

**BEVERLY HILLS UNIFIED SCHOOL DISTRICT
ANNUAL REPORT OF THE CITIZENS' OVERSIGHT COMMITTEE
MEASURE E BOND BUILDING FUND
YEAR ENDED JUNE 30, 2018**

The Citizens' Oversight Committee (COC) is pleased to provide its tenth annual report on the \$334 million general obligation Measure E bond initiative passed in November 2008 ("Measure E Bond"). This report covers the 2017-2018 fiscal year, i.e., the period from July 1, 2017 through June 30, 2018.

Principal duties of the COC are to ensure that proceeds have been expended for the purposes set forth in Measure E ballot language, report on the progress annually to the public and provide a compliance statement. Education Code Section 15278 (b) provides the specific role of the COC:

- *The purpose of the Citizens' Oversight Committee shall be to inform the public concerning the expenditure of bond revenues.*
- *The Citizens' Oversight Committee shall actively review and report on the proper expenditure of taxpayers' money for school construction.*

The District's Board of Education is responsible for monitoring, prioritization of projects commenced and spending levels of individual projects. The COC has no authority over how money is spent. However, by reporting on the proper expenditure of funds and holding the District accountable for their decisions, the COC may have an impact on future spending decisions.

This report highlights many of policy and programmatic issues addressed by the COC. During the 2017-2018 fiscal year, the COC met five times. The COC's Audit Committee reviewed the District's program bond fund expenditure reports and reported its findings at the bimonthly meetings. The District completed the following required efforts:

- Financial Audit – Annual, performed by Moss, Levy & Hartzheim LLP
- Performance Audit – Annual, completed by Moss Adams LLP

All audits were performed under the guidelines of Proposition 39, as well as generally accepted auditing standards.

Performance Audit Results and Comments

Moss Adams LLP issued its Measure E construction bond fund performance audit report for the fiscal year ended June 30, 2018 on March 29, 2019. Moss Adams reviewed the prior year's performance findings and noted that eight of the 20 findings have been closed. The remaining open findings are the following:

1. **Compliance with the Ballot Language.** We identified Los Angeles County Metropolitan Transportation Authority (MTA) and Federal Transit Administration (FTA) legal fees charged to the bond program where it is unclear whether the scope of work performed was allowable per ballot language.

2. Expenditure and Payment Procedures.

- The District has taken steps to pay invoices within required payment terms. However, 38% (23 of 61) of sampled expenditures did not meet the contractual agreements for payment terms. For example, time stamps or others means of documentation were not available for three of the sampled invoices to validate when the District received the invoice.
 - The District has made improvements in its payment procedures. However, adequate documentation in eight instances to validate compliance with District policies for payment approvals.
- 3. Salaries of District Employees for the Bond Program.** Certain labor charges totaling \$158,034 were allocated between the Bond Program and other District activities without direct cost identification to the Bond Program. The allocation to the bond program was 50%.
- 4. Compliance with State Laws, District Policies, and Other Regulations.** Policies and procedures were not consolidated and formalized through June 30, 2018, and the process for updating manuals was not documented.
- 5. District and Professional Services Staffing Plan for the Bond Program.** The District did not have well-defined policies and procedures surrounding in-house and consultant staffing for the Bond Program.
- 6. Design and Construction Costs Budget Management.** Monthly program reporting to key stakeholders did not include change order, schedule or budget to forecast information as recommended by the Government Finance Officers Association and the San Diego Taxpayers Association.
- 7. Bidding and Procurement Procedures.** The District did not provide competitive solicitation documentation for two professional service contractors.

Moss Adams identified the following new findings based on its performance audit report for the year ended June 30, 2018

1. Bidding and Procurement Procedures

- The District did not provide documentation that contractor selection was based on the definition of “best value” as defined in the Education Code. The District responded that its decision to select the contractor was made because the contractor’s team was most competent to negotiate contingency amounts for potential change orders and unforeseen conditions on a deteriorating historic structure with unusual site conditions.
- The District does not have Board approved budgets for all of its professional service providers. The District will consider this recommendation.
- The District did not provide documentation to demonstrate that it maintained oversight of the procurement process in one instance. Based on inquiry with the District, Team Concept Development Services presented its recommendation to the Facilities Subcommittee, which was then approved by appropriate District personnel. However, documentation was not provided to validate this. The District responded that it subsequently created and filed two new positions, the Director of Purchasing and the Executive Director of Construction and Facilities. Either one or both of these employees will be involved in the procurement process.
- The District’s policies and procedures for change order work do not address California PCC limitations. As of the end of our audit period, the Construction and Facilities Policies and Procedures was in the process of being developed. Change order procedures were addressed in the Policies and Procedures Manual approved on October 9, 2018.

- The District did not provide documentation that it advertised the RFQ for the Beverly Hills High School Modernization in the Los Angeles County trade paper publications in addition to Beverly Hills newspapers as required by the Education Code. The District provided documentation demonstrating that an advertisement for the preconstruction and lease-leaseback construction services for the Beverly Hills High School Modernization of Building B1 and B2 ran for two weeks in the Beverly Hills Weekly newspaper in addition to a posting on the District's website. The District did not provide supporting documentation the RFQ was advertised in a trade paper of general circulation in Los Angeles County.

- The District has written policies and procedures that that conflict with Board resolution authority. These conflicts were addressed in the Policies and Procedures Manual approved on October 9, 2018.

8. Procurement Fraud Prevention and Detection Controls.

- Formal policies and procedures and monitoring controls to prevent fraud and detect procurement fraud were being developed and implemented after year-end. The District should continue with the documentation and implementation of additional policies and procedures fraud to assist in identifying, preventing and detecting procurement fraud. The District will consider this recommendation.

9. Claim Avoidance Procedures

- The District has a claims avoidance policy; however, it does not have regular reporting or documentation available to identify actions taken to identify or limit claims exposure. The Construction and Facilities Department should utilize an accounting report with narrative sections to address in detail potential differences with a contractor, such as responsibility for performing specific work on a periodic basis. Particular care should be taken to record and preserve all possible data and/or evidence with respect to any matter that may become a basis for a contractor claim. The District has taken steps to address this recommendation.

10. Maintenance and Warranty of Measure E Assets

- The District did not maintain a consolidated warranty and preventative maintenance log for all assets incorporated into school site construction and was unable to provide complete and accurate reporting for items under warranty. The District has taken steps to address this recommendation.

The COC was pleased with the overall work of Moss Adams.

Financial Audit Results and Comments

Moss, Levy & Hartzheim LLP issued its financial audit report on December 15, 2018. The Financial Audit focused on the accuracy and fairness of the Financial Statements prepared by the District on the Measure E building fund. The following is the firm's opinion on the financial statements:

"In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the Measure E Bond Building Fund of the Beverly Hills Unified School District, as of and for the fiscal year ended June 30, 2018, and the respective changes in financial position for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America."

During the 2017-2018 fiscal year the Measure E Building Fund expenditures were \$27,203,000. The fund balance at June 30, 2018 was \$156,856,000.

The Financial Auditors also considered the District's internal control over financial reporting. The following findings were reported at June 30, 2017 and remain outstanding at June 30, 2018:

1. **Invoices were not paid timely.** During the test of disbursements, it was noted that 31 out of 95 invoices and 31 out of 50 invoices were not paid timely in 2017 and 2018, respectively.
2. **Project Scope.** During testing of procurement, it was noted Horace Mann Classroom Building A and B projects expanded significantly in scope of work and the additional amounts are in excess of reasonable allowable increases to original plans and projections.

Two findings that were reported in the June 30, 2017 financial audit report were satisfactorily resolved.

The COC was pleased with the overall work of Moss, Levy & Hartzheim.

COC Comments

Measure E funds have been paid to fund the cost of litigation opposing the proposed Metropolitan Transportation Authority subway tunnel under Beverly Hills High School. The total amount spent from the inception of the bond measure relating to MTA litigation was \$15,707,000, representing 8.56% of the total expenditures of \$183,549,000. The District's MTA litigation was unsuccessful upon appeal. As a result, the District has filed a new Federal law suit on January 29, 2018 asserting that adjustments to the proposed subway tunnel should be made. Again, the District does not have a budget for this litigation. Legal expenditures reduce bond funds available for construction.

The COC is concerned that the District has not articulated a reasonable strategy for this litigation, and that the litigation fees and costs are not monitored with the goal of assuring that the law firms are exercising sound legal and billing judgment. The COC requested redacted legal invoices and also has attempted to obtain a legal opinion addressing whether Measure E funds may be used for the litigation. The Board of Education has not facilitated this request basing its refusal on attorney-client privilege. The COC has also expressed concern about certain hourly rates charged for legal consulting services. The COC encourages the Board to engage in full transparency regarding the expenditure of Measure E bond funds.

The COC is encouraged that Team Concept Development Services (TCDS) has stabilized the District's construction program. The modernization of buildings B1, B2, B3 and B4 at Beverly Hills High School and the first phase of construction at El Rodeo School are proceeding. The utilization of the lease-leaseback and guaranteed maximum contracts recommended by TCDS will allow better cost control and BOE oversight.

The COC is cautiously optimistic that TCDS will reverse years of ineffective and inefficient management of the bond construction program. However, the COC requests ongoing and updated budgets for the cost of professional services provided by TCDS. While hourly rates and fees were established in the contract, no fiscal year or total budget cost was specified.

The COC recognizes that many of the significant findings from past performance audits have been resolved or partially addressed. The District is encouraged to continue addressing issues related to management and controls. The use of the Prolog construction management software should aid in the reduction of claims and excessive change orders.

Citizens' Oversight Committee
Beverly Hills Unified School District
June 6, 2019