



**AGREED-UPON PROCEDURES FOR  
CHINO VALLEY SCHOOL DISTRICT'S  
FACILITIES PROGRAM**

**Office of  
AUDITOR/CONTROLLER-RECORDER**

**September 2, 2004**

**Herbert R. Fischer, Ph.D., County Superintendent**

County Superintendent of Schools  
601 E Street  
San Bernardino, CA 92410-3093

**SUBJECT: AGREED-UPON PROCEDURES FOR CHINO VALLEY SCHOOL DISTRICT'S FACILITIES PROGRAM**

We have performed the procedures enumerated below, which were agreed to by the San Bernardino County Superintendent of Schools, and the Auditor-Controller, to determine whether the Chino Valley Unified School District's (District) facilities program is in compliance with applicable laws and to determine whether the District's internal controls are in place and ensure compliance with the applicable procedures and standards also noted below. The internal controls are the responsibility of the school district's management. This agreed-upon procedures engagement was conducted using attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently we make no representation regarding the sufficiency of the procedures described below either for the purpose of which this report has been requested or for any other purpose.

The procedures performed and conclusions reached as a result of these procedures are identified below and in the Schedule of Findings and Recommendation section respectively.

**Engagement Objectives**

1. Determine that the District used proper business standards in selecting construction and architectural firms.
2. Determine that the District followed the limits prescribed in Public Contract Code Section 20118.4 regarding change orders.

3. Determine that the District complied with the legal requirements of Public Contract Code Section 20111 by issuing formal bids for those projects exceeding certain dollar limits.
4. Determine that the District's facilities staff maintains complete and appropriate oversight of all District construction projects.
5. Determine that the construction management firm fulfilled all of its contractual responsibilities with wage/labor hours and acted within the scope of its contract.
6. Determine that the District obtained approval from the Division of State Architect when required by the provisions of Title 24 of the California Administrative Code, Sections 4-330.
7. Determine that the District and their contractors have taken all the steps necessary to ensure the safety and security of equipment and construction projects.
8. Determine that the District has an efficient and organized payment system for processing construction projects.
9. Determine that the District had signed contracts in place before beginning construction.
10. Determine that the internal controls in place will ensure compliance with the District's sound business practices and the provisions of the Standards and Procedures for Audits of California K-12 School District, Section 300.
11. Determine whether agreements for construction and construction management contracts exist for the same project where there is duplication and whether the management firm is paid to review its own work.

### **Scope and Methodology**

Procedures were performed to obtain information covering the time period from February 2000 to February 2004 and were limited to the review of the:

- District's policies, procedures, and practices;
- District policies and administrative regulations;
- external laws, regulations, and guidelines;
- bid packages for a selected sample - logs, proposals, proposal evaluator notes, and staff's recommendations;

- organization charts and job descriptions;
- agendas, internal and external communications, video tapes, and contracts;
- matrix prepared for a sample of bids; and
- selected sample of payment documentation and information and payment documentation provided by the San Bernardino County Superintendent of Schools, School Claims (School Claims) processing office.

The District's internal controls were also evaluated through interviews and reviews of information communicated via reports, memoranda, video tapes, emails and District personnel's meeting notes. These procedures were developed to review the related objectives stated above, and to identify internal control weaknesses.

As a result of our procedures that include the samples listed above, we have identified several instances of non-compliance with District policies and several weaknesses in internal controls, which are detailed in the Schedule of Findings and Recommendations section.

We were not engaged to, and did not conduct, an examination, the objective of which would be to express an opinion on the internal controls or compliance. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the San Bernardino County Superintendent of Schools, and the School Claims Office, and is not intended to be, and should not be, used by anyone other than these specified parties.

Respectfully submitted,

**Larry Walker**  
Auditor/Controller-Recorder

By: \_\_\_\_\_  
**Mark Cousineau**  
Internal Audit Section Supervisor

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## **EXECUTIVE SUMMARY**

1. In reviewing proper business procedures for the selection of construction management firms, it was noted that competitive evaluation procedures were not consistently followed. In one instance the District's Board of Education (Board) disregarded the policies and procedures that were put into place to ensure a competitive evaluation process.
2. In determining whether the District followed the change order limits prescribed in Public Contract Code section 20118.4, cost overruns were noted from the period of February 2001 to February 2004, for 13 projects that exceeded 10% of the original contract amounts by a combined total of \$841,751. It was also noted that there was often a time lag of several months between the date of a change order and the date the change order was submitted to the Board for approval, and several instances where the work had been completed and invoiced before being submitted to the Board for approval.
3. In reviewing projects for compliance with the legal requirements of Public Contract Code 20111 for issuing formal bids for those projects exceeding certain dollar limits, it was noted that the District's construction manager hired firms to complete construction projects without going through the required bid process or giving notice to the District. There were seven construction firms that submitted invoices to the District for payment that did not have contracts in place.
4. In determining whether the District's facilities staff maintained complete and appropriate oversight of all District construction projects, it was noted that appropriate oversight was not maintained. Of the construction contracts that were reviewed, work was consistently performed before obtaining bids, executing contracts, or obtaining the Division of State Architect's approval. District Facilities' staff did not always receive required reports or notices from its construction management firm and when the District did, the reports were often materially incorrect. In addition, there appears to be duplicate billings for constructability activities from December 2002 to November 2003.
5. In determining whether the construction management firm fulfilled all of its contractual responsibilities with wage/labor hours and acted within the scope of its contract, it was noted that the construction management firm did not provide the level of staffing to manage the District's construction projects and acted outside of the scope of its contract by hiring firms to construct projects without the required bid process and by issuing *Notice to Proceed* letters to contractors when it did not have the authority to do so.

### **EXECUTIVE SUMMARY Continued**

6. In reviewing the District's projects, it was determined that the District did not consistently obtain approval from the Division of State Architects (DSA) per the California Building Standards and Administrative Code, Title 24. Three instances were found where the District let a construction contract prior to receiving written DSA approval.
7. In reviewing the District's safety and security procedures, it was noted that contract language assigning responsibility for safety precautions and programs for project contractors did not always clearly define who is responsible.
8. In reviewing the District's construction payment process, it was noted that the District did not comply with Public Contract Code 20104.5, or School Claims' requirements for processing construction payments. There were no written policies or procedures in place and the District regularly submitted incomplete initial payment requests.
9. In reviewing contracts and *Notices to Proceed* to determine that the District had signed contracts in place before beginning construction, fifty-one instances on eighteen invoices were noted where construction related activities were started before a fully executed contract was in place.
10. In determining whether internal controls were in place to ensure compliance with the District's sound business practices and the provisions of the "Standards and Procedures for Audits of California K-12 School District", Section 300, it was noted that the District's internal controls were either not adequately designed or not operating as designed.
11. In determining whether agreements for the construction and modernization of District facilities and construction management services contracts existed for the same project where there is duplication and whether the management firm is paid to review its own construction work, no instances were noted where the construction management firm was paid to review its own construction work. However, it was noted that duplicate billings for constructability study activities exist as discussed in Item 4 of the Executive Summary.

### **SCHEDULE OF FINDINGS AND RECOMMENDATIONS**

#### **Finding 1: Competitive evaluation procedures were not consistently followed.**

The Board disregarded the District's Administrative Regulation AR 3311.1, which requires the District to apply a uniform system of rating pre-qualified bidders, on the

basis of standard questionnaires and financial statements, and disregarded the direction provided by Public Contract Code Sections 4527 and 4528. Staff recommendations and ratings established pursuant to AR 3311.1 were discounted or ignored. Instead the Board relied on a Board member to personally contact a limited number of the proposers in addition to this Board member's personal knowledge of the firms that submitted proposals.

At the March 9, 2000 Board meeting, agenda item III.D.1 Approval of Construction Management Companies for Use on New Construction and Modernization Projects was pulled from the consent calendar by Board member Truett. In the previous Board meeting, staff had recommended five of the eleven responsive firms based on competitive evaluation criteria. In the period between Board meetings, Board member Truett said that he "argued" to have four of his selections brought forward as the recommended firms. The four firms recommended by Board member Truett were not the highest rated firms on the list. The Board ignored staff's original recommendation of the five ranked firms and relied on Board member Truett's recommendation, which was based on phone calls to two firms and personal knowledge of the firms. The Board unanimously approved the list of four firms identified by Board member Truett.

Subsequently, B. E. McMurray Construction Inc. challenged the Board's decision in a faxed draft of a protest letter dated March 20, 2000 addressed to the District, each Board member, and the Superintendent. It states in part:

"I would like to take this time to strongly protest and express my concerns about the selection process for construction management services.

As we understand it, the District conducted a competitive process and recommended 4 or 5 firms to the Board for selection. The Board ignored the work of staff and proceeded to select from the firms who submitted but were not even on the short list of being competitively priced, experienced and or most responsive to the RFP requirements."

On April 20, 2000, the March 9, 2000 agenda item was brought back for approval of the addition of B. E. McMurray Construction Inc. for construction management services. The Board voted unanimously to add B. E. McMurray Construction Inc. to the approved list of construction management firms.

The selection of professional services should be impartial and follow regulations. However, B. E. McMurray, the District's construction manager, for three of its eight school construction projects, was originally pre-qualified through a proposal process that did not meet Public Contract Code and School Facility Program Guidelines.

Finally, not following the proper procedures to ensure that a competitive process is used may place up to \$80,252,000 of State School Facility Program funds in jeopardy. State

law specifically mandates that the State Allocation Board not apportion funds to a district unless the competitive process for professional services is being followed.

**Recommendation:**

The District should follow State laws and regulations, and its policies and regulations for evaluating, rating, and pre-qualifying bidders. The Board should accept, reject, or modify staff's recommendations based on the uniform system of competitive evaluation for rating proposals. Furthermore, all Board members should review the District's policies, administrative regulations, statutes, and guidelines pertaining to public works projects and when appropriate, receive training.

**Finding 2: Change orders were not monitored for either overages or approval.**

Public Contract Code 20118.4 states that a governing board may only authorize a contractor to proceed with the performance of a change or alteration without the formality of securing bids, if the cost does not exceed 10% of the original contract price. Administrative Regulation AR 3311.2 (a) allows for changes that are a result of requirements of another governmental agency, utility company, or are considered to be caused by "an act of God." The policy further dictates that change orders shall be closely monitored by the District, its architects and consultants in order to minimize change orders for reasons other than listed above.

The following cost overruns, occurring over a three-year period between February 2001 and February 2004 were identified. They are listed by project; construction company; change order number and amount; (amount expressed as a cumulative percentage of the original contract amount).

1. Wickman Elementary School; Rosetti Construction Co., Inc.; Change Order No. 8 for \$52,034.06; 112.17% of contract.
2. Wickman Elementary School; Rosetti Construction Co., Inc.; Change Order No. 9 for \$35,165.85; 113.71% of contract.
3. Wickman Elementary School; Rosetti Construction Co., Inc.; Change Order No. 10 for \$5,599.27; 113.96% of contract.
4. Rhodes Elementary School; Sialic Construction Corporation dba Shawnan Construction; Change Order No. 1, \$438,456.39; 229.05% of contract.
5. Rhodes Elementary School; Daniel's Electrical Construction; Change Order No. 4 for \$125,834.49; 112.39% of contract.



6. Liberty Elementary School; Duray/JF Duncan Industries; Change Order No. 1 for \$15,097.00; 114.22% of contract.
7. Ayala Relocatables; Alexander Associates; Change Order No. 1 for \$26,294.96; 111.19% of contract.
8. Five sites modular; MOD Craft Inc; Change Order No. 3 for \$16,165.05; 112.36% of contract.
9. Five sites modular; MOD Craft Inc; Change Order No. 4 for \$11,631.16; 115.74% of contract.
10. Magnolia Modernization; KAR Construction; Change Order No. 3 for \$97,239.00; 114.35% of contract.
11. Magnolia Modernization; KAR Construction; Change Order No. 4 for \$10,760.00; 115.64% of contract.
12. Magnolia Modernization; KAR Construction; Change Order No. 5 for \$878.00; 115.74% of contract.
13. Magnolia & Glenmeade Modernizations; Simmons & Wood, Inc.; Change Order No. 2 for \$6,598.00; 122.94% of contract.

Furthermore, the District received both external and internal warnings that change orders were not being monitored appropriately:

- ◆ Magnolia and Glenmeade Modernizations; letter from legal counsel with concerns that the Construction Manager directed change order work to be done without District approval and to advise that change orders must be approved by the Board prior to submittal for school claims processing.
- ◆ Magnolia and Glenmeade Modernizations; internal memorandum advising the Board of the excessive number of change orders in excess of the 10% limit per contract.

There were occurrences where the work was already completed and invoiced before the item went before the Board for approval. This lack of timely information and communication did not allow the Board, Superintendent and staff to effectively carry out their responsibilities.

Without close monitoring of change orders, newly constructed schools and modernization of existing schools may be completed with excessive cost overruns, which would result in a loss of public confidence in the Board and management. Finally,

not following the proper bid procedures may result in delay or loss of future funding from the State School Facility Program.

**Recommendation:**

The Board must set the tone for the organization by demanding strict adherence by all parties to their Administrative Regulation 3311.2 (a), which also incorporates Public Contract Code 20118.4. The Board and Superintendent must also support staff in requiring that the construction manager abide by the contract provisions by providing timely information and communication in the form of progress reports and billings. The District should strengthen their internal controls by increasing staff and by following their regulations requiring monitoring change orders closely.

**Finding 3: The District's construction manager hired firms for construction projects without the required bid process or notice to the District.**

Public Contract Code 20111 states that a governing board shall let any contract for a public project involving an expenditure of fifteen thousand dollars (\$15,000) or more to the lowest responsible bidder. Administrative Regulation AR3311 (a) requires that the District shall seek competitive bids through advertisement for contracts involving an expenditure of \$15,000 or more for a public project. This section specifies that no work or project shall be split or separated into smaller work orders or projects for the purpose of evading the legal requirements of Public Contract Code 20111-20118.4 for contracting competitive bidding. (Public Contract Code 20116).

We identified the following invoices which were submitted to the District for payment for work done without a contract in place. They are listed by project; construction company; invoice date, and amount.

A. Ayala Stadium; Rodriguez Brothers Construction Co., Inc. – Invoices totaling \$26,348.34:

1. July 23, 2003 for \$14,997.15
2. July 24, 2003 for \$4,926.60
3. September 9, 2003 for \$6,424.59

B Ayala Stadium; Laird Construction – Invoices totaling \$19,085.85:

1. September 30, 2003 for \$4,167.15.
2. September 30, 2003 for \$14,918.70.

- C. Ayala Stadium; Garrett Concrete Coring & Sawing, Inc. – Invoices totaling \$24,093:
1. 14 separate invoices dated between July 15, 2003 and August 12, 2003 totaling \$16,703.50 for which B. E. McMurray submitted as their reimbursable expenses on an invoice dated September 15, 2003 including a 1.1% overhead of \$183.74 for a total of \$16,887.24.
  2. 13 separate invoices dated between June 23, 2003 and August 26, 2003 totaling \$7,389.50 for which B. E. McMurray submitted as their reimbursable expenses on an invoice dated October 9, 2003 including a 1.1% overhead of \$81.29 for a total of \$7,470.79.

Questions raised by staff regarding invoices received without a contract in place were often either overridden or disregarded by the District. Unresolved disagreements between the Board and staff about how to deal with the construction manager allowed discrepancies to occur, and to remain unresolved. Failure to resolve this problem resulted in finger-pointing and casting of blame among the Board, Superintendent, staff and construction manager. The lack of communication from the construction manager in the form of required reports did not allow adequate oversight by staff or the Board that was necessary to effectively carry out the District's responsibilities to closely monitor construction progress and to appropriately process requests for payment.

Failure to follow the legal bid requirements by issuing formal bids may result in a loss of savings to the District as the competitive bid process allows the District to choose a company that will offer the greatest savings to the District. These possible increased costs might result in a loss of public confidence in the Board and management. Also, failure to follow the legal bid requirements may result in delay or loss of future funding from the State School Facility Program.

**Recommendation:**

The District must follow the Public Contract Code and their Administrative Regulations, which require a contract for any project exceeding \$15,000. The Board should address the "tone at the top" and not allow the attitude of "get it done at any cost." District staff should monitor the progress of contractors and report deviations to the Board. A policy should be placed into effect that requires staff to notify the Board about concerns regarding program failures. This will allow necessary communication to flow through to the Board, upon which they may then make informed decisions.

**Finding 4: The District did not maintain complete and appropriate oversight of all District construction projects.**

A review of a sample of suspended batch payments at the School Claims Office and contracts with change orders revealed that District approval was obtained after the work had been performed. Construction work was consistently performed before obtaining bids, executing contracts, and obtaining Division of State Architect approvals. A partial listing of examples follows:

1. Ayala Stadium; Garrett Concrete Coring & Sawing Inc. for \$24,358; bid not performed; B. E. McMurray submitted as reimbursable expenses.
2. Ayala Stadium; Laird Construction for \$19,086; bid not performed.
3. Ayala Stadium; Rodriguez Brothers Construction for \$26,348; bid not performed.
4. Edwin Rhodes Elementary School; Shawnan Construction for \$438,456; bid not performed.
5. Constructability Studies on Bond Issue Construction Projects Agreement; B. E. McMurray Construction for \$70,185; work performed without a contract September 2002 through November 2002.
6. Constructability Oversight Services on Bond Issue Construction Projects Agreement; B. E. McMurray Construction for \$280,920; work performed without a contract December 2002 through November 2003.
7. Constructability Oversight Services on Bond Issue Construction Projects Agreement; B. E. McMurray Construction; duplication of services from December 2002 through November 2003.
  - a. Liberty Elementary School: the agreement executed on November 7, 2002, requires the construction manager to perform services (Articles 1.3.3, 1.3.4, 1.3.6, 1.3.7, 1.3.10, 1.3.16, and 1.4.1) consistent with those billed by B. E. McMurray for construction oversight activities over a period of fourteen months (Article 1.8.2) beginning August 26, 2002, seventy-two days before the contract was executed.
  - b. Construction Oversight Services contract from November 5, 2002, through November 4, 2003. The contract was executed November 4, 2003 by Board members Klein, Pruitt, and Black. Approved by the Board on December 18, 2003 by unanimous vote.

- c. Ayala Stadium: the agreement executed on June 10, 2003, requires the construction manager to perform constructability reviews (Article 1.1.4) over a period eight months (Article 6.1.1). An additional three months beginning March 1, 2003, predating the executed contract extends the performance period to eleven months.
- d. Woodcrest Junior High School: the agreement executed on June 10, 2003, requires the construction manager to perform constructability reviews (Article 1.1.4) over a period eighteen months (Article 6.1.1). An additional five days beginning June 5, 2003, extends the performance period by predating the executed contract.

Based on the documents reviewed, staff was late in demanding deliverables from B. E. McMurray. Once staff started demanding contractually required reports, it took multiple requests to obtain those reports. Then the received reports were not complete and the process would repeat itself. The level and frequency of demands for contractually required reports decreased dramatically after the Facilities and Planning Department was removed from the Business & Operations Office. Senior staff's concerns that were reported through regular communication channels of the District to the Superintendent's Office were too often not provided to the Board in their original form. Even though the Board received staff concerns in a diluted form from the Superintendent's Office, the Board did not respond aggressively to indications of the construction program not operating in compliance with state law. Among the other indications were:

- ◆ Contractor complaints regarding project management;
- ◆ Change order information within the agenda packages that showed they were being reported months after work had been done;
- ◆ B. E. McMurray Monthly Construction Update reports explicitly stating that many of the change orders had exceeded ten percent;
- ◆ The absence of progress reports from B. E. McMurray that showed project budget, costs-to-date, number of change orders, dollar value of change orders, percentage of budget consumed, and percentage of completion; and
- ◆ Communications from San Bernardino County Counsel.

Notices and reports necessary for the Facilities and Planning Department to budget, manage, and monitor the District's construction and modernization program were either not provided by B. E. McMurray or were incomplete, late, and contained significant errors when provided. These reports, by project, contract, and contractor were the

responsibility of the construction management services firm. The construction management services firm was contractually obligated to provide updated reports that contained the information necessary to monitor construction project progress on weekly, monthly, and as needed basis. The District was unable to provide us with these reports in the chronological sequence and interval required by the construction management services contracts held by B. E. McMurray.

When information on the construction projects was provided by B. E. McMurray Construction Inc. it was often materially incorrect. For example:

1. B. E. McMurray Construction Inc. identified Shawnan Construction cost overruns for grading at Rhodes Elementary School at \$71,115 in the July 21, 2003, Weekly Construction Meeting Minutes. In fact, the cost overruns had exceeded \$102,000 by May 23, 2003. Not only was the amount incorrect, it was eight weeks late.
2. B. E. McMurray Construction Inc. drafted a letter that indicated the cost overruns at Rhodes Elementary School were due to City of Chino project requirements that involved school buildings. The cost overruns appear to be due a change in plans – from installing the storm sewer system in the street to installing it across school and park property. Shawnan Construction was issued a time and materials contract with no stop limits, and because the construction management services firm was not monitoring the contract by tabulating cumulative costs on a daily basis, the overruns occurred.

Besides paying for services never delivered, the District did not provide appropriate construction project oversight because of the lack or absence of accurate, complete, and timely project management reports and the failure of B.E. McMurray to interface an electronic document tracking system as was stipulated in their contracts. The inability to exert oversight in a timely manner could result in violations of law and regulations, substandard construction, project delays, excessive change orders, fewer contractors bidding on its projects, overall increased costs, contractor disputes leading to litigation, and possible reductions in School Facility Program funding. Organizationally, the District could lose the public's confidence, thereby making it more difficult to pass bond measures or make necessary educational changes.

**Recommendation:**

The District Board and staff are commended for taking several of the following steps to correct the control environment's organizational structure necessary for the District and its Facilities and Planning Department to reassert appropriate oversight of the District's construction program.

- ◆ The hiring of a construction program management firm, independent of the project construction management firms, to monitor all the District's construction projects.
- ◆ The use of multiple project construction management firms to distribute the workload.
- ◆ Creation of the Director of Facilities and Construction position that is responsible for onsite inspections and serving as the liaison between the Assistant Superintendent, Facilities and Planning and the construction program manager.

The District should consider asserting its contractual right to audit B. E. McMurray under contract Article 8.1 to determine the amount paid for any undelivered services. In addition, the District should develop procedures for every professional services contract that 1) identifies the deliverables required by the contract; 2) mandates a periodic review to determine if the deliverables are accurate, complete, and promptly delivered; 3) promptly notifies the provider of any shortcomings; and 4) requires that staff report those notices to providers and the details thereof (as an information item) in the Board meetings. This would enable the District to intervene early in programs that may be having problems.

**Finding 5: The construction management firm did not provide the level of staffing required to manage the District's school construction projects as required by their contracts and acted outside of the scope of its contract by hiring firms to construct projects without the required bid process and by issuing *Notice to Proceed* letters to contractors.**

For the month of April, 2003, the auditor compared the staffing required per the open contracts to B. E. McMurray's organization chart for their Chino Valley Unified School District construction projects. Overhead personnel were excluded. B. E. McMurray had eight fewer required positions than the contractually required nineteen staff positions.

In addition, Notice to Proceed letters were compared to determine if the contractually authorized entity issued the letter. B. E. McMurray issued the following Notice to Proceed letters, instead of the District, as required by contract article 1.2.10:

1. Edwin Rhodes Elementary School: B. E. McMurray *Notice to Proceed* letter via facsimile to Shawnan Construction dated May 13, 2003 and from Anker Jacobson, Project Manager authorizing time and material billing for grading.
2. Edwin Rhodes Elementary School: B. E. McMurray *Notice to Proceed* letter via facsimile to Shawnan Construction dated August 6, 2003 and from Anker Jacobson, Project Manager authorizing work on fire laterals.

Besides paying for services never delivered, the lack of construction management personnel could result in substandard construction, project delays, excessive change orders, fewer contractors bidding on projects, and contractor disputes. Organizationally, the District could lose the public's confidence, thereby making it more difficult to pass bond measures or make necessary educational changes.

**Recommendation:**

The District should require the construction manager to submit summary payroll information for each project. The District should compare the summary payroll information to the staffing level required by the construction management contract for each project. Summary payroll information should include the employee's name, position, and total hours worked by project.

Consider implementing a procedure that requires on site inspections in the event that:

- ◆ Reports required by the construction management contract are late or not received.
- ◆ There are unusually large increases in change orders, or a delay in notification of change orders.
- ◆ Complaints are received about project management.

The District should modify its contract language so that the District is the entity issuing the *Notices to Proceed Letters* to the contractors.

**Finding 6: The District did not consistently obtain approval from the Division of State Architects (DSA) when required.**

California Building Standard Administrative Code, Section 4-330 states that construction work, whether for a new school building, reconstruction, rehabilitation, alteration or addition, shall not be commenced, and no contract shall be let until the school board has applied for and obtained from DSA written approval of plans and specifications. Three instances were identified where the District let a contract for construction prior to receiving written DSA approval of the project. They are listed by project; type of project; construction company; date of DSA approval; date of first progress billing.

1. Magnolia Jr. High School Modernization; Modernization Construction; KAR Construction; June 13, 2002 – DSA Approval; December 31, 2001 – first progress billing.



2. Dickson and Marshall Elementary, and Canyon Hills Jr. High School; Modular structure installation; KAR Construction; July 18, 2003 – DSA Approval; August 30, 2002 – first progress billing.
3. Dickson, Eagle Canyon, and Gird Elementary Schools; Modular structure installation; APEX Construction; May 7, 2003 – DSA Approval; May 31, 2001 – first progress billing.

The substantial increase in construction projects over the last few years warranted a proportionate increase in staffing to adequately monitor construction projects. Administrative staff had warned the Superintendent about the dangers of rushing into projects without proper certifications. It appears that much of the correspondence may not have reached the Board members.

The District's internal controls were compromised by its over-reliance on the construction management firm, which affected the relationship between the Board and staff. The construction management firm sent plans to construction firms before receiving DSA approval; hired construction firms without following the required bid process; and provided late notifications of construction activities.

Failure to obtain approval from the Division of State Architect when required by the provisions of Title 24 of the California Building Standard Administrative Code, Section 4-330 may result in the loss of program funds and the loss of public confidence in the Board and management.

**Recommendation:**

Implement procedures that ensure that the provisions of Title 24 of the California Building Standard Administrative Code, Section 4-330 are followed. The Board should examine the tone they set for the District and not allow the attitude of "get it done at any cost." The District should monitor the progress of construction projects and report concerns to the Board.

**Finding 7: Contract language that assigns responsibility for safety precautions and programs for project contractors is not clear as to the responsible party in all contracts.**

Good business practices require that the District clearly assign safety and security responsibilities to its contractors or assume and manage those responsibilities themselves. School construction sites should have barricades, lighting, and security to restrict those sites to authorized District personnel and contractors. Contract language that does not clearly assign responsibility for safety precautions and programs could result in a situation where both parties assume that the other is responsible for this task when in actuality neither one is. In the event someone is injured or dies on a

construction project or site, the District could subject itself to unnecessary liability and legal expenses. This could occur even if the District and construction manager clearly identified their responsibilities because legal action could be initiated to seek “deep pockets.” Finally, additional costs would be thrust upon the District and its taxpayers from increased insurance costs, imposed fines and penalties, and other costs. This would impair the District’s mission to meet its students’ educational needs.

Two instances were found in which construction management contracts contain language that could be interpreted to mean that the District assumes responsibility for safety precautions and programs for project contractors. Those contracts and assignment of responsibility language were as follows:

1. Stadium at Ayala High School agreement for construction management services between the District and B. E. McMurray Construction, Inc., dated June 10, 2003; and
2. Woodcrest Junior High School agreement for construction management services between the District and B. E. McMurray Construction, Inc., dated June 10, 2003:

**Article 1.1.6 Assignment of Responsibility.** The Construction Manager shall provide recommendations to the Owner regarding the assignment of responsibilities for safety precautions and programs, temporary project facilities, and equipment, materials and services for common use by the contractors.

Previous agreements for construction management services contained language that clearly assigned the responsibility for safety precautions and programs to the construction manager. The District changed its boilerplate language in several areas in both the Ayala Stadium and Woodcrest Junior High School contracts from language used in previous contracts. All previous contracts assigned the responsibility for safety precautions and programs to the construction manager.

**Recommendation:**

When modifying contractual language from established boilerplate language, the District should establish a formal review process. A second review should be performed by staff or counsel who was not involved in the negotiations or initial reviews. Second, involve staff from different functional areas in the review of the contract language negotiations because different perspectives often improve the final agreement by identifying conflicting, unclear, or missing language necessary to accomplish District objectives.

**Finding 8: The District did not have written policies or procedures in place for processing construction project payments.**

Public Contract Code 20104.50 states that a governing board must set a standard of prompt payment that any business in the private sector, which may contract for services, should look toward for guidance. Public Contract Code 20104.50 (b) states that any local agency which fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Administrative Regulation 3314 states that the Superintendent or designee shall ensure that requests for progress payments related to construction contracts are processed and paid within 30 days.

Payments must be submitted to the San Bernardino County Superintendent of Schools, School Claims for payment. The County Superintendent's Building Contract Procedures dated April 4, 2002, gives direction on what must be given to school claims in order for payments to be processed. The following is the District's requirements for initial payment set-up that incorporates the Facilities and Planning Department's worksheet into the School Claims' requirements:

- ◆ Construction Contract Awarded
- ◆ School Board Approval
- ◆ Proof of Bid Publication
- ◆ Bid documentation (Bid Matrix)
- ◆ Payment Bond (if contract over \$25,000 or if labor is involved it must be for 100% of original contract price)
- ◆ Performance Bond (100% of original contract)
- ◆ Profile for bond company
- ◆ Division of the State Architect (D.S.A.) Approval
- ◆ Spreadsheet (Facilities and Planning)
  - Contract amount (which will include any change bids)
  - Amount billed for work to date
- ◆ Invoice (*Architect's Certification for Payment* and contractor progress billing)
  - Signed by DSA inspector, architect, construction manager, contractor

- Mathematical accuracy is verified by Facilities and Planning staff
- Asst. Superintendent Facilities and Planning signature authorizing payment

We found two instances, detailed below, that resulted in inefficiencies in the District's construction payment process.

- ◆ The District's Facilities and Planning Department did not have written procedures for processing construction contractor payments, but relies on School Claims initial contract payment submittal checklist.
- ◆ The District submits incomplete initial contract payment requests as defined by School Claims initial contract payment checklist. Based on our review of initial payment requests submitted to School Claims by the District the documents missing from the initial contract payment requests cause multiple requests to clear the exceptions. This decreases efficiency and increases costs for both School Claims and the District.

Failure to formulate a set of written procedures unique to the District's organization may result in delay of payment processing in the event of staff turnover or absence. These possible delays of payments might result in a loss of public confidence in the District. Also, delays in payments may result in a payment of interest to the contractor equivalent to the legal rate, which might result in substantial cost to the District.

### **Recommendation:**

The District should formulate their own set of written procedures by incorporating the County Superintendent's Building Contract Procedures with procedures and requirements unique to their own organization. These written procedures will streamline the process and will add an effective training tool for any new staff members. This will create a set of policies and procedures that will facilitate timely payments and should prevent increased costs to the District in the form of interest payments.

### **Finding 9: There were no controls in place to ensure that fully executed contracts were in place before construction was started.**

The District received invoices with period ending dates that occurred before an executed contract was signed. The District did not maintain good business practices or control over construction projects by allowing construction to begin before a contract was in place.

We found fifty-one instances on eighteen invoices in which construction or construction related activities were started before a fully executed contract was in place based on the

documents provided. They are listed by task; company; contract status; construction projects; progress billing date or date contract performance started.

1. Constructability Review; B.E. McMurray Construction Inc.; No contracts in place for constructability reviews or tasks; Woodcrest (Liberty) ES, Woodcrest JHS, Birdfarm ES, Don Lugo HS, Ayala HS Stadium for which the following billings were received:
  - o December 31, 2002
  - o January 31, 2003
  - o February 28, 2003
2. Constructability Review; B.E. McMurray Construction Inc.; No contracts in place for constructability reviews or tasks; Woodcrest (Liberty) ES, Woodcrest JHS, Birdfarm ES, and Don Lugo HS for which the following billings were received:
  - o March 31, 2003
  - o April 30, 2003
  - o May 31, 2003
3. Constructability Studies; B.E. McMurray Construction Inc.; No contracts for constructability reviews or tasks; Woodcrest (Liberty) ES, Birdfarm ES, and Don Lugo HS for which the following billings were received:
  - o June 30, 2003
  - o July 31, 2003
  - o August 31, 2003
  - o September 30, 2003
  - o October 30, 2003
  - o November 30, 2003
4. School Modernization; KAR Construction; contract executed January 7, 2002 Magnolia Jr. High School Modernization; December 31, 2001 – first progress billing.
5. Modular Building Installation; MODCRAFT Construction; contract executed September 5, 2002; Dickson and Marshall Elementary, and Canyon Hills Jr. High School; August 30, 2002 – first progress billing.
6. School Construction; Bogh Construction; contract executed October 14, 2002; Liberty Elementary School; September 25, 2002 – first progress billing.
7. Street Improvements; Shawnan Construction; contract executed May 19, 2003; Rhodes Elementary School; May 2, 2003 – first progress billing.

8. Modernization; B. E. McMurray Construction; contract executed June 10, 2003; Ayala Stadium; March 1, 2003 – performance of contract started.
9. School Construction; B. E. McMurray Construction; contract executed June 10, 2003; Woodcrest Junior High School; June 5, 2003 – performance of contract started.

The lack of control over construction projects, which allowed construction to commence before contracts were in place, could put the District in a precarious position of paying for services never authorized. The construction management personnel failed to maintain complete control of the construction sites by allowing contractors to perform construction without a contract in place or notice to proceed issued by the District. Organizationally, the District could lose the public's confidence, thereby making it more difficult to pass bond measures or make necessary educational changes.

**Recommendation:**

Implement procedures to ensure that executed and approved contracts are in place before work is started. The District should reject payment submittals from contractors when supporting billing documents indicate that work has been performed before the contract execution date. Also, consider asserting the District's contractual right to audit B. E. McMurray under contract Article 8.1 to determine the amount paid for any undelivered services.

**Finding 10: The District's internal controls were either not adequately designed or were not operating as designed.**

The District's control environment, risk assessment, monitoring, information and communication components of the internal controls system were either inadequately designed or not operating as designed to enable the controls to function. The control environment did not establish a framework that supported the exercise of appropriate and complete oversight of the District's construction projects by District Facilities and Planning staff.

The control environment is the foundation of all the other internal control components. It is influenced by leadership at every level, especially by the "tone at the top", in establishing the control consciousness. Factors considered include:

- ◆ Ethical values of its people;
- ◆ Competence of its people;
- ◆ Management's philosophy and operating style;
- ◆ Assignment of authority and responsibility by management;

- ◆ How it organizes its people; and
- ◆ The attention and direction provided by its Board.

The tone at the District's top is a major factor for a well functioning control environment. In the District's case, the mottos that were a consistent theme in interviews, internal documents, emails and notes, external documents and emails, and reviews of video taped Board meetings were "get it done at any cost" and "let dirt fly." Based on those reviews, interviews, and observations, there is indication staff warnings were muted by Board members who were involved in day-to-day construction activities and who publicly and privately sided with the B. E. McMurray construction firm over staff. Another important factor that helped create a less than ideal control environment was that the Superintendent's Office edited the information the Board received regarding staff concerns. The Board in turn expressed dissatisfaction of failures in staff performance.

The District lacked sufficient experienced, construction-qualified staff to manage the rapid ramp-up of construction projects. This was exacerbated when the Superintendent's Office removed the Facilities and Planning Department from the Business & Operations Office in order to speed construction decisions. Unfortunately, it also excised the Facilities and Planning Department from much of the administrative support the Business & Operations Office provided.

The District did not perform a risk assessment to identify the risks relevant to the District's objectives. The District's main objectives were to rapidly build new schools to relieve overcrowding and return the District to a traditional school year. Internal risks that should have been analyzed were the ability of the District to monitor construction managers, project expenditures, construction quality, and contract compliance while performing their existing duties. External risks should have included an analysis of the risk of using a single construction manager to manage and complete the different projects.

The information and control component of internal controls makes it possible to run and control the business of the District. An effectively functioning entity will identify, gather, and communicate important information in a time frame that enables it to carry out its responsibilities. Information that is delayed too long loses its ability to make a difference. Information that is not communicated cannot make a difference. Both conditions existed at the District.

Based on the documents reviewed, staff was late in demanding deliverables from B. E. McMurray. Once staff started demanding contractually required reports, it took multiple requests to obtain those reports. Then, the reports were not complete and the process would repeat itself. The level and frequency of demands for contractually required reports decreased dramatically after the Facilities and Planning Department was removed from the Business & Operations Office. Senior staff's concerns that were

reported through regular communication channels of the District to the Superintendent's Office were too often either not provided to the Board in their original form or not provided at all. Even though the Board received staff concerns in a diluted form from the Superintendent's Office, it did not always respond to indications of a construction program that was not following State laws and regulations, as reported under Finding 4.

There were other areas that were amiss within the control environment that were identified through interviews and reviews of information communicated via reports, memoranda, video tapes, emails, and District personnel's meeting notes.

1. Contracts were executed before approval by the Board:
  - a. Ayala Stadium: the construction management agreement executed on June 10, 2003, requires the project be completed over a period of eight months (Article 6.1.1). An additional three months beginning March 1, 2003, predating the executed contract extends the performance period to eleven months. Internal District emails indicate that construction was well under way three months before the contract execution and award date.
  - b. Woodcrest Junior High School: the construction management agreement executed on June 10, 2003, requires the project be completed over a period of eighteen months (Article 6.1.1). An additional five days beginning June 5, 2003, extends the performance period by predating the executed contract.
  - c. Michael G. Wickman Elementary School: the construction management agreement was executed on September 8, 2000, thirteen days before its unanimous approval by the Board on September 21, 2000.
  - d. Edwin Rhodes Elementary School: the construction management agreement was executed on September 8, 2000, thirteen days before its unanimous approval by the Board on September 21, 2000.
  - e. Construction Oversight Contract was signed on November 4, 2003, before its unanimous approval by the Board on December 18, 2003.
2. Individual members of the Board acted outside their Board roles regarding the District's construction program and issues related to individual projects and staffing.



3. The Board relied on the construction management firm over staff as documented. One example occurred at the September 18, 2003 meeting in which Board member Truett praises B. E. McMurray and then publicly berates staff.
4. The Board disregarded competitive evaluation ratings prepared by staff in the March 9, 2000 and April 20, 2000 Board Meetings regarding the prequalification of construction management services firms.
5. The Superintendent edited information intended for the Board as confirmed by former Superintendent Bloch.
6. The Superintendent attempted to pay contractors without contracts as documented by the San Bernardino County Superintendent of Schools, School Claims Office and the District's Orbach & Huff report.
7. The District's Facilities & Planning Department submitted documentation to pay contractors when payment information required by the School Claims was incomplete.
8. Facilities and Planning Department was removed from the Business & Operations Office without an appropriate oversight or increase in staffing.
9. The District management failed to review the District's organization and failed to assure adequate staffing levels and experience for an exponentially expanding construction program.

The control environment did not establish conditions in which District staff were both enabled and required to perform adequately regarding the District's construction and modernization program.

**Recommendation:**

The District is commended for already taking several steps to correct the control environment's organizational structure.

- ◆ The hiring of a construction program management firm, independent of the construction management firms, to monitor all the District's construction projects.
- ◆ The use of multiple construction management firms to distribute the workload.
- ◆ Creation of the Director of Facilities and Construction position that is responsible for onsite inspections and serving as the liaison with the Superintendent, Facilities and Planning Department and the construction program manager.

The District should develop a Policy and Administrative Regulation that addresses the performance of risk assessments for new programs or changes in existing programs. It should require that the District develop objectives for those programs, identify the associated risks, and document a plan to manage those risks. The District should implement a written procedure and use a checklist to make sure contracts are approved before contracts are executed. Overall, for all expenditures, formalize current practice into written procedures, with modifications as necessary.

The District should consider making use of its California School Boards Association membership benefits, such as seminars for board members and staff to help assure good governance and understanding their roles in the District. The District should also consider restoring Facilities and Planning to the purview of the Assistant Superintendent of Business & Operations. Further, the District should develop appropriate methods for Board response when it feels staff is not performing adequately and develop appropriate avenues for staff use when the Board or the Superintendent's Office is perceived to be interfering with appropriate job performance or for the good of the District. We emphasize that this reference is to the Board as a single entity as distinguished from the individual Board members.

Individual Board members should also consider that their interactions with management and staff, both public and private, could have the unintended effect of reducing the candor and willingness of staff to bring important issues to the Superintendent and the Board.

We would like to thank both the County Superintendent of Schools and the Chino Valley Unified School District's Board, management and staff for their professionalism, assistance, patience, and candor during this engagement.