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Cost overruns, other troubles tainted some Measure P work in Monterey Peninsula schools

by ROYAL CALKINS on JULY 3, 2016

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Seaside High School graduation, 2013

SEASIDE HIGH PROJECT DRAGGED ON AND ON, EXPENSIVELY

Like all California school districts involved in bond measures, the Monterey Peninsula school system has a citizens oversight committee. Oversight committees generally meet quarterly and confine their role to rubber-stamping whatever the district administration says about construction work financed by the latest bond issue.

But one project financed by the district's \$110 million Measure P of 2010, a new heating and air conditioning system for **Seaside High School**, proved to be so problematic that the committee made a special plea to the administration to be allowed to conduct a special study of the cost overruns and numerous other troubles.

Cost estimates had been exceeded and ultimately ignored. Administrative corners had been cut to speed up the project because students were shivering in unheated classrooms but everything was way behind schedule anyway.

Overseeing the project was **Harris Construction** of Fresno, which is now embroiled in a **criminal investigation** involving \$117 million in school construction it performed in Fresno under a no-bid contract arrangement that has since been ruled illegal by an appellate court. It was a no-bid "lease-leaseback" bid contract arrangement much like its contract for the Seaside High work and several other contracts Harris was awarded by the **Monterey Peninsula Unified School District**.

Initially, the oversight committee's request to investigate was ignored by then-Superintendent Marilyn Shepherd. But the committee persisted and, soon after she left the district, the school board authorized a special inquiry. The result was a special oversight committee report in March 2015, a remarkably pointed and candid report that found "utter disregard of contract provisions" and "blatantly obvious ... lack of contract review." (To view the report, **click on this link**, and when that opens, click on the "download now" button,)

The project was budgeted to cost \$2.5 million but the price ran considerably higher because of general cost overruns and additional work that was not approved by the school board. Among other things, the contract that originally called for heating and air conditioning work morphed into one that included a new tennis court and repaving of outdoor basketball courts.

Rick Heuer, who chaired both the oversight committee and the subcommittee at the time, said it was impossible to determine the actual final cost to the district.

According to the report, "District staff did not inform the board of the project phasing, the increased scope of work, increased architect's fees, increased cost estimates, scheduling or justification for the type of heating system selected. Design started in January of 2011. The board was kept in the dark about architect's fees and phasing until August of 2013. Staff seems to consider this to be only a minor oversight."

'URGENCY' PROJECT STALLED FOR NO GOOD REASONS

The report continues:

"Nowhere in the staff report was there any indication that the total value of the project would be. As a result no flags were raised regarding the potential overall cost of the project and its impact on the overall bond program and since no overall Bond Program Budget had been created there was no ability to assess the impact of what the total cost might be.

"It appears that little attention was paid to the accuracy of the contract documents. Besides the facts that not all provisions were enforced and contract amendments were not signed nor dated, the contract cover sheet was dated October 29, 2009, while the contract wasn't executed until March 16, 2010"

The report repeatedly complains that the school board was not kept up to speed on the work, the modifications or the increased costs.

"The inclusion of items totally unrelated to the heating system at Seaside High such as allowances for the tennis court, special education modernization and repaving of the basketball courts inflated the cost and were never reviewed in the context of the overall bond program. The title of the agenda item the board reviewed was 'Discuss & Approve the Harris Construction Guaranteed Maximum Price for Seaside High School HVAC Upgrades, Paving and Various Related Projects.' First, the items are not 'related' to HVAC upgrades. Second, the only place the costs of these add-ons are reviewed is in the contract itself."

Here's the text of the Sept. 20, 2013, letter the MPUSD Citizens Bond Oversight Committee sent to the Board of Trustees requesting permission to investigate the cost overruns at Harris Construction's Seaside High School project:

Dear Members of the Board:

At our last oversight committee meeting we were briefed on and briefly discussed the large cost overrun at Seaside High. Since that meeting we know that the board has been briefed on the overrun and it has been the subject of controversy. We continue to have questions about how it came to be, its impact on other bond projects and how we can ensure something such as this does not occur again. We would like your permission to do a full analysis of what occurred with this project, document for the public the entire process, make recommendations regarding any procedure changes which may improve the process and report back to you the results of our investigation. We feel this would allow for an objective review of this project and hopefully quell rumors and speculation.

Sincerely, Rich Heuer, Chairman

The report was available online, but never received outside attention. However, one of the committee members, Carole Dawson, says the situation has improved dramatically with Shepherd's departure and the hiring of her successor, PK Diffenbaugh.

“The biggest improvement was getting a superintendent who is really good,” said Dawson, who now chairs the district’s bond oversight committee.

While Diffenbaugh has inherited some problematic contracts from the \$110 million Measure P bond, he has improved oversight of the various processes and created an effective facilities advisory committee, said Dawson and others.

CONSULTANT TERRY BRADLEY WORE CONFLICTING HATS

Ironically, Diffenbaugh was hired in 2014 as the result of an executive search headed by Terry Bradley, the former Clovis school superintendent who was largely responsible for hiring Harris Construction and the Fresno architectural firm, the Teter Partnerships, that were responsible for the cost overruns on the Seaside High project. Bradley maintained his office at Harris Construction and also was a partner for a solar company that did considerable work for Monterey Unified, but it isn’t known whether he disclosed his various roles.



Carole Dawson

Bradley was recently fined \$50,000 by the U.S. Securities and Exchange Commission for leaking confidential information from five school district clients to a bond firm, Keygent Advisors. Though Monterey Peninsula Unified School District was not one of the five districts, Keygent did serve as the lead financial adviser for Measure P and Bradley worked from January 2011 to January 2016 as a general financial adviser for MPUSD.

(While working on the superintendent search for the district, Bradley visited the Monterey Herald, ostensibly to question editors about the type of superintendent they would like. He spent most of the time, however, pitching the idea of a new bond measure to improve conditions at Marina High School, which he said was one of the worst school facilities he had ever seen.)

The special oversight subcommittee produced a remarkably comprehensive report on the Seaside H.S. with numerous suggestions for improving the district's overall performance on renovation work. The committee itself was also remarkable, consisting of three people with particularly strong credentials.

Dawson is a retired civil engineer who worked in the public works departments for the cities of Monterey and Seaside, serving as project manager for several infrastructure improvements. She has been president of the **California Society of Professional Engineers** and has been highly active in neighborhood issues for the city of Monterey. She has degrees in philosophy from the University of California Santa Barbara and in civil engineering from California State University Sacramento.

Heuer is a hotel consultant in Monterey and an active member of the Monterey Taxpayers Association. He has served on the Monterey planning and architectural review commissions. He holds degrees from the Monterey Institute of International Studies and the Fisher Graduate School of International Business.

Committee member Alastair Rodd of Marina works as an international education consultant, primarily in Third World countries on projects involving education reform, decentralization and education financing. He holds bachelors degrees in economics and economic and social history from Bristol University and a masters in economics and African studies from Johns Hopkins University. He also has taken advanced studies in accounting.



Alastair Rodd

School districts promoting bond issues invariably put heavy emphasis on the existence of a citizens oversight committee, creating the impression that a group independent of the district will be monitoring or even directing key decisions involving use of the bond money. In fact, such committees are generally relegated to simply certifying that the spending is legal. Heuer, who also has served on a

bond oversight committee at Monterey Peninsula College, calls them “toothless.”

“If they spent \$100,000 on a toilet, we couldn’t do anything about it,” Dawson said. Usually, such committees meet four times a year and are presented with little more than a list of spending in the previous quarter and a rubber stamp.

A MILLION HERE, A MILLION THERE

For the Seaside High project, however, the committee saw quickly that much more scrutiny was needed.

Dawson said the district staff early on informed the school board that the \$2 million effort was going to cost at least \$4 million, “but the explanation was just seven sentences. No detail.”

She recalled that the fees for Teter, the Fresno-based architect, “just kept going up and up, and they say, ‘Oops,’ it’s \$400,000 instead of \$250,000’ and ‘Oops, the project is \$4 million instead of \$2.5 million’ and ‘Oops, this urgency project, this the-kids-don’t-have-any-heat urgency project is going to take four years.’”

The report, authored by Dawson, said, “There seems to be a blatant disregard for completing this ‘urgent’ project in a timely manner. There was no time schedule for this project. The Board approved the Master Contract with Teter on October 5, 2009. The contract with Teter was not executed until nearly five and a half months later. Design did not begin until ten and a half months after that. Therefore, from Board approval to start of design was one year and four months. Then, design (for all three phases) took another two years to complete. Construction took eight months to complete. For this ‘urgent’ project, the total time from Board approval to construction completion for three phases was four years.”

Dawson said she was relieved when Shepherd left the district, following significant controversy, but disappointed that she had not authorized a special inquiry before she left.

CRIMINAL INQUIRY MAKES SENSE

She said the committee hung back on the issue for a time but was motivated to move ahead when Monterey Herald reporter Claudia Melendez Salinas wrote about the delays and cost overrun in January 2014. While the school board was going through the process that would lead to Diffenbaugh's hiring, the committee sent a follow-up letter to the interim superintendent. He obtained board approval and the special committee inquiry began in April 2014.

Dawson said she was not surprised when she saw news accounts about Harris' legal troubles in Fresno and Bradley's SEC problems.

"We always suspected it could be something like this," she said.

Harris installed air conditioning and heating systems at the district offices and in several schools under the lease-leaseback system, which the courts have now ruled to be an illegal device intended to circumvent the competitive bidding process.

In Fresno, where an FBI investigation appears to be in full swing, the school district hired Harris Construction to build a new middle school. It then leased the property to Harris, putting the company instead of the district in charge of the project and enabling it to hire and manage subcontractors however it chose. **Fresno blogger Mark Arax reported that Bradley**, on behalf of the Fresno district, essentially promised construction contracts to Harris Construction in exchange for help financing the bond measure election campaign, which could amount to the type of quid pro quo that leads to bribery charges. Harris and several other firms involved in both the Fresno and Monterey bond measures also contributed to the Measure P campaign.

In Monterey and elsewhere, the lease-leaseback process was altered because schools were being renovated rather than built yet the properties were still technically leased to the contractor and various steps in the normal bidding process were eliminated.

An appeals court in Fresno ruled the practice illegal and the state Supreme Court let that opinion stand. The lawsuit that resulted in those rulings continues and, unfortunately for the Fresno district, the contract it signed with Harris requires the district to pay Harris' legal fees in addition to its own. At least some of the Harris contracts with MPUSD contain the same provision.

Comments on this entry are closed.

Dan Miller July 3, 2016, 12:19 pm

I was on the Pacific Grove Unified School District oversight committee. I resigned over the \$6.5 million football stadium. Not sure when I woke up in Texas. People need to realize when they vote for these things that there really isn't any oversight. As long as it was on the list of proposed covered projects, no matter how vague, there is really nothing that can be done. The "oversight" group sees the projects afterward and if they don't find it on the list then they can demand the district take it out of their general fund. Yea that's ever going to happen. Though passed years ago they just started on a project that was supposed to be funded by the Measure this last month. I'll never forget asking the group of members on the oversight committee why they didn't put on the ballot that \$6.5 million was earmarked for the football stadium. The response "because the people never would have voted for it."

LINK

Christina Lund July 3, 2016, 1:51 pm

Once again, terrific reporting.

Incompetence and self-dealing are not limited to bureaucracies. It must be a nightmare to manage a multi-million construction contract- I've always had a hard

time understanding why the construction trades get away with such arrogance, mismanagement and corruption.

LINK

Andrew Allison July 3, 2016, 1:59 pm

The potential for such outright fraud is the reason that the School District has a Board of Trustees. They have a fiduciary duty to the taxpayer which they have blatantly failed to perform. The fact that then-Superintendent Marilyn Shepherd's fingers are all over this malfeasance doesn't change the fact that the Board is responsible for it. Throw the rascals out.

LINK

Matthew Sundt July 3, 2016, 2:12 pm

Competent oversight purposely avoided by incompetent technocrats. I wonder what we will unearth here in our own backyard!

LINK

david fairhurst July 3, 2016, 2:26 pm

Again, my whole point was and is, and as I believe that Royal has once again show us with his in depth true journalistic reporting, that people vote for these bonds with the best of intentions but are hoodwinked and unaware of their actual expenditures and the graft. Where is the "accounting"?

We are told that these "bonds" (debts/loans with interest) are necessary because without them Art, Music, Libraries, Math, Science and all the true earmarks of education and culture will be cut or eliminated. Paraded before us and so ingrained into us (by the schools themselves) that there is no debate, is the "poor"

teacher that buys their own supplies, the responsibility of raising our children (which I never asked for), the lack of maintenance, outdated facilities, supplies, cancellation of "field trips" and so forth (all of which may be true conditions). But why are these problems never solved no matter how much in debt ourselves for our schools?

So, because we know the importance of education we vote for these "bonds" not realizing where the money actually goes. I have no problem with tax money going to where it is needed and can do the most good, but I am angered when it is usurped and diverted into excess for those that are already well compensated for the little they actually contribute. (no Alan E. I am not talking about teachers, even if I do think it is a "good" job with good benefits, I would agree it is not "excessive" in pay).

With my mom's passing some time ago there were old newspapers, (yes a lot of Depression era people became hoarders) there was one L.A. Times paper from about 1962 with lengthy articles and editorials about if only the State could raise the sales tax from 1% to 1.5%. That .5% increase would "save" all education and prevent the elimination of Kindergarden, Art and other necessary programs. They claimed that if the State could get this through, just this once, the State would never have to ask for any increases ever again, ha, ha, ha...yeah sure...

Yes remember how we approved gambling, starting with the lottery, in California because it would save the children and all this money would rain down upon our schools, what happened with that? Oh yeah, it got diverted into the general fund, another bureaucracy was born and more pay raises for those that didn't deserve them.

For a change, I think I agree with 'Dan' on this one. "Bonds" need "oversight", accountability and an honest representation of what they are intended for. If we vote for a "debt" to build an Art Center, a Theater or Sports arena we should know the costs beforehand and that public contribution thru taxes is spent on those programs as we were promised they would be.

LINK

bill leone July 3, 2016, 9:38 pm

When operating a small, private business, the owners & managers must take extra-ordinary precautions to prevent waste, theft & low productivity. Therefore, every single month, it is necessary to complete a Profit/Loss Statement; this provides a picture of whether you are in the Red, & exactly where the business is failing (inefficient & ineffective), or whether you are in the Black, & exactly what is generating gross & net profits. Using a P&L the owner/manager decides to either install cameras, hire a private detective, use technology to catch thieves, reduce waste, or improve quality control &/or productivity....or, on the other hand, give promotions, raises & bonuses. Without a monthly P&L Statement, it is impossible to run Any organization; management is Blind.

The only effective oversight for a Public Institution is....The Public. Therefore, We, the residents of this community, are responsible for constructing, implementing & using a P&L, or its equivalent, on a monthly basis, to measure the efficiency & effectiveness of our Public Services, especially education.

"We have met the enemy....& it is us!" (Pogo)

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