



East Side Union High School District

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Academic, personal and social success for each and every student.

Dan Moser, Superintendent

September 9, 2011

Honorable Richard J. Loftus, Jr.
Presiding Judge
Santa Clara County Superior Court
191 N. First Street
San Jose, CA 95113

Dear Judge Loftus:

INTRODUCTION

Pursuant to Penal Code section 933.05, the East Side Union High School District hereby submits its response to the June 16, 2011, Santa Clara County Civil Grand Jury Report "East Side Union High School District's Progress in Response to The Fiscal Crisis & Management Assistance Team Audit".

In its report, the Grand Jury concludes that although the District has made some efforts to "update procedures in line with" the FCMAT Report, the District "has been slow to implement the recommendations made" in the FCMAT Report. Included in the Grand Jury Report is a Table 1 "Summary of Recommendations, District Responses and SCCOE Comments" dated February 23, 2011 (nearly four months prior to the issuance of the Grand Jury Report) and which was obtained by the Grand Jury from the Santa Clara County Office of Education.

The Grand Jury Report includes two separate findings and two separate recommendations, and the District's response to each is contained below. The District thanks the Grand Jury for its interest in this important matter, for meeting with District officials to gather information relevant to its investigation, for the opportunity to respond to the recommendations and findings, and welcomes its continuing interest in these important issues.

In its report the Grand Jury expresses disappointment in the speed in which changes in the District's practices have been implemented. The District wants to take this opportunity to assure the Grand Jury and the entire District community that implementation of the FCMAT recommendations and other changes to contracting practices have been and remain a top priority of the District. However, the District also understands the Grand Jury's expressed disappointment; when it comes to protecting and preserving taxpayer and education dollars, change cannot come

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SEP 15 2011

DAVID H. YAMASAKI
Chief Executive Officer/Clerk,
Superior Court of CA County of Santa Clara
BY D. ALDYCKI

BOARD OF TRUSTEES: Frank Biehl, J. Manuel Herrera, Van Le, Patricia Martinez-Roach, Lan Nguyen

It is the policy of the East Side Union High School District not to discriminate on the basis of sex, age, religion, race or national origin, sexual orientation, or handicapping condition in its educational programs and activities or in the recruitment and employment of personnel.

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soon enough. With that fundamental concept in mind, the District wants to assure the Grand Jury and the public that over the last eighteen months the District has undertaken across-the-board preventative measures and actions so that any waste or abuse of District and taxpayer dollars will not be allowed or tolerated. Failure to adhere to the revised policies and regulations and directives has had, and will continue to have, negative consequences to all those doing business with or employed by the District. While those consequences might not always be transparent to the public or even the Grand Jury (because of confidentiality concerns), they have occurred and remedial or disciplinary measures will be meted out ethically and responsibly as quickly as any violations are discovered.

As the Grand Jury is aware, the Santa Clara County Office of Education (“SCCOE”) is FCMAT’s agent in ensuring that the internal control and other exceptions noted in the FCMAT Report have been appropriately addressed. In that regard the District staff has met with SCCOE periodically and as requested by the SCCOE since January 2010 to discuss and address the District’s progress in implementing the FCMAT recommendations. To be clear, the District does not believe that the mere implementation of the recommended revised policies or practices to be “closure” of the FCMAT issues. Instead, the District and its leadership are keenly aware that restoration of the community’s confidence and faith in the District’s ability to effectively manage its financial recourse will take time and considerable commitment and effort from the entire District team, including its Board, administration, and teaching and classified staff. To that end, the District welcomes and invites the public’s continuing interest in this important matter and we look forward to continuing and productive working relationship with the SCCOE and to continuing collaboration with the SCCOE on how best to ensure implementation sound contracting practices.

Before providing its response below to the recommendations and findings, the District believes it is important to highlight for the Grand Jury many of the efforts and changes implemented by the District in response to the FCMAT Report.

RELEVANT BACKGROUND INFORMATION

On January 28, 2010, FCMAT issued its Extraordinary Audit Report. The audit was prepared pursuant to request from the Santa Clara County Office of Education pursuant to Education Code section 1241.5. Following an extensive audit and review of the District’s contracting and personnel practices, FCMAT found:

1. There was no evidence of fraud, misappropriation of funds or other illegal practices in the contracted services transactions observed by FCMAT, but violations of board policy had occurred and gaps in then-existing policy needed to be corrected.

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2. Some material and labor invoices of contracted services to bond funds were insufficiently detailed to support charges to the bond funds. FCMAT recommended a more detailed review.
3. There was no evidence that board policies regarding vacation accrual and payouts of the superintendent were violated, but FCMAT concluded that there was room for improvement regarding payout procedures and accrued leave management. (FCMAT Report at p. 5.)

The District and its Board welcomed the FCMAT Report and they have always considered the FCMAT Report and the findings and recommendations therein to be a serious matter meriting the full attention of the District and its staff. Following the issuance of the FCMAT Report the District's Governing Board discussed the report and received comment on the report and its findings in open session at three consecutive Board meetings held on February 9, 2010 (special meeting), February 18, 2010 (regular meeting) and March 4, 2010 (regular meeting). During those meetings the Board also received comment from the County Superintendent as well as specific recommendations for addressing the FCMAT findings and implementing remedial measures. Subsequently, as described in more detail below, remedial measures were implemented and continue to be implemented.

On March 1, 2010, just 30 days after the FCMAT Report was issued, the District took the extraordinary measure of issuing an Administrative Directive to all responsible staff which implemented immediate changes to the District's contracting practices designed to address substantially all of the FCMAT findings. The Administrative Directive addressed substantially all of the 21 separate FCMAT recommendations. A copy of the Administrative Directive is attached hereto. All responsible contracting staff were provided a copy of the Directive and were required to acknowledge in writing that they received a copy of the Directive and understood its requirements and changes in policies and regulations. The Administrative Directive was an unprecedented action by the District and ensured the quickest method for an immediate change in policy and regulation (pursuant to established Board policies, changes to Board policy must first be submitted to "first" and "second" readings in at least two separate open session Board meeting, with administrative regulations thereafter drafted and implemented by Administration).

In November 2009 (following the SCCOE's initial investigation report which culminated in the FCMAT Audit) the Board approved and created a charter for a District Audit Committee comprised of two Board members and three members of the public. The Board-approved charter vests broad and sweeping oversight responsibilities with the 5 member body.

On April 15, 2010, the Board approved the restoration of the District's internal auditor position, which was eventually filled by Mr. Ian Marsh, an experienced school district internal auditor.

As noted earlier, the SCCOE is FCMAT's agent in ensuring that the internal control and other exceptions noted in the FCMAT report have been addressed. In that regard, the District has been

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in direct communication with SCCOE administrators and staff to keep the SCCOE apprised of the District's efforts and progress in addressing the FCMAT findings and recommendations. At the on-set of this process District and SCCOE staff discussed and agreed to quarterly meetings to facilitate the oversight and progress review process. Since then, District staff has met approximately quarterly with Cathy Grovenburg/Ken Shelton, Nimrat Johal and other SCCOE staff, to discuss measures taken. Our most recent meeting was on August 25, 2011. In connection with those meetings the SCCOE has requested, and the District has provided, numerous documents detailing and evidencing the District's efforts to implement the FCMAT recommendations as well as other materials not addressed in the FCMAT Report. Access to any District document or report has not been denied by the District on any basis; throughout this process the district has strived for 100% transparency and cooperation. In addition, throughout the process the SCCOE and the District have maintained a status summary table showing the District's progress at implementation of each of the 21 FCMAT recommendations. A copy of one of those tables was included as Table 1 in the Grand Jury Report. Unfortunately, the Table published in the Grand Jury Report was out of date and incomplete and did not, in fact, represent the current status of the District's implementation efforts at that time. What the District believes to be a current table showing the status of the implementation of all 21 recommendations is attached for your review.

We have prepared and attached a timeline which details these communications, responses and efforts to date, as well as the District's communications with the SCCOE on this subject.

RESPONSES TO FINDINGS AND RECOMMENDATIONS

Finding #1:

ESUHD has been slow to implement the recommendations of the January 28, 2010, FCMAT audit.

Response to Finding #1:

Disagree in part; agree in part. Since March 2010, and as detailed above, the District has undertaken several immediate measures and other actions to address and implement the recommendations in the FCMAT Report. The District agrees that full implementation of the changes is and remains a top-tier and critical priority for the District and that under the best circumstances such changes would have been fully implemented immediately at the time the FCMAT Report was issued, and that the District was not able to meet that objective. The District remains committed to restoring the public's faith in the District's ability to effectively manage its contracting and personnel practices.

Recommendation #1:

ESUHD needs to make the FCMAT audit a priority and implement its recommendations.

Response to Recommendation #1:

Agree; implementation of the FCMAT recommendations has been and will remain a priority of the District.

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Finding #2:

According to the FCMAT report, some employees fear reprisal when speaking out. This may prevent them from reporting incidents that could cost the district.

Response to Finding #2:

Agree that the FCMAT report included that some employees expressed such concerns.

Recommendation #2:


The District should establish a whistle-blower hotline process directed to the Internal Auditor.

Response to Recommendation #2:

District administration agrees and is presenting a recommendation to the Board to establish a whistle-blower hotline at the August 30, 2011, Regular Meeting.

The above response was adopted by the Governing Board at its August 30, 2011, Regular Meeting.

Respectfully submitted,



Dan Moser
Superintendent

**EAST SIDE UNION HIGH SCHOOL DISTRICT
ADMINISTRATIVE DIRECTIVE**

Amended to include: J. Lawrence & D. Barbata

TO: Jerry Kurr, Associate Superintendent of Administration and Business Services
Alan Garofalo, Associate Superintendent of Student Services and Facilities
Catherine Giammona, Interim Associate Superintendent of Human Resources
and Instruction
Karen Poon, Director of Finance
Julie Kasberger, Director of General Services
Donna Bertrand, Contracts Administrator
June Rono, Director of Facilities and Planning
Kathy Lanford, Assistant Director Facilities and Construction
Dennis Barbara, Director of Information Technology
John Lawrence, Assistant Director of Maintenance and Operations
All School Site Principals

FROM: Dan Moser, Interim Superintendent

DATE: March 1, 2010

SUBJECT: **FOR IMMEDIATE ATTENTION AND ACTION;**
District's Fiscal Practices

As you know, on January 29, 2010, FCMAT issued its Report of its Extraordinary Audit of the East Side Union High School District. The FCMAT Audit process was extensive and involved the interview of numerous current and former employees, as well as the review of thousands of pages of District information and numerous District transactions. Significantly, FCMAT found no evidence of fraud, misappropriation of funds, or other illegal practices by the District. However, FCMAT has made a total twenty-one (21) recommendations as to the revision and implementation of Board policies and Administrative Regulations, as well as to contracts administration, and the processing of accounts payable.

On February 9, 2010, the Governing Board met in open session to discuss and review Administration's recommended response to the FCMAT Audit. Attached is a copy of Administration's Board memorandum outlining the proposed recommended response to the FCMAT recommendations. That evening the Board unanimously approved Administration's recommendation, including several immediate actions that must be taken by all responsible administrators, managers and employees as outlined below.

The current economic environment presents challenges for all governmental agencies, especially school districts. With your immediate cooperation, the below actions will help our District operate more efficiently and will demonstrate to FCMAT, our community and the greater public our collective commitment to meet those challenges.

The below actions and practice shall be implemented immediately. Please review the below actions and requirements carefully, then please sign and date this memorandum in the space provided below, and return the signed copy to Cathy Giammona, Associate Superintendent of Human Resources and Instruction.

ACKNOWLEDGEMENT OF RECEIPT AND REVIEW:

I have received and reviewed this Memorandum and understand the required directives.

By _____

Print Name: _____

Date: _____

EAST SIDE UNION HIGH SCHOOL DISTRICT ADMINISTRATIVE ACTIONS AND PRACTICES FOR IMMEDIATE IMPLEMENTATION

1. All staff responsible for procuring contracts for goods or services or for recommending contracts for approval shall utilize informal bidding practices as outlined in Administrative Regulation 3323 and as set forth in #2 and #3 below.
2. All contracts for any services in a contract amount of \$5,000.00 or more shall be subject to the informal bid requirements set forth in Administrative Regulation 3323. At least three written quotes for such services shall be obtained. No contracts for services in the amount of \$5,000.00 or more shall be awarded to any person for any reason unless and until the informal bid requirements have been met.
3. All contracts for consulting services in any amount shall be subject to the informal bid requirements set forth in Administrative Regulation 3323 although such consulting services would otherwise be exempt from the public bidding requirements under Government Code section 53060. At least three written quotes for such consulting services shall be obtained before any such contract is recommended for approval.
4. Any contract for consultant services shall not be recommended for approval or recommended to the Board for approval unless and until the consultant has submitted a signed conflict-of-interest statement as required by Board Policy 3600. All contracts for consultant services submitted to the Board for approval shall include a statement by the Staff person requesting approval that the required conflict of interest statement has been submitted by the proposed consultant.
5. No contract with any person or firm may be extended beyond the time or amount originally approved by the Board without Board approval per Board Policy 3312 and 3314.
6. All purchase orders for all consulting services contracts must be submitted to the Governing Board for approval.
7. All purchase orders adjustments that do not otherwise meet the criteria of Board Policy 3314 shall be submitted to the Board for approval. Specifically, no invoice shall be paid in an amount in excess of a previously approved purchase order without Board approval unless the excess amount represents sales tax, transportation charges, or charges made for the detention of a shipment during loading or unloading, and such excess charges shall have been approved by the Superintendent or his/her designee.
8. All vendor requests for payment must include detailed invoices specifying the specific dates and hours per day of service, detailed by the professional providing the service, before any payment request may be made or payment authorized.
9. No contract for services may provide for equal payment installments unless the service provider's request for payment includes specific dates and hours per day of service and a description of the work provided detailed by the professional providing the service.
10. For all Measure G and Measure E projects, all requests for payment shall be accompanied by the vendor's detailed invoices that include specific dates and hours per day of service, detailed by the person providing the service, with the underlying facility project identified with each charge.

#	CONTRACTED SERVICES			
	Finding	FCMAT Recommendation to ESUHSD Board	District Response as of 3/29/11	SCCOE COMMENTS
1	1	Amend Administrative Regulation 3323 to require informal bids for all service contracts of more than \$ 5,000 with no maximum limit	District provided SCCOE with copies of Administrative Regulation 3311 "Business & Non-Instructional Operations. Subject: Bids."	Fully Compliant. Bidding process addressed in AR 3311
2	2	Amend Administrative Regulation 3323 to clarify that informal bids are required when consulting service contracts are otherwise exempt from bidding per Government Code 56030.		Consulting Services contracts otherwise exempt from bidding per Government Code 56030 was not addressed in AR 3311.
3	3	Enforce Administrative Regulation 3323 regarding utilization of informal bids.		Fully Compliant. Bidding process addressed in AR 3311
4	4	Include specific details on contract approvals in minutes of board meetings.	Practice implemented with March Board Minutes.	Fully Compliant. Spreadsheet attachments to minutes listing Contractor, Reviewer, Period, Amount, & Purpose.
5	5	Require evidence that conflict-of-interest statement has been submitted for every consultant contract being considered for approval as required by Board Policy 3600	District provided blank Conflict of Interest Statement form.	Upon request for completed samples, we were notified that this is new. Requested once from consultant who hasn't returned it as they are consulting with their legal counsel. Please advise if this was developed by an attorney and submit completed forms when received.
6	6	Restore the internal audit function, including funding for an internal auditor position, and operate this function according to industry standards.	Ian Marsh became new Internal Auditor in November 2010. He provided 2010-11 Work Plan at on-site visit.	Fully Compliant. 2010-11 work plan & status provided and reviewed.
7	7	Establish board policy providing guidance to the staff in circumstances where contracted services can be billed to the district by consultants and other service providers.	District provided SCCOE with copies of Administrative Regulation 3311 "Business & Non-Instructional Operations. Subject: Bids."	Fully Compliant. Addressed in AR 3311.
8	1	Submit all contract extensions for board approval per policy 3312	Administrative Directive issued 3/1/10.	Contract extensions not covered in AR 3311.
9	2	Submit purchase orders for all consulting services contracts to the governing board for approval.	Administrative Directive issued 3/1/10.	Fully Compliant. Consulting POs being approved by Board as evident in Board Minutes on District website (reviewed 2/22) detailing Contractor, Period, Amount, & Purpose.
10	3	Submit to the Board for approval all purchase orders adjustments that do not otherwise meet the criteria of board policy 3314	Administrative Directive issued 3/1/10.	Fully Compliant. PO Change orders being approved by Board as evident in Board Minutes on District website

CONTRACTED SERVICES cont.			
Finding	FCMAT Recommendation to ESUHSD Board	District Response as of 3/29/11	SCCOE COMMENTS
11	4 Require all vendors to provide detailed invoices that include specific dates and hours per day of service, detailed by the professional providing the service.	Contract Services PO report provided from which Emma chose a sample of 13 Purchase Orders and requested copies of invoices and supporting documentation from Karen in advance. Documents were provided on-site.	Sample Fully Compliant.
12	5 Refrain from utilizing contract provisions that provide for equal payment installments if they do not require itemized invoices with the same detail included in recommendation number four.		
13	6 Review the process utilized to hire the consultant whose payments were made under the purchase order of a different consultant and determine whether these services were authorized.	11/16 response: Administration to identify subject consultant and within the next 60 days investigate facts and circumstances surrounding the subject payments. Administration will report back to the Board on its findings and recommendations. District still cannot pinpoint the vendor.	No report on findings provided to SCCOE regarding District investigation of circumstances surrounding the vendor paid under purchase order of different consultant. No determination of whether services were authorized has been made (or not communicated with SCCOE). District still cannot pinpoint the vendor. Ian Marsh asked Jim Ceretta at FCMAT but he did not provide any information.

BOND FUNDS - CONTRACTED SERVICES				
	Finding	FCMAT Recommendation to ESUHSD Board	District Response as of 3/29/11	SCCOE COMMENTS
14	1	Require all vendors provide detailed invoices that include specific dates and hours per day of service, detailed by the person providing the service, with the underlying facility project identified with each charge.	Administrative Directive issued 3/1/10.	Not compliant. This was discussed in detail with FCMAT; Dan Moser & Jerry Kurr were present. In a sample of 14 contracts from 2007-2010 encumbered against Bond Funds, all but 2 consultants provided sufficient details on their invoices. Of the 2010-11 sample, 1 invoice lacked sufficient detail. Blach Construction - "School Name Title IX Constructability Review" with no details as to how amount was calculated, dates, etc.
15	2	Consider a review of all invoices charged to Measure G and Measure E funds to determine that project costs were properly allocated to each bond program.	Draft of VTD audit report for the fiscal year ended 6/30/10 was provided.	Substantially Compliant. <u>DRAFT</u> Audit verified that funds were expended for the purposes specified in Measure E and the funds held in the Bond Fund were used for salaries of administrators only to the extent they perform administrative oversight work on construction projects. In all significant respects, ESUHSD has properly accounted for the expenditures in the Bond Fund and that such expenditures were made for authorized Bond projects. The only recommendation is to amend the contract language going forward to be more specific with the nature and amount of reimbursable expenses such as travel, per diem, communication such as cell phone and internet, food and beverage. Please provide copy of final performance audit report on Measure E General Obligation Bond Fund.
16	3	Fund from other sources any inappropriate expenditures identified as a result of the review per recommendation number two	See immediately preceding recommended response. Remedy to follow outcome of #2 above.	N/A as the DRAFT audit was clean.

SUPERINTENDENT'S VACATION			
Finding	FCMAT Recommendation to ESUHSD Board	District Response as of 3/29/11	SCCOE COMMENTS
17	1 Adopt policy and regulations to require periodic vacations to be taken by all staff that accrue this leave, and implement procedures to periodically confirm vacations are taken.	Superintendent & Associate Superintendent contracts provided.	Fully Compliant. Superintendent & Associate Superintendent contracts provided. Vacation policy covered in Item 7 of both agreements and include the FCMAT Recommendations.
	18		
19	3 Establish board regulations regarding the basis for calculation of administrator daily rates to be utilized for vacation payout calculations.		
20	4 Review all board policy regulations and contracts for administrators and modify if necessary to establish clear language identifying required annual days of paid service, paid holidays, accrued vacation, sick leave and other leaves for members of management.		
	21		

FCMAT Extraordinary Audit- EC 1241.5(b)
 ESUHSD responses to SCCOE 6/27/11 comments

#	Finding	FCMAT Recommendation to ESUHSD Board	District Response 3/29/11	SCCOE Comments 3/31/11	District Response 5/12/11	SCCOE Comments 6/27/11	District Response 7/26/11	SCCOE Comments 8/16/11
2	2	Amend Administrative Regulation 3323 to clarify that informal bids are required when consulting service contracts are otherwise exempt from bidding per Government Code 56030.	District provided SCCOE with copies of Administrative Regulation 3311 "Business & Non-Instructional Operations. Subject: Bids."	Consulting Services contracts otherwise exempt from bidding per Government Code 56030 was not addressed in AR 3311.	AR 3311 includes Professional Services. Consulting Service contracts between \$15,000-\$78,500 require three written quotes: contracts over \$78,500 require formal bids. Please see Schedule 1 attached.	Finding #2 and 1 (informal bids): This regulation states that informal bids must be obtained for agreements between \$15,000 and \$78,000. However, the FCMAT recommendation is to require informal bids for contracts starting at \$5,000. Additionally, there is a recommendation to submit all contract extensions for board approval. Although both the recommendations have been included in AR 3311 (pursuant to our communication), these changes have been made unofficially i.e., the regulation was approved by cabinet on 4/29/11 and changes were made subsequent to that approval. This also raises a concern as to the internal control structure i.e., what is the process for ensuring that all amendments to policies are indeed approved by the appropriate authority.	FCMAT recommended AR 3323 be amended to require informal bids for all service contracts over \$5,000. The district's Administrative Directive issued on March 1, 2010, included such a requirement (Directive #2), however implementation of the low dollar threshold posed serious challenges and burdens on administrative staff as it greatly increased the number of informal bids across all of the district's operations. This added burden was discussed by the district's administrative team (Superintendent and Associate Superintendents) with the COE. The district's former CBO, Jerry Kurr, in response to concerns expressed by the increased administrative burden, and after consultation with the COE on this issue, instructed Purchasing to re-set the threshold at \$15,000, which is reflected in AR 3311. AR 3311 and its amendments, which replaced AR 3323, were reviewed and approved by Cabinet in accordance with district policy. Board Minutes show all contract extensions are submitted to the Board for review and approval. Revised AR 3311 references Government Code 53060: SCCOE staff suggested it reference GC 56030, which is not applicable. We agree Cabinet should review and approve all ARs before implementation. Internal Audit will help ensure this is done.	(Refer to statements in bold) Please provide meeting minutes showing this has been reviewed and approved by Cabinet.

FCMAT Extraordinary Audit- EC 1241.5(b)
 ESUHSD responses to SCCOE 6/27/11 comments

#	Finding	FCMAT Recommendation to ESUHSD Board	District Response 3/29/11	SCCOE Comments 3/31/11	District Response 5/12/11	SCCOE Comments 6/27/11	District Response 7/26/11	SCCOE Comments 8/16/11
5	5	Require evidence that conflict-of-interest statement has been submitted for every consultant contract being considered for approval as required by Board Policy 3600	District provided blank Conflict of Interest Statement form.	Upon request for completed samples, we were notified that this is new. Requested once from consultant who hasn't returned it as they are consulting with their legal counsel. Please advise if this was developed by an attorney and submit completed forms when received.	A Conflict of Interest Statement was prepared by district's General Counsel. For the template, please see Schedules 2.1 - 2.3. For samples of signed Statements, see Schedules 2.4 - 2.7.	Finding #5 (conflict of interest statements): At this time, we have two samples that have been provided by the district. However, one sample is incomplete raising questions as to the verification process employed by the district as to the content and review of completed forms. We would like the district to provide us data on how many consultants have been hired since July 2010 and how many conflict of interest statements have been obtained.	District Board Policy 3600 is a "standard" form of that policy developed by CSBA. BP 3600 "Consultants" does not require Conflict of Interest ("COI") statements from all consultants but rather vests some discretionary authority in the Superintendent ("as determined necessary by the Superintendent or designee") "depending on the range of duties to be performed". Following paragraph 4 of each COI statement is a footnote explanation as to what gifts do not include. It is separated from paragraph 4 by a short line which is not a signature line. SCCOE staff was confused by one consultant (RMA) which signed both pages of its COI in error. The SCCOE requested the district to provide the number of consultants hired since July 2010 and how many conflict statements have been obtained. AR 3311 was first adopted on April 29, 2011. Since then, and notwithstanding the discretionary element in BP 3600, the district has implemented a practice of obtaining signed COI statements from all approved consultants as part of the contract approval process. We have on file 22 signed COI statements since then, the majority being for Facilities Development work.	Please advise as to how many consultants have been hired since April 29, 2011.

FCMAT Extraordinary Audit- EC 1241.5(b)
 ESUHSD responses to SCCOE 6/27/11 comments

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13	6	Review the process utilized to hire the consultant whose payments were made under the purchase order of a different consultant and determine whether these services were authorized.	11/16 response: Administration to identify subject consultant and within the next 60 days investigate facts and circumstances surrounding the subject payments. Administration will report back to the Board on its findings and recommendations. District still cannot pinpoint the vendor.	No report on findings provided to SCCOE regarding District investigation of circumstances surrounding the vendor paid under purchase order of different consultant. No determination of whether services were authorized has been made (or not communicated with SCCOE). District still cannot pinpoint the vendor. Ian Marsh asked Jim Cerreta at FCMAT but he did not provide any information.	On April 19, 2011, FCMAT identified the requested documentation. Please see Schedule 4.1. Consultant was SGI, Inc. and sub-consultant was Community Development Resources, Inc. SGI routinely sub-contracts facilities work. Invoices were approved by Alan Garofalo from ESUHSD Facilities and Julio Hernandez from SGI. Please see Schedules 4.2, 4.3.	Finding #6 (payments to a vendor using another vendor's PO): The data provided does not answer the question of whether or not the work paid for was duly authorized. The real question is how do district staff ensure that all payments made using bond funds are legitimate expenses of these funds? That question remains unanswered. Paying a vendor under another vendor's PO represents other issues such as: o Who verifies whether that vendor has back up withholding requirements o Who issues a 1099, if appropriate o Who determines what services were provided and whether they were relevant to the contract. Please explain the process used to make such payment and steps taken to ensure that only valid expenses are being charged to bond funds.	FCMAT provided documentation which shows the transaction was between SGI, Inc. and its sub-consultant CDR, Inc. Invoice #MG-006 was approved by both the former Associate Superintendent Facilities and SGI's Bond Program Manager. CDR bills SGI monthly; SGI adds a 10 % administrative fee, then bills the district. ESUHSD's contract with SGI does not limit sub-contracting (provided SGI has obtained the district's approval of the sub-consultant). Since both SGI and CDR are incorporated and ESUHSD has no contractual relationship with sub-consultants/subcontractors there was no need to issue 1099s. The district ensures 1099s are issued when applicable. Facilities invoices are reviewed and recommended for approval by SGI as part of their contractual responsibilities, and then reviewed and approved by the Facilities Director or other designated District staff. VTD (the district's outside independent auditor) also reviews expenditures to ensure they are appropriately charged to bond funds; for FY 2009-10 VTD reported no exceptions. To strengthen Internal Controls, the district's standard form contracts have been and are being revised to uniformly require the district's pre-approval of sub-consultants; revised form contracts have been presented to Board for review, consideration and approval at open session Board meetings.	Was VTD's review specific to Bond Funds and, in fact, not a part of the annual external audit? The copy of the Audit Report provided was a draft; please provide the Final Report. The report identifies significant internal control deficiencies that have not been addressed by the District.

FCMAT Extraordinary Audit- EC 1241.5(b)
 ESUHSD responses to SCCOE 6/27/11 comments

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14	1	Require all vendors provide detailed invoices that include specific dates and hours per day of service, detailed by the person providing the service, with the underlying facility project identified with each charge.	Administrative Directive issued 3/1/10.	Not compliant. This was discussed in detail with FCMAT; Dan Moser & Jerry Kurr were present. In a sample of 14 contracts from 2007-2010 encumbered against Bond Funds, all but 2 consultants provided sufficient details on their invoices. Of the 2010-11 sample, 1 invoice lacked sufficient detail. Blach Construction - "School Name Title IX Constructability Review" with no details as to how amount was calculated, dates, etc.	Internal Audit reviewed construction management billings by Blach Construction. Blach invoices show charges for: (1) pre-construction, (2) construction, and (3) closeout (Schedules 5.1 - 5.3). In accordance with Article 5 of the contract between ESUHSD and Blach, consulting services are billed <i>based on a percentage of the total contract</i> , not on hours worked and hourly billing rates (Schedules 5.4 - 5.7).	Finding #1 (require vendors to provide detailed invoices): This item is considered completed at this time. However, our review of the contract associated with the sample invoice submitted suggest a lack of review of the contract process. The contract reviewed by us leaves a lot to interpretation and seems to be vague to almost lend an advantage to the vendor.	No further work was performed. We agree with the SCCOE that Facilities contracts should fully document the scope of services to be performed, how services are to be billed and allowable expenses which may be charged by the vendor. The district will take comprehensive steps to ensure that all contract language is strengthened. The district's standard form contracts have been and are being revised to address this and other issues. Revised form contracts have been presented to Board for review, consideration and approval at open session Board meetings. The district has also formed a committee comprised of the Internal Auditor, CBO and Purchasing Director who will review selected contracts to ensure that the district is not disadvantaged, and will recommend language changes to the district's legal counsel to help ensure this.	We request a sample of draft contract language if not yet approved by the Board.

East Side Union High School District

FCMAT Extraordinary Audit – EC 1241.5(b) - Responses to SCCOE 8/16/11 comments

#	Finding	District Response 7/26/11	SCCOE Comments 8/16/11	District Response 8/17/11
2	2	We agree Cabinet should review and approve all ARs before implementation.	(Refer to statements in bold). Please provide meeting minutes showing this has been reviewed and approved by Cabinet.	It is District policy for Administrative Regulations to be reviewed and approved by Cabinet. Minutes are not kept of cabinet meetings. AR 3311 was reviewed and approved by Cabinet on July 14, 2011, as certified by Associate Superintendent Cathy Giammona – please see Schedule 1.
5	5	We have on file 22 signed COI statements.	Please advise as to how many consultants have been hired since April 29, 2011.	A review of Board minutes shows that it approved xx consultant contracts since April 29, 2011.
13	6	VTD (the district’s outside independent auditor) also reviews expenditures to ensure they are appropriately charged to bond funds: for FY 2009-10 VTD reported no exceptions.	Was VTD’s review specific to Bond Funds and, in fact, not a part of the annual external audit? The copy of the Audit Report provided was a draft; please provide the Final Report. The report identifies significant internal control deficiencies that have not been addressed by the District.	Vavrinek, Trine, Day & Co. LLP’s audits for FY 2009-10 were specific to the Measures G and E bond funds. Schedules 2 and 3, the final VTD audit reports for Measure G and E respectively, show no material internal control weaknesses.
14	1	The district will take comprehensive steps to ensure all contract language is strengthened. The district’s standard form contracts have been and are being revised to address this and other issues. Revised form contracts have been presented to (the) Board for review, consideration and approval at open session Board meetings.	We request a sample of draft contract language if not yet approved by the Board.	Schedules 4 show samples of old Contract Services Agreements. These were used prior to adoption of revised language suggested by FCMAT and SCCOE, as shown in Schedules 5. Sch. 5.1, for example, states in paragraph 3, <i>“Invoices shall be in sufficient details to fully understand the services provided during the time period specified on the invoice...and any other information that is pertinent to the services provided.”</i> Most recently, the Board was presented with, and approved, master form of professional service agreements for architectural and inspector of record services. A revised form of agreement for Construction Management services that addresses the FCMAT issues has been circulated for comment and will be presented for Board approval at its Regular September meeting.

East Side Union High School District

Timeline

FCMAT Extraordinary Audit/ District follow-up with SCCOE

Date	Action
1/28/10	FCMAT Extraordinary Audit Report issued to SCCOE. SCCOE assigned responsibility for follow-up of corrective action re 21 audit exceptions.
2/9/10	Board Discussion/ Action re FCMAT Extraordinary Audit – motion to approve administration’s proposed recommended action; authorization to notify County Superintendent of administration’s proposed action, including restoration of Internal Audit function.
2/18/10	Board presentation/ Discussion/ Action re FCMAT Extraordinary Audit – Dr. Charles Weis, Eddie Garcia, Dan Moser.
3/4/10	Board response to SCCOE re FCMAT Extraordinary Audit – approval of administration’s response to the SCCOE re the FCMAT report, including Internal Audit position description.
11/22/10	Internal Auditor, Ian Marsh, started at ESUHSD.
2/23/11	Quarterly meeting at SCCOE – Ken Shelton, Nimrat Johal, Jenina Salcedo, Dan Moser, Hardy Childers and Ian Marsh. Ian Marsh assigned responsibility for coordination of ESUHSD follow-up. SCCOE scheduled wrap-up meeting for 5/4/11.
2/24/11	Phone call from Alan Bicho, Foreperson of Civil Grand Jury, to Ian Marsh, who told him the SCCOE 2/23/11 meeting very positive and a wrap-up meeting was scheduled for 5/4/11.
3/25/11	Ian Marsh, Hardy Childers met to review district follow-up of five open items from FCMAT report identified in 2/23/11 SCCOE meeting.
3/29/11	Jenina Salcedo from SCCOE reviewed district follow-up in ESUHSD office of five open items: all other items were confirmed as fully compliant.
5/4/11	SCCOE cancelled wrap-up meeting with District staff without explanation. Meeting was not rescheduled.
5/12/11	Ian Marsh e-mailed ESUHSD assessment of status of corrective action with supporting documents to Jenina Salcedo.
5/12/11	Karen Poon forwarded Ian Marsh’s 5/12/11 e-mail to Yen Lam at SCCOE with request to follow-up. Received no response.
5/26/11	Civil Grand Jury issued draft report on FCMAT Extraordinary Audit.
6/3/11	E-mail from Ian Marsh to Ms. Johal reminded her that ESUHSD had sent documentation to Ms. Lam and requested SCCOE response before Audit Committee meeting on 6/11/11.
6/3/11	E-mail response from Ms. Johal to Ian Marsh that she was in Sacramento and promised to contact him on 6/6/11, but did not.
6/6/11	Dan Moser wrote response re draft to Helene Popenhager, new Foreperson of Grand Jury, that it was based on out-of-date information.

Date	Action
6/8/11	Follow-up e-mail from Ian Marsh to Ms. Johal. Referred to pending issuance of Civil Grand Jury Report and need for immediate SCCOE review of ESUHSD's responses. Ian Marsh asked to meet with Ms. Johal on June 9, if available, but received no response.
6/9/11	Ian Marsh e-mail to Ms. Johal, again requesting document review and offered to meet to discuss. Ms. Johal e-mailed 8/3/11 she thought the District had a response to the findings already.
6/13/11-6/17/11	Ian Marsh on vacation.
6/14/11	Yen Lam left voice message for Ian Marsh (unintelligible).
6/16/11	Yen Lam left voice message for Ian Marsh (unintelligible).
6/16/11	Final Civil Grand Jury report issued.
6/21/11	Ian Marsh phoned Ms. Lam, who had started review of ESUHSD docs sent on 5/12/11. Ian Marsh explained urgency of the SCCOE's review.
6/23/11	Ms. Lam requested additional documents, including the Government Code reference in AR 3311, which Ian Marsh added. Ms. Lam said she would review documents with Ms. Johal.
6/27/11	Ms. Johal e-mailed response to Ian Marsh received. Stated that of five open items, three remained open; said that AR 3311 had been amended by District without proper authorization; asked for additional documentation not previously requested by FCMAT or Jenina Salcedo.
6/28/11	Article in San Jose "Mercury News" re Grand Jury report. Also posted on FCMAT website, it alleged district has lax financial controls and was slow to implement corrective action requested in FCMAT report. Ms. Johal is quoted as saying that all five items remain open.
7/5/11	Dan Moser wrote to Dr. Weis, County Superintendent, re corrective actions taken in response to FCMAT and Grand Jury reports; expressed concerns re possibly misleading and incomplete statements by Grand Jury and SCCOE.
7/11/11	Jenina Salcedo asked ESUHSD to respond to Ms. Johal's 6/27/11 questions.
7/11/11-7/27/11	District prepared responses for SCCOE.
7/28/11	Ian Marsh e-mailed Ms. Salcedo requesting to discuss District's responses. Received out-of-office reply.
8/3/11	Ian Marsh phoned Ms. Salcedo, who said she was setting up group meeting between ESUHSD and SCCOE. Ian Marsh requested Ms. Salcedo to review the new documents first, and e-mailed revised Excel spreadsheet, plus BP 3600 re consultant Conflict of Interest statements.
8/8/11	Ian Marsh phoned Ms. Salcedo to confirm receipt of docs. Left message.
8/11/11	Ms. Salcedo called Ian Marsh back – said she will review docs next week, and arrange wrap-up meeting.
8/16/11	Ms. Salcedo responded to Ian Marsh's 7/26/11 comments. Requested additional documentation.
8/18/11	Ian Marsh prepared additional documents requested by Ms. Salcedo.

Date	Action
8/22/11	Ian Marsh obtained extra documents from staff re Conflict of Interest Statements and samples of Contract Service agreements in both old and new formats.
8/22/11	Marcus Battle called Ms. Salcedo to arrange meeting 8/23/11 to discuss final responses.
8/24/11	Wrap-up meeting in District office – Nimrat Johal, Jenina Salcedo, Marcus Battle, Ian Marsh. Ms. Johal said she was misquoted in the 6/28/11 San Jose “Mercury” article re the number of open audit items.
8/25/11	Ian Marsh sent Ms. Johal list of 37 Personal Service Contracts approved by the Board in May and June. Excluded known duplicates, change orders, emergency contracts and governmental agencies. Ms. Johal requested 14 corresponding Conflict of Interest statements: 12 were e-mailed to Ms. Johal. For the two missing, one was an emergency contract – response was subsequently received after translation into Spanish; the other is an out-of-state vendor who ignored requests to sign.
8/30/11	Dan Moser reviewed the draft Grand Jury response with the Board of Trustees, which approved it.
9/9/11	District response to Grand Jury report.