

PROGRAM AUDIT OF THE CALIFORNIA CLEAN ENERGY JOBS ACT

Audit Report

PROPOSITION 39 PROGRAM

Chapter 29, Statutes of 2013

July 1, 2017, through June 30, 2018



BETTY T. YEE
California State Controller

June 2019



BETTY T. YEE
California State Controller

June 28, 2019

Adrienne Alvord, Chair
Citizens Oversight Board
1516 9th Street, MS 19
Sacramento, CA 95814

Dear Ms. Alvord:

The State Controller's Office (SCO) audited a selection of completed projects related to the California Clean Energy Jobs Act for the period of July 1, 2017, through June 30, 2018.

As of June 30, 2018, 114 local educational agencies (LEAs) reported \$63,057,214 in completed project costs and 37 community college districts (CCDs) reported \$22,462,119 in completed project costs. From the list of completed projects, we selected for audit 16 LEAs and three CCDs, which reported expenditures of \$24,233,274. Our audit found that:

- Seven LEAs and three CCDs sole-sourced a portion of their project costs, resulting in unallowable costs of \$3,013,770;
- Ten LEAs and three CCDs did not include the projected energy savings in the awarded contracts;
- One LEA and one CCD spent Proposition 39 funds on ineligible expenditures, resulting in unallowable costs of \$19,579 (\$27,654 less \$8,075 that was also sole-sourced); and
- Five LEAs submitted their final project completion reports after the deadline.

We also identified an issue that is not significant to the audit objectives, but warrants the attention of management. Specifically we found that four LEAs with unused planning funds properly applied them to program implementation. However, as these funds were not included in their approved energy expenditure plans, the amount of Proposition 39 funds paid to these LEAs exceeded their approved energy expenditure plans by \$26,238.

This final audit report identifies seven LEAs and three CCDs that sole-sourced a portion of their project costs, in violation of Public Resources Code (PRC) section 26235(c). This final audit report also identifies one LEA and one CCD that spent Proposition 39 funds on ineligible expenditures, in violation of the California Energy Commission's *Proposition 39: California Clean Energy Jobs Act – 2013 Program Implementation Guidelines* and the California Community Colleges Chancellor's Office's *California Community Colleges Proposition 39 Implementation Guidelines*.

PRC section 26240(h)(1) states, "The Superintendent of Public Instruction shall require local education agencies to pay back funds if they are not used in accordance with state statute or regulations...."

PRC section 26240(h)(2) states, “The Chancellor of the California Community Colleges shall require a community college to pay back funds if they are not used in accordance with state statute or regulations....”

Findings 1 and 3 are both apportionment-significant for LEAs. If you disagree with either finding, you have 30 days from the date the SCO emailed this report to request a summary review of any apportionment-significant audit findings on the grounds of substantial compliance. In addition, you have 60 days from delivery of this letter—or 30 days following the conclusion of a summary review regarding the finding included in that review—to file a formal appeal of any apportionment-significant audit findings on any one or more of the grounds set forth in Education Code (EC) section 41344(d). The request for a summary review or formal appeal should be submitted to the following address:

Executive Officer
Education Audit Appeals Panel
770 L Street, Suite 1100
Sacramento, California 95814

If you have any questions regarding the summary review process or the appeal process, please see the Education Audit Appeals Panel (EAAP) website (www.eaap.ca.gov) or call EAAP at (916) 445-7745.

LEAs working to resolve audit exceptions may request structured repayment plans under EC section 41344. To request a repayment plan, the LEA must submit a letter to the California Department of Education (CDE) within 90 days of receipt of this letter; within 30 days of withdrawing or receiving a determination of a summary review if there is no appeal; or within 30 days of withdrawing or receiving a final determination regarding an appeal pursuant to EC section 41344(a). More information on repayment plans can be found on the CDE’s website (<http://www.cde.ca.gov/fg/au/ag/resolution.asp>) or by contacting the CDE, School Fiscal Services Division, Categorical Allocations and Management Assistant Unit, at (916) 323-8068.

In addition, Findings 1 and 3 both have a fiscal impact on the affected CCDs. If you disagree with these two findings, Title 5, section 59100, et seq. provides that the Chancellor for the California Community Colleges has the authority to review audit findings involving CCDs. The request for an appeal should be submitted to:

Tracy Britten, Specialist
Fiscal Accountability
College Finance and Facilities Planning Division
California Community Colleges Chancellor’s Office
1102 Q Street
Sacramento, CA 95811

You may also call the CCCCCO’s Fiscal Accountability Office at (916) 324-9794 for more information.

If you have any questions about the audit findings, please contact Lisa Kurokawa, Bureau Chief, by telephone at (916) 327-3138.

Sincerely,

Original signed by

JIM L. SPANO, CPA
Chief, Division of Audits

JLS/as

cc: Jack Bastida, Contract Manager
Citizens Oversight Board
Jim Bartridge, Program and Policy Advisor
Citizens Oversight Board
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California Department of Education
Kimberly Tarvin, Director of Audits and Investigation
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Drew Bohan, Executive Director
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Bill Pfanner, Proposition 39 Project Manager
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California Energy Commission
Elise Ersoy, Manager
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Efficiency Division
California Energy Commission
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California Community Colleges Chancellor's Office
Eloy Ortiz Oakley, Chancellor
California Community Colleges
Christian Osmeña, Vice Chancellor
College Finance and Facilities Planning Division
California Community Colleges Chancellor's Office
Carlos Montoya, Director of Facilities Planning and Utilization
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Siskiyou County Office of Education

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Administrative Services
Yolo County Office of Education

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Audit Report

Summary

The State Controller's Office (SCO) audited a selection of completed projects related to the California Clean Energy Jobs Act for the period of July 1, 2017, through June 30, 2018.

As of June 30, 2018, 114 local educational agencies (LEAs) reported \$63,057,214 in completed project costs and 37 community college districts (CCDs) reported \$22,462,119 in completed project costs. From the lists of completed projects, we selected for audit 16 LEAs and three CCDs, which reported total expenditures of \$24,233,274. Our audit found that:

- Seven LEAs and three CCDs sole-sourced a portion of their project costs, resulting in unallowable costs of \$3,013,770;
- Ten LEAs and three CCDs did not include the projected energy savings in the awarded contracts;
- One LEA and one CCD spent Proposition 39 funds on ineligible expenditures, resulting in unallowable costs of \$19,579 (\$27,654 less \$8,075 that was also sole-sourced); and
- Five LEAs submitted their final project completion reports after the deadline.

We also identified an issue that is not significant to the audit objectives, but warrants the attention of management. Specifically we found that four LEAs with unused planning funds properly applied them to program implementation. However, as these funds were not included in their approved energy expenditure plans (EEPs), the amount of Proposition 39 funds paid to these LEAs exceeded their approved EEPs by \$26,238.

A separate summary of the audit results for the 16 LEAs and three CCDs selected for audit is included as an Appendix to this report.

Background

The California Clean Energy Jobs Act was created with the approval of Proposition 39 (Chapter 29, Statutes of 2013) in the November 2012 statewide election. The statute changed the corporate income tax code to allocate projected revenue from the General Fund to the Clean Energy Job Creation Fund for five fiscal years, beginning with fiscal year (FY) 2013-14. Under the initiative, it is estimated that up to \$550 million is available annually to be appropriated by the California State Legislature for purposes of funding eligible projects that create jobs in California while improving energy efficiency and expanding clean energy generation.

Senate Bill 73 requires that 89% of the funds deposited annually into the Clean Energy Job Creation Fund be made available to LEAs for energy efficiency and clean energy projects, and 11% be made available to CCDs for energy efficiency and clean energy projects.

An eligible energy project is an installation at or modification to a school site that improves energy efficiency or expands clean energy generation.

Energy efficiency measures include heating, ventilation, and air conditioning (HVAC) system retrofits and various interior and exterior retrofits; clean energy generation measures include photovoltaic (solar) panels. All facilities within an LEA are eligible for Proposition 39 program funding.

Citizens Oversight Board

Proposition 39 also established the Citizens Oversight Board (COB) to review expenditures, audit the Clean Energy Job Creation Fund, and maintain transparency and accountability of the Fund. Members of the COB are appointed by the California Treasurer, Attorney General, and State Controller with two ex officio members from the California Energy Commission (CEC) and the California Public Utilities Commission (CPUC).

California Department of Education

The California Department of Education (CDE) is responsible for distributing Proposition 39 funding to LEAs that serve grade K-12 students. CDE allocates funds based on the following formula:

- 85% based on average daily attendance reported as of the second principal apportionment for the prior year (P-2); and
- 15% based on the number of students eligible for free and reduced-priced meals in the prior year.

These funds may be used by LEAs for energy efficiency and clean energy projects, as well as related energy planning, energy training, and energy management. LEAs are required to submit an EEP to the CEC for consideration and approval. An EEP includes a technical description and project specifications for the proposed eligible energy measures. Funds are released to an LEA only after the CEC approves the EEP.

LEAs with prior-year average daily attendance of 1,000 or lower are eligible to receive funding for both the current year and the following year in the current year. LEAs that select this option do not receive a funding allocation in the following year.

LEAs whose first year of eligibility was FY 2013-14 also had the option of requesting a portion of that year's award allocation for energy planning activities without submitting an EEP to the CEC. The energy planning funds can be spent only on the following four activities:

- Energy audits and energy surveys/assessments;
- Proposition 39 program assistance;
- Hiring or retaining an energy manager; and
- Energy-related training.

Any unused energy planning funds must be applied toward implementing energy projects from an LEA's approved EEP.

California Energy Commission

The CEC is the primary state agency responsible for energy policy and planning. Public Resources Code (PRC) section 26235(a) requires the CEC to establish guidelines in consultation with the State Superintendent of Public Instruction, the Chancellor of the California Community Colleges, and the CPUC.

On December 19, 2013, the CEC adopted the *Proposition 39: California Clean Energy Jobs Act – 2013 Program Implementation Guidelines* (Proposition 39 Program Implementation Guidelines). These guidelines provide direction to LEAs on the types of awards and the required proposals, explain the screening and evaluation criteria, describe the standards to be used to evaluate project proposals, and outline the award process.

Included in Proposition 39 Program Implementation Guidelines is a savings-to-investment ratio (SIR) calculation. To be approved for Proposition 39 funding, the eligible energy project must achieve a SIR above 1.0. For example, for every dollar invested in the eligible energy project, the LEA must accrue over \$1 in savings. The SIR calculation is based on the present value of the savings divided by project installation costs, subtracting rebates and other grant funding sources. The Proposition 39 Program Implementation Guidelines also include a formula for estimating job creation benefits, pursuant to PRC section 26235(e)(10).

The CEC also developed an *Proposition 39: California Clean Energy Jobs Act – 2015 Energy Expenditure Plan Handbook* (EEP Handbook), which includes step-by-step instructions to assist LEAs in completing the required forms.

California Community Colleges Chancellor's Office

The California Community Colleges Chancellor's Office (CCCCO) is the state agency that oversees the California community college system. The CCCCCO is responsible for distributing Proposition 39 funding to individual CCDs. The funds may be used by CCDs for energy efficiency and alternative energy projects, along with related improvements and repairs, that contribute to reducing operating costs and improving health and safety conditions in the community college system.

The CCCCCO developed its *Proposition 39: Clean Energy Jobs Act of 2012 – California Community Colleges Energy Project Guidance* (Energy Project Guidance) to assist CCDs with implementing projects that meet the Proposition 39 requirements. Projects must be consistent with the State's energy loading order, which guides the State's energy policies and decisions according to the following priority order: 1) decreasing electricity demand by increasing energy efficiency and reducing energy usage in periods of high demand or cost, 2) meeting new energy supply needs with renewable resources, and 3) meeting new energy generation needs with clean fossil-fuel generation.

CCDs have been pursuing and implementing energy efficiency and renewable energy projects for many years through such programs as the CPUC-administered California Community Colleges/Investor Owned Utilities Energy Efficiency Partnership. This public-private partnership has been working on behalf of CCDs since 2006 and has aggressively reduced energy usage, resulting in over \$12 million in costs savings for the community college system.

Audit Authority

Government Code (GC) section 12410 and PRC section 26210 provide the legal authority to conduct this audit.

GC section 12410 states that the Controller shall superintend the fiscal concerns of the State and audit the disbursement of any state money for correctness, legality, and for sufficient provisions of law for payment.

The SCO's interagency agreement with the COB, pursuant to PRC section 26210(d)(2), commissions the SCO to review a selection of completed projects to assess the effectiveness of the expenditures in meeting the objectives of the California Clean Energy Jobs Act.

Objectives, Scope, and Methodology

On June 15, 2016, we entered into an agreement with the COB to conduct an audit to assess the CEC's control over implementation and administration of the Clean Energy Job Creation Fund to ensure that the expenditure and accounting of funds complied with applicable statutes. Our agreement also included auditing a selection of completed projects (80% LEA projects and 20% CCD projects) to determine whether the energy projects were consistent with the Clean Energy Job Creation Fund's program guidelines. We selected 16 LEAs and three CCDs for audit. We did not audit their financial statements.

We conducted this audit in accordance with generally accepted government auditing standards. 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To achieve our audit objectives for the LEA K-12 Proposition 39 Program, we:

- Reviewed the CEC's Proposition 39 Program Implementation Guidelines (issued in December 2014 and revised in November 2017) and the EEP Handbook (issued in June 2015) to ensure compliance with the applicable provisions of the Public Resources Code;
- Reviewed the controls established by the CEC to ensure the completeness of EEPs, annual project expenditure reports, and close-out project completion forms submitted by LEAs;
- Selected 16 of 114 LEAs with project costs totaling \$20,158,851 and determined whether:
 - Planning funds were expended in accordance with program

- requirements and unused planning funds were applied towards implementing eligible energy projects approved by the CEC;
- The LEA submitted an EEP to the CEC consistent with the LEA's priority of eligible projects;
 - The CEC approved the EEP in compliance with the CEC's Proposition 39 Program Implementation Guidelines and EEP Handbook;
 - The approved EEP included:
 - A signed utility data release form from the LEA allowing the CEC to access both historical and future utility billing data;
 - A benchmarking process established by the CEC to determine a prioritized plan for implementing the eligible energy projects;
 - An identification of eligible energy projects according to any one of the three methods available to LEAs (these include an energy survey; an American Society of Heating, Refrigerating and Air-Conditioning Engineering Level 2 energy audit; or data analytics);
 - A SIR that adheres to the cost-effectiveness determination set forth by the CEC; and
 - A job-creation benefits estimation that adheres to the formula set forth by the CEC.
 - The final report to the CEC contained the information outlined in PRC section 26240(b)(1) through 26240(b)(7);
 - The LEA did not use a sole-source process to award funds;
 - The LEA had a signed contract that identified project specifications, costs, and projected energy savings;
 - The LEA supported project costs; and
 - The LEA paid back Proposition 39 funds if the project was torn down, remodeled, or deemed surplus and sold prior to the payback of the project.

Errors found in the selected samples were not projected to the intended (total) population.

To achieve our audit objectives for the CCD Proposition 39 Program, we:

- Selected three of 37 CCDs with completed project costs totaling \$4,074,423 and determined whether:
 - The CCD submitted a Proposition 39 Funding Application to the CCCCCO, and the CCCCCO approved the application consistent with its *Proposition 39: Clean Energy Jobs Act of 2012 – California Community Colleges Proposition 39 Implementation Guidelines* (issued in May 2013 and revised in April 2015);
 - The CCD submitted a Call for Projects form that identified projects as energy efficiency or renewable energy generation;
 - The Proposition 39 Close-out Project Completion form and the

Annual Project Expenditure Report submitted to the CCCCCO contained the following information:

- The estimated amount of energy saved, accompanied by specific energy consumption and utility bill cost data for the individual facility where the project is located;
 - The nameplate rating of the new clean energy generation method installed;
 - The number of trainees resulting from the project;
 - The amount of time between awarding financial assistance and completing the project or training activities;
 - The entity's energy intensity before and after project completion, as determined by an energy rating or benchmark system; and
 - The number of direct full-time equivalent employees created by each project and the average number of months or years of utilization of each of these employees.
- The CCD did not use a sole-source process to award funds;
 - The CCD had a signed contract that identified project specifications, costs, and projected energy savings;
 - The CCD supported project costs; and
 - The CCD paid back the Proposition 39 Program funds if the project was torn down, remodeled, or deemed surplus and sold prior to the payback of the project.

Errors found in the selected samples were not projected to the intended (total) population.

Conclusion

As a result of conducting the audit procedures, we found instances of noncompliance with the audit objectives outlined in the Objectives, Scope, and Methodology section. These instances are quantified in the Schedules and described in the Findings and Recommendations section of this report.

We selected 16 LEAs and 3 CCDs with completed projects for audit. These 19 agencies reported total completed project costs of \$24,233,274 (\$20,158,851 for LEAs and \$4,074,423 for CCDs). Our audit found:

- Seven LEAs and three CCDs sole-sourced a portion of their project costs, resulting in unallowable costs of \$3,013,770;
- Ten LEAs and three CCDs did not include the projected energy savings in the awarded contracts;
- One LEA and one CCD spent Proposition 39 funds on ineligible expenditures, resulting in unallowable costs of \$19,579 (\$27,654 less \$8,075 that was also sole-sourced); and
- Five LEAs submitted their final project completion reports after the deadline.

We also identified an issue that is not significant to the audit objectives, but warrants the attention of management. Specifically we found that four LEAs with unused planning funds properly applied them to program implementation. However, as these funds were not included in their approved EEPs, the amount of Proposition 39 funds paid to these LEAs exceeded their approved EEPs by \$26,238. This issue is described in the Observation and Recommendation section of this report.

Follow-up on Prior Audit Findings

We previously conducted an audit of 20 LEAs and CCDs with completed projects between December 19, 2013, and June 30, 2016, and issued an audit report on June 30, 2017. We conducted a second audit of another 20 LEAs and CCDs with completed projects between July 1, 2016, and June 30, 2017, and issued an audit report on July 13, 2018. The report issued on July 13, 2018, found that:

- Seven LEAs sole-sourced all or a portion of their project costs, totaling \$557,645;
- Twelve LEAs and three CCDs did not include projected energy savings in their awarded contracts;
- Two LEAs applied Proposition 39 funding, totaling \$277,987, toward project costs incurred prior to the eligibility period of December 19, 2013;
- Four LEAs submitted their final project completion reports after the deadline; and
- The CEC did not properly review one EEP out of the 16 that we reviewed.

The 20 LEAs and CCDs identified in the June 30, 2017 audit report are not the same 20 LEAs and CCDs identified in the July 13, 2018 audit report, and they are not the same 19 LEAs and CCDs selected for the current audit; however, we found that all three audits identified the same issues.

Views of Responsible Officials

We discussed our audit results with representatives of the 16 LEAs and three CCDs selected for testing during audit fieldwork via email at the end of the audit. All responses have been included in the Appendix and Attachments A through H.

Restricted Use

This report is solely for the information and use of the COB, the CDE, the CEC, the CCCCCO, Armona Union Elementary School District, Butte-Glenn Community College District, Contra Costa Community College District, El Monte City School District, Esparto Unified School District, Hesperia Unified School District, High Tech High International Charter School, Luther Burbank School District, Mariposa County Office of Education, Mark Twain Union Elementary School District, Newport-Mesa Unified School District, Oceanside Unified School District, Pine Ridge Elementary School District, San Leandro Unified School District, South Orange County Community College District, Venture Academy Charter School, West Covina Unified School District, Willits Unified School District, Yreka Union High School District, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record, and is available on the SCO website at www.sco.ca.gov.

Original signed by

JIM L. SPANO, CPA
Chief, Division of Audits

June 28, 2019

Schedule 1— Total Completed Proposition 39 Program Costs for Local Educational Agencies July 1, 2017, through June 30, 2018

Local Educational Agency	Program Implementation	Planning Funds ¹	Total	Amount Unallowable	Reference ²
<u>Completed projects selected for audit:</u>					
Armona Union Elementary School District	\$ 287,683	\$ 28,005	\$ 315,688	\$ -	
El Monte City School District	2,017,022	144,797	2,161,819	(3,819)	Finding 2, 3
Esparto Unified School District	301,745	-	301,745	-	Finding 2
Hesperia Unified School District	4,798,481	260,000	5,058,481	-	Finding 4
High Tech High International Charter School	246,555	15,000	261,555	(50,000)	Finding 1, 2
Luther Burbank School District	266,798	10,767	277,565	-	Finding 2
Mariposa County Office of Education	62,563	15,919	78,482	-	Finding 2, 4
Mark Twain Union Elementary School District	276,203	7,600	283,803	(16,368)	Finding 1, 2
Newport-Mesa Unified School District	4,799,573	-	4,799,573	-	
Oceanside Unified School District	937,052	34,787	971,839	(45,449)	Finding 2
Pine Ridge Elementary School District	62,028	15,507	77,535	-	Finding 2, 4
San Leandro Unified School District	2,015,425	58,500	2,073,925	-	Finding 4
Venture Academy Charter School (San Joaquin Office of Education)	620,039	-	620,039 ⁴	(26,447)	Finding 1
West Covina Unified School District	1,891,376	136,277	2,027,653	(2,027,653)	Finding 1, 2, 3
Willits Unified School District	544,280	29,259	573,539	-	Finding 2
Yreka Union High School District	255,353	20,257	275,610	(20,257)	Finding 1, 2, 4
Total, completed projects selected for audit	\$ 19,382,176	\$ 776,675	\$ 20,158,851³	\$ (2,189,993)	
<u>Completed projects not selected for audit:</u>					
Acalanes Union High School District	\$ 897,787	\$ 130,000	\$ 1,027,787		
Ackerman Elementary School District	244,314	17,500	261,814		
Alexander Valley Union Elementary	193,000	50,000	243,000		
Allensworth Elementary School District	58,996	4,183	63,179		
Alta-Dutch Flat Union Elementary	54,792	15,745	70,537		
Alta Loma Elementary School District	351,465	130,000	481,465		
Anaheim Union High School District	535,853	17,860	553,713		
Antelope Elementary School District	175,907	17,801	193,708		
Antelope Valley Union High School District	1,185,286	25,000	1,210,286		
Ballard Elementary School District	146,813	33,197	180,010		
Bella Vista Elementary School District	215,144	53,786	268,930		
Bert Corona Charter School	246,789	14,300	261,089		
Big Pine Unified School District	250,000	-	250,000		
Buckeye Union Elementary School District	724,480	-	724,480		
Burnt Ranch Elementary School District	58,622	9,475	68,097		
Caliente Union Elementary School District	72,191	-	72,191		
Calipatria Unified School District	548,293	8,500	556,793		
Castaic Union School District	492,103	60,000	552,103		
Castle Rock Union Elementary School District	28,306	5,698	34,004		
Central Union High School District	843,990	130,000	973,990		
Chatom Union School District	202,795	18,823	221,618		
Chicago Park Community Charter School	26,606	11,427	38,033		
Chrysalis Charter School	100,243	-	100,243		
Chula Vista Elementary School District	1,223,834	-	1,223,834		
Coachella Valley Unified School District	4,638,411	-	4,638,411		
Corona-Norco Unified School District	1,942,642	-	1,942,642		
Crossroads Charter School	104,787	5,510	110,297		
Cucamonga School District	125,009	-	125,009		
Cutler-Orosi Joint Unified School District	692,377	41,795	734,172		
Empire Union Elementary School District	598,381	50,232	648,613		
Fresno Unified School District	1,294,341	14,999	1,309,340		
Glendora Unified School District	753,682	25,000	778,682		
Grant Elementary School District	35,986	4,652	40,638		
Gridley Unified School District	576,122	-	576,122		
Hanford Joint Union High School District	158,249	7,950	166,199		
Hombrook Elementary School District	22,289	5,700	27,989		
Hughson Unified School District	99,399	-	99,399		
Hydesville Elementary School District	102,990	50,633	153,623		
Igo, Omo, Platina Union Elementary School District	78,099	-	78,099		
Julian Union Elementary School District	242,059	52,947	295,006		
Kingsburg Elementary Charter School	525,789	37,296	563,085		
Larkspur-Corte Madera School District	350,000	-	350,000		
Lennox School District	284,694	-	284,694		

Schedule 1—(continued)

Local Educational Agency	Program Implementation	Planning Funds ¹	Total	Amount Unallowable	Reference ²
Completed projects not selected for audit:					
Lindsay Unified School District	439,980	47,315	487,295		
Little Shasta Elementary School District	27,822	2,400	30,222		
Livermore Valley Joint Unified School District	165,835	159,280	325,115		
Los Alamitos Unified School District	1,291,135	101,500	1,392,635		
Madera County Office of Education	84,587	15,535	100,123		
Maple Elementary School	138,059	-	138,059		
Mariposa County Unified School District	544,227	22,306	566,533		
Mary Collins Charter School at Cherry Valley	233,011	21,463	254,474		
Mid Valley Alternative Charter School	37,328	15,063	52,391		
Monarch Learning Center	40,470	51,172	91,642		
Monson-Sultana Joint Union Elementary School District	264,796	16,993	281,789		
Montague Elementary School District	207,160	51,790	258,950		
Monterey County Home Charter School	62,955	949	63,904		
Nevada Joint Union High School District	365,514	-	365,514		
Northern Humboldt Union High School District	149,391	10,802	160,192		
Oak Grove Elementary School District (EEP #550)	850,000	75,000	925,000		
Oak Grove Elementary School Districtb (EEP #1791)	1,486,316	153,059	1,639,375		
Ocean View School District	107,907	65,700	173,607		
One Charter School	258,663	-	258,663		
Orange County Educational Arts Academy	159,000	7,500	166,500		
Oroville City Elementary School District	236,972	-	236,972		
Palisades Charter High School (EEP #629)	177,261	24,845	202,106		
Palisades Charter High School (EEP #1083)	106,619	-	106,619		
Penngrove Elementary School	256,679	-	256,679		
Petaluma City Elementary School District	486,742	46,784	533,526		
Planada Elementary School District	91,376	30,000	121,376		
Pollock Pines Elementary School District	181,034	-	181,034		
Pomona Unified School District	306,840	404,635	711,475		
Redondo Beach Unified School District	156,434	-	156,434		
Rialto Unified School District (EEP #103)	1,357,000	34,000	1,391,000		
Rialto Unified School District (EEP #2566)	882,502	34,000	916,502		
Rio Bravo-Greeley Union Elementary School District	282,737	57,414	340,151		
Roseville City Elementary School District	371,828	58,500	430,328		
Round Valley Joint Elementary School District	212,181	-	212,181		
San Antonio Union Elementary School District	255,545	-	255,545		
San Joaquin Building Futures Academy	258,663	-	258,663		
San Joaquin County Office of Education	695,112	-	695,112		
San Jose Charter Academy	502,530	35,000	537,530		
Santa Ynez Valley Union High School District	269,960	-	269,960		
Savanna Elementary School District	389,926	13,430	403,356		
Science & Technology Academy at Knights Landing	45,272	-	45,272		
Semitropic Elementary School District	242,391	-	242,391		
Shasta Union Elementary School District	249,057	5,101	254,158		
Snowline Joint Unified School District	284,111	130,000	414,111		
Solvang Elementary School District	217,627	-	217,627		
Stellar Charter School	202,472	50,618	253,090		
Temecula Preparatory School	65,762	-	65,762		
Temecula Valley Charter School (EEP #619)	46,470	-	46,470		
Temecula Valley Charter School (EEP #2613)	59,925	-	59,925		
Trinity County Office of Education	45,334	15,075	60,409		
Tustin Unified School District	709,015	-	709,015		
Twin Ridges Home Study Charter School	25,830	2,260	28,090		
University Preparatory School	264,000	-	264,000		
Upper Lake Unified School District	106,055	54,594	160,649		
Wheatland Charter Academy	14,089	15,467	29,556		
Wheatland Elementary School District	452,819	78,054	530,873		
Willits Charter School	125,208	10,000	135,208		
Willows Unified School District	552,070	21,000	573,070		
Woodlake Unified School District	275,231	32,000	307,231		
Total, completed projects not selected for audit	39,877,750	3,020,612	42,898,362		
Total completed projects	\$ 59,259,926	\$ 3,797,287	\$ 63,057,214		

¹ The planning funds are requested directly from CDE before an EEP is submitted.

² See the Findings and Recommendations section.

³ We tested 100% of the costs reported, totaling \$20,158,851, for the 16 LEAs selected for audit.

⁴ Venture Academy received apportionments totaling \$573,704, \$46,335 less than the total amount requested of \$620,039.

**Schedule 2—
Total Completed Proposition 39 Program Costs
for Community College Districts
July 1, 2017, through June 30, 2018**

Community College District	Program Implementation	Amount Unallowable	Reference ¹
<u>Completed projects selected for audit:</u>			
Butte-Glenn Community College District	\$ 1,244,954	\$ (156,130)	Finding 1, 2
Contra Costa Community College District	1,253,496	(664,114)	Finding 1, 2
South Orange County Community College District	<u>1,575,973</u>	<u>(23,112)</u>	Finding 1, 2, 3
Total, completed projects selected for audit	<u>\$ 4,074,423 ²</u>	<u>\$ (843,356)</u>	
<u>Completed projects not selected for audit:</u>			
Cabrillo Community College District	145,883		
Cerritos Community College District	244,173		
Coast Community College District	1,459,306		
Compton Community College District	156,404		
Copper Mountain Community College District	34,965		
Desert Community College District	615,113		
El Camino Community College District	246,429		
Feather River Community College District	11,816		
Gavilan Joint Community College District	71,753		
Grossmont-Cuyamaca Community College District	1,013,495		
Imperial Community College District	76,725		
Kern Community College District	110,507		
Los Rios Community College District	672,433		
Mt. San Jacinto Community College District	516,367		
Ohlone Community College District	285,458		
Palo Verde Community College District	53,638		
Peralta Community College District	300,744		
Rancho Santiago Community College District	1,096,152		
Redwoods Community College District	90,630		
Rio Hondo Community College District	295,253		
Riverside Community College District	638,537		
San Diego Community College District	3,275,626		
San Francisco Community College District	1,184,852		
San Joaquin Delta Community College District	308,189		
San Jose/Evergreen Community College District	155,625		
San Luis Obispo County Community College District	537,511		
San Mateo County Community College District	1,047,041		
Santa Monica Community College District	196,492		
Shasta-Tehama-Trinity Joint Community College District	731,956		
Siskiyou Community College District	189,314		
Sonoma County Junior College District	432,484		
Southwestern Community College District	1,745,677		
Ventura County Community College District	104,490		
West Valley-Mission Community College District	<u>342,658</u>		
Total, completed projects not selected for audit	<u>\$ 18,387,696</u>		
Total completed projects	<u>\$ 22,462,119</u>		

¹See the Findings and Recommendations.

²We tested 100% of the costs reported, totaling \$4,074,423, for the three CCDs selected for the audit.

Findings and Recommendations

**FINDING 1—
Sole-sourced project costs**

We found that seven LEAs and three CCDs sole-sourced a portion of their project costs, totaling \$3,013,770, as follows:

El Monte City School District	\$ 3,819
High Tech High International Charter School	50,000
Mark Twain Union Elementary School District	16,368
Oceanside Unified School District	45,449
Venture Academy Charter School	26,447
West Covina Unified School District	2,027,653 ¹
Yreka Union High School District	<u>20,257</u>
Subtotal, Local Educational Agencies	<u>\$ 2,189,993</u>
Butte-Glenn Community College District	\$ 156,130
Contra Costa Community College District	664,114
South Orange County Community College District	<u>3,533</u>
Subtotal, Community College Districts	<u>\$ 823,777</u>
Total	<u><u>\$ 3,013,770</u></u>

¹For West Covina Unified School District, we found that of the \$2,027,653 that was sole-sourced, \$8,075 was also applied to ineligible expenditures (see Finding 3).

These seven LEAs and three CCDs did not provide supporting documentation to show that they considered other vendors before awarding contracts.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

We have interpreted the requirement to “not use a sole source process to award funds” as the necessity for a competitive process. Competitive processes improve cost-effectiveness, prevent favoritism, and make the procurement process transparent.

For the Proposition 39 program, LEAs and CCDs hired contractors to perform critical functions for energy upgrades. However, despite their reliance on contractors, these LEAs and CCDs used noncompetitive processes to contract for these vital services and, thus, did not ensure the cost-effectiveness of these services.

Recommendation

We recommend that:

- The CDE take appropriate action in response to funds paid to LEAs that did not meet the sole-source requirement; and
- The CCCCCO take appropriate action in response to funds paid to CCDs that did not meet the sole-source requirement.

No recommendation for LEAs and CCDs is applicable to this finding, as the Proposition 39 program has ended.

LEAs' and CCDs' Response

We notified the seven LEAs and three CCDs of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for individual LEAs and CCDs are included in the Appendix; their complete responses are included as attachments.

**FINDING 2—
Projected energy
savings not identified
in awarded contracts**

We found that 10 LEAs and three CCDs did not include the required projected energy savings in the awarded contracts, as follows:

Local Education Agency

Armona Union Elementary School District
El Monte City School District
High Tech High International Charter School
Luther Burbank School District
Mariposa County Office of Education
Mark Twain Union Elementary School District
Oceanside Unified School District
Pine Ridge Elementary School District
Willits Unified School District
Yreka Union High School District

Community College District

Butte-Glenn Community College District
Contra Costa Community College District
South Orange County Community College District

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

We found that many of the awarded contracts include generic statements that energy savings will be realized; however, these contracts do not identify the amount of projected energy savings.

In discussing this issue with agency representatives during audit fieldwork, many representatives commented that the approved energy plans and board documents identified the required projected energy savings amounts. We agree that these documents included the projected energy savings amounts; however, the guidelines require projected energy savings amounts to be identified in awarded contracts.

Recommendation

No recommendation for LEAs and CCDs is applicable to this finding, as the Proposition 39 program has ended.

LEAs' and CCDs' Response

We notified the 10 LEAs and three CCDs of this finding during audit fieldwork and at the end of the audit via email. Findings and

Recommendations for individual LEAs and CCDs are included in the Appendix; their complete responses are included as attachments.

**FINDING 3—
Proposition 39 funds
applied to ineligible
expenditures**

We found that one LEA and one CCD applied Proposition 39 funds to project costs not approved by the CEC or by the CCCCO, resulting in ineligible costs of \$19,579 (\$27,654 less \$8,075 that was also sole-sourced).

West Covina Unified School District

We reviewed the invoices from Associated Environmental Management for storm water pollution prevention services, and determined that the services were not related to the approved project costs in the district's EEP. Therefore, we found that \$8,075 for storm water pollution prevention services is ineligible for Proposition 39 funding. However, we found that this amount was also sole-sourced (see Finding 1).

The district self-certified in its EEP that "The LEA commits to use the funds for the eligible energy project(s) approved in its energy expenditure plan."

The CEC's Proposition 39 Program Implementation Guidelines state, "LEAs can only use Proposition 39 funding for the eligible energy projects approved in their energy expenditure plans."

South Orange County Community College District

We found that South Orange County Community College District applied Proposition 39 funds from application SOUTH0-1516-001-05 to project costs not included in the application approved by the CCCCO. The district improperly paid \$19,579 to vendor Clear Blue Energy for an interior lighting project that was not identified in the application.

The district signed and certified in its application that the funding would be used for the energy projects identified in its application.

Recommendation

We recommend that:

- The CDE take appropriate action in response to ineligible project costs; and
- The CCCCO take appropriate action in response to ineligible project costs.

No recommendation for LEAs and CCDs is applicable to this finding, as the Proposition 39 program has already ended.

LEA's and CCD's Response

We notified the LEA and the CCD of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for

individual LEAs and CCDs are included in the Appendix; their complete responses are included as attachments.

**FINDING 4—
Final project
completion reports
submitted after the
deadline**

We found that five LEAs submitted their final project completion reports after the deadline. LEAs are required to submit a final project completion report to the CEC 12 to 15 months after the EEP is completed. An EEP is considered complete when the LEA has completed all measures in the approved EEP.

The following table identifies the number of months the final report was submitted *after* the project was completed:

District	Months
Hesperia Unified School District	26
Mariposa County Office of Education	19
Pine Ridge Elementary School District	22
San Leandro Unified School District	28
Yreka Union High School District	16

PRC section 26240(b) states, in part:

As a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board....To the extent practical, this report shall also contain information on any of the following:

1. The total final gross project costs before deducting any incentives or other grants and the percentage of total project costs derived from the Job Creation Fund.
2. The estimated amount of energy saved, accompanied by specified energy consumption and utility bill cost data for the individual facility where the project is located, in a format to be specified by the Energy Commission.
3. The nameplate rating of new clean energy generation installed.
4. The number of trainees.
5. The number of direct full-time equivalent employees and the average number of months or years of utilization of each of these employees.
6. The amount of time between awarding of the financial assistance and the completion of the project or training activities.
7. The entity’s energy intensity before and after project completion, as determined from an energy rating or benchmark system...

Recommendation

No recommendation for LEAs is applicable to this finding, as the Proposition 39 program has ended.

LEAs' Response

We notified the five LEAs of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for individual LEAs and CCDs are included in the Appendix; their complete responses are included as attachments.

Observation and Recommendation

Unused planning funds

We found that four LEAs with unused planning funds properly applied them to program implementation. However, as these funds were not included in their approved EEPs, the amount of Proposition 39 funds paid to these LEAs exceeded their approved EEPs by \$26,238, as follows:

Local Educational Agency	Program	Planning	Total	Total	Unused
	Implementation	Funds	EEP Approved	CDE Apportionment	Planning Funds
			A	B	C = B - A
Armona Union Elementary School District	\$ 287,683	\$ 28,005	\$ 315,688	\$ 317,912	\$ 2,224
Luther Burbank School District	266,798	10,767	277,565	287,614	10,049
San Leandro Unified School District	2,015,425	58,500	2,073,925	2,079,178	5,253
Willits Unified School District	544,280	29,259	573,539	582,251	8,712
Total	\$ 3,114,186	\$ 126,531	\$ 3,240,717	\$ 3,266,955	\$ 26,238

We reviewed the districts’ ledgers and found that these LEAs received funds in excess of the total amounts indicated in the EEPs approved by the CEC because these LEAs applied their unused planning funds to project implementation.

LEAs had the option of requesting planning funds for energy planning activities in FY 2013-14 without submitting an EEP to CEC. The funds were intended to be used for planning activities for FY 2013-14 through FY 2017-18. Any unused planning funds can be applied toward implementing energy projects that are part of an approved EEP.

The four LEAs in our sample opted to use only a portion of their planning funds, and were able to apply the remaining funds toward project implementation. However, the unspent planning funds were not included in an approved EEP. CDE releases program implementation funds based solely on the amounts requested in approved EEPs; as a result, these LEAs received program implementation funds in excess of their approved EEP amount.

PRC section 26235(f) states:

The Superintendent of Public Instruction shall not distribute funds to an LEA unless the LEA has submitted to the Energy Commission, and the Energy Commission has approved, an expenditure plan that outline the energy projects to be funded. An LEA shall utilize a simple form expenditure plan developed by the Energy Commission. The Energy Commission shall promptly review the plan....A portion of the funds may be distributed to an LEA upon request for energy audits and other plan development activities prior to submission of the plan.

The CEC’s Proposition 39 Program Implementation Guidelines state:

LEAs whose first year of eligibility was fiscal year 2013-14, the first year of the program, had the option of requesting a portion of that year’s award allocation for energy planning activities in 2013-14 without submitting an energy expenditure plan(s) to the Energy Commission. This option was available only for the fiscal year 2013-14 award allocation of the Proposition 39 program and was intended to be used for planning activities for subsequent fiscal years (2013-14 through 2017-18).

The CEC’s Proposition 39 Program Implementation Guidelines also state

that “Any unused energy planning funds shall be applied toward implementing eligible energy project(s) approved as part of an LEA’s energy expenditure plan(s).”

Recommendation

We recommend that:

- CDE take appropriate action in response to unused planning funds identified in this audit; and
- CDE and CEC account for unspent planning funds that were applied to program implementation without being included in an approved EEP.

CDE’s Response

We initially communicated the results of our observation to a CDE representative via email on January 30, 2019. After subsequent email exchanges to further explain our observation, we received an email response on March 15, 2019, stating:

I was able to vouch your numbers and agree that the 4 districts audited had unused planning funds that should be returned to the state. However, I do not consider them to be “overpaid EEP funds” per the payment process established for this program, but rather “unused planning funds” that should be returned to the state. We will proceed to bill for return of unused planning funds once a finding is issued.

Appendix— Audit Results by Local Educational Agencies and Community College Districts

Local Educational Agencies

Armona Union Elementary School District.....	A2
El Monte City School District	A4
Esparto Unified School District.....	A6
Hesperia Unified School District.....	A7
High Tech High International Charter School.....	A9
Luther Burbank School District.....	A12
Mariposa County Office of Education.....	A14
Mark Twain Union Elementary School District	A16
Newport-Mesa Unified School District	A19
Oceanside Unified School District.....	A20
Pine Ridge Elementary School District	A22
San Leandro Unified School District.....	A24
Venture Academy Charter School (San Joaquin County Office of Education).....	A26
West Covina Unified School District	A29
Willits Unified School District	A33
Yreka Union High School District.....	A35

Community College Districts

Butte-Glenn Community College District	A37
Contra Costa Community College District.....	A41
South Orange County Community College District	A43

Armona Union Elementary School District Proposition 39 Program

Background

The California Energy Commission (CEC) approved Armona Union Elementary School District’s energy expenditure plan (EEP) for \$287,683, consisting of \$12,000 for energy management services and \$275,683 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Armona Elementary	\$ 44,804	Lighting retrofit	\$ 3,282
Parkview Middle	230,879	HVAC and lighting retrofit	8,401
Total	\$ 275,683		\$ 11,683

With these energy efficiency measures, the district reported a combined savings-to-investment ratio (SIR) of 1.74 and the creation of 1.54 direct job-years.

In addition, the district received \$28,005 in planning funds directly from the CDE, which was used for screening and audits, and program assistance.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s *Proposition 39: California Clean Energy Jobs Act – 2013 Program Implementation Guidelines* (Proposition 39 Program Implementation Guidelines) and *Proposition 39: California Clean Energy Jobs Act – 2015 Energy Expenditure Plan Handbook* (EEP Handbook). We identified the following audit issue:

Projected energy savings not identified in awarded contracts

We reviewed the district’s contract with Indoor Environmental Services (IES) and determined that the contract does not identify the projected energy savings.

Public Resource Code (PRC) section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

We also identified the following observation:

Unused planning funds

We found that the district applied unused planning funds to program implementation. However, these funds were not included in its approved EEP. As a result, the district received funding that exceeded its approved EEP by \$2,224. We informed the CDE of our observation via email on January 30, 2019.

Recommendation

We recommend that the CDE take appropriate action in response to the unused planning funds identified in this audit.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the audit finding and observation via email on February 26, 2019. We did not receive a response from the district.

El Monte City School District Proposition 39 Program

Background

The CEC approved El Monte City School District's EEP for \$2,017,022, consisting of \$160,000 for energy management services and \$1,857,022 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Asher Facility	\$ 14,651	Lighting and HVAC controls	\$ 524
Barton Center	9,872	Lighting and HVAC controls	1,141
Byron Thompson/Durfee	156,150	Lighting and HVAC controls	12,968
Central Kitchen	22,266	Lighting and HVAC controls	1,120
Cherrylee Elementary	95,936	Lighting and HVAC controls	7,052
Child Development	9,110	Lighting and HVAC controls	383
Cleminson Elementary	79,038	Lighting and HVAC controls	5,347
Columbia Elementary	177,101	Lighting and HVAC controls	12,773
Cortada Elementary	88,254	Lighting and HVAC controls	8,793
District Office	59,462	Lighting and HVAC controls	3,694
Gidley Elementary	109,875	Lighting and HVAC controls	9,331
Legore Elementary	149,040	Lighting and HVAC controls	12,986
Loma Center	55,104	Lighting and HVAC controls	6,482
New Lexington Elementary	63,163	Lighting and HVAC controls	4,484
Potrero Elementary	133,529	Lighting and HVAC controls	13,265
Rio Hondo Elementary	148,012	Lighting and HVAC controls	8,359
Rio Vista Elementary	116,087	Lighting and HVAC controls	10,322
Shripser Elementary	117,792	Lighting and HVAC controls	9,985
Wilkerson Elementary	107,783	Lighting and HVAC controls	12,017
Wright Elementary	144,797	Lighting and HVAC controls	12,695
Total	\$ 1,857,022		\$ 153,721

With these energy efficiency measures, the district reported a combined SIR of 1.22 and the creation of 10.40 direct job-years.

In addition, the district received \$144,797 in planning funds directly from the CDE, which it used for screening and audits, and energy management services.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issues:

Sole-sourced project costs

We found that the district sole-sourced its contract with Alsaleh Project Management, Inc. for construction management services for a district-wide exterior lighting fixtures maintenance project – A1803. The district did not provide supporting documentation to show that it considered other vendors before awarding the contract to Alsaleh Project Management, Inc.

Therefore, we found that the district sole-sourced its Proposition 39 contract, totaling \$3,819.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Projected energy savings not identified in awarded contracts

We reviewed the district’s contracts with RDM Electric Co., Inc. and Anderson Air Conditioning, L.P. and determined that the contracts do not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Recommendation

We recommend that the CDE take appropriate action in response to funds paid that did not meet the sole-source requirement.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District Response

We informed the district of the two audit findings via email on February 14, 2019. We did not receive a response from the district.

Esparto Unified School District Proposition 39 Program

Background

The CEC approved Esparto Unified School District’s EEP for \$301,745. The district used its implementation funds for the following renewable energy generation measure:

School Site	Proposition 39 Share Used at School Site	Renewable Energy Generation Measures	Reported Annual Cost Savings
Esparto K-8	\$ 301,745	Photovoltaic (solar) panels	\$ 8,002
	\$ 301,745		\$ 8,002

With this renewable energy generation measure, the district reported a combined SIR of 0.25 and the creation of 1.27 direct job-years.

Audit Results

We audited the Proposition 39 program costs and found that all costs reported were compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook.

District’s Response

We informed the district via email on February 26, 2019, that all costs reported for Esparto Unified School District were in compliance with the program guidelines. We did not receive a response from the district.

Hesperia Unified School District Proposition 39 Program

Background

The CEC approved Hesperia Unified School District's EEP for \$4,798,481. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Carmel Elementary	\$ 111,328	Interior/exterior lighting retrofit and plug loads	\$ 8,347
Cedar Middle	455,678	HVAC controls, interior/exterior lighting retrofit, and plug loads	27,967
Cottonwood Elementary	82,886	Exterior lighting retrofit and plug loads	5,964
Cypress School of the Arts	344,084	HVAC controls, interior/exterior lighting retrofit, and plug loads	21,712
Eucalyptus Elementary	212,585	HVAC, exterior lighting retrofit, and plug loads	12,397
Hesperia High	1,011,224	HVAC controls, interior/exterior lighting retrofit, and plug loads	61,042
Hollyvale Elementary	229,410	HVAC controls, interior/exterior lighting retrofit, and plug loads	13,092
Juniper Elementary	51,128	HVAC, exterior lighting retrofit, and plug loads	3,892
Mission Crest Elementary	53,634	Interior/exterior lighting retrofit and plug loads	5,756
Ranchero Middle	795,878	HVAC, interior/exterior lighting retrofit, and plug loads	50,958
Sultana High	1,312,181	HVAC, interior/exterior lighting retrofit, and plug loads	77,902
Topaz Preparatory Academy	138,465	Interior/exterior lighting retrofit and plug loads	9,325
Total	\$ 4,798,481		\$ 298,354

With these energy efficiency measures, the district reported a combined SIR of 1.22 and the creation of 26.87 direct job-years.

In addition, the district received \$260,000 in planning funds directly from the CDE, which it used for screening and audits.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issue:

Final project completion reports submitted after the deadline

The district's final report was submitted on September 6, 2017, 26 months after the reported project completion date of June 24, 2015.

PRC section 26240(b) states, in part:

As a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board

Recommendation

No recommendation is applicable, as the Proposition 39 program has ended.

District Response

We informed the district of the audit finding via email on February 14, 2019. Dr. George Landon, Assistant Superintendent of Business Services, and Virginia Gutierrez, Director of Purchasing, Facilities, and Warehouse, responded by letter dated February 14, 2019, and via email on March 6, 2019. The district's response letter is included as Attachment A.

The district's February 14, 2019 response to this finding is as follows:

The District was contracted with Climatec to administer our Prop 39 project, which included the filing of all mandatory reports with the California Energy Commission (CEC). On May 11, 2017, the California Energy Commission notified the District via email that our final report was never received and was now past due. At which point the District contacted our consultant to confirm that the final report had indeed been filed with the CEC within the required timelines. The District's consultant confirmed that the report had been submitted a "while ago". Ultimately, the final report was submitted on the District's behalf on September 6, 2017.

SCO Comment

Our finding remains unchanged.

We emailed the district on February 20, 2019, requesting that the district submit additional documentation showing that its consultant (Climatec) had submitted the final report within 15 months of the reported project completion date. On March 6, 2019, Ms. Gutierrez sent an email stating that Climatec had confirmed that it submitted the final report on the date we have on record, and that the district would not be submitting any further documentation.

High Tech High International Charter School Proposition 39 Program

Background

The CEC approved High Tech High International Charter School’s EEP for \$246,555, consisting of \$2,083 for energy management services and \$244,472 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
High Tech High International	\$ 244,472	Lighting and HVAC controls, and spray foam roof coating	\$ 35,788
	<u>\$ 244,472</u>		<u>\$ 35,788</u>

With these energy efficiency measures, the charter school reported a combined SIR of 2.86 and the creation of 1.37 direct job-years.

In addition, the charter school received \$15,000 in planning funds directly from the CDE, which it used for screening and audits, and energy management services.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issues:

Sole-sourced project costs

We found that the charter school sole-sourced its contract with Ari-Thane for implementation of its spray foam “cool roof” project. The district did not provide supporting documentation to show that it considered other vendors before awarding the contract to Ari-Thane. Therefore, we found that the district sole-sourced its Proposition 39 contract, totaling \$50,000.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Projected energy savings not identified in awarded contracts

We reviewed the charter school’s contracts with Fess Energy, Facility Dynamics Engineering, and Jackson and Blanc, and determined that the contracts do not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Recommendation

We recommend that the CDE take appropriate action in response to funds paid to the charter school that did not meet the sole-source requirement.

No additional recommendation is applicable, as the Proposition 39 program has ended.

Charter School's Response

We informed the charter school of the audit finding via email on February 4, 2019. Paul Dooley, Director of Facilities, responded on February 12, 2019. The response letter is included as Attachment B.

The charter school's response is as follows:

1. Sole-sourced funds

With regard to the cool roof project installed by Ari-thane Foam Products, Inc. at High Tech High International, HTH did not solicit bids from other vendors for the following reasons:

- In 2007, extensive research and study was done to find a product that provided a lightweight, cool roof, which could also add R-value [heat resistance] to our new and existing buildings at an affordable price. Multiple bids and product specifications were submitted and HTH concluded that [Ari-Thane] Foam Products best demonstrated they could meet our requirements.
- After testing the product on one small building, High Tech High then decided that all of its buildings, new and existing, would utilize the Ari-thane Foam so that future warranty, inspections, maintenance, and repairs could all be performed by one vendor. This approach provides economies of scale that represents best value in the utilization of HTH's funding.
- [Therefore], HTH began using [Ari-Thane] for installation of cool roofs on all of its new buildings and reroofing projects in approximately 2007.
- The High Tech High International building was the last of 11 HTH buildings to be reroofed. Accordingly, Ari-thane Foam was utilized on that building so that it would match the roofs within the HTH inventory.
- Our understanding is that, having demonstrated similar value to other LEAs, Ari-Thane has also been the successful bidder on several other Prop 39 roofing projects throughout Southern California.

2. Projected energy savings not included in the contracts

HTH was one of the early adopters of the program and we attended several early public outreach meetings in order to fully understand the program and to establish internal best practices. High Tech High International's EEP was among the first approved in the state and the contracts represented our nascent understanding of the program requirements at the time. While our future contracts included language related to the energy savings component, such language had no yet been developed at the time these projects were bid.

The approved EEP for HTHI included energy savings calculated through Trace™ Energy Modeling software – an industry standard [that] exceeds the program requirements. All bidding parties were notified that projects were funded by Prop 39 Clean Energy and the energy savings component was discussed throughout the bidding and contracting processes. Purchase order documents show the reduced wattages of the proposed LED lamps, for instance, and likewise cut-sheets for the HVAC equipment show minimum efficiency ratings – both of which are directly related to energy savings. These documents were included as part of the contracts.

HTH is a leader in energy efficiency across its portfolio of owned campuses, and six of our schools currently have a LEED certification. Our organization has a dedicated facilities staff and a reasonably robust operations and maintenance budget, which ensures our schools are operated as efficiently as possible. The Prop 39 program provided funding for an initiative that has been an organizational focus for HTH since our inception in 2000. We are aligned in ideology and in practice with the goals of Prop 39 and we certainly believe we participated in the program to the best of our ability.

SCO Comment

Our findings and recommendation remain unchanged.

The charter school states, “While our future contracts included language related to the energy savings component, such language had not yet been developed at the time these projects were bid.” We disagree. The *Proposition 39: California Clean Energy Jobs Act – 2013 Program Implementation Guidelines*, which cite PRC section 26206(d), were formally adopted by the CEC on December 19, 2013. The charter school entered into contracts with Fess Energy, Facility Dynamics Engineering, and Jackson and Blanc in 2015, over a year after the adoption of the Proposition 39 Program Implementation Guidelines.

Although we recognize that the charter school participated in the program to the best of its ability, the scope of our audit is to ensure compliance with state statutes and regulations, which require that the projected energy savings be identified in the awarded contract.

Luther Burbank School District Proposition 39 Program

Background

The CEC approved Luther Burbank School District’s EEP for \$266,798. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Luther Burbank Elementary	\$ 266,798	Lighting retrofit/controls, HVAC system, plug loads, building envelope, domestic hot water heater	\$ 16,362
	<u>\$ 266,798</u>		<u>\$ 16,362</u>

With these energy efficiency measures, the district reported a combined SIR of 1.24 and the creation of 1.49 direct job-years.

In addition, the district received \$10,767 in planning funds directly from the CDE, which it used for screening and audits, and program assistance.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issue:

Projected energy savings not identified in awarded contracts

We reviewed the district’s contract with Highlands Energy, and determined that the contract does not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

We also identified the following observation:

Unused planning funds

We found that the district applied unused planning funds to program implementation. However, these funds were not included in its approved EEP. As a result, the district received funding that exceeded its approved EEP by \$10,049. We informed the CDE of our observation via email on January 30, 2019.

Recommendation

We recommend that the CDE take appropriate action in response to the unused planning funds identified in this audit.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the audit finding and observation via email on February 14, 2019. We did not receive a response from the district.

Mariposa County Office of Education Proposition 39 Program

Background

The CEC approved Mariposa County Office of Education’s (COE) EEP for \$62,563. Mariposa COE used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Mariposa County Office of Education	\$ 45,995	Lighting retrofit	\$ 2,864
Monarch Academy	16,568	Lighting retrofit	1,945
	\$ 62,563		\$ 4,809

With these energy efficiency measures, Mariposa COE reported a combined SIR of 1.45 and the creation of 0.35 direct job-years.

In addition, Mariposa COE received \$15,919 in planning funds directly from the CDE, which it used for screening and audits.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issues:

Projected energy savings not identified in awarded contracts

We reviewed Mariposa COE’s contract with IES and determined that the contract does not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Final project completion reports submitted after the deadline

Mariposa COE submitted its final report on January 2, 2018, 19 months after the reported project completion date of June 6, 2016.

PRC section 26240(b) states, in part:

As a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board

Recommendation

No recommendation is applicable, as the Proposition 39 program has ended.

COE's Response

We informed Mariposa COE of the two audit findings via email on March 11, 2019. We did not receive a response from Mariposa COE.

Mark Twain Union Elementary School District Proposition 39 Program

Background

The CEC approved Mark Twain Union Elementary School District’s EEP for \$276,203. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Copperopolis Elementary	\$ 62,064	Lighting retrofit	\$ 6,683
Mark Twain Elementary	214,139	Lighting retrofit	14,431
	\$ 276,203		\$ 21,114

With these energy efficiency measures, the district reported a combined SIR of 1.47 and the creation of 1.55 direct job-years.

In addition, the district received \$7,600 in planning funds directly from the CDE, which it used for screening and audits, and program assistance.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issues:

Sole-sourced project costs

We found that the district sole-sourced its contract with Freedom Energy Corporation for energy planning and services, and for project management and implementation services. The district did not provide supporting documentation to show that it considered other vendors before awarding the contract to Freedom Energy Corporation. Therefore, we found that the district sole-sourced its Proposition 39 contract, totaling \$16,368.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Projected energy savings not identified in awarded contracts

We reviewed the district’s contracts with Gold Electric Inc. and EMCOR Services and found that the contracts do not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Recommendation

We recommend that the CDE take appropriate action in response to funds paid to the district that did not meet the sole-source requirement.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the two audit findings via email on February 5, 2019. Roy Blair, Director of Business Services, responded by letter dated February 22, 2019. We included the district's response as Attachment C.

The district's response related to the sole-source finding is as follows:

As relayed to you during your audit the District did in fact consult with other vendors and had at least one vendor give us a proposal at the District office. All vendors contacted were at least an hour travel time from our location. We contacted other Districts in our county and finally were given a recommendation by the Calaveras County Joint Power Authority to inquire [with] Freedom Energy. Their proposal was substantially less than any we had been given and therefore we obtained their services. After your exit conference, we began a search for documentation that would substantiate our claim that "we had in fact contacted and consulted with other vendors". We were unable to obtain the documentation you had suggested. Emails from 2014-15 were expunged from the county computer services after three years. Parties involved in the process at the time had not kept notes or could not remember contacts from three years previous. We understand that [therefore, you] could not substantiate our process for selecting a consultant.

Obviously, the District is not happy about possibly having to refund the \$16,838 we paid for services that we believe were the best option to obtain consulting services. I have attached an excel spreadsheet to help explain my following request. If we were to amend claims to show that the Freedom Energy [expenditures] were claimed against the Calaveras County Power Authority and not State funds, could we amend the claims and remove them from repayment? I am currently on the Governing Board of the Authority and believe this scenario would be acceptable to the Authority.

The district's response related to the lack of projected energy savings is as follows:

We now understand that to include savings in the individual contracts was the requirement. We thought that including the projected savings in proposals and the project application were meeting the requirements, as we understood them for this new program. It was our understanding that this would be a finding but without monetary consequences.

I sincerely request that you consider the uniqueness of this grant and the lack of experienced personnel to implement it. We appreciate the manner in which your auditor conducted the audit and the assistance she provided at its conclusion.

SCO Comment

Our finding and recommendation remain unchanged.

The SCO does not have the authority to approve or deny the district's request to reclassify funds used for consulting services to another grant program. The district should consult with its project manager at the CEC for further guidance, or consider filing an appeal with the Education Audit Appeals Panel. We describe the process for filing an appeal earlier in this report.

Although we recognize that the district participated in the program to the best of its ability, the scope of our audit is to ensure compliance with state statutes and regulations. These requirements state, in part, that districts cannot use a sole-source process to award funds for energy management, planning, or implementation services and that districts must identify projected energy savings in the awarded contracts.

Newport-Mesa Unified School District Proposition 39 Program

Background

The CEC approved Newport-Mesa Unified School District's EEP for \$4,799,573. The district used its program implementation funds for the following renewable energy generation measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Abraham Lincoln Elementary	\$ 164,944	Photovoltaic (solar) panels	\$ 10,656
Adams Elementary	115,656	Photovoltaic (solar) panels	7,506
Back Bay High	117,817	Photovoltaic (solar) panels	11,233
California Elementary	115,860	Photovoltaic (solar) panels	8,687
Charles W. Tewinkle Middle	161,918	Photovoltaic (solar) panels	9,358
College Park Elementary	117,146	Photovoltaic (solar) panels	6,853
Eastbluff Elementary	162,733	Photovoltaic (solar) panels	12,795
Estancia High	1,594,903	Photovoltaic (solar) panels	119,624
Everett A. Rea Elementary	138,785	Photovoltaic (solar) panels	8,476
Harbor View Elementary	70,690	Photovoltaic (solar) panels	5,153
Harper Pre-Adult School	212,070	Photovoltaic (solar) panels	18,077
Heinz Kaiser Elementary	117,817	Photovoltaic (solar) panels	6,920
Killybrooke Elementary	117,104	Photovoltaic (solar) panels	8,775
Mariners Elementary	117,383	Photovoltaic (solar) panels	7,059
Maude B. Davis Elementary	485,753	Photovoltaic (solar) panels	34,513
Newport Coast Elementary	164,004	Photovoltaic (solar) panels	9,034
Paularino Elementary	115,656	Photovoltaic (solar) panels	11,595
Pomona Elementary	117,104	Photovoltaic (solar) panels	7,296
Roy O. Andersen Elementary	141,380	Photovoltaic (solar) panels	7,947
Victoria Elementary	117,104	Photovoltaic (solar) panels	8,353
Whittier Elementary	117,104	Photovoltaic (solar) panels	7,079
Wilson Elementary	115,656	Photovoltaic (solar) panels	7,106
Woodland Elementary	100,986	Photovoltaic (solar) panels	7,861
	<u>\$ 4,799,573</u>		<u>\$ 341,956</u>

With these renewable energy generation measures, the district reported a combined SIR of 1.15 and the creation of 20.16 direct job-years.

Audit Results

We audited the Proposition 39 program costs and found that all costs reported were in compliance with the Job Creation Fund program guidelines, as well as the CEC's Proposition 39 Program Implementation Guidelines and EEP Handbook.

District's Response

We informed the district via email on February 8, 2019, that all costs reported for Newport-Mesa Unified School District were in compliance with the program guidelines. Julia Lammatao, Financial Analyst responded via email on February 13, 2019, stating that the district does not wish to provide a response.

Oceanside Unified School District Proposition 39 Program

Background

The CEC approved Oceanside Unified School District’s EEP for \$937,052. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Martin Luther King Jr. Middle	\$ 937,052	HVAC system/controls and lighting retrofit	\$ 64,872
	\$ 937,052		\$ 64,872

With these energy efficiency measures, the district reported a combined SIR of 1.29 and the creation of 5.25 direct job-years.

In addition, the district received \$34,787 in planning funds directly from the CDE, which it used for screening and audits, and program assistance.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and the EEP Handbook. We identified the following audit issues:

Sole-sourced project costs

The district contracted Ninyo & Moore for hazardous inspection services; Program Management Group for consulting services; and Ameresco for planning services. The district did not provide supporting documentation to show that it considered other vendors before awarding the contracts to Ninyo & Moore, Program Management Group, and Ameresco. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$45,449.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Projected energy savings not identified in awarded contracts

We reviewed the district’s contracts with Global Power Group and K&J Air Conditioning and determined that the contracts do not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Recommendation

We recommend that the CDE take appropriate action in response to funds paid to the district that did not meet the sole-source requirement.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the two audit findings via email on February 4, 2019. Shannon Soto, Ed.D., Deputy Superintendent, responded via email on February 14, 2019.

The district's response to these findings is as follows:

Unfortunately as I'm still new to OUSD, I'm discovering gaps in our internal procedures for the Prop 39 expenditures. Moving forward we will adhere to the competitive [bidding] process and contract procedures.

SCO Comment

Our findings and recommendation remain unchanged.

Pine Ridge Elementary School District Proposition 39 Program

Background

The CEC approved Pine Ridge Elementary School District’s EEP for \$62,028. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Pine Ridge Elementary	\$ 62,028	Lighting controls and retrofit	\$ 4,044
	\$ 62,028		\$ 4,044

With these energy efficiency measures, the district reported a combined SIR of 1.29 and the creation of 0.35 direct job-years.

In addition, the district received \$15,507 in planning funds directly from the CDE, which it used for screening and audits.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issues:

Projected energy savings not identified in awarded contracts

We reviewed the district’s contract with IES and determined that the contract does not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Final project completion reports submitted after the deadline

The district’s final report was submitted on September 29, 2017, 22 months after the reported project completion date of November 20, 2015.

PRC section 26240(b) states, in part:

As a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board

Recommendation

No recommendation is applicable, as the Proposition 39 program has ended.

District Response

We informed the district of the two audit findings via email on February 26, 2019. Christine Skinner, Superintendent/Principal, responded by letter dated March 8, 2019. The district's response letter is included as Attachment D.

The district's response to the findings is as follows:

1. Projected Energy Savings Not Included in the Contract

The 2014-15 Energy Expenditure Plan was approved by the California Energy Commission (CEC) in July of 2015. A different administrator was assigned to the district that year. When I spoke to IES [indoor environmental services] about this finding, I was told that at the time Pine Ridge's project was approved that Projected Energy Savings was not yet required for project approval.

2. Final Report not Submitted within 12-15 Months Following Project Completion [Date]

Pine Ridge Elementary School District missed the Final Report submission due to critical administration turn over in the 2016-17 school year. The Superintendent left and an interim was installed until June 2017.

When I came on to run the district in July 2017, I inquired about our Proposition 39 funds and project. Justin Payton from IES visited the campus on September 19, 2017 to collect the information that he needed to submit the final CEC report. Unfortunately, we missed the deadline.

SCO Comment

Our findings remain unchanged.

The requirement that contracts identify projected energy savings is pursuant to PRC section 26206(d), and has been in place since the Proposition 39 program began. In addition, the CEC's Proposition 39 Program Implementation Guidelines, and all subsequent revisions to those guidelines, include the same requirements for Proposition 39 contracts.

San Leandro Unified School District Proposition 39 Program

Background

The CEC approved San Leandro Unified School District’s EEP for \$2,015,425. The district used its program implementation funds for the following renewable energy generation measure:

School Site	Proposition 39 Share Used at School Site	Renewable Energy Generation Measure	Reported Annual Cost Savings
San Leandro High School	\$ 2,015,425	Photovoltaic (solar) panels	\$ 218,731
	<u>\$ 2,015,425</u>		<u>\$ 218,731</u>

With this renewable energy generation measure, the district reported a combined SIR of 1.06 and the creation of 8.46 direct job-years.

In addition, the district received \$58,500 in planning funds directly from the CDE, which it used for screening and audits.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issue:

Final project completion reports submitted after the deadline

The district submitted its final report in August 2017, 22 months after the reported project completion date of March 2015.

PRC section 26240(b) states, in part:

As a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board

We also identified the following observation:

Unused planning funds

We found that the district applied unused planning funds to program implementation. However, these funds were not included in its approved EEP. As a result, the district received funding that exceeded its approved EEP by \$5,253. We informed the CDE of our observation via email on January 30, 2019.

Recommendation

We recommend that the CDE take appropriate action in response to the unused planning funds identified in this audit.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the audit finding and observation via email on February 6, 2019. Kevin Collins, Assistant Superintendent of Business and Operations, responded via email on February 6, 2019, stating that the district had no issues with the finding and observation.

Venture Academy Charter School (San Joaquin County Office of Education) Proposition 39 Program

Background

The CEC approved Venture Academy Charter School’s EEP for \$620,039. The district used its program implementation funds for the following energy efficiency and renewable energy generation measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency and Renewable Energy Generation Measures	Reported Annual Cost Savings
Venture Academy	\$ 620,039	Lighting retrofit/controls and photovoltaic (solar) panels	\$ 41,625
	<u>\$ 620,039</u>		<u>\$ 41,625</u>

With these energy efficiency and renewable energy generation measures, the charter school reported a combined SIR of 1.10 and the creation of 3.05 direct job-years.

We determined that the charter school received CDE apportionments totaling of \$573,704, \$46,335 less than the total amount requested (\$620,039) on the schools’ final project completion report. Therefore, we only audited the amount received in Proposition 39 funding, which totaled \$573,704.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issue:

Sole-sourced project costs

The charter school contracted with Capitol Public Finance for consulting services, Dickinson Welding & Inspection for inspection services, Iomlan Construction Services for inspection services, Terracon Consultants for materials testing services, and Odyssey Landscaping Co. for irrigation system repairs. The school did not provide supporting documentation to show that it considered other vendors before awarding contracts to Capitol Public Finance, Dickinson Welding & Inspection, Terracon Consultants and Odyssey Landscaping Co. Therefore, we found that the charter school sole-sourced these Proposition 39 contracts, totaling \$26,447.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Recommendation

We recommend that the CDE take appropriate action in response to funds paid to the charter school that did not meet the sole-source requirement.

No additional recommendation is applicable, as the Proposition 39 program has ended.

Charter School's Response

We informed the LEA of the audit finding via email on February 5, 2019. Scott Anderson, Deputy Superintendent of Business Services, responded by letter on February 6, 2019. The LEA's response letter is included as Attachment E.

The LEA's response to the finding, in part, is as follows:

There is no definition of sole source in statute of in any Prop 39 guidance we are aware of. As such, LEA's are left to interpret this requirement in combination with any additional guidance provided, such as the FAQ's referenced above. The guidance in the FAQ response highlighted above indicates [that] LEA's are to refer to their own procurement regulations in certain circumstances. If a competitive process were required for any and all contracts regardless of type or amount (which is a significant departure from normal requirements for LEA's), that runs counter to this guidance which we relied upon. As such, we understood the sole sourcing prohibition to be aimed exclusively at Gov. Code Sec. 4217.12 which allows "sole sourcing" under certain conditions for energy services contracts. Other than the sole sourcing prohibition mentioned above pertaining to Gov. Code Sec. 4217.12, we followed our local regulations, consistent with the guidance provided by CDE in the cited FAQs.

The Capital Public Finance, Dickinson Welding & Inspection, Iomian Construction Services and Terracon Consultants are all professional services which are not subject to competitive bidding.

The Odyssey Landscaping Co. contract (above) was less than the public works bid limit of \$15,000 and, therefore, was not subject to competitive bidding.

Notwithstanding the preceding, the San Joaquin County Office of Education spent \$6,203,056.87 on all Prop 39 projects. Of this amount, \$1,675,535 [was] Prop 39 funds and the balance [was] local funds. Of the \$6.2 million spent on all Prop 39 projects, SJCOE paid Johnson Controls, Inc. a total of \$5,094,411.59, of which \$1,419,338.67 is attributable to the Venture Academy Family of Schools. By virtue of simple journal accounting entries, all of the Venture Prop 39 funds received (\$573,704) could have been used to fund part of the Venture share of the Johnson Controls Inc. energy contract. Rather, we chose to use the Prop 39 funds for Venture's pro rata share of all contracts needed to complete the projects as described above, and then use a significant amount of additional, local funds for the balance of the necessary contracts. Stepping back from the detailed accounting methodology we elected, the Prop 39 funds received prompted a significant local (non-Prop 39) investment and were highly effective in achieving their intended purpose.

SCO Comment

Our finding and recommendation remain unchanged.

The district states that there is no definition of sole source in statute or in Proposition 39 guidance. Although we concur that the Proposition 39 guidelines do not define the term sole source, we disagree that there is no definition of the term in statute. Our review of other California code sections and regulations that use the phrase “sole source” indicates that when the phrase is used for contracting, it describes a non-competitive bidding process of awarding contracts—in other words, a process where contracts are awarded without advertising or bidding.

The scope of our audit is to ensure compliance with state statutes and regulations. Therefore, although the charter school may have followed its own procurement regulations, it did not follow the minimum standards of PRC section 26235(c) which states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

West Covina Unified School District Proposition 39 Program

Background

The CEC approved West Covina Unified School District's EEP for \$1,891,376, consisting of \$130,573 for energy management services, \$31,468 for training, and \$1,729,335 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
California Elementary	\$ 98,643	Lighting retrofit and relamping	\$ 7,255
Cameron Elementary	89,839	Lighting retrofit and relamping	7,139
Coronado Alternate	95,442	Lighting retrofit and relamping	10,631
District Office	88,838	Lighting retrofit and relamping	8,179
Edgewood Middle School	261,789	Lighting retrofit, relamping, and fixture replacement	21,804
Hollencrest Middle School	106,846	Lighting retrofit and relamping	10,573
Merced Elementary	108,647	Lighting retrofit	13,097
Merlinda Elementary	97,642	Lighting retrofit and relamping	9,463
Monte Vista Elementary	79,835	Lighting retrofit and relamping	8,987
Orangewood Elementary	108,722	Lighting retrofit and relamping	13,652
Vine Elementary	81,436	Lighting retrofit, relamping, and fixture replacement	6,648
Walnut Grove Intermediate	104,046	Lighting retrofit, relamping, and fixture replacement	8,312
Wescove Elementary	64,028	Lighting retrofit, relamping, and fixture replacement	8,248
West Covina High School	343,582	Lighting retrofit, relamping, and fixture replacement	38,804
	<u>\$ 1,729,335</u>		<u>\$ 172,792</u>

With these energy efficiency measures, the school district reported a combined SIR of 1.60 and the creation of 9.68 direct job-years.

In addition, the district received \$136,277 in planning funds directly from the CDE, which it used for screening and audits, and energy management services.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issues:

Sole-sourced project costs

The district contracted IES for implementation and energy management services, as follows:

Implementation costs	\$ 2,096,481
Energy management costs	109,022
Total costs	<u>\$ 2,205,503</u>

The district did not provide supporting documentation to show that it considered other vendors before awarding these contracts to IES. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$2,205,503. However, only \$2,027,653 of the contracts was approved by the CEC. Because we audited only the amount approved

by the CEC in the district's final project completion report, we found that the district sole-sourced a total of \$2,027,653.

PRC section 26235(c) states, in part, "A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter."

Proposition 39 funds applied to ineligible expenditures

The district used Proposition 39 funds to pay Associated Environmental Management \$8,075 for storm water pollution prevention services. We found that these services were not related to approved project costs in the district's EEP.

The district self-certified in its EEP that "The LEA commits to use the funds for the eligible energy project(s) approved in its energy expenditure plan."

The CEC's Proposition 39 Program Implementation Guidelines state, "LEAs can only use Proposition 39 funding for the eligible energy projects approved in their energy expenditure plans."

Recommendation

We recommend that the CDE take appropriate action in response to funds paid to the district that did not meet the sole-source requirement, and funds spent on ineligible project costs.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District Response

We informed the district of the findings via email on February 4, 2019. Drew Passalacqua, Ed.D., Assistant Superintendent of Business Services, responded via letter on February 14, 2019. We included the district's response letter as Attachment F.

The district did not respond to the finding regarding ineligible expenditures. The district's response to the sole-source finding, in part, is as follows:

Without offering supporting evidence or explanation, the auditor concludes the following: "We found that the district sole-sourced its implementation and energy manager services, totaling \$2,205,503." The auditor further claims, "The district did not provide documentation to support that it considered other vendors when it awarded the contracts to Indoor Environmental Services (IES) as [follows]:

- Implementation costs - \$2,096,481
- Energy manager costs - \$109,022
- Total costs - \$2,205,503"

The auditor references Public Resource Code (“PRC”) section 26235(c), which states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.” The California Legislature has never defined “sole source process” as it relates to Prop 39. Further, as of 2014-15, when the District went through its RFQ [request for qualifications] process, the California Energy Commission had not yet released any definition or parameters on the “sole source” prohibition in its Prop 39 Guidelines or Frequently Asked Questions. The Prop 39 Guidelines merely deferred to each educational agency’s own “procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum legal standards specified in [Public Resource Code section 26235].”

Even the State Controller’s own Prop 39 audit reports provide a broad definition of “no sole source” and have established a relatively low standard for school districts to meet in their Prop 39 audits. For example, in the 2017-18 PROGRAM AUDIT OF THE CALIFORNIA CLEAN ENERGY JOBS ACT (“2017-18 SCO Audit Report”), the California State Controller’s Office stated:

We have interpreted the requirement to ‘not use a sole source process to award funds,’ as the need to use a *competitive process*. Competitive processes promote competition, prevent favoritism, and make the procurement process transparent.

(Program Audit of the Clean Energy Jobs Act, Fiscal Year 2017-18, https://www.sco.ca.gov/Files-AUD/07_2018ca_ceja.pdf, at 12, emphasis added.)

Thus, we disagree with the auditor’s finding that the District has provided “no documentation” to prove that the District did not sole source funds. The District has already submitted a number of records showing a competitive RFQ process, where multiple vendors were considered by the District. So, it is difficult for the District to understand what exactly the auditor is looking for in making such a determination. Any further guidance from the auditor on this standard, and the documentation that would suffice to show compliance, would be most helpful to the District prior to any negative audit finding.

In its response (see Attachment F) the district explained that language in the original RFQ documents included project implementation services.

SCO Comment

Our findings and recommendation remain unchanged.

We agree that the district submitted documentation supporting \$55,000 in planning services; however, the district did not provide supporting documentation to show that it considered more than one vendor before awarding contracts for implementation and energy management costs, totaling \$2,205,503.

The district indicates that further guidance on the sole-source requirement would be helpful. Four months before we contacted the district about our audit findings, we provided the following guidance in an email to the district's Chief Fiscal Executive on October 25, 2018:

The district provided a board agenda requesting approval of the RFP [request for proposals] bid No. 11:1415 for Implementation Services inclusive of district energy manager and training services for the award of contract to IES totaling \$2,216,483 (please see attached board agenda). We do not have documentation to support that more than one vendor was considered when awarding this contract. Please provide documentation for the award of contract to IES for Implementation Services inclusive of district energy manager and training services.

On November 7, 2018, we received a response from the Chief Fiscal Executive asserting that RFQ No. 10:1314 covered the district's award for Proposition 39 planning and implementation services, including energy management and training services. The response quoted sections of RFQ No. 10:1314 to support this position.

We disagree with the district's conclusions. We noted that the district issued separate RFQs for project planning and implementation. If the district had intended for RFQ No. 10:1314 to be inclusive of all activities, then there would not have been an additional, separate RFQ for implementation, and energy management and training services (RFQ No. 11:1415). In its response, the district does not explain why it did not provide supporting documentation for RFQ No. 11:1415, such as a copy of the RFQ, communications to vendors requesting bids, or bids subsequently received from various vendors, when the district's board document identified RFQ No. 11-1415 for implementation services and stated that bids had been received for this RFQ. We found reference to RFQ No. 11:1415 in a district board agenda dated May 15, 2015, stating "RFP bids were received from various contractors with the following result of the lowest bidder"; the agenda then identifies IES as the chosen vendor for implementation services. Had the district provided any evidence supporting this statement other than RFQ No. 10:1314, we might not have identified an audit finding.

Willits Unified School District Proposition 39 Program

Background

The CEC approved Willits Unified School District's EEP for \$544,280, consisting of \$45,000 for energy management services, and \$499,280 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Baechtel Grove Middle	\$ 80,800	Lighting retrofit	\$ 6,110
Blosser Lane Elementary	88,276	Lighting retrofit	3,722
Brookside Elementary	118,959	Lighting retrofit	3,943
Sanhedrin High	15,236	Lighting retrofit	1,269
Sherwood Elementary	7,589	Lighting retrofit	660
Willits High	188,420	Lighting retrofit	18,242
	<u>\$ 499,280</u>		<u>\$ 33,946</u>

With these energy efficiency measures, the district reported a combined SIR of 1.33 and the creation of 2.80 direct job-years.

In addition, the district received \$29,259 in planning funds directly from the CDE, which it used for energy management services.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issue:

Projected energy savings not identified in awarded contracts

We reviewed the district's contracts with IES and determined that the contracts do not identify the projected energy savings.

PRC section 26206(d) states, "All projects shall require contracts that identify the project specifications, costs, and projected energy savings."

We also identified the following observation:

Unused planning funds

We found that the district applied unused planning funds to program implementation. However, these funds were not included in its approved EEP. As a result, the district received funding that exceeded its approved EEP by \$8,712. We informed the CDE of our observation via email on January 30, 2019.

Recommendation

We recommend that the CDE take appropriate action in response to the unused planning funds identified in this audit.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the audit finding and observation via email on February 7, 2019. Nikki Agenbroad, Director of Fiscal Services, responded via email stating that the district did not need to include a response.

Yreka Union High School District Proposition 39 Program

Background

The CEC approved Yreka Union High School District’s EEP for \$255,353, consisting of \$19,540 for energy management services, and \$235,813 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Yreka High	235,813	HVAC system, chiller/boiler replacement	12,469
	<u>\$ 235,813</u>		<u>\$ 12,469</u>

With these energy efficiency measures, the district reported a combined SIR of 1.63 and the creation of 1.32 direct job-years.

In addition, the district received \$20,257 in planning funds directly from the CDE, which it used for screening and audits, and program assistance.

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC’s Proposition 39 Program Implementation Guidelines and EEP Handbook. We identified the following audit issues:

Sole-sourced project costs

The district contracted IES for planning services. The district did not provide supporting documentation to show that it considered other vendors before awarding the contract to IES. Therefore, we found that the district sole-sourced its Proposition 39 contract, totaling \$20,257.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Projected energy savings not identified in awarded contracts

We reviewed the district’s contracts with IES and determined that the contracts do not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Final project completion reports submitted after the deadline

The district’s final report was submitted on February 1, 2018, 16 months after the reported project completion date of September 30, 2016.

PRC section 26240(b) states, in part:

As a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its

first eligible project with grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board

Recommendation

We recommend that the CDE take appropriate action in response to funds paid to the district that did not meet the sole-source requirement.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the three audit findings via email on February 13, 2019. We did not receive a response from the district.

Butte-Glenn Community College District Proposition 39 Program

Background

The California Community Colleges Chancellor’s Office CCCCCO approved Butte-Glenn Community College District’s Proposition 39 Funding Application (Form B) for \$1,244,954. The district used its program implementation funds for the following energy efficiency and renewable energy generation measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency and Renewable Energy Generation Measures	Year 1 Cost Savings	Savings-to-Investment Ratio	Direct Job-Years Created
Application No. BUTTEG-1415-001					
Butte College – Main Campus	\$ 297,824	Monitoring-based commissioning			
Butte College – Skyway Center	13,249	Monitoring-based commissioning			
	<u>\$ 311,073</u>		<u>\$ 11,484</u>	<u>1.78</u>	<u>2.16</u>
Application No. BUTTEG-1516-001					
Butte College – Skyway Center	933,881	Photovoltaic (solar) panels			
	<u>933,881</u>		<u>\$ 50,635</u>	<u>2.01</u>	<u>5.04</u>
	<u>\$ 1,244,954</u>		<u>\$ 62,119</u>		

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CCCCCO’s *Proposition 39: Clean Energy Jobs Act of 2012 – California Community Colleges Energy Project Guidance* (Energy Project Guidance). We identified the following audit issues:

Sole-sourced project costs

The district contracted with Dan’s Electric Supply to furnish and install gas and electric meters as part of Application No. BUTTEG-1415-001 monitoring-based commissioning (MBCx) projects. The total amount of Proposition 39 funds related to this contract is \$92,660. The district also contracted with Murley Consulting Group for Application No. BUTTEG-1516-001 for solar consulting services totaling \$63,470. The district did not provide supporting documentation to show that it considered other vendors before awarding contracts to Dan’s Electric Supply and Murley Consulting Group. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$156,130.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Projected energy savings not identified in awarded contracts

We reviewed the district’s contracts with Direct Digital Controls, Inc.; All Phase Mechanical; CW Electric; GRD Energy; and Hankins Electric, and determined that the contracts do not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Recommendation

We recommend that the CCCCCO take appropriate action in response to funds paid to the district that did not meet the sole-source requirement.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the two audit findings via email on April 16, 2019. Kimberly Jones, Director of Facilities Planning and Management, and Jim Nicholas, Director of Business Services, responded via letter dated April 22, 2019. The district's response letter is included as Attachment G.

The district's response to the sole-source finding is as follows:

BGCCD is a rural district and, historically, has faced challenges getting numerous competitive bids when requests for proposals go out on specific projects. The District has used the best value criteria on several projects when necessary to ensure fiscal standards and required project outcomes are met. When looking for engineering expertise for both Solar and MBCx projects, GRD and Murley Consulting Group were engineering consultants recommended to the District by the California Community College Investor Owned Utilities Partnership (CCC/IOU Partnership) due to Butte County's rural setting and lack of local expertise.

The CCC/IOU Partnership was established in 2006 and created to encourage energy efficiency investments and foster best practices in the California Community College System. The state's four investor-owned utilities (IOUs), including Pacific Gas & Electric (PG&E), Southern California Edison (SCE), Southern California Gas Company (SCG), and San Diego Gas & Electric (SDG&E), have partnered with the California Community College (CCC) Chancellor's Office and the CCC Districts to provide technical assistance, financial incentives, and project support for energy efficiency improvements to the CCC system statewide. One of the primary functions of the CCCIOU has been to support the community colleges in the implementation of the California Clean Energy Jobs Act of 2012 (Proposition 39) by leveraging the infrastructure of the Partnership for the identification, installation, and timely close out of energy projects to ensure program fiscal accountability.

The District awarded contracts under the basis of Government Code 53060 professional services agreement. For special services and advice in financial, economic, accounting, engineering, legal or administrative matters, Districts may award contracts without engaging in a competitive bidding or proposal process per Government Code § 53060. Such persons contracted under this provision must be specially trained, experienced and competent to perform the services required. Contracts for GRD and Murley Consulting Group were established individually under the Public Contract Code section 20651 which eliminated the need to competitively bid the work. GRD was a consultant for the MBCx project with a contract of \$62,270 and Murley Consulting Group was a consultant for the Skyway Center Solar for \$63,470.

The MBCx project had two separate components to the project; one was for gas meters and the other for electrical meters. The contracts that were issued were done through an informal bidding process dictated by Public Contract Code 22000 Uniform Public Construction Cost Accounting Procedures (UPCCAP) that was approved by the BGCCD Board of Trustees in January, 2013. The project required the purchase of miscellaneous materials and supplies that were purchased from Dan's Electric, a local supply house. The purchase orders to Dan's Electric fall under public contract code 20651 as the District only purchased equipment and materials from them and each purchase was under the required bid limit. By doing this the District saved the project markup from the contractors. Portions of the project were self-performed, with the materials and supplies being purchased and the project being completed by existing staff.

The district's response to the projected energy savings finding is as follows:

BGCCD has followed existing law requiring all eligible energy projects to achieve a minimum savings to investment ratio (SIR) of 1.01 (reduced in 2016/2017 from the previous SIR of 1.05). All projects were thoroughly researched to ensure adequate savings were present before the project proposals were submitted to the California Community College Chancellor's Office for approval. The District verified savings on all completed projects and has been above the minimum SIR on all projects. With SI rates included in the project proposals, the Request for Proposals, and inclusion in Board of Trustee documents, and while including project specifications and costs on all contracts, the District did unknowingly omit inclusion of the SIR figures on the contracts. All information is readily available for any project, and not has not been omitted from the process. The District relied on the expertise of the CCC/IOU Partnership and Newcomb Anderson McCormick for analyzing each project to ensure energy saving requirements that were submitted in each of the project applications was accurate. The District entered into the consulting relationship with Newcomb Anderson McCormick on the recommendation from the CCCIOU based upon their use of the firm as professional experts in Prop 39 project development, management, implementation, and project closings. The required Code language appears to be intended to document projects savings and tie them back to the projects that were submitted to ensure the savings was accomplished. Accordingly, the District believes the substance of the Prop 39 requirements have been met.

SCO Comment

Our findings and recommendation remain unchanged.

The scope of our audit is to ensure compliance with state statutes and regulations. The district cites using best value criteria, Government Code section 53060, and Public Contract Code section 20651 to support its use of sole-sourced contracts. However, PRC section 26235(c) states, "A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter. A community college district or LEA may use the best value criteria as defined in paragraph (1) of subdivision (c) of section 20133 of the Public Contract Code to award funds pursuant to this chapter.

On December 12, 2013, the CCCCOC published guidance on sole-source requirements in its “Proposition 39 Contracting Fact Sheet” which states “Proposition 39 defers to local contracting practices as long as the prohibition of sole source contracts and all applicable law related to contractor qualifications, licensing, and certification requirements related to the project are met.” The Fact Sheet also notes that “To fully comply with that “Best Value” criteria and the prohibition against sole source contracting when utilizing their Prop 39 funds, a District will need to engage in a two-step process...” The two-step process that the CCCCOC describes is for districts to use a comprehensive RFQ/RFP evaluation process. However, the district did not follow this process for awarding the contracts in question.

Contra Costa Community College District Proposition 39 Program

Background

The CCCCCO approved Contra Costa Community College District’s Form B for \$1,253,496. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Year 1 Cost Savings	Savings-to-Investment Ratio	Direct Job-Years Created
CONTRA-1314-011					
Diablo Valley College	\$ 11,484	Lighting occupancy sensors			
Diablo Valley College	641,051	Library boiler/chiller retrofit and pumping variable frequency drive			
Los Medanos College	7,832	Recital Hall interior lighting retrofit			
Los Medanos College	39,589	Gym lighting retrofit			
Los Medanos College	7,326	Little Theater lighting retrofit			
	<u>707,282</u>		<u>\$ 56,136</u>	<u>1.09</u>	<u>7.31</u>
CONTRA-1617-005					
Diablo Valley College	546,214	Stadium lighting retrofit			
	<u>546,214</u>		<u>29,727</u>	<u>1.09</u>	<u>3.22</u>
	<u>\$ 1,253,496</u>		<u>\$ 85,863</u>		

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CCCCCO’s Energy Project Guidance. We identified the following audit issues:

Sole-sourced project costs

The district contracted with Alfatech Consulting to provide engineering consultation and related professional services for the Stadium Lighting D-1142 project. The Proposition 39 funds related to Alfatech Consulting total \$119,700. The district also contracted with Hallpass Capital, Inc., dba Gonled, to purchase, install, and commission new stadium LED lighting fixtures for the Stadium Lighting D-1142 project. The Proposition 39 funds related to Gonled total \$544,414. The district did not provide supporting documentation to show that it considered other vendors before awarding contracts to Alfatech Consulting and Gonled. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$664,114.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Projected energy savings not identified in awarded contracts

We reviewed the district’s contracts with Pacific Metro Electric, Integra Construction, Star Energy Management, and Gonled, and determined that the contracts do not identify the projected energy savings.

PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Recommendation

We recommend that the CCCCCO take appropriate action in response to funds paid to the district that did not meet the sole-source requirement.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the two audit findings via email on April 18, 2019. The district did not respond to the findings.

South Orange County Community College District Proposition 39 Program

Background

The CCCCOC approved South Orange County Community College District’s Form B for \$1,575,973. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Year 1 Cost Savings	Savings-to- Investment Ratio	Direct Job-Years Created
SOUTH0-1415-001 Saddleback College	\$ 780,000	Exterior lighting controls and retrofit			
	\$ 780,000		\$ 84,386	1.36	4.37
SOUTH0-1516-001 Saddleback College	\$ 795,973	Exterior lighting controls and retrofit			
	\$ 795,973		\$ 66,699	1.33	4.59
	\$ 1,575,973				

Audit Results

We audited the Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CCCCOC’s Energy Project Guidance. We identified the following audit issue:

Sole-sourced project costs

The district contracted WSP (Parsons and Brinckerhoff) for labor compliance services. The district did not provide supporting documentation to show that it considered other vendors before awarding the contract to WSP (Parsons and Brinckerhoff). Therefore, we found that the district sole-sourced its Proposition 39 contract, totaling \$3,533.

PRC section 26235(c) states, in part, “A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter.”

Projected energy savings not identified in awarded contracts

We reviewed the district’s contract with Anderson & Howard Electric and determined that the contract does not identify the projected energy savings. PRC section 26206(d) states, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.”

Proposition 39 funds applied to ineligible project expenditures

We found that for South Orange County Community College District applied proposition 39 funds from application SOUTH0-01516-001-05 to project costs not included in the application approved by the CCCCOC. The district improperly paid \$19,579 to vendor Clear Blue Energy for an interior lighting project that was not identified in the application.

The district signed and certified in its application that the funding would be used for the energy projects identified in its application.

Recommendation

We recommend that the CCCCCO take appropriate action in response to funds paid to the district that did not meet the sole-source requirements, and funds spent on ineligible project costs.

No additional recommendation is applicable, as the Proposition 39 program has ended.

District's Response

We informed the district of the audit finding via email on February 4, 2019. Kathleen Burke, Ed.D., Chancellor, responded via letter on February 14, 2019. The district's response letter is included as Attachment H.

The district agreed with the projected energy savings finding, stating that "The District has amended its contract templates to ensure that energy evaluations are now also included in all such contracts prospectively."

The district's response to the sole-source finding is as follows:

As it relates to the contract with WSP (Parsons and Brinkerhoff), the District followed Government Code Section 53060 which allows for the hiring of contractors that provide specialized services without obtaining multiple bids. The District believes that the labor compliance services provided by WSP (Parsons and Brinkerhoff) constitute specialized accounting and administrative services as allowed by this Government Code. Furthermore, sole sourcing typically is a factor when we are required to go out to bid for goods or services, when no bidding is required, such as allowed within Government Code Section 53060, any contract issued under this code would not be considered sole sourcing.

The district's response to the ineligible expenditures finding is as follows:

During the 2015/2016 fiscal year, the District contributed \$33,365 of local funds above the allocated amount of Proposition 39 funding for that fiscal year to complete the interior lighting project. The State subsequently provided additional funding for the interior lighting project in fiscal year 2016/2017, which was used to cover the overage from the prior year. Project managers have been trained to communicate with the Fiscal Services department to ensure that Proposition 39 funds are charged according to the applications submitted.

SCO Comment

Our findings and recommendation remain unchanged.

On December 12, 2013, the CCCCCO published guidance on the sole-source requirements in the Proposition 39 Contracting Fact Sheet, which states:

Proposition 39 defers to local contracting practices as long as the prohibition of sole source contracts and all applicable law related to contractor qualifications, licensing, and certification requirements related to the project are met.

Therefore, although the district followed its own procurement standards, it did not follow the minimum standards of the sole-source requirement for Proposition 39 funds contained in PRC section 26235(c).

Although the district may have contributed discretionary funds towards the electric lighting project in question, the district's approved application for Proposition 39 funding did not include this project.

**Attachment A—
Hesperia Unified School District's Response to Audit Results**



HESPERIA UNIFIED SCHOOL DISTRICT

ADMINISTRATION & EDUCATIONAL SUPPORT CENTER

David Olney
Superintendent

Jovy Yankaskas
Deputy Superintendent
Educational Services

Karen Kelly-Pelayes
Assistant Superintendent
Personnel Services

Dr. George Landon
Assistant Superintendent
Business Services

Robert McCollum
Assistant Superintendent
Innovative Technology and
Communication

Steve Hinojos
Chief
School Police

Board of Trustees
Mark Dundon
Cody C. Gregg
Marcy Kittinger
Ella "Lee" Rogers
Eric Swanson

Elementary Schools
Carmel•947-3188
Cottonwood•949-1390
Cypress•949-2596
Eucalyptus•949-0815
Hollyvale•947-3484
Joshua Circle•244-6133
Juniper•244-6161
Kingston•244-8869
Krystal•948-3611
Lime Street•244-0512
Maple•244-3096
Mesa Grande•244-3709
Mesquite Trails•949-3149
Mission Crest•949-8265
Topaz•244-4622

Secondary Schools
AEC, ROP•244-1771
Canyon Ridge•244-6530
Cedar Middle•244-6093
Community Day•244-5751
Hesperia High•244-9898
Hesperia Jr. High•244-9386
Mojave High•948-3999
Oak Hills High•244-2283
Ranchero Middle•948-0175
Shadow Ridge ISP & Home
Programs•949-8267
Sultana High•947-6777

Erika Hardoyo, Auditor
Office of State Controller Betty T. Yee
3301 C Street, Suite 725
Sacramento, CA 95816

February 14, 2019

REG: Program Audit of Proposition 39 – CA Clean Energy Jobs Act for Hesperia Unified School District

Dear Ms. Hardoyo,

Please accept this letter as Hesperia Unified School District's formal response to the following audit issue, identified during the audit fieldwork conducted on September 21, 2018:

1. Final Report not Submitted within 12-15 Months Following Project Completion Date

Per Public Resource Code section 26240(b), "as a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board" We found that the district's final report was submitted on September 6, 2017, which is 26 months after reported project completion date of June 24, 2015.

The District was contracted with Climatec to administer our Prop 39 project, which included the filing of all mandatory reports with the California Energy Commission (CEC). On May 11, 2017, the California Energy Commission notified the District via email that our final report was never received and was now past due. At which point the District contacted our consultant to confirm that the final report had indeed been filed with the CEC within the required timelines. The District's consultant confirmed that the report had been submitted a "while ago". Ultimately, the final report was submitted on the District's behalf on September 6, 2017.

Please feel free to contact me if you would like to discuss this matter in greater detail or require additional information.

Sincerely,


Dr. George Landon
Hesperia Unified School District
Assistant Superintendent, Business Services.

**Attachment B—
High Tech High International Charter School’s Response
to Audit Results**



DATE: February 11, 2019

TO: Alexandra Bonezzi, Auditor
Division of Audits
State of California

FROM: Paul Dooley 
Director of Facilities
High Tech High (HTH)

Ms, Bonezzi,

Thank you for the opportunity to respond to your email of Feb 4, 2018 regarding HTH International's participation in the Prop 39 program. Please see our responses to your two items, below.

1. Sole-sourced funds

With regard to the cool roof project installed by Ari-thane Foam Products, Inc. at High Tech High International, HTH did not solicit bids from other vendors for the following reasons:

- In 2007, extensive research and study was done to find a product that provided a lightweight, cool roof, which could also add R-value to our new and existing buildings at an affordable price. Multiple bids and product specifications were submitted and HTH concluded that Ari-thane Foam Products best demonstrated they could meet our requirements.
- After testing the product on one small building, High Tech High then decided that all of its buildings, new and existing, would utilize the Ari-thane Foam so that future warranty, inspections, maintenance and repairs could all be performed by one vendor. This approach provides economies of scale that represents best value in the utilization of HTH's funding.
- As such, HTH began using Ari-thane for installation of cool roofs on all of its new buildings and reroofing projects in approximately 2007.
- The High Tech High International building was the last of 11 HTH buildings to be reroofed. Accordingly, Ari-thane Foam was utilized on that building so that it would match the roofs within the HTH inventory.
- Our understanding is that, having demonstrated similar value to other LEAs, Ari-Thane has also been the successful bidder on several other Prop 39 roofing projects throughout Southern California.

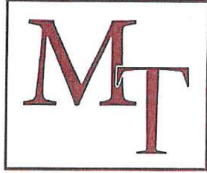
2. Projected energy savings not included in the contracts

HTH was one of the early adopters of the program and we attended several early public outreach meetings in order to fully understand the program and to establish internal best practices. High Tech High International's EEP was among the first approved in the state and the contracts represented our nascent understanding of the program requirements at the time. While our future contracts included language related to the energy savings component, such language had not yet been developed at the time these projects were bid.

The approved EEP for HTHI included energy savings calculated through Trace™ Energy Modeling software – an industry standard that exceeds the program requirements. All bidding parties were notified that projects were funded by Prop 39 Clean Energy and the energy savings component was discussed throughout the bidding and contracting processes. Purchase order documents show the reduced wattages of the proposed LED lamps, for instance, and likewise cut-sheets for the HVAC equipment show minimum efficiency ratings – both of which are directly related to energy savings. These documents were included as part of the contracts.

HTH is a leader in energy efficiency across its portfolio of owned campuses, and six of our schools currently have a LEED certification. Our organization has a dedicated facilities staff and a reasonably robust operations and maintenance budget, which ensures our schools are operated as efficiently as possible. The Prop 39 program provided funding for an initiative that has been an organizational focus for HTH since our inception in 2000. We are aligned in ideology and in practice with the goals of Prop 39 and we certainly believe we participated in the program to the best of our ability.

**Attachment C—
Mark Twain Union Elementary School District’s Response
to Audit Results**



Mark Twain Union Elementary School District
P.O. Box 1359 • Angels Camp, CA 95222
(209) 736-1855 phone • (209) 736-6888 fax • www.mtwain.k12.ca.us
Julia Tidball, Superintendent

February 22, 2019

In replying to your Email dated February 5, 2019 we are responding to the attached Prop 39 Audit findings. We would like to present some other data for your consideration to minimize or remove the possibility from having to repay any funds received.

FINDING

1. Sole-sourced funds

We found that the district sole-sourced its contracts with Freedom Energy Corporation for energy planning and services and project management and implementation services.

The district did not provide any documentation to support that it considered other vendors when it awarded the contracts to Freedom Energy Corporation. As such, we find that the district sole-sourced its contracts, totaling \$16,368.

PRC section 26235(c) states, in part, "A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter."

We are requesting for documentation to support that the district reached out to more than one vendor when awarding the contract to Freedom Energy Corporation.

RESPONSE

As relayed to you during your audit the District did in fact consult with other vendors and had at least one vendor give us a proposal at the District office. All vendors contacted were at least an hour travel time from our location. We contacted other Districts in our county and finally were given a recommendation by the Calaveras County Joint Power Authority to inquire of Freedom Energy. Their proposal was substantially less than any we had been given and therefore we obtained their services. After your exit conference we began a search for documentation that would substantiate our claim that "we had in fact contacted and consulted with other vendors". We were unable to obtain the documentation you had suggested. Emails from 2014-15 were expunged from the county computer services after three years. Parties involved in the process at the time had not kept notes or could not remember contacts from three years previous. We understand that you therefore, could not substantiate our process for selecting a consultant.

Obviously the District is not happy about possibly having to refund the \$16,838 we paid for services that we believe were the best option to obtain consulting services. I have attached an excel spreadsheet to help explain my following request. If we were to amend claims to show that the Freedom Energy expenditure were claimed against the Calaveras County Power Authority and not State funds could we amend the claims and remove them from repayment. I am currently on the Governing Board of the Authority and believe this scenario would be acceptable to the Authority.

Board of Education: Diane Bateman Jennifer Eltringham Kendall Morlan Timothy Randall Margaret Rollings

"Fostering a secure and exciting learning environment..."

Mark Twain Union Elementary School District

FINDING

2. Project energy savings not included in the contracts

We reviewed the district's contracts with Gold Electric Inc. and EMCOR Services and found that the contracts do not include the projected energy savings.

PRC section 26206(d) states, "All projects shall require contracts that identify the project specifications, costs, and projected energy savings."

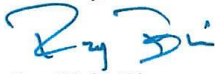
While we recognize that the projected energy savings was included in the district's energy expenditure plan, the scope of our audit is to ensure compliance with state statutes and regulations, which require that the projected energy savings be identified in the awarded contract.

RESPONSE

We now understand that to include savings in the individual contracts was the requirement. We thought that including the projected savings in proposals and the project application were meeting the requirements as we understood them for this new program. It was our understanding that this would be a finding but without monetary consequences.

I sincerely request that you consider the uniqueness of this grant and the lack of experienced personnel to implement it. We appreciate the manner in which your auditor conducted the audit and the assistance she provided at its conclusion.

Sincerely,



2/22/19

Roy Blair, Director of Business Services
Mark Twain Union Elementary School District

Funding Source >	CDE Planning Funds	Prop 39 Funds	Calaveras Co Power	District Contribution	TOTALS
Awarded	\$ 7,600	\$ 276,203	\$ 21,100	\$ 432	\$ 305,335

Freedom Energy Contract	7,600	8,768	20,000	279	7,600
Freedom Energy Contract	7,600	8,768	20,000	279	7,600
Emcor		73,856			8,768
Gold Electric		193,579	1,000		93,856
Other				153	194,858
Expenditures as Originally Claimed					
Received	7,600	276,203	21,000	432	305,235
Balance	7,600	276,203	21,000	432	305,235

Freedom Energy Contract #1	7,600	82,624	8,768	279	7,600
Freedom Energy Contract #1	7,600	82,624	8,768	279	7,600
Freedom Energy Contract #2		193,579	1,000		8,768
Emcor				153	93,856
Gold Electric					194,858
Other				153	153
Expenditures if Amended and CDE funds have to be for planning					
	7,600	276,203	21,000	432	305,235

Freedom Energy Contract #1	7,600	90,224	7,600	279	7,600
Freedom Energy Contract #1	7,600	90,224	7,600	279	7,600
Freedom Energy Contract #2		193,579	3,632		8,768
Emcor				153	93,856
Gold Electric					194,858
Other				153	153
Expenditures if Amended and allowed					
	-	283,803	21,000	432	305,235

**Attachment D—
Pine Ridge Elementary School District’s Response
to Audit Results**



PINE RIDGE
ELEMENTARY SCHOOL DISTRICT

Christine Skinner
Superintendent

March 8, 2019

California State Controller
PO Box 942850
Sacramento, CA 94250

VIA Email: EHardoyo@sco.ca.gov

To Whom It May Concern:

This letter is being submitted to the State Controller's Office as written response to the recent Proposition 39 program audit of Pine Ridge Elementary School District.

Following are the district's responses to the two (2) findings:

1. Projected Energy Savings Not Included in the Contract


The 2014-15 Energy Expenditure Plan was approved by the California Energy Commission (CEC) in July of 2015. A different administrator was assigned to the district that year. When I spoke to IES about this finding, I was told that at the time Pine Ridge's project was approved that Projected Energy Savings was not yet required for project approval.

2. Final Report not Submitted within 12-15 Months Following Project Completion Data

Pine Ridge Elementary School District missed the Final Report submission due to critical administration turn over in the 2016-17 school year. The Superintendent left and an interim was installed until June 2017.

When I came on to run the district in July 2017, I inquired about our Proposition 39 funds and project. Justin Payton from IES visited the campus on September 19, 2017 to collect the information that he needed to submit the final CEC report. Unfortunately, we missed the deadline.

Respectfully Submitted,



Christine Skinner

**Attachment E—
Venture Academy Charter School’s Response
to Audit Results**



Date: February 6, 2019

Alexandra Bonezzi
Office of State Controller Betty T. Yee
Division of Audits, Compliance Audits Bureau
3301 C Street, Suite 735
Sacramento, CA 95816

RE: Venture Academy Clean Energy Jobs Act January 3, 2019 Proposition 39 Program Audit
Follow-Up Items

Dear Ms. Bonezzi:

Contract Award Procedures

Excerpt from Frequently Asked Questions California Clean Energy Jobs Act (Proposition 39),
page 27:

(Revised) What is the "best value criteria" according to Public Resources Code Section 26235(c)?

Public Resources Code Section 26235(c) states that an "LEA may use the best value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter." In 2014, Section 20133 of the Public Contract Code was repealed and amended. The legislation that repealed Section 20133 also added a new statute to the Public Contract Code containing a more precise definition of "best value", (Pub. Contract Code § 21161). That definition has been refined several times, and the LEA should refer to the current language of Section 21161 for guidance on use of the best value criteria.

Does "no sole source" apply to Proposition 39 funding?

Yes. Public Resources Code Section 26235 (c) states, "A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter. A community college district or LEA may use the best value criteria defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter." (Senate Bill 785 (Chapter 931, Statutes of 2014), adopted by the Legislature and signed into law by Governor Edmund G. Brown, Jr. on September 30, 2014, repealed Section 20133 of Chapter 1, Part 3, Division 2 of the Public Contract Code and further amended the statute). **The LEA shall defer to their own procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations and do not conflict with the minimum legal standards specified above.**

SJCOE Response:

The contracts identified during the audit which were questioned regarding the requirements above were:

Capital Public Finance

The total cost for the consultant contract was \$23,100.00 of which \$10,500.21 was charged to Venture Academy Family of Schools. This contract was for professional consulting services needed to assist SJCOE with developing and administering the RFQ for Energy Efficiency Consulting and Implementation Services.

Dickinson Welding & Inspection

The total cost for this professional services contract was \$1,300.00 of which \$325.00 was charged to Venture Academy Family Schools. This contractor was selected by Johnson Controls, Inc. (who was ultimately awarded the Energy Efficiency Consulting and Implementation Services contract mentioned above) to perform in-plant inspection services during fabrication of solar panel structures.

Iomian Construction Services

The total cost for these professional services was \$45,422.25 of which \$11,364.45 was charged to Venture Academy Family of Schools. This contract was for professional services necessary to perform on-site inspection during construction.

Terracon Consultants

The total cost for these professional services was \$12,841.00 of which \$2,224.00 was charged to Venture Academy Family of Schools. This contract was for on-site professional materials testing services.

Odyssey Landscaping Co.

The cost of this contract was \$4,065.00 of which \$2,032.50 was charged to Venture Academy Family of Schools. These were necessary irrigation system repairs in the parking lot where the solar array was constructed.

Summary

There is no definition of sole source in statute or in any Prop 39 guidance we are aware of. As such, LEA's are left to interpret this requirement in combination with any additional guidance provided, such as the FAQ's referenced above. The guidance in the FAQ response highlighted above indicates LEA's are to refer to their own procurement regulations in certain circumstances. If a competitive process were required for any and all contracts regardless of type or amount (which is a significant departure from normal requirements for LEA's), that runs counter to this guidance which we relied upon. As such, we understood the sole sourcing


prohibition to be aimed exclusively at Gov. Code Sec. 4217.12 which allows "sole sourcing" under certain conditions for energy services contracts. Other than the sole sourcing prohibition mentioned above pertaining to Gov. Code Sec. 4217.12, we followed our local regulations, consistent with the guidance provided by CDE in the cited FAQs.

The Capital Public Finance, Dickinson Welding & Inspection, Iomian Construction Services and Terracon Consultants are all professional services which are not subject to competitive bidding.

The Odyssey Landscaping Co. contract (above) was less than the public works bid limit of \$15,000 and, therefore, was not subject to competitive bidding.

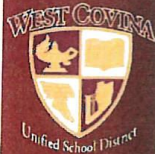
Notwithstanding the preceding, the San Joaquin County Office of Education spent \$6,203,056.87 on all Prop 39 projects. Of this amount, \$1,675,535 were Prop 39 funds and the balance were local funds. Of the \$6.2 million spent on all Prop 39 projects, SJCOE paid Johnson Controls, Inc. a total of \$5,094,411.59, of which \$1,419,338.67 is attributable to the Venture Academy Family of Schools. By virtue of simple journal accounting entries, all of the Venture Prop 39 funds received (\$573,704) could have been used to fund part of the Venture share of the Johnson Controls Inc. energy contract. Rather, we chose to use the Prop 39 funds for Venture's pro rata share of all contracts needed to complete the projects as described above, and then use a significant amount of additional, local funds for the balance of the necessary contracts. Stepping back from the detailed accounting methodology we elected, the Prop 39 funds received prompted a significant local (non-Prop 39) investment and were highly effective in achieving their intended purpose.

Sincerely,



Scott Anderson
Deputy Superintendent, Business Services

**Attachment F—
West Covina Unified School District’s Response
to Audit Results**



BOARD OF
TRUSTEES

*Daniel C.
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President*

*Camie Poulos
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*Michael Flowers
Member*

*Rose Lopez
Member*

*Charles D.
Hinman, Ed.D.,
Superintendent*

West Covina Unified School District

February 14, 2019

Via E-Mail
ABonezzi@sco.ca.gov

Alexandra Bonezzi, Auditor
Office of State Controller Betty T. Yee
Division of Audits, Compliance Audits Bureau
3301 C Street, Suite 725A
Sacramento, CA 95816

Re: West Covina Unified School District's Response to Proposition 39 Program Audit Issues

Dear Ms. Bonezzi:

We write to provide the District's formal response to the issues you have identified thus far in your audit under the Proposition 39 California Clean Energy Jobs Act ("Prop 39"). We have addressed each of the issues you identified in your February 4, 2019 email and have attached documentation in support of our response. As a preliminary matter, the District does not dispute the finding under Issue #2 regarding the use of \$8,075 on ineligible expenditures, and thus provides no further response to this item. Regarding the remaining Issues #1, 3 and the "Observation" regarding overpayment, the District respectfully disagrees with each of the preliminary findings by the auditor and has provided additional explanation below to assist the auditor in resolving the outstanding issues.

I. ISSUE # 1 Alleged Sole Sourcing of Funds for Planning and Implementation

Without offering supporting evidence or explanation, the auditor concludes the following: "We found that the district sole-sourced its implementation and energy manager services, totaling \$2,205,503." The auditor further claims, "The district did not provide documentation to support that it considered other vendors when it awarded the contracts to Indoor Environmental Services (IES) as follow [sic]:

1717 W. Merced Ave. West Covina California 91790 (626) 939-4600

- Implementation costs - \$2,096,481
- Energy manager costs - \$109,022
- Total costs - \$2,205,503"

The auditor references Public Resource Code ("PRC") section 26235(c), which states, in part, "A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter." The California Legislature has never defined "sole source process" as it relates to Prop 39. Further, as of 2014-15, when the District went through its RFQ process, the California Energy Commission had not yet released any definition or parameters on the "sole source" prohibition in its Prop 39 Guidelines or Frequently Asked Questions. The Prop 39 Guidelines merely deferred to each educational agency's own "procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum legal standards specified in [Public Resource Code section 26235]."

Even the State Controller's own Prop 39 audit reports provide a broad definition of "no sole source" and have established a relatively low standard for school districts to meet in their Prop 39 audits. For example, in the 2017-18 PROGRAM AUDIT OF THE CALIFORNIA CLEAN ENERGY JOBS ACT ("2017-18 SCO Audit Report"), the California State Controller's Office stated:

We have interpreted the requirement to 'not use a sole source process to award funds,' as the need to use a *competitive process*. Competitive processes promote competition, prevent favoritism, and make the procurement process transparent.

(Program Audit of the Clean Energy Jobs Act, Fiscal Year 2017-18, https://www.sco.ca.gov/Files-AUD/07_2018ca_ceja.pdf, at 12, emphasis added.)

Thus, we disagree with the auditor's finding that the District has provided "no documentation" to prove that the District did not sole source funds. The District has already submitted a number of records showing a competitive RFQ process, where multiple vendors were considered by the District. So, it is difficult for the District to understand what exactly the auditor is looking for in making such a determination. Any further guidance from the auditor on this standard, and the documentation that would suffice to show compliance, would be most helpful to the District prior to any negative audit finding.

In the meantime, the District has already provided a clear explanation, supported by the express RFQ language, that it did not use a sole source process to award planning or implementation funds under Prop 39. Rather, the District utilized a well-documented, competitive RFQ process to award Prop 39 planning and implementation funds, which we discuss in greater detail below, with further reference to the RFQ documents in Exhibits A, B, and C.

II. Prop 39 RFQ Documents – Planning and Implementation Services

We have attached the District's 2014 *Request for Qualifications No. 10:1314 for Energy Engineering Expenditure Planning Services* ("RFQ") in **Exhibit A**. We first wish to note that the title of the District's 2014 RFQ is a bit misleading as the actual scope of the RFQ not only covered "planning services," but Prop 39 implementation services as well.

We have pulled and included below excerpts from the RFQ to demonstrate that the District used the 2014 RFQ to consider multiple vendors for **both**: (1) energy planning services and (2) implementation services, inclusive of energy manager and training services. As shown below and in the attached RFQ documents, there is clear evidence the District used a "competitive" process to award its Prop 39 planning and implementation funds. Specifically, the District solicited proposals from a variety of vendors, and considered the attributes of other vendors prior to awarding the contracts for both planning and implementation services under Prop 39. As such, the District did not sole source the work for either planning or implementation services.

a. 2014 RFQ Documentation and Language Excerpts (See Exhibit A for Further Detail)

(NOTE: Quotations from the RFQ are in *italics*, District Explanation is **Bolded**)

RFQ Page 2:

District Facilities and Energy Projects Background

... The District plans to complete energy-savings projects at existing facilities in accordance with potential funding and guidelines from Proposition 39 during an initial period of five (5) years (collectively, the "Projects"). The District is eligible to receive a total of 2.3 million for its 14 WCUSD School sites and \$550,000 for San Jose Charter School over the next (5) years collectively, for design energy expenditure plan, energy savings verification and development of projects.

- ❖ **This language highlights the District's intended scope and funding plan for the development of its "energy projects" under Prop 39. The inclusion of this information shows that the District was looking to hire a firm, or firms, to assist in the strategy and implementation of their overall Prop 39 program from planning through implementation, including the later stages of "development of projects" and "energy savings verification."**

RFQ Page 3:

... The District may also engage selected Firm to provide independent support of later stages of energy projects, including:

- Working with the Districts approved Architect on the implementation of energy efficiency upgrades during the modernization of Cortez Elementary School next Fall.
 - Assistance with management of bid processes and selection of contractors and vendors
 - Technical quality oversight of constructed projects
 - Measurement and Verification (M&V) of project energy savings
 - Commissioning and retro-commissioning to confirm correct project installation achieving maximum savings
 - Energy-related training of District personnel
 - Energy Manager services to ensure and maintain savings
 - Work with design professional on each eligible project
- ❖ This language lists other responsibilities for the "selected Firm" that go well beyond Prop 39 planning services. Rather, these responsibilities cover the full scope of the District's Prop 39 project, including but not limited to, implementation of the energy efficiency measures energy manager services, and energy-related training of District personnel. This shows that, through this RFQ, the District was considering potential vendors for more than just planning services and was seeking firms that could work on the later stages of project implementation as well.

RFQ Page 4:

The District intends to contract with a Firm that has the following minimum qualifications:

...

- B. Extensive experience in the successful analysis and development of energy efficiency and conservation measures; including auditing, savings calculations, project costing, strategic planning, design specification, construction oversight, commissioning, maintenance and energy management.

...

- ❖ As shown by the above language, the 2014 RFQ was intended to identify and consider firms that carried the appropriate qualifications to assist in planning and implementation services. Item B specifically requires oversight, maintenance, commissioning, and management experience. If the District was only seeking a Prop 39 planning firm, this required experience would not be relevant.

RFQ Page 4 (cont.):

The District intends to use the responses to this RFQ to assist in the possible selection of one or more Firms for the District's potential energy projects...If the District selects a Firm for District's potential energy projects, the District shall have the right to negotiate any and all of the final terms and conditions of any agreement with the Firm and nothing in this RFQ or any Response shall be deemed or construed as a limitation of such rights.

- ❖ **This language is broad when describing the District's intent behind the RFQ. It does not limit the RFQ to selecting a firm for "planning services". Instead, the RFQ was designed to be used to select a firm for use on the Prop 39 "energy projects" generally.**

RFQ Page 5:

1.2 Response Content Requirements

D. Firm's Relevant Qualifications and Experience: Provide all of the following information, as applicable.

Please indicate "N/A" only if such information/experience is non-existent:

- Identify all certifications and licenses held in the name of the Firm or, if held in the name of one or more individuals, provide the name, title, address, telephone and e-mail address of the person holding the certification and/or license. Include the Date of Issuance for all certifications and licenses, and the expiration or termination date, if any.
 - Number of years Firm has been engaged in energy engineering consulting
 - Number of qualified energy engineers on staff available to support District projects. . .
 - Total cost in dollars of commercial energy projects installed by or through the Firm's engineering efforts
 - List the energy efficiency and/or conservation measures implemented for projects developed by the Firm in connection with past projects
 - Total capacity in kilowatt hours ("kWh") saved or generated by energy projects implemented or installed to date through projects developed by the Firm at K-12 public schools or reasonably equivalent commercial facilities
- ❖ **This language was included to ensure that the firm had the relevant credentials to complete each phase of the whole Prop 39 project, including implementation. The list seeks, among other things, vendor experience in implementing and developing energy efficiency and/or conservation measures, which goes beyond planning services. The above criteria also asks for the total cost in dollars of previous energy projects installed by the potential vendors. Vendors provided all of this information – on their qualities for planning AND implementation to the District, and this information was considered across multiple vendors in choosing IES.**

RFQ Page 6:

F. Proposed Firm Team: Provide all of the following information:

- Name of Firm's proposed project manager and a description of such person's experience as relevant to the District's proposed energy projects
- Names and titles/positions of team members who would be dedicated to the District's energy projects
- Roles and responsibilities of team members, including an organizational chart

- Brief description of team's ability to implement a successful energy program (history, performance of similar scope of services, etc.)
 - Resumes for key members of the Firm's proposed team, including key personnel of any subcontractors that Firm proposes to use (resume package may be submitted as an attachment to the Response)
- ❖ This section shows that the District was looking for a firm with the ability to implement and manage the proposed energy savings plan. The RFQ is asking for the name of the project manager and the team's ability to implement a program. If the District was only seeking a Prop 39 planning firm, this experience would not be as relevant.

RFQ Page 7:

I. Fee Schedule:

- **INVESTMENT GRADE AUDIT:** Respondent requires an investment grade audit before price savings numbers can be finalized. The following rates and charges are hereby proposed based on the buildings and or square footages shown in Appendix (A) for this separate audit agreement.

\$ _____.

- **ESCO MARKUP FEES:** If selected to implement energy efficiency and/or conservation measures (ECMs) eligible for Prop 39 funding and /or any additional ECMs, the above Respondent will assess the following overhead and profit markup percentages.

Overhead % _____.

Profit % _____.

- ❖ This language in Section I of the RFQ seeks vendor quotes, not only for the audit portion of the Prop 39 project, but for the vendor's fees to perform *implementation services* as the ESCO, aka the "Energy Services Company." The "Fee Schedule" section required the vendors to provide up front quotes for "ESCO Markup Fees" through the 2014 RFQ. Thus, the District used the RFQ to gather and evaluate the vendor markup fees that would apply to the project if the vendor was "selected to implement energy efficiency and/or conservation measures (ECMs) eligible for Prop 39 funding and /or any additional ECMs." This allowed the District to consider proposed vendor costs not only for the early planning services, but for the implementation phase of the project as well. These cost figures were compared across vendors, and not just considered for IES. As such, this portion of the RFP shows that the District wanted to engage in a competitive process, weighing many factors, including the proposed costs of the vendor's planning, management, and implementation services.

We appreciate your review of this language, along with the entirety of the 2014 RFQ. We were somewhat troubled by the most recent correspondence from the auditor that alleged that the District sole sourced its planning and implementation services, yet failed to address any of the RFQ language we highlighted in our prior email. We request that the auditor address the points above and the RFQ documentation in preparing a final response on this issue. Specifically, the District seeks the auditor's assistance in understanding why a documented RFQ that called for various vendors to submit cost projections and qualifications not only for planning/manager services, but also implementation services, would not constitute documentation showing a "competitive process" in accordance with Prop 39 requirements and State Controller guidance.

b. RFQ Sent to Multiple Vendors & RFQ Responses

In further support of the District's position, we have also attached in **Exhibit B** the email correspondence with the original RFQ that was sent out to nine different vendors soliciting responses to the RFQ. In **Exhibit C**, we have further included: (1) the last, best and final offers that came in from IES and Schneider Electric on Prop 39 planning services and (2) one of the RFQ responses from Pacific West Energy Solutions. At a minimum, these records prove that at least three different Prop 39 vendors were considered during the RFQ process.

We are working to obtain additional vendor responses to the RFQ, including those from IES and Schneider Electric. Unfortunately, because the RFQ took place in 2014, and there have been a number of staff changes and office moves over time, the District is still trying to track down more of the vendor RFQ responses. This includes reaching out directly to some of the vendors to see if we can get any further documentation from their end. Unfortunately, this creates an additional step in our process and we rely heavily on the response time of the outside vendors to collect this information. As such, we ask that the auditor provide the District with additional time to gather these records, if needed, before issuing any negative audit finding.

Thus, as explained above and as demonstrated in the attached documents, the original 2014 RFQ covered the District's award for Prop 39 planning and implementation services, including the district energy manager and training services. The District respectfully disagrees with the auditor's preliminary finding under Issue #1 and has provided the requisite documentation herein to support its position. We ask that Issue #1 be removed from the final audit finding as to both the planning and implementation funds under Prop 39.

III. ISSUE # 3 Allegation of Project Energy Savings Not Included in the Contracts

The auditor also states: "We reviewed the district's contracts with IES, and determined that none of the contracts identify the projected energy savings." As the auditor points out, PRC section 26206(d) states, "All projects shall require contracts that identify the project specifications, costs, and projected energy savings."

We note that the 2017-18 PROGRAM AUDIT OF THE CALIFORNIA CLEAN ENERGY JOBS ACT, prepared by the California State Controller's Office ("2017-18 SCO Audit Report"), included the following analysis:

In our discussions with the agencies during audit fieldwork, many commented that the approved energy plans and board documents included the required projected energy savings amounts. We agree that these documents included the projected energy savings amounts; however, the guidelines require the projected energy savings amounts to be included in the awarded contract.

(Program Audit of the Clean Energy Jobs Act, Fiscal Year 2017-18, https://www.sco.ca.gov/Files-AUD/07_2018ca_ceja.pdf, at 13.)

We have attached the IES Facility Solutions Agreement, dated April 29, 2015 ("IES Contract") in **Exhibit D** for your reference. As you can see in the table of contents on Page iii, *Exhibit D* of the IES Contract included the Energy Expenditure Plan as an attachment and it was incorporated into the Contract by reference. (See IES Contract, Section 9.15 at A-25.) As previously recognized by the State Controller in the 2017-18 SCO Audit Report, the "Energy Expenditure Plan" in **Exhibit D** included the projected energy savings amounts, and this Plan was incorporated into the IES Contract. As such, the District contract with IES did contain the required "projected energy savings," in accordance with both Section 26206(d) as well as the State Controller's informal guidance on the issue.

In sum, the District respectfully disagrees with the auditor's preliminary finding under Issue #3 and has provided the requisite documentation herein to support its position. We ask that Issue #3 be removed from the final audit finding.

IV. OBSERVATION - Overpayment

The auditor has also observed, "After review of the district's ledgers we determined that the district received an overpayment in the amount of \$251,283. The district's Energy Expenditure Plan was approved for \$2,027,653 (\$1,891,376 for program implementation, energy manager, and training and \$136,277 for planning activities) however, the district received \$2,278,936 from the CDE. This issue has been brought to the attention of CDE for further review."

In preparing our response, the District identified an additional state approved application for \$251,283 in additional funds for the District. We have attached a copy of the Application 5354 in **Exhibit E**, which we were not able to previously provide to the auditor. Application 5354 was included in the August 20, 2018 State Total Award Allocation form that includes the "Energy Expenditure Plan Amount Approved for West Covina Unified School District," which we have also attached for your reference in **Exhibit F**. Thus, the \$251,283 was not an "overpayment" as the auditor asserts, but rather an additional amount that the District applied for and received following State approval. This

information is readily available through the California Energy Commission website, but we are including here as well for your convenience and further reference.

We very much appreciate this opportunity to respond and hope this information is helpful in your assessment. Given the complicated nature of this audit, and the relatively uncertain parameters for Prop 39 compliance, we request that the auditor contact the District to discuss these items in greater detail should any further information or documentation be needed to complete the audit. You can reach us at: (626) 939-4600, ext. 4636.

We appreciate your time and attention to this matter.

Sincerely,



Drew Passalacqua, Ed.D.
Assistant Superintendent, Business Services

Exhibit List

- Exhibit A – District Prop 39 RFQ and Appendix A
- Exhibit B – District Email sending out RFQ to Nine Vendors
- Exhibit C – Available RFQ Responses
- Exhibit D – Prop 39 Contract with IES
- Exhibit E – Expenditure Plan Approved for \$251,283
- Exhibit F – State Ward Allocation Spreadsheet for Prop 39

**Attachment G—
Butte Glenn Community College District’s
Response to Audit Results**



BUTTE COLLEGE

April 22, 2019

Ms. Erika Hardoyo
Auditor
Office of State Controller Betty T. Yee
3301 C Street, Suite 725
Sacramento, CA 95816

This letter provides responses to findings communicated to the Butte-Glenn Community College District (BGCCD, The District) in regards to the Program Audit of California Clean Energy Jobs Act Program Expenditures – Proposition 39 via email dated April 16, 2019.

Finding 1. Sole Source Funds

BGCCD is a rural district and, historically, has faced challenges getting numerous competitive bids when requests for proposals go out on specific projects. The District has used the best value criteria on several projects when necessary to ensure fiscal standards and required project outcomes are met. When looking for engineering expertise for both Solar and MBCx projects, GRD and Murley Consulting Group were engineering consultants recommended to the District by the California Community College Investor Owned Utilities Partnership (CCC/IOU Partnership) due to Butte County's rural setting and lack of local expertise.

The CCC/IOU Partnership was established in 2006 and created to encourage energy efficiency investments and foster best practices in the California Community College System. The state's four investor-owned utilities (IOUs), including Pacific Gas & Electric (PG&E), Southern California Edison (SCE), Southern California Gas Company (SCG), and San Diego Gas & Electric (SDG&E), have partnered with the California Community College (CCC) Chancellor's Office and the CCC Districts to provide technical assistance, financial incentives, and project support for energy efficiency improvements to the CCC system statewide. One of the primary functions of the CCCIOU has been to support the community colleges in the implementation of the California Clean Energy Jobs Act of 2012 (Proposition 39) by leveraging the infrastructure of the Partnership for the identification, installation, and timely close out of energy projects to ensure program fiscal accountability.

The District awarded contracts under the basis of Government Code 53060 professional services agreement. For special services and advice in financial, economic, accounting, engineering, legal or administrative matters, Districts may award contracts without engaging in a competitive bidding or proposal process per Government Code § 53060. Such persons contracted under this provision must be specially trained, experienced and competent to perform the services required. Contracts for GRD and Murley Consulting Group were established individually under the Public Contract Code section 20651 which eliminated the need to competitively bid the work. GRD was a consultant for the MBCx project with a contract of \$62,270 and Murley Consulting Group was a consultant for the Skyway Center Solar for \$63,470.

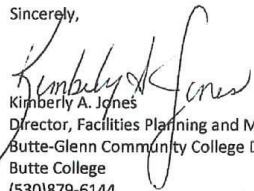
The MBCx project had two separate components to the project; one was for gas meters and the other for electrical meters. The contracts that were issued were done through an informal bidding process dictated by Public Contract Code 22000 Uniform Public Construction Cost Accounting Procedures (UPCCAP) that was approved by the BGCCD Board of Trustees in January, 2013. The project required the purchase of miscellaneous materials and supplies that were purchased from Dan's Electric, a local supply house. The purchase orders to Dan's Electric fall under public contract code 20651 as the District only purchased equipment and materials from them and each purchase was under the required bid limit. By doing this the District saved the project markup from the contractors. Portions of the project were self-performed, with the materials and supplies being purchased and the project being completed by existing staff.

Finding 2. Projected energy savings not included in the contract.

BGCCD has followed existing law requiring all eligible energy projects to achieve a minimum savings to investment ratio (SIR) of 1.01 (reduced in 2016/2017 from the previous SIR of 1.05). All projects were thoroughly researched to ensure adequate savings were present before the project proposals were submitted to the California Community College Chancellor's Office for approval. The District verified savings on all completed projects and has been above the minimum SIR on all projects. With SIR rates included in the project proposals, the Request for Proposals, and inclusion in Board of Trustee documents, and while including project specifications and costs on all contracts, the District did unknowingly omit inclusion of the SIR figures on the contracts. All information is readily available for any project, and not has not been omitted from the process. The District relied on the expertise of the CCC/IOU Partnership and Newcomb Anderson McCormick for analyzing each project to ensure energy saving requirements that were submitted in each of the project applications was accurate. The District entered into the consulting relationship with Newcomb Anderson McCormick on the recommendation from the CCCIOU based upon their use of the firm as professional experts in Prop 39 project development, management, implementation, and project closings. The required Code language appears to be intended to document projects savings and tie them back to the projects that were submitted to ensure the savings was accomplished. Accordingly, the District believes the substance of the Prop 39 requirements have been met.

Please feel free to contact us with any additional questions or for any clarifications regarding any of this information.

Sincerely,


Kimberly A. Jones
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Butte-Glenn Community College District
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**Attachment H—
South Orange County Community College District’s
Response to Audit Results**



Office of State Controller Betty T. Yee
Division of Audits, Compliance Audits Bureau
3301 C Street, Suite 725A
Sacramento, CA 95816

February 14, 2019

The District is in receipt of the Office of State Controller Division of Audits, Compliance Audits Bureau email dated February 4, 2019, which details the findings identified from the audit of the South Orange County Community College District's ("District") Proposition 39 program.

Following are the findings identified along with the District's response to each:

1. Projected energy savings not included in the contracts

We reviewed the district's contracts with Anderson & Howard Electric and determined that the contracts do not include the projected energy savings.

Per Public Resource Code section 26206(d), "All projects shall require contracts that identify the project specifications, costs, and projected energy savings."

District Response:

Although the projected energy savings were not previously included in the contract for the vendor selected, the District has consistently provided all information required per Public Resource Code section 26206(d) as an exhibit on the agenda to our Board of Trustees for review and approval. The District has amended its contract templates to ensure that energy evaluations are now also included in all such contracts prospectively.

2. Sole-sourced funds

We found that the district sole-sourced its contract with WSP (Parsons and Brinckerhoff) for labor compliance services for the district's exterior lighting project. The district did not provide documentation to support that it considered other vendors when it awarded the Proposition 39 contract to WSP (Parsons and Brinckerhoff). Therefore, we find that the district sole-sourced its Proposition 39 contract to WSP (Parsons and Brinckerhoff), totaling \$3,533.

Public Resource Code section 26235(c) states, in part, "A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter."

District Response:

As it relates to the contract with WSP (Parsons and Brinkerhoff), the District followed Government Code Section 53060 which allows for the hiring of contractors that provide specialized services without obtaining multiple bids. The District believes that the labor compliance services provided by WSP (Parsons and Brinkerhoff) constitute specialized accounting and administrative services as allowed by this Government Code. Furthermore, sole sourcing typically is a factor when we are required to go out to bid for goods or services, when no bidding is required, such as allowed within Government Code Section 53060, any contract issued under this code would not be considered sole sourcing.

3. Ineligible expenditures

For the SOUTH0-1516-001-05 application, we determined that the district improperly spent \$19,579 for vendor Clear Blue Energy for an interior lighting project not included on the application.

The district signed and certified on the district's application that the funding would be used for the energy projects identified on the referenced project name and number.

District Response:

During the 2015/2016 fiscal year, the District contributed \$33,365 of local funds above the allocated amount of Proposition 39 funding for that fiscal year to complete the interior lighting project. The State subsequently provided additional funding for the interior lighting project in fiscal year 2016/2017, which was used to cover the overage from the prior year. Project managers have been trained to communicate with the Fiscal Services department to ensure that Proposition 39 funds are charged according to the applications submitted.

Should you require any additional information from the District, please contact Richard Kudlik, District Internal Auditor, at (949) 582-4647 or via email at rkudlik@socccd.edu.

Sincerely,



Kathleen F. Burke, Ed.D.
Chancellor

**State Controller's Office
Division of Audits
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Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>