

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

Prepared for:

Beverly Hills Unified School District

Harvey M. Rose Associates, LLC

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March 21, 2013

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 16 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 Chief Facilities Official while the audit was underway. However, other District officials familiar with 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 blue ink that reads 'Fred Brousseau'. The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Fred Brousseau
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 2011-12 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 performed in compliance with Generally Accepted Government Auditing Standards 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.

Measure E FY 2011-12 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.

The District's recently retired Chief Facilities Official 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. This and other reports and records are regularly posted on the District's website.

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 is slated to be 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 several subcommittees, meet 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.

Performance Audit Findings and Recommendations

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

Section 1: Master Planning

Summary of Findings:

- The Facilities Master Plan that the District operated under in FY 2011-12 (July 1, 2011 through June 30, 2012), the performance audit review year, was approved by the Board of Education in August 2008. The plan, titled and often referred to as the "Draft Facilities Master 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.
- Similarly, the 2012 Facilities Master Plan, accepted by the Board of Education in August 2012, includes helpful analyses and recommendations, but lacks District priorities and other elements considered essential by the State.
- Both the 2008 and the 2012 plans lacked adopted educational specifications, or an articulation of what is required of proposed or future educational facilities to support the District's educational program. The California Department of Education and the State Allocation Board consider the establishment of good educational specifications critical to successfully designing and constructing school facilities consistent with educational goals.
- In the four years since Measure E was passed by District voters in November 2008, the District has used most of the expended Measure E funds to close out projects started with previous bond issues and to comprehensively assess the adequacy of existing facilities. The 2008 Master Plan did not call for these activities and very little of what was set forth in that document had been accomplished as of FY 2011-12.
- The 2008 Plan assumed that a comprehensive list of specific projects would subsequently be adopted by the District but that did not occur. 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, 2012, the District had not moved forward beyond conceptual designs for any project other than the Horace Mann auditorium renovation though some of the delay was undoubtedly due to the unforeseen removal and criminal prosecution of the former District

Facilities Director and an ensuing program District wide moratorium called for by the Board of Education.

- 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.
- Although it was listed as a priority in the 2008 Facilities Master Plan and a one-page excerpt from an energy efficiency/renewable energy/infrastructure analysis was included as an appendix to the 2012 Facilities Master Plan, the District has not clearly articulated how it intends to approach green technology for Measure E projects.

Based on the above findings, the following is recommended.

The Board of Education should:

- 1.1 Direct the Chief Facilities Official to draft an amendment to the Facilities Master Plan to include best practice elements as outlined by the State Allocation Board including District priorities, educational goals, and others as appropriate.
- 1.2 Direct the Chief Facilities Official to initiate a revision of the proposed educational specifications considering feedback from the Board of Education and to present the revised educational specifications to the Board of Education within three months for approval.
- 1.3 Take steps to commit the use of Measure E funds to specific project sites and sizes based on a completed Facilities Master Plan and accepted educational specifications so that the Facilities and Planning Department can move forward with the Measure E program and so there will be a master list of specific projects to compare against actual Measure E expenditures by District management and by future performance auditors, as required by State law.
- 1.4 Direct the Chief Facilities Official to draft, with the input of appropriate stakeholders, a green technology plan that articulates the District's approach to green technology under the Measure E program.

Section 2: Measure E Budget and Communication Effectiveness

Summary of Findings:

- As of June 30, 2011, the District had spent approximately \$21.5 million, or 29 percent, of the \$72 million raised through the 2009 Measure E bond issuance, and 6.5 percent of the \$334 million total authorized by Measure E. The District spent \$7,821,742 in Measure E funds in FY 2011-12, or approximately 37 percent more than in the prior fiscal year.
- The majority of total FY 2011-12 Measure E expenditures was for professional services, such as architectural, engineering and legal services, mostly directed to school sites. When measured by individual school sites and projects, the largest Measure E expenditure in FY 2011-12 was approximately \$1.7 million for legal and other professional services for matters related to the MTA's proposal to construct a subway tunnel underneath BHUSD property.
- While litigation was not explicitly identified as a project eligible for Measure E funding on the ballot or in master plan documents, the language in both is general and could be interpreted to allow using funds for that purpose, if project-related.

- To ensure the appropriateness of use of Measure E funds for litigation and compliance with State law, project-related litigation matters should be explicitly identified on a master list of Measure E projects adopted by the Board of Education, including identification of the nexus between the litigation and planned construction and modernization projects.
- Actual District Measure E expenditures in FY 2011-12 were significantly less than the original budget adopted by the Board of Education in June 2011, particularly for school auditorium ceiling renovations 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.
- The District spent more than anticipated in FY 2011-12 on legal and related professional services for MTA and other litigation matters. The Measure E budget was never amended to reflect these and changes in project plans.
- The District budgeting process for Measure E, while reportedly improved from previous years, was not adequately detailed or transparent in Fiscal Year 2011-12. The June 2011 budget presentation for the adoption of the FY 2011-12 Measure E budget did not include expenditure detail by project or school site, or provide individual project timelines. Due to Facilities and Planning Department professional staff resignations during the audit, it was not possible for the audit team to determine if the Facilities and Planning Department monitored the Measure E budget consistent with District written policies during FY 2011-12.

Based on the above findings, the following is recommended.

The Board of Education should:

- 2.1 Direct the Executive Director for Budget and Food Service and the Chief Facilities Official, with the input of District stakeholders as appropriate, to revise and expand the budgeting procedures in the Facilities and Planning Procedures Manual to include requirements to enhance the transparency of Measure E budgeting. These revisions should include disclosing the project or site level budgets and quarterly evaluations of adopted vs. actual budgetary information (for the current fiscal year as well as for the life of the project) with explanations for deviations.
- 2.2 Direct the Chief Facilities Official to improve the transparency and quality of Measure E updates to the Board of Education and Citizens' Oversight Committee by including current year adopted vs. actual budgetary information, current amount expended vs. total project budget, project milestones met, and the use of accompanying narratives, charts, and graphics to clearly illustrate progress.
- 2.3 Include MTA-related litigation and any other legal 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), does not outline policies and procedures for soliciting vendors and selecting the lowest responsible bidder for public projects, defined in State law as public facility construction, renovation and repair work. 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.
- Despite such deficiencies in the District's Measure E Procedures Manual, competitive bidding and selection appears to have been consistently employed by the Facilities and Planning Department in FY 2011-12.
- However, two of four reviewed contracts that were let by the Facilities and Planning Department in FY 2011-12 did not have documented evidence of vendor outreach efforts. Such documentation was not in place for either of two contracts reviewed that were let by the District Office. Maintaining documentation of vendor outreach and solicitation for Measure E Bond Fund contracts would provide assurance that that the District has gone through a valid competitive bidding process and received bids from as many qualified vendors as possible.
- Unlike contracts administered by the Facilities and Planning Department, competitive selection processes were not always used for Measure E contractors selected by the District Office.
- The Measure E Procedures Manual and the Purchasing Procedure Manual for District-wide procurement do not require professional service agreements to be competitively bid. However, 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.
- A sample of Facilities and Planning Department contracts reviewed were competitively bid and subject to a more rigorous selection and approval process than District Office contracts.
- 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, contracts let by the Facilities and Planning Department were prepared by the District's general counsel and appear to contain consistent language and requirements.
- Some of the contracts administered by the District Office were based on the contractors' standard contract language and excluded some standard District requirements.

Based on the above findings, the following is recommended.

The Board of Education should:

- 3.1 Direct the Chief Facilities Official to revise the Measure E Procedures Manual to include policies and procedures regarding the competitive bidding process for public project contracts, including a \$15,000 minimum expenditure requirement for competitive bidding, to help ensure compliance with Public Contract Code 20111.
- 3.2 Direct the Chief Facilities Official to revise the Measure E Procedures Manual, and District Office staff to revise the District Purchasing Manual, to explicitly require competitive bidding for professional service agreements expected to cost \$81,000 or more, including environmental, geotechnical, planning, legal, and other services paid for with Measure E Bond Funds. The policies should require:
 - a. Public advertisement for professional services, materials and supplies, unless the Board decides that it is in the best interest of the District not to publicly advertise;
 - b. Documented solicitation of at least two vendors;
 - c. Review of written statements of qualifications and proposals;
 - d. Interviews with responsive vendors with documented selection criteria;
 - e. Approval by the Board of Education in an open session and,
 - f. Exemption to the above requirements in cases of documented emergency or extenuating circumstances.
- 3.3 Direct the Chief Facilities Official to revise the Measure E Procedures Manual to develop written policies and procedures regarding standard District contract language to be included for all contracts paid for with Measure E Bond Funds, including standard insurance requirements and payment for increased costs to the District caused by:
 - a. Delays in the project(s) not initiated by the District;
 - b. Changes in the project scope not initiated by the District;
 - c. Violations of laws and regulations;
 - d. Future claims, disputes or stop notices; and/or,
 - e. Any other costs related to the negligence, recklessness, or willful misconduct of the vendor.
- 3.4 Direct the Chief Facilities Official to revise the Measure E Procedures Manual, and District Office staff to revise the District Purchasing Manual, to develop written policies and procedures for addressing future claims, liens and stop notices.

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 geotechnical services.
- Two separate processes are followed for administering contracts and reviewing invoices by the Facilities and Planning Department and the District Office, both of whom administer contracts paid for with Measure E bond funds.
- Contracts administered by the Facilities and Planning Department 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, there are insufficient expenditure controls for some of the contracts administered by the District Office, including: absence of an estimated project or not-to-exceed amount for primary contractors; no identification of subcontracting consultants, their fees or not-to-exceed amounts; no limits to and no required documentation for reimbursable expenses; and no prior District approvals prior to subcontractors commencing work paid for with Measure E bond funds.
- Consultant invoices for work performed as a subcontractor to another District contractor and as a prime contractor to the Board of Education through *separate* contracts, should be more thoroughly reviewed by District staff to ensure that services are not being billed for more than once.
- Inadequate expenditure controls present a risk for the District because consultant fees constitute a significant portion of the fees being paid for contesting the Metropolitan Transportation Authority's (MTA) proposed subway tunnel beneath District property.
- The Measure E Procedures Manual is vague and unclear regarding procedures for change orders to Measure E contracts. In the absence of clear policies and procedures, change orders for sample contracts administered by the Facilities and Planning Department followed a consistent process for approval, while those administered by the District Office were inconsistent and lacked transparency, including approving changes in scope of work, fees, contract, and purchase order amounts after work had been completed.
- Despite being a consistent finding in previous performance audits, expenditures still had purchase orders dated after the invoice date, which is a violation of District policies and procedures and State Education Codes requirements. Having purchase orders approved before any procurement is a form of internal control because purchase orders authorize expenditures and ensure that funding is available for procurement.

Based on the above findings, the following is recommended.

The Board of Education should:

- 4.1 Direct the Chief Facilities Official or executive staff to amend contracts with applicable vendors or firms to include:

- a. A limit for reimbursable expenses, including documentation of expenses incurred, so that the District has more consistent controls over expenditures and contracts paid for with Measure E funds; and,
 - b. A requirement that fees and not-to-exceed amounts for subcontractor consultant work are approved by the Board of Education prior to any services being rendered, even if a contract does not exist between the consultant and the District for the work under the direction of the primary contractor.
- 4.2 Direct the Chief Facilities Official to develop a policy that requires either a member of the Facilities and Planning Department or the District Office staff to review and compare all invoices from contractors operating under multiple contracts for the District to ensure that services provided are:
 - a. Within the contract amount and term;
 - b. Within the contract scope of services; and,
 - c. Without duplication of services being provided through other contracts.
- 4.3 Direct the Chief Facilities Official to develop a policy that requires legal and other professional services firms to provide the Citizens' Oversight Committee with the cover pages of invoices that include the name of the law firm, names of consultants paid through the contract, the amounts paid to each, and a brief description of the case matter (e.g., MTA work) to facilitate transparency and compliance with laws and regulations.
- 4.4 Direct the Chief Facilities Official to revise the Measure E Procedures Manual to include procedures that are considered best practices for change orders to the scope of services, project amounts, and fees, for *all* contracts paid for with Measure E bond funds, such as:
 - a. A structure approval process for changes beyond the agreed terms of a contract, with varying levels of approval authority depending on the magnitude of the change;
 - b. Written approval prior to original or additional services being provided; and,
 - c. Adherence to the change order process for all change orders.
- 4.5 Direct the Chief Facilities Official to develop a policy requiring purchase requisitions to be submitted and purchase orders approved within certain deadlines, such as within a week of a contract being signed, to minimize delays while ensuring that purchase orders are approved prior to services commencing or materials being purchased.

Introduction

Harvey M. Rose Associates, LLC (HMR) was retained by the Beverly Hills Unified School District to conduct the *2011-12 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 2011-12 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, promulgated 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 FY 2011-12 while the audit was in progress, 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 representatives of the Board of Education, the Citizens' Oversight Committee and the Facilities Advisory Committee, and other stakeholders, as well as District managers and staff.
- Site visits to all Measure E project sites to gain an understanding of the scope, progress, and complexity of planned improvements at each site.
- Assessment of the status of prior year audit exceptions.
- Assessment of policies, procedures, and communication effectiveness.
- Transaction testing and file review for purchase orders, payments, contracts, bidding processes, and claims and liens.
- Evaluation of master planning efforts and facility programming activities, including the use of green technology.
- Review of Measure E staffing and costs, scheduling, budget management, and expenditure control processes.
- Evaluation of District cash flow requirements with a comparison with the adequacy and timing of bond sales.
- Evaluation of agendas, minutes, and reports for Board of Education meetings.

A draft version of this report was provided to the Beverly Hills Unified School District for review, factual clarifications, and comments, and a performance audit exit conference was conducted March 4, 2013. Revisions to the report were then made and the final document submitted to the Beverly Hills Unified School District Board of Education.

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.

Overview of Measure E

Measure E was passed by a supermajority of District voters on November 4, 2008. The measure allows the District to issue up to \$334 million in bonds without an estimated increase in 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.

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.

The District's recently retired Chief Facilities Official 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. This and other reports and records are regularly posted on the District's website.

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 is slated to be 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 several subcommittees, meet 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 encountered unique challenges during the course of the audit fieldwork including a two week period from December 24th to January 4th when BHUSD management and staff were, in large part, unavailable due to the District's scheduled winter break. Additionally, the audit team had only limited access to the Chief Facilities Official, who was on vacation for three and a half weeks from December 24th to January 16th. Shortly after returning from his scheduled vacation, we learned that the Chief Facilities Official had commenced his retirement as of January 18th with no availability for further questions or discussions. Further, the Director for Facilities and Planning left the District on December 20th, 2012, just one week after our entrance conference.

Acknowledgements

Harvey M. Rose Associates, LLC would like to thank the former Chief Facilities Official and his staff and the Executive Director of Budget and Food Service for their time and assistance in conducting this performance audit.

1. Master Planning

- The Facilities Master Plan that the District operated under in FY 2011-12 (July 1, 2011 through June 30, 2012), the performance audit review year, was approved by the Board of Education in August 2008. The plan, titled and often referred to as the “Draft Facilities Master 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 standards, enrollment projections, a project schedule and estimated staffing needs to implement the plan. Similarly, the 2012 Facilities Master Plan, accepted by the Board of Education in August 2012, includes helpful analyses and recommendations, but lacks District priorities and other elements considered essential by the State.
- Both the 2008 and the 2012 plans also lacked adopted educational specifications, or an articulation of what is required of proposed or future educational facilities to support the District’s educational program. The 2012 Facilities Master Plan was based in part on separately prepared educational specifications, but they were not approved by the Board of Education when it accepted the revised Facilities Master Plan in August 2012. The California Department of Education and the State Allocation Board consider the establishment of good educational specifications critical to successfully designing and constructing school facilities consistent with educational goals.
- In the four years since Measure E was passed by District voters in November 2008, the District has used most of the expended Measure E funds to close out projects started with previous bond issues and to comprehensively assess the adequacy of existing facilities. The 2008 Master Plan did not call for these activities and very little of what was set forth in that document had been accomplished as of FY 2011-12. The 2008 Plan assumed that a comprehensive list of specific projects would subsequently be adopted by the District but that did not occur. 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, 2012, the District has not moved forward beyond conceptual designs for any project other than the Horace Mann auditorium renovation though some of the delay was undoubtedly due to the unforeseen removal and criminal prosecution of the former District Facilities Director and an ensuing District wide program moratorium called for by the Board of Education. 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.
- Although it was listed as a priority in the 2008 Facilities Master Plan and a one-page excerpt from an energy efficiency/renewable energy/infrastructure analysis was included as an appendix to the 2012 Facilities Master Plan, the District has not clearly articulated how it intends to approach green technology for Measure E projects.

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 approved just after the end of the year under review (FY 2011-12) in August 2012.

Master Planning Efforts Since 2008

The Facilities Master Plan that the District operated under in FY 2011-12 (titled and often referred to as the “Draft Facilities Master Plan”) and which was approved by the Board of Education in August 2008, contained some components necessary for an efficient and effective capital program, such as educational goals, District project priorities, and a preliminary financial plan. However, the Facilities Master Plan approved in 2008 did not include several elements considered essential by the State Allocation Board¹ and the Office of Public School Construction, including: (1) District standards; (2) a proposed schedule with estimated staffing needs; (3) a model space program; (4) potential legal issues; and, (5) community needs. Additionally and importantly, the Facilities Master Plan in effect during FY 2011-12 had no associated educational specifications, which should specify to District architects, the public, and other interested parties what District educators believe is required of proposed or future educational facilities to support a specific educational program. The State Allocation Board considers educational specifications a “critical element of the design process.” While the Measure E activity in FY 2011-12 overlapped with some of the 2008 Master Plan stated goals and conceptual project list, the District does not appear to have used the plan as a guide for its facilities program during the year.

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 Revision to 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.

¹ 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. Although its guidelines are not necessarily binding on all school districts, they can be considered best practices for school districts throughout the State.

- ✓ 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 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.²
- 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.³

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 Lacks Educational Specifications

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.

² 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.

³ Additionally, the ability of the District to raise the entirety of the \$334 million is questionable given the drop in assessed values from 2008.

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 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.

Nearly All District Projects were Still at Conceptual Design Phase as of June 30, 2012

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; and, (3) nearly completing renovation of the Horace Mann Auditorium, it had not proceeded beyond the conceptual designs for any other project or site as of June 30, 2012 (the conclusion of the year under review). The District had not yet committed to Measure E project scopes and scales though more than \$21.5 million has been spent and more than four years have elapsed since Measure E was passed by District voters. According to the 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, 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.

State Requires that Measure E Expenditures be Compared to a List of Approved Projects

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 improvements⁴:

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

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 FY 2011-12 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.

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.

District’s Approach to Green Technology Needs Articulation

One of the District’s objectives for this performance audit was to evaluate the Measure E program “for use of green technology in the design methodology and resulting construction specifications.” Although the 2008 Facilities Master Plan, which was in effect in FY 2011-12, listed “Green items/solar/environmental” as a Master Plan priority, there was no associated formal plan in place to directly address the use of green technology. Additionally, the Board of Education approved a policy in 2009 addressing Energy and Water Management that called for the Superintendent or designee to develop a “resource management program,” which was to include strategies for implementing effective and sustainable resource practices covering numerous environmental concerns. However, the Audit Team came across no evidence indicating that such a program has been developed and implemented for the Measure E program.

There is no evidence that the District incorporated green technology into specific project plans in FY 2011-12. Further, the 2012 Facility Master Plan, accepted by the District’s Board of Education in August 2012, includes a one page excerpt from an energy feasibility study. This excerpt consists of an Energy Efficiency/Renewable/Infrastructure Opportunity Matrix, which identified numerous opportunities for the use of green technology and energy efficiency. However, it is unclear how the District will move forward with this analysis given the lack of an articulated approach. Developing a plan or policy with specific goals (e.g. specified LEED certification status, using a cost-effective methodology, setting aside a certain percentage of each project budget, etc.) would provide District staff and the community with a clearer understanding of the District’s green technology approach and performance.

Conclusions

The District’s master planning efforts are 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.”

The District had not yet committed to the scope and scale of Measure E projects beyond conceptual designs more than four years after the Measure was passed by District voters. While some progress has been made by completing projects started under previous bond measures, the District has not moved forward beyond conceptual designs for any project other than the Horace Mann auditorium renovation. 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.

Recommendations

The Board of Education should:

- 1.1 Direct the Chief Facilities Official to draft an amendment to the Facilities Master Plan to include best practice elements as outlined by the State Allocation Board including District priorities, educational goals, and others as appropriate.
- 1.2 Direct the Chief Facilities Official to initiate a revision of the proposed educational specifications considering feedback from the Board of Education and to present the revised educational specifications to the Board of Education within three months for approval.
- 1.3 Take steps to commit the use of Measure E funds to specific project sites and sizes based on a completed Facilities Master Plan and accepted educational specifications so that the Facilities and Planning Department can move forward with the Measure E program and so there will be a master list of specific projects to compare against actual Measure E expenditures by District management and by future performance auditors, as required by State law.
- 1.4 Direct the Chief Facilities Official to draft, with the input of appropriate stakeholders, a green technology plan that articulates the District's approach to green technology under the Measure E program.

Costs and Benefits

The costs of these recommendations include additional staff time to draft and present revised plans and policies. The benefits of these recommendations include 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, 2011, the District had spent approximately \$21.5 million, or 29 percent, of the \$72 million raised through the 2009 Measure E bond issuance, and 6.5 percent of the \$334 million total authorized by Measure E. The District spent \$7,821,742 in Measure E funds in FY 2011-12, or approximately 37 percent more than in the prior fiscal year.
- The majority of total FY 2011-12 Measure E expenditures was for professional services, such as architectural, engineering and legal services, mostly directed to school sites. When measured by individual school sites and projects, the largest Measure E expenditure in FY 2011-12 was approximately \$1.7 million for legal and other professional services for matters related to the MTA's proposal to construct a subway tunnel underneath BHUSD property.
- While litigation was not explicitly identified as a project eligible for Measure E funding on the ballot or in master plan documents, the language in both is general and could be interpreted to allow using funds for that purpose, if project-related. To ensure the appropriateness of use of Measure E funds for litigation and compliance with State law, project-related litigation matters should be explicitly identified on a master list of Measure E projects adopted by the Board of Education, including identification of the nexus between the litigation and planned construction and modernization projects.
- Actual District Measure E expenditures in FY 2011-12 were significantly less than the original budget adopted by the Board of Education in June 2011, particularly for school auditorium ceiling renovations 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. In contrast, the District spent more than anticipated in FY 2011-12 on legal and related professional services for MTA and other litigation matters. The Measure E budget was not amended to reflect these changes in project plans.
- The District budgeting process for Measure E, while reportedly improved from previous years, was not adequately detailed or transparent in Fiscal Year 2011-12. The June 2011 budget presentation for the adoption of the FY 2011-12 Measure E budget did not include expenditure detail by project or school site, or provide individual project timelines. Due to Facilities and Planning Department professional staff resignations during the audit, it was not possible for the audit team to determine if the Facilities and Planning Department monitored the Measure E budget consistent with District written policies during FY 2011-12.

Measure E Expenses Up in FY 2011-12, Primarily due to more Spending on Architect/Engineering Services for School Sites and Legal and other Professional Services

The Beverly Hills Unified School District (BHUSD or District) spent \$7,821,742 of Measure E bond funds in FY 2011-12, which was \$2,120,302, or approximately 37 percent, more than the amount expended in FY 2010-11. Approximately \$5.1 million, or 65 percent of the FY 2011-12 expenditures, were on professional services for District school sites, such as architectural designs and mechanical, electrical, plumbing, and civil engineering assessments (all classified as Capital Outlay in the District budget). The next largest category of expenditures in FY 2011-12 was for Services and Other Operating Expenditures at approximately \$2.2 million, or 29 percent of total expenditures, as shown in Exhibit 2.1. Overall, the

2. Measure E Budget and Communication Effectiveness

District has spent approximately \$21.5 million, or 29 percent, of the \$72 million Measure E bond issue of 2009 and 6.5 percent of the \$334 million authorized by Measure E (not including earned interest, which has increased available funds by a moderate amount). Several school modernization and auditorium upgrade projects were assumed in the FY 2011-12 budget, but incurred very few actual expenditures due to the absence of Board of Education approval to move beyond conceptual designs.

The largest increase in spending in FY 2011-12 as compared to FY 2010-11 was the \$5.1 million spent on Capital Outlay, an increase of approximately \$3.6 million, or 252 percent more than in FY 2010-11. The expenditures classified as Capital Outlay were primarily for analyses and services to: assess the adequacy of existing facilities, obtain California Division of the State Architect (DSA) approval for various project close-outs, review and revise the Facilities Master Plan, draft new Educational Specifications, and acquire conceptual designs for proposed projects. The second largest increase in costs was for Classified Salaries (approximately \$101,000 or 39 percent more than FY 2010-11).

The largest decrease in Measure E bond fund spending was for Services and Other Operating Expenditures. This decrease was primarily due to the District winding down its litigation against Strategic Concepts and matters related to the termination of one of the District's former Facilities Director, though legal and related fee spending occurred for other matters.

2. Measure E Budget and Communication Effectiveness

Exhibit 2.1: Measure E Expenditures by Major Object, FY 2011-12 vs. FY 2010-11					
Major Budget Object Category	FY 2010-11 Actual Expenditures	FY 2011-12 Actual Expenditures	Percent of Total FY 2011-12	Change from FY 2010-11 Expenditures	% Change from FY 2010-11 Expenditures
Capital Outlay (architectural, engineering svcs., Horace Mann auditorium, etc.)	\$1,444,747	\$5,089,721	65.1%	\$3,644,974	252.3%
Services and Other Operating Expenditures (legal, geotechnical, other professional services ¹)	3,891,043	2,246,611	28.7%	(1,644,432)	(42.3%)
Classified Salaries	259,813	360,927	4.6%	101,114	38.9%
Employee Benefits	80,475	115,435	1.5%	34,960	43.4%
Books and Supplies	25,362	9,049	0.1%	(16,313)	(64.3%)
Grand Total	\$5,701,440	\$7,821,742	100%	\$2,120,302	37.2%

Sources: FY 2011-12 Measure E budget data provided by Executive Director for Budget and Food Services and FY 2010-11 budget data from the FY 2010-11 Measure E Performance Audit report.

Largest FY 2011-12 Expenditures for MTA Matter, High School, and Horace Mann Projects

The District's Measure E budget is allocated and tracked by project and site. Projects are defined in the District budget system as: aggregations of all activities at each school site; district administration; initiatives such as efforts challenging the MTA proposal to build subway tunnels under District property; and centralized Facilities and Planning Department costs (classified as Undistributed). As seen in Exhibit 2.2, the largest Measure E expenditure in FY 2011-12, by project, was for matters related to the MTA's proposal to construct a subway tunnel underneath BHUSD property (approximately \$1.7 million or 22 percent of all expenditures). The other substantial project expenditures in FY 2011-12 were for the High School (approximately \$1.7 million or 22 percent of all expenditures), and Horace Mann Elementary School (approximately \$1.6 million or 21 percent of all expenditures). Most Measure E expenditures in FY 2011-12 were for activities at the school sites when all individual school site expenditures are added together.

The largest increases in Measure E bond spending in FY 2011-12, by project, were for various analyses and investigations conducted to assess the adequacy of existing school site facilities, efforts to obtain DSA approval for previous improvements, and the production of conceptual designs at the High School

¹ Legal fees, including related services such as geotechnical studies subcontracted by law firms, represent 86 percent of this Services and Other Operating Expenditures. The remainder of expenditures in this object category was spent on other professional services including master planning consultants, independent facilities and planning consultants, independent auditing services, repographics services, reimbursements for mileage and car allowances to service providers, and small rentals, leases and repair costs.

2. Measure E Budget and Communication Effectiveness

(an increase of approximately \$1.7 million), Horace Mann Elementary School (an increase of approximately \$1.3 million, or 341 percent), and Hawthorne Elementary (an increase of approximately \$516,000, or 165 percent).

The largest decrease in Measure E bond spending reported in District records for FY 2011-12, by project, was for Facilities and Planning (approximately \$1.1 million, or a 69 percent, decrease). This budget category does not cover Facilities and Planning Department costs but, rather, is for construction management and other consultant costs for development of the District's 2012 Facilities Master Plan. Reduced use of certain consultants in FY 2011-12 explains most of the decrease between FYs 2010-11 and 2011-12.

The District spent approximately \$1.9 million on legal and related fees in FY 2011-12, or approximately \$1 million less than the \$2.7 million total spent in FY 2010-11. Most of the amount spent in FY 2010-11 was pertaining to the prosecution and termination of the District's former Facilities Director. While spending in that area wound down in FY 2011-12, spending on the MTA matter increased and comprised approximately \$1.7 million of the \$1.9 million spent on legal and related fees in FY 2011-12, as shown in Exhibit 2.5.

FY 2011-12 expenditures classified as Undistributed under District goals primarily covered administrative salaries, benefits, and related expenses for District staff and the Facilities and Planning Department. The expenditures classified as Undistributed reflect centralized administrative costs, such as administrative staff salaries and benefits and office supplies, that aren't attributed to a specific project site as they are overhead costs incurred by the Facilities and Planning Department. The \$205,100 of expenditures in the District Administration category were primarily related to legal services stemming from litigation against Strategic Concepts, LLC.

2. Measure E Budget and Communication Effectiveness

Exhibit 2.2: Measure E Expenditures by Project/School Site, FY 2011-12 vs. FY 2010-11					
Budget Project/ School Site	FY 2010-11 Actual Expenditures	FY 2011-12 Actual Expenditures	Percent of 2011-12	Change from FY 2010-11 Expenditures	% Change from FY 2010-11 Expenditures
MTA-related Matters	*	\$1,743,046*	22.3%	\$1,743,046*	*
High School	\$22,882	1,689,375	21.6%	\$1,666,493	7,283.0%
Horace Mann	373,724	1,649,410	21.1%	1,275,686	341.3%
Hawthorne	313,841	830,282	10.6%	516,441	164.6%
El Rodeo	395,902	516,611	6.6%	120,709	30.5%
Undistributed	Not Included	481,937	6.2%	481,937	--
Facilities & Planning	1,516,340	465,914	6.0%	(1,050,426)	(69.3%)
Beverly Vista	338,292	240,067	3.1%	(98,225)	(29.0%)
District Administration*	40,517	205,100*	2.6%	164,583	406.2%
Legal Fees	2,699,942	*		(2,699,942)	--
Grand Total	\$5,701,440	\$7,821,742	100%	\$2,120,302	37.2%

Sources: FY 2011-12 Measure E budget data provided by Executive Director for Budget and Food Services and FY 2010-11 budget data from the FY 2010-11 Measure E Financial Audit report.

*All legal Fees were presented together in the FY 2010-11 Measure E financial audit. FY 2011-12 expenditure data presents this area of expenditure by project so they are presented as "MTA-related matters" and as "District Administration," which should be added together for comparison between the two years.

As previously mentioned, the majority of the Measure E expenditures in FY 2011-12 were for professional services including legal, architectural and engineering services provided to assess the adequacy of existing facilities, obtain California Division of the State Architect (DSA) certification for various previously completed projects, review and revise the Facilities Master Plan, draft new Educational Specifications, and to acquire conceptual designs for proposed projects. The major FY 2011-12 Measure E expenditures, by school site, are summarized in Exhibit 2.3.

2. Measure E Budget and Communication Effectiveness

Exhibit 2.3: Major Measure E Expenditures by School Site, FY 2011-12			
School Site	Major Expenditures	Amount of Expenditure	% 2011-12 Measure E Expenditures at School Site
High School	Geotechnical investigations/soil testing	\$696,624	41.2%
	MEPC ¹ Services	497,800	29.5%
	Architectural Fees	229,400	13.6%
	Other	165,551	15.7%
	High School Total	\$1,689,375	100%
Horace Mann	Architectural Fees	\$1,020,760	61.9%
	Hazmat Investigations	130,456	7.9%
	Engineering Fees	113,172	6.9%
	Other	385,022	23.3%
	Horace Mann Total	\$1,649,410	100%
Hawthorne	Architectural Fees	\$523,610	63.1%
	Construction Management	128,192	15.4%
	Engineering	137,335	16.5%
	Other	41,145	5.0%
	Hawthorne Total	\$830,282	100%
El Rodeo	Architectural Fees	\$266,777	51.6%
	Engineering	187,242	36.2%
	Construction Management	39,727	7.7%
	Other	22,865	4.5%
	El Rodeo Total	\$516,611	100%
Beverly Vista	Engineering	123,717	51.5%
	Architectural Fees	80,848	33.7%
	Construction Management	32,324	13.5%
	Other	3,178	1.3%
	Beverly Vista Total	\$240,067	100%
TOTAL		\$4,925,745	

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

¹Mechanical, Engineering, Plumbing and Civil Engineering assessments.

Official District Measure E Project List Needed for Comparison to Actual Expenditures

As discussed in Section 1, State law 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 improvements:

2. Measure E Budget and Communication Effectiveness

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 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 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.

To assess whether Measure E bond funds are being expended consistent with the projects originally approved by the voters, a comparison was made between actual FY 2011-12 expenditures and 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 2008 Facilities Master Plan, which was in effect during FY 2011-12, includes a list of conceptual project scopes and does not either constitute a final approved list of specific projects to be executed.

While the use of Measure E funds for legal and other professional services related to the MTA subway tunnel matter and the termination and prosecution of a former District Facilities Director does not appear to be consistent with the language of Measure E or the 2008 Facilities Master Plan, both documents contain general project descriptions and flexible language that could be interpreted to allow for these expenses as are unforeseen project-related costs. However, as reported above, expenditures on these matters have comprised a substantial share of Measure E funds as of FY 2011-12, represent a District policy choice, and are continuing to be expended for these matters through at least FY 2012-13, making fewer funds available for eventual construction and modernization projects.

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 MTA-related or other litigation as a project or as a component of a project to end any concern by District stakeholders that the money is being used inappropriately. 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.

FY 2011-12 Measure E Spending Patterns Diverged Significantly from Adopted Budget

The District’s Measure E spending patterns differed significantly from the original budget adopted by the Board in June 2011. Overall, the District spent significantly less Measure E bond fund proceeds in FY

2. Measure E Budget and Communication Effectiveness

2011-12 than anticipated at the beginning of the year, particularly on school auditorium ceiling renovations and modernization projects. The District spent \$7,821,742 of Measure E funds in FY 2011-12, which is \$12,409,653, or 61.3 percent, less than the \$20,231,395 budget that was adopted by the Board. As seen in Exhibit 2.4, the negative difference between the adopted and expended amounts was primarily on Capital Outlay, for which the District spent \$5,089,721, or \$13,669,447 less than the \$18,759,168 that was adopted by the Board prior to the start of the fiscal year.

As seen in Exhibit 2.4, the District spent \$2,246,611, which is \$1,428,438, or 175 percent, *more* than anticipated on Services and Other Operating Expenditures. These expenses were primarily due to approximately \$1.7 million in spending on legal and technical services related to the MTA's proposal to construct a tunnel under BHUSD property. The \$2,246,611 also includes nearly \$200,000 spent on legal and related services for other matters, approximately \$150,000 spent on master planning and architectural services, approximately \$75,000 for geotechnical assessments and, \$70,000 paid for other services.

Exhibit 2.4: Measure E Budget vs. Actual Expenditures, FY 2011-12 by Major Object				
Major Object Category	Orig. Budget Adopted by Board	Actual Expenditures	Over/(Under) Adopted Orig. Budget	% Over/(Under) Adopted Orig. Budget
Capital Outlay (construction, modernization, architect/engineering services)	\$18,759,168	\$5,089,721	(\$13,669,447)	(72.9%)
Services and Other Operating Expenditures (legal, other professional services)	818,173	2,246,611	1,428,438	174.6%
Classified Salaries	453,040	360,927	(92,113)	(20.3%)
Employee Benefits	151,014	115,435	(35,579)	(23.6%)
Books and Supplies	50,000	9,049	(40,951)	(81.9%)
Grand Total	\$20,231,395	\$7,821,742	(\$12,409,653)	(61.3%)

Sources: FY 2011-12 Measure E budget data provided by Executive Director for Budget and Food Services

BHUSD Spent More on MTA-related Matters and Less on Construction and Modernization than Initially Budgeted

As seen in Exhibit 2.5, the District spent less than anticipated in FY 2011-12 on all projects/school sites, with the exception of two project categories: (1) District Administration (mostly legal fees related to litigation involving a former District Facilities Director) and (2) MTA-related legal and other professional service expenses. The primary cause of spending less than the adopted budget at all school sites was the absence of Board of Education approval of several auditorium and modernization projects from proceeding past the conceptual design phase and placing the Hawthorne Elementary and El Rodeo Elementary auditorium ceiling upgrades and the Beverly Vista and El Rodeo modernization projects on

2. Measure E Budget and Communication Effectiveness

hold.² The amount spent on school site projects ranged from \$240,067 at Beverly Vista (79.8 percent less than anticipated) to \$1,689,375 for the High School (19 percent less than anticipated).

In contrast, the District spent \$1,743,046 on MTA-related matters, which is \$1,498,773, or 614 percent, more than the \$244,273 that was adopted by the Board in June 2011. This increase in spending over the adopted budget is primarily due to ramped up efforts, including legal work and geotechnical analysis relating to the District's challenge to the MTA's proposal to construct a subway tunnel underneath BHUSD property. The extent of services needed for this matter and the direction the efforts would take over the year were possibly not known to District staff at the time the budget was prepared.

Exhibit 2.5: Measure E Budget vs. Actual Expenditures, FY 2011-12 by Project/Site				
Project/School Site	Orig. Budget Adopted by Board	Actual Expenditures	Over/(Under) Adopted Orig. Budget	% Over/(Under) Adopted Orig. Budget
MTA-related Matters	\$244,273	\$1,743,046	\$1,498,773	613.6%
High School	2,085,000	1,689,375	(395,625)	(19.0%)
Horace Mann Elementary School	5,231,761	1,649,410	(3,582,351)	(68.5%)
Hawthorne Elementary School	4,934,557	830,282	(4,104,275)	(83.2%)
El Rodeo Elementary School	4,503,670	516,611	(3,987,059)	(88.5%)
Undistributed	664,054	481,937	(182,117)	(27.4%)
Facilities & Planning	924,745	465,914	(458,831)	(49.6%)
Beverly Vista Elementary School	1,188,795	240,067	(948,728)	(79.8%)
District Administration	0	205,100	205,100	n.a.
Adult Ed Modernization	454,540	0	(454,540)	(100.0%)
Grand Total	\$20,231,395	\$7,821,742	(\$12,409,653)	(61.3%)

Sources: FY 2011-12 Measure E budget data provided by Executive Director for Budget and Food Services

District Spent Nearly \$2 Million in Measure E Bond Funds on Legal and other Professional Services

The District spent approximately \$1.94 million, or 24.8 percent of all Measure E funds spent in FY 2011-12, on legal and other professional services, primarily related to the MTA's plans to construct a subway tunnel underneath BHUSD property.³ Approximately \$1.7 million, or 80 percent, of the bond funds spent on legal and other professional services in FY 2011-12 were MTA-related, as shown in Exhibit 2.5. Nearly all of the remainder, about \$205,100, or 20 percent, was spent mostly on litigation against Strategic Concepts, LLC. The remainder, or about \$1,400, was spent on contract review services.

² The Horace Mann, Hawthorne, and El Rodeo auditorium ceiling replacement projects were put on hold by the Board of Education effective September 27, 2011 pending a comparison of modernization vs. new construction options. The Horace Mann auditorium project was later moved forward, but the Hawthorne and El Rodeo auditorium projects are still on hold.

³ The \$1.94 million also includes \$205,100 in expenditures classified as District Administration and covering legal services related to termination and prosecution of a former District Facilities Director.

2. Measure E Budget and Communication Effectiveness

In addition, the District spent approximately \$48,000 in FY 2011-12, initially paid from the Measure E bond fund, to an outside firm for lobbying services related to the MTA subway project. Several weeks after the payments, District staff concluded that the payments should not have been charged to the Measure E bond fund account and made transfers from the General Fund to cover the expenses. District staff notes that a change has been made to its billing allocation form to avoid similar errors in the future. Those payments are not included in the expenditure information shown in this report section.

District Budgeting Processes for Measure E Bond Funds are Not Sufficiently Transparent

The District budgeting process for Measure E, while reportedly improved from previous years by the addition of project level budgets and in conformance with the State's required formatting, is not adequately transparent when presented to the Board of Education and the public. Though the Facilities and Planning Department prepared the FY 2011-12 Measure E budget based on specific projects, the June 2011 budget presentation to the Board of Education for the adoption of the FY 2011-12 Measure E budget did not include a breakdown by project or school site or other project. 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 2011-12.

The two interim budget presentations to the Board in FY 2011-12 (one in November 2011 and one in March 2012) did not appear to be sufficiently detailed so that Board members and the public could understand the District's spending patterns. Specifically, interim budget reports during FY 2011-12 did not provide budgeted vs. actual expenditures or updated estimates based on actual spending. Despite the District's slower than anticipated spending overall (and specifically on auditorium and modernization projects), the November interim budget report projected that \$20,732,793 would still be spent by year end even though at that point only about \$1.8 million had been spent. Similarly, the March interim budget report projected that \$23,182,793 of Measure E funds would be spent by June 30, 2012, an *increase* of nearly \$2.5 million from what was projected in November even though by March 13th only about \$3.3 million had been spent. As previously mentioned, the District's actual total Measure E expenditures in FY 2011-12 were approximately \$7.8 million. Regular management reports showing budgeted vs. actual Measure E expenditures are not produced for District management or the Board.

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. Specifically, the GFOA recommends that local government agencies regularly evaluate their financial performance relative to the adopted budget with budget-to-actual and budget-to-projected actual comparisons of revenues, expenditures, cash flow, and fund balance periodically during the budget period. The GFOA also recommends that agencies, such as school districts:

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

2. Measure E Budget and Communication Effectiveness

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 Need Improvement

Periodic 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 needed for better transparency. 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 District-wide updates provide narrative summaries of overall activities and for each school site, the amounts budgeted vs. expended are not shown for the current fiscal year and are not shown by project, which is how the District develops and spends its budget. Further, the updates do not make use of charts, graphs or timelines, which could help distill the current state of the Measure E 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 in seven to 15 months and do not include budgetary information.

Compliance with Departmental Procedures Manual is Questionable

It is unclear whether the Facilities and Planning Department followed processes in FY 2011-12 established in the Facilities and Planning Procedures Manual to: (1) establish and break down budgets into hard and soft costs for all projects; and (2) review the projected budgets on a quarterly basis. The two professional District Facilities and Planning Department staff resigned their positions during the field work phase of the audit and were not available to the audit team to provide explanations or other information after their departures.

Although the audit team requested documentation of how each project budget was established for FY 2011-12, the District did not have such documentation available for the year under review. Rather, the audit team was provided with budget matrices for Horace Mann Elementary School for FY 2010-11, which were not broken down by hard and soft costs. While the audit team has reviewed current (as of December 2012) Prolog reports, presented to the Citizens' Oversight Committee, that currently provide breakdowns by hard and soft costs, evidence has not been provided that this was done for the FY 2011-12 budget or budget updates. Further, the audit team came across no evidence to suggest that the Facilities and Planning Department reviewed projected budgets on a quarterly basis in FY 2011-12, as required by the Facilities and Planning Procedures Manual. It should be noted that the audit team did not have access to Facilities and Planning Department officials for most of the fieldwork phase of the audit, but instead had to rely on documents available on line or provided by District administration.

Conclusions

The Beverly Hills Unified School District (District) spent \$7,821,742 of Measure E bond funds in FY 2011-12, primarily for professional services, such as architectural designs, legal, and other technical services. Although this amount is approximately 37 percent more than what was spent in FY 2010-11, it is about 61 percent less than what was anticipated when the Board of Education adopted the Measure E budget in June 2011 while continuing to incur borrowing costs on \$72 million in bond funds issued in early 2009.

Measure E funds were spent significantly differently in FY 2011-12 than planned as several school modernization and auditorium ceiling renovation projects did not proceed past the conceptual design phase due to the absence of Board of Education approval. Additionally, the District spent significantly more on MTA-related matters than budgeted at the beginning of the fiscal year. In spite of these changes, the Measure E budget was not formally amended during the year.

Recommendations

The Board of Education should:

- 2.1 Direct the Executive Director for Budget and Food Service and the Chief Facilities Official, 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 enhance the transparency of Measure E budgeting. These revisions should include disclosing the project or site level budgets and quarterly evaluations of adopted vs. actual budgetary information (for the current fiscal year as well as for the life of the project) with explanations for deviations.
- 2.2 Direct the Chief Facilities Official to improve the transparency and quality of Measure E updates to the Board of Education and Citizens' Oversight Committee by including current year adopted vs. actual budgetary information, current amount expended vs. total project budget, project milestones met, and the use of accompanying narratives, charts, and graphics to clearly illustrate progress.
- 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), does not outline policies and procedures for soliciting vendors and selecting the lowest responsible bidder for public projects, defined in State law as public facility construction, renovation and repair work. 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.
- Despite such deficiencies in the District's Measure E Procedures Manual, competitive bidding and selection appears to have been consistently employed by the Facilities and Planning Department in FY 2011-12. However, two of four reviewed contracts that were let by the Facilities and Planning Department in FY 2011-12 did not have documented evidence of vendor outreach efforts. Such documentation was not in place for either of two contracts reviewed that were let by the District Office. Maintaining documentation of vendor outreach and solicitation for Measure E Bond Fund contracts would provide assurance that that the District has gone through a valid competitive bidding process and received bids from as many qualified vendors as possible.
- Unlike contracts administered by the Facilities and Planning Department, competitive selection processes were not always used for Measure E contractors selected by the District Office. The Measure E Procedures Manual and the Purchasing Procedure Manual for District-wide procurement do not require professional service agreements to be competitively bid. However, 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.
- A sample of Facilities and Planning Department contracts reviewed were competitively bid and subject to a more rigorous selection and approval process than District Office contracts. Having the competitive selection and approval process for these contracts brought forward for discussion at Board meetings resulted in a more transparent process about Measure E expenditures for the Board of Education and the public.
- 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, contracts let by the Facilities and Planning Department were prepared by the District's general counsel and appear to contain consistent language and requirements. In contrast, some of the contracts administered by the District Office were based on the contractors' standard contract language and excluded some standard District requirements.

Policies and Procedures

Procurement of services, materials and supplies using Measure E funds are governed by two sets of District written 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 District-wide 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 District-wide Procurement Policies but not all included in Measure E Procedures Manual

The Measure E Procedures Manual 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 \$81,000 (effective January 1, 2012), 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 requirement, as is, or any work done by day labor or by force account pursuant to Section 20114 of the Public Contract Code.⁴

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.

⁴ Public Contract Code 20111(c).

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.

The Measure E Procedures Manual contains Requirements for some types of Professional Service Agreements while the District-wide Requirements in this area are Vague

With the exception of architectural services and construction contracts, 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 bidding could lead to the selection of more qualified firms for services and result in reduced costs for public entities. Competitive bidding reduces the risk of unfair contract awards and fraud or malfeasance. Therefore, the Measure E Procedures Manual and District Purchasing Manual should be revised to explicitly require competitive bidding for all professional service agreements, including environmental, geotechnical, planning, legal, and other services paid for with Measure E bond funds. As some public entities have done, the Board of Education could adopt a policy requiring competitive bidding for professional services agreements as a matter of practice except for documented instances of emergency or extenuating circumstances. This appears to have been the practice of the Facilities and Planning Department in FY 2011-12 but not the District Office based on our review of a sample of contracts from that year.

Competitive Bidding Practices

Despite the District’s unclear policies and procedures regarding competitive bidding for construction and professional services paid for with Measure E Bond Funds, a sample of contracts was reviewed 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, rosters of active contractors as of December, 2012 were obtained from the Facilities and Planning Department and the District Office⁵ since Measure E contracts are awarded and administered out of both offices. A total of 37 contracts were provided that were approved by the Board of Education either prior to, during, or after FY 2011-12, of which only 30 of these contracts had expenditures in FY 2011-12. Exhibit 3.1 shows a summary of the Measure E contracts provided by the District.

⁵ District Office refers to the District’s executive office headed by the Superintendent.

Exhibit 3.1			
All Active Measure E Bond Fund Contracts, as of December 2012			
District Contract Administrator	Approval by Board	# of Contracts	# with Expenditures in FY 2011-12
Facilities and Planning Department	Prior to FY 2011-12	15	10
	During FY 2011-12	11	13
	After FY 2011-12	3	0
Subtotal		29	23
District Office	Prior to FY 2011-12	6	1
	During FY 2011-12	1	6
	After FY 2011-12	1	0
Subtotal		8	7
Total		37	30

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

The bidding procedures for a total of six contracts active in FY 2011-12, or 20 percent of the contracts with Measure E expenditures that year, were reviewed. Because no public works contract over \$15,000⁶ was entered into and/or had Measure E bond expenditures in FY 2011-12, all of the contracts reviewed for contract solicitation and award were for professional services. As shown in Exhibit 3.2 below, the six contracts in the sample were originally approved for at least \$3,529,768 in expenditures for the term of their contracts (which went beyond FY 2011-12 in some cases). Some of the contracts were modified by December 2012 resulting in total authorization of at least \$3,149,268. The six sample contracts incurred \$3,763,862 in expenditures in FY 2011-12.

The review of six sample contracts confirmed that competitive bidding and selection processes occurred in FY 2011-12 for five of the six contracts. However, such practices were inconsistent, particularly depending on whether the Facilities and Planning Department or the District Office was responsible for selecting, awarding, and administering the contracts.

⁶ Competitive bidding is required for public project contracts of \$15,000 per District policies and Public Contract Code 20111.

Exhibit 3.2					
Characteristics of Six Sample Contracts, as of December 2012					
District Contract Administrator	Type of Service(s)	Board Approval Date	Original Contract Maximum Amount	Current Contract Maximum Amount	Expenditures in FY 2011-12
Facilities and Planning Department	1. Architectural / Engineering	8/3/2011	\$2,538,320	\$1,401,820	\$792,826
	2. Mechanical, Electrical, Plumbing, & Civil Engineering	11/22/2011	497,800	510,500	497,800
	3. Planning	2/22/2011	332,120	332,120	151,029
	4. Assessment of Hazardous Material	6/9/2011	86,528	197,173	131,814
<i>Subtotal</i>			\$3,454,7568	\$2,441,613	\$1,573,469
District Office	5. Legal	2/22/2011	None	None	\$1,482,798
	6. Geotechnical	11/9/2011	675,000 ¹	707,655	707,595
<i>Subtotal</i>			\$75,000	\$707,655	\$2,190,393
Total			\$3,529,768	\$3,149,268	\$3,763,862

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

- 1 The original contract consisted of two phases, the first phase was for \$75,000 and the second phase was for an amount not to exceed \$600,000. Initiating the second phase of the contract required an amendment to the contract. Subsequent amendments resulted in increased scope and costs to the second phase.

Four of Six Contracts Reviewed Lacked Adequate Vendor Solicitation Documentation

In general, the Facilities and Planning Department appears to have employed competitive bidding practices in their contracting in FY 2011-12. However, solicitation of quotes and bids for services from multiple vendors prior to final selection was not well documented in a sample of contract files reviewed as part of this performance audit. 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. According to the State Allocation Board's Public School Construction Cost Reduction Guidelines⁷, school districts should seek highly qualified professionals because there is a potential cost impact due to the use of inexperienced professionals that may be "friends" or "readily available," which may be "masked on the surface by lower fees or other enticements." The 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.

⁷ 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.

Of the six contract files reviewed, documentation of vendor solicitation was provided for two⁸ of the four contracts managed by the Facilities and Planning Department, and for neither of the two contracts managed by the District Office. According to District staff, the legal contract was not competitively bid. Competitive bidding for the geotechnical contract was a hybrid process. While the Request for Qualifications resulted in the competitive selection of two qualified firms, documentation of the competitive bid and selection process by which one of the two pre-qualified firms was selected to provide geotechnical services for the high school was not provided.

Documentation of vendor outreach in the two Facilities and Planning Department files included emails to chapters of associations for specific professions, as well as emails and letters to individual professional firms. Facilities and Planning Department staff report that they maintain lists of firms and vendors for particular services and mail and/or call firms when a specific service is needed, though documentation of the names and/or number of firms contacted in this way was not found in four of the six contract files reviewed. The District should revise its policies and procedures to require documentation of outreach and solicitation for all contracts paid for with Measure E bond funds.

Facilities and Planning Department Contracts were Subject to a more Competitive Selection and Approval Process than District Office Contracts

Documentation provided by the District for the six sample contracts reviewed shows that those managed by the Facilities and Planning Department went through a much more rigorous selection and Board approval process than the contracts managed by the District Office. By having the selection and approval process for these contracts brought forward in public discussion during a Board meeting, community stakeholders should be able to benefit from transparency and should be able to better assess whether Measure E bond fund expenditures will be in compliance with the law.

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.

Although the District did not provide documentation of public advertisement for any of the contracts reviewed, documentation provided shows that five of the six contracts reviewed for the audit were subject to a competitive process and adhered to Steps 2 and 3 of the three State Allocation Board recommended steps for competitive selection. Exhibit 3.3 summarizes the competitive selection process steps documented for the six sample contracts.

A Request for Qualifications (RFQ) and/or Request for Proposal (RFP) was approved by the Board of Education in public meetings, with the minutes and the actual RFQs/RFPs posted on the District's website for five of the six sample contracts. For each of these five contracts, 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

⁸ Although documentation of solicitation for the first round of the competitive process was found for only two of the four Facilities and Planning contracts, letters to firms that made it to subsequent rounds were in the files for all four contracts.

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.

While all bidders submitted fee proposals and/or estimated project costs (if applicable), the process followed by the Facilities and Planning Department used a comprehensive set of criteria to select the most qualified firm based on criteria in addition to cost. Once a firm or firms were selected, they were submitted to the Board of Education for approval, which then initiated the negotiation process before the final contract was presented to the Board of Education for approval. Therefore, the Facilities and Planning Department sought approval and direction from the Board in a public hearing at least three times before a contract was finally awarded.

The geotechnical contract administered by the District Office was one of the five contracts that went through the RFQ process. The result of the process was the Board's pre-approval of two firms to serve in a contractor pool and provide geotechnical services for the District, with assignment of specific projects determined through subsequent RFP processes.

According to District staff, final selection of the firm for geotechnical services at Beverly Hills High School was conducted by the Facilities and Planning Department, but under the direction of the Board of Education and legal counsel because the services were required to address reports issued by the Metropolitan Transportation Authority (MTA) about earthquake faults beneath District property. However, unlike the documentation for the four sample contracts administered by the Facilities and Planning Department, the audit team was not provided access to the final proposals submitted by the two pre-qualified firms and could not verify if a competitive process took place with the two pre-qualified firms competing against each other and if a selection committee was used to review the site proposals and select the final firm.

Exhibit 3.3 Documented Competitive Selection Process Steps for Six Sample Contracts										
District Contract Administrator	Type of Service(s)	Board Approved RFQ	Documented Solicitation for Initial Round	Copies of Submitted Written Quals.	Letters to Short-listed Bidders	Selection Committee Names Provided	Interview 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. Architectural / Engineering	✓	✓	✓	✓	✓	✓	✓	✓	✓
	2. MEPC ¹	✓		✓	✓	✓	✓	✓	✓	✓
	3. Planning	✓	✓	✓	✓	✓	✓	✓	N/A	✓
	4. Assessment of Hazardous Material	✓		✓	✓	✓	✓	✓	✓	✓
District Office	5. Legal	Not applicable: District staff reported that it was not competitively bid.								
	6. Geotechnical	✓		✓	✓	✓	✓	✓		✓
Total		5	2	5	5	5	5	5	3	5

Sources: RFQ and RFP Documents at Facilities and Planning Department

¹Mechanical, Electrical, Plumbing, & Civil forensic survey

As previously stated, District staff reported that there was no competitive bid process for the legal contract administered by the District Office. Therefore, there was no documentation of a formal interview, selection committee, or selection criteria. In addition, this contract was approved by the Board of Education under their consent agenda, whereas the five other contracts in the sample were approved in discussion items⁹.

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 \$81,000, or the adjusted threshold amount for competitive bidding in accordance with Public Contract Code,¹⁰ 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 sample contracts administered by the District Office were for services related to potential litigation and may be protected under attorney-client privilege, the contracts should not have been precluded from going through a competitive process. The competitive process for confidential services does not have to be as public as the professional services solicited and awarded by the Facilities and Planning Department, but documentation of active solicitation, selection criteria, and approval during public discussion at a Board meeting could result in better outcomes for the District.

Safeguard Language in Awarded Contracts

Once a contract has been awarded, the District could prevent unforeseen and increased expenditures through the inclusion of standard language and clauses in its contracts. To assess how the District minimizes increased costs from future claims and disputes with contractors, the same sample of six professional service contracts were reviewed and compared to four additional architectural service contracts and one additional legal contract paid for with Measure E Bond Funds, for a total sample of 11 contracts. Contract language included in a construction contract was not reviewed because the only construction contract provided by the District was entered into in FY 2012-13, after the audit review period.

⁹ 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.

¹⁰ 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 \$81,000 as of January 1, 2012.

Some Contractors Prepared their own Contracts without all Standard District Terms

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. However, contracts administered by the Facilities and Planning Department were prepared by the District’s general counsel and contain more consistent District contract terms and conditions. In contrast, some of the contracts administered by the District Office are prepared by the contractors themselves and contain their standard contract language, as opposed to a contract drafted by the District’s general counsel, with standard District terms and conditions. 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, are inconsistent across the contracts reviewed in the sample. Standard District insurance requirements are not included in the agreements prepared by the contractors.

Contracts for architects paid for with Measure E bond funds and administered by the Facilities and Planning Department explicitly state that the architect is responsible for any increased costs due to delays in the projects, known violations of laws or regulations, claims, demands, and other costs related to the negligence, recklessness, or willful misconduct of the architect. On the other hand, contracts for other professional services such as (i) mechanical, electrical, plumbing, and civil forensic surveys; (ii) planning; (iii) assessment of hazardous material; and (iv) legal services, do not explicitly hold the contractors financially responsible for any delays in their project and/or violations of laws and regulations.

Another inconsistency among the sample contracts is the requirement to maintain professional liability insurance for errors and omissions for a period of five years after project completion. The five architectural service contracts, the single planning contract, and the single geotechnical contract all had such requirements. However, contracts for (i) the mechanical, electrical, plumbing, and civil forensic survey; (ii) the assessment of hazardous material; and (iii) legal services did not have such a requirement. The second legal contract reviewed stated that the firm had insurance for errors and omissions, though no post-project timeframe was included and no evidence was provided to confirm that the District required such insurance. Other standard District insurance requirements were not included in this contract.

Future Claims, Liens and Stop Notices

The District does not have any formal written policies and procedures for how to address future claims, liens and stop notices. Although Facilities and Planning Department staff report that there were no claims or liens filed in FY 2011-12, they reported instances in which subcontractors contacted the District threatening to issue a stop notice due to the primary contractor’s failure to pay the subcontractor. While the issues were eventually resolved with the primary contractor, 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.

Conclusions

The Measure E Procedures Manual and the District Purchasing Manual do 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 professional service contracts revealed that while all of the contracts awarded by the Facilities and Planning Department went through a competitive bidding process, the legal contract awarded by the District Office 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.

Finally, 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.

Recommendations

The Board of Education should:

- 3.1 Direct the Chief Facilities Official to revise the Measure E Procedures Manual to include policies and procedures regarding the competitive bidding process for public project contracts, including a \$15,000 minimum expenditure requirement for competitive bidding, to help ensure compliance with Public Contract Code 20111.
- 3.2 Direct the Chief Facilities Official to revise the Measure E Procedures Manual, and District Office staff to revise the District Purchasing Manual, to explicitly require competitive bidding for professional service agreements expected to cost \$81,000 or more, including environmental, geotechnical, planning, legal, and other services paid for with Measure E Bond Funds. The policies should require:
 - a. Public advertisement for professional services, materials and supplies, unless the Board decides that it is in the best interest of the District not to publicly advertise;
 - b. Documented solicitation of at least two vendors;
 - c. Review of written statements of qualifications and proposals;
 - d. Interviews with responsive vendors with documented selection criteria;
 - e. Approval by the Board of Education in an open session and,
 - f. Exemption to the above requirements in cases of documented emergency or extenuating circumstances.

- 3.3 Direct the Chief Facilities Official to revise the Measure E Procedures Manual to develop written policies and procedures regarding standard District contract language to be included for all contracts paid for with Measure E Bond Funds, including standard insurance requirements and payment for increased costs to the District caused by:
- a. Delays in the project(s) not initiated by the District;
 - b. Changes in the project scope not initiated by the District;
 - c. Violations of laws and regulations;
 - d. Future claims, disputes or stop notices; and/or,
 - e. Any other costs related to the negligence, recklessness, or willful misconduct of the vendor.
- 3.4 Direct the Chief Facilities Official to revise the Measure E Procedures Manual, and District Office staff to revise the District Purchasing Manual, to develop written policies and procedures for addressing future claims, liens and stop notices.

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 bond fund expenditures, including professional services such as legal and geotechnical services. However, two separate processes are followed for administering contracts and reviewing invoices by the Facilities and Planning Department and the District Office, both of whom administer contracts paid for with Measure E bond funds.
- Contracts administered by the Facilities and Planning Department 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, there are insufficient expenditure controls for some of the contracts administered by the District Office, including: absence of an estimated project or not-to-exceed amount for primary contractors; no identification of subcontracting consultants, their fees or not-to-exceed amounts; no limits to and no required documentation for reimbursable expenses; and no prior District approvals prior to subcontractors commencing work paid for with Measure E bond funds. Additionally, consultant invoices for work performed as a subcontractor to another District contractor and as a prime contractor to the Board of Education through *separate* contracts, should be more thoroughly reviewed by District staff to ensure that services are not being billed for more than once.
- Inadequate expenditure controls present a risk for the District because consultant fees constitute a significant portion of the fees being paid for contesting the Metropolitan Transportation Authority's (MTA) proposed subway tunnel beneath District property. Without adequate and transparent controls, the District is exposed to risks of: (a) increased and unforeseen costs related to this matter; (b) lack of available funds for the future construction, rehabilitation and repair of District properties; (c) violation of laws and regulations governing Proposition 39 and Measure E bond funds; and (d) potential fraud and malfeasance.
- The Measure E Procedures Manual is vague and unclear regarding procedures for change orders to Measure E contracts. In the absence of clear policies and procedures, change orders for sample contracts administered by the Facilities and Planning Department followed a consistent process for approval, while those administered by the District Office were inconsistent and lacked transparency, including approving changes in scope of work, fees, contract, and purchase order amounts after work had been completed.
- Despite being a consistent finding in previous performance audits, expenditures still had purchase orders dated after the invoice date, which is a violation of District policies and procedures and State Education Codes requirements. Having purchase orders approved before any procurement is a form of internal control because purchase orders authorize expenditures and ensure that funding is available for procurement.

As discussed in Section 2 of this report, the District incurred \$7,821,742 in Measure E bond fund expenditures in FY 2011-12. Of these expenditures, \$1,023,620, or 13.1 percent was related to salaries,

4. Contract Administration and Expenditure Controls

benefits, and various adjustments.¹ The remaining \$6,798,122, or 86.9 percent of expenditures, was paid directly to 46² individual vendors, most, but not all, of whom have contracts with the District.

Because the majority of the FY 2011-12 Measure E bond fund expenditures was tied to a contract, 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.

To assess the District's contract administration, the audit team reviewed expenditure controls for transactions from two samples. The first sample was all 107 FY 2011-12 transactions for six contracts. The second sample was 24 contractor transactions from September, 2011. In total, 131 transactions from 18³ different vendors, representing \$4,279,797 in FY 2011-12 expenditures, were reviewed and are summarized in Exhibit 4.1 below. The expenditures of \$4,279,797 represent 63 percent of the total \$6,798,122 paid to vendors in FY 2011-12.

¹ According to District staff, adjustments are made when vendors have contracts that are paid through Measure E and the General Fund, but invoices were mistakenly paid for from the wrong fund. However, the audit team could not verify if all of the transactions that were not assigned to a vendor (i.e. vendor name not disclosed on expenditure reports) and not related to salaries or benefits, were actual adjustments due to incorrect fund assignment.

² The variance between the number of vendors (46) paid in FY 2011-12 and the number of contracts provided by the District (30) with expenditures in FY 2011-12 is due to (a) vendors that did not have contracts, (b) vendors that are utilized by more than the Facilities and Planning Department (i.e. plumbers, companies leasing mobile classrooms, etc.) and are, therefore, not strictly paid with Measure E bond funds, and (c) vendors that had contracts that were no longer valid as of December, 2012. Due to the method of sampling, the audit team could not verify the number of vendors in each of the above categories.

³ There are only 18 vendors as opposed to 19 (6 vendors from the contracts reviewed plus 13 from the additional transaction testing) because one vendor has multiple contracts, one of which was reviewed as part of the sample of six and two other contracts that had transactions in the other sample.

4. Contract Administration and Expenditure Controls

Exhibit 4.1				
Summary of Sample Transactions Reviewed				
Contract Administrator¹	Vendor Name	Type of Service(s)	# of Transactions Reviewed	Total FY 11-12 Expenditures Reviewed
District Office	1) Hill, Farrer & Burrill	Legal	26	\$1,482,798
F & P Dept.	2) WLC Architects	Architectural / Engineering	49	792,826
District Office	3) Leighton Consulting	Geotechnical	9	707,595
F & P Dept.	4) Banerjee Pocock & Associates	Mechanical, Electrical, Plumbing, & Civil Engineering	6	497,800
F & P Dept.	5) Dejong-Richter, LLC	Planning	8	151,029
F & P Dept.	6) Environmental Audit, Inc.	Assessment of Hazardous Material	9	123,991
Subtotal for Full FY 2011-12 Review			107	\$3,756,039
District Office	7) Dannis Woliver Kelley	Legal	1	\$204,000
F & P Dept.	8) Bernards	Construction Manager	2	75,392
F & P Dept.	9) HMC Architects	Architectural / Engineering	3	64,086
F & P Dept.	10) LPA Architecture	Architectural / Engineering	2	55,453
F & P Dept.	11) DLR Group	Architectural / Engineering	3	36,209
F & P Dept.	12) Environmental Audit, Inc. ²	Environmental Impact Report	2	29,936
District Office	13) Quinn Emanuel	Legal	1	19,867
District Office	14) Class Leasing, Inc.	Temporary Classrooms	2	14,423
District Office	15) Alston & Bird LLP	Legal	1	11,696
District Office	16) Venable, LLP	Lobbying ³ and Legal	1	7,629
District Office	17) William Scotsman	Temporary Classrooms	2	4,422
District Office	18) Office Depot	Office Supplies	2	465
District Office	19) Mobile Mini, Inc.	Container Units	2	180
Subtotal for September 2011 Review			24	\$523,758
Total			131	\$4,279,797

Sources: Measure E Expenditure Reports for FY 2011-12, Contracts provided by Facilities and Planning Department and District Office

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

2 Environmental Audit, Inc. had multiple contracts with the District. Two additional contracts with expenditures in FY 2011-12 were reviewed as part of the sample of monthly transactions.

3 As discussed in Section 2, the District inadvertently paid for lobbying services with Measure E funds in September, 2011. Transfers were made in subsequent weeks from the General Fund to the Measure E Fund to correct this mistake.

Two District Processes for Reviewing Expenditures

4. Contract Administration and Expenditure Controls

As discussed in Section 3, two District entities solicit, award, and administer Measure E bond fund contracts and expenditures at the District: 1) the Facilities and Planning Department; and 2) the District Office. Of the 18 vendors reviewed for this audit, invoices for nine, or half, of the vendors were approved by the Facilities and Planning Department and District Office staff.⁴ In accordance with the Facilities and Planning Procedures Manual for the Measure E Bond Program (Measure E Procedures Manual), the invoices for those nine vendors were signed 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 (Bernards). After the Facilities and Planning Department submitted a signed invoice to the District Office, the Chief Business Official or Chief Administrative Officer approved payment, and then submitted the invoice to the Los Angeles County Office of Education for final payment.

The 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, lobbying, and geotechnical services. However, invoices for the other nine vendors reviewed were not approved by any Facilities and Planning Department staff member or consultant. These nine invoices were either for vendors that were utilized District-wide (such as for mobile classrooms or office supplies) or they were for contracts administered separately by the District Office for a lobbying firm, 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 property⁵ and for legal services for the District's proceedings against its former Superintendent and Facilities Director.

The nine District Office contractor invoices were not submitted to the Facilities and Planning Department but, rather, to the District Office where they were approved by at least the Chief Business Official or Chief Administrative Officer. Invoices from Hill, Farrer, and Burrill, the District's lead law firm on MTA matters, were also approved by 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. 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.

Facilities and Planning Department Contracts have Standard Expenditures Controls in Place; some District Office Contracts are Lacking such Controls

Expenditure controls are insufficient for at least some of the contracts administered by the District Office. Five of the ten contracts administered by the District Office and reviewed by the performance

⁴ Per the District's policies and procedures for procurement, after a department has verified that materials and supplies were delivered or services were rendered, final approval of the procurement must come from the Chief Business Official (CBO) or the Chief Administrative Officer (CAO). In some of the invoices reviewed, the Facilities Consultant hired by the District Office signed the invoice, in addition to the CBO or CAO.

⁵ 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. Therefore, Measure E bond funds could be used for legal and other professional services to mitigate the impact of the subway on the construction program.

4. Contract Administration and Expenditure Controls

audit team did not have an estimated project or not-to-exceed amount, in contrast with all of the contracts administered by the Facilities and Planning Department. In addition, one of the agreements for legal services did not contain the hourly rates for the attorneys who would be providing services. According to District Office staff, Office Depot does not have a contract with the District, and therefore, there is no not-to-exceed amount for annual District expenditures on office supplies.⁶ The remaining four District Office contracts reviewed had not-to-exceed amounts for professional services or established payment amounts in the case of a lease.

Two of the contractors with contracts administered by the District Office 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 costs 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, assumedly for services unrelated to the MTA matter, were paid for from the General Fund. Invoices reviewed by the audit team for this firm included services that District records show were paid for from the General Fund. However, the only Hill, Farrer and Burrill contract reviewed by the audit team for this firm was for MTA-related work.

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 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.

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 was 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 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.

Similarly, the Venable, LLP contract has a clause that authorizes Venable, LLP to engage subcontractor consultants to assist with federal lobbying efforts. Although District staff report that this firm's lobbying efforts were paid for with General Fund monies and the audit team did not review any Venable, LLP invoices with subcontractor consultant work, there is a similar lack of internal controls for costs related to subcontractor consultants in the Venable, LLP contract. For example, there is no not-to-exceed amount or identification of consultants, their rates, or total fees in the contract.

⁶ According to District staff, total District-wide expenditures from Office Depot do not exceed \$81,000.

4. Contract Administration and Expenditure Controls

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 contracts administered by the Facilities and Planning Department, 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. 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 \$1,482,798⁷ paid to the law firm in FY 2011-12, \$1,103,959, or 74.5 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 2011-12		
	Amount	Percent
Consultant Services	\$1,103,959	74.5%
Attorney Fees	378,839	25.5%
Total	\$1,482,798	100%

Source: Hill, Farrer and Burrill invoices for FY 2011-12

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 between \$100 to \$400 per hour in FY 2011-12) or not-to-exceed amounts for services.

In contrast, the Venable, LLP contract states that the Board of Education “has the right to approve in advance” any subcontractor selected by Venable, LLP, but the District must agree not to initiate any legal claims against Venable, LLP based on any “negligence, gross negligence or intentional malfeasance” on the part of any subcontracted consultants. However, the audit team did not verify if this occurred.

One contract Lacked 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 significantly with the contracts administered by the Facilities and Planning Department, 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 approved by the Board and to have certainty about future costs. Though the work may be necessary to determine the size and scope of projects at

⁷ This amount is for 26 checks paid directly to the legal firm with a District contract. It does not include any subsequent adjustments made by the District for incorrect amounts billed, double payment, or amounts billed to the Measure E Fund which should have been billed to the General Fund (this attorney also does work for the District that is paid for with General Fund monies).

4. Contract Administration and Expenditure Controls

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. An example of an after-the-fact approval of consultant expenditures occurred on August 28, 2012, when the Board of Education approved \$670,000 for consultant work already performed and paid through the Hill, Farrer and Burrill contract. There is also no indication of the period of time covered by the fees. Exhibit 4.3 shows the maximum amount paid to each consultant.

Exhibit 4.3		
Example: Board Approval of Consultant Work and Fees after Completion, August 2012		
Consultant	Amount	Percent
Leighton Consulting	\$400,000	59.7%
Earth Consultants	150,000	17.9%
Kenney GeoScience	120,000	22.4%
Total	\$670,000	100%

Source: August 28, 2012 Board of Education Meeting minutes

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 instill additional control over Measure E expenditures.

One Contract has Inadequate Controls for Potential Duplication of Work

Two of the consultants paid through the Hill, Farrer and Burrill contract discussed above also have separate contracts with the District and there are inadequate controls to ensure that the consultants do not 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 \$45,000.⁸ Leighton Consulting conducted geotechnical services at the same site through its contract with the District and separately through Hill, Farrer and Burrill. Invoices submitted by Leighton Consulting to Hill, Farrer and Burrill and to the District were reviewed by the audit team. The invoices did not appear to be for the same work but it was not possible to draw a definitive conclusion about this. For example, the title of the project at the beginning of each invoice were similar, but not exactly the same. They would include “borings” in the description plus one or two additional services that varied across invoices. However, the same employee names were included in both invoices for work conducted at the same site for overlapping time periods. Invoices to the District included dates of service for hours billed by particular employees, while invoices

⁸ The contract with Prime Source was approved by the Board of Education in October of 2012, which is beyond the audit review period for this audit. However, Prime Source was paid through the Hill, Farrer and Burrill contract in FY 2011-12, and there is a current risk of duplicative work without sufficient internal controls.

4. Contract Administration and Expenditure Controls

to the attorney did not include specific dates of services for hours billed, even though the timeframe for each invoice may have some overlap.

The Hill, Farrer and Burrill and Leighton Consulting contracts are not verified by staff in the Facilities and Planning Department though the Measure E Procedures Manual requires this for firms being paid with Measure E funds. District staff reported that any possible overlap or double-billing would be addressed by legal counsel (Hill, Farrer and Burrill). While relying on a legal firm, a vendor for the District, to (a) determine the scope of work of other consultants and (b) serve as the control for determining overlap in services, may protect the District as it prepares for ongoing or potential litigation, the process exposes the District to risk of excessive expenditures and fraud. Additionally, the legal firm providing oversight of their subcontractors is not the same in terms of accountability and transparency requirements as District staff performing that role (i.e., Facilities and Planning Department and District Office). District staff should review all invoices from contractors simultaneously performing services under multiple contracts either for the District or for the District and another contractor, as an additional protection against billing for duplicative services.

Insufficient Transparency for Community Stakeholders

Further, attorney-client privileges in legal contracts inhibit the Citizens' Oversight Committee (COC) from carrying out its purpose under AB 1908, which is to review expenditures and ensure compliance with the law. At a minimum, the District should provide the 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 (i.e. MTA work).

These procedures are allowable according to a State of California Second Appellate District's November 16, 2012 decision,⁹ which found that documentation of attorney billing and payment, even if litigation is still pending, are not exempt from the California Public Records Act (CPRA). Additionally, the League of California Cities recommend that non-exempt portions of attorney bills, such as the name of the matter, invoice amount, and date, should be contained in separate documents from any memos, reports, or other portions of the bill that contain substantive research, legal conclusions, or strategy.¹⁰

Inadequate Review of Expenditures and Contract Requirements

Dejong-Richter, the consultant contracted to render services for the long range facility master plan approved by the Board of Education in August, 2012, continued to perform services, submit invoices, and receive payment even though the term of the contract had expired and there is no evidence of an amendment to the contract extending the term. Although total payment to Dejong-Richter did not exceed the total contract amount and the additional time may not have had an adverse impact on the Measure E program, this example illustrates risk exposure to the District when there is inadequate review of invoices to ensure compliance with contract terms, whether it is the total contract amount, fees, or duration of the project.

The term for the Dejong-Richter contract was from February 28, 2011 through December 31, 2011. However, the last invoice reviewed as part of the audit period was dated June 15, 2012 and was paid with a check dated July 11, 2012. According to the contract, the consultant and District "may mutually

⁹ County of Los Angeles vs. Superior Court of Los Angeles County, Cynthia Anderson-Barker (Real Party of Interest), B239849.

¹⁰ *League of California Cities: A Guide to the Public Records Act*, August 2011 Supplement.

4. Contract Administration and Expenditure Controls

extend [the] term by written amendment,” and amendments must be “approved or ratified by the District Board of Education.” A review of the purchase order files in the District Office and the Facilities and Planning Department did not result in finding such a written amendment to the agreement. Further, an approval of an amendment extending the term could not be found among District Board agendas and minutes from 2011 to the present.

According to District staff, review of invoices and payment for the Dejong-Richter contract was approached as if it were similar to *other* consultant contracts that do not have a set termination date, but rather, an open ended term until the completion of the project. Therefore, staff reviewed invoices to ensure that work completed tied to the objectives and scope of a completed project, instead of the complete terms of the agreement, which included an actual termination date.

Facilities and Planning Department Contracts Followed a Consistent Change Order Process; District Office Contracts did not Follow these 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, some sections of the Measure E Procedures Manual are explicitly directed at construction contractors, such as requirements to get approval of change orders from the Site Architect prior to receiving approval from the Facilities and Planning Department and the Board of Education. However, 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 purchase order could apply to construction contractors as well as other professional service providers.

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.

A review of six contracts from the sample of 18 contracts described above revealed inconsistent processes for change orders and a lack of transparency for contracts administered by the District Office. Exhibit 4.4 highlights changes made to the six contracts in the sample.

4. Contract Administration and Expenditure Controls

Exhibit 4.4					
Summary of Changes in Amounts for Six Contracts, as of December 2012					
Contract Administrator ¹	Vendor Name	Original Contract Amount	Current Contract Amount	Variance	Percent Variance
District Office	Hill, Farrer & Burrill	N/A	N/A	N/A	N/A
F & P Dept.	WLC Architects	\$2,538,320	\$1,401,820	-\$1,136,500	-44.8%
District Office	Leighton Consulting	675,000 ²	707,655	32,655	4.8%
F & P Dept.	Banerjee Pocock & Associates	497,800	510,500	12,700	2.6%
F & P Dept.	Dejong-Richter, LLC	332,120	332,120	0	N/A
F & P Dept.	Environmental Audit, Inc.	86,528	197,173	110,645	127.9%
Total		\$4,129,768	\$3,149,268	-\$980,500	-23.7%

Sources: Measure E Expenditures in FY 2011-12, Contracts provided by Facilities and Planning Department and District Office, and Board Minutes

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

2 The original contract consisted of two phases, the first phase was for \$75,000 and the second phase was for an amount not to exceed \$600,000. Initiating the second phase of the contract required an amendment to the contract. Subsequent amendments resulted in increased scope and costs to the second phase.

The reasons for changes in the scope of work, resulting in changes in the contract amount, and the change order approval process are documented for five of the six contracts in the sample with specific contract amounts. The changes were first reviewed and approved by the Facilities and Planning Department before they were approved by the Board of Education in a public meeting. The contracts were subsequently amended as were the purchase orders authorizing payment of invoices. For example, Environmental Audit, Inc., the contractor assessing hazardous material completed its scope of services within the contract amount. However, after the contractor submitted its report to the Department of Toxic Substance Control (DTSC), the State department required the contractor to conduct additional testing, which was communicated to the contractor and District staff. DTSC required additional work that resulted in a 127.9 percent increase in the contract amount, as shown in Exhibit 4.4 above.

The change order process for the Hill, Farrer and Burrill contract differed significantly from the five other contracts in the sample, illustrating a lack of internal controls over expenditures for the contract. Further, the District adjusted its procedures and documentation after non-public discussions between the Board of Education and the contractor, which illustrates that the contractor has more discretion over its scope of work than the other contractors in the sample.

Though there is no set compensation amount for the Hill, Farrer and Burrill contract, a purchase order with an estimated amount of expenditures was still created, similar to the purchase orders for all other contracts in the sample. The purchase order amount changed at least four times in FY 2011-12, but none of these changes were formally approved by the Board of Education in a public meeting. According to District staff, such approval was not required. Additionally, the change orders were often made after services were rendered and invoices were submitted to the District.

4. Contract Administration and Expenditure Controls

Similarly, additional work beyond the scope of services in the Leighton Consulting contract was completed, but not invoiced, prior to receiving written authorization in the form of an approval by the Board of Education. According to the Leighton Consulting, the additional scope of work was needed to develop stronger findings in relation to the work contesting the MTA's proposed subway tunnels under District property. Subsequently, three amendments to the contract, totaling \$209,365 in increased costs, were approved by the Board of Education on the same day, after the work was completed. Two of the amendments related to increasing the scope of the work for this contractor were approved as Board of Education meeting discussion items, whereas one amendment related to paying overtime to a contractor was approved on the consent agenda.

Reasons for changes in fee structures were not always documented in contractor files reviewed. A contract administered by the District Office (not in the sample above) for lobbying efforts related to addressing the proposed MTA subway tunnel beneath District property includes a monthly retainer fee. From April to June of 2011, the monthly retainer fee was \$7,500, but it was increased to \$15,000 in July of 2011. As of the writing of this report, the District has not provided the audit team a written explanation for why the monthly fees were doubled. In contrast, a legal contract administered by the District Office included a clause stating that attorney fees were set to increase in January of the subsequent year and the new fees would be reflected in the monthly billing. While both contracts and the changes in fees were approved by the Board of Education, the lack of transparency regarding the firm that doubled its fees inhibits the Citizens' Oversight Committee from performing its duty to review expenditures and ensure compliance with the Bond Measure.

Once the Measure E Procedures Manual is revised to include best practices for change order process, all contracts, including the Hill, Farrer and Burrill; Leighton Consulting; and any other MTA related contracts, should adhere to such policies and procedures so that changes to contract amounts are sufficiently controlled and reported.

Problems Identified in Previous Performance Audits Persist

Despite being a consistent finding in previous Measure E performance audits, expenditures still had purchase orders dated after the invoice date. The District's policies and procedures for procurement require the issuance of a signed purchase order prior to a vendor furnishing services or shipping materials in order to be compliant with California Education Codes 42631 and 42632. Having purchase orders approved before a service is rendered or supplies are purchased is a form of internal control because purchase orders authorize expenditures that are within contract amounts or approved budgets and ensure that funding is available for the procurement.

Examples of expenditures with invoices dated before purchase orders were approved still occurred in FY 2011-12, after the last performance audit was published. A breakdown of instances when invoice dates preceded purchase requisition and/or purchase order dates, in violation of the District's policies and procedures, is presented in Exhibit 4.5.

Exhibit 4.5			
Sample Transactions with Invoice Dates before Purchase Order Dates, FY 2011-12			
	Facilities and Planning Department	District Office	Total
Number of Invoices in Sample	84	47	131
Invoice Date is after Purchase Requisition, but before Purchase Order Issued	10	1	11
Invoice Date is before Purchase Requisition AND Purchase Order Issued	11	14	25
<i>Subtotal of Noncompliant Invoices</i>	<i>21</i>	<i>15</i>	<i>36</i>
Percent of Noncompliant Invoices	25.0%	31.9%	27.5%

Sources: Measure E Expenditures in FY 2011-12 and procurement files

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

Conclusions

The District lacks adequate expenditure controls for contracts paid for with Measure E bond funds, particularly for contracts that are awarded 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 or 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 Facilities Official or executive staff to amend contracts with applicable vendors or firms to include:
 - a. A limit for reimbursable expenses, including documentation of expenses incurred, so that the District has more consistent controls over expenditures and contracts paid for with Measure E funds; and,
 - b. A requirement that fees and not-to-exceed amounts for subcontractor consultant work are approved by the Board of Education prior to any services being rendered, even if a contract

4. Contract Administration and Expenditure Controls

does not exist between the subcontractor consultant and the District for the work under the direction of the primary contractor.

- 4.2 Direct the Chief Facilities Official to develop a policy that requires either a member of the Facilities and Planning Department or the District Office staff to review and compare all invoices from contractors operating under multiple contracts for the District to ensure that services provided are:
 - a. Within the contract amount and term;
 - b. Within the contract scope of services; and,
 - c. without duplication of services being provided through other contracts.
- 4.3 Direct the Chief Facilities Official to develop a policy that requires legal and other professional services firms to provide the Citizens' Oversight Committee with the cover pages of invoices that include the name of the law firm, names of consultants paid through the contract, the amounts paid to each, and a brief description of the case matter (e.g., MTA work) to facilitate transparency and compliance with laws and regulations.
- 4.4 Direct the Chief Facilities Official to revise the Measure E Procedures Manual to include procedures that are considered best practices for change orders to the scope of services, project amounts, and fees, for *all* contracts paid for with Measure E bond funds, such as:
 - a. A 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.
- 4.5 Direct the Chief Facilities Official to develop a policy requiring purchase requisitions to be submitted and purchase orders approved within certain deadlines, such as within a week of a contract being signed, to minimize delays while ensuring that purchase orders are approved prior to services commencing or materials being purchased.

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.