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## MEMORANDUM

**TO:** Los Angeles Community College District, Board of Trustees and Interim Chancellor, Dr. Tyree Wieder

**FROM:** Mikhail Reider-Gordon, Capstone Advisory Group LLC

**DATE:** March 10, 2010

**RE:** Recommendations

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We have conducted our organizational and operational analysis of the Los Angeles Community College District ("the District") Bond Construction Program Build-LACCD organization. Based on our on-going discussions with you throughout our inspection process of the organization, we are issuing the following recommendations for consideration:

### **Creation of an Office of Inspector General, Bond Construction Program**

The District should consider establishing for the duration of the Bond construction program an Inspector General function ("IG function" or "IG"). The IG office would provide specific internal audit capabilities and conduct relevant inquiries and investigations into the expenditure of all Bond monies. The IG function would focus on all aspects of the Bond program, working with both internal and external Bond counsel, to ensure appropriate administration of the program, but would also regularly examine and audit key processes involving contracting, bidding, procurement of building materials, etc., including correlating services described in contracts proposed between the District and vendors to Prop 39 rules. The IG would focus not only on compliance with Bond laws and regulations but also audit the effectiveness of the programs and processes, identify and help eradicate waste, fraud, abuse, corruption, theft and other financial malfeasance and misconduct. The IG's office would test the performance of the Finance Department in over-seeing the regulation of expenses and labor logs and the human resources function as to positions and personnel added to the Bond program to test that only appropriately qualified individuals are hired and that unnecessary or unallowable positions are not being created. The IG could also test the amount of time the job opening is publically posted, audit the

number of submissions/applications, review proposed salaries against regional rates for the same industry/position and provide transparency to the hiring process with the Program. The IG could also house a function or individual whose role would be to serve as a neutral independent analyst (see below) to provide cost-assessments on proposed programs and building projects that fall under the auspices of the Bond program.

## **Whistleblowers**

The District should consider implementing a more formalized Bond program whistle-blower complaint plan. This could include the establishment of a Bond program-specific toll-free number staffed by a professional third-party company that is familiar with fielding these types of complaints and allegations. The results from the third-party should be directed to the District's Internal Audit Department, the office of General Counsel, external Bond counsel, where applicable, and one rotating member of the Board of Trustees. A campaign that advertises the hotline should be directed not only to District personnel, but to all contractors (including architects and builders), community stakeholder groups such as the Citizen's Oversight Committee, campus students, faculty and staff, unions and PM program staff. The advertising campaign should include posters that provide the toll-free number and information about the confidential program which can be provided to all stakeholders for posting on the notice boards at venues including break-rooms, unions, work-sites, etc. As calls to the whistleblower hotline are received there should be a protocol that is closely adhered to at all times that logs when the complaint comes in, if any documentary evidence is accompanied by it, how each allegation is handled, documenting that the District takes each one seriously, what was done to verify or determine the necessary follow-up to the complaint and, where deemed necessary, an investigation opened for a swift response, keeping the Board and Chancellor's office apprised of developments (except where the allegation involves one of these individuals). A paper record of each complaint, supporting documentation of the steps taken and any findings or resolution should be maintained with the District's counsel for historical purposes.

## **Independent Guidance for the Board**

The Board might benefit from an individual who functions much like a Legislative Analyst functions in reviewing propositions and providing neutral guides to voters. The volume of motions for approval put forward to the Board under the aegis of Bond-related expenses and expansion of programs under the Bond construction efforts is high. Currently there is no full and independent disclosure of the cost, legality, or relevancy of these proposals. The independent analyst, perhaps working in the IG's group, would receive all proposed motions, amendments, funding requests, regarding expenditures or program enhancements from the Executive Director of the Bond program and his or her deputies and produce a timely separate report that assesses the exact specifications of what is being requested, the true cost, and the reasoning behind the justification. Prior to certain action items for the Board's approval an impartial analysis would be provided to them for consideration when voting. Rather than all items being subject to a written report to the Board, a dollar amount might be set [for instance, any proposed expenditure in excess of \$20,000] that required a report from the analyst prior to Board approval. Bond counsel may at times be required to opine on the proposal's adherence to Bond law prior to the issuance of the independent report. For smaller dollar amounts the analyst would have the right to question and demand support for requests to reach a point where they were either satisfied that the

expense was reasonable and the requested action justified or on not obtaining sufficient information to support the request, reject it thereby preventing it from ever reaching the Board for vote.

## **Conflict of Interest Statements**

The implementation of mandatory conflict-of-interest disclosures would be advisable in helping to prevent issues from arising with Build staff and contractors and in facilitating the disposition of potential issues. A written attestation, whether administered online or via hard-copy, should be made compulsory for all staff involved in the Bond program no matter what their level or which contractor they work for. Initial conflict-of-interest disclosure forms should be prepared for all new-hires making it essential to disclose in writing any and all potential and actual conflicts of interest as they relate to any part of the District or Bond program, be it a family relationship, friendship, business interest, prior employment, financial interest, etc. as part of the hiring process. Moreover, all current staff should be requested to fill one in immediately. Those who either fail to declare or who conceal conflicts would be subject to immediate termination or their employer (assuming a contracting firm) would be asked to remove them from the Bond project. Thereafter, the Program would seek annual attestations from all staff, providing opportunity for changes in circumstances to be disclosed. Those with interests to disclose would be subject to secondary review by the IG function or counsel, working with the contractor, to erect ethical walls around that person as it relates to their interest or in moving them to another position where the conflict does not have potential or real impact on the Bond program.

## **Supplier Code of Conduct**

A Supplier Code of Conduct ("SCC") should be implemented for all current and future contractors to the Bond program. The SCC provisions would require District suppliers to sign pledging agreements to conduct themselves at a certain standard. The SCC should include a zero tolerance policy on giving or receiving any gifts or hospitality of any type – including transportation, vacation and recreational trips, speaking engagements, free goods or services, invitations to sporting or cultural events, etc. – for suppliers as it relates to District personnel. The SCC would contain post-employment restrictions of one-year stipulating that vendor staff are precluded from becoming an employee of the District or being paid with District Bond funds as an independent contractor or sub-contractor to the District and that District employees are prohibited from working for a supplier for a period of one year after leaving District employment. The SCC would commit suppliers to not engage in any form of bribery or corrupt practices including extortion, and fraud, at a minimum. Suppliers or companies who may become suppliers to the District Bond program who elected to sponsor an event or otherwise donate money, goods or services to a Bond-related activity would be precluded from bidding on any work on the Bond program for a period of one year.

## **Expenses**

It is strongly recommended that the District conduct a full look-back of submitted expenses from, at a minimum, April 2007 through current to ascertain the total amount of any and all expenses incurred that are disallowed under Prop 39 and other Bond and tax rules. It is our understanding that Bond rules allow for up to 5% of expenditures to fall outside of the rules before a district loses their tax-exempt status or otherwise violates tax law to allow for inadvertent or accidental payment of disallowed expenses. Prop 39 provides no leeway for disallowed expenses. The District needs to determine what dollar amount they have already amassed toward this threshold total so as to gain an understanding of their potential for exceeding the allowable percentage.

Additionally, it is recommended that a comprehensive review of infrastructure-related expenses such as phones, Internet connectivity, data housing, etc. be analyzed against what is understood to be included under the contract with the District in the multiplier the Program Manager attaches to each staff person's base salary to ensure there has been no double-charging of such types of expenses.

## **Expense Controls**

The District should implement, in an expedited time-frame, new robust controls on allowable expenses. Working with Bond counsel, it is suggested that strict rules of what is allowed and disallowed be drafted and that the Build PM contracting companies, PM staff and District employees (especially those in the Accounting and Internal Audit departments) be educated on these strictures. Written guidelines and rules should be circulated and verbal instruction given to all personnel affected by these rules. Acknowledgement of receipt and education in these rules should be in written form and kept on file for each staff member. An individual or team of individuals either from the PM or from within the District's Accounting department should be tasked with reviewing all PM-submitted expenses against these rules for compliance with the Bond regulations. Anything falling outside of the allowed expenses or exceeding agreed-upon amounts should be rejected for payment.

## **Completion of Build Staff Analysis**

We have tested a sample of staff identified as working under the PM team at BuildLACCD and have analyzed their submitted hours, costs, billing accuracy, and value based on qualifications, job duties and referrals. It is recommended that the review be expanded to take in all staff falling under the Build Basic, Augmented & Supplemental Program Management umbrella.

## **Benefits**

The District needs to better understand what Build staff contractors and sub-contractors include in their multiplier in terms of benefits provided to those staff who work on the PM program. Charges of better pensions, insurance plans, etc compared to what District employees receive can better be answered with a full understanding of the benefits programs. The PM states in their contract with the District for the PM function that the multiplier takes in calculations for both labor and "fringe benefits and general

overhead”<sup>1</sup>. It is important to know how both the range of benefits and the cost of them compare against what the District’s own people receive in order to ascertain if adjustments or level-setting should be implemented going-forward. Understanding the costs of the benefits and overhead will also facilitate the District’s current discussion on the amount of mark-up and profit that is reasonable for contractors to earn as at this time.

## **Human Resources**

The creation of a human resources (“HR”) function within the Build program is strongly recommended. An experienced human resources professional who can direct the appropriateness of created positions, hiring and oversee the administration of a formal HR function is critical. This function could be performed by the PM with a qualified HR staff specialist. Formal processes and procedures should be implemented that dictate how the need for a new position is identified, requested, approved and that administers both the application process and subsequent performance reviews. The HR specialist should review the requested position, perform a regional salary analysis to determine a reasonable compensation rate in line with the regional market for the same industry or position and work with those who are proposed to manage the new hire to formalize in writing the job duties of the individual to be hired. Job openings should be publically advertised and widely posted to attract the greatest number of candidates from the Los Angeles area. The positions should be advertised a minimum of thirty (30) days. If an insufficient number of candidates apply (i.e., less than 5 for any one job), the posting should be more widely disseminated and the position held open longer. Transparency in all aspects of position creation and hiring should be foremost. Standards for each position and performance metrics by which to measure individuals should be codified and during the interviewing phase, the vetting of candidate’s education, credentials and claimed certifications and advance clearance of potential or actual conflicts-of-interest should be conducted. Documentation that provides a detailed chronology and history of how any given position was determined, who authorized its creation, how the criteria for the position were arrived at, how many and who applied for the job; which people were short-listed and why; who interviewed the candidates, what vetting was conducted on their backgrounds to verify their claimed experience, education and qualifications, etc. should be captured and retained to demonstrate the District has a means of ensuring those applying to work within the Bond program are treated with fair and equitable consideration.

## **Fraud Risk Assessment**

It is recommended that the District consider using appropriate resources to conduct a fraud risk assessment for the Bond program. Taking a weighted approach that identifies the types of risk that the Bond program is exposed to and categorizes the level of potential exposure could provide the District with a greater understanding of the program’s control weaknesses. Additionally, such an assessment could assist the District and the IG function in designing a plan for addressing and remediating the identified issues in a systematic fashion tackling the issues identified as high priority with more prompt actions.

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<sup>1</sup> URS Statement of Direct Labor, Fringe Benefits and General Overhead for the Year Ended December 31, 2005”, referenced in the URS Exhibit A schedule attached to the PM contract with the District, July 2007.