October 31, 2019

Kevin D. Jeter  
Associate General Counsel  
Los Angeles Community College District

Dear Mr. Jeter,

Enclosed is our report of investigation in reference to matters contained in David Salazar’s complaint transmitted and received by the District on April 30, 2019. As requested by the District, the focus of our review of Mr. Salazar’s complaint was limited to areas where an allegation of misconduct and/or mismanagement was associated with the LACCD Bond Program. Those four areas are as follows:

1. LACCD Bond Program Contract Management Performance  
2. Bond Measure CC Rationale  
3. Ralph M. Brown Act Violation  
4. Motivation for Bond Program Staffing Preferences

We found that with regard to the above topics, Mr. Salazar’s complaint had no merit. Our investigation did not indicate any wrong-doing on the part of the District, the PMO, or any persons named in the complaint related to these allegations.

As agreed upon in advance and specified in the Board Rule 17303.A, due to the conflict with persons named in the complaint, this report is being submitted to you so that you may deliver it to the Board. We appreciate your continued support of our services.

Sincerely,

Deirdre W. Power  
Bond Program Monitor  

Denise J. Lewis  
Deputy Bond Program Monitor
Bond Program Monitor
Investigative Findings Report

Investigation 19-03
October 31, 2019
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INTRODUCTION

This report provides the results of the Bond Program Monitor’s (“BPM”) review of allegations relating to the mismanagement of the Los Angeles Community College District (“LACCD” or “District”) Bond Program (“the program”) in a “Whistleblower Retaliation Complaint” (“the complaint”) filed by David Salazar. The LACCD hired Salazar as the Chief Facilities Executive (“CFE”) on August 4, 2017 to manage facilities for the District, including the LACCD Bond Program, which was funded by four voter approved bonds for the purpose of improving LACCD’s nine campuses. On March 4, 2019, the District gave Salazar a 60-day termination notice pursuant to Education Code Section 8809. On April 30, 2019, Salazar filed the complaint with the LACCD Director of Internal Audit, claiming that his termination was in retaliation for a number of actions he took during the course of his employment.

Consistent with its mission to deter and detect waste, fraud, corruption and abuse, the LACCD asked the BPM to investigate the allegations exclusively relating to the Bond Program. The BPM did not address the merits of Salazar’s allegations of retaliation by District staff or Board of Trustees, as that was not within the BPM’s purview. The BPM’s Scope, Methodology, and Findings are detailed below.

SUMMARY OF FINDINGS

Upon review of the complaint and the associated documentation, the BPM identified four areas describing potential misconduct within the Bond Program operations that, if true, could negatively impact the program. The information below summarizes the BPM’s findings related to the four areas of review: 1) LACCD Bond Program Manager Contract Performance; 2) Bond Measure CC Rationale; 3) Ralph M. Brown Act Violation; and 4) Motivation for Bond Program Staffing Preferences. These four areas are more thoroughly discussed in the “Detailed Findings” section of the report.

1. LACCD BOND PROGRAM MANAGER CONTRACT PERFORMANCE

Salazar stated during public LACCD Board and committee meetings and in his complaint that the District’s Bond Program Management Office (“PMO” or “Jacobs”) had overspent its contract during its first year, inferring that they were in violation of their contract.

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1 The complaint was against the District and LACCD Chancellor Francisco Rodriguez (“Rodriguez”), LACCD General Counsel Jeff Prieto (“Prieto”), and LACCD Trustees Steven F. Veres (“Veres”), Gabriel Buelna (“Buelna”), and Andra Hoffman (“Hoffman”).
2 The Bond Program includes the following: 2001 (Proposition A: $1.245 billion), 2003 (Proposition AA: $980 million) 2008 (Measure J: $3.5 billion), and 2016 (Measure CC: $3.3 billion).
3 The code cited does not require a reason and no reason was given.
The BPM finds that both Salazar’s assertions regarding the Jacobs’ contract terms and his portrayal of the status of Jacobs’ budget are inaccurate and misleading. The BPM confirmed that at the time, Jacobs’ budget, staffing, and management of the Bond Program were not inconsistent with the projections it communicated during contract negotiations and the beginning of its tenure.

2. BOND MEASURE CC RATIONALE

Salazar claimed that a space analysis he commissioned to analyze space utilization districtwide indicated that the District’s facilities have excess capacity, and that this undermined the District’s publicized rationale in support of Bond Measure CC. Bond Measure CC is a $3.3 billion bond measure approved by Los Angeles Voters in 2016 as part of the District’s Sustainable Building Program to finance District improvements and upgrades. Salazar claimed that this meant the Los Angeles County taxpayers who voted for Measure CC were “misled” by the District.

The BPM finds Salazar’s claim to be unsubstantiated, as the conclusions of the space analysis are not in conflict with either the Measure CC Bond text or the District published literature in support of it. Measure CC’s primary purpose was for the rehabilitation and repair of District college facilities including demolishing and rebuilding antiquated buildings as appropriate. Measure CC did not assert that the District suffered a space shortage.

3. RALPH M. BROWN ACT VIOLATION

Salazar claimed that Chancellor Rodriguez directed him to meet individually with Board members in what he believed would have been a “serial meeting,” constituting a violation of the California Open Meetings law, commonly referred to as the Ralph M. Brown Act (“Brown Act” or the “Act”). In addition, Salazar claimed that this direction was a violation of District Board policies regarding staff/Board communication. Salazar informed the BPM that the Chancellor expected him to meet with Board members to inform them of the status of the program, receive their input and identify any issues of concern.

Based on its review of the Brown Act, District Board Rules, and its consultation with the District’s Office of General Counsel, the BPM finds Salazar’s allegation that the Chancellor directed him to engage in meetings that would constitute a violation of the Brown Act and / or a violation of District policies to be without merit. Rather, the BPM finds that Salazar’s description of direction he received was consistent with the Brown Act and District policies.

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4. The study mentioned here is titled “LACCD Pre-programming and Space Analysis” dated December 6, 2018.

5 The Ralph M. Brown Act, California Government Code § 54950. The Brown Act or “Open Meeting Law” is officially known as the Ralph M. Brown Act and is found in the California Government Code § 54950 et seq. 1.
4. **MOTIVATION FOR BOND PROGRAM STAFFING PREFERENCES**

Salazar claimed that certain Board members retaliated against him because he disagreed with them on which proposed staffing model should be used by the District following the December 2018 Multiple Award Task Order Contract (“MATOC”) contract expiration. Specifically, Salazar stated that while he initially favored changing the staffing model, his ultimate preference was to retain the existing MATOC because the other models would have allowed for “increased corruption.” Salazar’s preference was in contrast to that of three board members who had expressed a preference to change to a proposed Hybrid Construction Management (“CM”) model.6

Although claims of retaliation are outside the BPM’s investigation scope, Salazar’s characterization of the nefarious motivations of the named Board members for their expressed preference fell within the scope of this review. The BPM therefore asked Salazar for details to support the allegations. Salazar, however, only provided vague and ambiguous statements that could not be investigated. In the absence of any specific details, the BPM had no information that would allow for follow-up on this claim.

**SCOPE**

As stated in the introduction, the District asked Exiger, as the LACCD BPM, to investigate alleged misconduct in the program, as described in Salazar’s complaint. The District made it clear that the BPM’s review should not include claims of retaliation nor any management issues that were not specifically related to the program because those issues are beyond the scope of the BPM’s mission. As noted above, the BPM identified four areas related to the Bond Program.

**RESOLUTION OF POTENTIAL CONFLICTS OF INTEREST**

Prior to the commencement of the investigative team’s review, the Board of Trustees addressed any potential conflicts of interests the BPM might encounter related to this matter. Specifically, Salazar’s complaint names Chancellor Rodriguez and other high-level executives, including the District’s General Counsel. This created the potential for conflicts of interest because at the time of the complaint submission on April 30, 2019, the BPM functionally and operationally reported to the Chancellor. While that is still the case, for purposes of this investigation, the BPM coordinated its activities through the Vice Chancellor, Finance and Resource Development, and an Associate General Counsel. This change occurred as a result of the Revised Board Rules drafted and adopted by the Board of Trustees on July 10, 2019. 7

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6 The “Hybrid CM Model” was one of the staff augmentation options presented and discussed during Board meetings.

7 The revised Board Rules regarding the BPM’s reporting structure when conflicts arise can be found on the LACCD website at [https://www.laccd.edu/Board/Pages/Board-Rules.aspx](https://www.laccd.edu/Board/Pages/Board-Rules.aspx) Chapter XVII, Article III, 17300.1.A and 17303.A.
METHODOLOGY

The BPM investigation team\(^8\) began its work on this matter by reviewing the complaint and enclosures soon after Salazar’s filing. During the subsequent weeks, the BPM worked with the District’s Associate General Counsel and other executives to 1) coordinate requests for various documentation and other information; 2) determine the investigation scope as discussed above; and, 3) manage internal communications.

The investigation team began conducting interviews in June 2019 and continued its investigation process through September 2019. Throughout its investigation, the BPM team obtained and reviewed various documents including, but not limited to, the following:

- Complaint and all enclosures;
- Contracts documents;
- LACCD Board Rules;
- Board of Trustee and Facilities Management Program Oversight Committee (“FMPOC”) meeting agendas, minutes and meeting audio recordings;
- MATOC hiring files;
- Space Analysis & Pre-Programming Measure CC Implementation along with the related Board presentations;
- KPMG Performance Audit Report;
- MATOC presentations to FMPOC and BOT;
- LA Times article dated February 4, 2019; and,

In addition to reviewing the above documentation, the investigative team spoke to the following individuals:

- David Salazar, former LACCD Chief Facilities Executive
- Dr. Francisco Rodriguez, LACCD Chancellor
- Jeffrey M. Prieto, LACCD General Counsel
- Thomas L. Hall, LACCD Director Facilities Planning (acting CFE)
- Rob Brykalski, Program and Construction Management, Jacobs
- Ed Van Ginkel, BuildLACCD Program Director, Jacobs
- Danny Villanueva, Vice President of Administrative Services, LA Mission College
- Grace Estevez, MATOC Resource Manager
- Steven Densmore, LACCD Outside Counsel

\(^8\) For purposes of this investigation, the investigation team consisted of Deirdre Waldron Power, LACCD Bond Program Monitor, and Denise Lewis, Deputy Bond Program Monitor.
DETAILED FINDINGS

1. LACCD BOND PROGRAM MANAGER CONTRACT PERFORMANCE

Background

In January 2019, Salazar began making public and written statements that the LACCD Bond Program Manager contract the District entered into with Jacobs had been “overspent” by $1.8M during the first year it was in place. In order to understand the BPM’s analysis of this issue and its merits, it is necessary to provide background context to the Jacobs’ contract and how it was structured.

In 2013, the District entered into a $94.6M five year contract with AECOM, Jacobs’ predecessor, to be the LACCD Bond Program Manager responsible for the day-to-day management of all of the contracts financed through the various Bonds. AECOM, however, spent its entire budget in less than five years and the District ended the contract early, in October 2017. In September of 2017, the District selected Jacobs as AECOM’s replacement for a five year term following a competitive procurement process.

The District’s contract with Jacobs, like the previous AECOM contract, provides that Jacobs would be reimbursed monthly for its staffing expenses following submission of invoices reflecting the actual number of hours worked at the agreed upon rates. The number of hours had to be equal to or less than the District approved staffing plans, which are presented for review and approval every 90 days. In order to prevent a reoccurrence of the AECOM overspend, a performance requirement was added to the contract during negotiations with Jacobs. The performance requirement created an overall program management fee cap amounting to the lesser of either $81 million or 3.5% of the total value of new contracts approved by the Board of Trustees during the contract period. The contract specified that this requirement would be applicable:

In the event that the total payments of Program Management Fees as of or after the end of the fourth year of the Term ... have exceeded the maximum compensation payable by District ... then such excess shall be deemed an overpayment by District and shall, without limitation to the District's other rights or remedies, be returned to the District or may be withheld by District from future payments due to Program Manager.

According to the parties involved in the negotiations between Jacobs and the District, the 3.5% performance requirement was meant to be calculated at the end of year four rather than on a

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9 The $1.8M was based upon Jacobs’ initial reporting of $334M which is further explained on the following page.
10 The performance requirement was not included in the original RFP but was added to the final contract terms following negotiations.
monthly or annual basis. This was done for a number of reasons. Foremost, the parties recognized that there would be a mobilization period with startup costs prior to any new projects being ready for Board approval and thus eligible to be included in the calculation for the 3.5% compensation factor. These costs included pre-programing, design, California Division of the State Architect (“DSA”) approval and other procurement efforts. In addition, at the start of the contract, Jacobs would be expending resources managing existing active contracts that were brought to the Board by AECOM and therefore not part of the 3.5% calculation. For these reasons, the 3.5% maximum compensation was not intended to be a year-to-year or a month-by-month reimbursement mechanism.

At the beginning of its contract Jacobs forecasted bringing $300 million worth of projects to the Board in its first year. In addition, Jacobs received approval of staffing plans in the amount of $16.4 million. Thus the District was on notice that Jacobs’ was not going to perform under the 3.5% cap in its first year. Jacobs provided this information to Salazar in September of 2017, near the beginning of his tenure with the District. Following the end of its first year, Jacobs initially reported that it had brought $334 million in projects to the Board and had billed the District $13.5 million, $2.9 million less than had been approved.

The basis of Salazar’s statements that the contract was “overspent” by $1.8 million was his application of the 3.5% performance measure to Jacobs’ first year performance. Specifically, Salazar calculated that 3.5% of $334 million is $11.71 million. One million, eight hundred thousand is the difference between that number and Jacobs’ billed amount of $13.5 million during the first year of its contract. The aforementioned statements about the overspend were made by Salazar at the January 2019 Facilities Management Planning & Oversight Committee (“FMPOC”), and at the February 2019 Board of Trustees meetings. In addition, he made these statements in both the body of his complaint as well as in an email exchange with the Chancellor included as an attachment to his complaint.

Analysis

As noted, the 3.5% performance measure was negotiated by the parties to the contract to be calculated at the end of year four, at which time Jacobs would face consequences if its actual billing was in excess of the cap. As such, the contract terms do not call for any negative consequences if Jacobs’ billing was in excess of 3.5% of the value of the contracts approved by the Board prior to then. Despite this, Salazar did not couple any of his assertions regarding the “overspend” with the qualifying statement that the contract terms did not require Jacobs to have spent 3.5% percent or less of the total contract amount at the end of year one. Rather, he simply stated Jacobs had overspent in the first year which could lead to the conclusion that Jacobs was in breach of the terms of its agreement with the District. This was not true.

11 The actual value of contracts brought to the Board was subsequently increased when change orders were added to the number. However all statements made here were based on the original reported number of $334 million.
In addition, the BPM notes that Salazar misrepresented the contract terms. For example, Salazar wrote in his complaint that Jacobs was to earn its $81 million fee “over five years at a rate of 3.5% and not the pre-approved staffing plans.” The contract terms noted above, however, make clear that the fee is in fact based on pre-approved staffing plans with the caveat that if Jacobs exceeds 3.5% of the approved contracts at year four, money could be withheld from future payments.

Similarly, in a February 5, 2019 email exchange between Chancellor Rodriguez and Salazar, the Chancellor asked Salazar to respond to questions posed by Board members regarding Salazar’s FMPOC comments on the topic. In his response, regarding the project approval amount and payments made, Salazar wrote:

The project approval amount for the first year of the Jacobs contract is $334.58 million (based on actual “work in place”). The actual payments/expense to Jacobs as the PMO on the Bond Program is $15.54 million. Please note, the Jacobs billing allowance is 3.5% of work-in-place, which amounts to 11.71 million. The difference is $1.83 million.

Without context, a reader of this statement could mistakenly conclude that 3.5% is an annual “billing allowance” and that Jacobs was in violation of the terms of its agreement and had, in fact, already improperly overbilled the District.

Salazar also mischaracterized Jacobs’ position regarding the budget issue. In his complaint, Salazar recounted telling the FMPOC Committee on January 23, 2019 that he “had learned from Jacobs that in the first year of its contract it had already overspent by $1.8 million.” In addition, at the February 6, 2019 Board of Trustees meeting, Salazar stated that he had received a copy of a letter from Jacobs in which they “acknowledged” they were “over budget by $1.8 million.” Although Jacobs confirmed in a February 5, 2019 letter the dollar figures used by Salazar in his analysis, it is misleading to state that Jacobs acknowledged that they were “over budget.” On the contrary, the BPM’s review of the Jacobs letter that Salazar was referring to makes clear that it did not agree to the characterization of the contract being “over budget.” Rather, Jacobs wrote that if the 3.5% contract requirement was changed from year 4 to year 1, they would in fact be overspent but noted that the contract did not contain such a requirement.

On a final note, the BPM finds that Salazar demonstrated an apparent misunderstanding of the scope of the District’s contract with KPMG in relationship to the $1.8M “overspend” issue. The District retained KPMG to conduct performance audits and its 2018 work plan included a review of Jacobs’ non-financial first year deliverables. The audit did not include a review of Jacobs’ billing or budget. As an example, in a February 6, 2019 email to the Chancellor responding to a question from a Trustee about when he learned of the $1.8 million issue, Salazar responded that he became aware of a potential issue when KPMG initiated their audit, but that it was not until “KPMG conducted their final analysis that the issue was verified.” In addition, at the February 6, 2019 Board of Trustees meeting, in response to a Board member’s question of when he became aware of the possible over expenditures, Salazar responded, “[a]s I said before, I had an inkling of it but it wasn’t completely verified until KPMG did their analysis.” Due to the fact that the
KPMG audit did not assess Jacobs’ billing we find these comments confusing at best or misleading at worst.

Conclusions

- Salazar’s statements in his complaint and in public meetings regarding the terms of the contract and Jacobs’ adherence to the financial requirements through its performance in its first year were inaccurate and misleading.

- Salazar made confusing statements regarding KPMG’s audit that were not in line with the scope of KPMG’s audit.

2. MEASURE CC BOND RATIONALE

Background

LACCD Pre-Programming & Space Analysis Study

Shortly after beginning his tenure, Salazar commissioned ALMA Strategies to conduct a space utilization study with the approval of Chancellor Rodriguez. According to Salazar, he felt that this was a fundamental process for a program like this and noted that the District had not yet engaged in such a study other than a required facility space inventory. He presented a summary of the results to the FMPOC on October 16, 2108. A December 6, 2018 final report titled LACCD Pre-Programming & Space Analysis (“Space Analysis”) was issued.

According to the Space Analysis executive summary, the purpose of the study was to:

…document, interpret, and understand the consequences of changes in enrollment on existing space utilization as well as future facility’s (sic) needs. The goal is to determine the appropriate/”right-size” of building based on programmatic needs, existing space utilization, Weekly Student Contact Hour (WSCH) projections, and capacity load impacts. Pre-programming and Space analysis will assist the district in maximizing bond dollar investments, developing project phasing plans, and calculating project budget estimates. Data attained from the space analysis will provide basis for Facility Master Plan updates, California Environmental Quality Act (CEQA) impacts, as well as identify opportunities to reduce or eliminate underutilized space, high Facility Condition Index (“FCI”) buildings, portable buildings, and manage maintenance and operation costs.

The executive summary also included this statement regarding the District’s goals:

In addition to the District’s strategic goals to bring capacity load ratios at or below 150% and District wide FCI to 20% by the year 2026, the District is also striving
towards maximizing its Return on Bond Investment (ROI), reducing total cost of ownership associated with facilities, improving overall student success, and increasing enrollment.

The study concluded that applying the State utilization standard regarding capacity load ratio of 100%, LACCD’s average capacity load ratio for 2016 was approximately 165%, meaning that spaces were being underutilized by 65%. The report further noted that the LACCD 2018-23 Strategic Plan includes a target to lower the capacity load ratios to 150% or below.

The study also analyzed the condition of the buildings at all of the campuses and assigned a Facilities Condition Index ("FCI") score to each one, representing a measure of the condition of a building. According to the report, an “FCI under 5% indicates good condition, 5-10% indicates fair condition, 10-30% indicates poor condition, and over 30% suggests that building is in critical condition.” Once again, the range by campus varied but the overall score on this was 24.35% with a range of 6.9 at Los Angeles Mission College to 44.6% at Trade Tech. The report noted that the current target for the District is to reach a District-wide FCI of 20%, as cited in the LACCD 2018-23 Strategic Plan.

According to Jacobs, the results of this study have been utilized in the planning for new construction to “identify excess capacity” in temporary bungalows, portable classrooms and high FCI buildings. In addition, Jacobs noted that for “almost all of the planned projects there is an equal or additional amount of square footage that is being proposed for demolition as is being constructed new.”

**Bond Measure CC**

On November 8, 2016, the Los Angeles County taxpayers approved Bond Measure CC authorizing an additional $3.3B for the LACCD Build program. The language of the Bond referendum stated:

To repair local community colleges/ prepare students/veterans for jobs/ university transfer by upgrading vocational/ career education for veterans, firefighters, paramedics nurses/ police, removing lead paint/ asbestos, upgrading campus safety/ security systems, technology, handicapped accessibility/earthquake safety, repairing deteriorating gas, water/ sewer lines, acquiring, constructing, repairing facilities, sites/ equipment, shall Los Angeles Community College District issue $3,300,000,000 in bonds at legal rates, requiring independent audits, citizen oversight, all funds used locally…

Additional information regarding the intended use of the bond proceeds is included in the full text of the Ballot Proposition, Exhibit B. Although it did not list any specific projects to be funded by the measure, it did provide categories and types of projects, the bulk of which were described as repairing, upgrading, improving and replacing. In this five page document, there were three sections that referenced the possibility of new construction to:
1. “…replace or remove outdated buildings and classrooms and construct new classrooms and support buildings…”
2. “…build or upgrade facilities, including science and engineering classrooms; construct, expand or reconfigure facilities to create large lecture classrooms; improve parking, construct parking structures…”
3. “Construct, upgrade, acquire or expand multi-use classrooms and labs, manufacturing and transportation training, fine and theater arts and visual and performing arts facilities, learning resources centers, physical education/aquatic facilities, gyms, stadiums, locker rooms, field lights, field houses, tennis courts, bleachers, press boxes, tracks, District administrative offices, conference center, physical plants/maintenance buildings, student service/campus centers, data centers, technology buildings kitchens, cafeterias/food services and classroom and instruction buildings, trades and technology buildings, libraries, athletic fields, student services buildings, central plants;…”

In addition, the Exhibit B explicitly mentioned funding for demolition of older buildings:

1. “…and the demolition of older buildings at each of the Colleges.”
2. “…replace or remove outdated buildings and classrooms;…”
3. “Demolition of existing facilities and reconstruction of facilities scheduled for repair and upgrade may occur, if the Board determines that such an approach would be more cost-effective in creating more enhanced and operationally efficient campuses.”

Finally, the plan included the authorized use of money to fund reports described as “assessment reviews, facility master plan preparation and updates.”

Analysis

In his complaint, Salazar claimed that the Space Analysis demonstrated that the District was overbuilt at all nine campuses and that there was no need to build more facilities at the “rate it projected to justify voter approval of the Measure CC $3.3 billion-dollar bond (meaning the taxpayers were misled).” Salazar’s claim is not supported by the facts. The Measure CC bond documents presented to the public did not claim that LACCD facilities are underbuilt and that new buildings are needed. Rather, the documentation supporting the Bond Measure was about improving, repairing and upgrading facilities which may or may not include possible new construction. But the justification also made clear that outdated buildings would be taken down as needed.

Further, Salazar’s claim that the Space Analysis demonstrated that the District “did not need to build more facilities at the rate it had projected to justify voter approval” is similarly not supported by the Bond Measure language. As noted, the justification presented to the public provided a long list of possible project types but did not contain any projected number or rate of new building construction. Rather, the scope of actual building was described by the District in the Bond
Measure, and accompanying literature in support of it, to be based on need and the measure explicitly included studies and adjustments to master plans as needed. This Space Analysis, which was utilized to create LACCD Build priorities, would seem to be precisely the sort of process envisioned and presented to the taxpayers as part of the Bond language.

Finally, the BPM notes that the FCI analysis in the Space Analysis report in fact supports the Measure CC justification. The report concluded that the District-wide average FCI of 24.5% meant that the LACCD facilities were in poor condition. The public justification notes the poor condition of many buildings and the need to update and upgrade outdated and older facilities.

Conclusions

- Based on the BPM’s review of the “Space Analysis and Preprogramming Implementation” report and Measure CC, the BPM finds Salazar’s allegation that the Space Analysis demonstrates that the District misled the public is unsubstantiated.

- Measure CC was put forward to the Los Angeles tax payers by LACCD for the primary purpose of the rehabilitation and repair of District college facilities including demolishing and rebuilding antiquated buildings as appropriate. The Space study supports the need for this effort in its assessment of the poor condition of the majority of the campuses’ facilities.

3. RALPH M. BROWN ACT VIOLATION

Background

In his complaint, Salazar stated that he was directed by Chancellor Rodriguez to engage in meetings that would violate the Brown Act. Salazar stated he “refused” the Chancellor’s request based on his concern that it would be a violation of the Brown Act and the “established chain of command and staff/Board communication policies of the District.” During his interview with the BPM, Salazar elaborated that the individual meetings he was expected to participate in would constitute “serial meetings,” a type of meeting prohibited under the Brown Act. Specifically, Salazar stated the Chancellor expected him to meet with individual Board members to provide them with up to date information on the Bond Program, receive their input and to identify any issues of concern. Salazar further stated that he did not recall the Chancellor asking him to solicit Board members’ preferences or position on any one issue.

The Brown Act directs that public entities, such as the LACCD Board of Trustees, take its official actions “openly and that their deliberations be conducted openly.” In addition to public meetings, the Act covers all types of communication between, among and with Board Members. Regarding meetings, it prohibits non-public meetings if the purpose is to gain consensus prior to a public meeting. Referred to as “serial meetings,” the prohibition is designed to prevent individual meetings during which consensus is developed in advance of a public vote thereby making the
business of government take place in private rather than in a forum open to the public. The specific text reads:

(b) (1) A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body. [CA. Gov. Code §54952.2(b)(1)]

Although the intent is to ensure that government business is conducted with transparency, the Brown Act does not prohibit all contact outside of public meetings and contains exceptions. Regarding meetings, it explicitly addresses the need for agency staff to provide information to decision makers:

California Government Code section 54952.2(b)(2) (2) Paragraph (1) shall not be construed as preventing an employee or official of a local agency, from engaging in separate conversations or communications outside of a meeting authorized by this chapter with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

Regarding District policies, the LACCD Board rules have two sections that address the issue of communication with Board members. First, the Statement of Ethical Values and Code of Ethical conduct section 2300.10 includes the following:

I recognize that the Chancellor is the Trustees’ sole employee; I pledge to work with the Chancellor in gathering any information from staff directly that is not contained in the public record.

In addition, Board rules, Chapter II, Article V, Communication to the Board Section 2409.11

Requests from Board Members.

All requests from Board Members for information or research, requiring mobilization of staff, staff time, District resources and personnel shall be made through the Chancellor and distributed to all Board Members.

Analysis

At no point in his complaint or during his interview with the BPM did Salazar indicate that he was asked to engage in any discussions that would constitute a “serial meeting,” and therefore a Brown Act violation. As noted, to be an illegal or improper “serial” meeting, he would have had to engage
in consecutive meetings for the purpose of gaining consensus and sharing information on the position of the individual Board members. However, he specifically noted that he was not asked to engage in these types of conversations. Rather, Salazar described the requests as being a briefing on the status of the program, to receive input and to hear any issues of concern.

In addition, the BPM notes that Salazar’s statements on the matter were somewhat inconsistent. Despite his assertion that he refused the Chancellor’s request, Salazar indicated in his complaint and during his interview with the BPM that he did in fact have such meetings with individual Board members. First, the BPM notes that Salazar’s self-evaluation, included in his complaint, reflects his intention to continue to engage in a “steady flow of communication to Board members to provide updates and regularly scheduled one-on-one meetings.” And Salazar informed the BPM that he met with some Board members for the purpose of informing them of the status of the Bond Program during which they provided feedback, input and suggestions. Regarding these meetings, Salazar said that while he did not solicit Board members’ opinions on particular items, he would report any issues of concern to the Chancellor, who would then follow up. In addition, in his complaint, Salazar stated that Trustees Veres, Hoffman, and Buelna made false allegations that he was not scheduling regular meetings with Board members when in fact he had made efforts to schedule meetings but received “negative or no response” from them.

Finally, the BPM reviewed Salazar’s claim that the Chancellor’s requests regarding Board communication constituted a violation of established chain of command and board communication policies. The BPM reviewed the Board rules and consulted with the Office of General Counsel and determined that Salazar’s description of the Chancellor’s direction regarding Board communication was consistent with District policy and procedures. Specifically, the Board rules direct that any requests for information be routed through the Chancellor. Therefore the BPM find Salazar’s claim without merit as the process followed was consistent with these rules.

Conclusion

- The BPM concludes that the Chancellor’s direction to Salazar falls squarely within the exception that allows an employee to meet with Board member to “answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency.” Therefore, Salazar’s claim that the Chancellor directed him to engage in meetings that would constitute a violation of the Brown Act or District policies is without merit.

4. MOTIVATION FOR BOND PROGRAM STAFFING PREFERENCES

The LACCD Bond Program is staffed through contracts referred to as Multiple Award Task Order Contracts (“MATOC”). This model involves the hiring for individual positions through a competitive process involving firms on a pre-approved bench rather than a single Construction Management firm. The first five year MATOC contracts were set to expire in 2018. Beginning in February 2018, Salazar made Bond Program staff augmentation model option presentations to FMPOC, the Committee of the Whole and the full Board in anticipation of the new contract. In
his complaint, Salazar made two related statements as to one of the reasons he ultimately favored retaining the existing MATOC contract model. First, he said that he was concerned that the proposed alternative models would allow for “increased corruption and patronage, providing the opportunity for the Board members to provide favors to many of their campaign donors and other supporters.” Secondly, he said that one of the models referred to as the Hybrid Agency CM model was a “foundation for a pay to play scenario.”

The BPM asked Salazar for details to support these serious allegations. In response, Salazar only provided a vague statement that he had heard through multiple sources, both inside and out of the Bond Program, that discussions were being held between certain trustees and various program management firms during which certain campuses were promised to firms with the proposed Hybrid Agency CM Model. When pressed by the BPM, Salazar did not provide specific names of firms or campuses. When the BPM asked about how a future pay to play scheme would be effectuated, the only statement he made was that Trustees can vote in a block.

In the absence of specific details regarding the alleged planning conversations, and the fact that the described “pay to play” misconduct events were potential future occurrences, there were no facts, incidents, or circumstances for the BPM to investigate.12

OVERALL CONCLUSION

As is stated in detail above, the BPM found that the misconduct and mismanagement allegations in Salazar’s whistleblower complaint have no merit.

October 31, 2019

Deirdre Waldron Power Denise Lewis
LACCD Bond Program Monitor Deputy Bond Program Monitor

12 The BPM notes that the existing rules allow Board members to vote on contracts for firms from whom they have received campaign donations. Such a structure will inevitably lead to questions regarding the motivation of votes where such donations were in fact received.
ABOUT EXIGER

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