases Did Not Always Have Prior Approval***

Despite being a consistent finding in previous Measure E performance audits, some expenditures in FY 2013-14 had purchase orders dated after the invoice date. The District's policies and procedures for procurement require the issuance of a signed purchase order prior to a vendor furnishing services or shipping materials in order to be compliant with California Education Codes 42631 and 42632. Having purchase orders approved before a service is rendered or supplies are purchased ensures that authorized expenditures are within contract amounts or approved budgets and that funding is available. 10 of the 94 sample transactions had invoices dated before purchase orders were approved in FY 2013-14, within a range of 7 to 57 days before the purchase order approval.

To resolve recurring issues of vendors rendering services and supplies prior to purchase order approvals, the District should revise its policies and procedures to require purchase requisitions to be submitted and purchase orders approved within certain deadlines, such as within a week of a contract being signed, to ensure that purchase orders are approved prior to services commencing or materials are purchased.

##### ***Contracts Do Not Have Consistent Language Regarding Change Orders***

The Measure E Procedures Manual details the change order process for contractors, but it is unclear if the procedures apply to only construction contractors or all firms with District contracts that are paid for with Measure E bond funds. For example, the requirement that the Facilities and Planning Department notify and provide Board of Education agendas and minutes for change orders to the District Purchasing Department to adjust the original or revised purchase order could apply to construction contractors as well as other professional service providers. All contractors must have a purchase order indicating expenditure authority prior to receiving payment from Measure E funds.

Furthermore, while the Measure E Procedures Manual states that contractors should submit change order requests in accordance with the General Conditions of the Contract, the language in the contracts are inconsistent. Some contracts state that written supplemental approval must be provided by the District but does not specify that District approval must be obtained before any changes and costs are incurred while some contracts state that approval must be provided beforehand. Also, some contracts specify that Board approval must be sought while others only state that District approval, which is ambiguous, must be obtained. The Measure E Procedures Manual should be revised to specify that any changes in costs should receive approval by the Board before the vendor moves ahead with any changes and the costs are incurred.

## **Conclusions**

The District does not consistently set maximum contract amounts or subcontractor rates in its Measure E Program professional services contracts, especially in contracts for legal services. This exposes the District to higher than necessary costs. Public agencies typically set maximum (or not-to-exceed) contract amounts to control contract costs; contractors bear the cost of contract expenditures that exceed the maximum amount. The District also does not consistently require that professional services contracts identify subcontractors, subcontractor hourly rates, and total subcontractor fees. Subsequent

#### **4. Contract Administration and Expenditure Controls**

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to the performance audit period of FY 2013-14, the District's professional services contracts were amended to include not-to-exceed amounts and a professional services agreement template has been created that limits reimbursable expenses and subcontractor expenses. The professional services agreement template states "special services work shall be performed only with the express direction and approval of the Board of Education, the Superintendent, or designee."

Contractors' invoices do not always document approval by Facilities Office staff, likely a result of staff turnover in the Facilities Office. The District should take greater efforts to obtain the appropriate signatures in compliance with the Measure E Procedures Manual and should ensure that reviews by both the Facilities Office and the Business Office are conducted. Also, the District continues to have incidences of invoices for goods or services that are date before the purchase of these goods or services is approved. To resolve recurring issues of vendors rendering services and supplies prior to purchase order approvals, the District should revise its policies and procedures to require purchase requisitions to be submitted and purchase orders approved within certain deadlines, such as within a week of a contract being signed, to ensure that purchase orders are approved prior to services commencing or materials are purchased

### **Recommendations**

The Board of Education should:

- 4.1 Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, within six months of the acceptance of the performance audit to develop a written policy for the Measure E Program and to amend existing construction and professional services contracts as necessary to require (a) not-to-exceed amounts, (b) limits on reimbursable expenses, and (c) all authorized subcontractor services, hourly rates and total fees.
- 4.2 Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, to develop a written policy, within six months of the acceptance of the FY 2013-14 performance audit, that requires the appropriate District staff (in-house Chief Facilities Official, general counsel, Assistant Superintendent for Business Services) to review and compare all invoices from contractors operating under multiple contracts for the District to ensure that services provided are:
  - a. Within the contract amount and term;
  - b. Within the contract scope of services; and,
  - c. Without duplication of services being provided through other contracts.
- 4.3 Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, to revise the Measure E Procedures Manual, within six months of the acceptance of the FY 2013-14 performance audit, to include procedures that are considered best practices for change orders to the scope of services, project amounts, and fees, for construction and professional services contracts paid for with Measure E bond funds, including:
  - a. A structured approval process for changes beyond the agreed terms of a contract, with varying levels of approval authority depending on the magnitude of the change;

- b. Written approval prior to original or additional services being provided; and,
- 4.4 Instruct the Facilities Fiscal Director, under the direction of the Chief Administrative Officer, to develop procedures within six months of the acceptance of the FY 2013-14 performance audit requiring purchase requisitions to be submitted and purchase orders approved within certain deadlines, such as within a week of a contract being signed.

### **Costs and Benefits**

Additional staff time would be required to draft, present, and implement revised policies and procedures. However, renegotiating contracts and implementing additional internal and expenditure controls for contracts paid for with Measure E bond funds would allow the District to: (a) ensure that sufficient funds are available for approved projects and expenditures in its Measure E Bond program; (b) reduce unnecessary and increased costs to the District; and, (c) ensure that the District is compliant with laws and regulations.



Appendix Table 1: District Implementation of FY 2012-13 Recommendations					
Report Section	#	Rec #	Topic	FY 2012-13 Recommendation	Implementation Status as Understood by Audit Team
1. Program Management and Master Planning	1	1.1	Management of Change Orders	The Board of Education should direct the CAO to draft and present to the Board of Education for approval a revised Measure E policy, which addresses owner-initiated change requests. Such a policy should establish a standard set aside, such as an owner's reserve of three to five percent (or other amount deemed appropriate by the Board) for changes in project scope or specifications, so that the 10 percent contingency amount may be reserved for unforeseen project expenditures and non owner-initiated changes.	Procedures have been drafted that address program funding, but do not mention of an owner's reserve (just a requirement of a funding/budget review if change orders exceed 5% of base contract amount). Procedures have not been approved by the Board.
	2	1.2	Vacant CFO Position	The Board of Education should direct the CAO to continue efforts to recruit and hire a Chief Facilities Official and a Director of Facilities and Planning so that the District has in-house staff that are able to focus on the day-to-day management of the Measure E program.	An effort to recruit qualified candidates for this position at the end of FY 2013-14 and beginning of FY 2014-15 failed and a new effort is underway to fill the position.
	3	1.3	Improvement of Master Plan	The Board of Education should direct the CAO to draft an amendment to the Facilities Master Plan to include best practice elements as outlined by the State Allocation Board including District priorities, educational goals, and others as appropriate.	No evidence that any steps have been taken on this recommendation by the District.
	4	1.4	Incorporation of Educational Specifications	The Board of Education should direct the Chief Administrative Officer to initiate a revision of the proposed educational specifications considering feedback from the Board of Education and to present the revised educational specifications to the Board of Education within three months for approval.	No evidence that any steps have been taken on this recommendation by the District.
	5	1.5	Master List of Projects	The Board of Education should take further steps to commit the use of Measure E funds to specific project sites and sizes based on a completed Facilities Master Plan and accepted educational specifications so that the Facilities and Planning Department can move forward with the Measure E program and so there will be a master list of specific projects to compare against actual Measure E expenditures by District management and by future performance auditors, as required by State law.	Although the Board approved an official list of Measure E projects on September 23, 2014, educational specifications do not appear to have been established by the District.
2. Budget and Communication Effectiveness	6	2.1	Budget Updates	The Board of Education should direct the CAO, with the involvement of District stakeholders as appropriate, to revise and expand the budgeting procedures in the Facilities and Planning Procedures Manual to include requirements to provide clearer Measure E budget information to better inform the Board, stakeholders, and the public. These revisions should include publicly presenting the project or site level budgets at year end and quarterly evaluations of adopted vs. actual budgetary information (for the current fiscal year as well as for the life of the project) to the Board of Education with explanations for deviations.	Site level budgets presented by Construction Managers in September 2014 with some graphics. New budget management procedures have been drafted by Totum staff, but it's not clear who has responsibility for compiling budget info and who it will be reported to. Procedures have not been adopted by the Board.
	7	2.2	Measure E Updates	The Board of Education should Direct the CAO to provide simple and clear presentations on Measure E updates by including current year adopted vs. actual budgetary information, current project amounts expended vs. total project budgets, project milestones met, and the use of accompanying narratives, charts, and graphics to clearly illustrate progress to the general public.	No evidence seen to date that this recommendation has been implemented for updates posted to District's website.
	8	2.3	Inclusion of MTA Spending in Board Approved List of Projects with Rationale	The Board of Education should include MTA-related litigation and any other legal and related matters in a District list of projects authorized for Measure E use, including the rationale for the relationship between the legal matter and the construction and modernization projects to be funded by Measure E.	MTA Subway is included in the Board adopted project list as of September 23, 2014, but no rationale for the relationship between the matter and Measure E construction and modernization projects is included.
3. Contract Award	9	3.1	Competitive Bidding- Public Projects	The Board of Education should direct the CAO to revise the Measure E Procedures Manual to include policies and procedures regarding the competitive bidding process for public project contracts, including a \$15,000 minimum expenditure requirement for competitive bidding, to help ensure compliance with Public Contract Code 20111, within six months of the acceptance fo the FY 2012-13 performance audit.	Revised draft procedures sections 1.6 and 1.7 (drafted by Construction Managers) do not address the threshold for when a contract must be competitively bid. Draft procedures have not been adopted by Board.
	10	3.2	Competitive Bidding- Professional Services	The Board of Education should direct the CAO to revise the Measure E Procedures Manual to explicitly require competitive solicitation for professional service agreements expected to cost \$84,000 or more, including environmental, geotechnical, planning, legal, and other consulting services paid for with Measure E Bond funds. The policies should be developed within six months of the acceptance of the FY 2012-13 performance audit and require: (a) Public advertisement for professional services, materials and supplies, unless the Board of Education decides that it is in the best interest of the District not to publicly advertise; (b) Documented solicitation of at least two vendors; (c) Review of written statements of qualifications and proposals; (d) interviews with responsive vendors with documented selection criteria; (e) approval by the Board of Education in an open session; and (f) exemption to the above requirements in cases of documented emergency or extenuating circumstances.	Construction managers have drafted procedures (Section 1.5 of draft procedures) that address each point of this recommendation. Draft procedures have not been adopted by the Board.

Report Section	#	Rec #	Topic	FY 2012-13 Recommendation	Implementation Status as Understood by Audit Team
	11	3.3	Insurance Requirements	The Board of Education should direct the CAO to revise the Measure E Procedures Manual, within 6 months of acceptance of the FY 2012-13 performance audit, to develop written policies and procedures regarding standard District contract language to be included for all contracts paid for with Measure E Bond funds, including: (a) District's inclusion in the SEWUP JPA and recently implemented practice of purchasing insurance for prime and subcontractors for construction projects to provide additional safeguards and potentially reduce bid costs; and (b) Standard insurance requirements and payment for increased costs to the District caused by: (i) delays in the project(s) not initiated by the District; (ii) changes in the project scope not initiated by the District; (iii) violations of laws and regulations; (iv) future claims, disputes or stop notices; and (v) any other costs related to the negligence, recklessness, or willful misconduct of the vendor.	No evidence that any steps have been taken on this recommendation by the District.
	12	3.4	Claims and Liens	The Board of Education should direct the CAO to revise the Measure E Procedures Manual to develop written policies and procedures for addressing future claims, liens and stop notices, within 6 months of the acceptance of the FY 2012-13 performance audit.	Construction managers drafted procedures (Section 1.10) of the draft procedures. Draft procedures have not been adopted by the Board.
4. Contract Administration and Expenditure Controls	13	4.1	Revise Contracts to Incorporate Controls	The Board of Education should direct the CAO to amend contracts with applicable vendors or firms to include (a) a not-to-exceed amount, limit for reimbursable expenses, including documentation of expenses incurred, so that the District has more consistent controls over expenditures and contracts paid for with Measure E funds; and (b) a requirement that fees and not-to-exceed amounts for all subcontractors under a prime consultant contract are approved by the Board of Education prior to any services being rendered.	According to the General Counsel, the District's professional services contracts have been amended to include not-to-exceed amounts and a professional services agreement template has been created for the District, which incorporates some limits on reimbursable expenses. While the PSA template does not directly refer to subcontractors, it includes a statement that "special services work shall be performed only with the express direction and approval of the Board of Education, the Superintendent, or designee."
	14	4.2	In-House Review of Legal Invoices	The Board of Education should direct the CAO to develop a policy, within 6 months of the acceptance of the FY 2012-13 performance audit, that requires the in-house general counsel to review and compare all invoices for legal services, including invoices for subconsultant services and the subconsultants' invoices under separate contracts with the District, to ensure that services provided are: (a) within the contract amount and term; (b) within the contract scope of services; and, (c) without duplication of services being provided through other contracts.	The General Counsel asserted to the audit team that he reviews all invoices for legal services as recommended in the FY 2012-13 performance audit. However, no formal policy requiring this review has been adopted by the Board and the audit team was not able to verify this new procedure, which was initiated after the scope period of this audit.
	15	4.3	Adherence to Change Order Procedures for all Measure E Contracts	The Board of Education should direct the CAO to revise the Measure E Procedures Manual, within 6 months of the acceptance of the FY 2012-13 performance audit, to include procedures that are considered best practices for change orders to the scope of services, project amounts, and fees for all contracts paid for with Measure E bond funds, such as: (a) a structured approval process for changes beyond the agreed terms of a contract, with varying levels of approval authority depending on the magnitude of the change; (b) written approval prior to original or additional services being provided; and, (c) adherence to the change order process for all change orders.	Construction manager has drafted procedures, but they appear to only apply to construction contracts. The draft procedures have not been approved by the Board.
	16	4.4	Procedures for Approval of Purchase Orders	The Board of Education should direct the CAO within 6 months of the acceptance of the FY 2012-13 performance audit to (a) develop a policy requiring (i) approval of purchase orders within a defined time period after a contract for services is executed, and (ii) a specified not-to-exceed amount for non-contractual purchases based on estimated expenditures; and (b) procedures for purchases from governmental agencies.	According to the audit response matrix, this recommendation has been assigned to District staff. No further steps have been taken to address this recommendation.
	17	4.5	Citizens Oversight Committee Review of Invoices	The Board of Education should direct the CAO to develop a policy, consistent with current practices, that allows the COC to review the cover pages of invoices from legal and other professional services firms that include the name of the law firm, names of consultants paid through the contract, the amounts paid to each, and a brief description of the case matter (e.g. MTA work) to facilitate transparency and compliance with laws and regulations, within 6 months of the acceptance of the FY 2012-13 performance audit.	Members of the COC report that invoice cover pages have been made available upon request, but a formal policy has not been adopted.
	18	4.6	Procedures for Review and Approval of Invoices	The Board of Education should establish procedures for review and approval of Measure E invoices in the absence of the Chief Facilities Official and Director of Facilities.	Procedures for District delegation of authority (section 1.9) have been drafted by Construction Management firm. Procedures allow CFO or COO (should be CAO?) to enter into a single/sole source contract with a single entity up to \$1 million. Procedures may allow too much delegation and not enough oversight over sole source contracting. Draft procedure has not been approved by Board.

Appendix Table 2: District Implementation of FY 2011-12 Recommendations					
Report Section	#	Rec #	Topic	FY 2011-12 Recommendation	Implementation Status as Understood by Audit Team
1. Program Management and Master Planning	1	1.1	Improvement of Master Plan	Direct the Chief Facilities Official to draft an amendment to the Facilities Master Plan to include best practice elements as outlined by the State Allocation Board including District priorities, educational goals, and others as appropriate.	No evidence that any steps have been taken on this recommendation by the District.
	2	1.2	Incorporation of Educational Specifications	Direct the Chief Facilities Official to initiate a revision of the proposed educational specifications considering feedback from the Board of Education and to present the revised educational specifications to the Board of Education within three months for approval.	No evidence that any steps have been taken on this recommendation by the District.
	3	1.3	Master List of Projects	Take steps to commit the use of Measure E funds to specific project sites and sizes based on a completed Facilities Master Plan and accepted educational specifications so that the Facilities and Planning Department can move forward with the Measure E program and so there will be a master list of specific projects to compare against actual Measure E expenditures by District management and by future performance auditors, as required by State law.	The Board approved an official list of Measure E projects on September 23, 2014.
	4	1.4	Green Technology Plan	The Board of Education should direct the Chief Facilities Official to draft, with the input of appropriate stakeholders, a green technology plan that articulates the District's approach to green technology under the Measure E program.	The District has not developed a formal green technology plan. However, when conducting the FY 2012-13 performance audit, the audit team found that the District had adhered to two established sustainability programs for the Horace Mann modernization project (see p. 1-7 of the FY 2012-13 report).
2. Budget and Communication Effectiveness	5	2.1	Budget Updates	The Board of Education should direct the Executive Director for Budget and Food Service and the Chief Facilities Official, with the input of District stakeholders as appropriate, to revise and expand the budgeting procedures in the Facilities and Planning Procedures Manual to include requirements to enhance the transparency of Measure E budgeting. These revisions should include disclosing the project or site level budgets and quarterly evaluations of adopted vs. actual budgetary information (for the current fiscal year as well as for the life of the project) with explanations for deviations.	Site level budgets presented by Construction Managers in September 2014 with some graphics. New budget management procedures have been drafted by Totum staff, but it's not clear who has responsibility for compiling budget info and who it will be reported to. Procedures have not been adopted by the Board.
	6	2.2	Measure E Updates	The Board of Education should direct the Chief Facilities Official to improve the transparency and quality of Measure E updates to the Board of Education and Citizens' Oversight Committee by including current year adopted vs. actual budgetary information, current amount expended vs. total project budget, project milestones met, and the use of accompanying narratives, charts, and graphics to clearly illustrate progress.	No evidence that any steps have been taken on this recommendation by the District.
	7	2.3	Inclusion of MTA Spending in Board Approved List of Projects with Rationale	The Board of Education should include MTA-related litigation and any other legal and related matters in a District list of projects authorized for Measure E use, including the rationale for the relationship between the legal matter and the construction and modernization projects to be funded by Measure E.	MTA Subway is included in the Board adopted project list as of September 23, 2014, but no rationale for the relationship between the matter and Measure E construction and modernization projects is included.
3. Contract Award	8	3.1	Competitive Bidding- Public Projects	The Board of Education should direct the Chief Facilities Official to revise the Measure E Procedures Manual to include policies and procedures regarding the competitive bidding process for public project contracts, including a \$15,000 minimum expenditure requirement for competitive bidding, to help ensure compliance with Public Contract Code 20111.	Draft Measure E Procedures Manual, dated October 31, 2014, regarding the awarding of construction contracts have been prepared by Totum but has not been adopted by the Board. Furthermore, these do not include a minimum expenditure requirement for competitive bidding.
	9	3.2	Competitive Bidding- Professional Services	The Board of Education should direct the Chief Facilities Official to revise the Measure E Procedures Manual, and District Office staff to revise the District Purchasing Manual, to explicitly require competitive bidding for professional service agreements expected to cost \$81,000 or more, including environmental, geotechnical, planning, legal, and other services paid for with Measure E Bond Funds. The policies should require: a. Public advertisement for professional services, materials and supplies, unless the Board decides that it is in the best interest of the District not to publicly advertise; b. Documented solicitation of at least two vendors; c. Review of written statements of qualifications and proposals; d. Interviews with responsive vendors with documented selection criteria; e. Approval by the Board of Education in an open session and, f. Exemption to the above requirements in cases of documented emergency or extenuating circumstances.	Draft Measure E Procedures Manual, dated October 31, 2014, regarding the awarding of professional service contracts have been prepared by Totum but has not been adopted by the Board. The draft does not explicitly address the procurement of legal services. The draft does not include provisions for situations when the Board decides it is in the best interest of the District not to publicly advertise, does not require approval by the Board in an open session, and does not provide exemptions in case of documented emergency or extenuating circumstances.

Report Section	#	Rec #	Topic	FY 2011-12 Recommendation	Implementation Status as Understood by Audit Team
	10	3.3	Standard Contract Language & Insurance Requirements	The Board of Education should direct the Chief Facilities Official to revise the Measure E Procedures Manual to develop written policies and procedures regarding standard District contract language to be included for all contracts paid for with Measure E Bond Funds, including standard insurance requirements and payment for increased costs to the District caused by: a. Delays in the project(s) not initiated by the District; b. Changes in the project scope not initiated by the District; c. Violations of laws and regulations; d. Future claims, disputes or stop notices; and/or, e. Any other costs related to the negligence, recklessness, or willful misconduct of the vendor.	Totum stated that this requirement is already covered by language in the Contractor Agreements under Special Conditions and instructed to "see the HMS Bld B contract." However, because language was not consistent across contract reviews, the recommendation has not been adequately addressed by the District and the Measure E Procedures Manual should provide explicit policies and procedures for language to be required in contracts.
	11	3.4	Claims and Liens	The Board of Education should direct the Chief Facilities Official to revise the Measure E Procedures Manual, and District Office staff to revise the District Purchasing Manual, to develop written policies and procedures for addressing future claims, liens and stop notices.	Draft Measure E Procedures Manual, dated October 31, 2014, regarding future claims, liens, and stop notices have been prepared by Totum but has not been adopted by the Board.
4. Contract Administration and Expenditure Controls	12	4.1	Limits on Contract Costs	The Board of Education should direct the Chief Facilities Official or executive staff to amend contracts with applicable vendors or firms to include: a. A limit for reimbursable expenses, including documentation of expenses incurred, so that the District has more consistent controls over expenditures and contracts paid for with Measure E funds; and, b. A requirement that fees and not-to-exceed amounts for subcontractor consultant work are approved by the Board of Education prior to any services being rendered, even if a contract does not exist between the consultant and the District for the work under the direction of the primary contractor.	According to the District's General Counsel, subsequent to the performance audit period of FY 2013-14, the District's professional services contracts were amended to include not-to-exceed amounts, and a professional services agreement template has been created that limits reimbursable and subcontractor expenses.
	13	4.2	Internal Controls- Review of Invoices	4.2 Direct the Chief Facilities Official to develop a policy that requires either a member of the Facilities and Planning Department or the District Office staff to review and compare all invoices from contractors operating under multiple contracts for the District to ensure that services provided are: a. Within the contract amount and term; b. Within the contract scope of services; and, c. Without duplication of services being provided through other contracts.	The District's General Counsel stated that he reviewed all contracts. However, a policy requiring this review has not been prepared.
	14	4.3	Citizens Oversight Committee Review of Invoices	The Board of Education should direct the Chief Facilities Official to develop a policy that requires legal and other professional services firms to provide the Citizens' Oversight Committee with the cover pages of invoices that include the name of the law firm, names of consultants paid through the contract, the amounts paid to each, and a brief description of the case matter (e.g., MTA work) to facilitate transparency and compliance with laws and regulations.	While a policy has not been developed, a review of FY 2013-14 invoices showed that a cover page with the name of the law firm, names of consultants paid through the contracts, amounts paid to each, and brief description have been prepared. It is also the Audit Team's understanding that these have not been regularly transmitted to the Citizens' Oversight Committee; thus, the recommendation has not been adequately addressed.
	15	4.4	Change Order Procedures	The Board of Education should direct the Chief Facilities Official to revise the Measure E Procedures Manual to include procedures that are considered best practices for change orders to the scope of services, project amounts, and fees, for all contracts paid for with Measure E bond funds, such as: a. A structure approval process for changes beyond the agreed terms of a contract, with varying levels of approval authority depending on the magnitude of the change; b. Written approval prior to original or additional services being provided; and, c. Adherence to the change order process for all change orders.	Draft Measure E Procedures Manual, dated October 31, 2014, regarding approvals of change orders have been prepared by Totum but has not been adopted by the Board.
	16	4.5	Purchase Orders	The Board of Education should direct the Chief Facilities Official to develop a policy requiring purchase requisitions to be submitted and purchase orders approved within certain deadlines, such as within a week of a contract being signed, to minimize delays while ensuring that purchase orders are approved prior to services commencing or materials being purchased.	Draft Measure E Procedures Manual, dated October 31, 2014, includes procedures for requisitions, purchase orders, and invoices, but does not specify deadlines for submission and approvals.