

Citizens Oversight Committee

Annual Report

July 19, 2004

Introduction

The Citizens Bond Oversight Committee (referred to as “the Committee” for the remainder of this document) is charged with informing the public concerning the expenditure of bond revenues for Measure M. The exact details of the purpose of an oversight Committee and their duties are specified in the California Constitution (AB 1908), and are summarized in the Committee’s bylaws. The pertinent sections of the bylaws are included in Appendix A including “*The purpose of the Committee as set forth in Prop. 39 is to inform the public at least annually by issuing a written report concerning the expenditure of bond proceeds from Measure M approved by the voters March 5, 2002.*” The Committee is required within the annual report to certify, if valid, that CVUSD is in compliance with Article XIII A, Section 1(b)(3) of the California Constitution (see Appendix B).

The following subjects are contained within this report:

Certification that money is being spent only on items identified in the ballot measure and within the state laws relating to this type of bond measure.

The Committee finds that the district is in compliance with the legal requirements of this issue.

Review of efforts to maximize bond proceeds

The district is doing a good job in getting the most from the bond proceeds and other available sources for construction and modernization.

Concerns over the construction of the second district stadium at Ayala High School

Although the district was within its legal rights on how this was done, the whole process gives the appearance of deception.

Communications

More effort needs to be put into informing the Committee about decisions relating to Measure M funds and the public needs to be kept better informed.

Program Management

The Committee believes the recent addition of a program manager and varied and specialized construction management firms is a good decision and should have been implemented much earlier.

Change Orders

Although they are necessary, and major changes can be implemented for good reasons, they should be better documented, reported, tracked, and always meet legal requirements.

Oversight Committee Authority

The Committee has no legal authority to determine the priority of how Measure M funds are spent. The Committee has authority to review, comment and inform the public concerning the expenditure of bond proceeds. In order to maintain taxpayer's confidence and not negatively impact future bond measures, the district and the board should work more cooperatively with the Committee.

The Orbach & Huff Report, Internal Memos and the County Audit

The committee has reviewed the Orbach & Huff Report and several internal memos related to the management of construction projects. We have many questions related to these documents, but feel that the county audit may answer some of them. When the audit is released, any remaining questions will be addressed to the appropriate parties. The findings will be in the next quarterly and annual reports.

Certification that money is being spent only on items identified in the ballot measure and within the state laws relating to this type of bond measure.

One of the major purposes of the Committee is to look at the expenditure of all funds from the Measure M bonds and certify that they are being spent only for projects listed in the original ballot proposal. The Committee meets every other month and sometimes monthly and is provided with a list of expenditures and the status of all ongoing projects, as well as plans for upcoming projects.

The Committee finds that all expenditures have been in compliance with the legal requirement that Measure M funds only be spent for projects listed on the original ballot proposal and have not been used for salaries or benefits for CVUSD employees. There have been other legal issues raised concerning District compliance to public bidding laws and adherence to public contract code by other reports. The County Auditor is currently conducting an audit concerning these issues and we are looking forward to reviewing its findings.

However, these are legal issues not included in the Committee's Certification requirement that Measure M funds are being used exclusively for Measure M projects and not for salaries or benefits for CVUSD employees. To this and only this does this Committee certify that the District is in compliance. The other legal issues will be addressed under the Committee's responsibility to "inform the public."

Review of efforts to maximize bond proceeds

In compliance with our mandate in Section 4.1 (d) of the Oversight Committee by-laws we would like to highlight some of CVUSD's accomplishments in maximizing bond proceeds for its construction program.

- 1) The re-use of designs for multiple schools sites saves valuable dollars that would otherwise be spent on higher professional fees and construction costs.
- 2) The schools currently being built incorporate many modern features, ensuring that the facilities will be useful for many years.
- 3) By working with the local city governments to co-locate with parks, it saves on the cost of land and playground equipment.
- 4) Using state modernization money whenever available and coordinating modernization programs with Measure M projects, saves bond proceeds and limits disruptions at the school sites.
- 5) Although each site was asked to prioritize projects, the Committee agrees with CVUSD that completing all on-site projects at once is a better use of funds than completing the highest priority projects first, then returning to the same site at a later time to carry out the lower priority items.

The Board may be within its legal rights on how it has re-prioritized and paid for the Second District Stadium, but it has given the public and this Committee reason for legitimate concern.

The legal requirement for passing the bond measure was that projects be listed and that Measure M funds only be spent for those projects. There is no legal requirement that the projects be prioritized. However, CVUSD chose to do that from the beginning. In campaigning for the passage of Measure M, the public was given the impression that bond proceeds would be spent according to the priorities listed in the Facilities Assessment Report.

The Board of Trustees has claimed that they are legally bound to not campaign for any bond measures, so they had no hand in what was being told to the public. However, district personnel, while off duty, were involved in the Measure M campaign. Any claim that the Board did not know the details of how the campaign was being handled is questionable.

One of the basic principles of management is “perception is reality”. Whether or not the Board had any intention of following the priorities established in the Facilities Assessment Report, the public had that perception that they would. The Committee has serious concerns over the way the Board handled the controversy over the timing of the construction of the second District Stadium. First, the Board claimed that they did not have anything to do with the campaign promises and therefore did not feel bound by them. While the truth of this has not been determined, it does not address the perceptions of the public. Second, in order to appease the public, the public was told that the stadium would be built with the second round of bond proceeds, scheduled for almost a year later, so as not to interrupt any other projects previously scheduled with the first round of bond proceeds. What the Board left out was that the construction of the second District Stadium would continue without interruption using borrowed funds from a non-Measure M building account. That account would then be paid back from the second issuance of bond proceeds a year later. This is not only a questionable exchange of funds, but a perceived example of deception.

The result of all of these decisions is that the Board may be less trusted by the public. This is not simply a political issue to consider for the next election. This is an issue of public confidence in the integrity of the bonding process and construction program. A lack of public confidence can hurt this and other school districts and ultimately our children when future bond measures are needed. This bond was passed only because a new law lowered the percentage needed to pass a bond measure from 66.6% to 55%, with the assurance that all projects would be listed and overseen by an independent oversight Committee. The public now knows that the Board has great latitude in re-prioritizing the defined projects and that the Citizens’ Bond Oversight Committee is only legally permitted to review and report its findings to the Public. Getting another bond passed in the future may be extremely difficult if such actions by the Board persist.

Board actions relating to Measure M should be officially communicated to the Committee, rather than having to be discovered by Committee members

Currently, whenever the Board takes action related to Measure M projects, there is no established method for communicating this to the Committee. Many times, the Committee has become aware of these actions because one of the Committee members was at the Board meeting or read about it in the newspaper. There should be a formal procedure in place for reporting Board actions regarding Measure M to the Committee.

CVUSD needs to continue to develop better communications with the community about what is happening with Measure M funds and how to see what the Committee is doing.

There are several Measure M projects going on in various stages of completion. The local papers often publish letters to the editor that show that the general public is not aware of the status of these projects. This was also pointed out in the annual performance audit. CVUSD should continue to develop public awareness of what projects are being worked on. This could include helping the Committee keep its web site up to date on project status and posting any information provided to the Committee concerning Measure M projects. The recent hiring of a Program Manager may help in this area. Also, the board is being given a monthly update on the status of all projects. This will help them better oversee the district and answer any questions the public may bring to them.

Change Orders

Ever since the Committee was formed, there has been a concern that change orders be kept in line and reported on regularly. Since the Committee is made up of citizens from the district and not professional auditors, we are not experts as to the complex laws that apply to public construction, but we want to make sure that school construction is being done within budget, within legal requirements and within the scope intended by the voters.

While there are varying opinions about the number and scope of change orders that are acceptable, there is a concern by the entire Committee that we be properly kept informed about them. Whether there be changes in project scope due to potential savings, unforeseen circumstances, or value engineering, the Committee should be kept properly informed about the purpose and the cost of all change orders. We are not able to fully report to the public if we are not kept informed.

The most dramatic change order was to the Shawnan Contract as described in the Orbach & Huff report. The original contract was for \$339,760. By the time the project had been completed the total change orders were \$438,456.39 for a total cost of \$778,216.39. This change order is currently under review by the County Auditor. The District has not paid the change order and there is pending litigation on the matter.

Program Management and Construction Management

In September, 2003, the Committee sent a recommendation to the board that more than one construction management company should be used (see Appendix D). District staff had qualified seven companies, which had been approved by the board. However, staff had been instructed to only use one of those companies, B.E. McMurray Construction. The Committee was uncomfortable with this policy for three reasons. First, the history of the district's use of this company showed that projects were not being completed on time. Second, without any other firm being used, there was no way to compare and determine if the CM firm was doing a good job. Thirdly, the Committee felt that a lack of competition gave no incentive for improved performance. About that time, the Board was considering granting an exclusive contract to B.E. McMurray to handle all district projects. The Committee's recommendation was ignored initially, but as negative issues with B.E. McMurray increased in late 2003, the Board began to implement needed changes.

Beginning in 2004, a Program Manager was hired and in the months following two separate construction management companies were hired to work on separate projects. More recently, another construction management company has been hired to take over for B.E. McMurray at Don Lugo. B.E. McMurray continues to perform work at Woodcrest Elementary and is obligated to close-out several existing projects.

In April, 2004, the Daily Bulletin obtained a series of memos from Dr. Saul to Dr. Bloch and Board Newsletters. One memo, written in February, 2003, expresses concern over the construction management company being used. The Committee regrets that district officials did not feel comfortable sharing their concerns with the Committee at that time. Perhaps some of the subsequent problems could have been averted if the concerns had been brought to our attention.

The Orbach & Huff Report, Internal Memos and the County Audit

On March 15, 2004, the Orbach & Huff Report, an investigative report into the management of CVUSD's construction program, commissioned by the School Board, was published to the School Board. The purpose of the report was to evaluate the performance of district officials, in particular, then Superintendent George Bloch. Waving his right to privacy, Dr. Bloch allowed the report to be made public soon thereafter. Since the report involved Measure M funds, the Committee has reviewed it. The County Auditor is currently conducting an audit into CVUSD's financial management of its entire construction program including the findings of the Orbach & Huff report.

In April 2004, the Daily Bulletin published a number of memos written by Dr. Saul to Dr. Bloch outlining her concerns about construction management issues for as far back as February 2003. A number of Board newsletters were also included dating back to April 2003. In all, these documents outline a growing lack of confidence in B.E. McMurray's top personnel by district officials, along with frequent intervention by at least one Board member in the day to day operations of the district's construction program. In seeking to clarify a number of issues to more accurately inform the public, the Committee asked a series of questions to district officials and Board members. One Board member answered a number of questions, while district officials and other Board members have not, citing the advice of district legal counsel. After the upcoming release of the County Audit report, the Committee will report in full regarding these issues.

Appendix A – Bylaws References

Section 2.0 PURPOSE

The purpose of the Committee as set forth in Prop. 39 is to inform the public at least annually by issuing a written report concerning the expenditure of bond proceeds from Measure M approved by the voters March 5, 2002 (the "bond proceeds").

Section 3.0 DUTIES

To carry out its stated purpose, the Committee shall perform the following duties:

3.1 Review Expenditures. The Committee shall review quarterly expenditure reports produced by the District to ensure that (a) bond proceeds are expended only for the purposes set forth in the ballot measure; (b) no bond proceeds are used for any teacher or administrative salaries or other operating expenses.

3.2 Annual Report. The Committee shall present to the Board, in public session, an annual written report which shall include the following:

- (a) A statement indicating whether the District is in compliance with the requirements of Article XIII A, Section 1(b)(3) of the California Constitution; and
- (b) A summary of the Committee's proceedings and activities for the preceding year.

Section 4.0 AUTHORIZED ACTIVITIES

4.1 In order to perform the duties set forth in Section 3.0, the Committee may engage in the following authorized activities:

- (a) Receive and review copies of the District's annual independent performance audit and annual independent financial audit, required by Article XIII A of the California Constitution.
- (b) Inspect school site facilities and grounds for which bond proceeds have been or will be expended, in accordance with any access procedure established by the Assistant Superintendent of Facilities/Planning.
- (c) Review copies of deferred maintenance proposal or plans developed by the District.
- (d) Review the District's efforts to maximize bond proceeds in ways designed to: (1) reduce costs of professional fees or site acquisition; (2) incorporate efficiencies in school site design; (3) encourage joint use of core facilities; or (4) involve cost-effective and efficient reusable facility plans.

4.2 Make requests for copies or inspection of District records in writing to the District's Assistant Superintendent of Facilities/Planning.

Appendix B

State Constitution

ARTICLE 13A (TAX LIMITATION)

SECTION 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on any of the following:

(1) Indebtedness approved by the voters prior to July 1, 1978.

(2) Bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(3) Bonded indebtedness incurred by a school district, community college district, or county office of education for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district or county, as appropriate, voting on the proposition on or after the effective date of the measure adding this paragraph. This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements:

(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.

(B) A list of the specific school facilities projects to be funded and certification that the school district board, community college board, or county office of education has evaluated safety, class size reduction, and information technology needs in developing that list.

(C) A requirement that the school district board, community college board, or county office of education conduct an annual, independent performance audit to ensure that the funds have been expended only on the specific projects listed.

(D) A requirement that the school district board, community college board, or county office of education conduct an annual, independent financial audit of the proceeds from the sale of the bonds until all of those proceeds have been expended for the school facilities projects.

(c) Notwithstanding any other provisions of law or of this Constitution, school districts, community college districts, and county offices of education may levy a 55 percent vote ad valorem tax pursuant to subdivision (b).

Appendix C
Current Project Status
As of June 30, 2004

Bird Farm Elementary School

Eighteen packages were bid on May 13, 2004. Twelve were compliant with district policy and were approved. The remaining six are being evaluated by the Construction Manager.

Liberty Elementary School

The school has been open since September, 2003. Several contracts are being closed out. Punch list items are ongoing. The Construction Manager has been given a list of outstanding items from the Inspector of Records.

Rhodes Elementary School

The school has been open since August, 2003. Several contracts are being closed out. Punch list items are expected to be completed in August. Change orders still need to be negotiated and resolved.

Walnut Elementary School

Sixteen packages were bid on May 28, 2004.

Wickman Elementary School

The school has been open since August, 2003. Several contracts are being closed out. Punch list items are expected to be completed in August. Change orders still need to be negotiated and resolved.

Woodcrest Junior High School

The Construction Manager has replaced its staff at this site. Although there will be a minor slow down caused by the transition, the new staff is expected to be more productive. The school should be completed by March, 2005.

Second District Stadium

The stadium has been in use since September, 2003. All contracts are being closed out. Punch list items are complete.

Don Lugo High School

Phase 1 (the “red” phase) construction has begun. A contract has been executed with Daniels Electric. Bernards Brothers has been hired by the District as a special consultant to review and propose a Phasing and Logistics Plan.

Appendix D

Letter to the Board re: Construction Management

Citizens' Bond Oversight Committee – Measure M

5130 Riverside Dr. Chino, CA. 91710 cvusdoversite@hotmail.com

To: **The Board of Education**
Chino Valley Unified School District
5130 Riverside Dr.
Chino, Ca. 91710

Members of the Board,

Under California State Legislation AB1908, we, the Citizens' Oversight Committee, are obligated to undertake "*vigorous efforts*" to carry out our mandate. As part of that mandate we are to "*actively review and report on the proper expenditure of taxpayers' money for school construction*" and we are to "*receive and review copies of the annual independent performance audit*" and we are also to review "*mechanisms designed to reduce the costs of professional fees.*"

In fulfillment of our obligations, it is our duty to report to the Board of Education one area of legitimate concern. It is our concern that the contract awarding process for construction management services is not competitive at this time. A single firm has been chosen exclusively without negotiations with any other firm for any specific project.

In April of 2002, fourteen companies submitted proposals in response to a broadly described, generic Request for Proposal (not specific to any one project). Of those fourteen firms, seven firms were interviewed on May 24, 2002. A selection committee chose six of the seven firms and recommended them to the Board. On June 20, 2002, the Board "*authorized staff to enter into agreement for Construction Management Services with the following recommended list on an as-needed basis.*" The six companies were then listed. Since that date only one company, B.E. McMurray, has been authorized to do work on any Measure M projects. The other companies have not even been contacted to bid on or negotiate terms for any specific project. It has been communicated to us that District Staff is following specific direction from the Board Majority.

In proposing a pre-qualified list of construction management firms, District staff stated, "*the District has multiple projects that will require different levels of Construction Management services*" and "*the goal is to match (Construction Management) services with the specific need of the projects.*" District staff also stated "*the Office of Public School Construction requires that all contracts for construction management services be obtained pursuant to a competitive process that is consistent with the requirements of Chapter 10, Section 4525 of the Government Code.*"

On December 12, 2002, the Board authorized staff to enter into agreement with B.E. McMurray for construction management services for future projects as assigned. In the Background description of the agenda item III D. 10 it states, "***The Board most recently approved a contract (w/B.E. McMurray) for Liberty Elementary School.***"

Instead of individual contracts for future projects, staff has been instructed to work with legal counsel to prepare a master contract for future work for B.E. McMurray Construction.”

We understand this to mean that under a master contract, B.E. McMurray will become the sole provider of construction management services for all Measure M projects (\$150 million). It appears that in practice this is already occurring.

We are concerned that the Public may begin to question the integrity of the contract awarding process if a fair and competitive environment is not encouraged in regard to the contracting of construction management services. We believe that a minimum of two pre-qualified construction management firms should be contracted by the District for separate projects to avoid the appearance of exclusivity.

We understand that in order to meet increasing student populations that an expedited process was necessary to open schools in time for the new school year, but in going forward we recommend that the necessary checks and balances be maintained to assure a fair and competitive selection process.

The District has hired multiple architectural firms, as well as multiple firms for every other construction job category. It is a wise business practice to maintain a fair and competitive selection process in each and every job category. This concept is reiterated in Recommendation #4 of the Performance Audit Report.

Thank you for your attention to this matter. We are confident that after careful review you will appropriately address our concern.

Thank you!

Citizens' Bond Oversight Committee – Measure M
(Approved on September 29, 2003)