

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, July 25, 2007

SCHOOL DISTRICT DATA

School District:.....SANTA MARIA JOINT UNION HIGH County:.....SANTA BARBARA
Application Number:.....57/69310-00-001 School Name:.....SANTA MARIA HIGH
Total District Enrollment:.....7,600 Project Grade Levels:.....9-12
Financial Hardship:NO

PURPOSE OF REPORT

1. To present a School Facility Program (SFP) audit finding.
2. To define a timeframe in which construction management contracts may be used by school districts towards meeting the *Fund Release Authorization* requirements.

BACKGROUND

SFP statute requires that once a district receives an apportionment for a new construction or modernization project, the district has a maximum of 18 months to meet the criteria to have the funds released. The essential element necessary to meet the criteria is to have "...a binding contract for the completion of the approved project" (Education Code [EC] Section 17072.32). The District received SFP adjusted grants for Santa Maria High School project, Application Number 57/69310-00-001. The District submitted a fund release request using the standard *Fund Release Authorization* on which the District specifically checked the following on the certification:

"The District certifies that it has entered into a binding contract(s) for at least 50 percent of the construction included in the plans applicable to the state funded project."

This certification is necessary to comply with SFP law, which states that funds may not be released until a contract exists.

DESCRIPTION

The District prematurely certified to entering into a binding contract(s) for at least 50 percent of the construction included in the plans applicable to the State funded project on February 28, 2001. The funds for the Santa Maria High School modernization project were released on March 28, 2001. The Office of Public School Construction (OPSC) conducted an expenditure audit of the Santa Maria High School, Application Number 57/69310-00-001, which indicated that the District used construction management related expenditures to assist them in meeting the certification requirement on the *Fund Release Authorization*.

DISTRICT'S PERSPECTIVE

The District submitted correspondence and documentation to the OPSC on April 12, 2007 and June 18, 2007, providing justification for their inclusion of construction management expenditures in meeting the District's *Fund Release Authorization* certification. The documentation provided by the District provides detailed information and the listing of the services that were performed.

The District believed, at the time of the *Fund Release Authorization* submittal, the certification was made accurately using the information available at that time. The District claimed no definitions or formulas were available, back at the time, as to how the "50 percent of the construction included in the plans applicable to the state funded project" was calculated. Therefore, the District asserts that construction management related expenditures, which they believed to be a construction cost, should be included in the calculation in meeting the *Fund Release Authorization* certification threshold. With the inclusion of the construction management related expenditures, the District did meet the 50 percent certification.

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AUTHORITY

Current statute provides that the SAB may make a finding of material inaccuracies and take appropriate actions to impose the school district's penalties as follows:

Material Inaccuracy

SFP Regulation Section 1859.2 (Definition of Material Inaccuracy), "Means any falsely certified eligibility or funding application related information submitted by the school districts, architects or other design professionals that allowed the school district an advantage in the funding process." Under the law and regulations governing material inaccuracy, the term "false certification" is used. It is not necessary for the SAB to determine that the certification was knowingly false. The term in this context is the simple and common meaning of inaccurate or not true. It does not require proof of any intent.

To make a finding of Material Inaccuracy, EC Section 17070.51 (a) states, "If any certified eligibility or funding application related information is found to have been falsely certified by school districts, architects or design professionals, hereinafter referred to as a Material Inaccuracy, the OPSC shall notify the Board."

STAFF COMMENTS

Since the inception of the SFP, the OPSC has maintained the position that certain construction management contracts or the expenditures associated with construction management services are not eligible in meeting the *Fund Release Authorization* certification. However, Staff believes that there may have been some ambiguity early in the SFP whether construction management fees could be used towards meeting the *Fund Release Authorization* certification. Upon further analysis of the recently submitted documentation from the District, Staff believes that the District acted in good faith during the submittal of the *Fund Release Authorization*, based on its understanding that construction management related costs could be applied to meet the fund release requirement. If the OPSC accepts the construction management related costs as reported, the District would have met the 50 percent *Fund Release Authorization* certification requirements; therefore, there was no funding advantage.

The OPSC does believe that there was some ambiguity from the inception of the SFP program to January of 2004. Since that time, the OPSC has taken additional steps, through various public forums (i.e. workshops, county office of education meetings, etc.) and *Advisory Action Newsletter* articles to clarify that only construction management contracts that are "at risk" were acceptable. For a construction management firm's contract to be deemed "at risk," the construction management firm must secure a bond for the project and be responsible for any costs incurred and/or penalties if the job is not completed in a timely manner. In essence, the construction manager is guaranteeing the construction project delivery at an agreed upon and binding cost.

In order to assist the Santa Maria Joint Union High and other school districts that believed construction management contract costs would meet the fund release requirements, Staff is recommending a grace period be established for audit purposes. It is recommended that from January 1, 1999 through December 31, 2003 Staff would deem the use of construction management contract fees as being acceptable in meeting the 50 percent fund release requirements for audit purposes regardless if the construction management contract was "at risk" or not. However, for any *Fund Release Authorization* certifications signed on or after January 1, 2004, the districts can only include "at risk" construction management contracts in order to meet the fund release requirements. By adopting the grace period, Staff believes this will address the past ambiguity and will provide further clarity on this topic for the future.

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RECOMMENDATIONS

1. Permit the Santa Maria Joint Union High School District a one-time exception to use the costs associated with the reported construction management related services to be applied towards the *Fund Release Authorization* submittal requirements.
2. Accordingly, provide that a material inaccuracy did not occur for SFP Application Number 57/69310-00-001.
3. Establish a grace period for audit purposes, only for fund release certifications made by school districts starting from January 1, 1999 through December 31, 2003 to permit Staff to accept the use of construction management contracts for the purposes of meeting the 50 percent *Fund Release Authorization* requirements.
4. Provide that for fund release certifications made by school districts on or after January 1, 2004 the use of "at risk" construction management contracts will be deemed the only acceptable construction management contracts in meeting the 50 percent *Fund Release Authorization* requirements.

BOARD ACTION

In considering this Item, the Board approved Staff's recommendations. In addition, Staff provided further clarification that projects meeting the grace period would be processed at the administrative level.