

To: Dr. Birdwell,  
Board Member Kirby,  
and the Members of the Bond Oversight Committee

From: Michael J. Norton, Committee Member  
Michael Peabody, Committee Member

Date: November 13, 2017

Re: My Notes Concerning Findings from Meeting of November 8, 2017 and  
Additional Matters for Consideration or Action

Thank you for conducting the meeting. Thank you for inviting us to participate in this Committee's activities. The dialogue for the first 2 hours of our meeting achieved some constructive results.

As suggested by Board Member Kirby, we have drafted this memo outlining the findings that the Committee reached during our meeting as well as open questions and next steps to resolve those questions. We have also taken the liberty of drafting some proposed changes to the 1GPA process for Dr. Birdwell, as Chair of the Committee to consider as part of future Committee Agendas.

Before reviewing the meeting activities, please consider the standards that our District sets for all people involved in its governance, standards that we, as Committee members, should keep in mind as we move forward. For SUSD employees and officials, these matters are routine. To the rest of the Committee, it is worth reviewing the standards so we understand better our goal and the principles involved.

SUSD succeeds or fails based largely upon public perception of the District's activities. Perception is as critical as substance when matters requiring a public vote arise. As this Committee moves forward, the questions we should always consider are these.

- "Have we avoided any inference of improper behavior?"
- "Have our actions as a Committee instilled in the Community confidence that the Committee is acting in the best interests of all voters?"
- "Have we made recommendations consistent with the ultimate goal that transactions casting a bad light on the District be avoided or voided?"
- "As we move forward, are we improving or detracting from the chance of successfully passing future funding initiatives including future ballots for Maintenance and Operating Funds Overrides"

The duty to avoid even an inference of inappropriate behavior is found throughout our District Policy documents. For instance, our Board is governed by these standards:

**"Accountability.** Governing Board members shall assure that government is conducted openly, efficiently, equitably, and honorably in a manner that permits

the citizens to make informed judgments and hold Governing Board members and other District officials accountable.

**Respectability.** Governing Board members shall safeguard public confidence in the integrity of the governance of the District by being honest, fair, caring and respectful, and by avoiding conduct creating the appearance of impropriety, or impropriety of which is otherwise unbecoming a public official.

### **Conflict of Interest**

Any Board member or employee of the District who has, or whose relative has, a substantial interest in any contract, sale, purchase, or service to the District shall make known that interest in the official records of the District and shall refrain from voting upon or otherwise participating in any manner as a Board member or employee in such contract, sale, or purchase. [LEGAL REF.: A.R.S. [38-503](#)]

Any Board member or employee who has, or whose relative has, a substantial interest in any decision of the District shall make known such interest in the official records of the District and shall refrain from participating in any manner as a Board member or employee in such a decision. [LEGAL REF.: A.R.S. [38-503](#)]"

As this Committee reviews the Bond spending projects, the District's formal policies regarding spending, bidding, and approvals should be upheld to the fullest extent possible to assure that there is no perception of inappropriate activity by the voting public. The inference of misspending is just as damaging to the District as actual misappropriations, since voters in Scottsdale have held all of our governing entities to a very high standard.

Below, the District Policy regarding purchasing, from our website.

## **DJE BIDDING / PURCHASING PROCEDURES**

The Superintendent or the Superintendent's designee shall be responsible for all purchasing, contracting, competitive bidding, and receiving and processing of all bid protests, in accordance with the Arizona school district procurement rules, including A.A.C. R7-2-1141 *et seq.* A contract shall not be awarded to an entity that does not verify employment eligibility of each employee through the E-verify program in compliance with A.R.S. [23-214](#) subsection A. Each contract shall contain the warranties required by A.R.S. [41-4401](#) relative to the E-verify requirements.

### **Purchases Not Requiring Bidding**

Purchases of ten thousand dollars (\$10,000) or less may be made at the discretion of the Superintendent or the Superintendent's designee. Such procurements are

not subject to competitive purchasing requirements, however reasonable judgment should be used to ensure the purchases are advantageous to the District.

Verbal price quotations will be requested from at least three (3) vendors for a transaction in excess of ten thousand dollars (\$10,000) but less than fifty thousand dollars (\$50,000). The price quotations should be shown on, or attached to, the related requisition form. . . .

Written price quotations will be requested from at least three (3) vendors for transactions of at least fifty thousand dollars (\$50,000) but not more than one hundred thousand dollars (\$100,000). . . . .

. . . . .

The District is not required to obtain bid security for the construction manager-at-risk method of project delivery.

. . .

### **Purchases Requiring Bidding**

Sealed bids and proposals shall be requested for transactions to purchase construction, materials, or services costing more than one hundred thousand dollars (\$100,000). All transactions must comply with the requirements of the Arizona Administrative Code and the Uniform System of Financial Records.

## **CONCLUSIONS FROM THE MEETING OF 08-NOV-17:**

### **Conclusion Regarding Failure of 1GPA Process With Re: to Hunt & Caraway**

- 1) The 1GPA Procurement Office does not engage sufficient controls to assure that vendors with felonies, financial issues or organizational issues cannot slip through a defective screening process, as demonstrated in the case of Hunt & Caraway.
- 2) It is troubling that elementary checks of public records requiring only a few minutes of time disclosed so many obvious defects in the integrity, organizational failures and financial structure of a contractor which had somehow completed the process of becoming approved for no-bid contract awards.
- 3) 1GPA issues "Due Diligence" folders for its Approved Vendors, but there is no substantive "Due Diligence" activity in the folders. When 1GPA shares with the community documents titled "Due Diligence Folder" it infers that a standard of care has been employed that in fact has not been employed. [www.1GPA.org](http://www.1GPA.org) Approved Vendors Tab, Hunt & Caraway Architects, "Due Diligence Documents" Download.
- 4) It is at least possible that 1GPA provides a False Positive regarding the qualifications of its vendors in other situations since the Hunt & Caraway defects were readily known through simple research of public records.

- 5) The B.O.C. should be concerned that the False Positives regarding Due Diligence are based in significant part on work that was or should have been performed by SUSD's own Purchasing Staff. Since SUSD staff members participate in the 1GPA approval of vendors process, SUSD's activities lend credence to a system that is flawed. SUSD support of H&C led to the listing of H&C as a 1GPA Approved Vendor.
- 6) Neither SUSD nor 1GPA verifications of H&C's integrity were supported by any publicly available documents. Quite the opposite, H&C appears to be a company that should not be allowed to contract with SUSD in any form based on public documents available through Maricopa County Superior Court as well as the Arizona Corporation Commission.

### **RECOMMENDATIONS RE 1GPA and HUNT & CARAWAY:**

- 1) Standard background checks should be made regarding all officers, directors and major shareholders as well as any significant contract managers before contracts the magnitude of the current SUSD project are awarded.
- 2) If 1GPA will be used in the future, it must be required to perform industry standard due diligence.
- 3) While Robichaux has resigned as an officer and director of Hunt & Caraway, the question of whether he gains financially from the H&C contracts with the District remains open as does the question of whether he is still a legal or beneficial owner of the company. (See H&C/Robichaux letter attached)
  - a) There is an open question about why SUSD would not simply cancel the H&C Contract and start over.
  - b) By engaging in the management process of H&C rather than terminating H&C's contract, does SUSD give any impression to our community that we MAY be more concerned about the future of H&C than we are about the future of SUSD?
  - c) Would other contractors be allowed this same privilege?
  - d) Have other contractors been allowed this same privilege in the past?
- 4) If Hunt & Caraway is allowed to remain a contractor to SUSD for the Bond project, an independent audit of H&C transactions should be considered, at H&C's cost, to determine that public funds were dispensed in line with industry standards and to give credibility to the integrity of SUSD
- 5) Through the appearance of deferential treatment of H&C from 2016 through November 2017 two consequences must be considered:
  - a) Voter disillusionment
  - b) Competing Vendors choose not to bid.

### **Open Items:**

- 1) **Bond Contract Awards to Hunt & Caraway:** Mike Peabody and Mike Norton have committed to meet with District Procurement officers soon to review the final selection process and in particular the due diligence process for Hunt & Caraway.
  - a) As required by Dr. Birdwell, we have submitted a Request for Public Records to Michelle Marshall, Legal Counsel, and Jill Olivas.

- b) Anyone else who can commit some time on this project is welcomed to join us.
  - c) After we review the process by which SUSD conducted its due diligence choosing Hunt & Caraway as the primary architect for the bond projects Mr. Peabody and I will send a findings report to the committee for review and consideration.
  - d) NOTE: While we had hoped to meet with Mr. Gonzales today, Monday the 13<sup>th</sup>, Mr. Gonzales reported Sick today and no future date has been set to meet with him.
- 2) **\$180,000 Purchase Order to Hunt & Caraway:** In Feb. 2016, SUSD issued a Purchase Order to Hunt & Caraway that raises questions based on the limited discussion we had about District, Board, and State Procurement standards for a purchase of that magnitude.
- a) Referenced PO is attached to this Memorandum. At the conclusion of the meeting, my notes indicate that the contracting of Hunt & Caraway to perform that work was done through the authorization of the Interim Superintendent,
  - b) I do not recall anyone else being mentioned as having authorized that work, but please confirm which members of the Board or Cabinet made the decision on or before February 6, 2016 to contract with Hunt & Caraway and to issue the purchase order attached.
  - c) Please help the committee understand the process by which this P.O. was issued.
    - i) Were Bids sought or received from other vendors whether verbally or written?
    - ii) Since the initial Purchase Order in February 2016 was for \$60,000, SUSD's policy requires 3 competing bids from other vendors.
    - iii) Who else bid on this project?
    - iv) If no one else bid on this project, how was it authorized?
  - d) Subsequently, SUSD made a request for approval of the Purchase Order by the Board (See P.O. attached below with note regarding Board Approval in April and May) By April and May, the H&C work had already been completed totaling over \$180,000. Please provide evidence that this PO was appropriately approved by Governing Board per SUSD policy requiring Board approval for contracts in excess of \$100,000.
  - e) Please provide explanation of processes if the vendor was issued a PO prior to Governing Board approval or without competitive bids and cite SUSD policy that allows this practice.
  - f) Also please provide some guidance on the decision to contract with an architectural firm instead of other research organizations to perform demographic studies and enrollment forecasts.
    - i) NOTE: If the selection of H&C is based in part upon Approved Vendor Status with 1GPA, the use of H&C to perform services other than Architectural Services creates a perception that the 1GPA system was used to avoid normal bidding requirements, something that the District should avoid at all costs as we are scrutinized by our voters.
  - g) In its proposal letter to Dr. Birdwell, H&C and its subcontractor represented that they controlled a \$240M Bond project involving the construction of 8 schools.

- i) Why was H&C authorized to represent that it was in control of a \$240M Bond Project for SUSD?
- ii) All communications between Interim Superintendent Birdwell and Brian Robichaux from January through May 2016 to provide clarity would be appreciated.
- h) As vendors communicated with SUSD about H&C's representation of control of the yet to be approved \$240M Bond Project, were any SUSD staff or Board members advised or concerned?
- i) If retroactive approval of the H&C P.O. was obtained, please provide the details and date of that retroactive approval.
- j) Please provide all of the work product of H&C or its assignees with regard to the February 2016 Purchase Order.
- k) Did the representations that H&C Controlled the Bond project deter or discourage other potential bidders from offering their services? (See Letters from H&C Assignees/Subcontractors attached)
- l) By assigning its work under the PO, did H&C violate District Standard Provisions for Purchase Order? (see standard provisions immediately below)
  - m) [https://www.susd.org/application/files/5615/0051/0060/SUSD\\_Purchase\\_Order\\_General\\_Terms\\_and\\_Conditions.pdf](https://www.susd.org/application/files/5615/0051/0060/SUSD_Purchase_Order_General_Terms_and_Conditions.pdf)

“22. Reassignment - This order may not be reassigned or transferred without written permission of the Purchasing Department”

MJN, Committee Member  
MP, Committee Member