

Berkeley Unified School District

FACILITIES PLANNING DEPARTMENT

1720 Oregon Street, Berkeley, CA 94703 (510) 644-6066 Fax: (510) 644-8703

Draft Minutes of the Meeting of September 27, 2012

Members Present: Stephanie Allan Susi Marzuola Eric Weaver Allen Nudel
Nicolie Bolster-Ott David Goldin

Board Members Present: Josh Daniels, School Board Director

Staff Present: Lew Jones, Director of Facilities
Chanita Stevenson, Administrative Coordinator

Members of the Public: Mike Bolgatz Miguel Dwin

1. *Call to Order:* The meeting was called to order at 6:00 PM.
2. *Approval of Meeting Minutes:* Secretary Weaver moved to approve the minutes and Member Bolster-Ott seconded the motion. The motion was approved unanimously.
3. *Public Comments:* There were no public comments.
4. *Discussion with the Auditor:* The Auditor provided a handout with answers to the following questions and the Committee asked additional questions. The questions and answers are below with an additional section for Committee questions:
 - a. **Have there been any changes in the law since last years' audit.**
 - Education Code Section 15286 has been added to require the annual financial and performance audits be submitted to the Citizens' Oversight Committee by March 31 of each year. These audits shall be conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States for financial and performance audits.
 - b. **Outline of the scope of your planned audit.**
 - We have been engaged by the District to conduct a Performance Audit on the District's Measure I General Obligation Bonds. The objective of our Performance Audit will be to determine if the bond funds have been expended only on the specific projects listed in accordance with the requirements of Proposition 39, as specified by Section 1 (b)(3)(c) of Article XIII A of the California Constitution.
 - The objective of a performance audit is to provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability. We will plan and perform the performance audit in accordance with performance audit standards contained in Government Auditing Standards (GAS), issued by the Comptroller General of the United States. Those standards require that we plan and perform the

audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Because of inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or material non-compliance may not be detected exists, even though the audit is properly planned and performed in accordance with applicable standards. An audit is not designed to detect error or fraud that is immaterial to the performance audit objectives.

- We will also obtain an understanding of internal control that is significant within the context of the audit objectives. For internal control that is significant within the context of the audit objectives, we will assess whether internal control has been properly designed and implemented. For those internal controls that are deemed Significant within the context of the audit objectives, we will perform tests of controls including testing underlying transactions, as required by GAS standards, to evaluate the effectiveness of the design and operation of controls. Information systems controls are often an integral part of an entity's internal control. Thus, when obtaining an understanding of internal control significant to the audit objectives, we will also determine whether it is necessary to evaluate information systems controls.
- We expect to perform the following procedures to the list of Measure I General Obligation Bond project expenditures for the year ended June 30, 2012 (the "List"):
 - 1) Interview District management related to controls over bidding, contracting, expenditure of Bond Funds, and financial reporting.
 - 2) Document the District's procedures and controls over bidding, contracting, expenditure of Bond Funds, and financial reporting.
 - 3) Perform tests to determine that the District's controls over bidding, contracting, expenditure of Bond Funds, and financial reporting have been put in place and are working as documented.
 - 4) Verify the mathematical accuracy of the List.
 - 5) Reconcile the List to total bond expenditures as reported by the District in the District's audited financial statements for the year ended June 30, 2012, presented as the Building Fund.
 - 6) Select a sample of expenditures. The sample will be selected to provide a representation across specific construction projects, vendors and expenditure amounts.
 - 7) Verify that the expenditures were for the approved projects and were to construct, upgrade, and improve classrooms and school facilities, renovate restrooms and plumbing, upgrade electrical systems, improve student access to computers and technology, replace heating and air conditioning systems or to make health and safety improvements, and that no funds were used for teacher or administrative salaries, or other school operating expenses.

c. What percentage of the transactions do you intend to review?

- The number of transactions will be determined using our standard risk assessment and sampling procedures, based on the number of transactions and dollar value of those transactions, as reported by the District.

d. How do you define "small" versus "big" projects?

- We do not distinguish between "small" projects and "big" projects. For purposes of compliance with the requirements of Proposition 39, this is not relevant.

e. Do you have different audit criteria for small projects and big projects?

- We do not distinguish between "small" projects and "big" projects. For purposes of compliance with the requirements of Proposition 39, this is not relevant.

f. How much confidence do you have in the District's bookkeeping?

- During our financial statement audits of the District for the past three years, we have had no significant internal control findings.

g. Define the Boundaries of Measures AA and I.

- Not sure what is meant by "Boundaries". Furthermore, we have not been engaged to provide any services to the District related to Measure AA (other than part of the overall District audit). With respect to Measure I, we follow the language contained in the ballot language that was approved by the voters of the District:

"To improve school safety and facilities for learning and teaching, shall Berkeley Unified School District issue \$210,000,000 in bonds at interest rates within the legal limit, to construct new classrooms for growth; complete seismic upgrades, construct science labs, upgrade computers and education technology, renovate playgrounds, replace restrooms, cafeterias, roofs, heating and fire safety systems, remove hazardous materials, improve energy efficiency, and qualify for State grants, with independent audits and citizen oversight?"

h. Verify that each project is within the scope of its funding source, i.e. Measure AA vs. I

- We have not been engaged to provide any services to the District related to Measure AA (other than part of the overall District audit). Refer to Answer #2 with respect to Measure I.

i. With respect to the performance audit portion of the audit, what steps to verify that all required signatures and reviews have been made prior to cutting checks?

- Refer to Answer #2. As part of the District's financial audit, and as required by Performance Audit standards, we undertake a study and evaluation of the internal control system in place within the District.

j. Verify that Board has properly approved each project.

- Refer to Answer #2. We also read Board minutes, CBOC minutes and other information presented to the Board and CBOC related to the projects, to determine the District's priorities related to the projects.

k. Verify that staff time is properly allocated to appropriate project and that non-bond related costs are not assigned to the bond.

- Refer to Answer #2. Also note that if District salaries are being charged to the bond projects, we take steps to determine that the salaries are specifically charged to the project (not allocated) by using time cards, time sheets or other appropriate methodology.

l. Verify that re-allocation of projects between Measures AA and I was done properly.

- We have not been engaged to provide any services to the District related to Measure AA (other than part of the overall District audit). Refer to Answer #2 with respect to Measure I.

Committee Member Questions:

- **How is Berkeley Unified keeping track of time related to projects?**
Staff has been on a time sheet for some time. Most of operating costs are being charged to Measure AA. Specific Measure I projects, staff utilizes a time sheet.
- **How are expenses tracked when an alternative delivery method is used where one check is issued for multiple services?**
The Auditor stated that he has run into these situations where expenditures are bundled. First, they would sit down with the administrator to determine what services are included. Next, they would sub sample and verify that all expenses are legitimate. They also look for patterns such as bid splitting to make sure these patterns do not occur.
- **Are we able to request that the Audit includes a review of a higher number of transactions?**
Management is unable to specify the number of transactions that are audited. However, if there are concerns expressed it implies that there is a greater risk which would cause the sample size to become larger. If the number was specified it, the audit would not be considered an independent audit. If the Board specified that it wanted all transactions reviewed it would not be considered an audit but a different type of service. If it is determined that there is a high risk then the sample size would go up.
- **Is there a shared pool of information among firms that do this type work, is there a shared definition that helps defines risk?**
No. Each firm has their own methodology of defining risk. Every firm utilizes standardized processes. Our firm is subject to review every year. Our approach is conservative.
- **When did the rules change for audits?**
When Prop. 39 was first passed in 1999 a performance audit was required, but performance auditing standards were not developed within the Government Auditing Standards. The Government Auditing Standards or the “yellow book” was changed in 2003 and definitions and procedures were developed for performance audits. It was amended again in 2007. The law did not specify that the performance audit had to be done in accordance to the yellow book and there were non CPA firms doing audits. In 2010, the law was changed where the performance audit must be done according to the Government Auditing Standards.
- **Is Bond Counsel ever engaged about expenditures within Proposition 39?**
Yes, if there is a specific issue he will contact Bond Counsel or District’s legal counsel. The information would be disseminated to the Committee. Also, he would ask the District before engaging counsel services.
- **What were the expenditures for Measure I as of June 30th?**
Staff responded that the expenditures for Measure I were \$12.26M.

There was a concern that a performance audit is not done frequently enough for Measure AA. The Committee directed the Chairs to send an email to Staff and the CBO to have a Performance Audit of Measure AA done since the last audit and should be done every five years or until the bond ends. The Committee also wants a financial audit done for Fiscal Year 2012 for Measure AA.

5. *Action: AB 1199: Aligning CBOC By-Laws with the Change in the Law.* A motion was made by the chair and it states: The CBOC recommends to the Board that the Committee's By-laws be revised to include the recent changes in AB 1199 that are now law:

Specifically, Section 8. Terms of Office now permits a third two-year term and restricts any person's service to three consecutive terms.

Staff will provide specific language to the Board reflecting these changes. Secretary Weaver moved to approve this action and it was seconded by Co-Chair Marzuola. The motion was approved unanimously.

6. *Discussion regarding Board Resolution No. 13-001 on September 12, 2012 Temporary Borrowing between funds.* Secretary Weaver stated that State of California does not disperse funds to school districts until later in the year. If a district does not have enough money to fund its obligations it can borrow money in the form of a Tax Revenue Anticipated Notes (TRANS) until the State funds the school district. The costs to utilize a TRANS to borrow funds is usually around \$150,000 in fees and interest. In recent years the District obtained authorization but has not had to utilize a TRANS and did not have to borrow. This year, the amount of money the State of California has deferred is larger because Governor Brown added \$450 per student contingent upon the passage of Proposition 30. There is a law that permits school districts to borrow money from other funds temporarily where there will be a guaranteed repayment once the cash flow is provided by the state. The District plans to borrow \$9M from the Construction Fund) for 45 days to be repaid when it comes in December to save costs to the General Fund. Secretary Weaver and Co-Chair Allan were concerned that the way the resolution was written it creates a political perception that Bond funds are being used for non-bond expenses, which is not true. Member Goldin asked if Bond Counsel said we could do this. Board Director Daniels stated that this is legal and that the money is guaranteed to be repaid whether Proposition 30 passes or not. Co-Chair Allan and Secretary Weaver spoke with Co-Superintendent Cleveland regarding the resolution. Co-Superintendent Cleveland stated that she has not done this before because of possible political concern but recognized that this would save the District money? and stated that she would provide a memo to the Committee to be posted on the website that will explain to the public:

- a. *The financial reasons for borrowing the funds from Measure I;*
- b. *That borrowing between funds is legal;*
- c. *That the Committee is questioned the borrowing; and*
- d. *That there is no negative impact to Bond.*

Co-Chair Allan added that she wanted the Co-Superintendent Cleveland to explain because the resolution the Board passed was unclear. The resolution did not explain that this funding problem was not created by the District mis-management of funds, but was created by the State of California funding changes for schools. The District was in a very difficult position. It allows the District to save \$150,000. The Committee would like to

have the memo so that the reasoning is more transparent to the public. Member Goldin questioned Staff if the Department has the cash flow to pay all commitments without selling more bonds. Staff responded that it did. Member Goldin wants to make sure that this is not a normal business transaction. School Board Director Daniels stated that in previous years that the interest earned at the Alameda County Treasurer would help offset fees related to utilizing a TRANS to borrow funds. Now that interest rates are very low it would no longer cover the costs of fees for a TRANS it makes internally borrowing more attractive. Secretary Weaver is worried that the Board action may affect the BSEP reauthorization. Board Director Daniels responded that it was taken into consideration during his conversations with the Co-Superintendent and was open to hearing feedback from the Committee.

7. *Staff Report*

- **Berkeley Arts Magnet and Malcolm X Annex Solar:** The solar panels were turned on at both sites this past week. It will take 45-60 days before PG&E will begin the rebate process.
- **Berkeley Community Theater Access Project:** Staff expects completion on this project within a week.
- **Derby Field:** The PGE issues at Derby have been resolved. The job was delayed 3 weeks because old transite pipe was discovered at the site. Adjustments will be made to the budget to cover this issue and the Class II soil removal.
- **BHS Phase II & III:** Berkeley High School is past is the haz mat phase. The pad is in and the footings will start soon. Staff believes that the hazardous materials issue will be around \$1.25M. No financial adjustments were made on the report for this job because there was enough in the contingency and the ability to continue to maintain an additional 5% contingency. This change order is around 5%. An additional change order is for the Laundry Room.
- **Jefferson Modernization:** Funds were added to this project for additional seismic review of the north wall. A budget adjustment will be made to project in the next update.
- **West Campus Demo and Abatement/West Campus CTE:** This project is currently out to bid and we would like to do this before starting the West Campus CTE project. The budget was increased for the CTE project because the Architect misestimated the project.
- **West Campus Board Room:** Staff stated that the Board Room is currently out to bid. The budget for the Board Room increased because originally the City of Berkeley planned to share facilities with the District. The Board wanted to keep certain aspects of the project, such as restrooms in the project. Measure AA funds will be used to fund this project.
- **King Field:** There is an interest by the school to have an all-weather track. Some members of the Community are opposed to having an all-weather track. The recommendation will be to increase the budget and a future landscaping project will be deleted from King. The increase to the budget will shift this project from Measure AA to Measure I. The Board will make a decision on October 10th.
- **Science Labs at Berkeley High School:** The Board voted to move forward with two out of three science labs. The Board requested Staff and the high school administration to identify a third room. The high school administration concluded they did not have additional room large enough to accommodate a third science lab.

- **Infrastructure:** Staff noted that the Facilities Division will utilize new General Conditions and new Construction consultant documents.

8. *Committee Member Comments:* There was general discussion among the committee members about the process followed by the Board in temporary borrowing between the funds at their September 12, 2012 Board meeting. As the Committee charged with overseeing the expenditure of bond funds, committee members believed that the Board should have consulted the CBOC in advance on this matter as it involves bond funds. Co-Chair Allan agreed to convey the sentiment of the CBOC to the Board liaison.
9. *Project Tracking Committee*
 - The Project Tracking Committee has no updates.
10. *Next Meeting Dates:* The next meetings are scheduled for the following dates:
 - Future Meeting Dates are October 25th and November 29th
11. *Adjournment.* The meeting adjourned at 7:47 PM.