

Portland Public Schools Bond Construction Program:

PERFORMANCE AUDIT #2

May 2015

Hirsh and Associates,

Bill Hirsh and Richard Tracy

MEMORANDUM

To: Carole Smith, Superintendent;
CJ Sylvester, Chief, School Modernization

From: Richard Tracy and Bill Hirsh

Date: May 2015

Re: **School Bond Construction Program - Performance Audit #2**

Attached is our 2015 performance audit report of the School Bond Construction Program for the Portland Public School district. This is the second of four annual audits and principally covers the period from April 2014 to March 2015. In addition, to adequately consider and discuss the significant evolution of the high school scopes, schedules, and budgets, we have gone back and looked at pre-bond and post-bond planning, assumptions, and decisions.

We would like to thank the management and staff of the school district and of the Office of School Modernization for their assistance and cooperation in conducting this audit.

We look forward to meeting with the School Board to more fully discuss the report's findings and recommendations.

cc:

Jim Owens, Senior Director, Office of School Modernization

Contents

SUMMARY	1
INTRODUCTION	5
Overview of bond program resources, budgets, and schedules	
Office of School Modernization	
Public accountability structures	
Audit objectives, scope, and methods	
AUDIT RESULTS	15
Bond program projects: Status of planning, design, and construction	
1. Summer Improvement Projects.....	18
2. High School modernization projects.....	25
3. Other major projects: Faubion, Tubman, and Marshall	35
4. Master planning for six additional high schools	40
Bond program management and administration	
5. Program management plan and standard operating procedures	44
6. Balanced Scorecard reporting	54
7. Program management (overhead) costs	56
8. Procurement and contracting	63
9. Public engagement and communication	70
10. Equity in public purchasing and contracting	76
RECOMMENDATIONS	83
MANAGEMENT RESPONSE TO THE AUDIT	89

APPENDICES

A. Status of Corrective Actions: 2014 Performance Audit Recommendations	A-1
B. Assessment of Performance Audit Success	B-1
C. Analysis of BOE Resolution Nov. 2013	C-1
D. Definition of architectural, engineering, and related services	D-1
E. LD Mattson Inc. v. Multnomah County	E-1
F. ORS - Minority, Women, and Emerging Small Business contracting	F-1

SUMMARY

The Portland Public School district has embarked on an ambitious eight-year capital improvement program to modernize, replace, and improve school buildings. With the passage of Ballot Measure 26-144 in November of 2012, the district was authorized to issue \$482 million in general obligation bonds to finance the costs of planning, design, and construction. Additional resources have increased the projected improvement budget to approximately \$525 million. This report is the second annual performance audit of how well the district is managing and implementing the school building improvement bond program.

Substantial progress in many areas

Over the past year the bond program has made substantial progress in improving neighborhood schools, designing major modernizations at Roosevelt and Franklin high schools, and designing an innovative public/private educational facility at Faubion PK-8. The program has also continued to refine and enhance its management and administrative systems and procedures for project management, procurement, and public engagement.

Accomplishments include:

- Summer projects in 2014 completed improvements at 12 schools on tight schedules in time for start of school.
- Current designs for Roosevelt and Franklin high schools provide for aesthetically beautiful and functional facilities that can offer more credits to students, lower student to teacher ratio, and provide the foundation for achieving the district's vision for twenty-first century learning.

- An innovative partnership between Faubion and Concordia University holds promise to create a new model for PK-8, community, and higher education teaching and learning.
- Marshall high school was substantially upgraded on-time and on-schedule and will be ready as an interim space in the fall for students displaced due to construction at Franklin.
- The community, teachers and administrators, and other stakeholders were extensively involved in much of the decision-making process about school building needs and design.

The Office of School Modernization has continued to refine and update its program management plan and standard operational procedures to provide the opportunity for better guidance to staff and consultants. OSM strengthened change orders controls, project reporting, and procurement and selection methods. In addition, the program has developed and implemented a number of strategies to involve stakeholders and communicate with public about the progress of school bond program. The program took action on 81 percent of the recommendations of our 2014 audit report. Throughout the past year, the blended organizational staffing team has been responsive, professional, and flexible in the face of changing circumstances.

Risks facing the bond program

Substantial increases in the scope and budgets of high school modernization projects and significant escalation in Portland area construction prices have increased budget and schedule risks. Escalation reserves are fully allocated before all projects have received escalation funds and the planned budgets of some future summer projects were reduced. Both Franklin and Roosevelt high school projects are behind baseline schedule. These conditions have reduced the flexibility of the program to respond to unforeseen future conditions and to adjust to potential delays that might occur during construction.

Some of the conditions that are increasing program risks include:

- Changes in the size, program area, and configuration of high school modernization designs contributed to a \$41 million increase in the high school current adjusted budgets, an 18 percent increase over original

budget. The actual increase will be larger once the needs of Grant HS are fully addressed.

- High school scope increases coupled with construction cost escalation averaging approximately 5 percent in the Portland region have caused the \$45 million escalation reserve to be fully allocated before all projects received escalation funding.
- The budgets for summer improvement projects in years 2018 and 2019 have been reduced to help fund IP 2014 construction bids that were substantially over budget.
- Delays in finalizing high school designs for Roosevelt and Franklin construction projects have increased construction schedule risks.

Although the bond program is facing additional risks, OSM has recently taken action to reduce risks by allocating \$13.8 million in bond premium reserves to address project escalation needs, schematic design changes at Faubion, and other unanticipated new costs. In addition, the program continues to have access to significant contingencies and reserves that are available to further mitigate risks. These resources include \$10 million in Board of Education contingency, approximately \$32 million in additional premium from the second bond sale in 2015, and significant contingencies built into existing projects that may be reallocated to other needs if not used. Project directors remain confident that projects will be completed on-time in accordance with updated and revised schedules by taking various efforts to recover lost time.

Opportunities for improvement

To further enhance program management, strengthen compliance with existing policies, and manage the risks facing the program, we have identified several opportunities for improvement. Some of the major opportunities include:

- Develop plans for utilizing available program contingencies and reserves to address future project escalation needs, and the restoration of budgets for summer improvement and master planning projects. As of the final drafting of this audit, OSM has begun some of this effort, specifically with regard to potential use of bond premiums.

- In a joint effort with academic leadership, involve the community, teachers, and building administrators more fully and earlier in updating the LRFP and Educational Specifications for future high school modernizations including Grant, Lincoln, Madison, and Benson.
- Develop internal protocols for setting future Guaranteed Maximum Prices by the end of design development; using the GMP process for major early work agreements to CM/GC projects; and managing and monitoring the GMP during the construction of Roosevelt and Franklin high schools.
- Identify options for program savings by reducing the percent of bond spending on management overhead over the remaining years of the eight-year bond program.
- Update the program management plan, standard operating procedures, project team management plan template, and e-Builder manuals for greater accuracy and usefulness. Require the procedures and e-Builder to be used as intended by district project management, staff, consultants, and contractors.

Because the program is entering a crucial construction period for two high school modernizations and one major school replacement, we believe significant efforts are needed to recognize, report, and address those risks that could affect the performance of the bond program in meeting its goals and objectives. Our 2014 and 2015 performance audit recommendations coupled with OSM's ongoing "lessons learned" should help improve the likelihood of program success.

We make a number of recommendations in the body of the report that are compiled and summarized in the Recommendations section of the report on page 83. We note throughout the audit, where appropriate, that a number of the recommendations have been implemented or are in the process of being implemented since the audit test period was finished.

INTRODUCTION

In November of 2012, the voters of the of the Portland Public School district approved Ballot Measure 26-144 authorizing the Portland Public School district to issue up to \$482 million in general obligation bonds to finance capital projects to replace, renovate, and upgrade schools and classrooms throughout the district. This is the second of four performance audits of the School Building Improvement Bond program and covers the period from April 2014 to March 2015. The 2014 and 2015 performance audits can be found on the PPS Bond Program website at www.pps.k12.or.us/bond. This audit assesses the degree to which the program is achieving its goals and objectives and is following applicable laws, policies, and procedures. The overall purpose of the performance audits is to provide useful information to help strengthen the operations of the bond program and to assist in providing public accountability for the use of voter-approved tax resources.

Overview of bond program resources, budgets, and schedules

The following tables provide current information on the bond program resources, project budgets, and schedules as of March 2015. As shown in figure 1, the School Building Capital Improvement Bond program derives funds from a variety of sources. Total capital improvement program funds from all sources have grown, increasing from \$499,107,903 in March 2014 to \$500,266,411 in March 2015. While general obligation bonds comprise the vast majority of funding for the bond program, the program also receives support from various state grants, contributions, bond premium/debt savings, and from partnerships and potential partnerships with other organizations.

Figure 1 2012 Capital Improvement Program resources from all sources

	2014	2015
General Obligation Bonds	\$482,000,000	\$482,310,324*
SRGP funds and PPS contribution (seismic upgrades)	\$1,500,000	\$1,495,172
Facilities and Maintenance capital funds	\$4,458	\$40,732
SB1149 funds (energy efficiency and renewable energy)	\$801,810	\$801,810
Education specifications	\$300,000	\$300,000
Bond premium/debt savings	\$13,870,000	\$ 13,870,000
Concordia University	-	\$879,306
Debt Repayment	\$931,509	\$568,948
TOTAL	\$499,107,903	\$500,266,411

Source: OSM Operations Summary, for March 2014 and March 2015

* Interest earnings

In addition to the above current resources, the bond program anticipates additional resources as follows:

- Approval to borrow up to \$8,000,000 to pay for “additional criteria” scope increases for Roosevelt HS and Franklin HS
- Bond premium of up to \$32 million from the second bond sale in April 2015
- Additional funding from Concordia University of \$15,510,000
- Energy modeling assistance of \$17,000

The School Building Improvement Bond program as of March 1, 2015 is composed of 21 separate projects. These projects include:

- Full modernization of three high schools – Roosevelt, Franklin, and Grant
- Replacement of Faubion PK-8 elementary school

- Nine Summer Improvement Projects to replace roofs, correct seismic deficiencies and accessibility problems, and upgrade science classrooms
- Master planning for three high schools – Benson, Lincoln, Madison
- Two swing site improvements, and transportation upgrades to provide temporary facilities for the students at Franklin, Roosevelt, and Grant high schools and at Faubion PK-8
- Three other separately budgeted projects account for program management and contingencies, repayment of line of credit debt, and the costs for preparing Educational Specifications

The table below lists the 21 separate projects managed by the OSM and their original and current budgets, and the invoices approved for payment as of March 2015.

Figure 2 School Building Improvement Bond program: Projects and budgets

PROJECT	BUDGET (in millions)		Approved invoices
	Original budget	Current budget	
Franklin HS	\$81.6	\$104.5	\$3.1
Grant HS	\$88.3	\$93.5	\$0.01
Roosevelt HS	\$68.4	\$92.2	\$2.7
Faubion PK-8	\$27.0	\$44.7	\$1.1
9 Improvement Projects, 2013-19	\$67.7	\$68.9	\$28.7
3 HS Master plans	\$1.2 **	\$1.0	\$0.0
Swing sites and transportation	\$9.6	\$4.9	\$0.0
Marshal swing site	\$0.0	\$4.0	\$2.2
Educational Specifications	\$0.0	\$0.3	\$.271
Debt repayment	\$45.0	\$45.0	\$45.0
2012 Bond Program *	\$93.1	\$63.8	\$8.5
TOTAL	\$482.0	\$522.9	\$95.6

Source: OSM Operations Summary March 2015

* 2012 Bond Program project includes program management and administration, reserves, contingencies

** Original planning budget was \$1.5 million.

As shown above, over the past two years, the bond program budget has grown by approximately 10 percent, from \$482.0 million to \$522.9 million. However, because two of the major HS construction projects are only just now approaching the construction phase, Faubion is still in design, and Grant is at the preliminary planning stage, only \$95.6 million in invoices have been approved for payment, less than 20 percent of the total bond program budget. Over the next two years, program spending will increase significantly as three major modernization projects begin and largely complete construction. We will discuss the increases in major modernization projects in the Audit Results section of this report.

Figure 3 below shows the principal schedule points for the major construction projects of the bond program. While the two high school modernization projects have experienced design delays, scheduled substantial completion dates have remained the same. Schedule delays will also be discussed in the Audit Results section of this report.

Figure 3 Project schedules for major construction projects

PROJECT	Complete Design Development Phase		Start Construction		Substantial completion
	Schedule	Actual	Schedule	Actual	
Franklin HS	July 2014	Oct 2014	June 2015	-	March 2017
Grant HS	Sept 2016	<i>n/a</i>	June 2017	-	March 2019
Roosevelt HS	July 2014	Jan 2015	April 2015	-	March 2017
Faubion PK-8	June 2015	-	June 2015	-	April 2017
Marshall swing site	Feb 2014	April 2014	April 2014	Jan 2015*	Jan 2015
6 Improvement Projects			Various		

Source: BAC January 2015 Report

* Marshall roofing was re-scheduled at a later date.

Office of School Modernization

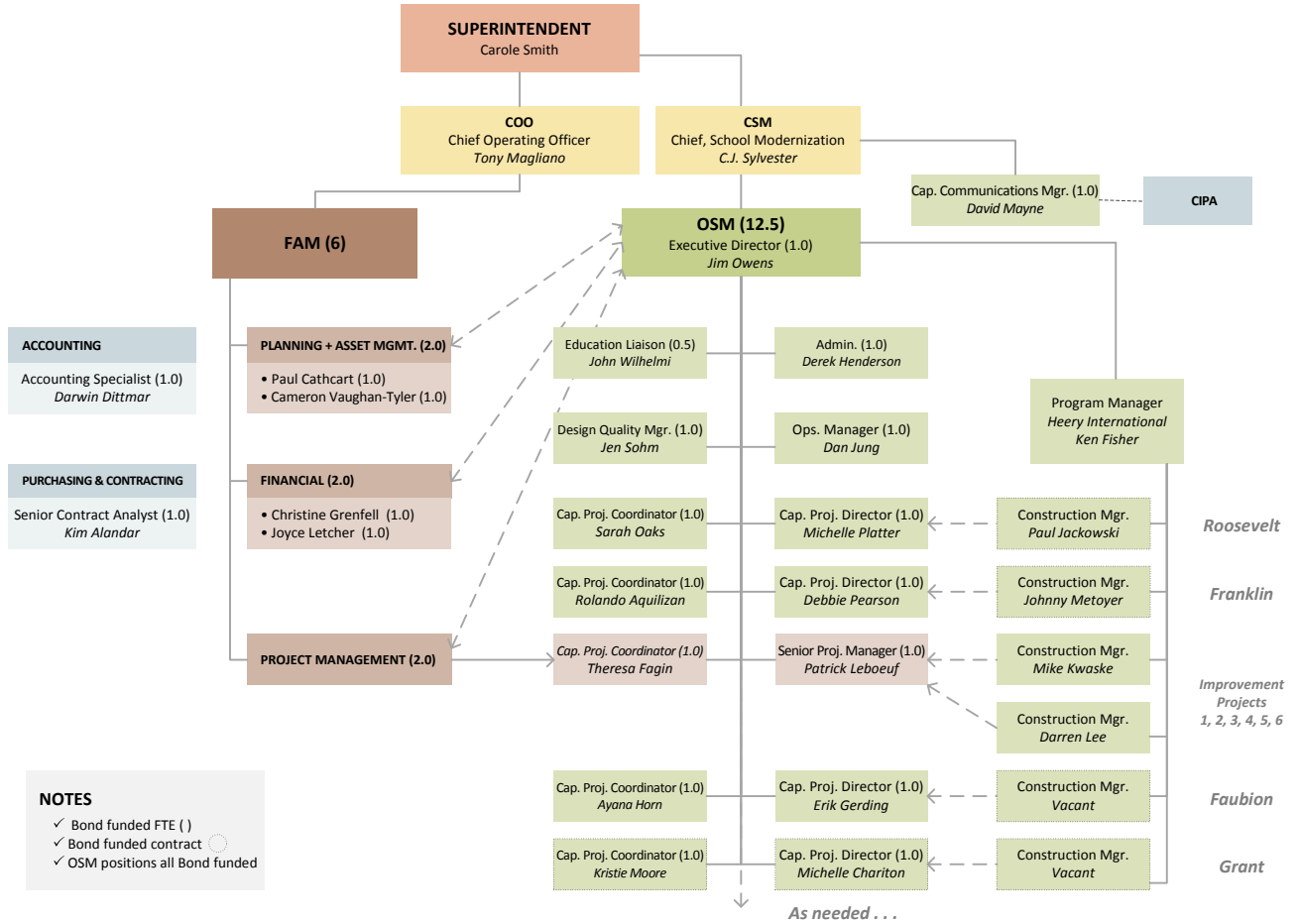
As discussed in our 2014 performance audit, the Office of School Modernization (OSM) is responsible for managing the School Building Improvement Bond program under the overall direction of the superintendent and the specific direction of the Chief, School Modernization (CSM). In cooperation with the district's Facility and Asset Management (FAM) department, OSM has established plans, policies, and procedures to execute the capital construction program. The program must comply with established federal, state, and local laws, and district policies, rules, and procedures regarding procurement, construction, contracting, budgeting and financial reporting, land use and building codes, and equity in public purchasing and contracting.

The blended organizational structure of OSM is largely unchanged from last year. As shown below, OSM is composed of staff from OSM, FAM, and representatives from district Accounting and Finance and Purchasing and Contracting. The only significant change to this organization is the addition of a bond funded Capital Communications Manager reporting to the Chief, School Modernization.

The organizational chart below shows the blended organizational structure of the program.

Figure 4 Organizational chart
BLENDED BOND TEAM

3.31.15



Public accountability structures

The district continues to use several mechanisms to provide public accountability for the use of bond funds. In addition to annual financial and performance audits, the Balanced Scorecard performance report and the Bond Accountability Committee provides monthly and quarterly reporting respectively to the Board of Education and the public.

BOND ACCOUNTABILITY COMMITTEE

The seven member community-based volunteer Bond Accountability Committee (BAC) is chartered by the school board to assist in monitoring the planning and progress of the school bond program relative to the voter-approved work scope, budget, and schedule objectives. The BAC charter charges the committee to meet at least quarterly to actively review the implementation of the program and to provide advice to the board on a number of topics including the appropriate use of bond funds, alignment with goals and policies established by the board, compliance with safety, historic integrity and access rules, and standards and practices for efficient and effective maintenance and construction.

At the completion of this year's performance audit the BAC has had 10 quarterly meetings and issued 9 public reports on the status and progress of the bond program. All BAC meetings were announced publicly and were open to public participation.

BALANCED SCORECARD REPORTING

The Balanced Scorecard performance measure and reporting tool used by OSM reports on the overall performance of the bond program and on four specific perspectives related to Budget, Schedule, Stakeholder involvement, and Equity in public contracting. A variety of strategic objectives, performance measures and performance targets are tracked and reported on a monthly basis in order to provide objective indicators on what is progressing successfully and where improvements may be necessary. A summary of the four primary Balanced Scorecard perspectives and objectives is presented in the table below.

Figure 5 Balanced Scorecard performance perspectives and objectives

Perspective	Objective
BUDGET	Design and construction costs within budget
SCHEDULE	Design and construction are completed on schedule
STAKEHOLDER	Project scope, design and construction meet educational, maintenance, and DAG needs
EQUITY	Projects addressing MWESB, apprenticeship, and student participation goals
OVERALL	Overall assessment of performance meeting the four perspectives

Source: OSM Balanced Scorecard Report and PMP

Audit objectives, scope, and methods

This audit has four primary objectives:

1. To determine if the bond program is completing projects on-budget, on-schedule, and in accordance with the objectives of the voter-approved bond measure
2. To determine if the district has in place adequate and appropriate policies and procedures to guide the management and implementation of the program
3. To evaluate if the district is following established policies, procedures, and other rules in managing and implementing the bond projects
4. To identify opportunities to enhance and improve the performance of the program

To address these objectives, we interviewed:

- Chief, School Modernization
- Office of School Modernization, management and staff
- Facilities and Asset Management, management and staff
- Purchasing, management and staff
- Program/Construction Management firm
- Community Involvement and Public Affairs staff
- Bond Accountability Committee chair
- Office of Teaching and Learning management
- Office of School Performance management

In addition, we reviewed numerous documents including e-Builder documents on project cost management, procurement, project monitoring and reporting, and administration; internal OSM operations reports on program cost management, MWESB performance, student participation, financial reconciliation, and cash flows; OSM program management plan and standard operating procedures; PPS rules and directives for purchasing and procurement, and state public contracting statutes; and applicable case law. We tested purchasing and contracting documents for architectural design, construction, and

CM/GC selection. We also utilized e-Builder to obtain information on invoicing review and approval, budget and cost reporting, project change orders and budget amendments, and public involvement.

This is the second of four annual audits and covers the period from the start of bond planning until March 2015. In addition to continuing to review and assess the adequacy of the bond program policies and procedures, we spent more time this year looking at the status of design and construction of the summer improvement projects, high school modernizations, and other major projects. However, because the Guaranteed Maximum Price (GMP) for the two high school CM/GC contracts was not established at the completion of the audit review phase, we have not conducted a detailed analysis of the GMPs in this year's report. Next year's audit will include a thorough review of the GMPs for Roosevelt and/or Franklin high schools. In addition, based on the interest expressed by several members of the Board of Education (BOE) at the presentation of the 2014 Audit in June of 2014, we have looked at the adequacy of teacher involvement and participation in high school planning.

This audit was performed in accordance with a personal services contract approved by the Portland School Board (October 7, 2013). We planned and conducted fieldwork from July 2014 until March 2015. We conducted report writing and quality control in March, April and May 2015. We conducted this work following professional standards for performance auditing and obtained sufficient evidence to provide a reasonable basis for our findings and conclusions. We make a number of recommendations pertaining to public procurement and contracting that should not be construed as offering legal advice. The district may wish to obtain legal counsel before implementing those recommendations.

Appendix B provides an assessment of the success of the 2014 performance audit report.

AUDIT RESULTS

The Portland Public School district made substantial progress in 2014 toward physically improving the condition of schools, and planning and designing major modernization and replacement projects. The 2014 Summer Improvement Projects completed roofing, ADA, seismic and other improvements at 12 schools in time for start of school, and the construction of improvement projects in the summer of 2015 is anticipated to begin on schedule. In addition, final designs for the modernization of Franklin and Roosevelt high schools are nearing completion and initial construction phases will begin this spring and summer. The completion of the design for the Faubion PK-8 school replacement is behind the baseline schedule but may not impact the on-time completion of the project. Finally, except for roofing work that was deferred until early 2015, Marshall High School physical improvements were substantially completed on-time and on-budget.

While the bond program has made substantial progress toward its goals, the program is also facing potential risks due to increases in the scope and budgets for the high school modernization projects, significant escalation in construction prices, and the full use of the program's escalation reserve. In addition, delays in finalizing designs, project pricing, and building permits have reduced schedule flexibility. These factors put an additional strain on the program to complete all projects in accordance with its objectives. However, we believe sufficient resources and time are still available to mitigate these risks.

OSM recognizes that updates to the Long Range Facility Plan and to the Educational Specifications are needed to ensure that the master planning for future high school modernizations is guided by standards that are consistent with actual design goals and district instructional requirements. We believe these updates are needed prior to initiation

of future master planning processes. Teachers, the community, administration, and other stakeholders should be comprehensively involved in updating the LRFP and Ed Specs.

We found that district has continued to develop and improve its policies and procedures to manage and administer the program and its projects. OSM took action on 22 audit recommendations from the last audit that should tighten compliance with procurement requirements, strengthen performance reporting, and improve program and project management. OSM and CIPA have also taken significant efforts to communicate with internal and external stakeholders. Based on our review this year, we also believe that there are continuing opportunities to improve management systems and procedures. Specifically, OSM should implement the Project Team Management Plans and update the Standard Operating Procedures. In addition, OSM can continue to strengthen public outreach and communication by ensuring greater participation of teachers, and the Offices of Teaching and Learning, School and Operations Support, and School Performance, and by reaching out earlier to community leaders in neighborhoods affected by major school modernization projects.

OSM continues to have mixed success in implementing the Equity in Public Procurement and Contracting policies. Student involvement in bond activities greatly increased in the past year and most participating construction firms met the requirements for providing apprenticeship opportunities in construction trades at the desired levels and making reasonable efforts to employ a workforce that reflects the diversity of the City of Portland. OSM is not meeting aspirational goals for the percent of payments to MWESB firms. While, on the whole, consulting firms met the aspirational goal of 18 percent MWESB of paid invoices, construction contractor MWESB payments remained at 5.6 percent of paid invoices.

The following sections describe in more detail our performance audit findings for the second full year of bond operations. We offer a number of recommendations for improvement that are also summarized in the Recommendations section of this report on page 83.

Bond program projects: Status of planning, designing, and construction

Over the past year, the OSM was actively involved in planning, designing, and constructing nine separate bond projects. Construction was completed on two projects (IP 2014 and Marshall Swing Site) and design work made substantial progress for seven other projects (IP 2015, IP 2015-Science, IP 2015-Maplewood, Roosevelt HS, Franklin HS, Faubion PK-8, and Tubman Campus swing site for Faubion). Beginning this summer, the program will be fully staffed and will enter the busiest construction period to date with the initiation of major modernization work at two high schools, improvement work at Tubman Campus, and the implementation of summer improvement projects at 27 schools. Construction for the replacement of Faubion PK-8, with the demolition of the existing school, is also anticipated to begin in the fourth quarter of 2015.

Each of the current active projects managed by the Office of School Modernization is consistent with the bond measure proposal approved by voters in November of 2012, as amended by board resolutions. Specifically, the type, budget, and school location of modernization, replacement, and improvement projects in progress align with the bond measure, subsequent board resolutions, and the district's public communications. We did not find any other projects or activities being administered by OSM that were not specifically identified in the voter approved ballot measure or in the district's public communications with the community.

The following sections report on the degree to which OSM has kept its projects on-budget, on-schedule, in conformance with applicable public procurement procedures, and consistent with the objectives established in the voter approved bond measures. In addition, we identify opportunities to strengthen controls and improve compliance with applicable policies and procedures.

1. SUMMER IMPROVEMENT PROJECTS

In accordance with the Bond Proposal and the program schedule established by the Office of School Modernization, construction of the summer Improvement Project 2014 (IP 2014), except for elevator towers at three schools, was substantially completed at 12 schools during the summer of 2014 in time for school opening in the fall. As shown in the table below, roof replacements, seismic upgrades, ADA accessibility improvements, and science classroom improvements were constructed at Hosford, James John, Beach, Woodlawn, Boise-Eliot/Humboldt, Chief Joseph, King, Vernon, Arleta, Creston, Grout, and Lane.

Three elevator installations at Hosford, James John, and Beach were also part of the IP 2014 project. The Hosford and James John exterior elevators were substantially complete in March and the Beach elevator is scheduled for completion this summer.

Figure 6 2014 Summer Improvement Projects

	Roof and seismic	Science classrooms	Seismic rehab	ADA accessibility
HOSFORD	✓	✓	✓	✓
JAMES JOHN	✓		✓	✓
BEACH		✓	✓	✓
BOISE-ELIOT/HUMBOLDT	✓	✓	✓	
WOODLAWN		✓	✓	
CHIEF JOSEPH		✓		
KING		✓		
VERNON		✓		
ARLETA	✓	✓	✓	
CRESTON	✓	✓	✓	
GROUT			✓	
LANE		✓	✓	

Source: OSM Project Management Plan

The budget for IP 2014 was increased from the original project budget of \$13.6 million to \$18.1 million, a 33 percent increase. As of March 2015 the project is nearing final close-out and is expected to be under the revised budget of \$18.1 million by approximately \$250,000. As shown below, the primary factor in the increase over the original budget was higher contractor bids than anticipated. Total construction bids exceeded fully escalated IP 2014 design and construction budgets by \$2,888,750 (25.6%).

Figure 7 Comparison of IP 2014 Design and Construction budgets to contractor bids

BID PACKAGE	Design and construction budget	Contractor bids	% change
P & C CONSTRUCTION (James John and Hosford)	\$4.8 m	\$6.2 m	22.1%
PAYNE CONSTRUCTION (Arleta and Creston)	\$2.9 m	\$3.4 m	17.6%
BALDWIN CONSTRUCTION (Grout and Lane)	\$.9 m	\$.8 m	-5.1%
2KG CONSTRUCTION (Woodlawn and Beach)	\$1.4	\$2.1 m	49.7%
CEDAR MILL CONSTRUCTION (King and Vernon)	\$.1 m	\$.1 m	-13%
2KG CONSTRUCTION (Boise-Eliot/Humboldt and Chief Joseph)	\$1.1 m	\$1.5 m	30.7%
TOTAL	\$11.2 m	\$14.1 m	25.6%

Source: OSM IP Project documents

Several factors may have contributed to higher construction bids than anticipated, including significant construction escalation in the region, potentially inadequate cost estimating by the design firms, and bidder recognition of the extensive administrative requirements of the PPS contract related to e-Builder, MWESB reporting, and insurance. After the application of the assumed inflation rate of 2 percent, OSM funded the IP 2014 bid deficit increases by reducing the scope of future IP work by just over \$3 million.

According to data provided by OSM, \$1,785,187 in budget for ADA work has been reduced from IP 2018, and \$1,285,755 in budget for ADA and Science Lab work has been reduced from IP 2019. According to OSM management, there is no current written plan or policy to restore the budgets for these projects. However, the verbal intention of OSM remains that if there are sufficient savings and/or resources within the program, the scope and funding for these projects will be restored.

In 2014 we attended four weekly progress meetings and visited the construction sites for four of the schools included in IP 2014 to determine if construction management systems and procedures were in place and working as intended. Our visits to these sites and our review of project documents showed that OSM was implementing many of the construction management and monitoring systems put in place by OSM and included in the Program Management Plan (PMP). For example, as recommended by our 2014 bond performance audit, OSM developed a matrix for the assignment of responsibilities between the project manager, construction manager, contractor, and architect. Responsibilities were followed according to the matrix with greater ability of the construction manager to better assist OSM staff in the day-to-day project implementation. Daily and weekly progress reports were, on the whole, more thorough and timely. The district also contracted with the PM/CM firm for two CMs for IP 2104 and the contract period for the CMs started well before and ended well after the construction period. Change orders were executed with appropriate signature authority. OSM reported three injuries at one of the 12 construction sites. Two required emergency room visits and employees returned to work. The contractor held corrective safety meetings with all personnel after the injuries. The CM developed a comprehensive standard operating procedure for project close-out which was implemented for IP 2014.

We believe there are continuing opportunities to strengthen some of the practices for managing and managing the IP construction projects. Some of the opportunities are listed below.

Change order process. OSM has implemented a new change order process called Potential Change Order (PCO) which replaces the Change Order Request (COR) system from IP 2013. Consistent with district policy, OSM policy is now that project directors and project managers can approve all change orders, regardless of total dollar amount of change orders, provided the total amount does not exceed 25 percent of the original contract amount and no single change order exceeds \$10,000. The new PCO system also sends email notifications for PCO requests to individuals with greater signature authority that exceed the project manager's signature authority, so that higher level approval can be provided.

We reviewed all PCOs for one contract for two sites. With the exception of some PCOs that were not approved until well after the contract was substantially complete, PCOs were processed according to district and OSM guidelines and requirements. For those PCOs we reviewed that did not obtain signatures until well after the project were substantially complete, in many of these cases there was clear agreement between the project manager and contractor that work needed to occur. In the opinion of OSM/FAM and/or the architect, the delay in executing the PCO was due to the initial cost proposal by the contractor exceeding the amount which the district believed was a fair and appropriate price. Subsequent negotiation, albeit after-the-fact, did result, in several occasions, in lower pricing. We note that one drawback of the PCO system was the inability of the contractor to initiate change orders. Since the end of the summer of 2014, OSM has implemented another new e-Builder change order system called CR-PM (change request - project manager initiated) and CR-VI (change request - vendor initiated).

RECOMMENDATION 1

In order to improve compliance with PPS contracts and general conditions, OSM should ensure that change order work occur only upon appropriately authorized change order execution. Where price cannot be initially fairly and equitably determined, and schedule is critical, authorize work on e-Builder to begin under a negotiated not-to-exceed (NTE) limit with the actual cost to be determined based on criteria set by OSM/FAM either on a lump sum or actual cost basis. Make appropriate modification to e-Builder so that the NTE limit can be “replaced” by the actual negotiated cost.

Using e-Builder. At several IP 2014 site meetings, we heard from two contractors and three different architecture firms that using e-Builder for providing and reviewing submittals was challenging and time consuming. Submittals often involve communications back and forth between the general contractor, the architects, and the architects’ sub-consultants. It requires extra steps in e-Builder to identify which communications and responses align with specific contracts (there were six separate major general contracts for IP 2014). Up-loading and down-loading attachments to e-Builder submittals were also difficult. OSM acknowledged the difficulties experienced by the contractors and architects and suggest that some of the challenges are due to the manner in which PPS designates all IP work as a single project.

The contractors and architects, whom we refer to above, told us that they had received training in e-Builder but additional training was needed, especially as a follow-up once the system was actually put into use and challenges arose. One contractor commented that because of the short-term and low-bid nature of the summer IP contracts, contractors could not afford to hire additional staff to manage and process materials in e-Builder. In comparison for comparably sized projects, the CM/GC firms generally have a full time project manager in addition to a full time job superintendent.

RECOMMENDATION 2

In order to minimize delays and avoid risk related to potential delays, OSM should continue to streamline the submittal process on e-Builder. OSM should consider providing more e-Builder training to contractors, architects, and new OSM/FAM staff, and developing an in-depth “How To” manual of typical e-Builder processes.

Incorporating lessons learned. The CMs for IP 2014, in conjunction with OSM project management staff, developed a comprehensive running list of lessons learned. The list consists of recommendations related to a number of areas including technical specifications, safety, designs, and contract management. Technical recommendations relate to roofing, flashing, safety, weather protection, and electrical specifications. Contract management recommendations relate to ensuring architects meet timelines for design, earlier procurement of construction contracts, and better coordination of ITB documents.

RECOMMENDATION 3

In order to ensure greater consistency throughout district schools and to benefit from past learning, OSM should incorporate appropriate design recommendations from IP lessons learned into the District Design Standards. Similarly, OSM should incorporate appropriate project management recommendations into the Standard Operating Procedures (SOP).

OSM is also completing design work and the development of bid packages for the summer IP 2015 project, the IP 2015-Science project, and the IP 2015-Maplewood project. These projects include several construction contracts at multiple sites during the summer of 2015. Overall, IP 2015 will include roof replacements, seismic improvements, and accessibility improvements at nine schools. IP 2015-Science will include science classroom improvements and ADA accessibility upgrades at 18 schools. Based on the most current project schedules bid packages and notices to proceed construction are scheduled earlier than the IP 2014 project. Accelerated scheduling of these events was one of the lessons learned from the previous summer.

Our review of procurement selection processes for the design firms for IP 2015 and IP 2015-Science showed that OSM could improve the documentation of selection decisions and strengthen compliance with selection requirements. These improvements are discussed in the Procurement section of this report on page 63.

2. HIGH SCHOOL MODERNIZATION PROJECTS

As of March 2015, the three high school modernization projects have experienced significant budget and scope increases. Adjusting for inflation and program and project management costs, budgets for Roosevelt, Franklin, and Grant high schools have increased by 18 percent, from \$238.3 million to \$280.2 million and total net building square footage has increased by 45,000 square feet, from 754,500 to 799,900. Several factors contributed to these increases including an increase in the target student capacity of the high schools identified during the master planning phase, additional space needs identified during the schematic design phase, and higher construction cost inflation than anticipated. Other factors were higher building cost per square foot (irrespective of inflation) to meet district design standards and user group needs, higher soft costs, and adjustments in the number of classrooms needed to allow students to earn more credits in a school year and to reduce the student to teacher ratio. Scope and budget increases have reduced program contingencies, fully allocated escalation reserves, and reduced schedule flexibility. While we believe that sufficient time and potential assets are available to program over the course of the next five and a half years to address these risks, the ability of the program to respond effectively to additional needs and unexpected events is reduced.

The table below compares the original budgets for Franklin, Roosevelt, and Grant high schools to the current adjusted budgets as of March 1, 2015.¹ The current budget has been adjusted so that it can be compared accurately to the original budgets by including \$8.7 million in program and project management costs that were also included in the original budget. The budget was also adjusted to remove the effects of inflation by subtracting \$22.7 million in escalation at 2 percent that was added to the projects. The resulting adjusted current budget helps illustrate the increase in costs resulting from increases in school capacity, additional space needs, additional classrooms, higher building cost per square cost irrespective of inflation, and escalation above 2 percent.

¹ These budget estimates do not reflect the final amounts of the Guaranteed Maximum Price negotiations for Franklin and Roosevelt high schools that were underway at the completion of the audit period.

As shown, the Franklin budget increased by \$20.0 million and the Roosevelt budget increased by \$23.6 million or 25 percent and 35 percent respectively.

Although the Grant high school size has been increased to match that of Franklin HS, the Grant HS budget has not been increased commensurately because it has not yet undergone master planning, schematic design, or design development, nor has it been fully allocated funding to adjust for additional student credit opportunities and reduced teacher workload. Although Grant has been allocated escalation for the final two years of the construction period at the assumed rate of 2 percent, it is likely that actual escalation (currently at 5 percent or more) will exceed the available budget. If Grant experiences similar changes in the planning and design phase as Franklin and Roosevelt, according to a March 2015 memo from OSM management, we would expect commensurate increases in its budget on the order of \$14 million or more. A memo drafted by OSM and received just prior to finalizing this audit report, indicates that OSM is considering the use of up to \$19M in bond premiums to supplement the Grant HS budget.

**Figure 8 High school modernization budgets:
Original budget vs. adjusted current budget, March 2015**

PROJECT	Original budget	Current budget*	Adjusted current budget*	% increase from original to adjusted current budget
FRANKLIN HS	\$81.6 m	\$104.5 m	\$101.6 m	25%
ROOSEVELT HS	\$68.4 m	\$94.8 m	\$92.0 m	35%
GRANT HS	\$88.3 m	\$93.5 m	\$86.6 m	<4%>
TOTAL	\$247.0 m	\$292.8 m	\$280.2 m	18%

Source: OSM Bond Program Update, March, 2015

* In order to accurately compare the original project budget to current project budgets, we adjusted the current budgets to add program and project management costs of \$8.7 million and to subtract \$22.7 in inflation at 2% that were not included in the original budget amount.

Much of the increase in the budgets for Roosevelt and Franklin reflect significant additions to the total square footage and number of teaching stations (core classrooms, arts, athletics, career education, and educational support spaces) at each school. Teaching stations increased from 51 to 65 at Roosevelt high school and from 56 to 72 at Franklin high school. Overall, the square footage of the two high schools increased by 11 percent and the number of teaching stations increased by 28 percent. Because Grant high school has not yet undergone master planning, schematic design, and design development, there are no estimates of square footages and teacher stations.

Figure 9 High School Modernization Projects: Increases in building square footage and teaching spaces for Franklin and Roosevelt high schools, March 2015

PROJECT	Draft Ed Specs	100% Design Development	% increase
Roosevelt HS:			
Square footage	228,535		
Teaching stations*	51	65	27%
Franklin HS:			
Square footage	240,000		
Teaching stations*	56	72	28%
TOTAL:			
Square footage	468,535		
Teaching stations*	107	137	28%

Source: Roosevelt HS Program Progression spreadsheet and Franklin HS Crosswalk: Program Area Analysis from Bond Development through Design Development

* Teaching stations based on working documents from project directors.

There are several primary factors that have contributed to high school modernization scope and budget increases. These factors might be best summarized by the chronological phases at which they occurred:

- Long Range Facility Plan (May 2012)
- Draft Educational Specifications area program (September 2013)
- BOE Resolution #4840 addressing HS size (November 2013)

- Schematic Design (June 2014 – BOE Resolution #4922 for Franklin HS, and #4936 for Roosevelt HS)
- Additional Criteria (July 2014 – BOE Resolution #4938)

The Long Range Facility Plan. The LRFP, completed in May 2012, established the parameters for modernization of high schools for the November 2012 bond. Using an “instructional model” based on 30 square feet per student and 30 students per general education classroom, the LRFP established the target student capacity for comprehensive high schools at 1,500 students and building area at 240,000 square feet. At the time of passage of the bond, given the lower enrollment at Roosevelt, target student capacity for RHS was set at 1,200; core building capacity at 1,500; and building area at 228,535 square feet for the approved bond. The LRFP and the approved bond left Grant at its current size of 274,489 square feet.

Draft HS Educational Specifications. The draft HS Educational Specifications were completed in September of 2013. They restated the bond approved 1,500 student capacity at Franklin and Grant, and the 1,200 student capacity and a 1,500 core capacity at Roosevelt. The draft HS Ed Specs suggested that the HSs could be built with less square footage than that calculated by the LRFP methodology. Reducing the high school sizes theoretically could have resulted in an approximate \$27M reduction in overall HS development cost. Subsequently, during schematic design, it was determined that several of the square footage assumptions and suggestions of the draft HS Ed Spec area program were not compatible with the existing building modernizations and the District’s design and instructional goals.

Board of Education Resolution. As master planning began for Franklin in the fall of 2013, it became clear that the student capacity parameters established in the LRFP and the draft Educational Specifications were inadequate to address the actual and projected enrollments at Franklin. It was also hoped that the capture rate for Roosevelt HS could significantly increase and that more students would move into the neighborhood, thereby increasing the pool of students from which to enroll. After much discussion over a two-month period, the Board of Education passed a resolution on November 18, 2013 that

increased the target student capacity at Franklin and Grant to 1,700 students and the target student capacity at Roosevelt to 1,350, with a core capacity at all three schools of 1,700. Building area was set at approximately 245,000 square feet for Franklin and Grant and 223,000 square feet at Roosevelt. As compared with the LRFP model, this represented a modest increase of 5,000 square feet for Franklin, a modest decrease for Roosevelt of 5,000 square feet, and a significant 30,000 decrease in square feet for Grant in order to maintain parity with Franklin. As compared with the draft Ed Spec area program model, the new square footages were all increases.

In conjunction with the student capacity changes at the three high schools, the total budget was increased in principle by \$10,000,000 over the approved budget amount – an increase from \$247 million to \$257 million. The \$10 million added to the high school budgets was to be transferred from the \$20 million BOE contingency, subject to the BOE approval of schematic designs for Franklin and Roosevelt, scheduled for March of 2014. Details of the LRFP, Ed Spec, BOE resolution process are described in Appendix C.

Schematic Design. Delays in finalizing program area space were also caused by the identification during the master planning and the schematic design processes of the need for additional classrooms, more career and technical education spaces, and more educational support classrooms. To some degree, the delays in planning were caused by incomplete/inaccurate classroom standards and formulas for determining the number of general education classrooms, and incomplete understanding and buy-in by key user groups of the LRFP and Educational Specifications that established the initial standards for the number of classrooms, career related education spaces, and the use of teacher offices. As discussed later in this report on pages 74-75, involvement by teachers, administrative, and academic leadership in these decisions at critical times was minimal.

The schematic design process increased both the building area and the number of classroom spaces for both Franklin and Roosevelt. Some of the increase was due to the inefficiencies resulting from fitting standard classroom areas and adjacent spaces identified in the Educational Specifications into an existing building shell with established window placements, hallways, and stairwells. Some of the increase was due to the need for

additional classrooms over and above that which was determined by the LRFP capacity model or that which was assumed in the Educational Specification. Overall, the size of Franklin high school was increased by 19,000 square feet and Roosevelt by 12,000 square feet from the “November 2013 BOE approved” sizes. The Grant high school building size was nominally increased to match that at Franklin.

In addition to increases in building size and teaching stations, the schematic design process also identified cost increases associated with the inflationary increase in building costs identified by the CM/GC firm. The OSM initial assessment based on RLB data was for an annual cost escalation of 2 percent, but during the 14-month period ending December 31, 2014, actual annual construction cost inflation in the Portland area approached 5 percent. According to OSM project management staff, the original \$220 building cost per square foot, even when inflated at the assumed rate (2 percent), was not sufficient for the scope and quality desired by the user groups and the District Design Standards (including historic preservation goals and LEED silver certification standards).

In total, the schematic design changes including cost escalation increased the Franklin HS project budget by \$8.3 million and the Roosevelt HS project budget by \$8 million dollars. Although the Grant high school modernization has not initiated master planning or schematic design, the Grant High School budget also received an estimated increase of \$4.3 million in an endeavor to keep the three high school budgets somewhat aligned.²

OSM funded the schematic design increases from three sources:

- \$19 million from the unallocated escalation reserve reducing the escalation reserve for future projects to zero,
- \$500,000 from the Chief, School Modernization (formerly COO) contingency, and

² Grant also received its full share of escalation funding, at the assumed rate of 2% (\$10.1 million) in order to keep pace with the other two high schools that had received their full assumed escalation funding amounts of \$5.8 and \$4.6 million

- \$600,000 from \$1.5 million in funds budgeted for future bond issuance expenses.

Additional Criteria (*Increases in classrooms to accommodate more student sections and teachers*). The final scope and budget increase for Franklin and Roosevelt high schools resulted from the district's desire to give students the opportunity to earn the maximum number of credits per year rather than the minimum of six credits per year needed to graduate, and the desire to decrease student to teacher. In order to increase the number of credits students can earn, additional sections must be offered and taught each year. In simple terms, increasing the number of courses taught in high school and decreasing student to teacher ratios requires more teachers to teach the courses and more classrooms to hold the classes. To accommodate these additional classroom spaces, the building areas of Franklin Grant, and Roosevelt were further increased past the schematic design increases, by 15,000 square feet for Franklin and Grant, and 5,000 square feet at Roosevelt. Franklin added eight additional teaching spaces and Roosevelt added three teaching spaces.

These scope increases added approximately \$7 million dollars to the two budgets, \$5 million at Franklin and \$2 million at Roosevelt. Grant high school has not received additional funding at this point because it has yet to complete master planning and schematic design. To fund this increase the Board of Education gave OSM the authority to borrow internally up to \$8 million, if required in the future. The \$8 million includes a \$1 million contingency. At the completion of our audit work, the Chief of School Modernization has proposed to the Superintendent that the bond program use bond premium resources that are expected from the 2015 bond sale rather than the authorized borrowing of \$8 million to fund the "additional criteria" requirements.

Effect of high school scope and budget increases. The increases in high school scope and budget have impacted the program in both positive and negative ways. Positively, the high schools will have additional capacity in the future to serve more students and to offer more credits in the school year. Average class sizes will be smaller. Students will have greater opportunity to explore career learning through the addition of more space for career and technical education. A larger number of classrooms of varying sizes, including

smaller classrooms, will be made available to support specialized teaching and learning needs. Teacher offices facilitate the opportunity for greater collaboration among teachers. The schools should better represent the vision first described in the Educational Facilities Specifications.

The changes in high school scopes and budget have also increased schedule and financial risks. Some of these risks are discussed below.

Schedule risk: Changes to the scope of the high school projects to increase student capacity, add classrooms, and change program areas have contributed to delays in the baseline schedule. Finalizing the designs for both Franklin and Roosevelt high school were respectively 134 days and 179 days behind baseline schedule. In addition, at the completion of our audit, both projects were experiencing delays in preparing construction bid packages, obtaining building permits, and finalizing Guaranteed Maximum Price negotiations with CM/GC firms.

OSM does not expect that these delays will impact the completion of the construction or the owner move-in deadlines. However, these delays have resulted in consumption of planned excess days (“float”) that are normally built into the scheduling of major projects. Consequently, the projects have significantly less flexibility to respond to unforeseen delays that might occur during construction. If delays do occur, there is a higher risk that completion and move-in schedules will be affected.

Financial risks: Increases in the budgets for the high school modernization and summer improvement projects have increased financial risks to the program. Specifically, the distribution of all the available escalation reserve to existing projects eliminates the availability of a reserve to respond to continuing cost inflation. In addition, reducing the scope and budgets for IP projects in 2018 and 2019 to fund increase in the IP 2014 project also created a future \$3 million need if OSM desires to restore funding the scope of these projects. Finally, the tighter schedule may contribute to greater construction schedule compression and could result in the need for premium time to make up for lost time.

Although extra premium time would be covered within the GMP, it would increase actual project costs and reduce project savings that could be returned to the district.

Although the program is facing increased schedule and budget risks as a result of the changes to the high school modernization scope and budget increases, we believe the program also has access to potential funding resources that can largely mitigate the financial risks. The major potential assets available to OSM include:

- \$10 million in remaining Board of Education contingency – While OSM is reluctant to use the remaining BOE reserve with five and a half years remaining in the eight-year program, these resources are available to ensure projects are completed in accordance with initial bond plans.
- \$14 million in bond premium reserves resulting from the initial bond . As of the final drafting of this audit, OSM is proposing to use this reserve to address escalation for IP 2015 and Grant high school, schematic design increases at Faubion, swing site project costs, and maker-space fixtures and furniture requirements.
- Additional bond premium from the April 2015 bond sale. OSM staff expect a premium of up to \$32 million.
- Potential unused project contingency amounts currently budgeted in the Franklin and Roosevelt projects. According to OSM total contingency for construction and the project is about 12% of the project cost.

While the schedule flexibility has been greatly reduced, project directors remain confident that the major high school modernization projects will be completed on-time in accordance with the baseline schedule. OSM staff told us that they are working with the architect and the CM/GC firm to incorporate the earliest bid packages into early work agreements so that the beginning stages of demolition and construction can proceed without jeopardizing substantial completion of the entire project. OSM indicates that they are working with the City of Portland to find ways to accelerate plan reviews so that it will meet the originally timing contemplated by OSM. The construction documents and building permit approvals have been disaggregated into phases in order to not delay the critical path of substantial completion.

RECOMMENDATION 4

To help the program complete bond projects as planned and to respond to financial risk, we recommend that OSM develop plans for utilizing available contingencies and reserves to address future project escalation needs, options for restoring the budgets of 2018 and 2019 future summer improvement projects, and establishing sufficient budgets for master planning projects.

3. OTHER MAJOR PROJECTS: FAUBION, TUBMAN, AND MARSHALL

Faubion PK-8. The replacement of the Faubion PK-8 has completed schematic design, and demolition is scheduled to begin in the fall of 2015. The project is currently in the design development phase, and is on its revised schedule. The new facility, scheduled to open in September of 2017, is an innovative public/private venture with Concordia University. The new facility will combine Faubion, the Concordia University College of Education, and an early childhood learning center, a health and wellness center, and other community services. During construction, Faubion students will locate to Tubman Campus for the 2015-16 and 2016-17 school years.

According to the March 2015 OSM operations report, the current budget for the Faubion project is \$44.7 million which includes a \$15.5 estimated contribution from Concordia University to fund the CU portion of the project (the CU College of Education, an early childhood and pre-K program, and some shared facilities and parking). CU and PPS are currently negotiating a development agreement. OSM informs us that as of the final drafting of this audit the development agreement has been negotiated and executed. In addition, the district and CU are actively discussing and pursuing the possibility of obtaining new market tax credit financing for a modest portion of the project. The new market tax credit program, if successful, would provide for federal tax credits through the United Funds of Portland, for projects in areas which meet one or more of the following criteria: economically depressed, high poverty rate, and creation of jobs. The development agreement with Concordia University and the new market tax credit program, if any, will be reviewed in our 2016 audit.

Faubion and Concordia have been neighbors and partners for many years. Concordia students have participated in student teaching at Faubion and some newly hired current Faubion teachers graduated from Concordia. The partnership significantly grew in recent years and has resulted in a new joint effort called the “3 to PhD.” According to a publication produced by CU, and co-authored by the Faubion administration, the “3 to PhD” effort aims to give children in the Faubion community maximum opportunity to achieve at the highest level. This is particularly challenging at Faubion where 80+ percent

of the kids are eligible for free and reduced lunch, 25 percent of the students live in low-income housing, and nearly as many are qualified as homeless.

The master planning and schematic design processes have built on the “3 to PhD” by designing the building to ensure Concordia students are fully immersed and visible in the PK-8 student environment. For example, the master plan shows CU education classes with windows overlooking the Faubion student commons/cafeteria. Extensive community involvement occurred during the master planning process with a far greater community turn out than for Roosevelt HS and Franklin HS, although the communications outreach was comparable between and among projects. Cost estimates prepared based on the schematic design showed that the project was about \$4 million over budget. OSM is proposing to address this need by using a portion of the 2013 bond sale premium.

OSM management informs us that it is their intent to use a “two-step/low bid” alternative contracting methodology for the public improvement contract to build the entire Faubion/CU complex. In a two-step process as contemplated by OSM, an exemption and findings would be reviewed and approved by the BOE, complying with the alternative contracting requirements of ORS 279C.335. Contractors would respond to a request for qualifications (RFQ) or request for proposals (RFP), and would be “short-listed” into a pool of contractors that would be subsequently eligible to provide competitive bids for the project upon the completion of CD documents. Bidding would occur in approximately August of 2015. Under the two-step process as conceived now by OSM, the contract would be awarded to the short-listed contractor that submitted the lowest responsive bid. The procurement and procurement methodology that is employed by OSM for Faubion will be reviewed as part of the 2016 bond performance audit.

Tubman. Tubman MS, which will house Faubion students for two years, is a relatively newer PPS building which has been closed as a regular middle school program for a number of years. The school is in relatively good condition, requiring some deferred maintenance and remodeling for use by the Faubion program. The design for the upgrading of Tubman is currently being produced by the architect for the new Faubion. The Tubman

construction and the plan for transportation to Tubman will be reported in the 2016 bond performance audit.

Although draft Education Specification were available to guide the design of Faubion, as of the drafting of this report, the K-8 educational specifications have not been completed or approved by the BOE.

Marshall Campus upgrade. This project is on budget, on schedule, and meeting planned objectives. It consisted of several different components, most of which are complete, and one component (roofing) which is scheduled for completion this spring.

Marshall Campus was a comprehensive high school, and then converted to use for “small” high school programs in the mid 2000’s. Subsequently, the school was closed as a high school but was continued to be used for some district programs. The building itself, relative to other older buildings in the PPS inventory, required only a modest amount of upgrade in order to function as the Franklin HS and Grant HS interim space programs.

The upgrades for the Marshall Campus consisted of a new ball field (funded and installed by FAM and community partnerships); fire alarm upgrade; improved site access from the property line to the school’s main entrance; refinishing and restriping of parking areas, improved parking area lighting; ADA improvements in selected bathrooms; interior painting; kitchen and food services improvements; interior improvements to support instruction (e.g., demolition of the dark room and conversion to a digital media computer lab, conversion of a larger classroom to two smaller classrooms, upgrades to create teacher office spaces); roofing upgrades; furniture acquisition for specified classrooms and offices. The Marshall Campus building will have sufficient space to support the creation of teacher offices, which will allow teachers immediate opportunity to use the teacher-office model that is being designed for the new Franklin HS.

The fire alarm upgrade was managed and financed by the bond program, through an ITB, with an original contract amount of \$482,740. Although there was only a single bidder, the bid was substantially under the engineer’s estimate (a range of \$850,000 to \$1.2

million), which resulted in PPS electing to award the contract to the single bidder. The contract sum had been amended to a total of \$500,630. Changes to the contract were managed by the new CR-PM or CR-VI system. All changes were reported as CR-PM, project manager initiated.

The site work and other building improvements at the Marshall Campus were constructed by the Franklin HS CM/GC firm under an early work agreement which is discussed in the procurement section of this audit report. The original amount of the early work agreement for the Franklin HS CM/GC contract for work at Marshall HS was \$2,088,321.

Changes to the GMP were to be reviewed and approved using the e-Builder processes for change orders either initiated by the project management or the contractor (CR-PM or CR-VI processes). In addition, the district used a GMP change order process within e-Builder for approval of draw-downs of contingencies and allowances within the early work agreement-assumed mini-GMP. Although there is no written protocol in place for the district's management of changes within the GMP including draw-downs of contingencies or allowances, the district treated the change order approval authority for changes to the early work agreement-assumed mini-GMP using the same authority established in Purchasing and Contracting delegation of authority requirements.

OSM management has stated that the delegation of authority for approval of change orders is the same for CM/GC projects as it is for other construction contracts. However, in accordance with the CM/GC contracts and as normally practiced in the industry, changes within the GMP are not considered formal changes to the contract and, consequently, are not subject to the P&C delegation of authority for approval. Nevertheless, while OSM cannot reasonably withhold approval of GMP change order requests, the contracts with the CM/GC firms require some level of OSM concurrence. At the time of the final drafting of this audit, OSM has informed us that they have established processes within e-Builder project management software to review change orders and draw-downs within the GMP. Written guidelines and approval authority should also be provided in the program's SOP.

RECOMMENDATION 5

In order to maintain reasonable control over the expenditure of funds within the CM/GC GMP, OSM should establish written policies and procedures in the SOP pertaining to GMP spending, approval protocols, guiding staff on reviewing and approving GMP contingency use, and establish criteria for the use of unobligated GMP amounts that could be returned to OSM as savings.

4. MASTER PLANNING FOR SIX ADDITIONAL HIGH SCHOOLS

As reported in the 2014 bond performance audit, the approved bond included a project for the master planning for six additional high schools (Lincoln, Madison, Benson, Jefferson, Cleveland, and Wilson), potentially to be modernized as part of future bonds. According to documentation provided by OSM management, \$1.5 million was originally allocated to this line item with \$250,000 budgeted for each of the six schools.

A future bond planning committee met from the spring of 2014 through the fall of 2014 and recommended that PPS consider putting the next capital bond before the voters in November of 2016. The committee recommended that the bond measure include the modernization of three high schools: Lincoln, Madison and Benson. On November 25, 2014, the BOE designated Lincoln, Madison and Benson for inclusion in the next bond and authorized the use of the remaining master planning budget for these three schools as part of the current bond program. The Board Resolution No. 4990 authorized the Superintendent to use the \$1.5 million in master planning funds in the bond program budget to fund these efforts. According to OSM, comprehensive master plans will be prepared for Lincoln, Madison and Benson.

As shown in the table below, the original budget for high school master planning has been reduced by \$530,000, from \$1.5 million to the current budget of \$970,000. The reductions included a reallocation of \$180,000 to support an intergovernmental agreement with the Portland Bureau of Transportation to fund street and right-of-way improvements associated with the high school modernizations. In addition, \$350,000 was reallocated to bond project 2012 to support bond program administration. This administrative amount represented 23 percent of the available master planning budget.

The current master planning budget for future high school modernization is as follows – Benson, Lincoln, and Madison are budgeted in e-Builder at \$323,334 per school. While Cleveland, Jefferson, and Wilson do not currently have a master plan budget, OSM indicates that some level of planning will be supported by current OSM bond staff.

Figure 10 High School Master Planning Budgets: Original vs current, March 2015

PROJECT	Original Budget	Current Budget	% increase/ <decrease>
BENSON HS	\$250,000	\$323,334	29%
CLEVELAND HS	\$250,000	\$0	<100%>
JEFFERSON HS	\$250,000	\$0	<100%>
LINCOLN HS	\$250,000	\$323,334	29%
MADISON HS	\$250,000	\$323,334	29%
WILSON HS	\$250,000	\$0	<100%>
TOTAL	\$1.5 m	\$970,002	<35%>

Source: OSM Operations Summary, March 2015

According to OSM, the increase in the individual master planning budgets for three schools is based on the recognition that master planning and related community engagement activities for Franklin and Roosevelt required significantly more time and effort than originally planned. OSM staff estimate that actual costs for master planning for the schools was approximately \$500,000 per high school. However, because of the reductions in the original budgets for master planning, the bond program has significantly less funding to carry-out master planning for new high school modernization.

RECOMMENDATION 6

In order to complete projects as proposed in the approved bond, OSM should consider increasing the funding for master planning budgets to more optimal levels if additional resources are available to the program.

Prior to starting the master planning process for Grant, Lincoln, Madison, and Benson, OSM and the district need to update the LRFP and the high school Educational Specification to reflect current decisions on high school student capacity, size, and classroom utilization. A number of original standards established in the LRFP and Educational Specification were significantly modified during master planning and design phases including student and core capacity levels, the number and utilization of classrooms, and the size of program areas for CTE and other needs. Consequently, the LRFP and Ed Specs do not provide a sufficient level of accuracy and updated guidance for future high school master planning efforts.

The process for updating the guidance should thoroughly and fully involve key user groups and internal and external stakeholders including teachers and building academic leadership. In addition, a formula for classroom number and size, and Educational Specifications needs to be developed for Benson Polytechnical HS, which is a focus option high school as opposed to a comprehensive high school. It will have a different program and space needs than a comprehensive high school.

RECOMMENDATION 7

In order to establish more useful and current guidance documents for future high school master plans, OSM/FAM should meaningfully and fully involve user groups and stakeholders in updating the Long Range Facility Plan and Educational Specifications to reflect current decisions on high school size, capacity, and classroom models. OSM/FAM should also establish new standards for focus option high schools such as Benson HS. The revised documents should be completed before master planning begins for any of the three schools of the potential next bond.

Bond program management and administration

The Office of School Modernization has developed a variety of policies, procedures, systems, and practices to manage and implement the School Building Improvement Bond program. These systems are intended to provide the district and OSM with reasonable assurance that the bond program goals are achieved efficiently and effectively, and that the risks to the program are minimized and adequately controlled. We evaluated a number of these systems in our 2014 performance audit report and made 27 recommendations to strengthen various policies, procedures, and practices. (Appendix A is a status report from the district on the progress made in addressing last year's recommendations.)

Again this year we evaluated a variety of internal processes to determine the degree to which improvements have been made and to determine if there are continuing opportunities to strengthen the management of the program. We also conducted more detailed reviews of the program's communication and public engagement efforts and the performance of the program in addressing the district's equity in public procurement and contracting policy. The following sections discuss the results of our review of the program's management and administration for the period from April 2014 to March 2015.

5. PROGRAM MANAGEMENT PLAN AND STANDARD OPERATING PROCEDURES

OSM continues to update and refine the Program Management Plan (PMP) – a comprehensive guide for the management of the bond program. Over the past year, OSM updated and re-posted the PMP three times. The single largest component of the updated PMP was the inclusion of Standard Operating Procedures (SOP) in August of 2014. OSM has also provided periodic training to staff on the content and requirements of the PMP/SOP.

Based on our review, we believe the PMP is now a more comprehensive and complete policy guide. It continues to contain essential information on program goals and objectives, roles and responsibilities of management and staff, and project management. The document now provides in-depth information on the distinction between public improvement contracts and public works contracts. The PMP also includes either in total or by reference other important guidance documents such as the SOP, program communication plans, and design and maintenance standards. The PMP is considered a dynamic document that is periodically updated, reviewed, and posted for staff use.

Although the PMP has been improved considerably since the 2014 performance audit, there remain opportunities for improvement. Specifically, the PMP contains some outdated information and inaccurate guidance. Also, the PMP continues to be missing essential reference documents. Despite the improvement in the PMP/SOP, many of the major requirements in the PMP Standard Operating Procedures (SOP) are not used by project managers and directors. In brief these weaknesses include:

- Out-dated and inconsistent information on project schedules – Scheduled start and completion dates for educational specifications and IP projects need updating, or, alternatively, excluding information that needs frequent update.
- Inconsistent information on project budgets – Many of the project budgets have changed (e.g., the high school modernizations) from the time of passage of the bond. When the PMP states data that are different than LRF or approved bond amounts, the differences and rationale for the difference should be clarified.

- Out-dated information on key performance metrics – Targets have not been updated to reflect current year goals.
- Missing updates to the HS Educational Specifications and Long Range Facility Plans and lack of new references to MS and K-8 Educational Specifications.
- Inaccurate description of the application of prevailing wage requirements for demolition contracts – Appendix 8P incorrectly implies that stand-alone demolition projects are public works contracts.

RECOMMENDATION 8

In order to improve the usefulness of the PMP, OSM should update the currently posted PMP to ensure it is complete, accurate, and current. Updating is needed for information on project schedules, project budget evolution, key performance metrics, Educational Specifications and the LRFP, and prevailing wage requirements. Alternatively, to save staff time required to maintain and update the PMP, OSM could instead of updating the PMP provide references in the PMP to current OSM procedures and reports pertaining to project schedules and budgets, and performance metrics.

Project Team Management Plans. One of the important features of the PMP is the preparation of Project Team Management Plans (PTMP). The PMP requires each project to complete a PTMP to guide the implementation of the project. The PTMP includes requirements for overall project management including schedule, budget, scope, and quality control. Another important feature of the PTMP is project risk evaluation, prevention and mitigation. The PTMP includes requirements for action steps when projects fail to meet milestones and objectives.

Our review of the IP 2014, IP 2015, Roosevelt and Franklin high modernizations, Faubion replacement, and the Marshall project indicates that PTMPs have not been prepared for any project. We were told by project managers and directors that the PTMP guidance has not been fully provided, and although an after-the-fact draft template exists for a theoretical hybrid IP 2014-2015, a clear template for that which is required and how it would be

implemented is not yet available. In addition, OSM staff inform us that it is their expectation that PTMPs are to be prepared by the construction managers provided by Heery, the PM/CM consulting firm assisting OSM with the management of the bond program. At the completion of this audit, construction managers had not been assigned to the modernization projects and PTMPs were not in place. Moreover, the PMP has been revised to require preparation of the PTMP at the completion of construction documents rather than early in the design phase as initially required in the first version of the PMP. In our view, producing a PTMP at the completion of CD phase of design is too late in a project to properly assess and mitigate project risk – some of which occurs early in design, as seen with Franklin HS and Roosevelt HS.

RECOMMENDATION 9

In order to improve project management and reduce project risks, critical elements of the PTMP should be put in place at the beginning of each project. These essential and critical elements would include the identification and potential mitigation of risk with regard to budget, schedule, scope, safety, quality, and communications. If the bulk of the PTMP is to be drafted by the CMs for modernization projects just prior to construction, ensure the timely hire and assignment of CMs to these projects to begin this work and other crucial elements of preparing for construction.

Policy on use of escalation reserves. The original PMP posted in September of 2013 explained how the escalation budget was developed and established a policy on the use of escalation funds. The policy stated that escalation reserves were to be used to adjust project budgets for expected changes in the cost or price of construction and construction goods and services. The escalation allocation methodology established timeframes for applying escalation to project budgets and indicated that any unallocated escalation funds could be allocated to program contingency. However, the PMP policy was revised in 2014, to allow the use of escalation reserve for project scope changes in addition to cost inflation. Accordingly, as discussed earlier in this report, the entire escalation reserve was applied at an assumed rate of 2 percent escalation annually to three high school modernization projects, Faubion, and the IP 2015 project to address both changes in the cost of construction and

related services and increases in high school project scopes. As a result, there are no escalation reserves available for future IP projects or for active projects that may experience actual inflationary cost increases at a higher rate than the assumed 2 percent. (According to professional cost estimators and the OSM program manager, the actual construction cost inflation rate was above 5 percent in 2014.)

As per an e-mail provided by OSM, as of March 4, 2015, at an assumed rate of 2 percent, IP 2016 would require an additional \$2.6 million and IP 2017 would require an additional \$3.1 million. The Grant high school project may require considerable additional escalation.

The BAC in its February 10, 2015 report and update to the BOE expressed concern about the depletion of the escalation reserve and that inflation may have an adverse effect on several bond projects. However, the BAC points out that to date IP projects have not used all allocated construction contingency and some unallocated amounts have been transferred to the CSM contingency for allocation to other project needs. The assumption is that current and future projects may also finish with unobligated construction contingency, which could be returned to the CSM contingency, and then potentially be used for underfunded projects.

RECOMMENDATION 10

In order to control risk for the entire program, OSM should only use escalation reserve to fund scope changes when a current projection of escalation indicates that escalation will not be needed for the remaining projects of the program. If program needs require use of escalation for other purposes, the risks related to non-fully escalated projects should be understood and reported, and a potential mitigation plan for those additional risks should be developed.

Standard Operating Procedures (SOP). In response to our 2014 performance audit recommendation, OSM prepared and issued the SOP in 2014. As stated in the SOP, the primary purposes of the SOP are as follows:

- Create project procedures that provide for the effective and economical management of capital projects ...

- Establish a common framework ... to plan and proceed with the work in a predictable and cohesive manner while improving team efficiencies due to consistent practices.
- Provide a series of universal metrics ... for establishing accountability within the PPS organization.
- Provide a tool ... to aid in “on-boarding” staff ...

The SOP includes comprehensive guidance on a number of topics including project communications; project cost management; health, safety and security; purchasing and contracting; project and construction management; quality management; risk management and legal review; and schedule management. In addition, the SOP contains an e-Builder manual, a PTMP template, and BIM guidelines. (BIM refers to Building Information Modeling and is a system of digitized and integrated drawings that the district requires for all modernization projects). The SOP is complete in many areas and is a strong first step in providing a detailed blueprint for program/project management.

We also believe that several areas of the SOP require further improvement. Some of the improvement opportunities are addressed below.

Requirements for filing procurement documents: The PMP/SOP makes a strong first effort at providing guidelines for the filing of documents in e-Builder. However, there are inconsistencies in either the way in which e-Builder is supposed to be used as proscribed by the SOP and/or in its actual use. For example, procurement documents are not consistently filed within e-Builder in the procurement sub-category. For IP 2014, there are 30 documents listed in this sub-category under documents for procurement – none of which directly relate to the ITB or RFP process for the IP 2014 contracts. Our sampling of Franklin HS and Roosevelt HS shows that full documentation of the solicitation materials and scoring information is not provided on e-Builder for formal or informal selections.

Our review of documents on e-Builder for Franklin HS and Roosevelt HS show two sub-categories for the filing of approved minutes for design review meetings. The SOP does not provide clarity about which sub-category to use. In addition, our review of the

two projects shows that approved minutes for design review meetings were not filed in a consistent, comprehensive or timely basis for either project, in either sub-category.

There continues to be in both the SOP and the use of e-Builder a lack of clear protocol or priority for the filing of documents within any sub category – i.e., by date, by version, by category, etc.

The e-Builder manual in the PMP states “This manual in no way shall be construed to modify the provisions of your contract. Changes to this document (should read ‘your contract’) shall be by amendment only.” This statement should be re-written for greater clarity. Changes to contracts implemented in e-Builder are binding contractual amendments.

RECOMMENDATION 11

In order to improve the usefulness and effectiveness of e-Builder, OSM should continue to develop systems for uniform filing of documents in e-Builder and to ensure that the systems are used by project management teams and the OSM program management. Work with Purchasing and Contracting and OSM staff to develop a way to post RFP and ITB information for formal procurements, currently housed on P&C drives, to e-Builder. Ensure that solicitation documents, including informal RFPs and scoring sheets managed by OSM/FAM and stored on the OSM/FAM X-drives, are appropriately filed in e-Builder. Amend the language of the PMP, the SOP, e-Builder manuals, and the public improvement contracts, to incorporate the process for contract change processes via e-Builder.

Distinguish between design-bid-build and alternative procurement procedures: The SOP does not distinguish in some circumstances the differences between CM/GC and design-bid-build contracting and procurement procedures. For example, the SOP require that comprehensive cost estimates be completed (by the design team) at 100% SD, 100% DD, 50% CD, 100% CD, and bid documents. This is not a reasonable or expected requirement for CM/GC projects where the CM/GC firm provides estimates at all key phases, and the A/E generally only provides formal cost estimating for the GMP document. It is also not

the practice and the requirement for at least one of architecture contracts for IP 2014 work, where cost estimates were required at the end of SD, DD, and 90% CD.

RECOMMENDATION 12

In order for the SOPs to be a more useful tool for project managers and directors, OSM should clarify where and when SOP requirements and procedures are proscribed for CM/GC projects and/or for design-bid-build projects.

Clarify certain requirements: The SOP calls for various efforts that are neither clearly defined nor illustrated by examples or templates. For example, the SOP calls for value engineering (V/E) at various points in the design process but the SOP does not explain the objectives of V/E or define how it is to be performed. The standard industry objective of V/E is to find equal or greater performance or value in terms of new methods and systems at the same or lower cost. By clarifying the term, and the intent, the district will potentially increase the opportunities to reduce cost without compromising scope or quality.

Similarly, the SOP calls for both a Project Safety and Security Plan and a Site Safety Plan. These plans are not defined or illustrated in the SOP so that the purpose of the plan and the contents are not clearly understood. Neither of these safety-related plans has been consistently prepared for any of the active OSM bond projects.

The SOP also states that the PTMP is a blueprint for quality, and there is considerable discussion about quality, but there is a lack of specificity about what will be done to monitor and track quality and which personnel will do what tasks.

RECOMMENDATION 13

In order to improve the utility and effectiveness of the SOP, OSM should revise the SOP to provide greater explanation of and requirements for value engineering, Project Safety and Security Plans, Site Safety Plans, and project quality.

More detail on procurement methods: Procurement and Contracting rules and procedures are relatively comprehensive and thorough for formal consultant contract procurement. OSM/FAM conducts all informal and direct procurements for consultant contracts. However, the SOP does not provide sufficient guidance on requirements for personal services contracting and informal and direct procurement. The SOP states (after the section on A/E procurement) that the “selection strategy for general consultant services follows a similar process.” Although the selection practice for other consultant selection is similar to that for formal selection of architects and engineers, it is sufficiently dissimilar to warrant guidance on how these procurements are to occur. Appendix D contains excerpts from ORS 279C referring to definitions and provisions for the procurement of contracts for architecture, engineering, and related services.

The SOP also incorrectly state that PPS rules must be followed when procuring alternative contracting methodologies. Insofar as CM/GC procurements are concerned, the AG Model Public Contracting Rules rather than P&C rules must be followed.

RECOMMENDATION 14

In order to reduce risk for non-compliance with public contracting requirements, OSM should update the SOP to provide more accurate detail for the procurement of personal services contracts (including contracts for A/E and related services), with particular consideration of PPS rules for direct procurement, informal and intermediate procurement. Update the SOP to provide more detailed and accurate information with respect to the alternative contracting procurement, including CM/GC procurement.

Design Standards (DS), July 1, 2014. As recommended in our 2014 performance audit, OSM and FAM completed and issued the District Design Standards in July, 2014. The Design Standards are included as an appendix in the PMP and include recommendations and requirements for contract procurement and Construction Specification Institute (CSI) division details. (CSI divisions are an industry standard for specifications for the elements that go into typical building and site construction including site work, foundations, moisture and envelope protection, mechanical, plumbing, electrical, etc.) OSM staff

informs us that the PPS CSI standards have been developed with the assistance of several consulting firms, and have been reviewed and vetted by district construction, maintenance, operations, and facilities staff. The development and use of PPS design standards should serve to standardize design and construction and result in higher quality, and lower maintenance and life cycle expenses. We did not assess the completeness or accuracy of the Design Standards relating to the PPS CSI standards.

Based on our review of the contract procurement guidance provided in the Design Standards, we believe that the standards related to procurement could be more complete and more accurate. For example, the DS refers to SB 1533, January 1, 2013, that requires 1.5 percent of total contract price for new construction or major renovation to be spent on green technology. However, the DS does not clarify the type of projects which can be exempt from these requirements or what elements of construction and design for qualifying projects are eligible expenses to be considered part of the 1.5 percent requirements. (Much of this information is contained within the applicable Department of Energy Rules, which can be excerpted, or referenced. ORS 279C.527 describes the statutory requirement for green technology. ORS 279C.528 requires public contracting agencies to use rules adopted by the Department of Energy for the implementation of ORS 279C.527).

It would be useful to provide guidance in the DS to project teams on preferred alternatives of how to approach this requirement, which allows for several alternate green technology methodologies. Specifically, the district could make it clear if it wants to pursue active solar panels which were the original intent of this legislation or if it prefers passive design and other features.

The DS also provides some procurement guidance that is incorrect or incomplete. For example, the DS states that “pursuant to ORS 279A.065(1) the A.G.’s Model Rules do not apply to the District.” This is not accurate with respect to CM/GC contracts where 279A.065 does require use of the AG’s rules. The DS also addresses intermediate procurements for public improvement contracts (under \$100,000), but omits mention of the

potential for direct procurement for contracts under \$5,000. In addition, some construction work to be done with bond funds may not be considered part of a public improvement, in which case different procurement limits apply (up to \$150,000 for intermediate procurements and \$10,000 for direct procurement).

RECOMMENDATION 15

In order to improve the accuracy and clarity of Design Standards, OSM should clarify which projects require the use of 1.5 percent of the public improvement contract amount for green technology by identifying the eligible sources for use of these funds or by referencing the applicable Department of Energy Rules. Provide guidance on potential green technology methodologies that might be preferred by the district. In addition, because many of the procurement requirements in the Design Standards are out-of-date, and perhaps superfluous now that there is an SOP, consider deleting procurement requirements in entirety from the Design Standards and referring users to the PPS District Contracting Rules and SOP.

6. BALANCED SCORECARD REPORTING

The Balanced Scorecard measurement and reporting tool continues to be a valuable accountability tool for the OSM. Reported monthly and quarterly to the Bond Accountability Committee and the Board of Education, the tool provides timely and easily understood information that offers insights on the progress of the program in meeting some its fundamental goals – staying on budget, keeping on schedule, responding to stakeholder needs, and addressing equity considerations in contracting with firms and in the participation of apprentices and students in bond projects. Over the past year, OSM made a number of improvements to the Balanced Scorecard report that will improve the reliability and completeness of the reported color coded scores. Specifically,

- color coding for the scheduling perspective provides a more reliable assessment of actual progress in comparison to the established baseline target,
- stakeholder perspectives are more fully captured through the use of an automated surveying tool, and
- equity perspective performance is reported more fully and more reliable with the addition of data on workforce (apprenticeship) participation and more detailed annual information on student participation activities.

Our review this year shows that there are continuing opportunities to strengthen the budget perspective element of the Balanced Scorecard. Although OSM made some improvement to the measurement of budget perspective last year, we believe the reporting of some objectives could be more complete and informative. For example, costs for planning, design, and construction bids are compared to a performance target of “within budget amount” which is defined as the adjusted current budget. If these costs were compared to the original non-adjusted budgets, Balanced Scorecard ratings may be different and users might receive a more nuanced view of the budget risks facing the program. Comparing costs to adjusted budgets amounts would rarely show negative results until late in the development of the program when there is little opportunity to make changes. In addition, reporting only on active projects may not illuminate budget risks that could be facing future projects. As discussed in the section on high school modernizations,

increasing budget allocations to current high school projects result in potential increased budget risks in the future.

RECOMMENDATION 16

To improve the rigor and completeness of the Balanced Scorecard reporting tool, OSM should consider revising elements of the budget perspective reporting to ensure users of the reporting tool have a more complete understanding of budget to actual comparisons by including comparisons to original and revised budgets. This could involve additional objective criteria or additional narrative or highlighted points.

7. PROGRAM MANAGEMENT (OVERHEAD) COSTS

To manage and administer the bond program, OSM has established a separate “project” which OSM has called the 2012 Bond Program project. This project accounts for all OSM staff, materials and services, and other activities to administer the bond program. The program also accounts for various reserves and contingencies for the bond program that fluctuate as funds are debited and credited to on-going bond program projects and contingencies. The table below summarizes the current eight-year management budget of the 2012 Bond Program project budget as of March 2015. As shown, the total budget to manage the bond program as of March 2015 is \$38 million. This is composed of \$17.9 million in staffing costs (e.g. salaries, benefits, overtime, and professional development) and \$20 million in materials and services (e.g. consulting, intergovernmental agreements, office supplies, travel, and insurance). As of March 2015, approximately 2½ years into the eight-year program, OSM has spent about \$9.2 million or 24 percent of the budget. The spending levels to date are on track in terms of the percent of time remaining in the eight-year program. Management costs are expected to increase in the next three years as the major projects enter construction and decline as projects are completed.

**Figure 11 OSM 2012 Bond Program management costs:
Eight-year bond program**

	Current budget	Estimate at completion	Spending to date	% of total
DISTRICT ADMINISTRATION (salary, benefits, overhead, professional development)	\$17.9 m	\$18.1 m	\$3.8 m	21%
MATERIALS AND SERVICES (consulting, materials, services, Insurance, supplies)	\$20.1 m	\$20.2 m	\$5.4 m	27%
TOTAL	\$38.0 m	\$38.3	\$9.2 m	24%

Source: OSM Operations Summary March 2015

The current staffing level for the program is 21.5 positions and is composed of the following positions that are funded by the bond. As shown in the table, staffing includes

an executive director, administrative support, operations manager, and a design quality manager. There are four project directors and four project coordinators for the major modernization and replacement projects. In addition, there is one project manager and one coordinator for the summer IP projects. Other bond-funded staff includes personnel assigned from PPS departments including Facilities and Asset Management, Finance, Purchasing and Contracting, and Community and Public Engagement. The program is overseen by the non-bond funded position of Chief, School Modernization.

Figure 12 OSM staffing by position

POSITION	BOND FTE
Senior Director	1.0
Sr. Support Specialist	1.0
Operations Manager	1.0
Sr. Design Quality Manager	1.0
Educational Support (Liaison)	0.5
Project Director - 1 (RHS)	1.0
Project Director - 2 (FHS)	1.0
Project Director - 3 (GHS)	1.0
Project Director - 4 (Faubion)	1.0
FAM Project Manager - III (IP)	1.0
Project Coordinator - 1 (RHS)	1.0
Project Coordinator - 2 (FHS)	1.0
Project Coordinator - 3 (GHS)	1.0
Project Coordinator - 4 (Faubion)	1.0
FAM Project Coordinator – IP	1.0
FAM Partnership Development Mgr.	1.0
FAM Senior Planner	1.0
Communications Coordinator	1.0
ACCT Sr. Accounting Specialist	1.0
P&C Sr. Contract Manager	1.0
FAM Accounting Support	1.0
FAM Accounting Support	1.0
TOTAL	21.5

Source: OSM Staffing Projections spreadsheet

In addition to the \$17.9 million in staffing costs, the Bond Program materials and services category of \$20 million is composed of a variety of items. The largest overhead amounts include program management and construction management consulting, insurance premium costs, expenses for issuing the next bonds, audit services, and computer software. The PBOT and OCIP line items included in administration under Bond Program 2012 should not be considered as overhead – they normally would be listed as separate project costs.

Figure 13 Major categories of Bond Program materials and supplies

LINE ITEM	Budget	Spent to date (3/1/2015)	% remaining
External Program Management (PM/CM)	\$7.4 m	\$2.0 m	73%
PBOT IGA	\$5.0 m	0	100%
Owner controlled Insurance Program (OCIP)	\$2.5 m	\$2.2 m	12%
Bond issuance costs	\$1.6 m	\$446,476	72%
Audit services	\$1.2 m	\$241,712	80%
Computer software	\$700,000	\$127,699	82%
Local meetings – Non-instructional staff development	\$365,000	\$6,472	98%
Traffic engineering services	\$300,000	\$79,476	74%
External Project management	\$200,000	\$142,000	29%
All other (travel, supplies, printing, technology, fixtures and furniture, telephone, legal, etc.)	\$700,000	\$201,915	71%

Source: OSM Operations Summary, March 2015

In order to monitor and control overhead expenses, OSM calculates each month the percent of the total program budget that is budgeted for and spent on management and overhead. The table below shows the percent of overhead by sub categories of overhead: payroll, payroll plus program consulting, and total management overhead. As shown,

budgeted Bond Program overhead ranges from 3.4 percent to 5.8 percent depending on what amounts are included in overhead. Actual overhead spending to date is running higher than planned overhead spending – 7.3 percent versus 5.8 percent. While OSM has not established a firm goal for the percentage of spending that should be spent to manage and administer the program, staff indicates that a general benchmark for the program should range from 5 percent to 6 percent. OSM’s current actual overhead spending to date is higher than their internal benchmark.

Figure 14 OSM Bond Program overhead budget, actual, and percent of total bond program spending

BOND PROGRAM	Current budget	% of total budget	Expended to date	% of total spending
Staffing costs	\$18.0 m	3.4%	\$3.8 m	3.9%
Other materials and services costs including program consultants and construction managers (PM/CM)	\$12.5 m	2.4%	\$3.2 m	3.4%
TOTAL management overhead*	\$30.5 m	5.8%	\$7.0 m	7.3%

Source: OSM Operations Summary, March 2015

* Does not include budgeted amounts for PBOT IGA and the OCIP insurance program.

OSM has reduced budgeted overhead amounts in several areas. The largest reduction of \$1.4 million came from the \$3.0 million bond issuance costs line item. Because the previous bond issuance cost less than \$500,000, OSM transferred \$621,820 to the schematic design budgets of Roosevelt, Franklin, and Grant high schools, and reallocated \$800,000 to other bond oversight line items. Other changes in the budgeted overhead items were reallocations between line items and had no net effect on the total budgeted amount.

To find additional reductions in program management and administration costs, OSM can explore other opportunities for “belt-tightening.” Likely areas are those where current spending is much lower than what one would expect at this stage of the program such as computer software and local meetings/non-instructional staff meeting line items. The largest budget line items also may offer opportunities for reductions including external

program management and audit services line items. For example, the current contract for bond performance auditing services is for the first four years of the eight-year program and represents 50 percent of the total budgeted funds for this line item. If OSM successfully implements audit recommendations and internal lessons learned, the program could be operating more efficiently and effectively by the time it enters its fifth year. Consequently, there could be opportunities to reduce the cost and scope of performance auditing for years five through eight. Similarly, the current contract with the PM/CM firm encumbers program management services only through year four. Here, too, should the program be running efficiently and effectively at that time, a reduced level of contracted program management (as opposed to construction management) may be warranted.

While overall staffing budgets comprise almost half of the bond overhead, it is difficult to identify specific positions to reduce as the program enters its busiest period of construction. Although the project management staffing per modernization project (project director, project coordinator, construction manager) exceeds the range for other school bond programs we surveyed, it can be a worthwhile and justified expenditure provided the projects are managed within budget, on schedule, and to the desired level of scope. Nevertheless, it is also conceivable that the same level of staffing funded by this bond may not be necessary in the future. For example, full-time positions for partnership development, land use planning, and procurement assistance may not be required for all eight years of the program. Should another bond be passed before this bond completes, funding for these positions could appropriately be funded by the future bond as those positions would then support the new bond's projects.

RECOMMENDATION 17

In order to control the percent of program budget spent on management oversight, OSM should identify opportunities for savings in payroll and management support line items. Likely areas of for consideration would be those line items with lower spending than expected, the largest budgeted items, and positions with potential declining workload in the final years of the program.

Owner Controlled Insurance Program. The single largest increase in the Bond Program's management costs in the past year was the implementation of the Owner Controlled Insurance Program (OCIP). In simple terms, the district pays for the premium and provides for most general business liability insurance for major construction contractors and their subcontractors. The district's OCIP applies to all PPS (OSM and FAM) public improvement projects exceeding \$100,000 and covers general liability and pollution liability insurance for those contractors and subcontractors participating in bond program public improvement contracts. (Contractors continue to provide their own insurance for workers compensation, automobile liability, and commercial liability for non-site related activities. The district separately continues to pay for builder risk insurance.) Before initiating work on a bond construction public improvement contract, contractors and all their subcontractors must enroll in OCIP. The five-year cost of the program is \$2.5 million.

According to OSM, the OCIP initiative is intended to be cost neutral because it is anticipated that the cost of the program to the district will be offset by decreases in construction contractor bids, or in CM/GC general conditions and bids, on bond projects reflecting their lower insurance costs. Participants in the program are required to deduct their own general liability insurance costs from their bids and provide documentation of this credit to the OCIP administrator. Literature on OCIP also identifies other benefits of the strategy including increasing the pool of contractors that can work on the projects, reducing the obstacles to resolving claim disputes between the district and multiple parties so that claims can be settled faster, and improving the overall risk management of large construction programs. OSM management hopes that expanding the pool of potential contractors and subcontractors will remove a historical barrier and help the district to achieve the aspirational goal of increasing MWESB participation in bond construction projects.

The OCIP is just completing its first year of operation in the Bond Program. It is difficult to determine that the OCIP is achieving its goals relative to cost neutrality, expanding MWESB participation, or improving claims management. Given the relative

significant cost of the premium and its impact on OSM management overhead, from the standpoint of public accountability, it would be desirable to obtain an assessment of the initiative in achieving its expected outcomes. At the time of drafting of this audit, the OCIP administrator provided a status report on premium reductions reported by contractors participating in the OCIP program. Although bond contractors have reported approximately \$370,000 in premiums reductions, OSM staff at this point in the development of the program are reluctant to call these reductions savings to the program. In addition, the impact of the program in increasing MWESB participation is unknown at this time.

8. PROCUREMENT AND CONTRACTING

As discussed in the 2014 bond performance audit, formal procurements in the district are managed and administered by the Purchasing & Contracting Department (P&C). These formal procurements include Invitation to Bid (ITB) for design-bid-build (d-b-b) public improvement contracts; Request for Proposal (RFP) for CM/GC public improvement contracts; and RFP for consultant contracts for architecture, engineering, and categories of contracts called related services. We reviewed a sample of formal procurements for the test period including the ITB for public improvement contracts for IP 2014 and the selection of architects for IP 2015. For the 2014 bond performance audit we had reported on the initial RFP process for the CM/GC contracts for RHS and FHS. This audit includes a further evaluation of the details of the CM/GC contracts that were executed after the reporting period for the 2014 audit

As discussed in the 2014 audit, OSM and FAM manage informal and direct procurements. This audit evaluates the contracts for A/E services for IP 2015-Sci, procured by direct appointment, by OSM/FAM. OSM managed the informal and direct appointment of several specialty consultants, including those for surveying, geotechnical services, commissioning services, and testing and inspection.

Under the CM/GC contract, the CM/GC firm procures subcontracts governed by the negotiated GMP, primarily by publicly advertised bid, but subject to contractual provisions rather than public bidding laws. Prior to the negotiation and execution of the GMP, the CM/GC firm can perform some necessary work under an early work agreement. The CM/GC firms for both Roosevelt HS and Franklin HS each performed work under early work agreements during this audit test period.

IP 2014

We reviewed, in depth, several of the IP 2014 ITB public improvement contract solicitations. All contracts that we reviewed appeared to be procured in accordance with public bidding procedures. Six of the school sites of IP 2014, which were initially packaged together, bid substantially (60+ percent) over the project estimates and the

revised budgets. As permitted by statute and district policy, all bids were rejected and the six-site package was repackaged into three separate bid packages of two schools each. In addition, three other packages were bid with two schools each. While the final bids were still over budget, the accepted bids were 25.6 percent over budget as compared with the original 60+ percent over budget.

One of the lessons learned from IP 2014 is to bid IP work at an ideal of two school sites per bid package, and to bid the work as early as possible to minimize competition with other work in the region. This two-school packaging and earlier bid date scheduling has been integrated into IP 2015 and IP 2015/Science.

Integrity Structures provided a low bid of \$5,622,810 for the Hosford and James John project. The construction firm P&C submitted the next low bid at \$6,225,000. It was determined by OSM that the low bidder did not have the required lead-based paint removal license and the bidder was rejected as being non-responsible. While the project ended up costing approximately \$600,000 more than the original low bid, rejection of the low bidder as being non-responsible was the only appropriate action the district could take and was consistent with state statute and rules.

RECOMMENDATION 18

To increase the likelihood that more bidders will not inadvertently miss some bidding requirements, OSM should consider adding specific statutory responsibility requirements (e.g., lead based testing licensing, as applicable) to future ITBs. In addition, to ensure that responsibility is appropriately reviewed, which is currently the initial task of the project director/manager, OSM should consider amending the SOP to clearly proscribe the responsibility test items that project directors/managers need to consider.

IP 2015 and IP 2015-Sci

We also reviewed the formal RFP solicitation process for the architect for IP 2015 and the direct appointment solicitation process for the architects for IP 2015-Sci. P&C managed the procurement of architect(s) for IP 2015 by formal RFP. As was the case for IP 2013

and IP 2014, and as permitted by P&C rules, the RFP for IP 2015 stated that one or more architects could be hired through a single RFP process. The district received multiple proposals and short-listed three firms for interview. Firms were assessed using the new ranking system that was recommended in the 2014 bond performance audit.

The selection committee elected to propose the award of the contract to one firm. Committee members stated that one firm was hired rather than two or three firms because the one firm clearly demonstrated that it was the most prepared and qualified to do the entire project. Although the RFP permits one or more firms to be hired, it does not provide guidance on the criteria for making this choice. The new ranking system works well for equitably determining the order of the firms that are considered but does not provide guidance as to what degree one firm might be deemed more capable than another firm to perform all of the work.

RECOMMENDATION 19

In order to ensure greater accountability, transparency, and fairness in selection processes, OSM/P&C should ensure that RFPs clearly state the criteria and weighting for making a choice of one or more firms if an RFP permits one or more firms to be selected by an RFP. At the time of the final drafting of this audit, P&C informs us that they are working on this requirement.

For IP 2015-Sci, OSM/FAM determined that the design work could reasonably and appropriately be done by two architecture firms, and that the estimated contract amount for each architecture contract would be under \$100,000. OSM/FAM then proceeded to conduct two direct procurements, soliciting proposals from four firms, two proposals each for the two projects. In the solicitation document, OSM/FAM asked for a price proposal and considered price as one criterion in selection. State statute permits pricing to be considered when procuring architects, engineers, and related services with contracts under \$100,000. However, as pointed out in our 2014 performance audit report, Purchasing and Contracting had inadvertently omitted, in PPS rules, the ability to consider pricing for

contracts under \$100,000. PPS rules prohibit requesting or considering price for architectural and other services under \$100,000 and, as a result, the A/E IP 2015-Sci selection was not compliant with district purchasing rules. (We were informed by P&C at the time of drafting of this audit that this rules revision, and other rule changes, were initially delayed but will be implemented in the summer of 2015).

As mentioned elsewhere in this audit, the SOP does not provide specific guidance for the procurement of architecture contracts by informal or direct means. Consequently, staff does not have sufficient guidance in this area.

RECOMMENDATION 20

In order to avoid non-compliance issues and the risks related to non-compliance, Purchasing and Contracting should continue to update district rules to align with the state model rules and/or intended best practice. OSM and FAM should also consider augmenting internal training sessions with detailed training on public contract procurement law with focus on ORS 279 A, B, C, district P&C rules and policies, BOLI PWR rules and policies, applicable AG rules, and applicable Department of Energy and Construction Contractor Board rules. The training would be particularly valuable for “on-boarding” new staff and as a refresher for existing project and program management staff.

CM/GC procurement for Franklin HS and Roosevelt HS

We reviewed the contracts that were executed on March 17, 2014 for CM/GC services for Roosevelt HS and Franklin HS. According to P&C staff, both selections had been made by mid-January of 2014. The BOE awarded the contracts for pre-construction services for both firms on January 21, 2014.

OSM staff inform us that the nearly two-month delay in executing the contracts could be attributable to several factors including discussions about whether or not the CM/GC firm needed to supply a performance and payment bond for a separate and distinct pre-construction phase. It is our understanding from discussions with OSM project management staff that the one or both CM/GC firms may have attended design meetings, at

their own risk, prior to the execution of the contracts. Both CM/GC projects were on a fast-track to recover time lost in the master planning phase.

RECOMMENDATION 21

In order to reduce the risk of schedule delay, OSM should anticipate and clear obstacles to contract execution so that contracts can be executed, and contractors can begin work as soon as possible on CM/GC and other contracts. In order to reduce financial and legal risk, have contractors begin work only with signed and executed contracts where certificates of insurance have been provided and are valid prior to starting work.

Subsequent to the initial procurement of CM/GC contracts for Roosevelt HS and Franklin HS, contracts were negotiated with the two successful firms. In conformance with industry practice and contractual language both contracts permit certain contractor expenses to be reimbursed, as part of the GMP, whether in the category of Cost of the Work or General Conditions. Unless covered as part of the fee, or otherwise proscribed at specific hourly rates inclusive of normal benefits, the CM/GC's personnel expenses are to be reimbursed at the contractor's cost which is a combination of direct salary cost, government required taxes, and costs and fringe benefits customarily paid by the contractor. According to documents filed on e-Builder, the district negotiated a proscribed markup amount of 62 percent for these additional costs for Franklin HS, for personnel for which all inclusive hourly rates had not been proposed. Although proscribing an average markup potentially saves time compared with evaluating markup for each individual employee, the district has not provided written backup for the basis for the 62 percent. A miscellaneous provision added at the end of the contract, article 19e, precludes the district from auditing the basis for, or the validity of, the 62 percent once it has been agreed to. The miscellaneous provision 19e is problematic for two reasons: (1) it is not good public practice or industry standard to "reimburse" the contractor for costs which are non-auditable; and (2) this clause is non-compliant with district P&C rules PPS-049-0660(5)(e) CM/GC contract requirements for audit. "Cost reimbursement must be made subject to final audit adjustment ..."

RECOMMENDATION 22

In order to be more accountable for expenditure of bond funds, OSM should develop written rationale for the proscribed 62 percent markups for FHS CM/GC personnel costs to be reimbursed by OSM. OSM should also ensure that reimbursements to CM/GC firms are based on actual costs in accordance with contractual requirements. In addition, OSM should remove article 19e from existing and future CM/GC contracts. At the time of final drafting of this audit, OSM informs us that they intend to remove article 19e from the FHS CM/GC contract.

Consistent with industry practice and P&C rules, the CM/GC contracts permit the district to enter into early work agreements with the CM/GC contractors, should work need to occur before a GMP is negotiated. Although there is specific language in the contract about negotiating the GMP, subcontracting requirements, and the costs which are considered part of the fee or GMP, there is no proscriptive language pertaining to early work. Generally, early work is minimal, often involving destructive evaluation of existing building conditions, where costs might be difficult to assess, other than to provide a NTE limit or a lump sum. Both Roosevelt HS and Franklin HS have had such work, and at minimal expense compared to the total contract cost.

It was contemplated when the RFP for Franklin HS was issued that the contract with the CM/GC firm for Franklin HS might be amended to include the renovation of Marshall HS as an interim instructional space for the Franklin HS students while Franklin HS is being modernized. An early work agreement, in excess of \$2 million, was negotiated with the Franklin HS CM/GC for the bulk of the work at Marshall HS. The CM/GC contractor solicited bids through public notification (e.g., ads in various papers), and developed a price for the work at Marshall HS based on the solicited bids, allowances, contingency, and the CM/GC's fee. An early work agreement was negotiated and executed for a specific price based on those numbers. Although the early work agreement is written as a lump sum amount, the CM/GC firm and OSM managed it as if it were a mini-GMP.

RECOMMENDATION 23

In order to manage cost and risk for future CM/GC contracts, OSM should modify contract language to provide more specificity about how early work may occur including the use of mini-GMPs which would be subject to the contract provisions pertaining to GMPs, except as specifically exempted. Where practical, negotiate substantive early work as mini-GMP's as opposed to lump sums.

9. PUBLIC ENGAGEMENT AND COMMUNICATION

In coordination with the Community Involvement and Public Affairs department, the OSM has continued to plan and conduct a number of processes to engage and communicate with the public and internal stakeholders about the school bond program and its specific projects. Communication and public engagement was particularly important in 2014 as Roosevelt and Franklin high schools underwent schematic design and design development. To assess how well OSM and CIPA conducted public engagement and communication efforts, we analyzed the degree to which 2014 recommendations were implemented and communication and outreach activities were carried out. We also identified opportunities to further enhance the performance communication and engagement efforts.

Bond Program communications plan finalized

As recommended in our 2014 audit report, OSM finalized a Bond Communications Plan in December of 2014. Major features of the plan include primary goals, key messages, strategic priorities, and a variety of tactics to achieve the goals.

- *Primary goals* of the plan are to make the successes of the bond program broadly visible, to raise awareness of the benefits of the program on students and families and to build support for future bonds that will improve the learning environment of all PPS schools.
- *Key messages* are 1) projects are completed on time, on budget, and to quality standards, and 2) improvements build better learning environments for students.

The plan identified 8 strategic *priorities* and 20 different *tactics* to achieve the goals of the plan. Some of the priorities are to demonstrate that PPS is a good steward of public dollars, to communicate clearly and directly with affected communities in multiple ways, and to evaluate the impact of public engagement activities. Other priorities included the creation of strategic communication plans for each project, preparation of a variety of printed materials for families and businesses, and the use of email to send regular updates to the internal PPS community.

Communication *tactics* identified in the plan ranged from creating videos that highlight various bond projects, better utilizing social media opportunities, and using the bond website as the primary conduit for bond program information. Tactics also included auto-dialer notices about upcoming meetings and events, regular communication meetings attended by program and project managers, and use of survey instruments to collect information on the success of public engagement and communication tactics.

OSM also added a new priority to the communication plan that was not clearly identified in the previous draft plan: specifically, to provide clarity to the public on what type of feedback the district is seeking during design phases and how the feedback will be used by project teams. One tactic to address this priority is to revise frequently asked questions (FAQ) materials to clearly identify how public input will be used during master planning and schematic design and how decisions will be influenced by public engagement.

OSM also developed several standard operating procedures related to communication and public engagement. Specifically, SOPs were prepared creating bond videos, preparing print materials, sending auto-dialer event-based alert messages, and creating email messages. In addition, SOPs were prepared for school closing and reopening ceremonies and tours.

To improve coordination and management of communication efforts, OSM also created a new bond-funded position of Communications Manager within OSM reporting to the Chief, School Modernization.

Extensive public engagement and communication activities

Our review of public engagement and communication activities indicates that OSM and CIPA continue to conduct extensive outreach and communication in accordance with the priorities and tactics identified in the bond communication plan. A variety of methods have been used to inform, consult, and involve internal and external stakeholders in the bond program and projects. The listing below shows some of the most important efforts.

- Provided information on summer IP 2014 projects to teachers and parents at back-to-school nights, supplemented by flyers, fact-sheets, posters, and email announcements. Construction work performed was detailed on PPS bond website
- Created 10 videos on the summer improvement project and major modernization projects that are accessible from the PPS bond website
- Held over 20 meetings with school administrators at Franklin and Roosevelt high schools to discuss modernization plans and designs
- Held over 40 meetings with teachers and staff at Franklin and Roosevelt high schools to discuss schematic design and design development
- Held 12 and 14 Design Advisory Group meetings (DAG), respectively, at Franklin and Roosevelt high schools
- Met with 33 Roosevelt high school area community groups including St. Johns Neighborhood Association, business associations, Roosevelt HS partners, Asian Pacific American chamber of commerce, African-American family night, and summer night series
- Attended 16 meetings with community groups including neighborhood associations in the Franklin high school attendance area
- Met over 40 times with internal PPS stakeholders including facilities maintenance, transportation, nutrition, IT/Media relations, and security
- Held 8 student group meetings at Franklin and Roosevelt high schools to discuss master planning, schematic design, and design development
- Invited parents, the community, and design group to over 15 tours of other schools with recent upgrades and modernizations

It is clearly evident that OSM and CIPA have provided additional visibility for the bond program by disseminating a significant amount of information and engaging the public in a number of ways over the course of first two years of the bond program. Our review shows that the vast majority of the strategies and tactics contained in the plan have been implemented. Moreover, the program has strived to improve by holding at least 6 internal “lessons learned” meetings to assess the success of the DAG structures, design workshops and open houses, public meetings, and communication efforts. These internal

assessments have identified ways to strengthen bond program public engagement and communications. Some of needs identified in these meetings include more clarity on the role and responsibilities of the Design Review Groups including broader recruitment and training of DAG members, earlier outreach to community leaders and organizations to identify concerns and potential flashpoints, and more frequent updates and refreshing of the bond website.

We also found that none of the existing projects have developed a project communication plan that is called for in the communications plan. In addition, a template for what this plan should include is still under development. The current, active modernization projects and replacement projects may lack plans because they have moved forward before the requirements and guidelines for communication plan were finalized. Nevertheless, we believe that preparing a project communication plan prior to initiating major phases of the project would help project directors manage their workload better, ensure that all community groups are identified and included, and involve teachers, administrators, and internal stakeholders earlier and more completely.

It is also difficult to determine how successful public engagement and communication these efforts have been in achieving other goals of the communication plan – raising public awareness of the benefits and building support for future bonds. In order to determine if communication activities are having their intended effect, it would be helpful to evaluate stakeholder knowledge about the bond, satisfaction with opportunities for input and collaboration with the district, and the degree to which the public has confidence in the fiscal stewardship of the district. The 2014 Communications Plan also indicates that evaluating the impact of public engagement activities is a strategic priority. The district has conducted a district wide survey to determine public perceptions and priorities for Portland schools. Several questions in the survey assessed public sentiment regarding bond spending.

RECOMMENDATION 24

In order to improve public engagement with the bond program and its projects, OSM and CIPA should ensure that project communication plans are prepared at the start of new projects. This plan should clearly identify the communication and public engagement activities that will be undertaken including when and how frequently community groups, teachers, administrators, and other stakeholders will be involved. Integrate into the project communication plans lessons learned, if available, from prior and comparable community and staff engagement efforts.

Teacher involvement in planning decisions

At the request of some members of the school board, we spent considerable time reviewing the degree to which teachers were involved in planning and design decisions for the two high school modernization projects at Franklin and Roosevelt high schools. We found that teachers and staff had significant opportunities to participate in the development of the Long Range Facility Plan, school master plans, and at the schematic design and design development phases. Over 70 teachers and staff participated in the LRFP modern learning environment symposium held in February of 2012, of which 19 teachers and staff were from Franklin, Roosevelt, and Grant high schools. In addition, as described above, OSM staff held numerous meetings with teachers and staff to discuss Franklin and Roosevelt high school master plans, the schematic design, and the design development. Often these meetings were with different academic disciplines such general education, athletics, performing arts, counseling, and science. According to high school project directors these meetings were generally well attended and there was interactive participation with teachers. In fact, teacher involvement during the design process, directly and indirectly, contributed to the recognition for the increase in CTE space, and the recognition of the need for classrooms of different sizes, and additional classrooms.

However, we also found that teacher and administrator participation during one key element of the planning phases for high school modernizations was minimal. Specifically, while OSM held three meetings with teachers and two meetings with administrators to

discuss Education Specifications area programs, on average, only three teachers each from Grant HS, Franklin HS and Roosevelt HS attended the first meeting and only one teacher each from these schools attended the final meetings when draft spatial decisions (number of classrooms, CTE area space, and teacher offices) were decided.

Various factors may have contributed to the low attendance of the meetings including the time of year (meetings held end of May and June, and early July of 2013) and the influence of challenging concurrent teacher union negotiations. As a result, some critical decisions established in the draft high school Education Specifications area program, such as the utilization and number of teacher classrooms, the expansion of teacher offices, and the type and size of career education space, received minimal input from teachers. According to interviews with OSM and the Offices of Teaching and Learning and School Performance, teachers did not fully understand or embrace the concept of teachers not “owning their classrooms,” sharing classrooms, and spending their non-teaching periods in teacher offices. This factor proved challenging during the master planning and the development of schematic designs, and likely delayed the final completion of Educational Specifications and contributed, along with other factors, to the delay in the finalization of schematic design

The Offices of Teaching and Learning and School Performance inform us that more active academic and building leadership during this time may have helped teachers engage more and both shape and accept the new learning model expressed in the draft Educational Specification standards.

RECOMMENDATION 25

In order to fully engage teachers and building administrators in decisions regarding high school design and educational program areas, OSM and PPS academic leadership should jointly develop an involvement plan that reaches out to all teachers and administrators, ensures meetings are scheduled at optimal times, and fosters on-going dialogue. As non-bond funding permits, the plans could include the formation of teacher leadership teams and assignment of academic leaders and liaisons.

10. EQUITY IN PUBLIC PURCHASING AND CONTRACTING

OSM's performance in achieving the objectives of the school district's Equity in Purchasing and Contracting policy continues to improve but the results continue to be mixed. As required by the policy, OSM strives to achieve three objectives:

1. **Business equity:** An aspirational goal that 18 percent or more of the payments made for consulting services (PPS Division 48) and construction contracts (PPS Division 49) will be paid to firms certified by the state as minority- or women-owned businesses, or as emerging small businesses (MWESB).
2. **Contractor workforce equity:** For public improvement projects with a value of \$200,000 and subcontracts of \$100,000, the contractor will ensure that a minimum of 20 percent of labor hours in each apprenticeable trade are performed by state-registered apprentices, and the contractor will participate in outreach and other efforts to create an apprenticeship program that reflects the diversity of the Portland metropolitan area.
3. **Career learning equity:** Provide career learning opportunities for students, particularly young people of color and women, in various career paths including but not limited to architecture, engineering, building trades and construction work and other related services. Contractors with contracts exceeding \$100,000 are required to register on the district's career database and offer career learning opportunities such as job shadows, guest speaker, informational interviews, and career and workforce days and fairs.

Business equity

OSM continue to have difficulty reaching its aspirational goal for the business equity objective of the equity policy. As of March 2015, the percent of bond invoice payments made to MWESB owned consultants and contractors averaged about 10 percent, less than the aspirational goal of 18 percent established by the district's Administrative Directive. As shown in the table below, approximately \$40.8 million in invoice payments have been made to firms that hold consultant and construction contracts under PPS Division 48 and Division 49 purchasing rules. Contractors (Division 49) submitted invoices totaling \$27.2

million of which \$1.5 million was paid to MWESB firms (5.6 percent). Consultants (Division 48) submitted invoices totaling \$13.5 million of which \$2.6 million was paid to MWESB firms (18.9 percent).

Figure 15 Percent of bond program payments to MWESB firms (consultants and contractors): March 2015

TYPE OF CONTRACT/PURCHASE	Total invoices paid	Payments to MWESB firms	% to MWESB firms
Division 48 – A&E, survey & related services	\$13.5 m	\$2.6 m	18.9%
Division 49 – Public Improvements	\$27.2 m	\$1.5 m	5.6%
TOTAL 48 and 49 contracts	\$40.8 m	\$4.1 m	10.0%

Source: OSM MWESB Invoice spreadsheet March 2015

OSM has made a number of efforts to increase the share of paid bond program invoices to MWESB firms.

- Bidders on public improvement contracts must show evidence that they have contacted or solicited sub-bids from registered MWESB firms.
- OSM can weigh candidate practices regarding their history in hiring minority, women, and emerging small businesses when screening and selecting consultants. OSM has placed a weighting of a range of 5 to 20 points for the screening of proposals and interviews, for how firms responded to this criterion.
- Selection of CM/GC firms is based in part on practices used by the firms to address socio-economic factors such as hiring MWESB sub-contractors. OSM has placed a weighting of a range of 10 to 20 points, for the screening of proposals and interviews, for how the firms responded to this criterion.
- All contracts include requirements to make good faith efforts to meet MWESB aspirational goals.

- OSM established the Owner Controlled Insurance Program to relieve contractors and subcontractors from the cost of liability insurance to encourage more small businesses and MWESB to bid on OSM projects.
- OSM reached out to MWESB contractors and consultants to encourage them to bid and propose on bond program contracts.

Efforts to establish firm targets, as opposed to aspirational goals, for selecting MWESB participation in contracts are constrained by case law. One relevant judicial decision that is cited in the AG’s last Model Public Contract Rules Manual would appear to have direct application to PPS, in that it is within the same jurisdiction that the original decision was rendered. The federal district court case, *L. D. Matson vs. Multnomah County* (Appendix E) found that, barring a study showing a historical practice of past discrimination, establishing goals and set-asides for protected classes (e.g. minority and women business enterprises) in public contracting violated equal protection laws of the U.S. Constitution.³ PPS and other public agencies in Oregon have attempted to address the legal barriers by establishing “aspirational goals” for MWESB selection rather than mandatory goals and by widening the class of contractors to whom these aspirational goals apply to include the non-protected class of emerging small business enterprises. Excerpts from Oregon statute pertaining to MWESB requirements for procurement are included in appendix F.

Further constraining public agency ability to establish set-asides for MWESB firms is Oregon state law (ORS 279C) that requires public improvement contracts over \$100,000 to be awarded to responsive, qualified firms who provide the lowest bid and the lowest subcontractor prices. While state law permits agencies to waive competitive bids for contracts under \$100,000, it prohibits breaking projects into smaller amounts to avoid the competitive bid requirements.

Oregon statutes governing the selection of consultants (architects, engineers, and related services) permit direct procurement of contracts under \$100,000 (no competitive procurement). For consultant contracts over \$100,000, public agencies may consider

³ *L.D. Matson vs Multnomah Co*, US District Court of Oregon, 1988

several criteria to score proposals and select firms such as a candidates historical use of MWESB sub-consultants. The ability to select qualified consultants based on criteria other than low bid alone provides more opportunities to award contracts to MWESB firms, as illustrated by the relative higher percent of invoices paid to MWESB consulting firms participating in OSM projects compared to competitively bid construction firms. OSM indicates that legal counsel has advised them that holding consultants to specific goals for MWESB participation may also be restricted due to case law.

Despite the legal barriers to establishing specific goals and set-asides for MWESB firms, OSM also has significant opportunities to address the business equity objectives of the district's Equity in Purchasing and Contracting policy due to the decision to use CM/GC alternative contracting process for major high school modernization projects. Following the requirements in state law, the Board of Education exempted Franklin and Roosevelt public improvement contracts from competitive bidding allowing the selection of CM/GC firms to be based in part on how the firms would address the MWESB aspirational goal of 18 percent of paid invoices to MWESB firms. The PPS contract with the CM/GC firms requires the firms to meet the good faith efforts in soliciting subcontracts. In addition, in accordance with their contracts, the firms have more latitude when procuring subcontracts to break down elements of the work into smaller procurement components in order to encourage greater MWESB participation.

Student participation

OSM made significant progress in 2014 in addressing the student participation objective of the Equity in Purchasing and Contracting policy, meeting all their goals in three categories of activities. As shown in the figure below, for all eligible active contracts in 2014, 3,800 students participated in group activities such as job fairs, 1,100 students participated in short-term activities such as mock interviews, and 33 students participated in long-term activities such as internships. Overall, OSM reports that over 4,900 individual students were served in some way and contractors contributed 667 hours to helping students participate in bond activities.

Figure 16 Student participation in bond activities in 2014

TYPE OF ACTIVITY	# of participants	GOAL
Group activities – career fairs, guest speakers	3,800	>500 students
Short-term activities – job shadows, mock interviews	1,100	>50 students
Long-term activities – internships, project learning	33	>10 students

Source: OSM spreadsheet on 2014 student participation activities

Workforce equity

OSM made progress in 2014 toward addressing the workforce equity objective of the equity policy. In accordance with the contract language, 13 prime contractors and 11 subcontractors from IP 2014 and Marshall Swing projects participated in the Workforce Training and Hiring Program administered by the City of Portland. As shown in the table below, 10 of these 13 contractors (77 percent) met the requirement that at least 20 percent of labor hours in each apprenticeable trade were performed by state registered apprentices. All but one of the contractors registered as a Training Agent with the Bureau of Labor and Industries and submitted work plans indicating how they would make reasonable efforts to employ a workforce that reflected the diversity of the City of Portland.

**Figure 17 OSM contractors participating in Workforce Training & Hiring Program:
Percent of labor hours performed by registered apprentices**

CONTRACTOR	% of carpenter hours	% of laborer hours	% of electrician hours	% of other trades hours
GB Manchester	<i>n.a.</i>	<i>n.a.</i>	33%	<i>n.a.</i>
Payne Construction	22%	0%	<i>n.a.</i>	<i>n.a.</i>
McDonald and Wetle	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	50%
2KG Contractors	29%	34%	<i>n.a.</i>	<i>n.a.</i>
Anderson Roofing	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	27%
ABC Roofing	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	19%
Baldwin General Contracting	0%	0%	<i>n.a.</i>	<i>n.a.</i>
P & C Construction	28%	23%	<i>n.a.</i>	<i>n.a.</i>
Arrow Roofing and Sheet Metal	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>	36%
Piper Mechanical	<i>n.a.</i>	<i>n.a.</i>	45%	n/a
Emerick Construction Co	20%	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
Konell Construction and Demo	23%	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>
Point Monitor	39%	<i>n.a.</i>	<i>n.a.</i>	<i>n.a.</i>

Source: OSM spreadsheet of contractor apprenticeship hours

RECOMMENDATION 26

To help improve MWESB participation in bond program contracts, we recommend that OSM take the following actions:

1. Update CM/GC GMP amendments to comply with audit recommendation #15 from the 2014 performance audit report. Specifically, to provide more flexibility in the selection of subcontractors PPS contracts should allow the CM/GC firms to procure subcontractors by methods other than competitive advertised bids. Such contract change is not subject to updating of the P&C rules.
2. Obtain a written legal opinion about best practices and risks in addressing MWESB procurement aspirational goals.

RECOMMENDATIONS

RECOMMENDATION 1 (p. 22)

In order to improve compliance with PPS contracts and general conditions, OSM should ensure that change order work occur only upon appropriately authorized change order execution. Where price cannot be initially fairly and equitably determined, and schedule is critical, authorize work on e-Builder to begin under a negotiated not-to-exceed (NTE) limit with the actual cost to be determined based on criteria set by OSM/FAM either on a lump sum or actual cost basis. Make appropriate modification to e-Builder so that the NTE limit can be “replaced” by the actual negotiated cost.

RECOMMENDATION 2 (p. 23)

In order to minimize delays and avoid risk related to potential delays, OSM should continue to streamline the submittal process on e-Builder. OSM should consider providing more e-Builder training to contractors, architects, and new OSM/FAM staff, and developing an in-depth “How To” manual of typical e-Builder processes .

RECOMMENDATION 3 (p. 23)

In order to ensure greater consistency throughout district schools and to benefit from past learning, OSM should incorporate appropriate design recommendations from IP lessons learned into the District Design Standards. Similarly, OSM should incorporate appropriate project management recommendations into the Standard Operating Procedures (SOP).

RECOMMENDATION 4 (p. 34)

To help the program complete bond projects as planned and to respond to financial risk, we recommend that OSM develop plans for utilizing available contingencies and reserves to address future project escalation needs, options for restoring the budgets of 2018 and 2019 future summer improvement projects, and establishing sufficient budgets for master planning projects.

RECOMMENDATION 5 (p. 39)

In order to maintain reasonable control over the expenditure of funds within the CM/GC GMP, OSM should establish written policies and procedures in the SOP pertaining to GMP spending, approval protocols, guiding staff on reviewing and approving GMP contingency use, and establish criteria for the use of unobligated GMP amounts that could be returned to OSM as savings.

RECOMMENDATION 6 (p. 41)

In order to complete projects as proposed in the approved bond, OSM should consider increasing the funding for master planning budgets to more optimal levels if additional resources are available to the program .

RECOMMENDATION 7 (p. 42)

In order to establish more useful and current guidance documents for future high school master plans, OSM/FAM should meaningfully and fully involve user groups and stakeholders in updating the Long Range Facility Plan and Educational Specifications to reflect current decisions on high school size, capacity, and classroom models. OSM/FAM should also establish new standards for focus option high schools such as Benson HS. The revised documents should be completed before master planning begins for any of the three schools of the potential next bond.

RECOMMENDATION 8 (p. 45)

In order to improve the usefulness of the PMP, OSM should update the currently posted PMP to ensure it is complete, accurate, and current. Updating is needed for information on project schedules, project budget evolution, key performance metrics, Educational Specifications and the LRFP, and prevailing wage requirements. Alternatively, to save staff time required to maintain and update the PMP, OSM could instead of updating the PMP provide references in the PMP to current OSM procedures and reports pertaining to project schedules and budgets, and performance metrics.

RECOMMENDATION 9 (p. 46)

In order to improve project management and reduce project risks, critical elements of the PTMP should be put in place at the beginning of each project. These essential and critical elements would include the identification and potential mitigation of risk with regard to budget, schedule, scope, safety, quality, and communications. If the bulk of the PTMP is to be drafted by the CMs for modernization projects just prior to

construction, ensure the timely hire and assignment of CMs to these projects to begin this work and other crucial elements of preparing for construction.

RECOMMENDATION 10 (p. 47)

In order to control risk for the entire program, OSM should only use escalation reserve to fund scope changes when a current projection of escalation indicates that escalation will not be needed for the remaining projects of the program. If program needs require use of escalation for other purposes, the risks related to non-fully escalated projects should be understood and reported, and a potential mitigation plan for those additional risks should be developed.

RECOMMENDATION 11 (p. 49)

In order to improve the usefulness and effectiveness of e-Builder, OSM should continue to develop systems for uniform filing of documents in e-Builder and to ensure that the systems are used by project management teams and the OSM program management. Work with Purchasing and Contracting and OSM staff to develop a way to post RFP and ITB information for formal procurements, currently housed on P&C drives, to e-Builder. Ensure that solicitation documents, including informal RFPs and scoring sheets managed by OSM/FAM and stored on the OSM/FAM X-drives, are appropriately filed in e-Builder. Amend the language of the PMP, the SOP, e-Builder manuals, and the public improvement contracts, to incorporate the process for contract change processes via e-Builder.

RECOMMENDATION 12 (p. 50)

In order for the SOPs to be a more useful tool for project managers and directors, OSM should clarify where and when SOP requirements and procedures are proscribed for CM/GC projects and/or for design-bid-build projects.

RECOMMENDATION 13 (p. 50)

In order to improve the utility and effectiveness of the SOP, OSM should revise the SOP to provide greater explanation of and requirements for value engineering, Project Safety and Security Plans, Site Safety Plans and project quality.

RECOMMENDATION 14 (p. 51)

In order to reduce risk for non-compliance with public contracting requirements, OSM should update the SOP to provide more accurate detail for the procurement of personal services contracts (including contracts for A/E and related services), with particular consideration of PPS rules for direct procurement, informal and intermediate

procurement Update the SOP to provide more detailed and accurate information with respect to the alternative contracting procurement, including CM/GC procurement.

RECOMMENDATION 15 (p. 53)

In order to improve the accuracy and clarity of Design Standards, OSM should clarify which projects require the use of 1.5 percent of the public improvement contract amount for green technology by identifying the eligible sources for use of these funds or by referencing the applicable Department of Energy Rules. Provide guidance on potential green technology methodologies that might be preferred by the district. In addition, because many of the procurement requirements in the Design Standards are out-of-date, and perhaps superfluous now that there is an SOP, consider deleting procurement requirements in entirety from the Design Standards and referring users to the PPS District Contracting Rules and SOP.

RECOMMENDATION 16 (p. 55)

To improve the rigor and completeness of the Balanced Scorecard reporting tool, OSM should consider revising elements of the budget perspective reporting to ensure users of the reporting tool have a more complete understanding of budget to actual comparisons by including comparisons to original and revised budgets. This could involve additional objective criteria or additional narrative or highlighted points

RECOMMENDATION 17 (p. 60)

In order to control the percent of program budget spent on management oversight, OSM should identify opportunities for savings in payroll and management support line items. Likely areas of for consideration would be those line items with lower spending than expected, the largest budgeted items, and positions with potential declining workload in the final years of the program.

RECOMMENDATION 18 (p. 64)

To increase the likelihood that bidders will not inadvertently miss some bidding requirements, OSM should consider adding specific statutory responsibility requirements (e.g., lead based testing licensing, as applicable) to future ITBs. In addition, to ensure that responsibility is appropriately reviewed, which is currently the initial task of the project director/manager, OSM should consider amending the SOP to clearly proscribe the responsibility test items that project directors/managers need to consider.

RECOMMENDATION 19 (p. 65)

In order to ensure greater accountability, transparency, and fairness in selection processes, OSM/P&C should ensure that RFPs clearly state the criteria and weighting for making a choice of one or more firms if an RFP permits one or more firms to be selected by an RFP. At the time of the final drafting of this audit, P&C informs us that they are working on this requirement.

RECOMMENDATION 20 (p. 66)

In order to avoid non-compliance issues and the risks related to non-compliance, Purchasing and Contracting should continue to update district rules to align with the state model rules and/or intended best practice. OSM and FAM should also consider augmenting internal training sessions with detailed training on public contract procurement law with focus on ORS 279 A,B,C, district P&C rules and policies, BOLI PWR rules and policies, applicable AG rules, and applicable Department of Energy and Construction Contractor Board rules. The training would be particularly valuable for “on-boarding” new staff and as a refresher for existing project and program management staff.

RECOMMENDATION 21 (p. 67)

In order to reduce the risk of schedule delay, OSM should anticipate and clear obstacles to contract execution so that contracts can be executed and contractors can begin work as soon as possible on CM/GC and other contracts. In order to reduce financial and legal risk, have contractors begin work only with signed and executed contracts where certificates of insurance have been provided and are valid prior to starting work.

RECOMMENDATION 22 (p. 68)

In order to be more accountable for expenditure of bond funds, OSM should develop written rationale for the proscribed 62 percent markups for Franklin HS CM/GC personnel costs to be reimbursed by OSM. OSM should also ensure that reimbursements to CM/GC firms are based on actual costs in accordance with contractual requirements. In addition, OSM should remove article 19e from existing and future CM/GC contracts. At the time of final drafting of this audit, OSM informs us that they intend to remove article 19e from the FHS CM/GC contract.

RECOMMENDATION 23 (p. 69)

In order to manage cost and risk for future CM/GC contracts, OSM should modify contract language to provide more specificity about how early work may occur including the use of mini-GMPs which would be subject to the contract provisions pertaining to GMPs, except as specifically exempted. Where practical, negotiate substantive early work as mini-GMP's as opposed to lump sums.

RECOMMENDATION 24 (p. 74)

In order to improve public engagement with the bond program and its projects, OSM and CIPA should ensure that project communication plans are prepared at the start of new projects. This plan should clearly identify the communication and public engagement activities that will be undertaken including when and how frequently community groups, teachers, administrators, and other stakeholders will be involved. Integrate into the project communication plans lessons learned, if available, from prior and comparable community and staff engagement efforts.

RECOMMENDATION 25 (p. 75)

In order to fully engage teachers and building administrators in decisions regarding high school design and educational program areas, OSM and PPS academic leadership should jointly develop an involvement plan that reaches out to all teachers and administrators, ensures meetings are scheduled at optimal times, and fosters on-going dialogue. As non-bond funding permits, the plans could include the formation of teacher leadership teams and assignment of academic leaders and liaisons.

RECOMMENDATION 26 (p. 81)

To help improve MWESB participation in bond program contracts, we recommend that OSM take the following actions:

1. Update CM/GC GMP amendments to comply with audit recommendation #15 from the 2014 performance audit report. Specifically, to provide more flexibility in the selection of subcontractors PPS contracts should allow the CM/GC firms to procure subcontractors by methods other than competitive advertised bids. Such contract change is not subject to updating of the P&C rules.
2. Obtain a written legal opinion about best practices and risks in addressing MWESB procurement aspirational goals.

MANAGEMENT RESPONSE



PORTLAND PUBLIC SCHOOLS

501 North Dixon Street / Portland, OR 97227
Telephone: (503) 916-3200 / Fax: (503) 916-3110
Mailing Address: P. O. Box 3107/97208-3107
Email: csmith1@pps.net

Carole Smith
Superintendent

OFFICE OF THE SUPERINTENDENT

May 13, 2015

Hirsh and Associates
PO Box 5575
Eugene, Oregon 97405

Dear Mr. Hirsh & Mr. Tracy:

Thank you for your thorough review of Portland Public Schools' 2012 School Improvement Bond Program. We are always looking for opportunities to improve work processes and recognize that we are accountable and responsible to produce quality work, on time, on budget and complying with procurement policies.

I have reviewed the draft version of the Performance Audit and appreciate the breadth and depth of your work. Your recommendations will assist us in managing the eight year program. Many of your audit recommendations dovetail nicely with work underway; you have also suggested some new actions we can take.

Based on our review of the draft version of Performance Audit #2 dated May 2015 we have developed responses to each of your 26 recommendations. Three of these are already completed. I expect 22 of these will have a goal of implementation by December 31, 2015. Our intent is to provide an update in January 2016. This will support your work during Audit#3.

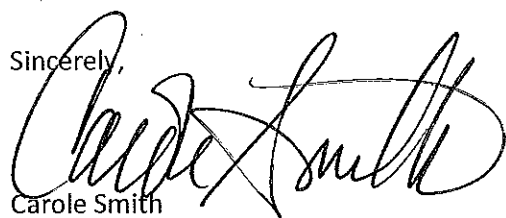
Each response contains one of the following statements:

- Concur - Goal is to implement recommendation by December 31, 2015
- Concur with Comment - Goal is to implement recommendation by December 31, 2015 with qualifying comments
- Nonconcur - Recommendation may not be implemented with comments to explain
- Completed – Recommendation already implemented

The following table presents a tabulated summary of the PPS's responses.

Audit Recommendation	Topic	Dept	Response
#1	Program Management	OSM	Concur
#2	Program Management	OSM	Concur
#3	Program Management	OSM	Concur
#4	Program Management	OSM	Concur with comment
#5	Program Management	OSM	Concur with comment
#6	Program Management	OSM	Concur with comment
#7	Program Management	OSM	Concur
#8	Program Management	OSM	Concur
#9	Program Management	OSM	Concur
#10	Program Management	OSM	Completed
#11	Program Management	OSM/P&C	Concur with comment
#12	Program Management	OSM	Concur
#13	Program Management	OSM	Concur
#14	Program Management	OSM	Concur
#15	Program Management	OSM	Concur
#16	Program Management	OSM	Nonconcur
#17	Program Management	OSM	Concur with comment
#18	Purchasing & Contracting	OSM/P&C	Completed
#19	Purchasing & Contracting	OSM/P&C	Completed
#20	Purchasing & Contracting	OSM/P&C	Concur
#21	Program Management	OSM	Concur
#22	Program Management	OSM	Concur
#23	Program Management	OSM	Concur
#24	Program Management & Communications	OSM/CIPA	Concur
#25	Program Management	OSM	Concur
#26	Program Management & Purchasing and Contracting	OSM/P&C	Concur with comment

Attached is our written response to your findings and recommendations. Please contact me if you have any questions or comments. Thanks again for the hard work and time spent with our Team and your efforts to identify areas for improvement.

Sincerely,

 Carole Smith
 Superintendent

RECOMMENDATION 1 (p. 22)

In order to improve compliance with PPS contracts and general conditions, OSM should ensure that change order work occur only upon appropriately authorized change order execution. Where price cannot be initially fairly and equitably determined, and schedule is critical, authorize work on e-Builder to begin under a negotiated not-to-exceed (NTE) limit with the actual cost to be determined based on criteria set by OSM/FAM either on a lump sum or actual cost basis. Make appropriate modification to e-Builder so that the NTE limit can be “replaced” by the actual negotiated cost.

STAFF RESPONSE: Concur

RECOMMENDATION 2 (p. 23)

In order to minimize delays and avoid risk related to potential delays, OSM should continue to streamline the submittal process on e-Builder. OSM should consider providing more e-Builder training to contractors, architects, and new OSM/FAM staff, and developing an in-depth “How To” manual of typical e-Builder processes.

STAFF RESPONSE: Concur

RECOMMENDATION 3 (p. 23)

In order to ensure greater consistency throughout district schools and to benefit from past learning, OSM should incorporate appropriate design recommendations from IP lessons learned into the District Design Standards. Similarly, OSM should incorporate appropriate project management recommendations into the Standard Operating Procedures (SOP).

STAFF RESPONSE: Concur

RECOMMENDATION 4 (p. 34)

To help the program complete bond projects as planned and to respond to financial risk, we recommend that OSM develop plans for utilizing available contingencies and reserves to address future project escalation needs, options for restoring the budgets of 2018 and 2019 future summer improvement projects, and establishing sufficient budgets for master planning projects.

STAFF RESPONSE: Concur with comment

Planning for potential unexpected scope, schedule or cost events is a primary function of OSM at both project and program level. OSM has developed plans and taken actions to compensate for the budget and scope changes that have occurred to date and have plans to compensate for future potential needs. The current bond scope and budget will complete all bond projects identified in the bond language and communicated to the PPS community.

RECOMMENDATION 5 (p. 39)

In order to maintain reasonable control over the expenditure of funds within the CM/GC GMP, OSM should establish written policies and procedures in the SOP pertaining to GMP spending, approval protocols, guiding staff on reviewing and approving GMP contingency use, and establish criteria for the use of unobligated GMP amounts that could be returned to OSM as savings.

STAFF RESPONSE: Concur with comment

OSM has already implemented project processes and procedures to review and approve GMP encumbrances and contingency/allowance balances. OSM will memorialize these procedures in the updated SOP.

RECOMMENDATION 6 (p. 41)

In order to complete projects as proposed in the approved bond, OSM should consider increasing the funding for master planning budgets to more optimal levels if additional resources are available to the program.

STAFF RESPONSE: Concur with comment

OSM agrees the master planning projects should be budgeted to match project scope. OSM is currently reviewing the individual master planning efforts to determine appropriate and necessary scope of work as well as commensurate budgets.

RECOMMENDATION 7 (p. 42)

In order to establish more useful and current guidance documents for future high school master plans, OSM/FAM should meaningfully and fully involve user groups and stakeholders in updating the Long Range Facility Plan and Educational Specifications to reflect current decisions on high school size, capacity, and classroom models. OSM/FAM should also establish new standards for focus option high schools such as Benson HS. The

revised documents should be completed before master planning begins for any of the three schools of the potential next bond.

STAFF RESPONSE: Concur

The Comprehensive High School Education Specification version 2.0, anticipated for completion June 30, 2015, will reflect the BOE approved changes to Franklin and Roosevelt high schools' enrollment as well as additional criteria. This EdSpec will guide the development of Grant High School's master plan. This means that all high schools designed and developed as part of the 2012 School Building Improvement Bond are comparable in scope and budget.

The Comprehensive High School Education Specification version 3.0, anticipated for completion August 2015, will further refine the additional criteria as regards teacher:student ratios, and will guide the development of Lincoln and Madison high schools' master plans.

One of the initial deliverables for the Benson High School master plan design team will be a Polytechnic High School Education Specification specific to that school and its curriculum.

RECOMMENDATION 8 (p. 45)

In order to improve the usefulness of the PMP, OSM should update the currently posted PMP to ensure it is complete, accurate, and current. Updating is needed for information on project schedules, project budget evolution, key performance metrics, Educational Specifications and the LRFP, and prevailing wage requirements. Alternatively, to save staff time required to maintain and update the PMP, OSM could instead of updating the PMP provide references in the PMP to current OSM procedures and reports pertaining to project schedules and budgets, and performance metrics.

STAFF RESPONSE: Concur

RECOMMENDATION 9 (p. 46)

In order to improve project management and reduce project risks, critical elements of the PTMP should be put in place at the beginning of each project. These essential and critical elements would include the identification and potential mitigation of risk with regard to budget, schedule, scope, safety, quality, and communications. If the bulk of the PTMP is to be drafted by the CMs for modernization projects just prior to construction, ensure the

timely hire and assignment of CMs to these projects to begin this work and other crucial elements of preparing for construction.

STAFF RESPONSE: **Concur**

RECOMMENDATION 10 (p. 47)

In order to control risk for the entire program, OSM should only use escalation reserve to fund scope changes when a current projection of escalation indicates that escalation will not be needed for the remaining projects of the program. If program needs require use of escalation for other purposes, the risks related to non-fully escalated projects should be understood and reported, and a potential mitigation plan for those additional risks should be developed.

STAFF RESPONSE: **Completed**

Existing policies and practices already meet this recommendation. The 2012 School Building Improvement Bond escalation reserve has been fully allocated due to post-recession construction inflation in excess of that which was predicted.

Both the 2013 and 2015 bond premiums are supplementing the program's need for escalation on a project by project basis.

RECOMMENDATION 11 (p. 49)

In order to improve the usefulness and effectiveness of e-Builder, OSM should continue to develop systems for uniform filing of documents in e-Builder and to ensure that the systems are used by project management teams and the OSM program management. Work with Purchasing and Contracting and OSM staff to develop a way to post RFP and ITB information for formal procurements, currently housed on P&C drives, to e-Builder. Ensure that solicitation documents, including informal RFPs and scoring sheets managed by OSM/FAM and stored on the OSM/FAM X-drives, are appropriately filed in e-Builder. Amend the language of the PMP, the SOP, e-Builder manuals, and the public improvement contracts, to incorporate the process for contract change processes via e-Builder.

STAFF RESPONSE: **Concur with Comment**

Formal Solicitations should not be housed in e-Builder as they are managed by Purchasing & Contracting, not OSM, and should be kept in one central location to avoid duplication of records or recordkeeping errors.

RECOMMENDATION 12 (p. 50)

In order for the SOPs to be a more useful tool for project managers and directors, OSM should clarify where and when SOP requirements and procedures are proscribed for CM/GC projects and/or for design-bid-build projects.

STAFF RESPONSE: Concur

RECOMMENDATION 13 (p. 50)

In order to improve the utility and effectiveness of the SOP, OSM should revise the SOP to provide greater explanation of and requirements for value engineering, Project Safety and Security Plans, Site Safety Plans and project quality.

STAFF RESPONSE: Concur

RECOMMENDATION 14 (p. 51)

In order to reduce risk for non-compliance with public contracting requirements, OSM should update the SOP to provide more accurate detail for the procurement of personal services contracts (including contracts for A/E and related services), with particular consideration of PPS rules for direct procurement, informal and intermediate procurement. Update the SOP to provide more detailed and accurate information with respect to the alternative contracting procurement, including CM/GC procurement.

STAFF RESPONSE: Concur

RECOMMENDATION 15 (p. 53)

In order to improve the accuracy and clarity of Design Standards, OSM should clarify which projects require the use of 1.5 percent of the public improvement contract amount for green technology by identifying the eligible sources for use of these funds or by referencing the applicable Department of Energy Rules. Provide guidance on potential green technology methodologies that might be preferred by the district. In addition, because many of the procurement requirements in the Design Standards are out-of-date, and perhaps superfluous now that there is an SOP, consider deleting procurement requirements in entirety from the Design Standards and referring users to the PPS District Contracting Rules and SOP.

STAFF RESPONSE: Concur

RECOMMENDATION 16 (p. 55)

To improve the rigor and completeness of the Balanced Scorecard reporting tool, OSM should consider revising elements of the budget perspective reporting to ensure users of the reporting tool have a more complete understanding of budget to actual comparisons by including comparisons to original and revised budgets. This could involve additional objective criteria or additional narrative or highlighted points

STAFF RESPONSE: Nonconcur

The Balanced Scorecard is designed to provide a moment-in-time snapshot of the program status. The tool is intentionally truncated to highlight specific areas of interest. Expanding the metrics of the tool will cause for it to begin to lose its value. OSM understands the particular focus on budget by stakeholders, therefore provides a program cost summary containing details regarding each bond project (with both original and current budget information) whenever the Balanced Scorecard is produced.

RECOMMENDATION 17 (p. 60)

In order to control the percent of program budget spent on management oversight, OSM should identify opportunities for savings in payroll and management support line items. Likely areas of for consideration would be those line items with lower spending than expected, the largest budgeted items, and positions with potential declining workload in the final years of the program.

STAFF RESPONSE: Concur with comment

As noted in the body of the audit, OSM has made numerous budget reducing changes in the last 2.5 years. OSM continually looks for opportunities to reduce overhead costs to maximum the dollars that will go into the schools. Contrary to the statement in the audit, actual overhead spending is not running higher than planned. Bond programs require a higher percentage of staff time at the outset of projects. Once projects begin construction (as 3 of the 4 largest bond projects will this calendar year) the percentage of overhead expenditures will drop, as planned.

RECOMMENDATION 18 (p. 64)

To increase the likelihood that bidders will not inadvertently miss some bidding requirements, OSM should consider adding specific statutory responsibility requirements (e.g., lead based testing licensing, as applicable) to future ITBs. In addition, to ensure that responsibility is appropriately reviewed, which is currently the initial task of the project director/manager, OSM should consider amending the SOP to clearly proscribe the responsibility test items that project directors/managers need to consider.

STAFF RESPONSE: Completed

The following language has been added to the P&C ITB-C template:

LEAD BASED PAINT RENOVATION LICENSE

Perform all work in accordance with OR-OSHA (OAR Chapter 437 Division 3, 1926.62) and Section 02080 (Lead Handling Procedures) specification in the project manual. When working in areas of buildings occupied by children under age six (6), requirements under OAR Chapter 333, Division 69 may also apply, and the Bidder will be required to be licensed under and comply with OAR Chapter 812, Division 7, and ORS Chapter 701.510.

The Bidder shall assume lead-containing paint and varnish is present throughout the building unless noted otherwise in the survey documents. Contractors cannot bid on a renovation project until they have completed an approved training class and obtained a Lead-Based Paint Renovation License per the Construction Contractors' Board (CCB).

RECOMMENDATION 19 (p. 65)

In order to ensure greater accountability, transparency, and fairness in selection processes, OSM/P&C should ensure that RFPs clearly state the criteria and weighting for making a choice of one or more firms if an RFP permits one or more firms to be selected by an RFP. At the time of the final drafting of this audit, P&C informs us that they are working on this requirement.

STAFF RESPONSE: Completed

The following language has been added to the P&C RFP templates:

The District will determine the number of contracts to be awarded at time of contract award. This determination will be based upon the evaluation of scores underlying the rank of each proposal and the capacity of the proposers, and shall be at the sole discretion of the District.

RECOMMENDATION 20 (p. 66)

In order to avoid non-compliance issues and the risks related to non-compliance, Purchasing and Contracting should continue to update district rules to align with the state model rules and/or intended best practice. OSM and FAM should also consider augmenting internal training sessions with detailed training on public contract procurement law with focus on ORS 279 A,B,C, district P&C rules and policies, BOLI PWR rules and policies, applicable AG rules, and applicable Department of Energy and Construction Contractor Board rules. The training would be particularly valuable for "on-boarding" new staff and as a refresher for existing project and program management staff.

STAFF RESPONSE: Concur

RECOMMENDATION 21 (p. 67)

In order to reduce the risk of schedule delay, OSM should anticipate and clear obstacles to contract execution so that contracts can be executed and contractors can begin work as soon as possible on CM/GC and other contracts. In order to reduce financial and legal risk, have contractors begin work only with signed and executed contracts where certificates of insurance have been provided and are valid prior to starting work.

STAFF RESPONSE: Concur

RECOMMENDATION 22 (p. 68)

In order to be more accountable for expenditure of bond funds, OSM should develop written rationale for the proscribed 62 percent markups for Franklin HS CM/GC personnel costs to be reimbursed by OSM. OSM should also ensure that reimbursements to CM/GC firms are based on actual costs in accordance with contractual requirements. In addition, OSM should remove article 19e from existing and future CM/GC contracts. At the time of final drafting of this audit, OSM informs us that they intend to remove article 19e from the FHS CM/GC contract.

STAFF RESPONSE: Concur

RECOMMENDATION 23 (p. 69)

In order to manage cost and risk for future CM/GC contracts, OSM should modify contract language to provide more specificity about how early work may occur including the use of mini-GMPs which would be subject to the contract provisions pertaining to GMPs, except as specifically exempted. Where practical, negotiate substantive early work as mini-GMP's as opposed to lump sums.

STAFF RESPONSE: Concur

RECOMMENDATION 24 (p. 74)

In order to improve public engagement with the bond program and its projects, OSM and CIPA should ensure that project communication plans are prepared at the start of new projects. This plan should clearly identify the communication and public engagement

activities that will be undertaken including when and how frequently community groups, teachers, administrators, and other stakeholders will be involved. Integrate into the project communication plans lessons learned, if available, from prior and comparable community and staff engagement efforts.

STAFF RESPONSE: Concur

RECOMMENDATION 25 (p. 75)

In order to fully engage teachers and building administrators in decisions regarding high school design and educational program areas, OSM and PPS academic leadership should jointly develop an involvement plan that reaches out to all teachers and administrators, ensures meetings are scheduled at optimal times, and fosters on-going dialogue. As non-bond funding permits, the plans could include the formation of teacher leadership teams and assignment of academic leaders and liaisons.

STAFF RESPONSE: Concur

RECOMMENDATION 26 (p. 81)

To help improve MWESB participation in bond program contracts, we recommend that OSM take the following actions:

1. Update CM/GC GMP amendments to comply with audit recommendation #15 from the 2014 performance audit report. Specifically, to provide more flexibility in the selection of subcontractors PPS contracts should allow the CM/GC firms to procure subcontractors by methods other than competitive advertised bids. Such contract change is not subject to updating of the P&C rules.
2. Obtain a written legal opinion about best practices and risks in addressing MWESB procurement aspirational goals.

STAFF RESPONSE: Concur with comment

Purchasing & Contracting and OSM staff will discuss with legal counsel the recommendation to obtain a written legal opinion.

APPENDIX A

Status of Corrective Actions - Performance Audit #1



PORTLAND PUBLIC SCHOOLS

501 North Dixon Street / Portland, OR 97227
Telephone: (503) 916-3200 / Fax: (503) 916-3110
Mailing Address: P. O. Box 3107/97208-3107
Email: csmith1@pps.net

Carole Smith
Superintendent

OFFICE OF THE SUPERINTENDENT

January 15, 2015

Hirsh and Associates
PO Box 5575
Eugene, Oregon 97405

Dear Mr. Hirsh & Mr. Tracy:

Thank you for your continuing assessment of our Portland Public Schools' 2012 School Building Improvement Bond Program, as you are now well into your second annual review. We have implemented many of the recommendations from Performance Audit #1 and continue to look for opportunities to improve the ongoing Bond Program.

To date, 21 of the 25 Performance Audit #1 recommendations previously identified for implementation have been completed. Recommendations 5 and 15 will be fully implemented when the PPS Board adopts amended Public Contracting Rules, incorporating the recently finalized Attorney General's Model Rules, in early 2015. Recommendation 17 is in the revision process as part of the finalization of the contract General Conditions. Recommendation number 18 will be completed as part of the pending revisions to the Long Range Facility Plan and Comprehensive High School Educational Specifications which are planned for the first half of 2015.

The following table presents a tabulated summary of the PPS's responses.

Audit Recommendation	Topic	Dept	Response
#1	Program Management	OSM	Complete
#2	Program Management	OSM	Complete
#3	Program Management	OSM	Nonconcur
#4	Program Management	OSM	Nonconcur
#5	Purchasing & Contracting	P&C	Working
#6	Purchasing & Contracting	P&C	Complete
#7	Purchasing & Contracting	OSM /P&C	Complete
#8	Purchasing & Contracting	P&C	Complete

Audit Recommendation	Topic	Dept	Response
#9	Purchasing & Contracting	P&C	Complete
#10	Purchasing & Contracting	P&C	Complete
#11	Purchasing & Contracting	P&C	Complete
#12	Purchasing & Contracting	P&C	Complete
#13	Purchasing & Contracting	P&C	Complete
#14	Purchasing & Contracting	P&C	Complete
#15	Purchasing & Contracting	Risk/OSM	Working
#16	Purchasing & Contracting	OSM	Complete
#17	Purchasing & Contracting	OSM /P&C	Working
#18	Planning & Design	P&C	Working
#19	Planning & Design	P&C	Complete
#20	Project & Construction Management	P&C	Complete
#21	Project & Construction Management	P&C	Complete
#22	Project & Construction Management	OSM	Complete
#23	Project & Construction Management	OSM	Complete
#24	Project & Construction Management	OSM	Complete
#25	Cost & Budget Management	OSM	Complete
#26	Public Engagement & Communications	CIPA/OSM	Complete
#27	Public Engagement & Communications	CIPA/OSM	Complete

Attached is our updated response to your findings and recommendations. Please contact me if you have any questions or comments. Thank you again for the hard work and time spent with our Team and your efforts to identify areas for improvement.

Sincerely,



Carole Smith
Superintendent

Attachment

PROGRAM MANAGEMENT

RECOMMENDATION 1 (p. 30)

To ensure the program has a solid foundation to guide the implementation of the program over the next several years, OSM should update the Program Management Plan and include missing documents.

STAFF RESPONSE: Complete

The first revision of the PMP was posted to both the 'X' drive and in eBuilder in July of 2014. The next revision will be distributed for staff comments and edits in June of 2015 for reposting by the end of July 2015. The July 2014 version included the Project Standard Operating Procedures as an *Implementing Draft* to be finalized as part of the 2015 review process.

RECOMMENDATION 2 (p. 35)

Evaluate the current project scheduling process to determine if the needs of the program and project are being met. Consider alternatives for preparing and updating project schedules including contracting with an outside provider, preparation by project managers and directors, or a combination of efforts.

STAFF RESPONSE: Complete

OSM distributed the Monthly Project Report Instructions on the 31st of October, 2014, to provide direction regarding the monthly updating of project schedules. With baselines now established, these instructions provide Project Directors/Project Managers with three options for submitting their monthly project updates that include updated project schedules.

RECOMMENDATION 3 (p. 38)

The OSM Executive Director should develop an annual work plan for Heery Program and Construction Management assistance consistent with the existing contract. The work plan should identify work priorities for the year and define specific tasks and deliverables that will be accomplished, dates for completion, performance expectations, and establish an objective methodology for assessing the consultant's performance and success in providing support to

OSM/FAM and staff at the program and project management levels.

STAFF RESPONSE: Nonconcur

The Executive Director has reviewed this recommendation and has determined that Heery has been providing the Program and Construction Management assistance in accordance with the PPS/Heery agreement (ENG59584) and that the program will continue to be executed without an amendment for an annual work plan. OSM/FAM program and project management staff have been provided opportunities to report on their experiences and have done so.

RECOMMENDATION 4 (p. 40)

To improve the rigor and completeness of the Balanced Scorecard reporting tool, OSM should consider making the following improvements:

1. More clearly define the budget perspective performance measures and targets. To provide a more transparent basis for budget perspective scoring develop a spreadsheet that explains the source of the data and that compares the actual amounts to the actual targeted amounts.
2. Report more accurately on the schedule perspective by ensuring the color coded rating matches the actual schedule status against the baseline schedule.
3. Improve the reliability and relevance of stakeholder perspective ratings by encouraging greater and more complete stakeholder participation in surveys. OSM should consider implementing electronic, on-line survey tools to simplify survey administration and increase response rates.
4. Improve the usefulness and reliability of the equity perspective reporting by working with the non-profit registry that maintains information on career opportunities to include more complete information on registered companies.

STAFF RESPONSE: Complete

The Balanced Scorecard processes has been reviewed and revised as needed.

Item 4.1 was reviewed and the performance measures and associated targets were found to be precise and accurately defined. The budget targets can be found in eBuilder as current budget or in some cases the original budget amount. Greater detail is provided in eBuilder as the budget is broken down into four major categories and every one of these

major categories contains multiple line items that provide even more precise detail. As our transparency tool, eBuilder provides visibility for any changes to the original budget item and associated documentation that provides the justification for the budget change. It is found that eBuilder provides the detail that explains the source of the data and compares the actual amounts to the actual targeted amounts.

Item 4.2 has been implemented and the current color coding given to performance measures is in accordance with the assessment of the monthly update against the associated target.

Item 4.3 has been implemented through the use of Survey Monkey which is an on-line survey tool that does simplify survey administration while increasing response rates.

Item 4.4 has been implemented by OSM to improve the usefulness and reliability of the equity perspective by revising Objective C, which now evaluates four Performance Measures by applying well specified Performance Targets for each year of the bond program.

Overall, OSM has significantly improved on its reporting with regard to the Equity Perspective and expects to continually improve in all areas of this perspective.

PURCHASING AND CONTRACTING

RECOMMENDATION 5 (p. 42)

In order to better match the AG's Model Public Contracts Rules and to correct a language error, the Purchasing and Contracting department should modify the following sections of the PPS Purchasing and Contracting Manual:

1. PPS-47-0270(3) – Eliminate the requirement that intermediate solicitations over \$75,000 be “written.”
2. PPS-48-0110(4) – Correct the definition of engineer to indicate than an engineer practices “engineering” not “land surveying”

3. PPS-48-0130(1) – Permit the use of pricing as a selection criterion in selecting qualified architectural/engineering and related services when the cost of the services do not exceed \$100,000.
4. PPS-47-0270(1) – Raise the lower limit for intermediate procurements from \$5000 to \$10,000.
5. PPS-47-0265(2) – Increase the limit on amendments for small procurements to \$12,000 or \$12,500.

STAFF RESPONSE: Working - Pending final PPS rule changes in early 2015

Purchasing staff will review recommendation 5(1) with legal counsel and, unless counsel advises otherwise, will implement with the next Purchasing and Contracting Rules update, after the AG adopts new Model Public Rules for 2014. Recommendations 5(2) and 5(3) will be implemented with the next Rules update. Recommendations 5(4) and 5(5) were implemented on 3/31/14.

RECOMMENDATION 6 (p. 43)

Consider adopting the Attorney General's Model Public Rules while retaining separate rules for selection and procurement of contracts for personal services.

STAFF RESPONSE: Complete

Staff reviewed the recommendation and conferred with public contracting counsel. In conjunction with counsel, staff decided to continue using modified model rules that incorporate the text of the model rules, include statutory and local requirements, and address procurement issues unique to the District.

RECOMMENDATION 7 (p. 44)

The district should consider increasing the change order authority for various positions currently identified in PPS 8.50.105 Administrative Directive.

STAFF RESPONSE: Complete

Purchasing staff has conferred with the Office of School Modernization staff, Facilities and Asset Management staff, and legal counsel and has decided at this time to stay with the current change order authority for various positions currently identified in PPS 8.50.105 Administrative Directive.

RECOMMENDATION 8 (p. 46)

ITB language should indicate that unit prices will be used as stated on the bid submittal or, at the sole discretion of the District, will be negotiated at a fair and reasonable unit price as change orders are requested.

STAFF RESPONSE: Complete

Staff has changed ITB language to reflect the following:

UNIT PRICING:

[Include the following language if unit prices are requested for Change Order purposes but will not be considered in calculating the Total Bid Price. Delete if inapplicable.]

Unit Pricing for Change Order Work: Unit prices for Change Order work will be as stated on the bid submittal form or, at the sole discretion of District, negotiated at a fair and reasonable unit price as Change Orders are requested.

RECOMMENDATION 9 (p. 46)

ITB language should indicate that the lowest responsible bid will be based upon the base bid and alternatives selected at the time of award. Procedures discussed with OSM could be put in place to ensure that the selection of alternates would be based on price, value, and need, and not used to effect the selection of one contractor over another.

STAFF RESPONSE: Complete

Staff has changed ITB language to reflect the following:

ALTERNATES:

The Total Bid Price will be calculated by adding to or deducting from the Base Bid those alternates selected by District at the time of award.

Bids will be evaluated to identify the lowest responsible Bid based on the Total Bid Price. Bids must be submitted by a responsible Bidder and not otherwise disqualified.

RECOMMENDATION 10 (p. 47)

Revise the General Conditions language to ensure that it specifies a maximum allowable profit and overhead for negotiated Change Order pricing. As of the date of this audit report, OSM informs us that OSM and Purchasing are working to address this recommendation.

STAFF RESPONSE: Complete

Purchasing staff updated the ITB General Conditions to address this recommendation in May 2014. The General Conditions now provide, at paragraph 6(1) (3):

Change Pricing. In the absence of applicable unit prices or other agreement, the changed work will be priced in accordance with the following provisions:

- i. In no case shall the sum of the individual markups applied to a General Contractor's Contract Modification exceed fifteen percent (15%), regardless of the number of Subcontractor tiers involved in performing the Work.*
- ii. The total combined mark-up for a Subcontractor and his lower-tier Subcontractor shall not exceed ten percent (10%). Costs of tax and insurance shall not be marked up.*
- iii. For work perform by a subcontractor, the subcontractor will receive 10% markup for direct costs. The General Contractor shall receive a five percent (5%) of the subcontractor's direct costs for processing.*
- iv. For self-performed work by the General Contractor, the markup shall equal fifteen percent (15%) of the direct cost as defined herein.*
- v. Bonding may be increased a maximum of one percent (1%) provided the Contractor demonstrates to the District a requirement to increase bonding.*
- vi. If the net value of a change results in a credit from the Contractor or subcontractor, the credit shall be the actual net cost, plus five percent (5%) for overhead and profit. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.*

RECOMMENDATION 11 (p. 48)

For formal selection processes using a Request for Proposal procedure, the district should consider using a ranking methodology that scores firms in order of preference as opposed to pure point totals from individual rater's point totals. In addition, provide guidelines on how to score specific categories to ensure greater consistency in scoring individual categories.

STAFF RESPONSE: Complete

Purchasing staff modified the Division 48 RFP template (section 4.2.5) to incorporate a ranking methodology in May 2014. The ranking methodology in the Division 48 RFP template is identical to that in the CMGC RFP template:

4.2.5 Final Scoring and Ranking of Proposals

The highest-ranked proposal will be determined as follows:

- a) Each evaluator will assign a number to each proposal based on the total score he or she awarded each proposal (as described in 4.2.1 through 4.2.4).
- b) The proposal to which the evaluator awarded most points will receive an Evaluator Final Score of 1. The proposal to which the evaluator awarded the second most points will receive an Evaluator Final Score of 2, and so forth. The proposal the evaluator scored lowest (through the process described in 4.2.1 through 4.2.4) would receive the highest Evaluator Final Score.
- c) The District will then sum the Evaluator Final Scores for each proposal and rank the proposals. The proposal with the lowest total final score (the sum of all Evaluator Final Scores) will be ranked highest. The proposal with the second lowest final score will be ranked second highest, and so on. The proposal with the highest Final Score will be ranked last.

RECOMMENDATION 12 (p. 48)

In addition to providing raters of proposals with guidelines on how to score specific categories of information, the district should also provide instructions on how raters should use reference information in their scoring of proposals. The changes should be incorporated into written Purchasing SOPs.

STAFF RESPONSE: Complete

Staff has provided clarifying guidelines (instructions) on how to evaluate and score proposals that clarify best practice as well as how references and pricing are dealt with. See Instructions for Evaluators v7 082714.doc.

RECOMMENDATION 13 (p. 49)

To help control the cost of builders risk insurance, the District should consider increasing the share of deductible, per occurrence, that contractors must pay in the event of a builders risk insurance claim.

STAFF RESPONSE: Complete

The District's insurance exhibit (Exhibit B) for Large Construction contracts (i.e., construction contracts over \$100,000) was revised in May 2014. The new language relating to builders risk insurance indicates that the contractor will be responsible for the first \$10,000 of the deductible, per occurrence. This change reflects a \$5,000 increase in the contractor's share of deductible.

RECOMMENDATION 14 (p. 52)

To ensure the next RFP for CM/GC services is complete, consistent, and clear, we recommend the following changes:

1. To ensure clear understanding of when substantial completion is required, establish a specific and consistent date in the RFP. Substantial completion is specified as Spring 2017 in one part of the RFP and March 2017 in another.
2. To ensure that the CM/GC fee is based on the estimated Cost of Work at the time of development of the Guaranteed Maximum Price, the fee definitions in the RFP and contract should be the same. Although the contract defined the fee as “based on the estimated Cost of Work at the time of the development of the GMP,” the RFP defined the fee as based on the “% of completed construction work.”
3. To provide clear directions to proposal raters, clarify how the preconstruction fee and the CM/GC fee will be used in the assessment of total fee and the rating of the proposed fees.

STAFF RESPONSE: Complete

Staff has evaluated the recommendation and provides the following as a more detailed response to the recommendation:

1. Substantial completion cannot be narrowed down any further on a CMGC proposal as the timeline is very “open” at the time the solicitation is issued. The RFP that was reviewed may have had a typo showing two different timelines for substantial completion; however “Spring” may be as close as we can get in some cases.
2. Staff reviewed the language in both documents. The language quoted as being a definition in the RFP- “% of completed construction work”- is not a definition. This language appears only in the evaluation criteria of the RFP, and is used as a scenario so that pricing from all proposers is consistent and an “apples to apples” comparison may be made.
3. The evaluation instructions clearly state that pricing should be rated by procurement only, not the evaluators.

RECOMMENDATION 15 (p. 53)

Consider, in future contracts, or in the GMP amendment for existing contracts, providing more proscriptive guidelines for the CM/GC to be able to procure subcontracts by specific methods other than advertised competitive bid.

STAFF RESPONSE: Working – Pending final Attorney General Rule changes in early 2015

P&C will revise template to reflect rule changes when they are received.

RECOMMENDATION 16 (p. 53)

Redefine the contract to clarify what general conditions work will be paid lump sum and what other general condition work will be reimbursed on an actual cost basis, subject to a maximum allowance within the negotiated GMP.

STAFF RESPONSE: Complete

Staff has further reviewed this recommendation through an assessment of the CM/GC General Conditions as well Exhibit C - Costs for General Conditions Work Matrix. Although there may be General Condition costs considered for payment on an actual cost basis for changes within or outside the GMP, the current assessment is that for the basis of setting the GMP it is best practice to have the cost for General Conditions be set with a lump sum as stated in Section 8. h. 1. - Costs For General Conditions Work. Also, bond management funding does not provide for the man-hours needed to validate the actual costs of General Condition activities that would be invoiced on an actual cost basis.

RECOMMENDATION 17 (p. 54)

For current contracts in the GMP amendment, and for future contracts, clarify District intent for P/OH to be allowed to the CM/GC for additive changes to the GMP. Consider placing a maximum total percentage limit that can be charged for P/OH for all tiers of subcontractors.

STAFF RESPONSE: Working

Currently in the revision process as part of the finalization of the contract General Conditions.

PLANNING AND DESIGN

RECOMMENDATION 18 (p. 59)

In order to improve the efficiency of the master planning and design efforts of future modernization and replacement projects, we recommend that the district consider the following actions:

1. Hold more timely and complete discussions with internal and external stakeholders on school design topics such as the number, type, and size, of classrooms; classroom utilization rates; career learning and technical education delivery, and core space needs. The completed high school specifications will provide a sound foundation for these discussions but complete educational specifications for middle and elementary schools should be final before initiating these discussions with lower grade levels (e.g., Faubion PK-8). Ensure that updates if any to the HS Ed Specs, including target capacity and core size occur well before the start of the master planning process for the remaining comprehensive high schools, which is scheduled to occur later during this eight year bond program.
2. Reconcile student and core planning capacities currently established by the BOE with the different capacities contained in the Long Range Facility Plan and the Educational Specifications for comprehensive high schools. Ensure that all documents are consistent and compatible with one another before beginning the work at GHS and the master planning for the remaining comprehensive high schools.

STAFF RESPONSE: Working

Revisions to the Comprehensive High School Educational Specifications and Long Range Facility Plan are planned for the first half of 2015 which will consider the numbered aspects of this recommendation

RECOMMENDATION 19 (p. 60)

In order to provide timely and complete guidance to project design teams, OSM and FAM should strive to complete PPS Design Standards and Guidance in time for inclusion in the design for Roosevelt and Franklin high school, Faubion PK-8, and summer Improvement Project 2015.

STAFF RESPONSE: Completed

PPS Design Guidelines were recently updated and have been posted on the PPS website. The ongoing design teams have participated in the guideline development. The Design Guidelines will continue to evolve over time, as they are a living document.

PROJECT AND CONSTRUCTION MANAGEMENT

RECOMMENDATION 20 (p. 64)

To guide the delivery and management of bond program projects, we recommend that project plans and SOP's be developed and implemented by the end of calendar year 2014, if not sooner. Those SOP's necessary for the successful implementation of IP 2014 be completed and put into use immediately.

STAFF RESPONSE: Completed

The project SOPs were published as an appendix to the July 2014 update of the Program Management Plan. The SOPs were further presented to the blended bond team as a training topic in the October 2014 Bond Program Update meeting.

RECOMMENDATION 21 (p. 66)

In order to increase the value of e-Builder as a common repository for all project documentation, OSM should establish requirements for filing and indexing all project documents and for encouraging the consistent use of e-Builder by project staff for document storage.

STAFF RESPONSE: Completed

Filing and indexing guidelines for all project documents has been published in Appendix 8B of the July 2014 Update of the Program Management Plan.

RECOMMENDATION 22 (p. 66)

Depending on individual project team preferences, develop and implement streamlined steps for RFI processing where the PD/PM is copied rather than required to act on certain steps.

STAFF RESPONSE: Complete

Project Directors and Project Managers have been informed that the Operations Manager will modify the RFI process to meet their individual project needs. This has been our operating process from the start of the program.

RECOMMENDATION 23 (p. 69)

To ensure the district complies with contract language and board policy regarding change order approval, the new PCO procedure should be fully tested and found functional before IP 2014 change order work proceeds. OSM should ensure that project staff understand new requirements and comply with e-Builder protocols. OSM should also consider developing and implementing a back-up paper system in the event that the new PCO process does not ensure that changes are approved by the appropriately authorized staff, and lower level authority is “renewed” before change order work proceeds.

To more effectively and efficiently manage change order processing, we have made a separate recommendation (# 7) that PPS consider increasing change order authority for designated PPS staff, and adding a limited level of authority for the PC position.

Once the new system is implemented and fully working, in order to avoid potential confusion, PPS contract documents should be amended to reflect the terminology of the new system.

STAFF RESPONSE: Complete

The new PCO procedure was proved through a lengthy testing period and as of the 16th of December has successfully processed 260 PCOs for IP14. It has been proven that e-Builder is the appropriate place to capture the PCO process confirming changes were being approved at the appropriate levels. The creation of a back-up paper-system would require a significant amount of work for which OSM is not presently staffed. Back-up paper copies of commitment reports, previous authorized changes reports, etc, with original signatures from multiple staff would be required which would be significant time consuming processes that would inhibit rapid execution of change orders.

Contract documents (Division 01, General Conditions, and the Contract Document) have been revised to reflect the terminology currently being used for our systems.

RECOMMENDATION 24 (p. 70)

To ensure the roles and responsibilities of the Project Managers/Directors, Coordinators, and Construction Managers are fully understood, the OSM should complete the Responsibility by Participant Matrix that identifies the specific expectations for each role including tasks, timelines, and report documentation. This recommendation should be implemented in conjunction with recommendation #3.

STAFF RESPONSE: Complete

Section 2, Description of PPS Bond Program Organization of the Program Management Plan contains the roles and responsibilities for each member of the OSM organization. Responsibility matrices have been prepared for projects and have been reviewed and concurred with by Program Staff.

COST AND BUDGET MANAGEMENT

RECOMMENDATION 25 (p. 74)

To improve efficiency and reduce duplicative efforts, the district should continue to explore opportunities to upgrade PeopleSoft and e-Builder to establish compatibility between the two systems.

STAFF RESPONSE: Completed

Integrating e-Builder and PeopleSoft may have a significant benefit to PPS as a whole (which is why it is being explored) but it may have only a marginal benefit to the Bond Program, at a potentially significant effort. A cost/benefit analysis must be done to determine the feasibility of this recommendation. If ultimately deemed beneficial to the District, available funds would then need to be assessed to determine the correct source(s) of funds.

PUBLIC ENGAGEMENT AND COMMUNICATIONS

RECOMMENDATION 26 (p. 79)

CIPA with the assistance of OSM should update and revise the bond communication plan to address lessons learned in the first year of the program and to clearly identify which strategies will be employed and when they will be delivered throughout the entire year. In addition, the CIPA and OSM should make clear to the community how input will be considered and how decisions will be influenced by public engagement.

STAFF RESPONSE: Complete

The revised communication plan has been released for use by the Blended Bond Team in January 2015. This plan has been incorporated into the draft of the PMP to be reviewed in June of 2015 and reposted for team use in July 2015.

RECOMMENDATION 27 (p. 81)

In order to improve public engagement with the bond program and its projects, OSM and CIPA should:

1. Evaluate the impact to date of public engagement activities on stakeholder knowledge of the program, satisfaction with opportunities for input and feedback, and confidence in fiscal stewardship of the district.
2. Assess the effectiveness of staff roles to lead and support public engagement, in order to identify ways to improve coordination and delivery.

STAFF RESPONSE: Complete

The bond communication team conducted a series of meetings with project management teams and discussed the topics addressed in this recommendation. The meetings resulted in the identification of ways to improve coordination and delivery of our bond related messages.

APPENDIX B

2014 RESULTS

Report on Performance Audit Report Success Factors

<u>Performance Measure</u>	<u>Performance Target</u>	<u>Result</u>
1. <i>Annual performance audit issued on time.</i>	On or before June 30 (Upon timely receipt of management written response)	2014 Performance Audit issued to School Board on June 10 2014
2. <i>Performance audit helped improve the public accountability of the bond construction program</i>	BAC and OSM management rate the audit helpful or very helpful	87% of survey respondents rated the audit <i>helpful</i> or <i>very helpful</i> . (Source: 2014 Performance Audit Satisfaction Survey)
3. <i>Performance Audit recommendations are implemented</i>	At least 90% of audit recommendations implemented within 2 years	81% of audit recommendations completed within 6 months* (Source: January 15, 2015 Status Report from Office Superintendent)
4. <i>Audit was conducted in a professional manner.</i>	OSM management believe the audit was conducted in a professional manner	100% of respondents rated professionalism <i>high</i> or <i>very high</i> (Source: 2014 Performance Audit Satisfaction Survey)

5. <i>Audit report was clear and easy to understand.</i>	At least 90% of readers found the report clear and easy to understand	100% of respondents rated the report clarity and understandability <i>good</i> or <i>very good</i> (Source: 2014 Performance Audit Satisfaction Survey)
6. <i>Audit report provide measurable benefits to the OSM program.</i>	Report identified opportunities for cost savings or avoidance, compliance improvements or practical ideas for better program management	87% of respondents found the audit <i>useful</i> or <i>very useful</i> in improving the bond program (Source: 2014 Performance Audit Satisfaction Survey)

* Audit Recommendation #4 related to Balanced Scorecard report has been counted as a “complete” recommendation in the calculation of the percent of recommendations completed within 6 months. PPS had originally non-concurred with two of the four sub-recommendations. Despite the non-concur initial position, PPS implemented all four sub-recommendations.

APPENDIX C

Analysis of November 2013 BOE Resolution increase to the high school budgets

According to a memo posted by OSM management on e-B in December of 2013, the original planning for the bond, based on the LRFP, called for all three high schools (RHS, FHS, and GHS) to be the same student size of 1500 target student capacity/1500 core. RHS and FHS were to be built to 240,000 sf at \$220 building sf; and GHS was to be built to its current size of 274,489 sf, also @ \$220 building sf. Based on parametric estimating strategies identified in the LRFP, and adjusted for different site sizes, the original estimates for the high schools were \$84.5M for FHS; \$84M for RHS; and \$91.5M for GHS. According to the OSM memo, “the total parametric budget for the three high schools was \$260M (rounded).”

The December 2013 OSM memo went on to state, “The above numbers were generated during the review of potential bond options. At the time, due to lower enrollment numbers, it was decided that Roosevelt HS could be estimated at a lower student capacity (1200 students with a core space capacity of 1500). In keeping with the estimating methodology, staff changed the target size for Roosevelt HS from 240,000 sf to the existing size of 228,535 sf and utilized the bottom of the range of cost per sf (as identified by Rider Levett Bucknall Quarterly Construction Cost Report) which was \$190 per sf.

This change reduced the total budget by approximately \$13M and provided the flexibility at Roosevelt to either improve the entire existing facility at the lower cost per sf (\$190) or modernize approximately 192,000 sf of the existing building at the originally estimated \$220/sf (which retains the 160 sf per student ratio).”

The next step in the process was to consider what the high school budgets and scopes would look like if the draft HS Educational Specifications area program was considered, based on the approved bond target capacities. The draft Ed Specs developed an initial conclusion that all three high schools could be potentially considerably smaller. (The assumptions, in terms of building size, made in the draft Ed Spec area program, were changed later in design). The Ed Spec model resulted in size of RHS being reduced from 228,535 to 210,893 sf; the size of FHS being reduced from 240,000 sf to 221,579 sf; and the size of GHS being reduced from 274,489 sf

to 221,579 sf. Total square feet would be 654,051, a decrease of about 89,000 square foot from 743,024 square feet (approved bond amount). These changes, if implemented, would have resulted in a net decrease in the total HS budgets by \$27M.

OSM believed that the \$27M in “savings” could best be put back into the high school budgets and scopes to create greater equity between the schools. This resulted in an Applied Equity model, returning the total budget to the \$247M approved bond amount retaining the draft Ed Spec total square footages and making several other changes.

On November 18, 2013, the BOE passed a resolution, subject to final BOE approval at the schematic design level for FHS and RHS, to increase by \$10M the overall budgets for Franklin, Roosevelt, and Grant high schools from approximately \$247M (approved bond budget) to \$257M, the \$10M in increased funds to be withdrawn from the BOE bond \$20M contingency.

The intent of the use of the \$10M increase was conceptual, based on increasing the target enrollments and core sizes of the approved bond for the three high schools. Franklin and Grant increased in target enrollment and cores sizes from 1500 to 1700 students, each. Roosevelt increased in target enrollment from 1200 to 1350, and from core size of 1500 to 1700 students.

The BOE resolution resulted in a new scope/budget model which made several changes to the Applied Equity model: (1) The size of RHS was increased by about 12,600 sf, from 210,893 sf to 223,491; the sizes of FHS and GHS were each increased by 23,700 sf from 221,579 sf to 245,279 sf (2) the building cost for all three high schools was set at \$220 per sf; (3) the soft costs were increased from 20 percent of the construction total to 25 percent of the construction total. In order to accommodate the total of 550 more students and larger cores, for all three high schools, the total square footage was increased by 59,998 sf, from the Applied Equity/Ed Spec model total size of 654,051 sf to the BOE model size of 714,049 sf.

APPENDIX D

PROCURING ARCHITECTURE, ENGINEERING AND RELATED SERVICES

EXCERPTS FROM OREGON REVISED STATUES

The governing statute, ORS 279C, defines the categories of architecture, engineering and other services that can only be procured by qualifications based selection (QBS), without consideration of price, for contracts over \$100,000. The other services which must be procured using QBS are defined by statute as services performed by a photogrammetrist, transportation planner, or land surveyor. Another class of (professional) personal services contracts is also defined as “related” services and may be procured using price as one selection criterion.

ORS 279C.100, definitions, includes the following:

(2) “Architectural, engineering, photogrammetric mapping, transportation planning or land surveying services” means professional services that are required to be performed by an architect, engineer, photogrammetrist, transportation planner or land surveyor.

(8) “Related services” means personal services, other than architectural, engineering, photogrammetric mapping, transportation planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvement projects, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner’s representation services or land-use planning services.

279C.110 Selection procedure for consultants to provide services; compensation; applicability.

(1) A contracting agency shall select consultants to provide architectural, engineering, photogrammetric mapping, transportation planning or land surveying services on the basis of the consultant’s qualifications for the type of professional service required. A contracting agency may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation only after the contracting agency has selected a candidate pursuant to subsection (2) of this section.(our underline).

(2) Subject to the requirements of subsection (1) of this section, the procedures that a contracting agency creates to screen and select consultants and to select a candidate under this section are at the contracting agency’s sole discretion. The contracting agency may adjust the procedures to

accommodate the contracting agency's scope, schedule or objectives for a particular project if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$250,000.

(6) If the contracting agency and the selected candidate are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the contracting agency, the contracting agency shall, either orally or in writing, formally terminate negotiations with the selected candidate. The contracting agency may then negotiate with the next most qualified candidate. The negotiation process may continue in this manner through successive candidates until an agreement is reached or the contracting agency terminates the consultant contracting process.

(8) Notwithstanding the provisions of subsection (1) of this section, a contracting agency may directly appoint a consultant if the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for the project does not exceed \$100,000. (Our underline).

279C.120 Selection procedure for related services. (1) A contracting agency may select consultants to perform related services:

(a) In accordance with screening and selection procedures adopted under ORS 279C.105;

(b) On the basis of the qualifications of the consultants for the types of related services required, under the requirements of ORS 279C.110; or

(c) On the basis of price competition, price and performance evaluations, (our underline), an evaluation of the capabilities of bidders to perform the needed related services or an evaluation of the capabilities of the bidders to perform the needed related services followed by negotiations between the parties on the price for those related services.

APPENDIX E

LD Mattson, Inc. v. Multnomah County

**L.D. MATTSON, INC., an Oregon corporation, and Oregon-Columbia Chapter of
the Associated General Contractors of America, Inc., an Oregon non-profit
corporation, Plaintiffs,**

v.

**MULTNOMAH COUNTY, a political subdivision of the State of Oregon and Marion
Construction Company, an Oregon corporation, Defendants.**

Civ. No. 88-414-RE.

United States District Court, D. Oregon.

November 22, 1988.

Bruce C. Hamlin, Richard N. Van Cleave, Spears, Lubersky, Bledsoe,
Anderson, Young & Hilliard, Portland, Or., for plaintiffs.

Laurence Kressel, County Counsel, John L. DuBay, Asst. County Counsel,
Portland, Or., for Multnomah County.

Joseph A. Yazbeck, Jr., F. Gordon Allen, Allen, Kilmer, Schrader,
Yazbeck & Chenoweth, P.C., Portland, Or., for Marion Const.

OPINION

REDDEN, District Judge.

In this civil rights action, plaintiffs L.D. Mattson, Inc. and the
Oregon-Columbia Chapter of the Associated General Contractors of

America, Inc. (OAGC) challenge the constitutionality of defendant Multnomah County's affirmative action program for public contracting.

Plaintiffs move for partial summary judgment and seek a declaration that the program is unconstitutional and an injunction barring further implementation of the program. Defendant moves for summary judgment and for a stay pending the outcome of *City of Richmond v. J.A. Croson*, ___ U.S. ___, 108 S.Ct. 1010, 98 L.Ed.2d 976 (1988). Finally, the State of Oregon, urging the stay, has filed an amicus curiae brief, to which plaintiffs have responded.

I grant plaintiffs' motion for partial summary judgment, and deny defendant's motions for summary judgment and stay.

My May 6, 1988 Opinion in this case sets out the factual background of this action.

A. The Cross Motions for Summary Judgment

The parties agree that the program establishes racial and gender preferences. The racial preference requires strict scrutiny; the gender preference requires mid-level scrutiny. *Associated General Contractors of California v. City and County of San Francisco (AGCC)*, 813 F.2d 922, 928, 939 (9th Cir.1987). Although the analysis for evaluating racial and gender preferences may differ, the parties here agree that no such difference is pertinent to the decision in this case.

*67 The question is (1) whether the program is justified as serving a compelling governmental interest, and (2) if justified, whether the program is narrowly tailored. See AGCC at 928, 939-40.

1. Justification

The AGCC court, following *Wygant v. Jackson Board of Education*, 476 U.S. 267, 106 S.Ct. 1842, 90 L.Ed.2d 260 (1986), held that in order

for a locality to justify a racially discriminatory ordinance, it must make findings that it engaged in past discrimination. AGCC at 929. These parties agree that the county made no findings of its past discrimination, and the county contends that it need not do so. Defendant argues that it has a compelling interest in eliminating industry discrimination because it impliedly participates in such discrimination in awarding public contracts to members of the industry. Plaintiffs contend that this theory of implied participation cannot justify defendant's program as a matter of law and that the county failed to make those requisite findings. I agree.

The only authority defendant offers on implied participation is an Eleventh Circuit case and a case note. *South Florida Chapter of the Associated General Contractors of America, Inc. v. Metropolitan Dade County, Florida*, 723 F.2d 846 (11th Cir.1984), conflicts with AGCC and was decided before *Wygant*. It is not persuasive authority.

The case note is *The Non-Perpetuation of Discrimination in Public Contracting: A Justification for State and Local Minority Business Set Asides After Wygant*, 101 Harv.L.Rev. 1797 (1988). It argues that lower courts, including the AGCC court, have erred by reading *Wygant* too narrowly and requiring that municipalities make a showing of their past discrimination before enacting such programs. The case note conflicts with AGCC and is not persuasive.

Wygant and its progeny impose a heavy burden upon local governments by requiring proof of their own guilt, but that is the law of this Circuit. Even if findings of industry discrimination were sufficient, the county failed to make such findings.

This defendant recorded only its findings of lingering past discrimination and a review of the level of participation of minority business enterprises (MBEs) and women business enterprises (WBEs). Such finding of societal discrimination alone has been held an inadequate basis for set aside programs.

Defendant argues that its findings of discrimination in the construction industry are an adequate basis. According to defendant, it found a disparity between the percentage of minorities in the community (11%) and the percentage of county construction contracts awarded to minorities over the three fiscal years beginning in 1978 (.3% in 1978-79; .6% in 1979-80; and .9% in 1980-81). These statistics fail because defendant does not indicate that these percentages reflect the percentages of participation in the construction industry. These figures refer to all county contracts, not merely construction contracts. Affidavit of Bruce C. Hamlin, exhibit B, pages 3-4.

Also, general population statistics have limited use in discrimination analyses. See *Moore v. Hughes Helicopters, Inc.*, 708 F.2d 475, 482-83 (9th Cir.1983). This is because the appropriate comparison is between the populations of entities or persons available, capable and interested, with those who actually secured the contracts. Hence, defendant's statistics do not show significant disparity.

The state suggests another source of support for defendant's ordinance in its brief which is the amicus brief it has submitted in the *City of Richmond* case. In that case the city relied on extensive findings, including U.S. Congressional findings, to justify its affirmative action program. See Amicus Brief, page 4. The state argues that local governments, including defendant, should be able to rely on such congressional findings of industry discrimination. Here, however, defendant did not indicate its awareness of or reliance on such congressional findings.

I must hold defendant's voluntary affirmative action program without justification for two reasons. First, it fails to make prior findings that it discriminated against minorities and women, the requirement set forth in AGCC. Second, even applying the theory of implied participation in industry discrimination does not help defendant because it failed to make the requisite findings.

2. Narrowly Tailored

The narrowly tailored prong complements the justification prong. A program can be narrowly tailored only insofar as it remedies the discrimination from which the program draws its justification.

Here, the defendant has not made findings upholding justification and the program cannot be narrowly tailored into survival. It is worth pointing out, however, that a justified program must be narrowly tailored, including a finding that lesser restrictive alternatives were inadequate. Also, the provision for compliance by good faith efforts must set objective standards to guide implementation. Finally, such a program requires a review date whereby the local government can determine whether or not necessity compels continuance of the ordained program.

I conclude that defendant's voluntary affirmative action program is without sufficient justification and is not narrowly tailored. It violates the equal protection clause of the Fourteenth Amendment of the United States Constitution. Accordingly, I grant plaintiffs' motion for summary judgment on its first claim. I direct an order declaring the ordinance unconstitutional and enjoining implementation of programs based thereon.

B. Defendant's Motion to Stay

I decline to stay this action. Even if the United States Supreme Court holds that the implied participation theory can justify such an ordinance, defendant failed to make the requisite findings. Further, should the court find that a local government may rely on and adopt congressional findings, there was no reliance or adoption here. Finally, I am bound by the precedent of this Circuit which is, of course, firmly in place.

Plaintiffs shall prepare an order consistent herewith which shall be signed unless defendant objects within five calendar days of its submission.

Document Info

DocketNumber : Civ. No. 88-414-RE

Citation Numbers : Civ. A. No. C81-1656A

Judges : Redden

Filed Date : 11/22/1988

APPENDIX F

ORS 279A - MWESB Contracting

MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

279A.100 Affirmative action; limited competition permitted. (1) As used in this section:

(a) “Affirmative action” means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability or a policy to give a preference in awarding public contracts to disabled veterans.

(b) “Disabled veteran” has the meaning given that term in ORS 408.225.

(2) The provisions of the Public Contracting Code may not be construed to prohibit a contracting agency from engaging in public contracting practices designed to promote affirmative action goals, policies or programs for disadvantaged or minority groups or to give a preference in awarding public contracts to disabled veterans.

(3) In carrying out an affirmative action goal, policy or program, a contracting agency by appropriate ordinance, resolution or rule may limit competition for a public contract for goods and services, or for any other public contract estimated to cost \$50,000 or less, to contracting entities owned or controlled by persons described in subsection (1) of this section. [2003 c.794 §13; 2009 c.235 §1]

Note: Sections 1 and 2, chapter 741, Oregon Laws 2013, provide:

Sec. 1. Task Force on Procuring Through Small and Local Businesses. (1) The Task Force on Procuring Through Small and Local Businesses is established, consisting of nine members appointed as follows:

(a) The President of the Senate shall appoint:

(A) Two members from among members of the Senate.

(B) One member who is a minority individual or a woman, as those terms are defined in ORS 200.005, who owns or operates a small or local business.

(b) The Speaker of the House of Representatives shall appoint:

(A) Two members from among members of the House of Representatives.

(B) One member who is a minority individual or a woman, as those terms are defined in ORS 200.005, who owns or operates a small or local business.

(c) The Governor shall appoint three members as follows:

(A) One member who is a minority individual or a woman, as those terms are defined in ORS 200.005, who owns or operates a small or local business;

(B) An employee of the Oregon Department of Administrative Services; and

(C) An employee of the Department of Transportation.

(2) The task force shall:

(a) Study the extent to which contracting agencies award public contract to minority-owned, woman-owned or emerging small businesses in this state and describe and categorize the types of public contracts that contracting agencies typically award to minority-owned, woman-owned or emerging small businesses in this state;

(b) Evaluate the extent to which large procurements for goods and services, including construction services, could feasibly be broken into smaller procurements that would be within the capabilities and expertise of minority-owned, woman-owned and emerging small businesses in this state;

(c) Investigate and recommend incentives that can help to induce contracting agencies to award public contracts to minority-owned, woman-owned or emerging small businesses; and

(d) Report the results of the study the task force conducts under paragraph (a) of this subsection in a manner that makes comprehensive data about public contracting awards to minority-owned, woman-owned or emerging small businesses in this state visible, understandable and useable and that illuminates the particular impact that contracting agencies' public contracting practices have on:

(A) Minority-owned businesses, woman-owned businesses and emerging small businesses, each as separate categories of businesses; and

(B) Specific groups of minority individuals who own small or local businesses, including but not limited to individuals who are:

(i) Asian American, as described in ORS 200.005 (4)(c), or Pacific Islander;

(ii) Black, as described in ORS 200.005 (4)(a), or African American;

(iii) Hispanic, as described in ORS 200.005 (4)(b), or Latino;

(iv) Portuguese, as described in ORS 200.005 (4)(d);

(v) American Indian or Alaskan Native, as described in ORS 200.005 (4)(e); and

(vi) A member of another group that the Advocate for Minority, Women and Emerging Small Business has determined is socially and economically disadvantaged.

(3) The task force may:

(a) Consult and communicate with any person;

(b) Hold hearings and receive testimony and other evidence;

(c) Request data and information from contracting agencies; and

(d) Take other actions that are consistent with the task force's purpose.

(4) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the voting members of the task force.

(6) The task force shall elect a member of the task force to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(9) The task force may adopt rules necessary for the operation of the task force.

(10) The task force shall submit a report in the manner provided by ORS 192.245, and may include recommendations for legislation, to an interim committee of the Legislative Assembly related to public contracting as appropriate no later than September 1, 2014.

(11) The Oregon Department of Administrative Services shall provide staff support to the task force.

(12) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses the members incur in performing the members' official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to the Oregon Department of Administrative Services for purposes of the task force.

(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in performing the task force's duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform the members' duties. [2013 c.741 §1]

Sec. 2. Section 1 of this 2013 Act is repealed on January 1, 2015. [2013 c.741 §2]

279A.105 Subcontracting to emerging small businesses or businesses owned or controlled by disabled veterans. (1) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a business enterprise that is certified under ORS 200.055 as an emerging small business or a business enterprise that is owned or controlled by a disabled veteran, as defined in ORS 408.225.

(2) A contracting agency may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from, a business enterprise that is certified under ORS 200.055 as an emerging small business and that, as identified by the contracting agency, is located in or draws the business enterprise's workforce from economically distressed areas, as designated by the Oregon Business Development Department.

(3) A contracting agency may require that a public contract be awarded to a responsible bidder, as defined in ORS 200.005, who the contracting agency determines has made good faith efforts as prescribed in ORS 200.045 (3). For purposes of this subsection, "responsible bidder" includes a responsible proposer that has made good faith efforts as prescribed in ORS 200.045 (3). [2003 c.794 §14; 2005 c.103 §5; 2009 c.235 §2]

279A.110 Discrimination in subcontracting prohibited; remedies. (1) A bidder or proposer who competes for or is awarded a public contract may not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

(2) A contracting agency may debar or disqualify, under ORS 279B.130 or 279C.440, as appropriate, a bidder or proposer if the contracting agency finds that the bidder or proposer has violated subsection (1) of this section in awarding a subcontract in connection with a contract advertised by the contracting agency or a contract between the contracting agency and the bidder or proposer. A debarred or disqualified bidder or proposer may appeal the debarment or disqualification under ORS 279B.425 or ORS 279C.445 and 279C.450, as appropriate.

(3) A contracting agency may not allege an occurrence of discrimination in subcontracting as a basis for debarring or disqualifying a bidder or proposer under subsection (2) of this section more than three years after the alleged discriminatory conduct occurred or more than three years after the contracting agency, in the exercise of reasonable diligence, should have discovered the conduct, whichever is later.

(4) A bidder or proposer shall certify in the documents accompanying the bidder's or proposer's offer to enter into a public contract that the bidder or proposer has not discriminated and will not discriminate, in violation of subsection (1) of this section, against any minority, women or emerging small business enterprise or against a business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining a required subcontract.

(5) After a contractor is awarded a public contract, if the contractor violates the certification made under subsection (4) of this section, the contracting agency may regard the violation as a breach of contract that permits the contracting agency to:

(a) Terminate the contract; or

(b) Exercise any of the remedies for breach of contract that are reserved in the contract.

[2003 c.794 §15; 2009 c.235 §3]

