

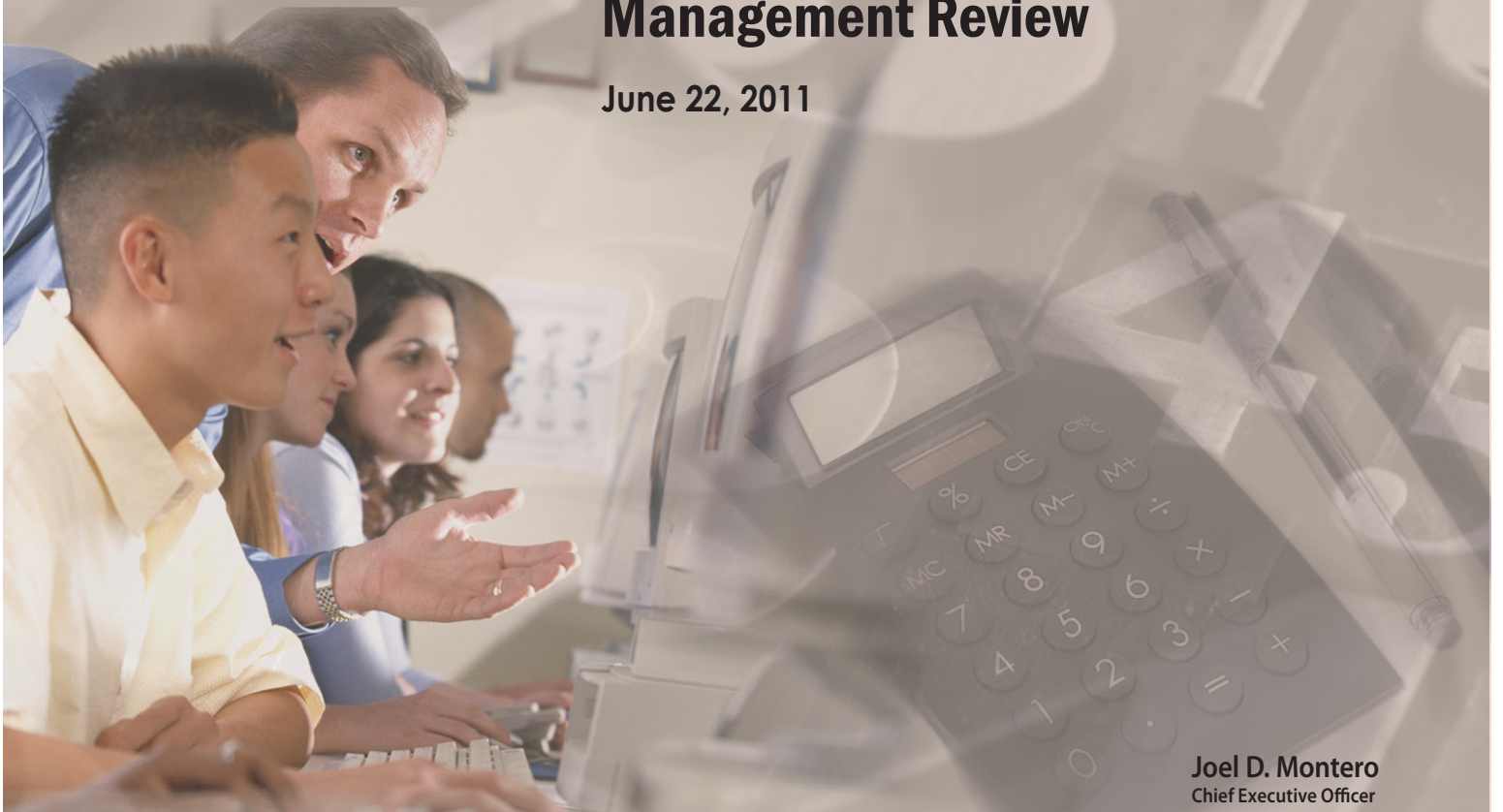


CSIS California School Information Services

Rio School District

Management Review

June 22, 2011



Joel D. Montero
Chief Executive Officer





June 22, 2011

Barbara Wagner, Interim Superintendent
Mark Krueger, Interim Superintendent
Rio School District
2500 E. Vineyard Avenue
Oxnard, CA 93036

Dear Interim Superintendents Wagner and Krueger:

In March 2011, the Rio School District governing board and the Fiscal Crisis and management Assistance Team entered into an agreement for a management assistance review. Specifically, the agreement stated that FCMAT would perform the following:

The primary focus of this review is to provide the Rio School District Board of Trustees with reasonable assurance based on the testing performed that adequate management controls are in place with regard to bidding and awarding contracts. Specific review objectives will include evaluating the policies, procedures, and internal controls related to the administration of outside contracts.

- Sample outside contracts and vendor invoices to determine if invoices were for services and materials provided and fit within contractual agreements.
- Review contracts to ensure that contracts for public work projects in excess of \$15,000 or contracts for material or supply purchases in excess of \$76,700 meet bidding requirements outlined in CA Public Contract Code 20111.
- Review professional service contracts where bidding may not be required (Government Code Section 53060) to ensure that board policies were followed with regard to bidding process.
- Evaluate the division of labor and segregation of duties between administration and staff with regard to bidding and award of outside contracts.
- Provide recommendations for improvement in district policy and practices with regard to bidding and award of outside contracts based upon best practices.

The FCMAT review included a test sample of documentation for district authorized outside services contracts, invoices, bid documents, and other necessary documentation required to validate or refute allegations regarding potential misappropriation of funds or illegal practices.

This report contains the study team's findings and recommendations.

FCMAT

Joel D. Montero, Chief Executive Officer

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Administrative Agent: Christine L. Frazier - Office of Kern County Superintendent of Schools

We appreciate the opportunity to serve you and we extend our thanks to all the staff of the Rio School District for their cooperation and assistance during fieldwork.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joel D. Montero', with a stylized, cursive script.

Joel D. Montero

Chief Executive Officer

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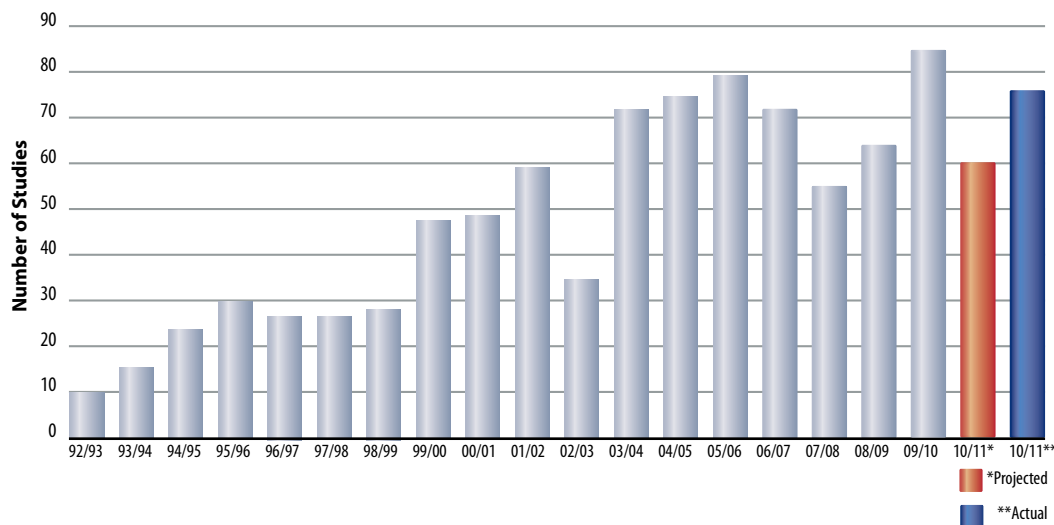
About FCMAT

FCMAT's primary mission is to assist California's local K-14 educational agencies to identify, prevent, and resolve financial and data management challenges. FCMAT provides fiscal and data management assistance, professional development training, product development and other related school business and data services. FCMAT's fiscal and management assistance services are used not just to help avert fiscal crisis, but to promote sound financial practices and efficient operations. FCMAT's data management services are used to help local educational agencies (LEAs) meet state reporting responsibilities, improve data quality, and share information.

FCMAT may be requested to provide fiscal crisis or management assistance by a school district, charter school, community college, county office of education, the state Superintendent of Public Instruction, or the Legislature.

When a request or assignment is received, FCMAT assembles a study team that works closely with the local education agency to define the scope of work, conduct on-site fieldwork and provide a written report with findings and recommendations to help resolve issues, overcome challenges and plan for the future.

Studies by Fiscal Year



FCMAT also develops and provides numerous publications, software tools, workshops and professional development opportunities to help local educational agencies operate more effectively and fulfill their fiscal oversight and data management responsibilities. The California School Information Services (CSIS) arm of FCMAT assists the California Department of Education with the implementation of the California Longitudinal Pupil Achievement Data System (CALPADS) and also maintains DataGate, the FCMAT/CSIS software LEAs use for CSIS services. FCMAT was created by Assembly Bill 1200 in 1992 to assist LEAs to meet and sustain their financial obligations. Assembly Bill 107 in 1997 charged FCMAT with responsibility for CSIS and its statewide data management work. Assembly Bill 1115 in 1999 codified CSIS' mission.

AB 1200 is also a statewide plan for county office of education and school districts to work together locally to improve fiscal procedures and accountability standards. Assembly Bill 2756 (2004) provides specific responsibilities to FCMAT with regard to districts that have received emergency state loans.

In January 2006, SB 430 (charter schools) and AB 1366 (community colleges) became law and expanded FCMAT's services to those types of LEAs.

Since 1992, FCMAT has been engaged to perform nearly 850 reviews for LEAs, including school districts, county offices of education, charter schools and community colleges. The Kern County Superintendent of Schools is the administrative agent for FCMAT. The team is led by Joel D. Montero, Chief Executive Officer, with funding derived through appropriations in the state budget and a modest fee schedule for charges to requesting agencies.

Introduction

Background

The Rio School District was formed in 1885 and serves students in preschool and grades K-8. The district is located within the city limits of Oxnard. It serves approximately 4,500 pupils from portions of Oxnard and unincorporated areas of Ventura County. The unincorporated community of El Rio is primarily agricultural and hosts several small to medium size businesses in addition to some limited commercial development. While most California school districts have experienced declining enrollment in recent years, Rio's enrollment has increased 8.9% from 2006-07 to 2009-10. Several development projects are either under way or in review including the 1,500 new homes built in the River Park subdevelopment, with another 1,500 homes remaining to be built in the near future. Another large residential development is Oxnard Villages, where 1,500 homes are in the planning stages.

Rio Del Mar Elementary School was opened in fall 2006 to accommodate growth in the first phase of the River Park development. It is anticipated that another elementary school, River Park West, will be needed by 2015-16 as the district nears capacity at Rio Del Mar. The State Architect has approved the district's plans for River Park West. These plans must be renewed after one year to address any changes to the original plans or address any new building codes adopted since the original date of approval.

Since opening the new elementary school in 2006, the district has added facilities to other existing schools those additions include modular classrooms at Rio Vista Middle School and science labs at Rio Del Valle Middle School. The majority of construction contracts issued by the Facilities Department in the last three years have been for the maintenance and modernization of existing facilities.

Continued enrollment growth will necessitate the construction of new schools. In an attempt to ensure that policies and procedures are in place for bidding and award of outside contracts, the governing board has requested FCMAT to review the adequacy of management controls, internal controls including segregation of duties, and that outside contracts are in accordance with the Government Code, Public Contract Code and the California Uniform Public Construction Cost Accounting Act (CUPCCA).

Study Guidelines

FCMAT visited the district on March 15 and 16, 2011 to conduct interviews with district staff, collect data and review documents. This report is the result of those activities and is divided into the following sections:

- Executive Summary
- General Purchasing and Bidding Requirements
- Contract Classifications
- Internal Controls
- Contract Administration
- Other Findings - Potential Conflict of Interest
- Appendices

Study Team

The study team was composed of the following members:

Debi Deal, CFE	Bruce B. Hancock
FCMAT Fiscal Intervention Specialist	Consultant
Los Angeles, California	Hancock Gonos & Park
	Sacramento, California

Luisa M. Park	Laura Haywood
Consultant	FCMAT Public Information Specialist
Hancock Gonos & Park	Bakersfield, California
Sacramento, California	

Executive Summary

Rio School District has experienced several high profile events over the last three years. First a board member was arrested, convicted and incarcerated on felony violations. Then the district's superintendent was arrested and subsequently convicted for a misdemeanor violation.

After several months of community unrest regarding the continued employment of the superintendent, four of the five board members were replaced in the general election. With several allegations of wrongdoing particularly with the management and award of contracts, the governing board requested that FCMAT review district policies, procedures and internal controls related to the administration of outside contracts. Subsequent to completion of that FCMAT study the superintendent was placed on administrative leave and the director of facilities and director of fiscal services have resigned, having accepted employment in other school districts.

Most construction contracts issued by the Facilities Department in the last three years have been for the maintenance of existing facilities, such as replacement of termite infested and dry rot beams and posts, repair of the library roof at Rio del Valle Middle School, plumbing at Rio Vista Middle School, asphalt demolition and removal at Rio Rosales School, and well pump modifications at Rio Del Valle School.

The district built two new elementary schools and one intermediate school between 2004 and 2007. Two of these schools were partially funded through a mitigation agreement with a developer and included state funding through the School Facilities Program administered by the Office of Public School Construction (OPSC) for the State Allocation Board (SAB).

According to the director of facilities, all three projects have been audited and closed out by the OPSC. FCMAT has verified that two of these projects are closed and the third is pending OPSC closeout review. Therefore, these three projects have not been included as part of the FCMAT review.

The focus of this review is to determine if the Rio School District has administered contracts in accordance with the Public Contract Code, the Government Code and the California Uniform Public Construction Cost Accounting Act (CUPCCA). Under CUPCCA guidelines, the district may use alternative bidding procedures when performing public construction projects by vendor contract. The governing board adopted the CUPCCA guidelines at a June 21, 2005 public meeting.

It was revealed during the course of this study that the district's superintendent and the Boys and Girls Club of Greater Oxnard and Port Hueneme (BGCOP) Chief Professional Officer – then and now a sitting Rio school board member – signed a Memorandum of Understanding (MOU) between the two agencies to provide an after-school program that may represent a potential conflict of interest.

Findings and Recommendations

General Purchasing and Bidding Requirements

Purchasing

The authority to contract is the responsibility of the governing board. Education Code (EC) Section 17605 authorizes the governing board to delegate authority to purchase materials, supplies, equipment and services; however, this authority does not supersede purchases in excess of the amount specified in the Public Contract Code (PCC) Section 20111. Delegated authority by the governing board is limited by time, money and subject matter. Under EC 17605, all transactions must be reviewed by the governing board at least every 60 days. The Rio school board has delegated purchasing authority to the Business Office. Under the direct supervision of the business office, the purchasing assistant and Facilities Department prepare purchase orders and bid documents.

The purchasing function should be standardized and unbiased, with a focus on product quality and securing the best price. District Board Policy 3300(a) formalizes the purchasing authority and procedures but does not have an accompanying administrative regulation that specifies requirements, steps and procedures for staff to follow. The administrative regulations should document the purchasing process and establish the positions authorized to issue purchase orders that obligate the district. Governing boards can authorize purchase orders either before or after they are sent to a vendor. Flexibility with these options is established by the board and should be stated in board policy.

Board policy may establish lower limitations for formal and informal bidding procedures or quotations. Currently, the district has no established guidelines for informal requests for proposals (RFPs) or requests for quotations (RFQs.) The board policy and administrative regulations should require informal quotes to be obtained for purchases and/or services that reach certain dollar thresholds. They should also include clear guidelines for informal bidding procedures and mandatory training for all employees associated with the purchasing function.

Piggyback purchasing is a process of procurement utilizing another public entity's formal bid award or RFP. The formal bid documents or RFP must state that the vendor agrees to allow other public agencies to purchase at the same terms and conditions as the original bid during the period of time that the bid is in effect. The district utilizes piggyback purchasing appropriately to buy bulk paper and other school supplies.

Bidding Requirements

Under PCC 20111, formal bid limitations are increased by the superintendent of public instruction on January 1 of each fiscal year to reflect the change in the implicit price deflator. The statutory bid limit for the purchase of goods and services is \$78,900 effective January 1, 2011 and is applicable to equipment, materials, supplies and services except construction services and public projects.

Contract Classifications

School districts enter into many different types of contracts. Depending on the type of contract, various education, public contract or government codes dictate the requirements for issuance of a binding agreement. For example, construction contracts fall under Public Contract Code and have specific dollar limitations and requirements for competitive bidding. Many other types of contracts are subject to certain guidelines or may have no requirements other than the district's board policy.

Purchase Order Contracts

Districts use purchase orders to purchase materials, goods, equipment and services. General purchasing falls under PCC 20111.

Public Works Contracts

Public work projects, such as new construction, renovation (excluding routine maintenance), improvement, or demolition of publicly owned, leased or operated facilities are limited to \$15,000. However, PCC 22000-22032 authorizes a public agency to adopt an alternative bidding procedure for public works contracts.

The California Uniform Construction Cost Accounting Procedure (CUCCAP) raises the bid limit from \$15,000 to \$30,000 for public projects. Public projects can be performed by the employees of a public agency by force account (with certain limitations), negotiated contract or purchase order. Public projects less than \$125,000 may be let by informal bidding procedures subject to all of the provisions in PCC 22033. Public projects over \$125,000 must be let by contract using the formal bidding procedures (PCC 20115, 22000-22032(a)(b), and 22033).

In 2005, the governing board passed a resolution and properly notified the State Controller of its election to implement CUCCAP. The governing board updated Board Policy 3311, raising the respective funding thresholds to \$25,000 and \$100,000. In October 2007, the threshold limits were revised to \$30,000 and \$125,000.

On December 11, 2008, the district staff presented a collection of revised policies for board adoption. According to staff, a revised BP 3311 that called for the district to follow the original PCC provisions rather than the more flexible CUPCCA guidelines was mistakenly included in the package of policies and was formally adopted by the board that evening. The new policy superseded the existing board policy and again the district was subject to the lower \$15,000 threshold for informal bidding and formal bidding procedures for projects above this dollar amount.

In preparation for the FCMAT study, staff noticed the error and on March 24, 2011 the board adopted a revised board policy reinstituting the CUPCCA provisions. For the 27 months between December 2008 and March 2011, the Facilities Department continued to follow the CUPCCA guidelines. As a result, the district may have exceeded its funding authority for one project.

Contracts Not Subject to Competitive Bidding

Several categories are exempt from the competitive bidding process as defined in the PCC, EC and/or GC:

- Emergencies: When repairs or purchases are necessary to prevent discontinuance of classes or avoid danger to life or property (PCC 20113).

- **Data Processing Equipment:** Computers, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus. This is not applicable to contracts for construction or for procuring any product that is available in substantial quantities to the general public (PCC 20118.1).
- **Instructional Materials:** Textbooks, library books, educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals (PCC 20118.3).
- **The State List:** Purchases made through the Department of General Services or utilizing its California Multiple Award Schedule (CMAS) for materials, equipment, or supplies (EC 17595 and PCC 10298).
- **Federal Surplus Property:** Competitive bidding is not required when purchasing certain federal surplus property; however, some restrictions apply (EC 17602).
- **Transportation Services:** A contract for transportation services may be exempt if it is with an entity other than common carrier or a municipal transit system (EC 39802).
- **Piggyback Bids:** Utilizing another public entity's formal bid award or RFP. The formal bid documents or RFP must state that the vendor agrees to allow other public agencies to purchase at the same terms and conditions as the original bid during the period of time that the bid is in effect. Does not apply to public works projects (PCC 20118).
- **Insurance:** This includes the purchase of insurance policies for property, liability, group and life coverage (GC 989-990; EC 35208).
- **Energy Service and Energy Management Contracts:** Although competitive bidding is not required, K-12 districts may use an RFP process for energy conservation contracts (GC 4217.12).

Contracts Subject to Certain Provisions

Professional Experts

Professional expert applies to a person who is specially trained, experienced and competent to perform specialized services. This category includes financial, economic, accounting, engineering (see discussion below in Other Professional Services), environmental, landscape architect, land surveying, construction project management, legal, or administrative matters (GC 4529.10 - 4529.12).

Other Professional Services and Advice

This category includes attorneys, architects, and accountants. However, all architectural and engineering services must be procured pursuant to a fair, competitive selection process. Other regulations may require competitive bidding as is the case when securing state funding through the State Allocation Board. Depending on the nature of the services involved, other types of services may include security alarm monitoring, administration of a campus bookstore, or sewage disposal service (GC 4529.10 and 4529.12; 53060).

Internal Controls

An integral part of an organization's internal control system involves establishing effective preventive controls in each sector of operations. Internal controls are the principal mechanism for preventing and/or deterring fraud or illegal acts. Illegal acts, misappropriation of assets or other fraudulent activities can include an assortment of irregularities characterized by intentional deception and misrepresentation of material facts.

Effective internal control processes provide reasonable assurance that a district's operations are effective and efficient, that the financial information produced is reliable, and that the district operates in compliance with all applicable laws and regulations. The internal control elements provide the framework for an effective fraud prevention program. An effective internal control structure includes the policies and procedures used by the district staff, adequate financial and information systems, the work environment, and the professionalism of employees.

Although internal controls cover an array of procedures and guidelines ultimately designed to safeguard assets, the underlying tone of management is also important in fraud deterrence. Competent management exhibiting high ethical values sets the example for employees to follow.

Policies and Procedures

Policies and procedures give the staff guidance and structure in processing transactions. Board policy establishes the framework and provides legal references. The accompanying administrative regulations detail processes for staff to follow and maintain compliance with the board policy. Other resources available to staff include desk manuals and other reference materials.

A fundamental element of internal control is the segregation of certain key duties. Adequate segregation of duties reduces the likelihood that errors will remain undetected by providing for separate processing by different individuals at various stages of a transaction and for independent review of the work.

The principle underlying segregation of duties is that no employee or group should be in a position to commit and conceal errors or fraud in the normal course of duties. In general, the principle of segregation of duties entails separating the custody of assets, authorizing or approving related transactions affecting those assets, recording or reporting related transactions, and executing the transaction activity. If more than one of these functions reside with one employee, the possibility of theft increases.

In each phase of a contract, the district should ensure that policies and procedures are in place and supported by proper approvals and documentation. In addition, segregating duties and functions within each phase strengthens internal controls.

Several steps are involved prior to entering into a formal contract. In general, these activities include recognition of the need, notice of intent to contract, development of specifications and the award criteria.

Once a contract has been awarded, contract administration and oversight is essential. Without proper oversight and segregation of duties, the district can be at risk for excessive change orders, product substitution or mischarges for labor and materials.

Contract Administration

The district has the processes and procedures involved in procuring and administering professional services, public projects, materials, supplies, equipment and services in place; however, adherence to these procedures has been inconsistent. The district should establish written procedures and hold staff accountable.

Until recently, the district had not provided training to its staff to ensure that board policies are followed. In August 2010, members of the Fiscal Services Division provided training for all principals, directors, supervisors and their secretaries on the district's business procedures. In November 2010, the assistant superintendent for business and the district's legal counsel conducted a training session for key employees on the purchasing procedures and bidding threshold for public construction projects as defined in the CUPCCA. The most recent training was in February 2011, when the director of accounting and assistant superintendent of business conducted "Budget and Purchasing 101" for all district personnel who have purchasing authority. Training efforts such as these are valuable and should continue annually.

Reviewing board policies annually ensures that changes in law are properly updated and reflected in board policy. This type of review would have revealed the error that allowed the CUPCCA process to lapse.

Professional service contracts such as architectural, landscape architectural, engineering, environmental, legal services, financial services, accounting services, land surveying and construction project management firms are not subject to competitive bidding requirements detailed in Public Contract Code 20111. Instead, the district is subject to the provisions of GC 4526, which allows selection based on demonstrated competence and professional qualifications necessary to satisfactorily perform the services required.

District staff is required to negotiate a contract with the best qualified firm offering professional services. It is best practice for a school district to engage in a request for qualification or request for proposal (RFQ/RFP) process for professional services contracts. GC 4526 does not dictate the means by which a district ensures that the selected professional is the most competent and has the qualifications necessary to satisfactorily perform the services, but there is an expectation that districts avoid any unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration.

FCMAT reviewed 21 professional service contracts. The district utilized a RFQ/RFP process on two architectural and one construction management service contracts. District staff was unable to provide supporting documentation to indicate that a selection process had occurred on the remaining 18 professional service contracts.

The district should adopt a RFQ/RFP procedure for all professional services contracts to ensure that the selection of professional service contracts meets the intent outlined in GC Sections 4526-4528. Many local agencies throughout California have adopted this method of soliciting professional services to achieve these goals.

For the three professional service contracts that utilized the RFQ/RFP process, staff provided the governing board with the number of individual firms that submitted proposals and a recommendation regarding which firm the board should select to provide the service. However, the board agenda

The district should adopt a RFQ/RFP procedure for all professional services contracts to ensure that the selection of professional service contracts meets the intent outlined in GC Sections 4526-4528.

item did not explain the criteria staff used to reach a recommendation. Instead, the agenda item simply recommended the assignment of a specific consultant to an upcoming project. Information that the board should receive regarding the criteria and the selection process followed includes:

- The date of advertising
- Outreach efforts
- The number of firms contacted
- Criteria and weighting factors for the paper screening
- The selection committee membership
- The top three firms in rating order
- Dates of interviews
- The criteria for the final selection

Contracts for inspection services, community facilities district, and topographic mapping did not include evidence that a selection process was utilized. The dollar values for the contracts were less than \$15,000. Therefore, staff may have considered these services to be classified as a “special service” per GC 53060, which does not require a solicitation process.

Most of the professional service contracts reviewed did not include evidence that they were subsequently approved and ratified by the board. Education Code 17604 states:

“... no contract made pursuant to the delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board.”

However, according to staff interviewed, the Ventura County Office of Education will not release funds to vendors without proof of board approval. District staff provided FCMAT with a list of items required by the Ventura COE to release funds, which includes board approval of the contract. This requirement provides some assurance that approval is obtained.

The district should ensure that all contracts are approved or ratified by the governing board and copies of the minutes should accompany the contract documents.

Special Services Contracts

As previously mentioned, special services contracts are exempt from competitive bidding. GC Section 53060 authorizes the district to contract for special services for advice in financial, economic, legal, or administrative matters, if said contractor is specifically trained, experienced and competent to render the special consultant services. Some of the contracts reviewed were of this nature; however, FCMAT was unable to determine if these contracts were approved or ratified by the governing board. Most of the contracts obtained from the district and reviewed by FCMAT were for special services. Best practice is for the district to provide its governing board with a list of contracts, the dollar value for each contract and a description of service so that the board has good understanding of where district funds are spent.

Construction Contracts

In the past two and half years the district has contracted for the construction of science labs at Rio Del Valle Middle School and for an addition of modular classrooms at Rio Vista Elementary School, which included site work through a formal competitive bid process. The district provided

supporting documentation that indicates that the district adhered to PCC Section 22002 and applicable board policies. In each case, the district advertised, held a bid opening, selected the lowest responsible bidder and obtained board approval. Each contract conformed to all bid requirements, including those for bid bonds and insurance.

The district contracted for other repair work at existing sites and to retrofit gym equipment at Rio Vista Middle School. These contracts are subject to the CUPCCA provisions that enable the district to seek construction services by informal bidding procedures. This process authorizes the district to seek three written quotations for any work that costs between \$30,000 and \$125,000. For projects less than \$30,000, the district can obtain three informal quotes. A provision of the informal bidding procedures under CUPCCA requires the district to issue an annual notice inviting contractors to be placed on the list of available contractors in various trade categories. This notice is to be advertised and mailed to construction trade journals as specified by the CUPCCA.

The district provided evidence that the requirement for annual notification has been followed since the CUPCCA adoption in 2005. However, the district was unable to produce an annual list of contractors in each trade category from 2008 through 2011. Instead, the district provided a cumulative list of contractors. As a result, FCMAT was unable to verify that two of the contractors selected for construction services were on the list of eligible contractors to perform that specific trade at the time of their selection. Therefore, these two contracts may have failed to adhere to the informal bidding procedures set forth in the CUPCCA.

FCMAT reviewed ten other contracts. Four contracts required that the district seek three informal quotes and six contracts required that the district obtain three written quotes. With the exception of one contract, the district did not provide sufficient evidence to support that the process was followed. Nine of the selected contracts are within the formal bid levels established by the governing board. One contract is in violation of the Public Contract Code that requires formal bidding for any contract that exceeds a threshold of \$76,700 as adopted by the governing board on December 11, 2008.

Currently, the director of facilities seeks quotes or informal written quotations and meets individually with potential contractors to discuss the scope of work and conduct a job walk. Notifying all interested contractors of a specific time and place for a job walk would ensure that all potential contractors received consistent information regarding the project.

PCC Section 20116 prohibits splitting or separating into smaller work orders or projects any work, project, service or purchase that requires competitive bidding for the purpose of evading the law. FCMAT found no evidence indicating that the district has violated this provision in law.

Construction Expenditures

The district provided FCMAT with a list of all construction expenditures for fiscal years 2008-09 through 2010-11. In reviewing the expenditure list, the team noted that the district had not provided several contracts that appear to be subject to the CUPCCA provisions.

These contracts are for the repair of gym floors, removal of portables from specific sites, transportation of portables and plumbing. Subsequently, FCMAT requested and received copies of the contracts (purchase orders) for these projects. However, the district did not provide supporting evidence that the CUPCCA guidelines were followed. Specifically, no evidence was provided to indicate that the district had obtained either three informal quotations or three written quotations as required by PCC Section 22032. It should be noted that the large construction contracts

on this list had already been reviewed and had adhered to the Public Contract Code for formal bidding.

The study agreement with FCMAT requires a review of contracts against vendor invoices to determine if invoices were for services and materials provided and fit within contractual agreements. The district provided very few invoices to make this comparison, but the invoices received showed appropriate services and materials.

The district has board policies governing construction contracts and informal bidding procedures, and generally has adhered to the Public Contract Code, the Government Code and the California Uniform Public Construction Cost Accounting Act. However, the district's record keeping is inconsistent. The documentation provided to FCMAT did not disclose the protocol for purchasing goods and services or the selection of service providers. District staff referenced the CUPCCA guidelines often during interviews and they believe that they follow CUPCCA appropriately. However, written Rio School District procedures detailing the internal process of procurement, selection, approval and award do not exist. The staff training on CUPCCA provided in late 2010 should be supplemented with a procedure manual that covers internal implementation.

Recommendations

The district should:

1. Establish written procedures and hold staff accountable for adherence to district procedures and for administering professional services, public projects, materials, supplies, equipment and other services.
2. Continue providing annual procurement training for staff involved in purchasing goods and/or services.
3. Review board policies annually and update them to reflect changes in law.
4. Require staff to provide more information to the board detailing the internal process of procurement and final selection criteria.
5. Ensure that all contracts are approved or ratified by the governing board and that copies of the minutes accompany the contract documents.
6. Follow CUPCCA regulations for informal bidding requirements. Adopt a RFQ/RFP procedure for all professional services contracts to ensure that contract selection meets the intent outlined in GC Sections 4526-4528.
7. Maintain a list of vendors for each trade category by bid year and retain detailed records for each RFP/RFQ for every informal bid.
8. Review current record retention systems and make improvements as necessary. Make documentation regarding formal and informal solicitation, bidding, approval and award readily accessible for all contracts.

9. Notify all interested contractors of a specific time and place for a job walk to ensure that all potential contractors receive consistent information regarding the project.
10. Consider creating a procedure manual with protocol and procedures detailing the internal process of procurement, selection, approval and award. Place particular emphasis on approval authority, the type of procurement process being used, and governing contracting /purchasing thresholds.

Other Findings – Potential Conflict of Interest

The district has had a long-standing multi-agency collaborative agreement to support, augment and expand existing services for students in an after-school program. This collaboration effort was established in July 2004.

At that time, the Boys and Girls Club of Greater Oxnard and Port Hueneme (BGCOP) was the fiscal agent of the federally funded 21st Century Community Learning Center Grant Program and developed an after-school program called Partnership for Rio Out-of-School Student Programs for Educational Realization (PROSPER). The PROSPER collaborative included the following organizations:

- BGCOP
- The Coalition To End Family Violence
- KidShape Foundation
- El Concilio del Condado de Ventura
- City of Oxnard Police Department
- FOOD Share, Ventura County Food Bank
- California Lutheran University, Center for Leadership
- Rio School District

Under the terms of the memorandum of understanding (MOU), the district provided teaching supplies and equipment from various federally funded grants totaling \$13,800 to cover the after-school program. In addition, the district was obligated to provide in-kind matching contributions valued at \$150,000.

In 2006, BGCOP was advised that the 21st Century grant would no longer be funded. Instead a new state grant called the After School Education and Safety (ASES) program grant would replace this funding source. However, under the ASES program, the district was required to be the fiscal agent and the BGCOP became a subcontractor of the district.

On December 1, 2006, the district's superintendent and the chief professional officer of the BGCOP – then and now a sitting school board member for Rio School District – signed a MOU between the two agencies under which BGCOP would continue to provide the after-school program using ASES funding. Subsequently, the MOU was never approved or ratified by the governing board in accordance with EC 17604 yet remained in place.

The ASES program evolved from voter approval of Proposition 49 in 2002. The goal is to merge school and district reform strategies with local community resources, creating partnerships between schools, parents, law enforcement, non-profit entities, and other governmental agencies to provide academic enrichment programs in an extended learning environment that is constructive and safe.

The current funding derived from the ASES grant is approximately \$917,000. Of this amount, the district is entitled to indirect costs and remaining funds are paid to the BGCOP to administer the program.

The board member and chief professional officer of the BGCOP, which is a 503(c)(3) not-for-profit corporation, stated that he receives a salary from BGCOP. Therefore, a conflict of interest may exist. Since school board members are elected officials, GC 1090 applies, which states:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by anybody or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

Government Code Sections 1091 and 1091.5 offer some limited exceptions whereby the official has only a remote interest in the contract. Remote interests are specified in GC 1091(b) and include an officer of a nonprofit corporation, landlord of the contracting party, an owner who owns less than 3% of a for-profit corporation and for whom the total income from dividends from the corporation does not exceed 5% of the total annual income, and being a “*non-salaried member of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.*” (Emphasis added.) Section 1091.5(a)(8) states:

An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is considered to be “noncompensated” even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing the duties of his or her office.

The starting point in the determination of a potential conflict of interest is the Political Reform Act of 1974 codified in GC Section 81000. Chapter 7 in the GC sections 87100 – 87500 deals exclusively with conflicts of interest.

The Fair Political Practices Commission (FPPC) is the agency charged with enforcing the conflict of interest provisions. The FPPC regulations implementing the Act are contained in the California Code of Regulations, Title 2, Division 6, Sections 18109-18997. The guiding principle of the conflict of interest code as defined in Section 18700 states that:

(a) No public official at any level of state or local government may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying conflict of interest. A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his/her economic interests, unless the public official can establish either: (1) that the effect is indistinguishable from the effect on the public generally, or (2) a public official’s participation is legally required.

To determine whether a conflict of interest exists under the Political Reform Act, the FPPC applies an eight-step process. The table below contains FCMAT’s analysis of the process.

Eight-Part Process	FCMAT Analysis
Determine whether the individual is a public official, within the meaning of the Act. (GC 82048; 2 CCR 18701)	Board members are public officials.
Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision. (2 CCR 18702)	The board member participated in making a contract with the district and signed the MOU as a compensated representative of the BGCOP.
<p>Determine whether the public official has one of the five qualifying types of economic interest.</p> <p>Business Entities (2 CCR 18703.1)</p> <p>Real Property (2 CCR 18703.2)</p> <p>Source of Income (2 CCR 18703.3)</p> <p>Source of Gifts (2 CCR 18703.4)</p> <p>Personal Finances (2 CCR 18703.5)</p>	<p>The public official has an economic interest if “the public official is a director, officer, partner, trustee, employee, or holds any position of management in the business entity.” The board member is an officer and employee of the BGCOP.</p> <p>The public official meets this criterion if there was compensation aggregating \$500 or more within 12 months prior to the time when the relevant governmental decision was made.</p> <p>The public official may have an economic interest in personal finances should the grant funding cease.</p>
Determine whether any of the above qualifying types of economic interests is directly or indirectly involved in the governmental decision which the public official will be making, participating in making, or using or attempting to use his/her official position to influence. (2 CCR 18704)	The board member has a direct economic interest derived from his salary with the BGCOP. Even though the grant dollars cannot be traced to the board member’s salary, the funding gives opportunity for the BGCOP to make other financial decisions.
Determine the materiality for each economic interest involved. (2 CCR 18705)	The dollar value of the ASES grant exceeds the threshold amounts established for disqualification.
Determine whether it is reasonably foreseeable that the economic interest will be materially affected. (2 CCR 18709)	A financial interest exists within the meaning of Section 87100 “if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family...”
Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally. (2 CCR 18707)	The effect of the personal expenses, income, assets or liabilities of the public official would be distinguishable if it involved more than 10% of the population, or 5,000 individuals who are residents of the jurisdiction.
Determine if the public official’s participation is legally required despite the conflict of interest. If the official can establish that his or her participation is legally required, he or she may participate in the governmental decision despite the conflict of interest. (2 CCR 18708)	This standard has a narrow application and is used “only if there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.” One example of an appropriate use under this section would be a tie-breaker vote in open session.

GC Section 87105 defines the process a public official shall follow if a conflict of interest exists. Prior to board consideration of the matter giving way to the conflict of interest (or potential conflict of interest), the public official must do all of the following:

1. Identify the financial interest in sufficient detail to be understood by the general public.
2. Recuse him or herself from voting or discussing the matter; however, the public official may speak on the issue during general public comment section of the agenda.
3. Leave the room until the discussion and/or voting is complete.

It is recommended that the board member/chief professional officer of the BGCOP follow all of the provisions of GC §87105 above.

It is also recommended that the district create a new MOU with the BFCOP to be signed by an officer of the BGCOP that has no affiliation with the District. The new MOU is a binding contract once signed and must be approved or ratified by the governing board in accordance with EC 17604.

The district has obtained a legal opinion dated December 23, 2010 from the law firm of Griffith & Thornburgh, LLP for which they have waived the attorney-client privilege. The document is attached as Appendix A to this report. The seeking of legal advice does not cure any potential GC 1090 violation.

In general, a conflict of interest exists when an individual's private interests interfere with his or her professional obligations to a public employer. Not all situations imply wrongdoing or inappropriate activities. Clearly, the perception that there may be a financial incentive may detract from the overall benefit to the educational program involved.

Recommendations

The district should:

1. Have the board member/chief professional officer of the BGCOP follow all of the provisions of GC 87105 prior to board consideration of the matter that may involve a conflict of interest.
2. Create a new MOU to be signed by an officer of the BGCOP who has no affiliation with the district to be approved or ratified by the governing board in accordance with EC 17604.

Appendices

Appendix A – Legal Opinion

Appendix B – Study Agreement

GRIFFITH & THORNBURGH, LLP

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December 23, 2010

Our File No.:
4447-0001

ATTORNEY-CLIENT PRIVILEGED

Sherianne Cotterell, Superintendent
Rio School District
2500 Vineyard Avenue
Oxnard, CA 93036

Re: Legal Opinion on Board Member Conflict of Interest

Dear Ms. Cotterell:

We have been engaged as special counsel by you on behalf of the Rio School District (District) to analyze and provide our opinion on the following questions:

- (1) Whether a conflict of interest exists by virtue of a board member's employment as the Chief Professional Officer with the Boys and Girls Club of Greater Oxnard and Port Hueneme, due to the club's partnership with the District in various grants (including 21st Century Community Learning Centers and After School Education and Safety Program) whereby the Club in concert with the District, provides after school programs at the District schools, and
- (2) Whether or under what circumstances should the board member recuse himself from participating in decisions brought before the Board of Education involving the Boys and Girls Club?

Based upon our analysis of the facts as presented we have reached the following conclusions: (1) the board member would be disqualified from participating in any decision-making involving the Boys and Girls Club of Greater Oxnard and Port Hueneme due to his "financial interest" in the nonprofit organization; and (2) the conflict of interest can be avoided by the board member disclosing his interest and recusing himself from all decision-making involving the nonprofit organization as described hereafter.

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FACTS

District board member Tim Blaylock is the Chief Professional Officer and a salaried employee of the Boys and Girls Club of Greater Oxnard and Port Hueneme (Boys and Girls Club), a nonprofit IRC 501(c)(3) corporation. The Boys and Girls Club provides arts, music, sports and other educational programs for young people in the greater Oxnard and Port Hueneme areas.

The Boys and Girls Club and District have collaborated to establish eligibility for and to receive Federal and State grant funding to operate programs, including at District schools, which benefit the students of the District. Some of the joint programs are funded by United States Department of Education, 21st Century Community Learning Center (21st CCLC) grants which are awarded by the California Department of Education. These learning centers provide academic, family literacy and related educational services. A second joint program funded through a partnership between the Boys and Girls Club and the District is the After School Education and Safety (ASES) Program which provides funding for after school services at each District school. (This program is the result of the 2002 voter-approved initiative, Proposition 49. See California Education Code § 8482, et. seq.). It is the intent of ASES program legislation to encourage school districts to collaborate with community based organizations to provide safe and educationally enriching alternatives for disadvantaged youth during non-school hours.

To implement the 21st CCLC and ASES grant funded programs, the Boys and Girls Club and District have entered into separate Memoranda of Understandings. The respective duties and responsibilities of the Boys and Girls Club and District are spelled out in these documents. The responsibilities that are allocated between the two organizations range from providing staff, supplies and facilities to fiscal oversight, and vary depending upon program. Under the ASES program, grant funding through the California Department of Education is provided for the Boys and Girls Clubs to provide after school services at five District elementary and one District junior high school at the rate of \$112,500 per elementary school and \$150,000 for the junior high school.

ANALYSIS

Because of the dual role of Mr. Blalock as both District board member and paid official of the Boys and Girls Club, it is necessary to identify and avoid any potential conflict of interest irrespective of the salutary purposes of the joint grant programs between the District and non-profit Boys and Girls Club.

Three sets of laws or rules potentially govern this situation: (1) the Political Reform Act of 1974 (Gov.Code §§81000-91015); (2) Government Code §1090 et seq.; and (3) the board's conflict of interest policies. These are discussed below.

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A. The Political Reform Act

Gov. Code §87100 prohibits a public official from making, participating in making or using his or her official position “to influence a governmental decision in which he knows or has reason to know he has a financial interest.” Section 87103(c) says that an official has a “financial interest” if it is reasonably foreseeable “that the decision will have a material financial effect, distinguishable from its effect on the public generally” on: “Any source of income . . . aggregating . . . \$250 or more in value received by or promised to the public official within twelve months prior to the time the decision is made.”

These sections have been applied in many different situations, including where local agency officials also worked for non-profit corporations that were doing business with the local agency. As demonstrated in both judicial decisions and administrative opinions issued by the Fair Political Practices Commission staff, the fact that the employee of the non-profit corporation receives only modest financial compensation which is not overtly related to the its dealings with the non-profit corporation’s dealings with the local agency is of little significance. Nor is the remote nature of the benefit to the non-profit corporation enough to insulate a transaction from scrutiny under these laws.

In *Witt v. Morrow*, 70 Cal.App.3d 817 (1977), Witt was a city councilman and a director of the city’s redevelopment agency. He was also the president and attorney for a non-profit corporation. The corporation paid him a salary of \$550 per month. The redevelopment agency was considering a shopping center development. The non-profit corporation owned apartments across the street from the shopping center. The trial court enjoined Witt from participating in the consideration of the shopping center proposal and the court of appeal affirmed. The court reasoned that §87100 barred a public official from considering a matter in which the official had a “financial interest.” *Id.* at 820-21.

Witt argued that the decision wouldn’t have a material effect on him because it was the corporation, not him, that would get any benefit from having the property across the street from the non-profit corporation’s land developed as a shopping center. *Id.* at 164. He also argued that any impact on him was remote because he was paid \$550 per month, not a percentage of the corporation’s value, so the fortunes of the corporation didn’t directly affect him. *Id.* The court rejected these arguments as being inconsistent with §87103(c) which defines a material financial interest as the receipt of over \$250 in the preceding twelve months. *Id.*

Witt also argued that there was no evidence that any decision he made regarding shopping center would be affect his continued receipt of his \$550 monthly salary. *Id.* The court rejected this argument by giving the conflict of interest statutes a broad reading consistent with their important public policy goals:

[The official’s] concept of what constitutes a conflict of interest is to [sic] narrow.

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It is not just actual improprieties which the law seeks to forestall but also the appearance of possible improprieties. Any employee, in the private or public sector, wishes to keep his job and maintain good relations with his employer. A person who must make decisions which may affect his employer's purse is in a situation where he may not give full consideration to the merits of the decision.

Id. at 823.

A similar conclusion was reached by the California Attorney General. See Opinion No. 86-1003, 70 Ops. Cal. Atty. Gen. 45 (March 11, 1987). There, a school board member was also the salaried executive director of an organization. The organization made a proposal for a program or contract involving the schools and pupils of the school district. The opinion concluded that "a school board member may not generally vote upon, participate in considering, or attempt to influence action taken upon a proposed program or contract submitted to the board by an organization of which the member is a salaried director."

The California Fair Political Practices Commission has promulgated regulations implementing the Political Reform Act and regularly issues advisory opinions about conflict of interest issues concerning business dealings between a governmental agency and a business in which a member of that agency has an interest. These opinions are fact-specific and are not directly relevant to the issues presented in this matter. But the Commission's standard-eight part analysis is helpful in determining whether a prohibited conflict of interest exists.

1. Public Official: Mr. Blaylock is a public official because he is a member of a local government agency. See §82048(a); Opinion No. 86-1003, 70 Ops. Cal. Atty. Gen. 45 (March 11, 1987)(applying the Political Reform Act to a school board member)

2. Making a Government Decision: If in the future he was to vote on a proposed contract between the district and the Boys and Girls Club, Mr. Blaylock would be making a government decision. See 2 CCR §18702.1(a)(1)(defining "makes a government decision" as voting on a matter).

3. Economic Interest: The Political Reform Act lists five types of economic interests. Under the relevant tests, Mr. Blaylock has at least one and perhaps two additional economic interests within the meaning of the Political Reform Act. First, he has an interest in a "business entity" since the Boys and Girls Clubs is a business entity, see *Witt v. Morrow*, 70 Cal.App.3d at 820-21 (applying Political Reform Act to a nonprofit corporation), and as the Chief Professional Officer of the Boys and Girls Clubs, he is an officer of a business entity. See 2 CCR §18703.1(b). Second, he would have an economic interest in a "source of income" if he has received \$500 of income or more within twelve months before the time when the governmental decision is made. See 2 CCR §18703.3(a)(1); §82030(a), (b) (defining "income" to include salary and wages but excluding "reimbursement for travel expenses and per diem

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received from a bona fide nonprofit entity exempt from taxation”) Third, he would have an economic interest in his personal finances if the decision by the board could result in his income increasing. 2 CCR §18703.5.

Because it has been established that Mr. Blalock fits within the first category due to his having an interest in a “business entity” under FPPC regulations, it is unnecessary to analyze the second and third categories of “economic interests”.

4. Direct or Indirect Economic Interest: The next step is to determine whether Mr. Blaylock’s economic interest is direct or indirect. Under the regulations, Mr. Blaylock has a direct economic interest in his personal finances insofar as a decision by the District to contract with the Boys and Girls Club results in the receipt of funds to the Boys and Girls Club, even though the funding comes from outside grants. This is because the grant funds allow for expanded services to be provided by the Boys and Girls Club, which is legally presumed to support the continuation of Mr. Blalock’s salary. This is true whether or not in actuality the grant funding can be shown as having any actual effect on Mr. Blalock’s compensation from the Boys and Girls Club. Thus any involvement by Mr. Blalock in a decision by the District to contract with the Boys and Girls Club would have a “financial effect on his finances or those of his or her immediate family.” See 2 CCR §18704.5.

5. Materiality: The regulations governing materiality contain different rules depending upon whether the economic interest is direct or indirect and the type of economic interest involved. Mr. Blaylock’s direct economic interest in his personal finances would be material if it involved his receipt of at least \$250 from the Clubs in any 12-month period. See 2 CFR 18705.5(a).¹

Mr. Blaylock’s indirect business entity economic interest would also be material he participated in a decision of the board to approve an agreement with the Boys and Girls Club that would result in an increase or decrease of the Clubs gross income for \$20,000 or more. See 2 CFR §18705.1(c)(4)(A). This would be the case under the ASAS program.

The materiality of Mr. Blaylock’s indirect source of income economic interest is assessed under 2 CFR §18705.3(b)(2). Assuming the gross annual receipts of the Boys and Girls Clubs are more than \$100,000 but less than or equal to \$1,000,000, a decision that would increase its gross income by \$50,000 or more would be material. 2 CFR §18705.3(b)(2)(E). If its gross annual receipts are more than \$1,000,000 but less than or equal to \$10,000,000, then a decision that would increase its gross annual receipts by \$100,000 or more would be material. 2 CFR §18705.3(b)(2)(D). One or more of these thresholds would appear to be met by the ASAS program.

¹ The exception for materiality found in §18705.5(b) for financial effects of a decision affecting only a salary wouldn’t apply since that exception is limited to salaries received from a federal, state or local agency and Mr. Blaylock’s salary comes from the Boys and Girls Club.

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6. Foreseeability: Under 2 CFR §18706, a material financial effect on an economic interest is reasonably foreseeable within the meaning of §87103 if “it is substantially likely” that one or more of the materiality standards in 2 CFR §§ 18704 and 18705 will be met. The foreseeability standard is met even though the effect is not certain to occur, as long as it is more than a mere possibility, which is said to depend upon the facts at the time the decision is made. See *In re Ellery Deaton*, 1 FPPC Ops. 149 (2010). Under the present facts this standard is met.

7. The Effect on the Public in General Exception: Even if it is reasonably foreseeable that a governmental decision will have a material financial effect on Mr. Blalock which would compel a finding that he had a disqualifying conflict, Mr. Blalock would not be disqualified if he established that the effect on his economic interests would be indistinguishable from that of the public in general. See 2 CFR §18707(a). This would require establishing that a significant percentage of the general public would have to be indistinguishably affected by the decision compared to Mr. Blalock. See, e.g., 2 CFR §18707.1(b)(1). That would not be the case with the ASAS program since the economic benefit to the Boys and Girls Club is readily distinguishable from the public generally.

8. The Legally Required Participation Exception: Mr. Blalock would also be able to participate in decisions on matters in which he otherwise had a conflict if “there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.” 2 CFR §18708. This rule of necessity has been narrowly construed by the California Attorney general. But the regulation itself says that it can’t be used to allow an otherwise-disqualified public official to vote to break a tie or to obtain a quorum if a quorum can be obtained from non-disqualified officials whether or not they are actually present at the time of the hearing. 2 CFR §18708(c). We think, therefore, that this exception would be of limited, if any, utility in allowing Mr. Blalock to vote on a matter on which he was otherwise disqualified.

In summary, application of the standard eight-step analysis followed by the Fair Political Practices Commission results in the conclusion that that Mr. Blalock may not vote as a District board member or otherwise influence decision-making with regard to approval of contracts with the Boys and Girls Club, including 21st CCLC and ASES grant funded programs. We have considered that under these grant programs the source of funding is from by outside governmental sources, not the District. However, this does not alter our opinion in the matter due to the fact that it is the District’s participation in the grant programs that triggers the funding received by the Boys and Girls Club. Hence, while the grant programs are of great benefit to the District in a very real sense, from the standpoint of conflict of interest the outside source of funding is irrelevant.

Having established that the Political Reform Act prohibits Mr. Blalock from participating in the making of Board decisions involving the Boys and Girls Club, we now turn to a discussion of how Mr. Blalock can avoid any conflict under the Act. When and if future matters involving the

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Boys and Girls Club, including the 21st CCLC and ASES grant funded programs, are brought before the District's Board for consideration or action, a conflict may be avoided if Mr. Blalock recuses himself by following all the below requirements:

Government Code section § 87105.

(a) A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following:

(1) Publicly identify the financial interest that gives rise to the conflict of interest or potential conflict of interest in detail sufficient to be understood by the public, except that disclosure of the exact street address of a residence is not required.

(2) Recuse himself or herself from discussing and voting on the matter, or otherwise acting in violation of Section 87100.

(3) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters.

(4) Notwithstanding paragraph (3), a public official described in subdivision (a) may speak on the issue during the time that the general public speaks on the issue.

B. Section 1090 et seq.

The conflict analysis is not completed without also considering a second and independent set of conflict of interest statutes found in Gov. Code § 1090 et seq. Section 1090 prohibits government officials or employees from being "financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." Those persons are also prohibited from being "purchasers at any sale or vendors at any purchase made by them in their official capacity." If § 1090 applies to one member of a board, its proscriptions can't be avoided by having the interested board member abstain; the entire board or commission is prohibited from entering into the contract. *Lexin v. Superior Court*, 47 Cal.4th at 1073; *Thompson v. Call*, 38 Cal.3d 633, 649 (1985). Criminal penalties can also be imposed for a violation of § 1090. Gov. Code. § 1097.

The harsh consequences of § 1090 are ameliorated by two other sections. Section 1091(a) exempts from the reach of § 1090 contracts in which an official has only a "remote interest." If an official has only a remote interest in the contract, and if that interest is disclosed to the board

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of which the official is a member, then the board can approve or ratify the contract without the vote of the remotely interested board member. Section 1091.5 goes farther than §1091 by exempting thirteen types of contracts which would otherwise fall within §1090.

For our purposes, Mr. Blaylock would be exempt from the provisions of §1090 because he has only a remote interest in the contracts with the Boy and Girls Club under §1091(b)(1) which states: “[A remote interest means] [t]hat of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.” The Boys and Girls Club is a nonprofit corporation so Mr. Blaylock’s interest in contracts between the Club and the District would be remote. Under § 1091(a), so long as he (a) disclosed his interest in the contracts to the board, (b) that disclosure was noted in the board’s official records, and (d) the board ratified or approved the contract in good faith without counting Mr. Blaylock’s vote, the prohibitions of §1090 would not apply.

C. The Rio School District’s Board Policy 9270(a)

The Political Reform Act authorizes the district to adopt a conflict of interest code having the force of law. See §87300; Opinion No. 86-1003, 70 Ops. Cal. Atty. Gen. 45 (March 11, 1987). The district has promulgated such a code as its Board Policy 9270(a). The district’s conflict of interest code incorporates the provisions of both the Fair Political Practices Act and Government Code § 1090 et. seq. without adding any additional material provisions bearing on this issues under consideration.

CONCLUSION

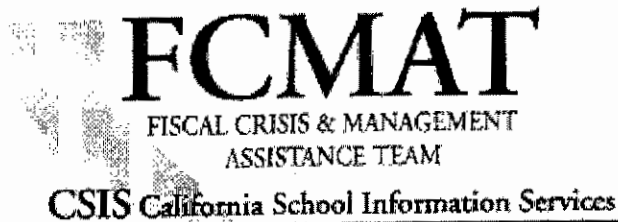
In summary, we conclude based upon the facts as presented that Mr. Blalock is disqualified from participating in future Board decisions involving the Boys and Girls Club, including 21st CCLC and ASES grant funded programs. However, a conflict of interest can be avoided by Mr. Blalock’s disclosing his interest and recusing himself from all decision-making in respect thereto as outlined herein.

Please feel free to contact me if you should have any questions or comments.

Very truly yours,



Craig Price



**FISCAL CRISIS & MANAGEMENT ASSISTANCE TEAM
DRAFT STUDY AGREEMENT
February 25, 2011**

The FISCAL CRISIS AND MANAGEMENT ASSISTANCE TEAM (FCMAT), hereinafter referred to as the Team, and the Rio School District, hereinafter referred to as the District, mutually agree as follows:

1. BASIS OF AGREEMENT

The Team provides a variety of services to school districts and county offices of education upon request. The District has requested that the Team provide for the assignment of professionals to study specific aspects of the Rio School District operations. These professionals may include staff of the Team, County Offices of Education, the California State Department of Education, school districts, or private contractors. All work shall be performed in accordance with the terms and conditions of this Agreement.

In keeping with the provisions of AB1200, the County Superintendent will be notified of this agreement between the District and FCMAT and will receive a copy of the final report. The final report will be published on the FCMAT website.

2. SCOPE OF THE WORK

A. Scope and Objectives of the Study

The scope and objectives of this study are to:

The primary focus of this review is to provide the Rio School District Board of Trustees with reasonable assurance based upon the testing performed that adequate management controls are in place with regard to bidding and awarding contracts. Specific review objectives will include evaluating the policies, procedures, and internal controls related to the administration of outside contracts.

1. Review district policies and procedures related to professional services contracts and capital construction projects to determine if any components of misappropriation of funds or other illegal practices have occurred that merit further examination. Provide reasonable assurance that outside contracts are entered into by properly authorized personnel and that the bidding and award of contracts follow district policy and Government Code.
2. Sample outside contracts and vendor invoices to determine if invoices were for services and materials provided and fit within contractual agreements.
3. Review contracts to ensure that contracts for public work projects in excess of \$15,000 or contracts for material or supply purchases in excess of \$76,700 meet bidding requirements outlined in CA Public Contract Code 20111.
4. Review professional service contracts where bidding may not be required (Government Code Section 53060) to ensure that board policies were followed with regard to bidding process.
5. Evaluate the division of labor and segregation of duties between administration and staff with regard to bidding and award of outside contracts.
6. Provide recommendations for improvement in district policy and practices with regard to bidding and award of outside contracts based upon best practices.

FCMAT review will be completed by examining a test sample of referenced documentation for district outside services contracts, invoices, bid documents, and any other necessary documentation required to validate or refute the allegations regarding potential misappropriation of funds or illegal practices.

B. Services and Products to be Provided

- 1) Orientation Meeting - The Team will conduct an orientation session at the School District to brief District management and supervisory personnel on the procedures of the Team and on the purpose and schedule of the study.
- 2) On-site Review - The Team will conduct an on-site review at the District office and at school sites if necessary.

- 3) Exit Report - The Team will hold an exit meeting at the conclusion of the on-site review to inform the District of significant findings and recommendations to that point.
- 4) Exit Letter - The Team will issue an exit letter approximately 10 days after the exit meeting detailing significant findings and recommendations to date and memorializing the topics discussed in the exit meeting.
- 5) Draft Reports - Sufficient copies of a preliminary draft report will be delivered to the District administration for review and comment.
- 6) Final Report - Sufficient copies of the final study report will be delivered to the District administration following completion of the review.
- 7) Follow-Up Support – Six months after the completion of the study, FCMAT will return to the District, if requested, to confirm the District's progress in implementing the recommendations included in the report, at no cost. Status of the recommendations will be documented to the District in a FCMAT Management Letter.

3. **PROJECT PERSONNEL**

The study team will be supervised by Anthony L. Bridges, CFE, Deputy Executive Officer, Fiscal Crisis and Management Assistance Team, Kern County Superintendent of Schools Office. The study team may also include:

<i>A. Debi Deal, CFE</i>	<i>FCMAT Fiscal Intervention Specialist</i>
<i>B. To Be Assigned</i>	<i>FCMAT Consultant</i>

Other equally qualified consultants will be substituted in the event one of the above noted individuals is unable to participate in the study.

4. **PROJECT COSTS**

The cost for studies requested pursuant to E.C. 42127.8(d)(1) shall be:

- A. \$500.00 per day for each Team Member while on site, conducting fieldwork at other locations, preparing and presenting reports, or participating in meetings.
- B. All out-of-pocket expenses, including travel, meals, lodging, etc. The District will be invoiced at actual costs, with 50% of the estimated cost due following the completion of the on-site review and the remaining amount due upon acceptance of the final report by the District.

Based on the elements noted in section 2 A, the total cost of the study is estimated at \$5,500.

- C. Any change to the scope will affect the estimate of total cost.

Payments for FCMAT services are payable to Kern County Superintendent of Schools - Administrative Agent.

5. RESPONSIBILITIES OF THE DISTRICT

- A. The District will provide office and conference room space while on-site reviews are in progress.
- B. The District will provide the following (if requested):
- 1) A map of the local area
 - 2) Existing policies, regulations and prior reports addressing the study request
 - 3) Current or proposed organizational charts
 - 4) Current and two (2) prior years' audit reports
 - 5) Any documents requested on a supplemental listing
 - 6) Any documents requested on the supplemental listing should be provided to FCMAT in electronic format when possible.
 - 7) Documents that are only available in hard copy should be scanned by the district and sent to FCMAT in an electronic format.
 - 8) All documents should be provided in advance of field work and any delay in the receipt of the requested documentation may affect the start date of the project.
- C. The District Administration will review a preliminary draft copy of the study. Any comments regarding the accuracy of the data presented in the report or the practicability of the recommendations will be reviewed with the Team prior to completion of the final report.

Pursuant to EC 45125.1(c), representatives of FCMAT will have limited contact with pupils. The District shall take appropriate steps to comply with EC 45125.1(c).

6. PROJECT SCHEDULE

The following schedule outlines the planned completion dates for key study milestones:

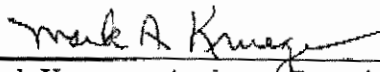
Orientation:	<i>to be determined</i>
Staff Interviews:	<i>to be determined</i>
Exit Interviews:	<i>to be determined</i>
Preliminary Report Submitted:	<i>to be determined</i>
Final Report Submitted:	<i>to be determined</i>
Board Presentation:	<i>to be determined</i>
Follow-Up Support:	<i>If requested</i>

7. CONTACT PERSON

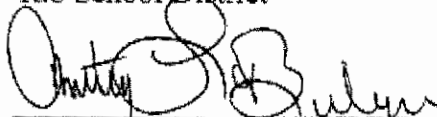
Name of contact person: Mark Krueger, Assistant Superintendent, Business

Telephone: (805) 485-3111 FAX: (805) 983-8217

E-Mail: mkrueger@rio.k12.ca.us


 Mark Krueger, Assistant Superintendent
 Rio School District

2/25/11
 Date


 Anthony L. Bridges, CFE
 Deputy Executive Officer
 Fiscal Crisis and Management Assistance Team

February 25, 2011
 Date

