

**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, 2014



March 19, 2014

Dawalyn Murakawa-Leopard, Ed.D
Chief Administrative Officer
Beverly Hills Unified School District
255 S. Lasky Drive
Beverly Hills, CA 90212

Dear Dr. Murakawa-Leopard:

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 18 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 retirement of the previous Chief Facilities Official in January 2013 and the departure of his replacement during the course of the audit. However, other District officials familiar with and responsible for the Measure E program 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,

A handwritten signature in black ink that reads 'Daniel Goncher' in a cursive script.

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 2012-13 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:

- In June 2013 the District successfully completed its first significant Measure E construction project, the Horace Mann auditorium renovation. The total project expenditures over the two year period from July 1, 2011 to June 30, 2013 were approximately \$4.5 million with relatively little expenditures in FYs 2010-11, 2009-10, and 2008-09. Within that amount, the District's construction expenditures were approximately \$3.5 million, which was about \$106,000, or 3 percent, more than the original amount, but within the 10 percent contingency amount set by District policy.
- The Horace Mann auditorium renovation costs included approximately \$122,000, or 2.7 percent of total project expenditures, for specific requests by the District. While owner-initiated changes are not uncommon for public capital projects, the Board should revise the District Measure E procedures to set standard amounts for District requested changes to ensure that specific changes requested by the District (e.g. changes in project scope or specifications) are

appropriate, are not paid for from the 10 percent contingency amount, and do not significantly increase the costs or delay the schedule by an excessive amount.

- The District has had considerable turnover and extended vacancies in the Facilities and Planning 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 level of construction activity increases.
- The District took substantive steps in FY 2012-13 to define the future of the Measure E program by creating and communicating to the public a Measure E Bond Fund Working Plan and a more detailed Measure E Bond Informative. Despite these efforts, the District still does not have a Board certified list of specific school facility projects to be funded by Measure E bonds as required by State law. Without such a list, the State requirement that annual performance audits compare actual expenditures to the District's list of certified projects cannot be accomplished.
- As of June 30, 2013, nearly five years after the passage of Measure E, the District has not initiated or completed construction for any major project other than the Horace Mann auditorium renovation. Some of the delay was undoubtedly due to the unforeseen removal and criminal prosecution of the former District Facilities Director, an ensuing District wide program moratorium called for by the Board of Education, and uncertainty regarding the timing of future Measure E bond funding. The State Allocation Board advises school districts to commit to project sites and sizes early to lower the risk of redundant studies, regenerative thinking, and added costs. The Board of Education should do so as soon as possible.
- The Facilities Master Plan that the District operated under for most of FY 2012-13 (the Fiscal Year is July 1st through June 30th), was accepted by the Board of Education in August 2012. The plan contained a number of components necessary for an effective capital program but lacked other components considered essential by the State Allocation Board and the Office of Public School Construction, including District priorities and educational specifications.
- 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 anticipates long term energy and cost savings from participation in these programs.

Based on the above findings, the following is recommended.

The Board of Education should:

- 1.1 Direct the Chief Administrative Officer 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 not owner-initiated changes.

- 1.2 Direct the Chief Administrative Officer 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.
- 1.3 Direct the Chief Administrative Officer 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.
- 1.4 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.
- 1.5 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.

Section 2: Measure E Budget and Communication Effectiveness

Summary of Findings:

- As of June 30, 2013, the District had spent approximately \$31 million, or 43 percent of the \$72 million in 2009 Measure E bond proceeds, and 9.3 percent of the \$334 million total authorized by Measure E. The District spent \$9,642,966 in Measure E funds in FY 2012-13, or approximately 23 percent more than in the prior fiscal year.
- The majority of FY 2012-13 Measure E expenditures was for capital outlay, including building construction and improvements, architectural services, and construction management. This spending was primarily for the Horace Mann auditorium renovation project. Spending on legal, geotechnical and other professional services, almost entirely related to the MTA Westside subway expansion proposal and its findings of potential seismic hazards on District property, was also a large expenditure accounting for about 15 percent of overall FY 2012-13 Measure E spending.
- Actual District Measure E expenditures in FY 2012-13 were 66 percent less than the original budget adopted by the Board of Education in June 2012. Spending was particularly lower for school renovation and modernization projects. This was primarily due to the absence of approval of such projects beyond the conceptual design phase as the Board of Education reconsidered its Measure E priorities and amongst uncertainty regarding proposed projects that will not be fully funded unless voters approve acceleration of Measure E bond funding. The overall Measure E fiscal budget was not amended to reflect these changes in project plans.
- The District should report more clearly on the Measure E program to ensure that stakeholders and the public understand the program and the progress of projects within the program. The June 2012 budget presentation to the Board of Education for the adoption of the FY 2012-13 Measure E budget did not include expenditure detail by project or school site, or provide individual project timelines. Further, the District's Measure E web pages and progress reports need improvement to ensure that sufficient detail is provided to the general public.

Based on the above findings, the following is recommended.

The Board of Education should:

- 2.1 Direct the 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 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.
- 2.2 Direct the Chief Administrative Officer 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.
- 2.3 Include MTA-related litigation and any other legal and related matters in a District list of authorized 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.

Section 3: Contract Award

Summary of Findings:

- The Facilities and Planning Procedures Manual for the Measure E Bond Program (Measure E Procedures Manual), has not been revised to outline policies and procedures for soliciting vendors and selecting the lowest responsible bidder for public projects, defined in State law to include public facility construction and renovation. These areas should be covered in the manual since most Measure E funds will be spent on public projects and State law requires all public projects with over \$15,000 in expenditures to be competitively bid.
- Although the District's Measure E Procedures Manual does not explicitly require competitive bidding for construction contracts (public projects) or competitive solicitation of professional services contracts, the four contracts for construction or site specific projects in the audit's sample of six contracts were selected through a competitive process in FY 2012-13 or previous fiscal years. However, one of these four contracts did not have documented evidence of vendor outreach efforts for the initial phase of the competitive process. Maintaining documentation of vendor outreach and solicitation for Measure E Bond Fund contracts would provide assurance that the District has gone through a valid competitive selection process and received proposals or bids from as many qualified vendors as possible.
- The District did not use competitive selection processes for the two Measure E contracts in the sample that were initiated by the Board of Education – one for legal services and one for the business/facilities consultant. There was no documentation that the District staff obtained informal quotes or qualifications from multiple vendors for these services. The Board of Education approved the legal services contract on the consent agenda, precluding any public discussion of the selection of the contractor. Although the District wished to quickly backfill the business/facilities consultant contract when the prior consultant left, the District selected a

business/facilities consultant who also worked as a subcontractor for one of the District's contract attorneys without undergoing a competitive process. Approving a contract with a professional consultant who was also providing services to the District through a separate subcontract exposes the District to additional risks. Although the Measure E Procedures Manual does not require professional service agreements to be competitively bid, the Office of Public School Construction's State Allocation Board recommends a formal, competitive selection process for professional services such as planning and design, legal, financial and construction services in order to prevent unforeseen and increased costs throughout the construction project. As an organization with statewide reach, the Allocation Board's policies can be considered best practices for any California school district's construction program.

- The District does not have written policies and procedures regarding standard contract language to be included for all contracts paid for with Measure E bond funds, or policies for addressing future claims, liens and stop notices. However, project specific construction and professional service contracts were prepared by the District's general counsel and contain consistent language and requirements. In contrast, professional service contracts initiated by the Board of Education for legal services were based on the contractors' standard contract language and excluded some standard District requirements, including standard insurance. In addition, the District plans to purchase insurance for all prime and subcontractors for construction projects for additional safeguards and potentially reduce bid costs, but the new practice has not been included in policies and procedures.

Based on the above findings, the following is recommended.

The Board of Education should:

- 3.1. Direct the Chief Administrative Officer 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 of the FY 2012-13 performance audit.
- 3.2. Direct the Chief Administrative Officer 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.
- 3.3. Direct the Chief Administrative Officer to revise the Measure E Procedures Manual, within six months of the 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 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; and
 - b. Standard insurance requirements and payment for increased costs to the District caused by:
 - Delays in the project(s) not initiated by the District;
 - Changes in the project scope not initiated by the District;
 - Violations of laws and regulations;
 - Future claims, disputes or stop notices; and
 - Any other costs related to the negligence, recklessness, or willful misconduct of the vendor.
- 3.4. Direct the Chief Administrative Officer to revise the Measure E Procedures Manual to develop written policies and procedures for addressing future claims, liens and stop notices, within six months of the acceptance of the FY 2012-13 performance audit.

Section 4: Contract Administration and Expenditure Controls

Summary of Findings:

- The Facilities and Planning Procedures Manual for the Measure E Bond Program (Measure E Procedures Manual), does not specify that contractor payment procedures are exclusively for construction contractors and is, therefore, assumed to apply to *all* Measure E bond fund expenditures, including professional services such as legal and consulting services. The District's practices for approving contractor payments do not consistently conform to the Measure E Procedures Manual, which requires Facilities and Planning Department staff (Chief Facilities Official, Director of Facilities, or a Facilities Consultant) to review and approve all contractor payments for Measure E services prior to approval by the Chief Administrative Officer. Because the Chief Facilities Official and Director of Facilities positions have been vacant, the review and approval process for some construction and site-specific contracts has been inconsistent. Also, the District did not obtain approval from the Facilities and Planning Department for Measure E expenditures for legal services requested by the Board of Education, but rather these expenditures were approved by the Chief Administrative Officer, Superintendent, Executive Director of Budget and Food Services and the President of the Board of Education.
- Construction and professional service contracts for construction or site specific projects are subject to expenditure controls such as contract not-to-exceed amounts, disclosed hourly rates for prime and subcontractors and limitations on allowable expense reimbursements. However, the legal and business/facilities consultant contracts requested by the Board of Education lack

many of these expenditure controls. Although subconsultant work makes up more than 82 percent of the legal services contract expenditures, the contract does not set a not-to-exceed amount for prime contractor or subconsultant expenditures nor require the prime contractor to disclose the name, hourly rate, or total fees paid to the subconsultants.

- Further, two subconsultants for the legal services prime contractor also contract directly with the District for similar services. The District pays a premium for these subconsultant services; for example, the legal services contractor bills the District \$400 per hour for services provided by one subconsultant, which is up to \$150 per hour more than the billing rate charged directly by the subconsultant under a contract between the subconsultant and the District. Also, a subconsultant for legal services adds a 20 percent premium to reimbursable expenses, but the subconsultant does not charge this premium under a separate contract with District.
- The Measure E Procedures Manual is unclear regarding procedures for change orders to Measure E professional services contracts. Contractors for legal services and business/facilities consultant services requested by the Board of Education did not always obtain Board approval for incurring new expenses. According to District staff, the legal services contract, which lacked a not-to-exceed contract amount, did not require Board of Education approval prior to incurring new expenses; however, contract expenditures more than doubled, from \$500,000 to \$1,069,000.
- Some expenditure had purchase orders dated after the invoice date. Having purchase orders approved within a defined period is a form of internal control because purchase orders authorize expenditures and ensure that funding is available for procurement. Separate and specific procedures for purchases from governmental agencies should also be defined.

Based on the above findings, the following is recommended.

The Board of Education should:

- 4.1. Direct the Chief Administrative Officer 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.
- 4.2. Direct the Chief Administrative Officer to develop a policy, within six 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.
- 4.3. Direct the Chief Administrative Officer to revise the Measure E Procedures Manual, within six 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.
- 4.4. Direct the Chief Administrative Officer within six 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.
- 4.5. Direct the Chief Administrative Officer to develop a policy, consistent with current practices, that allows the Citizens' Oversight Committee 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 six months of the acceptance of the FY 2012-13 performance audit.
- 4.6. Establish procedures for review and approval of Measure E invoices in the absence of the Chief Facilities Official and Director of Facilities.

Introduction

Harvey M. Rose Associates, LLC (HMR) was retained by the Beverly Hills Unified School District to conduct the *2012-13 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 2012-13 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 retirement of the Chief Facilities Official who managed the Measure E program during the first seven months of the audit reporting period of FY 2012-13, we were not able to obtain his views and responses to the audit report. 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, 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 to 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. A performance audit exit conference was conducted with District management on March 12, 2014. Revisions to the report were then made and the final document was submitted 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, one 9-12 high school, and an adult school. The K-12 enrollment is approximately 4,600 and the adult school enrollment is approximately 300. 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.

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- **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 May 2013.

Overview of Measure E

Measure E was passed by a supermajority of District voters on November 4, 2008¹. The measure allows the District to issue up to \$334 million in bonds without an estimated increase in property tax rates. 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 \$72,944,664 in bonds issued comprised of \$12,460,000 in current interest bonds and \$59,584,664 in capital appreciation bonds. A second issuance of approximately \$45 million took place in December 2013.

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.

¹ 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 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 spring 2013.

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 had only limited access to the Chief Facilities Official, who left the District shortly after we commenced our audit in January 2014. Although this staff member was not present during the review year, her absence left the audit team with one less key District contact who could have assisted with understanding Measure E program processes, accomplishments, and challenges. The previous Chief Facilities Official left the District in January 2013 and was not available for questions or discussions. In addition, the Director for Facilities and Planning left the District on December 20th, 2012.

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

- In June 2013 the District successfully completed its first significant Measure E construction project, the Horace Mann auditorium renovation. The total project expenditures over the two year period from July 1, 2011 to June 30, 2013 were approximately \$4.5 million with relatively little expenditures in FYs 2010-11, 2009-10, and 2008-09. Within that amount, the District's construction expenditures were approximately \$3.5 million, which was about \$106,000, or 3 percent, more than the original amount, but within the 10 percent contingency amount set by District policy.
- The Horace Mann auditorium renovation costs included approximately \$122,000, or 2.7 percent of total project expenditures, for specific requests by the District. While owner-initiated changes are not uncommon for public capital projects, the Board should revise the District Measure E procedures to set standard amounts for District requested changes to ensure that specific changes requested by the District (e.g. changes in project scope or specifications) are appropriate, are not paid for from the 10 percent contingency amount, and do not significantly increase the costs or delay the schedule by an excessive amount.
- The District has had considerable turnover and extended vacancies in the Facilities and Planning 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 level of construction activity increases.
- The District took substantive steps in FY 2012-13 to define the future of the Measure E program by creating and communicating to the public a *Measure E Bond Fund Working Plan* and a more detailed *Measure E Bond Informative*. Despite these efforts, the District still does not have a Board certified list of specific school facility projects to be funded by Measure E bonds as required by State law. Without such a list, the State requirement that annual performance audits compare actual expenditures to the District's list of certified projects cannot be accomplished.
- As of June 30, 2013, nearly five years after the passage of Measure E, the District has not initiated or completed construction for any major project other than the Horace Mann auditorium renovation. Some of the delay was undoubtedly due to the unforeseen removal and criminal prosecution of the former District Facilities Director, an ensuing District wide program moratorium called for by the Board of Education, and uncertainty regarding the timing of future Measure E bond funding. The State Allocation Board advises school districts to commit to project sites and sizes early to lower the risk of redundant studies, regenerative thinking, and added costs. The Board of Education should do so as soon as possible.
- The Facilities Master Plan that the District operated under for most of FY 2012-13 (the Fiscal Year is July 1st through June 30th), was accepted by the Board of Education in August 2012. The plan contained a number of components necessary for an effective capital program but lacked other components considered essential by the State Allocation Board and the Office of Public School Construction, including District priorities and educational specifications.

The District Completed the Horace Mann Auditorium Renovation with Approximately \$4.5 million in Total Expenditures in FYs 2011-12 and 2012-13

The District completed its first major construction project under Measure E, the Horace Mann auditorium renovation in June 2013 with approximately \$4.5 million in expenditures over FY 2011-12 and 2012-13 (the period with the majority of project expenses¹), of which the largest project expenditure was \$3.5 million, or 79 percent, for building construction (under the agreement with the general contractor, Minco Construction). A detailed breakdown of project costs for the renovation of the Horace Mann auditorium is shown below in Exhibit 1.1.

Exhibit 1.1: Horace Mann Auditorium Renovation Costs FY 2011-12 & FY 2012-13		
Expenditure by Sub-Object	2 Year Total	Percent
Building Construction/Improvements	\$3,536,335	79.1%
Architectural Services	\$302,346	6.8%
Construction Management	\$276,553	6.2%
Engineering Services	\$113,172	2.5%
DSA ² Project Inspector/Fees	\$107,638	2.4%
Geotechnical Investigation/Soils Testing	\$36,904	0.8%
Hazard Material Investigation/Testing	\$34,111	0.8%
Water	\$20,069	0.4%
Direct Costs (Purchase Orders)	\$11,711	0.3%
Equipment Replacement	\$11,149	0.2%
Advertising (for bids)	\$7,438	0.2%
Moving Expense	\$6,853	0.2%
Architect Reimbursements	\$3,243	0.1%
Legal Fees	\$2,706	0.1%
Communications	\$19	0.0%
Total	\$4,470,247	100%

Sources: FY 2011-12 and FY 2012-13 Measure E expenditure data provided by the Executive Director for Budget and Food Services.

The Horace Mann auditorium renovation was completed on May 22, 2013, a little less than three months after the original project completion date of March 1, 2013. Construction management staff report that the delay was primarily due to difficulties receiving light fixtures from the manufacturer, difficulties in being able to get them to function properly, and multiple minor issues with the installation of an elevator.

¹ District staff report that approximately \$26,000 was spent on the Horace Mann auditorium project on architectural services in FY 2010-11 and relatively small amounts were spent on the project in FY 2009-10 and FY 2008-09, but a specified project code wasn't created for the project until July 2010 so it is not possible to get an exact accounting of total project expenditures.

² DSA stands for the California Division of the State Architect

Additional Horace Mann Auditorium Construction Expenditures were Within the Allowable Contingency, but Board Should Address Costs Stemming from Owner Requests

The Horace Mann auditorium renovation construction expenditures totaled \$3,536,335 with \$122,142, or 2.7 percent of total expenditures,³ including the entire amount set aside (\$65,700) for a District Allowance and \$56,442 of the 10 percent contingency, for owner requests (requests for changes to the project scope or specifications by the District). Currently, the District's Measure E procedures manual does not address owner-initiated change orders. While owner-initiated changes are not uncommon for publicly funded capital projects and the District appropriately established an allowance for owner requests, the Board should revise the District's Measure E procedures based on the experience from the Horace Mann Auditorium project to establish standard set asides, such as an owner's reserve (3 to 5 percent is common), to ensure that specific changes requested by the District (e.g. changes in project scope or specifications) are appropriate and do not significantly increase the costs or delay the project schedule. Such a policy should reserve the entire contingency amount, or 10 percent under current District policy, for unforeseen project circumstances that may arise during construction and not owner-initiated requests.

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. The Director of Facilities and Planning, a position that reports to the Chief Facilities Officer, has been vacant since December 2012.

While the District has made use of an outside 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. 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.

District Took Substantive Steps to Define Measure E Projects in FY 2012-13, but Still Lacks Board Certified List of Specific Projects Mandated Under State Law

The District took substantive steps in FY 2012-13 to define the future of the Measure E program by creating and communicating to the public a *Measure E Bond Fund Working Plan* and a more detailed *Measure E Bond Informative*. The documents were presented at three separate public town hall meetings in June 2013. The Working Plan was a pamphlet that included a high level budget showing the amounts proposed to be allocated by school site and contingency, a proposed construction schedule through December 2018, and summary schematic designs for the High School, El Rodeo, and Horace Mann. The purpose of the documents and town halls was to communicate the necessity for the District

³ This figure is based on FY 2011-12 and FY 2012-13 expenditures of \$4,470,247.

1. Program Management and Master Planning

to accelerate the issuance of bonds under Measure E so that the District may move forward and complete necessary construction and modernization projects within the next five years.⁴

Despite these efforts by the District, BHUSD still lacks a Board of Education certified list of specific projects as required under State law. Pursuant to Proposition 39, the California Constitution requires the following four accountability requirements for school districts that use the sale of bonds approved by 55 percent of the voters for school facility improvements⁵ (emphasis added):

1. The proceeds from the bond sales be used only for reconstruction, rehabilitation or replacement of school facilities, including furnishing and equipping the facilities, or the acquisition or lease of real property for school facilities.
2. *A list of specific school facility projects to be funded has been reviewed and certified by the school district board for safety, class size reduction and information technology needs.*
3. An annual independent performance audit be conducted to ensure that funds have been expended only on the specific projects listed.
4. An annual independent financial audit be conducted to ensure that all bond proceed expenditures have been for the school facilities projects.

The 2008 Master Facilities Master Plan in effect for the first two months of FY 2012-13 included a number of projects for each school site and a number of general categories of possible work such as “seismic upgrades, upgrade science rooms, and security upgrades.” However, all projects were described in the plan document as preliminary and conceptual. The Plan states that final project lists, budgets and schedules would be subsequently developed and approved by the Board of Education in a BHUSD Implementation Plan. It was assumed that the 2008 Plan would be periodically updated as needs and circumstances changed. Similarly, the 2012 Master Plan listed several options for each school site, but did not provide a definitive list of projects to be implemented.

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, makes it difficult to compare the use of Measure E funds against a list of specific projects, 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 and timelines

Significant Work Accomplished, but Nearly All District Projects Still Not in Construction Phase as of June 30, 2013

Although the District has undergone significant work since Measure E was passed, including: (1) closing out prior projects, which required relatively minor repairs; (2) conducting detailed analyses of the existing mechanical, electrical, plumbing and civil (MEPC) equipment, systems, and utilities; (3) initiating a program to identify and implement the “Top 3 Replacement Items” at each school site; and, (4) complete the renovation of the Horace Mann Auditorium, it had not proceeded to construction for any other project or site as of June 30, 2013 (the conclusion of the year under review). The District had not yet formally committed to Measure E project scopes and scales though more than \$31 million has been spent and nearly five years have elapsed since Measure E was passed by District voters. According to the

⁴ Keygent Advisors, a Financial Advisory and Management Consulting firm, has provided the District with analysis on its bond financing schedule that showed the District would need to accelerate its bond financing in order to meet its short term capital facility needs.

⁵ California State Constitution: Article XIII A, Section 1(b)(3)(A-D).

State Allocation Board, the lack of a firm plan raises the risk of redundant studies, regenerative thinking, and added costs to a school district construction and modernization program.

While the Measure E program was intentionally slowed down by a moratorium on the program imposed by the Board of Education in the aftermath of the dismissal and criminal prosecution of the District's former Facilities Official and more recently uncertainty regarding timing of future Measure E bond funding, there is greater urgency now for adopting a comprehensive plan and minimizing the impacts of lost time since the first Measure E bond issuance in 2008. The State Allocation Board advises that school districts should focus the District's decision process and commit to the sites and project sizes as early as possible to avoid false starts, multiple studies, and rethinking at the start of each new project, which translates to added services, fees and time to project completion. The Board of Education should formally commit to specific projects as soon as possible.

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 at the beginning of the review period in August 2012.

During FYs 2010-11 and 2011-12, the District engaged the services of a consultant firm to revisit the 2008 Facilities Master Plan, which resulted in a revised Facilities Master Plan (*Strategic and Long Range Facility Master Plan*) presented to and accepted by the Board in August 2012. The purpose of the revision was generally to establish a long term plan that would allow the District to move forward with Measure E projects by incorporating the work of the new Chief Facilities Official and consultants hired after the District severed ties with a previous Facilities Director.

2012 Facility Master Plan Helpful, But Missing Some Essential Elements

Though the Facilities Master Plan that was approved in August 2012, and is currently being utilized by the District, included some improvements on the 2008 plan, the current document is still incomplete and contains components that have not been accepted by the District's Board of Education. Although the 2012 Facility Master Plan includes some important elements necessary to move forward with the capital program, it lacks other significant components.

The strengths of the 2012 Facilities Master Plan are the result of its inclusion of:

- ✓ District-wide enrollment projections, which were missing from the 2008 Facilities Master Plan. Detailed enrollment projections help establish the long-term level of capacity needed to serve pupils and District staff at each school site.
- ✓ An assessment of the condition and adequacy of existing facilities with an identification of needed improvements and their implementation costs. These are included in: (1) the summary of mechanical, electrical, plumbing and civil (MEPC) equipment, systems, and utilities as well as (2) the Educational Adequacy Summary. The 2008 plan contained a less thorough assessment.

- ✓ A “Business Plan,” which outlines schedule and budget options for all school sites.
- ✓ Design and construction standards, which establish desired standards and practices and serve as guidelines for design professionals in the preparation of bid documents and construction specifications. The 2008 plan did not contain this information.

Despite these strengths, the 2012 Facilities Master Plan is missing some critical elements considered best practices by the State Allocation Board, including:

- District priorities, which would articulate the District’s broad priorities and philosophy. Although the previous 2008 Facilities Master Plan contained a list of Board approved “priority-rankings,” the 2012 Facilities Master Plan only vaguely refers to “policies and identified goals established by the School Board [of Education]” without calling them out specifically. Without an articulated list of priorities, the Board and community are left without a common understanding of how alternatives will be considered and chosen.
- Community needs, which the State Allocation Board considers essential. Without an assessment of community needs, planning may overlook some members of the community.
- Potential legal issues that could impact the progress or implementation of projects District-wide or at specific school sites.⁶
- The cost of the projects identified in the 2012 Facilities Master Plan ranged from \$494,058,799 to \$581,256,514, which is approximately \$160 to \$248 million, more than the \$334 million that the District assumes will be available from all Measure E bond issuances.⁷

Further, although the Facilities Master plan lists educational goals, they are included in the summary of Educational Specifications section, which is a series of associated documents incorporated in the Plan but that were not approved by the District’s Board when presented in August 2012. Therefore, it is unclear whether the District stands by those educational goals or if they will be revised if/when the Board reconsiders educational specifications for the District. Similar to District priorities, educational goals articulate the District’s philosophy, but with a focus on the educational program.

BHUSD Continues to Lack Educational Specifications

As was found in the FY 2011-12 Measure E performance audit, the District lacks definitive, complete, and approved educational specifications. The 2008 Facilities Master Plan, which was in effect for the entirety of FY 2011-12, did not include and was not based on associated educational specifications despite industry best practices.

The California Department of Education considers the development of educational specifications the “keystone of the facility planning process” and recommends that educational specifications be completed *before* an architect is asked to design a school. Similarly, the State Allocation Board

⁶ At the time the 2012 Facilities Master Plan was prepared and adopted, the key legal issues that Measure E funds were and are being used for were publically known.

⁷ Additionally, the ability of the District to raise the entirety of the \$334 million is doubtful given the drop in assessed values from 2008.

recommends that school districts develop good educational specifications ahead of the design process and be used to guide all design decisions and solutions. The State Allocation Board also advises that “there is a direct increase in the cost of design and other fees due to lack of definitive and complete educational specifications.”

Although the District contracted with consultants in FY 2010-11 and 2011-12 to develop educational specifications, the Board did not approve the proposed specifications when they were presented in August 2012 and the audit team has not been made aware of any plans to develop alternative or modified specifications.

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) program⁸ and (2) the Savings by Design (SBD) program⁹. The 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 LEED (Leadership in Energy and Environmental Design) 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.

⁸ 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, 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.

⁹ SBD, administered in Beverly Hills by Southern California Edison, encourages energy efficiency in the design and construction of non-residential buildings.

Conclusions

The District completed its first significant Measure E construction project, the Horace Mann auditorium renovation in June 2013. The District's construction expenditures were approximately \$3.5 million, which was approximately \$106,000 or 3 percent more than the original amount, but within the 10 percent contingency amount set by District policy. The project included approximately \$122,000, or 2.7 percent, of total expenditures stemming from specific requests by the District. While owner-initiated changes are not uncommon for publicly funded capital projects, the District exceeded its allowance for the Horace Mann project, necessitating a withdrawal from the project contingency. The 10 percent contingency should be set aside for unforeseen project circumstances, not owner requested changes.

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. 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.

Although the District has taken substantive steps to define the future of the Measure E program in FY 2013-13, BHUSD still has not yet formally committed to the scope and scale of Measure E projects. While some progress has been made on relatively minor projects, conducting detailed analyses of the existing buildings and improvement needs, and the Horace Mann auditorium has been completed, the District has not moved to the construction phase for any other project. Further, the District does not have a Board-certified list of specific projects as required under State law. The State Allocation Board advises school districts to commit to project sites and sizes early to lower the risk of redundant studies, regenerative thinking, added costs, and extended timelines.

The District's master planning efforts are still incomplete. Specifically, the District's current master plan is missing critical elements such as District priorities and a description of the impact of potential legal issues. Further, the District has not adopted educational specifications, which specify to the architect, the public, and other interested parties what educators believe is required of proposed or future educational facilities to support a specific educational program and which the State Allocation Board considers a "critical element of the design process."

Recommendations

The Board of Education should:

- 1.1 Direct the Chief Administrative Officer 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 not owner-initiated changes.

1. Program Management and Master Planning

- 1.2 Direct the Chief Administrative Officer 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.
- 1.3 Direct the Chief Administrative Officer 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.
- 1.4 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.
- 1.5 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.

Costs and Benefits

The costs of these recommendations include additional staff time to draft and present revised plans and policies and to recruit for vacant positions. The benefits of these recommendations include a clearer definition and use of contingency funds, in-house staff that can focus on the day-to-day management of the Measure E program, a complete and more useful Facilities Master Plan, useful educational specifications that will serve as guidance to designers, a clear District-wide understanding of how Measure E funds will be allocated so that additional projects can commence, and a clear District-wide understanding of how green technology should be approached with Measure E funds.

2. Measure E Budget and Communication Effectiveness

- As of June 30, 2013, the District had spent approximately \$31 million, or 43 percent of the \$72 million in 2009 Measure E bond proceeds, and 9.3 percent of the \$334 million total authorized by Measure E. The District spent \$9,642,966 in Measure E funds in FY 2012-13, or approximately 23 percent more than in the prior fiscal year.
- The majority of FY 2012-13 Measure E expenditures was for capital outlay, including building construction and improvements, architectural services, and construction management. This spending was primarily for the Horace Mann auditorium renovation project. Spending on legal, geotechnical and other professional services, almost entirely related to the MTA Westside subway expansion proposal and its findings of potential seismic hazards on District property, was also a large expenditure accounting for about 15 percent of overall FY 2012-13 Measure E spending.
- Actual District Measure E expenditures in FY 2012-13 were 66 percent less than the original budget adopted by the Board of Education in June 2012. Spending was particularly lower for school renovation and modernization projects. This was primarily due to the absence of approval of such projects beyond the conceptual design phase as the Board of Education reconsidered its Measure E priorities and amongst uncertainty regarding proposed projects that will not be fully funded unless voters approve acceleration of Measure E bond funding. The overall Measure E fiscal budget was not amended to reflect these changes in project plans.
- The District should report more clearly on the Measure E program to ensure that stakeholders and the public understand the program and the progress of projects within the program. The June 2012 budget presentation to the Board of Education for the adoption of the FY 2012-13 Measure E budget did not include expenditure detail by project or school site, or provide individual project timelines. Further, the District's Measure E web pages and progress reports need improvement to ensure that sufficient detail is provided to the general public.

The District Increased Spending of Measure E Funds in FY 2012-13, Primarily due to the Horace Mann Auditorium Renovation Project

The Beverly Hills Unified School District (BHUSD or District) spent \$9,642,966 of Measure E bond funds in FY 2012-13, which was \$1,821,223, or approximately 23 percent, more than the amount spent in FY 2011-12. Overall, the District spent approximately \$31 million, or 43 percent, of the \$72 million Measure E bond issue of 2009 and 9.3 percent of the \$334 million authorized by Measure E (not including earned interest, which has increased available funds by a moderate amount).¹

The largest increase in spending in FY 2012-13 as compared to FY 2011-12 by major budgetary category (Major Object) was \$7.5 million spent on construction projects (or Capital Outlay), an increase of approximately \$2.4 million, or 47.6 percent more than in FY 2011-12 as shown in Exhibit 2.1 below. These expenditures were primarily building construction and improvements for the Horace Mann

¹ Subsequent to the year under review, in December 2013 the District issued an additional \$45 million in Measure E bond funds bringing the total amount of issued Measure E bond funds to \$117 million as of the writing of this report.

2. Measure E Budget and Communication Effectiveness

auditorium and the replacement of a chiller at Hawthorne Elementary, architectural services, construction management, fees associated with obtaining California Division of the State Architect (DSA) approval for various project completions, and engineering services.

All other major categories of spending decreased in FY 2012-13 from FY 2011-12. The largest categorical decrease in Measure E bond fund spending was for Services and Other Operating Expenditures. This decrease was primarily due to the winding down of expenses related to the District's litigation against Strategic Concepts² and matters related to the MTA Westside subway proposal.

Exhibit 2.1: Measure E Expenditures by Major Object, FY 2011-12 vs. FY 2012-13					
Major Budget Object Category	FY 2011-12 Actual	FY 2012-13 Actual	Percent of Total FY 2012-13	Change from FY 2011-12	Percent Change from FY 2011-12
Capital Outlay (construction, architectural, construction mgmt., etc.)	\$5,089,721	\$7,512,809	77.9%	\$2,423,088	47.6%
Services & Other Operating Expenditures (legal and other professional services)	\$2,246,611	\$1,753,204	18.2%	(\$493,407)	-22.0%
Classified Salaries	\$360,927	\$298,918	3.1%	(\$62,009)	-17.2%
Employee Benefits	\$115,435	\$71,549	0.7%	(\$43,886)	-38.0%
Books and Supplies	\$9,049	\$6,488	0.1%	(\$2,561)	-28.3%
Total	\$7,821,743	\$9,642,966	100%	\$1,821,223	23.3%

Sources: FY 2012-13 and FY 2011-12 Measure E expenditure data provided by Executive Director for Budget and Food Services.

As shown in Exhibit 2.2, the largest subcategory (budgetary sub-object) of Measure E spending in FY 2012-13 was approximately \$4 million, or 41 percent of total expenditures, on building construction and improvements for District school sites. These funds were primarily for the renovation of the Horace Mann auditorium. In addition to the Horace Mann auditorium project, other modernization and auditorium upgrade projects were assumed in the FY 2012-13 budget, but incurred significantly less actual expenditures due to the absence of Board of Education approval to move beyond conceptual designs

The second largest subcategory of Measure E spending in FY 2012-13 was for architectural services at approximately \$1.8 million, or 18.7 percent of total expenditures, as shown in Exhibit 2.2. Spending on legal and other professional services was the third largest category of expenditures at approximately \$1.5 million or 15.2 percent of the total for FY 2012-13. These legal and other professional service fees, including significant geotechnical analyses, were almost entirely (97 percent) related to the MTA's Westside subway expansion proposal and its findings of potential seismic hazards in the vicinity of the

² In January 2014, subsequent to the year under review, the District reimbursed the Measure E bond fund for costs incurred for legal services relating to litigation against Strategic Concepts. According to District staff, all bond fund expenses relating to these legal services have been reimbursed as of the approval of the January 2014 reimbursement.

2. Measure E Budget and Communication Effectiveness

high school campus. District Administration has stated that the expenditures related to the legal, geotechnical, and other services were necessary to ensure that the high school campus did not have significant seismic hazards, which would then allow the District to move forward with future modernization of the high school. Further details of the top Measure E expenditures in FY 2012-13 are shown in Exhibit 2.2 below.

Exhibit 2.2: Top Measure E Expenditures by Sub-object, FY 2012-13			
Budgetary Category (Sub-object)	FY 2012-13 Actual	Percent of FY 2012-13	Amount Change from FY 2011-12
Building Construction/Improvements	\$3,954,732	41.0%	\$3,954,732
Architectural Services	\$1,806,336	18.7%	(\$317,179)
Legal Services ³ (mostly MTA-related)	\$1,466,589	15.2%	(\$472,444)
Construction Management	\$901,523	9.3%	\$178,009
Other Services ⁴	\$237,539	2.5%	\$167,295
Classified Supplemental and Administrative Salaries	\$220,098	2.3%	(\$54,576)
Division of the State Architect Fees	\$200,635	2.1%	\$163,767
Engineering Fees	\$191,318	2.0%	(\$867,948)
All Other Sub-object Categories	\$664,196	6.9%	(\$929,155)
Total	\$9,642,966	100%	\$1,822,501

Sources: FY 2012-13 and FY 2011-12 Measure E expenditure data provided by Executive Director for Budget and Food Services.

Most FY 2012-13 Measure E Expenditures were for Horace Mann and Districtwide Administration/ Initiatives

Most of the Measure E expenditures in FY 2012-13 were spent at Horace Mann, as shown in Exhibit 2.3 below. Approximately \$5.9 million, or about 62 percent of total FY 2012-13 Measure E expenditures, was spent at Horace Mann, primarily for the auditorium renovation project. Smaller amounts were spent on planning activities related to the Horace Mann modernization project, the proposed new building and proposed demolition at Horace Mann, and other minor facilities items as further detailed in Exhibit 2.4 below.

The second highest amount of expenditures in FY 2012-13 was for districtwide administration and initiatives, including efforts related to the MTA proposal to build a subway tunnel underneath District property, MTA's finding of potential seismic hazards in the vicinity of the high school campus, and the administration of the Facilities and Planning program as detailed in Exhibit 2.4 below. District Administration has stated that spending on legal, geotechnical, and other related services were required to clarify the geotechnical status of the high school campus and address concerns related to the placement of proposed subway tunnels underneath the campus. Approximately \$2.4 million, or about 25 percent of total Measure E expenditures, was spent on districtwide administrative (including the operation of the Facilities and Planning Department) matters in FY 2012-13, a decrease of about \$492,000 from FY 2011-12. This decrease is primarily due to an approximate \$475,000 decline for legal

³These expenditures include a significant amount of geotechnical analysis.

⁴ Other Services includes Measure E program management consultants and independent auditing services.

2. Measure E Budget and Communication Effectiveness

services and an approximate \$59,000 decline in personnel related expenditures due to multiple vacancies in the Facilities and Planning Department.

The District spent less than 14 percent of the remaining expenditures, or about \$1.3 million, at the other school sites as shown in Exhibit 2.3 below. The District spent less Measure E funds at the other school sites in FY 2012-13 than in FY 2011-12, including on districtwide administration and initiatives. The lower spending at these other school sites is primarily due to the absence of Board approval to move beyond the conceptual stage, which is chiefly due to bond funding uncertainty discussed in more detail in Section 1. Additionally, spending decreased on districtwide administration and initiatives mostly due to the winding down of litigation against a former facilities official (which was subsequently reimbursed to the Measure E bond fund), a decrease in legal services related to the MTA Westside subway proposal, and multiple vacancies in the Facilities and Planning Department.

Exhibit 2.3: Measure E Expenditures by School Site/Location						
School Site/Location	FY 2011-12 Actual Expenditures	Percent of FY 2011-12	FY 2012-13 Actual Expenditures	Percent of FY 2012-13	Change from FY 2011-12 Expenditures	Percent Change from FY 2011-12 Expenditures
Horace Mann	\$1,649,410	21.1%	\$5,936,778	61.6%	\$4,287,368	259.9%
District/Facilities Administration & Related ⁵	\$2,895,997	37.0%	\$2,404,451	24.9%	(\$491,546)	-17.0%
Hawthorne	\$830,282	10.6%	\$548,997	5.7%	(\$281,285)	-33.9%
High School	\$1,689,375	21.6%	\$526,970	5.5%	(\$1,162,405)	-68.8%
El Rodeo	\$516,611	6.6%	\$146,770	1.5%	(\$369,841)	-71.6%
Beverly Vista	\$240,067	3.1%	\$79,001	0.8%	(\$161,066)	-67.1%
Total	\$7,821,742	100%	\$9,642,966	100%	\$1,821,224	23.3%

Sources: FY 2012-13 and FY 2011-12 Measure E expenditure data provided by Executive Director for Budget and Food Services.

Exhibit 2.4 below provides greater detail on the project expenditures at each location. Two major project expenditures in FY 2012-13, other than Horace Mann were on the replacement of a chiller/cooling tower at Hawthorne (approximately \$470,000) and planning for modernization of the High School (approximately \$527,000).

⁵ These amounts include legal, geotechnical, and other services related to the MTA proposal to construct subway tunnels underneath the high school campus and its findings of potential seismic hazard in the vicinity of the high school. District Administration has stated that such efforts have been necessary to clarify the geotechnical status of the land and address concerns related to the placement of proposed subway tunnels underneath the campus.

2. Measure E Budget and Communication Effectiveness

Exhibit 2.4: Measure E Expenditures by Project and Location						
Location	Location Expenditures by Project	FY 2011-12 Actual Expenditures	FY 2012-13 Actual Expenditures	Percent of FY 2012-13 Expenditures at Location	Change from FY 2011-12 Expenditures	Percent Change from FY 2011-12 Expenditures
Horace Mann	Auditorium Ceiling Upgrades	\$447,798	\$4,022,449	67.8%	\$3,574,651	798.3%
	New Construction (planning for the demolition of existing and construction of new buildings)	\$823,015	\$1,337,267	22.5%	\$514,252	62.5%
	Horace Mann Modernization (planning for the renovation of existing building)	\$260,855	\$497,889	8.4%	\$237,034	90.9%
	Horace Mann Interim Classroom	\$59,700	\$56,122	0.9%	(\$3,578)	-6.0%
	Lunch shelter, Courtyard & Central Plant	\$0	\$22,741	0.4%	\$22,741	N/A
	Rotunda Deomolition	\$24,828	\$201	0.0%	(\$24,627)	-99.2%
	Division of the State Architect Closeout	\$33,214	\$108	0.0%	(\$33,106)	-99.7%
	Horace Mann Total	\$1,649,410	\$5,936,778	100%	\$4,287,368	259.9%
District/Facilities Administration	MTA (legal fees and geo-engineering)	\$1,742,028	\$1,420,081	59.1%	(\$321,947)	-18.5%
	Facilities & Planning	\$325,367	\$935,441	38.9%	\$610,074	187.5%
	Facilities Master Plan	\$140,547	\$26,482	1.1%	(\$114,065)	-81.2%
	District Administration (legal fees)*	\$205,100	\$22,447	0.9%	(\$182,653)	-89.1%
	District/Facilities Administration Total	\$2,895,997	\$2,404,451	100%	(\$491,546)	-17.0%
Hawthorne	Chiller/Cooling Tower Replacement	\$0	\$470,227	85.7%	\$470,227	N/A
	Electrical Distribution Replacement	\$0	\$39,660	7.2%	\$39,660	N/A
	Hawthorne Modernization	\$484,621	\$36,365	6.6%	(\$448,256)	-92.5%
	Auditorium Ceiling Upgrades	\$340,445	\$2,745	0.5%	(\$337,700)	-99.2%
	Division of the State Architect Closeout	\$5,216	\$0	0.0%	(\$5,216)	-100.0%
	Hawthorne Total	\$830,282	\$548,997	100%	(\$281,285)	-33.9%
High School	High School Modernization	\$1,689,375	\$526,970	100%	(\$1,162,405)	-68.8%
	MTA	\$1,018	\$0	0.0%	(\$1,018)	-100.0%
	High School Total	\$1,689,375	\$526,970	100%	(\$1,162,405)	-68.8%
El Rodeo	Emergency Lighting Replacement/Sanitary Sewer Replacement	\$0	\$75,019	51.1%	\$75,019	N/A
	El Rodeo Modernization/New Construction	\$346,994	\$47,294	32.2%	(\$299,700)	-86.4%
	Division of the State Architect Closeout	\$42,908	\$24,152	16.5%	(\$18,756)	-43.7%
	Auditorium Ceiling Upgrades	\$126,709	\$305	0.2%	(\$126,404)	-99.8%
	El Rodeo Total	\$516,611	\$146,770	100%	(\$369,841)	-71.6%
Beverly Vista	Beverly Vista Modernization	\$236,757	\$50,192	63.5%	(\$186,565)	-78.8%
	Chiller Pump Replacement	\$0	\$17,347	22.0%	\$17,347	N/A
	Shade Structure	\$0	\$10,532	13.3%	\$10,532	N/A
	Division of the State Auditor Closeout	\$3,310	\$930	1.2%	(\$2,380)	-71.9%
	Beverly Vista Total	\$240,067	\$79,001	100%	(\$161,066)	-67.1%
Total		\$7,821,742	\$9,642,966	N/A	\$1,821,224	23.3%

Sources: FY 2012-13 and FY 2011-12 Measure E expenditure data provided by Executive Director for Budget and Food Services.

* A portion of the legal fees expended under District Administration were related to the termination and prosecution of a former District facilities official. These funds were subsequently reimbursed to the Measure E Bond Fund.

As shown in Exhibit 2.5 below, the District spent Measure E funds for actual construction projects only at Horace Mann (for the auditorium renovation) and Hawthorne (chilling/cooler tower replacement). Expenditures at other school sites were generally for architectural, engineering, geotechnical evaluation, and construction management costs.

2. Measure E Budget and Communication Effectiveness

Exhibit 2.5: Top Measure E Expenditures by Location			
Location	Major Expenditures by Budgetary Category (sub-object)	FY 2012-13 Actual Expenditures	Percent of FY 2012-13 at Location
Horace Mann	Building Construction/Improvements	\$3,536,335	59.6%
	Architectural Fees	\$1,468,870	24.7%
	Construction Management	\$388,015	6.5%
	Other	\$543,559	9.2%
	Horace Mann Total	\$5,936,778	100%
District/Facilities Administration & Related	Legal Fees*	\$1,463,883	60.9%
	Construction Management	\$303,284	12.6%
	Other Services (contracted program management and independent auditing services)	\$237,539	9.9%
	Other	\$399,745	16.6%
	District/Facilities Administration & Related Total	\$2,404,451	100%
Hawthorne	Building Construction/Improvements	\$418,397	76.2%
	Engineering	\$64,263	11.7%
	Construction Management	\$48,668	8.9%
	Other	\$17,669	3.2%
	Hawthorne Total	\$548,997	100%
High School	Architectural Fees	\$296,340	56.2%
	Construction Management	\$111,701	21.2%
	Geotechnical Investigations/Soil Testing	\$26,223	5.0%
	Other	\$92,706	17.6%
	High School Total	\$526,970	100%
El Rodeo	Engineering	\$71,775	48.9%
	Architectural Fees	\$44,821	30.5%
	Construction Management	\$26,908	18.3%
	Other	\$3,266	2.2%
	El Rodeo Total	\$146,770	100%
Beverly Vista	Construction Management	\$22,949	29.0%
	Equipment Replacement	\$22,939	29.0%
	Engineering	\$15,150	19.2%
	Other	\$17,964	22.7%
	Beverly Vista Total	\$79,001	100%
Grand Total		\$9,642,966	

Sources: FY 2011-12 and FY 2012-13 Measure E budget data provided by Executive Director for Budget and Food Services.
 *Most (97 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. Funds spent on litigation against the former facilities official were subsequently reimbursed.

2. Measure E Budget and Communication Effectiveness

BHUSD Continues to Lack an Official Measure E Project List, but has Created a Working Plan

As discussed in Section 1, State law requires the following four accountability measures for school districts that use the sale of bonds approved by 55 percent of the voters for school facility improvements (emphasis added):

1. The proceeds from the bond sales may be used only for reconstruction, rehabilitation or replacement of school facilities, including furnishing and equipping the facilities, or the acquisition or lease of real property for school facilities.
2. *A list of specific school facility projects to be funded must be reviewed and certified by the school district board for safety, class size reduction and information technology needs.*
3. An annual independent performance audit must be conducted to ensure that funds have been expended only on the specific projects listed.
4. An annual independent financial audit must be conducted to ensure that all bond proceed expenditures have been for the school facilities projects.

To assess whether Measure E bond funds are being expended consistent with the projects originally approved by the voters, the auditors compared actual FY 2012-13 expenditures to Measure E language. The purpose of Measure E, as stated on the ballot in 2008, 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 language does not constitute a list of specific projects but, rather, general categories of improvements, with flexibility in the purpose and type of projects that can be covered by Measure E bond funds. The District’s 2012 Strategic and Long Range Facility Master Plan, which was accepted by the Board of Education in August 2012 and therefore in effect for most of FY 2012-13 includes a listing of various options available to the District, but does not constitute a final approved list of specific projects to be funded. Further, as discussed in Section 1, a *Measure E Bond Fund Working Plan* and an accompanying *Measure E Bond Informative*, prepared by District administration and program management consultants, were presented to the public in June 2013. While these documents provide a list of various projects, they have not been certified by the Board of Education and therefore do not constitute an official list of school facility projects under State law.

The District continued to spend Measure E Bond funds on costs related to the proposed MTA subway tunnel project that were not specifically identified in the Bond Measure of 2012 Facilities Master Plan

The District spent Measure E Bond funds in FY 2012-13 on legal fees and geo-engineering costs related to the proposed MTA subway tunnel project. As discussed in the FY 2011-12 performance audit report, the language of Measure E and the 2012 Facilities Master Plan both contain general project descriptions and flexible language that could be interpreted to allow for these expenses as are unforeseen project-related costs.

To address State Constitution requirements for ensuring that Measure E money is only being used for approved projects, the Board of Education should consider formally authorizing a list of school facility

2. Measure E Budget and Communication Effectiveness

projects, including MTA-related professional services as a project or as a component of a project to end any concern by District stakeholders that the money is being used inappropriately, as recommended in the FY 2011-12 performance audit report. Consistent with recommendations in Section 1 of this report, the District should formally commit to specific projects based on the latest Facilities Master Plan, including certain litigation matters and with the rationale for why it is an appropriate use of Measure E funds. Actual expenditures for litigation should continue to be reported through the District's expenditure reports.

The District Underspent FY 2012-13 Measure E Funds in All Spending Categories

The District's Measure E spending in FY 2012-13 was 66.3 percent less than the adopted FY 2012-13 budget, particularly on school renovation and modernization projects. The District spent \$9,642,966 of Measure E funds in FY 2012-13, which is \$19,007,465 less than the \$28,650,431 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 (or Capital Outlay) for which the District spent \$7,512,809, or \$18,961,122 less than the \$26,473,931 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 budget by \$247,757, or 16.5 percent. These expenditures were primarily due to approximately \$1.5 million in spending on legal and technical services related to the MTA's proposal to construct a tunnel under BHUSD property. The \$1,753,204 also includes about \$238,000 spent on program management consultants and independent auditing services.

Exhibit 2.6: Measure E Budget vs. Actual Expenditures, FY 2012-13 by Major Object				
Major Budget Object Category	Original Budget Adopted by Board	FY 2012-13 Actual Expenditures	Over/(Under) Adopted Original Budget	% Over/(Under) Adopted Original Budget
Capital Outlay (construction, architectural, construction mgmt., etc.)	\$26,473,931	\$7,512,809	(\$18,961,122)	-71.6%
Services & Other Operating Expenditures	\$1,505,447	\$1,753,204	\$247,757	16.5%
Classified Salaries	\$493,040	\$298,918	(\$194,122)	-39.4%
Employee Benefits	\$153,013	\$71,549	(\$81,464)	-53.2%
Books and Supplies	\$25,000	\$6,488	(\$18,512)	-74.0%
Total	\$28,650,431	\$9,642,966	(\$19,007,465)	-66.3%

Sources: FY 2012-13 Measure E budget data provided by Executive Director for Budget and Food Services

The District Spent \$1.4 Million in Measure E Bond Funds on MTA-Related Legal Services

The District spent approximately \$1.42 million, or 14.7 percent of all Measure E funds spent in FY 2012-13, 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.

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Of this amount, the District spent approximately \$402,503 in FY 2012-13, initially paid from the Measure E bond fund, to an outside firm for legal services related to the MTA subway project. This same firm provides 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 Report More Clearly on Projects Funded by Measure E

The District Measure E budget reports, while conforming to the State's required twice annual Interim Reports, should be expanded so that stakeholders and the public can fully understand Measure E projects. Though the Facilities and Planning Department prepared the FY 2012-13 Measure E budget based on specific projects, the June 2012 budget presentation to the Board of Education for the adoption of the FY 2012-13 Measure E budget did not include a breakdown by project or school site.⁶ Further, there is no narrative report explaining the basis for the proposed budget and no use of charts or graphs to help illustrate the state of and plans for Measure E funding for FY 2012-13. Although presenting Measure E expenditures information by project and school site is more detailed than the prescribed format required by the State, reporting capital expenditures by project and site are considered best practices and should be adopted by District staff as a supplemental presentation to the Board of Education and public. While District staff has provided detailed expenditure reports to the Citizens Oversight Committee Audit Committee, the District should provide simple and clear presentations to the Board and general public showing the budgets and expenditures to date for each Measure E project.

Similar to our findings for FY 2011-12, the two interim budget presentations to the Board in FY 2012-13 (one in November 2012 and one in March 2013) were not sufficiently detailed so that Board members and the public could understand the District's Measure E spending patterns. Although interim budget reports during FY 2012-13 provided budgeted vs. actual expenditures, the projected year totals were not updated based on actual spending. Despite the District's slower than anticipated spending overall, the March 2013 interim budget report projected that \$32,917,584 would still be spent by year end even though at that point only \$3.9 million had been spent. As previously mentioned, the District's actual total Measure E expenditures in FY 2012-13 were approximately \$9.6 million. While District staff has stated that project line items are updated and reported to the Board as necessary, the overall Measure E fiscal budget is not updated or revised based on changes that occur throughout the year.

The District's Measure E budgeting processes are not 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. Although District staff reports on and revises project budgets due to specific line item changes, the overall Measure E fiscal budget is not updated to reflect such changes. 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;

⁶ The FY 2012-13 budget prepared by the Facilities and Planning Department included \$16.4 million in Measure E expenditures by school site, which did not reconcile with the \$26.8 million Measure E FY 2012-13 budget.

2. Measure E Budget and Communication Effectiveness

- Make budget adjustments, whether to programs or to revenues and expenditures, as appropriate, periodically throughout the year; and,
- 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.

Additionally, the District should consider highlighting proposed and/or projected capital project timelines in its budget presentations to provide additional context.

Measure E Progress Reports are Helpful, but Still Need Improvement; District Website Should be Updated

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 improvements are still needed to provide sufficient information to the public to understand the projects funded by Measure E. 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 still 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, a review of the Horace Mann auditorium construction updates within the districtwide update reports found that while they included basic information about the project, a narrative describing the work to-date, and photos of the progress, they were missing: (1) the amount expended to-date; (2) a breakdown of spending by hard and soft costs; and, (3) sufficient detail on project delays. Regarding the project delays, the update from April 2013 for the Horace Mann Auditorium (within the districtwide update) stated the contract completion date next to an asterisk with a comment stating "Recommended Time Extension due to Elevator." More details should be provided on project delays such as the original anticipated completion date, the specific issue with the elevator (e.g. delay in receiving parts or obtaining permits), and the District's actions to address the delay (e.g. put on hold until parts arrive or working with DSA to obtain approval within 2-3 weeks).

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 begin to ramp up as anticipated in FY 2013-14 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. However, as of the writing of this report, the site-specific pages have not been updated since July 2012 and do not include budgetary information. Further, a page devoted to "Projects Completed and In Progress" had no information posted. The District should regularly update its website to keep the public informed about the progress made under Measure and should 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 \$9,642,966 of Measure E bond funds in FY 2012-13, primarily for building construction and improvements (mostly for the Horace Mann auditorium), architectural services, and legal services (mostly related to the MTA Westside subway proposal). Although this amount is approximately 23 percent more than what was spent in FY 2011-12, it is approximately 66 percent less than what was anticipated when the Board of Education adopted the Measure E budget in June 2012 while continuing to incur borrowing costs on \$72 million in bond funds issued in early 2009.

The District needs to report Measure E budget and expenditure information clearly and concisely to allow stakeholders and the public to fully understand the projects funded by Measure E and their progress. The June 2012 budget presentation for the adoption of the FY 2012-13 Measure E budget did not include expenditure detail by project or school site, or provide individual project timelines. Additionally, the District's Measure E web pages and progress reports need improvement to ensure that information is sufficient the general public to understand the projects.

Recommendations

The Board of Education should:

- 2.1 Direct the 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 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.
- 2.2 Direct the Chief Administrative Officer 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.
- 2.3 Include MTA-related litigation and any other legal and related matters in a District list of authorized 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.

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 Facilities and Planning Procedures Manual for the Measure E Bond Program (Measure E Procedures Manual), has not been revised to outline policies and procedures for soliciting vendors and selecting the lowest responsible bidder for public projects, defined in State law to include public facility construction and renovation. These areas should be covered in the manual since most Measure E funds will be spent on public projects and State law requires all public projects with over \$15,000 in expenditures to be competitively bid.
- Although the District's Measure E Procedures Manual does not explicitly require competitive bidding for construction contracts (public projects) or competitive solicitation of professional services contracts, the four contracts for construction or site specific projects in the audit's sample of six contracts were selected through a competitive process in FY 2012-13 or previous fiscal years. However, one of these four contracts did not have documented evidence of vendor outreach efforts for the initial phase of the competitive process. Maintaining documentation of vendor outreach and solicitation for Measure E Bond Fund contracts would provide assurance that the District has gone through a valid competitive selection process and received proposals or bids from as many qualified vendors as possible.
- The District did not use competitive selection processes for the two Measure E contracts in the sample that were initiated by the Board of Education – one for legal services and one for the business/facilities consultant. There was no documentation that the District staff obtained informal quotes or qualifications from multiple vendors for these services. The Board of Education approved the legal services contract on the consent agenda, precluding any public discussion of the selection of the contractor. Although the District wished to quickly backfill the business/facilities consultant contract when the prior consultant left, the District selected a business/facilities consultant who also worked as a subcontractor for one of the District's contract attorneys without undergoing a competitive process. Approving a contract with a professional consultant who was also providing services to the District through a separate subcontract exposes the District to additional risks. Although the Measure E Procedures Manual does not require professional service agreements to be competitively bid, the Office of Public School Construction's State Allocation Board recommends a formal, competitive selection process for professional services such as planning and design, legal, financial and construction services in order to prevent unforeseen and increased costs throughout the construction project. As an organization with statewide reach, the Allocation Board's policies can be considered best practices for any California school district's construction program.
- The District does not have written policies and procedures regarding standard contract language to be included for all contracts paid for with Measure E bond funds, or policies for addressing future claims, liens and stop notices. However, project specific construction and professional service contracts were prepared by the District's general counsel and contain consistent language and requirements. In contrast, professional service contracts initiated by the Board of Education for legal services were based on the contractors' standard contract language and excluded some standard District requirements, including standard insurance. In addition, the District plans to purchase insurance for all prime and subcontractors for construction projects for additional safeguards and potentially reduce bid costs, but the new practice has not been included in policies and procedures.

Policies and Procedures

As discussed in the FY 2011-12 Performance Audit of Measure E, 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 of Education could not be verified through a review of Board agendas and minutes.

Key State Mandates are Referenced in Districtwide Procurement Policies but Not Fully Incorporated in Measure E Procedures Manual

District staff confirmed that neither the districtwide Procurement Policies nor Measure E Procedure Manual has been updated since the last audit, despite recommendations for revisions. Therefore, the Measure E Procedures Manual still does not outline policies and procedures for soliciting bidders or selecting the lowest responsible bidder¹ for public projects,² even though a majority of the bond expenditures are presumably for public projects subject to the Public Contract Code. However, the Measure E Procedures Manual assumes that competitive bidding has taken place since it states that its procedures are for *after* the lowest responsible bidder has been determined by the Department. There are no statements regarding minimum expenditures that would require competitive bidding.

In contrast, the District Purchasing Manual states that the District "shall seek competitive bids through advertisement of contracts involving an expenditure of \$15,000 or more for public project contracts," in accordance with Public Contract Code 20111. Additionally, the District Purchasing Manual states that competitive bids shall be sought through advertisement for contracts exceeding \$83,400 (effective January 1, 2013), and must be awarded to the lowest responsible bidder if they are for:

- The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the District;
- Services, except construction services; and,
- Repairs and maintenances that are not public projects.³

This provision includes "services", as shown above, but does not explicitly address "professional service" contracts. The procedures do include a provision that all contracts shall be let to the lowest responsible bidder "unless otherwise authorized by law." This would appear to exempt professional service contracts since California Public Contract Code 20111(c) states that professional services or advice, insurance services or any other purchase or service otherwise exempt from the competitive bidding

¹ The lowest responsible bidder is the most qualified vendor that meets bid specifications at the lowest cost.

² 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.

³ According to Public Contract Code 22002, a "public project" does not include "maintenance work" such as (a) routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purpose; (b) minor repainting; and, (c) landscape maintenance.

requirement, as is, or any work done by day labor or by force account pursuant to Section 20114 of the Public Contract Code.⁴

As recommended in the FY 2011-12 performance audit, the Measure E Procedures Manual should be revised to include specific policies and procedures governing competitive bidding for public project contracts, consistent with State law and District procurement policies, including minimum expenditure requirements for competitive bidding for public projects, professional services and other contracts paid for with Measure E funds. Requirements for documenting the bidder outreach process, number of bids received and selection process should also be detailed in the Measure E Procedures Manual. District staff reported that implementation of the FY 2011-12 performance audit recommendations were reserved for the full-time Chief Facilities Official hired to replace the Chief Facilities Official, who retired in January 2013. However, revising the Measure E Procedures Manual is a task the Chief Administrative Officer should complete within six months of the completion of the FY 2012-13 audit.

Neither the District’s Purchasing Procedure Manual nor the Measure E Facilities and Planning Procedures Manual Require Competitive Solicitation for Professional Services Contracts

With the exception of architectural services and construction contracts,⁵ there is no discussion for how to select contractors and award professional service agreements for services such as engineering that are paid for with Measure E bond funds in the Measure E Procedures Manual. The District Purchasing Manual, however, states that the District,

“shall purchase equipment, supplies and *services* using competitive bidding when required by law and in accordance with statutory requirements for bidding and bidding procedures.”

As stated above, Public Contract Code 20111, which requires school districts to utilize competitive bidding for most types of contracts, does not apply to “professional services or advice, insurance services, or any other purchase or service otherwise exempt.” However, the District Purchasing Manual states that the Board of Education may request that a contract go through a competitive bid process “if the Board determines that it is in the best interest of the District to do so.”

In addition, best practices suggest that competitive solicitation of professional services contracts through a Request for Proposals (RFP) process⁶ could lead to the selection of more qualified firms for services and result in reduced costs for public entities. Competitive solicitation reduces the risk of unfair contract awards and fraud or malfeasance. Therefore, the Measure E Procedures Manual should be revised to explicitly require competitive solicitation for all professional service agreements, including environmental, geotechnical, planning, legal, and other services paid for with Measure E bond funds. As many public entities have done, the Board of Education could adopt a policy requiring competitive solicitation for professional services agreements as a matter of practice except for documented instances of emergency or extenuating circumstances. This was the practice for construction and professional service contracts for construction or site specific projects in FY 2012-13 but not the legal

⁴ Public Contract Code 20111(c).

⁵ 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 of Education; and construction contracts are awarded to the lowest responsible bidder.

⁶ A Request for Proposals (RFP) process requests that responders submit proposals on how they would approach the required work, the qualifications of the staff to perform the work, and an hours and cost proposal. Professional services contracts are awarded based on the proposal rather than to the lowest responsive bidder.

and business/facilities consultant services requested by the Board of Education, based on our review of a sample of contracts from that year.

Competitive Bidding Practices

The auditors reviewed a sample of contracts to examine contract solicitation and award processes; ensure compliance with laws, regulations, and District policies; and assess best practices.

Since no single department maintains an inventory of all Measure E contractors, the auditors obtained a roster of contractors with expenditures in FY 2012-13 with input from the Facilities and Planning Department and the District Office⁷ since Measure E contracts are awarded and administered out of both offices. 44 contracts were provided that were approved by the Board of Education either prior to or during FY 2012-13. Exhibit 3.1 shows a summary of the Measure E contracts provided by the District.

Exhibit 3.1		
All Measure E Bond Fund Contracts with Expenditures in FY 2012-13		
District Contract Administrator	Approval by Board	# of Contracts
Facilities and Planning Department	Prior to FY 2012-13	29
	During FY 2012-13	5
Subtotal		34
District Office	Prior to FY 2012-13	8
	During FY 2012-13	2
Subtotal		10
Total		44

Sources: Facilities and Planning Department, District Office, and Measure E Expenditures in FY 2011-12

The bidding procedures for six contracts active in FY 2012-13, or 13.6 percent of the contracts with Measure E expenditures that year, were reviewed. Two of the sample contracts reviewed for contract solicitation and award procedures were public works contracts over \$15,000,⁸ while the remaining four contracts were for professional services. As shown in Exhibit 3.2 below, the six contracts in the sample were originally approved for at least \$3,972,697 in expenditures for the term of their contracts (which went beyond FY 2012-13 in some cases). Some of the contracts were modified as of February 2014 resulting in total authorization of at least \$4,183,534. The six sample contracts incurred \$5,071,842 in expenditures in FY 2012-13, which exceeded the authorized amount, as shown in Exhibit 3.2.

Four of the six sample contracts were for construction or site specific projects and selected through a competitive bid or RFP processes in FY 2012-13 or previous fiscal years.⁹ The two contracts that did not go through a competitive bidding and/or selection process were for legal and business/facilities consultant services provided directly to the Board of Education and paid for with Measure E funds.

⁷ District Office refers to the District’s executive office headed by the Superintendent.

⁸ Competitive bidding is required for public project contracts of \$15,000 per District policies and Public Contract Code 20111.

⁹ All four of the contracts that went through a competitive bid or RFP process were approved in FY 2012-13, but the competitive pre-qualification and/or RFP process began in previous fiscal years.

Exhibit 3.2					
Characteristics of Six Sample Contracts, as of February 2014					
Type of Service(s)	Board Approval Date	Original Contract Maximum Amount	Current Contract Maximum Amount	Expenditures in FY 2012-13	Expenditures Under/ (Over) Contract Amount
Contracts for Construction or Site Specific Projects					
1. Construction	7/17/2012	\$3,477,000	\$3,582,837	\$3,535,077	\$47,760
2. Construction	11/27/2012	418,397	418,397	397,477	20,920
3. Architectural / Engineering	10/9/2012	26,800	26,800	21,172	5,628
4. Mechanical, Electrical, Plumbing, & Civil Engineering	9/11/2012	5,500	5,500	3,690	1,810
<i>Subtotal</i>		<i>\$3,927,697</i>	<i>\$4,033,534</i>	<i>\$1,573,469</i>	<i>\$2,460,065</i>
Professional Service Contracts Requested by the Board of Education					
5. Professional/Consulting	10/23/2012	\$45,000	\$150,000	\$1,482,798	(\$1,332,798)
6. Legal	3/7/2011	None	None	707,595	(707,595)
<i>Subtotal</i>		<i>\$45,000</i>	<i>\$150,000</i>	<i>\$2,190,393</i>	<i>(\$2,040,393)</i>
Total		\$3,972,697	\$4,183,534	\$5,071,842	(\$888,308)

Sources: Facilities and Planning Department, District Office, and Measure E Expenditures in FY 2012-13

Three of Six Contracts Reviewed Lacked Adequate Vendor Solicitation Documentation

Similar to the performance audit findings for FY 2011-12, construction and professional service contracts for construction or site specific projects were awarded based on competitive bidding or selection practices for four sample contracts in FY 2012-13. However, solicitation of quotes and bids for services from multiple vendors prior to final selection was not well documented for one of these four sample contracts. Although the two professional service contracts requested by the Board of Education were not selected through a competitive process, there was no documentation that the Board of Education or District staff obtained informal quotes for fees or qualifications from multiple vendors for these services. Maintaining documentation of such solicitation for Measure E Bond Fund contracts would ensure that the District is in compliance with laws and regulations, or is following best practices.

Although the District does not receive funds from the State for its school construction program, the State Allocation Board's policies are considered best practices for any California school district. Further, its policies are similar to general best practices for professional service contracts across several jurisdictions. According to the State Allocation Board's Public School Construction Cost Reduction Guidelines,¹⁰ school districts should seek highly qualified professionals because there is a potential cost

¹⁰ 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.

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 State Allocation Board recommends selecting highly qualified professionals through a formal competitive selection process that includes interviewing at least three qualified firms. Although the State Allocation Board does not comment on the topic, best practices suggest that documentation of broad solicitation could prevent selection of professionals based on personal connections, fraud or malfeasance.

Although all of the contracts in the sample were approved prior to the Board of Education’s acceptance of the FY 2011-12 performance audit and its recommendations,¹¹ District staff reported that it has not revised its policies and procedures to require documentation of outreach and solicitation for all contracts paid for with Measure E bond funds. Such a revision should be finalized within six months of the completion of the FY 2012-13 audit.

Construction and Site Specific Contracts were Subject to a Competitive Selection and Approval Process while Professional Service Contracts Requested by the Board of Education were not

Documentation provided by the District for the six sample contracts reviewed shows the four construction and professional service contracts for construction or site specific projects went through a competitive selection and Board of Education approval process while the sample professional service contracts requested by the Board of Education did not. By having the selection and approval process for these contracts brought forward in public discussion during a Board meeting, the Board, Citizens Oversight Committee and community members could better assess whether Measure E bond fund expenditures will be in compliance with the law.

In compliance with Public Contract Code and District Policies and Procedures, the two sample contracts for construction services were selected through a competitive bid process because estimated expenditures for each public works project were greater than \$15,000. As part of the competitive process, advertisements soliciting bids were included in local publications. After the bid invitation period, the vendor with the lowest bid was presented to the Board of Education for approval of the contract.

Although the District does not have any formal policies for the competitive selection of professional services consultants, with the exception of architectural services, the State Allocation Board’s Public School Construction Cost Reduction Guidelines suggest the following steps to prevent unforeseen and increased expenditures from professional services consultants throughout a construction project:

- 1) Publicly advertise for services;
- 2) Review written statements of qualifications to arrive at a short list of candidates; and,
- 3) Interview each to determine their qualification for, and compatibility with, the project.

The two professional services contracts for construction or site specific projects were subject to a competitive process and adhered to Steps 2 and 3 of the three State Allocation Board recommended

¹¹ Of the seven contracts that were approved in FY 2012-13, only one was approved after the acceptance of the FY 2011-12 performance audit. This contractor did not incur expenditures for the site specific project in FY 2011-13, and was therefore, not included in the contract sample review.

steps for competitive selection.¹² Exhibit 3.3 summarizes the competitive selection process steps documented for the six sample contracts.

For the two professional services contracts for construction or site specific projects, a Request for Qualifications (RFQ) and/or a Request for Proposals (RFP) process was approved by the Board of Education in public meetings, with the minutes and the actual RFQs/RFPs posted on the District's website. Reviewed documentation shows there were multiple steps for selection of the most qualified firm, including identifying a short-list of submissions for invitation to at least one interview and/or presentation. Selection committees of at least three members provided scores for various criteria during the interviews. Members of the selection committees were from the Facilities and Planning Department and the Citizens' Oversight Committee and/or the Facilities Advisory Committee.

The contractor for architectural and engineering services in the sample was originally ranked fifth in its RFQ and RFP process, making it the alternate firm districtwide. The first four ranked architectural and engineering firms were assigned to one of the four elementary and middle schools in the District. When one of the architectural firms decided to withdraw its services for the District, the Board of Education approved the termination of the withdrawing firm's contract for "convenience without cause" and approved contract negotiations with the alternate firm.

The mechanical, electrical, plumbing, & civil engineering contract in the sample was the lowest bid submitted for site specific services out of three engineering firms that were pre-qualified through two separate RFQ processes. Two of the firms that submitted proposals, including the firm awarded the contract, were pre-qualified for mechanical, electrical, plumbing, & civil engineering services district-wide while the third firm was pre-qualified and awarded the architectural and engineering services contract for the specific school site.

¹² Although the Requests for Qualifications for the two contracts were not publicly advertised, solicitation for proposals was documented for both contracts.

Exhibit 3.3										
Documented Competitive Selection Process Steps for Six Sample Contracts										
District Contract Administrator	Type of Service(s)	Board Approved RFQ and/or Advertising	Documented Solicitation	Copies of Submitted Proposals or Bids	Letters to Short-listed Bidders	Selection Committee Names Provided	Interview /Selection Criteria Provided	Board Approved Most Qualified Firm(s)	Project/ School Site Specific RFP Process Documented	Board Approved Contract in Public Discussion
Facilities and Planning Department	1. Construction	✓	✓	✓	✓		✓	✓	✓	✓
	2. Construction	✓	✓	✓	N/A		✓	✓	✓	✓
	3. Architectural / Engineering	✓	✓	✓	✓	✓	✓	✓	✓	✓
	4. MEPC ¹	✓		✓	✓	✓	✓	✓	✓	✓
District Office	5. Legal	Not applicable: District staff reported that it was not competitively bid.								
	6. Consulting Services	Not applicable: District staff reported that it was not competitively bid.								
Total		4	3	4	4	2	4	4	4	4

Sources: RFQ and RFP Documents at Facilities and Planning Department

¹Mechanical, Electrical, Plumbing, & Civil forensic survey

Of the six contracts, five were approved by the Board of Education as a discussion item in a public meeting. However, the contract for legal services, which was not selected through a competitive process, was approved by the Board of Education under their consent agenda.¹³

Though not required by State law for professional service agreements, to mitigate against selecting professional service contractors that are not as qualified and/or are more costly to the District, policies and procedures should be revised to require that all Measure E Bond Fund contracts estimated to cost at least \$84,100, or the adjusted threshold amount for competitive bidding in accordance with Public Contract Code,¹⁴ should be awarded through a competitive process except in cases of documented emergencies or other extenuating circumstances. Such policies could also eliminate the risk of unfair contracting to a firm that could provide financial incentives or rewards to District staff or Board of Education members that play a critical role in their contract award. At a minimum, the policies should include: (a) public advertisement for professional services, materials and supplies, unless the Board of Education decides in a public forum that it is in the best interest of the District not to publicly advertise; (b) documented solicitation of multiple vendors; (c) review of written statements of qualifications and proposals; (d) interviews based on documented selection criteria; and, (e) approval by the Board of Education in a public setting.

While the legal contract requested by the Board of Education was for services related to potential litigation, the contract should not have been precluded from going through a competitive process. Documentation of active solicitation, selection criteria, and approval during public discussion at a Board meeting could result in better outcomes for the District.

Similarly, although the District wished to quickly backfill the business/facilities consultant contract when the prior consultant left, the business/facilities consultant requested by the Board of Education, who also worked as a subcontractor for one of the District's contract attorneys without undergoing a competitive process. Although the selected business/facilities consultant was able to quickly backfill the services of the outgoing Business/Facilities Consultant, and subsequently the Chief Facilities Official after his retirement in January, 2013, approving a contract with a professional consultant who was also providing services to the District through a separate subcontract exposes the District to additional risks. These risks are further discussed in Section 4 and could have been avoided with a competitive selection process.

Recommended Standard or Uniform Safeguard Contract Language Still not Implemented

The FY 2011-12 performance audit 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 and safeguard language in a sample of reviewed contracts were inconsistent. The policies and

¹³ It should be noted that any item on the consent agenda for a meeting can be pulled to the regular agenda by any member of the Board of Education and discussed in public.

¹⁴ Public Contract Code 20111 states that contracts for expenditures of at least \$50,000 should be competitively bid. However, it also states that beginning in January of 1997, the expenditure threshold for competitive bidding shall be annually adjusted to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States. According to District Policies and Procedures, this amount was \$84,100 as of January 1, 2014.

procedures were never revised and contracts reviewed for the FY 2012-13 performance audit continue to contain inconsistent safeguard language.

A review of 11 sample contracts in the FY 2011-12 audit revealed that legal contractors prepared their own contracts that excluded contract terms typically prepared by the District's contracted general counsel for construction and professional service contracts for construction or site specific projects. The FY 2012-13 audit contained one of the legal contracts from the previous audit, which had not been amended as recommended. In contrast, the business/facilities consultant services contract requested by the Board of Education contained some standard contract language found in the professional service contracts for construction or site specific contracts. As a result, contract language regarding consequences for the contractors' actions that could lead to increased costs for the District, including delays in projects, violations of laws and regulations, or any other actions that result in claims or disputes, were inconsistent across the sample contracts. Standard District insurance requirements were also not included in the agreements prepared by legal contractors.

While no construction contracts were in place in FY 2011-12, two construction contracts in FY 2012-13 were reviewed for safeguard languages. These contracts included 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 the 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.

In addition, on November 27, 2012, the Board of Education approved the District's inclusion in the Statewide Educational Wrap Up Program (SEWUP) Joint Powers Authority (JPA) which could provide additional safety oversight and lower construction bid costs. 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 report that other benefits of the program include a dedicated loss control consultant who will provide monthly site visits and recommendations regarding safety, potential increased participation from small or underutilized contractors that may have found the cost of insurance requirements prohibitive, and mitigation of the risk that contractors will be out of business and unable to respond to construction defects found within 10 years of completing the project.

Despite the inclusion of safeguard language in construction contracts and approval to join the Statewide Educational Wrap Up Program Joint Powers Authority in FY 2012-13, the District has not developed written policies and procedures regarding standard District contract language to be included for all contracts paid for with Measure E Bond Funds. The policies and procedures should reflect the new District practice of providing insurance for prime and subcontractors for construction projects as well as standard safeguard language for professional services contracts.

Future Claims, Liens and Stop Notices

Though recommended in the FY 2011-12 performance audit, the District still does not have any formal written policies and procedures for how to address future claims, liens and stop notices. While District staff report that there were no claims or liens filed in FY 2012-13, they reported an instance in which a potential claim could have been filed, but the issue was eventually resolved. The District should have written policies and procedures that reflect California Civil Code Title 15, which specifies procedures for

stop notices, to ensure compliance with the law and reduce staff time in addressing such issues. Other public entities such as the Los Angeles Unified School District Facility Services Division and Los Angeles World Airports have policies and procedures that reference the Code, which the District could model its policies and procedures after. Written policies and procedures are essential given the District's history of staff turnover. This recommendation should be implemented by the Chief Administrative Officer within six months of the completion of the FY 2012-13 audit.

Conclusions

The Measure E Procedures Manual continues to not require competitive bidding processes for the selection of all contracts paid for with Measure E Bond Funds, including professional services. A review of a sample of construction and professional service contracts revealed that while all of the construction and professional service contracts for construction or site specific projects went through a competitive bidding process, the legal and professional services contracts requested by the Board of Education did not.

The lack of specific competitive bidding policies and inconsistent competitive bidding procedures conflicts with the State Allocation Board's guidelines to select professional consultants through a competitive process, in order to prevent unforeseen and increased expenditures from professional consultants throughout a construction project. Best practices suggest that documentation of broad solicitation could prevent selection of professionals based on personal connections, fraud or malfeasance.

Although the District has included some safeguard language in its construction contracts and some of its professional service contracts, the District does not have standard contract language regarding consequences for the contractors' actions such as delays in projects, violations of laws and regulations, or any other actions that result in claims or disputes, exposing the District to potential additional expenditures during and after projects are completed. Further, the policies and procedures do not reflect the District's 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.

Recommendations

The Board of Education should:

- 3.1 Direct the Chief Administrative Officer 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 of the FY 2012-13 performance audit.
- 3.2 Direct the Chief Administrative Officer 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.
- 3.3 Direct the Chief Administrative Officer to revise the Measure E Procedures Manual, within six months of the 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 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; and
 - b. Standard insurance requirements and payment for increased costs to the District caused by:
 - Delays in the project(s) not initiated by the District;
 - Changes in the project scope not initiated by the District;
 - Violations of laws and regulations;
 - Future claims, disputes or stop notices; and
 - Any other costs related to the negligence, recklessness, or willful misconduct of the vendor.
- 3.4 Direct the Chief Administrative Officer to revise the Measure E Procedures Manual to develop written policies and procedures for addressing future claims, liens and stop notices, within six months of the acceptance of the FY 2012-13 performance audit.

Costs and Benefits

Additional staff time would be required to draft, present, and implement revised plans and policies. However, the additional investment in competitively selecting and including standard safeguard language in construction and professional service contracts paid for with Measure E Bond Funds would ensure that the District is compliant with laws and regulation, as well as following best practices for reducing potential unforeseen and increased expenditures.

4. Contract Administration and Expenditure Controls

- The Facilities and Planning Procedures Manual for the Measure E Bond Program (Measure E Procedures Manual), does not specify that contractor payment procedures are exclusively for construction contractors and is, therefore, assumed to apply to *all* Measure E expenditures, including professional services such as legal and consulting services. The District's practices for approving contractor payments do not consistently conform to the Measure E Procedures Manual, which requires Facilities and Planning Department staff (Chief Facilities Official, Director of Facilities, or a Facilities Consultant) to review and approve all contractor payments for Measure E services prior to approval by the Chief Administrative Officer. Because the Chief Facilities Official and Director of Facilities positions have been vacant, the review and approval process for some construction and site-specific contracts has been inconsistent. Also, the District did not obtain approval from the Facilities and Planning Department for Measure E expenditures for legal services requested by the Board of Education, but rather these expenditures were approved by the Chief Administrative Officer, Superintendent, Executive Director of Budget and Food Services and the President of the Board of Education.
- Construction and professional service contracts for construction or site specific projects are subject to expenditure controls such as contract not-to-exceed amounts, disclosed hourly rates for prime and subcontractors and limitations on allowable expense reimbursements. However, the legal and business/facilities consultant contracts requested by the Board of Education lack many of these expenditure controls. Although subconsultant work makes up more than 82 percent of the legal services contract expenditures, the contract does not set a not-to-exceed amount for prime contractor or subconsultant expenditures nor require the prime contractor to disclose the name, hourly rate, or total fees paid to the subconsultants.
- Further, two subconsultants for the legal services prime contractor also contract directly with the District for similar services. The District pays a premium for these subconsultant services; for example, the legal services contractor bills the District \$400 per hour for services provided by one subconsultant, which is up to \$150 per hour more than the billing rate charged directly by the subconsultant under a contract between the subconsultant and the District. Also, a subconsultant for legal services adds a 20 percent premium to reimbursable expenses, but the subconsultant does not charge this premium under a separate contract with District.
- The Measure E Procedures Manual is unclear regarding procedures for change orders to Measure E professional services contracts. Contractors for legal services and business/facilities consultant services requested by the Board of Education did not always obtain Board approval for incurring new expenses. According to District staff, the legal services contract, which lacked a not-to-exceed contract amount, did not require Board of Education approval prior to incurring new expenses; however, contract expenditures more than doubled, from \$500,000 to \$1,069,000.
- Some expenditure had purchase orders dated after the invoice date. Having purchase orders approved within a defined period is a form of internal control because purchase orders authorize expenditures and ensure that funding is available for procurement. Separate and specific procedures for purchases from governmental agencies should also be defined.

4. Contract Administration and Expenditure Controls

As discussed in Section 2 of this report, the District incurred \$9,642,966 in Measure E bond fund expenditures in FY 2012-13. Of these expenditures, \$315,309, or 3.3 percent was related to salaries and benefits. The remaining \$9,327,657, or 96.7 percent of expenditures, was paid directly to 48¹ individual vendors. Of these vendors, 21, or 43.8 percent did not have a contract with the District, but had a purchase order to indicate expenditure approval.

Since FY 2012-13 Measure E bond fund expenditures could be tied to a contract or just a purchase order, the audit team reviewed expenditure controls for transactions from two samples. When a contract existed, the audit team examined contract administration as a form of Measure E expenditure control. Contract administration refers to the way contracts are 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.

The first sample reviewed consisted of all 46 FY 2012-13 transactions for six contracts. The second sample was 16 vendor transactions from February 2013. In total, 93 transactions from 22 different vendors, representing \$6,194,001 in FY 2012-13 expenditures, were reviewed and are summarized in Exhibit 4.1 below. The expenditures of \$6,194,001 represent 66.4 percent of the total \$9,327,657 paid to vendors in FY 2012-13.

¹ The variance between the number of vendors (48) paid in FY 2012-13 and the number of contracts provided by the District (44) with expenditures in FY 2012-13 is due to (a) vendors that do not have contracts (21), (b) vendors that have more than one contract with the District (8 vendors with a total of 25 contracts), and (c) vendors that only have one contract with the District (19).

4. Contract Administration and Expenditure Controls

Exhibit 4.1				
Summary of Sample Transactions Reviewed				
Contract or Purchase Order Administrator¹	Vendor Name	Type of Service(s)	# of Transactions Reviewed	Total FY 12-13 Expenditures Reviewed
F & P Dept.	1) Minako Construction	Construction	13	\$3,535,077
District Office	2) Hill, Farrer, & Burrill	Legal	21	969,607
F & P Dept.	3) Plumbing, Piping & Construction	Construction	2	397,477
District Office	4) Prime Source Consulting	Professional/Consulting	7	144,819
F & P Dept.	5) Banerjee Pocock & Associates	Mechanical, Electrical, Plumbing, & Civil Engineering	1	21,172
F & P Dept.	6) MVE Institutional	Architectural/Engineering	2	3,690
Subtotal for Full FY 2012-13 Review			46	\$5,071,842
F & P Dept.	7) WLC Architects	Architectural/Engineering	5	\$752,718
District Office	8) Division of State Architect	State Fees	2	195,200
F & P Dept.	9) Bernards	Construction Manager	10	46,481
District Office	10) Harvey M. Rose Associates, LLC	Performance Audit Services	1	35,350
District Office	11) Venable, LLP	Legal	1	27,627
F & P Dept.	12) UCMI, Inc.	Inspector of Record	2	24,480
F & P Dept.	13) Leighton Consulting	Geotechnical Investigations	2	17,316
F & P Dept.	14) Environmental Audit	Environmental Impact Report	2	9,365
District Office	15) William Scotsman	Temporary Classrooms	8	7,583
F & P Dept.	16) HMC Architects	Architectural/Engineering	3	2,156
District Office	17) Beverly Hills Courier	Bid Advertisements	1	1,650
District Office	18) Office Depot	Office Supplies	2	1,412
District Office	19) City of Beverly Hills	City Fees	1	429
F & P Dept.	20) C2 Reporographics	Reproduction	4	180
District Office	21) Haulaway	Container Units	2	122
District Office	22) Mobile Mini, Inc.	Container Units	1	90
Subtotal for February 2013 Review			47	\$1,122,159
Total			93	\$6,194,001

Sources: Measure E Expenditure Reports for FY 2012-14, Contracts provided by Facilities and Planning Department and District Office

1 F & P Dept. = Facilities and Planning Department.

Procedures for Approving Contractor Payments Do Not Consistently Conform to the Measure E Procedures Manual

The District has contracts for construction and professional services for construction or site specific projects, as well as legal and other professional services requested by the Board of Education. The Facilities and Planning Procedures Manual for the Measure E Bond Program (Measure E Procedures Manual) does not specify that contractor payment procedures are exclusively for construction contractors. Therefore, it is assumed that the Measure E Procedures Manual should apply to *all* Measure E bond fund expenditures, including professional services such as legal and business/facilities consultant services. According to the Measure E Procedures Manual, invoices should be approved by at least one of the following Facilities and Planning Department staff or consultants to ensure that services provided were in accordance with the vendors' contracts, including compliance with applicable laws and regulations: Chief Facilities Official, Director of Facilities, and the Facilities Consultant. However, the Measure E Procedures Manual does not specify who the Facilities Consultant is, whether it is the Construction Management Consultant (Bernards) or the business/facilities consultant requested by the Board of Education (Prime Source). After the Facilities and Planning Department submits a signed invoice to the District Office, the Chief Administrative Officer should approve payment prior to submitting the invoice to the Los Angeles County Office of Education for final payment.

The FY 2011-12 performance audit found that the procedures above were not consistently applied to all contracts. A Facilities and Planning Department staff member or consultant did not review or sign invoices for vendors that were utilized districtwide (such as for mobile classrooms or office supplies) or invoices for legal and other professional service contracts that were requested by the Board of Education. For example, in FY 2011-12, invoices for a law firm and an engineering firm for services related to the District's challenge of the Metropolitan Transportation Authority's (MTA) plan to build a subway tunnel under District property² and for legal services for the District's proceedings against its former Superintendent and Facilities Director were not reviewed by the Facilities and Planning Department.

As a result of staff turnover in FY 2012-13, which is further discussed in Section 1, the process for approving contractor payments was not consistent. The Chief Administrative Officer, who would typically sign an invoice after a Facilities and Planning Department staff member or consultant reviewed and signed an invoice, served as the Interim Chief Facilities Official for a portion of FY 2012-13. In addition, another business/facilities consultant (Prime Source) provided services that were previously performed by the Chief Facilities Official for a portion of FY 2012-13. Some invoices had both signatures for approval, while others only had one of the two. The lack of a second approval weakens the District's internal controls by having one less review of expenditures before submittal to the County Office of Education for final payment.

In FY 2011-12, invoices from Hill, Farrer, and Burrill, the District's lead law firm on MTA matters, were not approved by the Facilities and Planning Department, but by the Chief Administrative Officer, the Superintendent, President of the Board of Education, and Executive Director of Budget and Food Services to verify that services were provided in accordance with the vendor's contract with the District. These four signatures were also present in the FY 2012-13 invoices and it is assumed that the Chief Administrative Officer's signature represented District Office approval, as opposed to Facilities and

² According to two legal opinions provided to the District, such expenditures are legitimate Measure E bond expenditures because the construction that is impacted by the subway project is eligible to be funded by Measure E bond funds.

4. Contract Administration and Expenditure Controls

Planning Department approval. According to District staff, the signature of the Board President is an additional internal control because, unlike all of the other invoices reviewed, some members of the Board seek services directly from Hill, Farrer, and Burrill. Therefore, having the same level of District staff approval as the other Measure E invoices is insufficient to verify that all legal services were actually rendered. In FY 2012-13 all members of the Board had the opportunity to review the legal invoices and provide comments to the Superintendent and/or discuss the invoices in a Closed Session.

As of the writing of this report, the District has hired an in-house general counsel. Reviewing Measure E contract language was previously conducted by contract general counsel, but not expenditure review. Given the privileged information that could be included in legal contracts and invoices, the in-house general counsel should review and approve such expenditures. This separate procedure should be included in the Measure E Procedures Manual.

Construction and Most Professional Service Contracts have Standard Expenditures Controls in Place; Legal Contracts Requested by the Board of Education Do Not Have Such Controls

Expenditure controls are insufficient for at least some of the professional service contracts requested by the Board of Education. Two legal contracts requested by the Board of Education and reviewed by the performance audit team did not have an estimated project or not-to-exceed amount. The two other professional service contracts requested by the Board of Education and all 11 of the construction or site specific contracts have an estimated project or not-to-exceed amount. The seven remaining vendors in the sample did not have contracts with the District, only purchase orders authorizing expenditures.

The legal contracts were paid for from both the Measure E Fund and the General Fund. Their contracts did not specify which fund(s) their services would be paid from; this decision is made by District staff based on the appropriateness and any legal constraints on the funds. For example, District staff determined that lobbying services were not an appropriate use of Measure E funds and report that expenditures for such services provided by Venable, LLP were charged to the General Fund. Legal service fees provided by the same firm regarding potential litigation against MTA under the same contract, however, were charged to the Measure E Fund. MTA-related legal work provided by Hill, Farrer and Burrill was charged to the Measure E Fund whereas other work provided by the firm was paid for from the General Fund.

To ensure that work conducted by both vendors are paid for with the appropriate fund, the District created a billing allocation form specifying the project(s) worked on, the amount billed, and the appropriate fund for payment. During the FY 2011-12 review, the audit team found instances in which project work was billed and paid for with the wrong fund under both the Venable, LLP and the Hill, Farrer and Burrill contracts, but were subsequently corrected by District Staff. In FY 2012-13, two such instances were found with the Hill, Farrer and Burrill contract.

The Hill, Farrer and Burrill contract for services related to the MTA matter has a clause that allows them to bill the District for subcontractor consultant services in addition to attorney fees. The contract does not identify the consultants, their rates or total fees. Additionally, the contract does not include a not-to-exceed amount for either the attorney or subcontracting consultant work. A review of invoices indicated that the consultant services paid through the attorney contract include geotechnical, engineering and other professional services. Invoices from the consultants were submitted to the attorney, which were then included in the attorney's bill and a copy of the consultant's invoice was forwarded to the District for payment. While estimated costs for the law firm and the subcontracting

4. Contract Administration and Expenditure Controls

consultants may have been discussed with the Board of Education in closed session, no cost maximums or limitations have been formalized or codified in any agreements with the firms.

The District is required to pay all “reimbursable expenses” such as photocopying, mail, delivery services, and mileage billed by the subcontractor consultants and the attorneys for Hill, Farrer and Burrill. This clause contrasts with reimbursable expenses for construction and professional service contracts for construction or site specific projects, which were either not allowed or had set limits. Moreover, most of the invoices from Hill, Farrer and Burrill did not include receipts documenting reimbursable expenses. Only one subcontractor provided receipts for additional expenses. Consistent with best practices, limits and required documentation for reimbursable expenses should be included in all contracts paid for with Measure E Funds to implement additional expenditure controls and promote consistency across contracts.

The lack of expenditure control for subcontracting consultant services under the Hill, Farrer and Burrill contract is problematic given that a significant portion of the fees paid to the legal firm were for consultant services. Exhibit 4.2 below shows that of the \$969,607³ paid to the law firm in FY 2012-13, \$799,429, or 82.4 percent, was for the services of consultants under the direction of the attorneys.

Exhibit 4.2		
Breakdown of Measure E Funds Paid to Hill, Farrer and Burrill in FY 2012-13		
	Amount	Percent
Consultant Services	\$799,429	82.4%
Attorney Fees	170,178	17.6%
Total	\$969,607	100%

Source: Hill, Farrer and Burrill invoices for FY 2012-13

According to District Office staff, these subcontractor consultants do not have a contract with the District for the work they perform under the direction of the attorney. District Office staff reported that the attorneys may have contracts with the consultants, but any such contracts would likely be subject to attorney-client privilege confidentiality. Without contracts between the consultant and the District for the work they are performing under the direction of the attorneys, the District has no control over the selection and qualifications and licenses of the subcontracting consultants, fees paid (which ranged from \$78 to \$400 per hour in FY 2012-13) or not-to-exceed amounts for services.

An example of additional fees and costs that could be avoided if a subcontractor consultant has a direct contract with the District for work provided under the direction of Hill, Farrer and Burrill are 20 percent charges added to “reimbursable costs” by one subcontractor, Leighton Consulting. Reimbursable costs include fees for equipment and supplies, as well as additional subcontractor services (i.e. another company to perform testing for a specific sample). Leighton Consulting already has a direct contract with the District for services at a school site, which are not related to MTA matters. While Leighton Consulting similarly bills the District for “reimbursable costs,” the additional 20 percent charges are omitted from the school site specific contract.

³ 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).

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Similarly, the Venable, LLP contract lacks explicit expenditure control over third party or expert services provided in conjunction with its legal services to the District. The contract states that Venable, LLP could “arrange for some ancillary services to be provided by third parties with direct billing to the client.” It is not clear if (a) the Board of Education must approve such services prior to work commencing, (b) the third parties have a direct contract with the District prior to submitting a bill and/or, (c) the third parties have a contract with Venable, LLP for providing ancillary services. However, the audit team did not verify if Venable engaged with third party service providers that directly billed the District.

One Legal Contract Did Not Have Public Board of Education Approval before Expenses Were Incurred

The District is not informed of costs related to Hill, Farrer and Burrill’s consultants until *after* the work has been completed through invoices received or presentations to the Board of Education. This contrasts with the construction and professional service contracts reviewed for the audit, which has a contract amount approved by the Board *prior* to services being provided. Prior approval by the Board allows the District to verify that sufficient Measure E funds are available to pay for the approved project and other Measure E projects or expenditures as well as to have certainty about future costs. Though the work may be necessary to determine the size and scope of projects at Beverly Hills High School, as professional service work related to MTA increase and are paid for with Measure E bond funds, there will be fewer funds available for the “construction, reconstruction, rehabilitation, or replacement of school facilities,” the type of projects approved by voters in Proposition 39 and Measure E.

Due to the structure of the Hill, Farrer and Burrill contract, the Board of Education and District Office staff do not know how much will be spent by the subcontracting consultants to the law firm in advance. As discussed in the last performance audit, the Board of Education approved \$670,000 for consultant work already performed and paid through the Hill, Farrer and Burrill contract on August 28, 2012. There is also no indication of the period of time covered by the fees. The audit team did not find any similar approval of consultant work after services were provided in subsequent Board meeting minutes.

All contracts paid for with Measure E funds should include a requirement that fees and not-to-exceed amounts for 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, in order to promote transparency and establish additional control over Measure E expenditures.

Risk for Duplicate Billing Could be Further Mitigated

Two of the consultants paid through the Hill, Farrer and Burrill contract discussed above also have separate contracts with the District and there is a potential risk that the consultants could double bill the District for the same services, first through the Hill, Farrer and Burrill contract and then through the same consultants’ separate contracts with the District. The two District contracts are Leighton Consulting for \$707,655 and Prime Source for \$150,000. The FY 2011-12 performance audit found that Leighton Consulting conducted geotechnical services at the same site through its contract with the District and separately through Hill, Farrer and Burrill. Expenditure controls were insufficient in FY 2011-12 for these services since the Hill, Farrer and Burrill and Leighton Consulting contracts were not verified by staff in the Facilities and Planning Department even though the Measure E Procedures Manual requires this for firms being paid with Measure E funds. In FY 2012-13, Leighton Consulting provided services for a school site separate from its services as a subcontractor consultant for Hill, Farrer and

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Burrill. These invoices were reviewed by staff in the Facilities and Planning Department. Therefore, the risk of potential duplication of work was significantly reduced for Leighton Consulting in FY 2012-13.

Prime Source provides services to the District as a consultant for Hill, Farrer and Burrill on MTA related work (at \$400 per hour) and as a direct consultant to the Board on other facilities related issues (at \$250 or \$295 per hour). Therefore, the District pays a premium for Prime Source services under the contract with Hill, Farrer and Burrill. Additionally, Prime Source must interact with the same people on the same days, making it difficult to fully detect duplicate billing for the same work.⁴ For example, a side by side review of invoices submitted to Hill, Farrer and Burrill and to the District found similar phrases for work on the same days such as, “study session,” “Board meeting,” and a “phone call” or “emails” to the same Board member. Presumably, Prime Source would have billed the portion of a Board meeting related to MTA work to Hill, Farrer and Burrill 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 Prime Source has a single contract with the District for all services paid for with Measure E funds and for the same rate. Further, use of the recently hired in-house general counsel to review and approve expenditures for legal services and District contracts for professionals simultaneously providing subcontracting services under legal contracts could also mitigate these risks.

Contracts do not Consistently Follow Measure E Procedures Manual Change Order Procedures

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 professional services as well as construction contractors. All contractors must have a purchase order indicating expenditure authority prior to receiving payment from Measure E funds.

A review of six contracts (the first six vendors from the sample of 22 vendors described in Exhibit 4.1 above) found inconsistent processes for change orders in the legal contract and business/facilities consultant services requested by the Board of Education and administered by the District Office in FY 2012-13. The six contracts are shown in Exhibit 4.3 below.

⁴ According to the Prime Source contract with the District, the fee is \$295 per hour for three hours or less worked in a day, or \$250 per hour for four hours or more worked in a day. It is not clear what the rate is for hours worked between three to four hours per day.

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Exhibit 4.3					
Summary of Change Orders for Six Contracts, as of February 2014					
Contract Administrator¹	Vendor Name	Original Purchase Order Amount	Current Purchase Order Amount	Variance	Percent Variance
F & P Dept.	Minako Construction	\$3,477,000	\$3,582,837	105,837	3.0%
District Office	Hill, Farrer & Burrill	500,000	1,069,000	569,000	113.8%
F & P Dept.	Plumbing Piping & Construction	418,397	418,397	0	N/A
District Office	Prime Source	45,000	150,000	105,000	233.3%
F & P Dept.	Banerjee Pocock & Associates	26,800	26,800	0	N/A
F & P Dept.	MVE Institutional	5,500	5,500	0	N/A
Total		\$4,472,697	\$5,252,534	\$779,837	17.4%

Sources: Measure E Expenditures in FY 2012-13, Contracts provided by Facilities and Planning Department and District Office, and Board Minutes

1 F & P Dept. = Facilities and Planning Department.

Minako Construction Contract Change Order (Facilities and Planning Department)

The change order process for Minako Construction appeared to follow the Measure E Procedures Manual change order procedures.

Prime Source Contract Change Order (Requested by Board of Education, Administered by District Office)

All three changes to the Prime Source contract were approved by the Board in public discussion, but did not always occur before additional services were rendered. As shown in Exhibit 4.3, the original Prime Source contract was for \$45,000 for the three-month term from November 1, 2012 through January 31, 2013. However, the Chief Facilities Official retired in January 2013, prompting the District to negotiate a three-month extension through April 30, 2013 and a \$45,000 increase to the Prime Source contract, for a contract amount of \$90,000, so that Prime Source could backfill the Chief Facilities Official's duties. The Board of Education did not approve the contract extension and increase in the contract amount until February 12, 2013, or nearly two weeks after the contract extension. Further, Prime Source over-billed the District for the first three months through January 31, 2013 by \$1,592 (\$46,592 in fees compared to the contract amount of \$45,000). The Board of Education approved the second change order, which increased the contract amount by an additional \$60,000 for a contract amount of \$150,000, and the third change order, which extended the contract term through June 30, 2013, prior to implementation of the change orders.

4. Contract Administration and Expenditure Controls

Hill, Farrer, and Burrill Contract Change Order (Requested by Board of Education, Administered by District Office)

The District entered into five change orders⁵ to the contract with Hill, Farrer and Burrill for legal services without formally submitting the change orders to the Board of Education for approval, which according to the District staff was not required. The contract, which does not specify a not-to-exceed amount, increased by more than 100 percent as shown in Exhibit 4.3.⁶ The District did not process any of the five change orders until after services were rendered and invoices were submitted to the District; the District only processed the change orders at the time that invoices were submitted because there were insufficient funds remaining in the most up to date purchase order to pay the full balance of the invoices received.

While the District approved the change orders for the contracts with Minako Construction and Prime Source prior to incurring the new expenditures, the Hill, Farrer and Burrill contract incurred the expenditures prior to the District processing the change orders, indicating insufficient controls over contract expenditures. Further, the District only processed the change orders after non-public discussions between the Board of Education and the contractor, indicating that the contractor has more discretion over its scope of work than the other contractors in the sample.

The District should revise the Measure E Procedures Manual to specify change order processes for *all* contracts paid for from Measure E funds and include procedures such as: (a) having 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 services being provided; and, (c) adherence to the change order process for all subsequent change orders.

Once the Measure E Procedures Manual is revised to include best practices for a change order process, all contracts, including those for legal and other professional services, should adhere to such policies and procedures so that changes to contract amounts are sufficiently controlled and reported.

Not All Purchase Orders Were Executed Prior to the Purchase of Services

Purchase orders authorize expenditures that are within contract amounts or approved budgets and ensure that funding is available for the procurement, and should be approved prior to purchasing goods or services. 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. In the FY 2012-13 Measure E performance audit, the auditors found purchase orders that were approved after the invoice date for the goods or services, which had also been found in prior Measure E performance audits, although the number of these purchase orders were significantly less than in the FY 2011-12 performance audit. Of the 93 transactions reviewed, 10, or 10.8 percent, of the transactions had invoices dated before purchase orders were approved in FY 2012-13. While four of these ten transactions were for services provided by other government agencies or were one-time instances, the other six were for ongoing services.

⁵ The fifth change order was a negative change order to adjust an inadvertent mistake made in the total amount of previous change orders.

⁶ While the contract did not specify a not-to-exceed amount, the purchase order estimated an expenditure amount.

The District should revise its policies and procedures to require creation of a purchase order within a defined time period after a contract for services is executed to ensure that purchase orders are approved prior to the purchase of materials or services, and that the amount of the purchase is within the contract amount or budget. If the purchase does not require a contract, then the purchase order should set an estimated maximum expenditure. Purchases from governmental agencies, which may require a separate timeline and procedures for purchase order approvals, should also be specified in policies and procedures.

Sufficient Transparency for Community Stakeholders

The FY 2011-12 performance audit recommended that the District should provide the Citizens' Oversight Committee (COC) with the cover pages of legal invoices that include the name of the law firm, names of consultants paid through the legal contract, the amounts paid to each, and a brief description of the case matter (e.g. MTA work). These procedures are allowable according to a State of California Second Appellate District's November 16, 2012 decision,⁷ and are considered best practices by the League of California Cities.⁸ District staff report that a member of the COC reviewed the coversheet and summary of service hours and rates for Hill, Farrer and Burrill invoices in November 2013, January and February 2014, after the Board of Education approved such expenditures. The COC should continue to have access to such information to increase transparency for community stakeholders and this practice should be included in a formal written policy.

Conclusions

The District lacks adequate expenditure controls for legal and some other professional contracts paid for with Measure E bond funds, particularly for contracts requested by the Board of Education and administered by the District Office. Without adequate controls such as primary contractor expenditure limits; required identification of subcontractor names; fee rates and total fees; approval of purchase orders prior to services being provided and invoiced; and District approval of changes to the scope of work, term, or total expenditure authority for contracts prior to services being provided, the District could: (i) incur increased and unforeseen costs, (ii) have insufficient funds for completing its facilities construction and rehabilitation program, and (iii) be subject to violations in the law, fraud and malfeasance.

Recommendations

The Board of Education should:

- 4.1 Direct the Chief Administrative Officer 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,

⁷ County of Los Angeles vs. Superior Court of Los Angeles County, Cynthia Anderson-Barker (Real Party of Interest), B239849.

⁸ *League of California Cities: A Guide to the Public Records Act*, August 2011 Supplement.

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- 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.
- 4.2 Direct the Chief Administrative Officer to develop a policy, within six 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.
- 4.3 Direct the Chief Administrative Officer to revise the Measure E Procedures Manual, within six 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.
- 4.4 Direct the Chief Administrative Officer within six 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.
- 4.5 Direct the Chief Administrative Officer to develop a policy, consistent with current practices, that allows the Citizens' Oversight Committee 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 six months of the acceptance of the FY 2012-13 performance audit.
- 4.6 Establish procedures for review and approval of Measure E invoices in the absence of the Chief Facilities Official and Director of Facilities.

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.