Contract Audit Report

Audit of the Use of Consultants
Facilities Services Division
February 24, 2009

Mr. Guy Mehula
Chief Facilities Executive
Facilities Services Division
Los Angeles Unified School District
333 S. Beaudry Avenue, 23rd Floor
Los Angeles, CA 90017

Dear Mr. Mehula:

This is our report on the Use of Consultants within the Facilities Services Division.

The report addressed several areas of concern within the Facilities Services Division relating to the cost of consultants, their use and their effects on District employees. The report also makes several recommendations which we believe will go a long way to address these concerns if implemented.

I appreciate your continued support of our contract audit services.

Sincerely,

[Signature]

Jerry Thornton
Inspector General, Office of the Inspector General

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EXECUTIVE SUMMARY

We have audited the use of consultants within the Facilities Services Division (FSD). The objectives of the audit were to: (i) determine the number of consultants employed within the FSD and the related costs for fiscal year 2006-2007, (ii) compare the cost of using consultants against the cost of using employees, (iii) determine the reasons for using consultants, (iv) determine whether consultants are complying with the Contractor Code of Conduct, (v) review the policies and procedures that govern the use of consultants, (vi) review the hiring and promotional process for consultants, (vii) determine the process followed when a consultant changes firm affiliation, (viii) examine the difference between Program Management and Construction Management consultants and determine if consultants working in program management positions are performing construction management functions, and (ix) determine the effects of the use of consultants on employees working for or with consultants within FSD.

Based on our audit we found that:

- During fiscal year 2006-2007, the Facilities Services Division employed 1,277 consultants at an annual cost of $186 million.

- On average, the cost of a consultant was 1.7 times the cost of an employee. The cost to the District of having consultants in the positions we examined was about 70 percent higher than employing classified employees in those positions in fiscal year 2006-2007. The District might have saved about $77 million on costs for personnel services for that fiscal year if it had used employees.

- The use of consultants provides FSD certain benefits, such as increased flexibility in fulfilling immediate needs and obtaining expert knowledge when not present in the District. However, there is a concern/risk that the use of consultants in performing Inherently Governmental Functions could lead to a loss of government control over and accountability for mission-related policy and program decisions.

- Consultants in FSD managed and supervised District employees, made or influenced decisions affecting employees’ positions and compensation, performed District employees’ annual evaluations, and approved their timecards. There were also no policies and procedures within FSD limiting the types of functions consultants may perform.

- The line separating District employees from consultants was blurry. There was no way to determine who was a consultant and who was an employee. Consultants were not identified as such in their correspondences such as letters and e-mails or on their business cards and identification badges. Consultants are not required to identify themselves as such when conducting District business.

- Consultants in FSD were making hiring and promotional decisions with respect to consultants from their own firms. We also found that consultants were approving timesheets for other consultants from their own firms.
• Eighty four (84) percent of consultants have been employed at the FSD for a period of more than two years and sixteen (16) percent have been employed for more than five years.

• Consultants were hired or promoted that did not have the required minimum qualifications for their positions.

• PB Americas, Inc. (PB) consultants were not limited to performing program management work and some Construction Management (CM) consultants were performing program management work and supervised PB consultants.

• The Program Management (PM) contract allows for greater flexibility in staff placement, billing rate negotiations, and signing on subcontractors than the CM contracts. Positions identified for PM consultants are filled by PB without any competition from any other firms. Positions for CM consultants are required to be filled via a call-for-resumes/candidate evaluation and selection process where the CM firms are invited to submit resumes for the position and the consultant is selected from a short list of candidates after an interview and evaluation process.

• Designating only one firm to provide consultants for program management positions may not be beneficial to FSD. The District can obtain well-qualified, if not better-qualified, consultants to perform program management duties from a bench of firms through a competitive process for each position, rather than from just one firm.

• A majority of the respondents in an employee survey indicated that the use of consultants in management positions has an overall negative impact on District affairs, working relationships, fair treatment of employees, job security of employees, and overall employee morale. Most respondents also believed that the consultants in management positions were not performing well in managing the department where they worked, that they were biased in their work, and were not working for the benefit of the District.

RECOMMENDATIONS:

• We recommend that the FSD should identify functions being performed by consultants which are either inherently governmental functions or closely supporting inherently governmental functions. For the inherently governmental functions, FSD should determine personnel needs and develop ways to meet those needs using employees instead of consultants. For the functions that closely support inherently governmental functions, FSD should develop policies and procedures to ensure that appropriate District control is preserved.

• We recommend that the FSD should establish policies to mitigate the risk of consultants being mistaken for District employees. When appearing for or speaking for the District, consultants should be required to identify themselves as such.

• We recommend that FSD management should observe and enforce the CT-005 policy guidelines to prevent any conflict of interest in the timesheet approval process and
observe and enforce the CT-006 policy guidelines to prevent any conflict of interest in the hiring/promotion process.

- We recommend that FSD should clearly define in its policy the maximum timeframe for which consultants are allowed to be used to fill a vacant position.

- We recommend that FSD should implement a policy to prevent consultants from supervising other consultants when they are from the same firm or when their firms have a prime/subcontractor relationship.

- We recommend that Existing Facilities should implement proper policies and procedures to ensure that the consultants it hires meet the minimum qualification requirements for the positions they occupy.

- We recommend formal policies and procedures be implemented on the hiring and promotion process for PM consultants. Such policies and procedures should ensure that there is proper documentation of evaluation and approval by District management employees and that conflicts of interest are not involved in the process.

- We recommend that the qualification requirements for PM positions should be specified and there should be documentation in the evaluation package demonstrating that the candidate qualified for the position. Consultants from the same firms of the candidate should not be involved in any part of the process, including drafting the qualification requirements, evaluation, and recommendation.

- We recommend that FSD should develop and implement appropriate policies and procedures to bar consultants from changing their firm affiliation while working at the District.

- We recommend that that FSD should terminate the two-tier system of consultants (PM/CM) and require all consulting firms to be subject to the same terms and conditions and policies and procedures.

- We recommend that FSD should staff all senior level management positions with District employees instead of consultants.

INTRODUCTION

The Facilities Services Division oversees the construction of new facilities and the modernization of existing facilities. In 1997, voters passed the first bond issue in 34 years to construct new schools and to upgrade existing ones. At the time, the District did not have the qualified personnel in place to acquire needed new school locations or construction personnel to manage a plan to effectively build or repair schools.

Due to the need to achieve the goals of the building program within required schedules and to maintain flexibility in staffing requirements, the available District staff was augmented with consultants who had experience in the construction and program management functions. During
fiscal year 2006-2007, FSD employed 4,678 personnel, of which 1,277 or 27 percent were consultants.

SCOPE AND OBJECTIVE

Our audit was conducted from October 19 2007 through November 21, 2008.

The objectives of the audit were to: (i) determine the number of consultants employed within the FSD and the related costs for fiscal year 2006-2007, (ii) compare the cost of using consultants against the cost of using employees, (iii) determine the benefits and risks of using consultants, (iv) determine whether consultants are complying with the Contractor Code of Conduct, (v) review the policies and procedures that govern the use of consultants, (vi) review the hiring and promotional process for consultants, (vii) determine the process followed when a consultant changes firm affiliation, (viii) examine the difference between Program Management and Construction Management consultants and determine if consultants working in program management positions are performing construction management functions, and (ix) determine the effects of the use of consultants on employees working for or with consultants within FSD.

We conducted our audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) and included such tests of management controls that we considered necessary in the circumstances.

METHODOLOGY

To accomplish our audit objectives, we: (i) requested data from FSD pertaining to the number of consultants used and the related costs, and tested the data by confirming the information with the consultant firms; (ii) calculated the equivalent cost of employing employees for a sample of consultant positions; (iii) performed interviews with FSD management; (iv) obtained an understanding of relevant policies and procedures; (v) performed interviews with consultants; (vi) reviewed hiring records for a sample of consultants; (vii) reviewed financial disclosures filed by consultants; and (viii) conducted a survey of employees working in FSD branches and departments in which consultants occupied senior level management positions.

RESULTS OF AUDIT

I. How Many Consultants Did FSD Employ and What Were the Costs?

During the fiscal year under review (FY 2006-2007), Facilities Services Division employed consultants to perform management and staff functions within the Division. The positions filled by consultants ranged from clerical positions to top management positions. These consultants were supplied by firms on contract with the District and FSD paid for the services of these consultants on an hourly basis. The consultants were required to work 40 hours a week and provided services within FSD only, under staff augmentation. Those consultants who worked on a task order basis were excluded from our population.
We obtained data from FSD and performed an independent verification of the data by confirming the data with the consulting firms that provided the consultants. Based on our audit, we found that FSD employed 1,277 consultants at a cost of about $186 million during fiscal year 2006-2007.

<table>
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<tr>
<th>Branch</th>
<th>No. of Consultants</th>
<th>Total Costs</th>
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<tbody>
<tr>
<td>New Construction</td>
<td>518</td>
<td>$ 72,923,303</td>
</tr>
<tr>
<td>Existing Facilities</td>
<td>690</td>
<td>104,062,610</td>
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<tr>
<td>Construction Support Services</td>
<td>55</td>
<td>6,088,171</td>
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<tr>
<td>Facilities Contracts</td>
<td>11</td>
<td>1,871,885</td>
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<tr>
<td>Planning &amp; Development</td>
<td>2</td>
<td>522,109</td>
</tr>
<tr>
<td>Facilities Support Services</td>
<td>1</td>
<td>107,793</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,277</strong></td>
<td><strong>$ 185,575,871</strong></td>
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Based on more current data provided by FSD, FSD employed 882 consultants as of September 2008, a decrease of 395 from fiscal year 2006-2007.

*FSD’s Response:*

According to FSD, the data we presented did not address the trend changes in the number of consultants nor how the numbers relate to the size of the construction program. FSD believed that in order for the information to be utilized in a helpful manner, the data should have referenced other fiscal years, the number of district employees in FSD, and the growth and phases of the capital program. (*See Exhibit B for a verbatim copy of FSD’s response*).

*OIG’s Response:*

Analyzing the trend changes in the number of consultants versus the number of district employees in FSD over the history of the construction program was not the objective of this audit, and as such, we did not perform an analysis of such changes. FSD did, however, provide to us, previously, with the staffing history for New Construction Branch and Existing Facilities Branch which we have attached as Exhibit C to this report.

Based on the information provided by FSD, we prepared a trend analysis of staffing level changes for the New Construction Branch and Existing Facilities Branch (See graph on following page). The analysis showed that there have not been any significant changes in the ratio of employees versus consultants in the New Construction Branch in recent years. The analysis showed that for every two (2) employees, there have been three (3) consultants staffed in the New Construction Branch. In Existing Facilities, it has been roughly a one-to-one ratio for employees versus consultants.
This analysis was prepared using unaudited information provided by the Director of Facilities Support. It is worth noting, however, that the numbers of consultants provided for fiscal year 06-07 are lower than our audited numbers which we independently verified with FSD and the consulting firms that provided the consultants. According to the above staffing history provided by Facilities Support, New Construction and Existing Facilities employed 359 and 527 consultants respectively. According to our audit, we verified that those numbers should be 518 and 690 for New Construction and Existing Facilities respectively. The above data provided by Facilities Support reflected a consultant undercount of 44% and 31% respectively for FY 2006-2007.
II. How Did the Cost of Consultants Compare to the Cost of Employees for the Same Positions?

We selected 41 consultant positions and determined the employee classifications that these consultant positions would fall into based on the information the Personnel Commission provided us. Then, we performed a comparison of the annual cost of these consultants to the annual cost of employing District employees (paid salary plus benefits) for the positions.

The Personnel Commission provided us with classified positions that were equivalent to selected consultant positions for comparison. We considered the fact that the District does not pay for vacation, sick leave, and holidays for consultants and used an average of 1,920 annual hours to compute the cost of a typical consultant. For District employees, we used 2,080 hours to calculate the annual salary costs plus additional benefits that were added to the annual salary costs using Financial Guide No. 1 from the Budget Services and Financial Planning Division (See Exhibit E).

Based on our sample, we found that on average, the cost of a consultant was 1.7 times the cost of an employee. In other words, the cost to the District of having consultants in those positions examined was about 70 percent higher than employing classified employees in those positions in fiscal year 2006-2007. (See Exhibit A for details of our computation).

Given that the cost for consultants in fiscal year 2006-2007 was approximately $186 million, if the FSD had used employees in those consultant positions in FY 2006-2007, the District might have saved about $77 million on costs for personnel services for that fiscal year.

FSD Response:

FSD disagreed with the calculation of the $77 million of possible cost savings for FY 2006-2007 if employees were used for all the consultant positions. It maintained that the construction program simply would not have its current success if the District had used only employees to execute the Construction and Renovation Program (program). FSD indicated that, given that construction is not the District’s core business, the expertise and the number of positions of staff to support a major construction program is not maintained with the District. Its view is that it cannot hire adequate industry professionals to meet the demands of the program, because in general, the best and brightest industry professionals would not want to work for a school district. Instead of costing the District more funds with the use of consultants, FSD claimed that it saved the District $450 million over the past 6 years by using an optimal mix of employees and consultants in the program instead of 100% consultants.

FSD also argued that since the components included in the cost of employees and consultants are different, the comparison made between those two costs is flawed. FSD argues that the billing rate of a consultant includes costs that are part of the consulting firm’s general overhead, such as salaries of management, administrative staff, accounting, and human resources. On the other hand, the cost of employee includes only the employee’s salaries and benefits, and did not include District overhead costs such as recruiting, training, and payroll administration. FSD indicated that for an accurate comparison, the cost of the employee should also include similar components of overhead that is included in the consultant’s cost.
In addition, FSD indicated that the benefit of using consultants included the ability to quickly adjust staffing levels to match the fluctuations of workloads. If employees were used, delays in obtaining staff through the District’s hiring process could result in significant consequences to the program. When the workload is reduced and staffing levels need to be adjusted accordingly, the associated costs of layoffs and bumping could also be significant. FSD believes that the costs associated with such possible delays, layoffs and bumping, if the program uses all employees, should be included in the cost comparison as well.

OIG’s Response:

In this audit objective, our audit scope was to calculate the difference between the cost of an employee versus the cost of a consultant for the same position. The “cost” we examined here was simply the amount of funds the District paid for the services of the individuals over a one year period. For a consultant, that cost is based on an hourly billing rate multiplied by the number of hours worked in a year. For an employee, that cost is based on the salary paid to the employee plus employee benefits paid such as retirement contributions, payroll taxes, and other fringe benefits. The fact that the consulting firms’ overhead costs were included in the hourly billing rates of consultants does not make the comparison invalid. Consultant firms include various cost components in their billing rates in order to ascertain that the revenues from providing the services to FSD will help pay for those cost components. Overhead costs are included in the hourly rates to ascertain that the revenues received from FSD will not only pay for the salaries of the consultant, but also those overhead costs. However, regardless of what cost components were included in the hourly billing rates, that rate was what was paid to the consultant’s firm for the services of the consultant, from the District’s perspective. Similarly, from the District’s perspective, it pays a salary and benefits for the services of a District employee.

It is true that there are other costs associated with using employees, such as the cost of recruiting, training, payroll processing, etc, that have not been included in the cost of employees. On the other hand, other costs associated with using consultants such as the cost of contract procurement, contract administration, consultant selection and evaluation, invoice processing, training, supervision etc, have not been included in the cost of consultants as well. Hence, in considering only what the District paid for the services of the individuals, we believe the comparison was properly calculated.

The OIG did not recommend that the program be executed 100% by employees, however, there is no basis to conclude that the program would not have had its current success if the District had used only employees to execute the program. FSD never attempted to execute the program entirely with employees and it cannot reference a program that failed because it was executed with employees. There is also no evidence to support its claim that it saved the District $450 million over the past 6 years by using an optimal mix of employees and consultants in the program instead of 100% consultants. On the contrary, based on our analysis above, FSD could have saved the District more than $450 million over the past 6 years if it had used 100% employees.
III. What are the Reasons for Using Consultants? What are the Risks?

FSD indicated that it uses consultants instead of hiring employees for several positions because:

1. Expert knowledge was not present in the District.
2. Specific experience was required.
3. District recruitment has not been successful with high demand in local area for talent and the duration of the employee recruitment process was too long.
4. Use of consultants can be a temporary measure while trying to recruit District employees.
5. The positions occupied by consultants are finite or temporary and consultants can be quickly removed if they do not perform up to expectations.
6. Consultants can be used to handle temporary peaks in workload.

While the use of consultants provides FSD certain benefits, such as increased flexibility in fulfilling immediate needs and obtaining expert knowledge when not present in the District, one must consider the following concerns/risks:

Risk of Loss of Government Control

A major concern is the risk of loss of government control over and accountability for mission-related policy and program decisions when consultants provide services that are either inherently governmental functions or closely support inherently governmental functions. According to the Federal Acquisition Regulations (FAR), inherently governmental functions must not be performed by contractors or consultants. The U.S. Office of Management and Budget states that, "An inherently governmental function is a function that is so intimately related to the public interest as to mandate performance by government employees. These functions include those activities that require either the exercise of discretion in applying government authority or the making of value judgments in making decisions for the government." The FAR sets forth examples of inherently governmental functions. When applied to the District, they include the following:

Inherently Governmental Functions that Must Not be Performed by Consultants

1. The determination of program priorities for budget requests.
2. The direction and control of District employees.
3. The selection or non-selection of individuals for District employment, including the interviewing of individuals for employment.
4. The approval of position descriptions and performance standards for District employees.
5. The determination of what District property is to be disposed of and on what terms.
6. In District procurement activities with respect to prime contracts—
   (i) Determining what supplies or services are to be acquired by the District;
   (ii) Participating as a voting member on any source selection boards;
(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
(iv) Awarding contracts;
(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);
(vi) Terminating contracts;
(vii) Determining whether contract costs are reasonable, allocable, and allowable; and
(viii) Participating as a voting member on performance evaluation boards.

7. The determination of budget policy, guidance, and strategy.

In addition, the closer consultant services come to supporting inherently governmental functions, the greater the risk of their influencing the government’s control over and accountability for decisions that may be based, in part, on the consultant’s work. Decisions may be made that are not in the best interest of the government and may increase vulnerability to waste, fraud, or abuse. The FAR sets forth examples of services closely supporting inherently governmental functions. They include:

Examples of Services That Closely Support Inherently Governmental Functions

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
2. Services that involve or relate to reorganization and planning activities.
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
4. Services that involve or relate to the development of regulations.
5. Services that involve or relate to the evaluation of another contractor’s performance.
6. Services in support of acquisition planning.
7. Consultants providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
9. Consultants providing assistance in the development of statements of work.
10. Consultants working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information.
11. Consultants providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns or conducting agency training courses.
12. Consultants participating in any situation where it might be assumed that they are agency employees or representatives.
13. Consultants participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.
14. Consultants providing inspection services.

**Consultants Performing Inherently Governmental Functions**

Based on the data submitted by FSD, we found that there were 28 consultants occupying senior management levels within FSD. Three (3) of the six (6) branches within FSD were headed by consultants. Based on our interviews of these senior management consultants as well as other consultants and employees, we found that the consultants’ duties included performing inherently governmental functions and those that closely supported inherently governmental functions. For example, consultants were involved in directing/planning/monitoring bond funds, budgeting, negotiating contract award, modifying contracts, managing contracts and closing out contracts. In their positions, consultants managed and supervised District employees, made or influenced decisions affecting employees’ positions and compensation, performed District employees’ annual evaluations, and approved their timecards.

We also found that there were no policies and procedures within FSD limiting the types of functions consultants may perform.

We recommend that FSD identify functions being performed by consultants which are either inherently governmental functions or closely supporting inherently governmental functions. For the inherently governmental functions, FSD should determine personnel needs and develop ways to meet those needs using employees instead of consultants. For the functions that closely support inherently governmental functions, FSD should develop policies and procedures to ensure that appropriate District control is preserved.

**Consultants Not Always Identified As Such**

During our audit we found that consultants participated in several situations where it might be assumed that they were LAUSD employees or representatives. To avoid confusion by District employees, contractors, and the public over whether they are speaking to a District employee, it is important to clearly distinguish consultants from District employees in all interactions. Consultants attending meetings, answering District telephones, and working in other situations where their consultant status is not obvious to other parties should identify themselves as such to avoid creating the impression that they are District employees. In addition, the FAR states that agencies must ensure that all documents or reports consultants produce are suitably marked as consultant products or that consultant participation is appropriately disclosed. Further, in December 2005, the Assistant Secretary of the Army issued a memorandum, “Contractors in the Government Workplace,” stating that “while it is preferred that contractor personnel work in company office space, if Government and contractor personnel must be co-located in the same office space, then, to the maximum extent possible, the contractor personnel should have separate and separated space.”

At FSD, we found the line separating District employees from consultants to be blurry. There was no physical separation; both worked side by side in identical office space, and consultants
were not identified as such on their cubicles. Consultants were not identified as such in their correspondences, including letters and e-mails. Some consultants use business cards that look the same as District employee business cards. FSD has no requirement that consultants identify themselves as such in their correspondence and contacts with outside parties, which could help ensure that outside parties know they are dealing with a consultant.

We recommend that FSD establish policies to mitigate the risk of consultants being mistaken for District employees and appearing to be speaking for the District. FSD consultants should be required to identify themselves as such in all correspondence, including e-mail and voice mail, and in all documents.

Risk of Organizational or Personal Conflicts of Interests

For purposes of this report, we define a personal conflict of interest as a situation when an individual, employed by an organization in a position to materially influence government decisions may lack objectivity or be perceived to potentially lack objectivity because of his or her personal activities, relationships, or financial interests.

During our audit, we found instances of potential or actual conflicts of interests. We found that consultants were making hiring and promotional decisions with respect to consultants from their own firm. We also found that consultants were approving timesheets for other consultants from their own firm. These findings are discussed in further detail in the sections that follow.

FSD Response:

FSD disagreed with the use of FAR and the OMB as a reference to evaluate its use of consultants. FSD indicated that it is subject to the California Education Code, Public Contract Code, and Government Code, but not FAR and the OMB. FSD also believed that the FAR section quoted in the report was not relevant to the use of consultants, and that it relates to the contracting provisions with contractors related to providing procurement services.

Furthermore, FSD maintained that a unified team of employees and consultants is essential to the success of the program, and that anything that drives a barrier in the team is counterproductive to its goal. However, FSD stated that it did implement policy “FSD 001 Business Card Policy” in October 2008 in order to provide greater transparency. The policy requires all “contract professionals” have that title on their business cards. FSD also stated that in the future, it would consider additional actions to distinguish contract professionals from employees (e.g. changes on the identification badges).

OIG Response:

FSD is incorrect in stating that the FAR section quoted (FAR Subpart 7.5) in the report relates to the contracting provisions with contractors providing procurement services. The FAR contains policies and procedures relevant to the acquisition, by contract, of services and supplies by and for use of the Federal Government. The FAR serves to ascertain that the federal acquisition of services and supplies meet certain standards and objectives such as promoting competition, minimizing administrative costs, conducting business with integrity, and fulfilling public policy
objectives. FAR Subpart 7.3 “Contractor Versus Government Performance” lays out the policy that inherently governmental activities are to be performed by government personnel and not to be obtained through acquisition. In Subpart 7.302, the FAR states that the Office of Management and Budget Circular A-76 provides that it is the policy of the Government to—“(1) Perform inherently governmental activities with Government personnel.” FAR Subpart 7.5 goes on to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors. It states that “the purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors.”

FSD’s Construction and Renovation Program uses local bond funds and not Federal funds, and we agree that FSD is not legally subject to the FAR. However, FSD is nevertheless part of a public agency spending taxpayer funds in this program, and the discretion and prudence prescribed in the FAR policies and procedures could and should be used as a reference by FSD.

IV. Was There Potential and Actual Conflict of Interests and Were the Conflicts Disclosed and Managed in Accordance with the District’s Contractor Code of Conduct?

We performed interviews of 28 consultants that occupied senior level management positions within FSD. Based on these interviews, we found conflicts of interest in the work performed by a number of these consultants. Ten (10) of the twenty-eight (28) consultants supervised consultants from their firm and were also signing and approving the timesheets of these consultants. Five (5) of the twenty-eight (28) consultants were involved in the hiring process of consultants from their firm.

According to the District’s Contractor Code of Conduct, these consultants were required to disclose any potential conflict of interest by filing a Meaningful Conflict Disclosure, and taking steps to mitigate the conflict, including recusing themselves from being involved in those activities. Only one (1) consultant disclosed a conflict by filing a Meaningful Conflict Disclosure.

Based on the responses from the consultants, we found that the consultants did not perceive that there was a conflict, as they were not aware that merely being employed with their firm creates a “financial interest”. Furthermore, the FSD policies and procedures that the consultants were following at the time did not bar the consultants from approving other consultants’ timesheets even if they were from the same firm.

FSD implemented policy CT-005 Standard Protocol for Validation of Consultant Hours in July 2008. According to CT-005, consultants are not allowed to sign timesheets if there is a conflict of interest.

We recommend that all FSD management observe and enforce the CT-005 policy guidelines to prevent any conflict of interest in the timesheet approval process.

FSD’s Response:

FSD indicated that it decided in FY 2006-2007 that it would be appropriate to add additional management controls to the process of consultant time approval. In June 2008, it formalized the
policies “CT-005 Standard Protocol for Validation of Consultant Hours” and “CT-006 Contract Professional Staff Appointment Policy.” Such policies have been in place and are being followed.

V. What Policies and Procedures Has FSD Been Using Related to Consultants?

During the period covered under the scope of our audit, the New Construction Branch and Existing Facilities Branch were using different policies and procedures related to the hiring and change of duties of consultants. New Construction Branch adopted Standard Procedures 2.6 Staff Planning and Hiring in October 2004. The Existing Facilities Branch followed internal procedures Process for Hiring a New Consultant beginning February 2006, and formally adopted policies and procedures documented in Standard Protocol for Hiring CM Consultants at Central Offices in February 2007.

In June 2008, FSD issued Policy CT-005 Standard Protocol for Validation of Consultant Hours and Policy CT-006 Consultant Staff Appointment Policy to provide and establish policies and procedures related to the hiring of consultants and the approving of timesheets of consultants. These policies and procedures apply to all FSD branches.

Policy CT-006 sets forth the policies pertaining to the selection, appointment, and reassignment of consultants. The policy requires consultants be used to fill vacant positions when the work required is temporary or finite or when expert knowledge is not currently present in the District. The policy further requires that District employees be considered prior to filling a position with a consultant. The policy does not specifically define the timeframe for “temporary” or “finite.” We found that 84 percent of consultants had been employed for a period of more than two years and 16 percent had been employed for more than five years. Without a clear timeframe established for using consultants, the policy is open to interpretation by FSD management and may not be implemented on a consistent basis by its various branches and departments.

We recommend that FSD clearly define in its policy the maximum timeframe for which consultants are allowed to be used to fill a vacant position.

Policy CT-005 sets the policies and procedures pertaining to the approving of timesheets of consultants. CT-005 addresses conflict of interest concerns in the approving of consultants’ timesheets by consultants. It requires a higher-level approval signature for a consultant’s time sheet if the direct supervisor is also a consultant and with the same firm. This process is to continue until a conflict of interest fails to exist. While this addresses the conflict of interest issue, it would also result in a District employee or consultant signing/approving a time sheet for a consultant with whom he has minimal contact. The concern is that this higher-level manager may not have adequate knowledge of the hours worked by the consultant to be able to certify the validity of the hours as reported on the consultant’s timesheets. A more effective way to eliminate conflict of interest, either in the approving of timesheets or any other areas pertaining to the work conducted by consultants, is to disallow consultants from supervising other consultants when they are from the same firm or when their firms have a prime/subcontractor relationship.
We recommend that FSD implement policy to prevent consultants from supervising other consultants when they are from the same firm or when their firms have a prime/subcontractor relationship.

_FSD’s Response:_

FSD disagreed with our recommendation that it should define a maximum timeframe in its policy for which consultants are allowed to be used to fill a vacant position. FSD indicated that our audit did not make a valid business case to justify the restriction of a maximum amount of time a consultant may work on the building program. FSD indicated that many factors affect the determination of whether a position is filled with an employee or a consultant. In addition, even for those positions that FSD decided to fill with employees (such as inspector positions and project manager positions), it often was not successful in doing so in the numbers needed and with individuals with the required qualifications, due to the demand for talent in the local markets and the District’s lower than industry pay.

FSD also disagreed with our recommendation that it should implement policy to prevent consultants from supervising other consultants when they are from the same firm or when their firms have a prime/subcontractor relationship. It indicated that the supervision of consultants by other consultants from the same firm is a legally acceptable model and provides greater responsibility on the construction management firm. The model of construction management for Existing Facilities Local Regions is based upon one firm with the responsibility of the projects in that region. This model provides clarity of responsibility for the execution of the projects. FSD indicated that it addresses the risk of conflict of interest through District established policies and procedures, and review and oversight by senior management.

_OIG’s Response:_

Our recommendation that FSD should define a maximum timeframe in its policy (CT-006) for which consultants are allowed to be used to fill a vacant position came from the premise that the policy itself requires consultants be used to fill vacant positions when the work is “temporary” or “finite”, but does not clearly define what “temporary” or “finite” means. In order for this policy to be effectively and consistently implemented by management, FSD needs to clearly define what “temporary” or “finite” means.

FSD indicated that one main reason for using consultants was that it was not able to recruit the number of qualified individuals as District employees, one example being Construction Inspectors. According to data provided by FSD, the Inspection Department was using 73 consultants for inspections as of September 2008. We asked the Personnel Commission about their recruitment efforts and the results of their recruitment for the Construction Inspector position. We found that during the period when FSD hired and was using 73 consultants as inspectors, it asked the Personnel Commission to try to fill a total of only 7 vacancies for the Construction Inspector and Construction Inspector Class 1 positions.

In an effort to fill the 7 vacancies, the Personnel Commission began the recruitment process in July 2008. The Personnel Commission created eligibility lists for both of those positions in
September 2008, and as of February 11, 2009, there were 18 qualified candidates still on the eligibility lists.

According to the Personnel Commission, FSD opted to limit the recruitment efforts to posting the openings only on the District’s website instead of posting the open positions on other websites and journals. It would have taken more time and effort in the recruitment process, but could have resulted in more candidates on the eligibility list. Nevertheless, none of the candidates on the eligibility list has been hired as of February 11, 2009.

<table>
<thead>
<tr>
<th>Position</th>
<th>Construction Inspector</th>
<th>Construction Inspector Class 1</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Vacancies</td>
<td>6</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Number on List</td>
<td>13</td>
<td>5</td>
<td>18</td>
</tr>
<tr>
<td>Number Hired</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

FSD also disagreed with our recommendation that it should implement policy to prevent consultants from supervising other consultants when they are from the same firm or when their firms have a prime/subcontractor relationship. While we agree with FSD that it is not illegal to have consultants supervising other consultants from the same firm, we maintain that the most effective way to eliminate any conflict of interest issues is to disallow the practice. Supervisors often have to make judgments, recommendations, and decisions or perform functions pertaining to or affecting their subordinates and the District. Such decisions include performance evaluations, change of duties, and the determination of the continuous need for the position, etc. There is a conflict of interest in every such decision because of the financial relationship that exists between the supervisor and his/her firm (as mere employment creates a financial relationship). To mitigate the risk of conflict of interest, the supervisor would need to prepare the necessary conflict of interest disclosures in accordance with the Contractor Code of Conduct as discussed in section IV and recuse himself or herself from making such decisions or performing such functions. Someone other than the supervisor, who would have less intimate knowledge of the consultant’s work and daily activities, would be required to perform such functions, thereby impairing the effectiveness of the management of the consultant.


FSD’s Existing Facilities Branch and New Construction Branch have a bench of construction management (CM) firms contracted to provide consultants to FSD. FSD also has a contract with PB Americas Inc. or Parsons Brinckerhoff (PB) to provide program management (PM) services. We reviewed the hiring/promotional processes of CM and PM consultants to determine if the applicable policies and procedures were complied with and if there was any evidence of conflict of interest involved in the process.
A. Construction Management Consultants

Based on our review of the documentation related to the hiring of construction management (CM) consultants, we found instances where:

1. The consultants did not meet minimum qualifications established for the positions.
2. Consultants were interviewed and approved for hire by consultants from the same firm.
3. Policies and procedures were not complied with in the hiring and change of duties process.
4. There was no evidence of evaluation and approval for some changes of duties (i.e. promotions) of consultants.

1. Consultants Not Meeting Minimum Qualifications

We reviewed the resumes of a sample of consultants and compared the qualifications of these consultants to the required minimum qualifications set forth in the CM contract. Based on our review, we found that the Existing Facilities consultants hired or promoted in 11 out of 75 hiring and promotional activities we reviewed did not have the required minimum qualifications for the positions. We also noted that in some of those instances, the job descriptions in the selection process did not indicate that those qualifications were mandatory, only preferred. The following are some examples:

- Chloe Thornburn, a consultant from Earth Tech, was hired as a Project Analyst II in 2007. A Project Analyst II is required to have B.S. or B.A. in architecture, engineering, urban planning, construction management, accounting, finance, economics, or business management. When she was hired, she was in the process of completing an A.S. degree in Accounting. She did not have a B.S. or B.A. degree. Although she was flagged as an unqualified candidate, she was hired at the specific request of a PB senior management consultant.

- Deborah Leister, a consultant from Jacobs/Pacifica, was hired as a Senior Scheduler/Cost Specialist in 2004 at $113 per hour. A B.S. or B.A. degree in engineering, construction management, or business was required for the position. According to the consultant’s resume, she had an A.A. but not a B.S. or B.A. degree. In 2005, she was promoted to Controls Manager II at $135 per hour, Controls Manager III in 2006 at $140 per hour, and Project Cost/Special Advisor in 2007 at $152 per hour. All these positions required candidates to have a B.S. or B.A. degree in engineering, business, construction management or related field, and a Masters degree in business administration or construction management was strongly preferred. She had none of these.

- Francesca Tomtishen, a consultant from HNTB, was promoted from a Data Entry Clerk to the position of Scheduler/Cost Specialist II at $109 per hour. A BS or BA degree and a minimum of 5 years of experience in construction scheduling were required for the position. The consultant had 2 years of experience in construction scheduling at the time she assumed the position and her resume did not indicate that she had any degree.
- Erin Weems, a consultant from URS/JGM, was promoted to Sr. Project Analyst at $103 per hour on January 21, 2008 and on February 11, 2008 was promoted to Project Manager I at $135 per hour. The position requires 5 years of experience with project/construction management with a BS or BA in Architecture, Engineering, Urban Planning, or Construction Management. Based on her resume, Erin has 4 years of related experience at the time she was appointed to the position and degrees in Design Marketing and International Finance.

Consultants not possessing the required qualifications may not be able to perform their job duties effectively, thereby negatively impacting FSD’s execution of its School Construction and Repair/Modernization Program.

We recommend that Existing Facilities implement proper policies and procedures to ensure that the consultants hired meet the minimum qualification requirements for their positions.

**FSD’s Response:**

FSD did not agree with the recommendation. FSD indicated that the minimum qualifications merely act as a guideline in helping to choose the right person for the job. The goal is to hire the best and the brightest professionals. FSD indicated that the construction management contracts contain a provision to allow experience to substitute for education. It indicated that in the cases of Chloe Thornburn and Deborah Leister, their experience was substituted for education and that their promotions were approved by Mr. Bruce Kendall, Deputy Chief Facilities Executive. With regard to Francesca Tomtishen, FSD indicated that she was hired by the Local Region, which acted somewhat independently in the hiring and promotion of consultants. FSD admitted that the final two promotions for Erin Weems may have been unwarranted. However for both Francesca Tomtishen and Erin Weems, the promotions were approved either by the Director and/or Mr. Bruce Kendall, Deputy Chief Facilities Executive.

**OIG’s Response:**

Based on the resumes of Chloe Thornburn and Deborah Leister, Ms. Thornburn and Ms. Leister did not meet the minimum experience requirements of the positions to which they were appointed, in addition to not meeting the education requirements. The following illustrates the relevant experience possessed by the 2 consultants and the required minimum experience for the positions.

<table>
<thead>
<tr>
<th>Chloe Thornburn</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Year</strong></td>
</tr>
<tr>
<td>2007</td>
</tr>
<tr>
<td>Year</td>
</tr>
<tr>
<td>------</td>
</tr>
</tbody>
</table>
| 2004 | Senior Scheduler /Cost Specialist | 8 years experience in using Microsoft Office applications and Project Cost Control Systems.  
5 years of Project Controls experience in Education, Public Works or Govt. agency project work and 2 years experience on a major school construction program. | 8 months experience as Contracts Administrator, 6 months experience as Job Order Contract Manager/PM & Contract Operations Manager and 2 years experience as Information Service Manager /Administrative Director.  
Total possible relevant experience is 3 years and 2 months. |
| 2005 | Controls Manager II          | 6 years experience in Project Controls work.                                        | 1 year experience as Senior Cost Specialist at the District.                                    |
| 2006 | Controls Manager III         | 8 years experience in Project Controls work.                                        | 1 year experience as Controls Manager II in the District, 1 year experience as Senior Cost Specialist in the District. |
| 2007 | Project Cost/Special Advisor | 6.5 years experience in Project Controls work, including planning, estimating, forecasting, scheduling, cost control, schedule control, and project reports.  
3.5 years experience as a Project Controls Manager. | 2 years experience as Controls Manager II/III in the District, 1 year experience as Senior Cost Specialist in the District. |

While District employees must meet entrance qualifications and additional qualifying requirements to be eligible for hire for a District position, consultants were appointed to positions for which they did not meet both education and experience requirements. If the minimum qualifications were meant to be guidelines to help FSD recruit the best and the brightest as FSD claimed, that was not exemplified in the above 2 cases. FSD should be vigilant in requiring their candidates to meet and exceed those standards. FSD should implement policies and procedures to ensure that the consultants meet the minimum qualification requirements for the positions to which they are appointed, and that any such controls cannot be overridden or circumvented by senior management.

2. Conflict of Interest

In reviewing the hiring and promotion/change of duties records of a sample of consultants in New Construction and Existing Facilities, we found instances where individuals were interviewed and evaluated by consultants from their own consulting firm.
New Construction

- Hope Fang, a consultant from CCG/Harris, was promoted from Project Engineer to Project Cost Estimator I in 2004. She was interviewed and her appointment was approved by another CCG/Harris consultant. At the time of the appointment, New Construction policies did not allow consultants to interview consultants from the same firm.

- Kimberly Emerson, a consultant from CCG/Harris, was hired as Administrative Assistant in 2002. She was interviewed and was approved for hire by another CCG/Harris consultant.

Existing Facilities

- William Ritchie, a consultant from HNTB/Yang, was promoted from Controls Lead Scheduler to Sr. Scheduler on March 15, 2007 and to Controls Manager I on July, 27 2007. He was interviewed by the same HNTB/Yang consultant both times.

- Eric O’Connor, a consultant from Jacobs/Pacific, was hired as Controls Manager II in 2007. He was interviewed by another consultant from Jacobs/Pacific.

- Nathaniel Wheeler, a consultant from HNTB/Yang, was hired as Project Manager III in 2006. He was interviewed by another HNTB/Yang consultant.

- Gajiwala Dhvani, a consultant from HNTB/Yang, was hired in 2007 as Sr. Scheduler/Cost Specialist. He was interviewed by another HNTB consultant.

- Carolyn Wong, a consultant from HNTB/Yang was hired as Sr. Scheduler/Cost Specialist in 2007. She was interviewed and was approved for hire by another HNTB consultant.

- Nilesh Shah, a consultant from HNTB/Yang, was hired as Sr. Scheduler/Cost Specialist in 2006. He was interviewed and was approved for hire by another HNTB/Yang consultant.

We found that the policies and procedures that were in place during those years did not prevent consultants from interviewing and evaluating candidates from their same firms. However, FSD has since implemented CT-006 in June 2008 which bars consultants from interviewing consultants from the same firm.

We recommend that all FSD management observe and enforce the CT-006 policy guidelines to prevent any conflict of interest in the hiring/promotion process.
3. Non-Compliance with Policies and Procedures

New Construction

New Construction implemented policies and procedures related to the evaluation and hiring of consultants in 2003, and those policies and procedures were formalized as official FSD standard procedures in October 2004. Eight (8) of the consultants we reviewed were hired after that date and as such, their hiring was subject to those policies and procedures.

Based on our review of the hiring records, we found that either the policies and procedures were not complied with in the hiring process or the required documentation were not maintained for seven (7) out of the eight (8) consultants reviewed. We found that:

- In four (4) of the eight (8) consultants’ hiring process, a call-for-resume to all the construction management firms was not performed. Under the policies and procedures, New Construction was supposed to request resumes from all the construction management firms (CM bench) contracted with New Construction to find candidates to fill any open positions. The call-for-resume process gives all firms a fair chance to provide consultants to fill the position and potentially gives the District a better chance to find the right candidate.

- For three (3) of the eight (8) consultants, we did not find any evidence of interview/evaluation. There was no interview evaluation form maintained on file and the appointment memo for these consultants did not have the required sign-offs of any interviewers indicating their approval to hire.

- For two (2) of the eight (8) consultants, the required interview/evaluation form was not maintained on file.

Existing Facilities

Existing Facilities implemented policies and procedures related to the evaluation and hiring of consultants in July 2005. These policies and procedures were formalized as official FSD procedures in February 2007. Nine (9) of the consultants we reviewed were hired after that date and as such, their hiring was subject to those policies and procedures.

Based on our review of the hiring records, we found that either the policies and procedures were not complied with in the hiring process or the required documentation were not maintained for two (2) out of the nine (9) consultants reviewed. We found that:

- For one (1) out of the nine (9) consultants, there was none of the required documentation for candidate evaluation and selection. The only documentation provided for our review was an e-mail indicating that the consultant was already hired.

- For one (1) out of nine (9) consultants, we found that the call-for-resume for the job position did not match the position the consultant was eventually hired into.
We recommend that New Construction and Existing Facilities management enforce its consultant hiring policies and procedures.

4. No Evidence of Interview and Approval for Change of Duties

We noted that many consultants have changed positions since they began working for the District. Along with the change of positions, the hourly rates often increased. Existing Facilities did not have formal policies and procedures pertaining to the change of duties of consultants, and the practice was to follow the same procedures for a new hire, i.e. perform a call-for-resume, create a short list of candidates, and interview and select the candidate. Based on our review of the records retained for 36 change of duties process of consultants, we found that for twenty (20) of the thirty-six (36) consultants, we did not find any evidence of interview/evaluation/approval. For example:

- Vance Warhurst, a consultant from CMTS, was transferred from an FTPMG CM contract (Contract #0590005) as a Senior Project Manager to an Existing Facilities contract (Contract # 0790037 with CCG/Harris) as a Deputy Director with a 12% pay increase without a call for resume or competition. The transfer was made at the request of a Director in Existing Facilities who is a consultant.

- Vince Jarecki, a consultant, was also transferred from an FTPMG CM contract to an Existing Facilities CM contract in Program Controls (Contract # 0790041) as a Deputy Director with a 12% pay increase without a call for resume or competition at the request of another Director inExisting Facilities who is a consultant.

FSD implemented CT-006 Consultant Staff Appointment Policy in June 2008. Under CT-006, all change of duties resulting in a change of billing rates must be subject to evaluation and approval of the Department Director or higher level manager who is a District Employee.

We recommend that all FSD management observe and enforce the CT-006 policy guidelines.

FSD’s Response:

FSD indicated that the change of duties for Vance Warhurst and Vince Jarecki were approved by Mr. Bruce Kendall, Deputy Chief Facilities Executive. The approvals were based on the consultants’ qualifications and performance throughout their tenure with the District.

OIG’s Response:

One of the reasons why organizations, especially publicly funded organizations, have policies and procedures is to ensure that decisions such as those relating to hiring and promotion of staff is based on objective criteria and not left to the whims and subjective views of one individual. During the period when Mr. Warhurst and Mr. Jarecki were transferred and promoted, the practice was to perform a call-for-resume, create a short list of candidates, and interview and select the candidate. This process was not followed. No justification was given for the
exception and there was no documentation that their qualification and experience were ever reviewed or that they were the best candidates for the positions.

B. Program Management Consultants

Based on our review of the documentation related to the hiring of ten (10) positions that were occupied by PB Americas Inc. (PB) consultants, we have the following finding:

No Policies and Procedures for the Hiring and Promotion of PB Consultants

PB consultants occupy many management and senior management level positions within FSD. These management-level PB consultants were in positions that could influence, if not make, hiring and promotion decisions affecting consultants and employees. To mitigate the risk of conflict of interests, adequate polices and procedures are necessary to ensure that the hiring and promotion of PB consultants are not tainted by any conflict of interest.

However, we found that there were no policies and procedures governing the hiring and promotion of PB consultants. There was no requirement for the write-up of candidate qualification requirements prior to selection. There was no documentation requirement on the evaluation, selection, and approval process.

For all the positions that we reviewed, there was no documentation on how the candidates qualified for the positions and how they were selected. There was no documentation of approval by FSD management employees within the FSD Department or Branch using the consultants. We also could not determine, due to lack of documentation in the evaluation and selection process, whether any PB consultants were involved in the decision-making process. For a number of positions, the only documentation that was provided to us for review were e-mail communications between a management-level PB consultant to another management-level PB consultant indicating that the Deputy Chief Executive had approved the use of the PB consultants for those positions. For example:

- Scott Lewis, a PB consultant and an engineer by profession, held several senior management positions within the past 5 years including Director of Repair and Modernization, Director, Operations Center, Director, Project Development, Director of Operations, Director of Program Controls, Assistant to Deputy Chief Executive and Senior Project Manager. There was no documentation showing that he was evaluated or competed for any of these positions or that he was the best qualified candidate for any of the positions.

- Robert Temple was hired by PB as a Control Manager IV in August 2006. Three weeks later, he was promoted to Deputy Director of Program Controls and after 4 months he became the Director of Program Controls. In June 2007, he became an Independent Contractor but retained his position and was reassigned to PB as a sub-contractor at a billing rate of $198 per hour. Mr. Temple telecommutes from his office in Atlanta, Georgia and spends only 1 week each month in Los Angeles. To make up for his absence, a PB employee was appointed Deputy Director of Program Controls. There
was no documentation showing that he was evaluated or competed for his position, no justification for allowing him to work out of his Atlanta office while billing the District for 40 hours per week or why he was the best qualified candidate for the position.

In several other cases, PB was used by other consultants and employees to bring people into the District under the PB contract. We believe that the reason for that was that it was easy to hire people under the PM contract because there were no specific requirements for hiring anyone under the contract. For example:

- Mike Bejerano was hired in March 2006, to fill a position vacated by a CM firm consultant at the request of the Director of the Small Business Program, who is also a consultant. In November 2007, Mr. Bejerano was promoted to Assistant Program Manager for the Small Business Program with a 43% increase in salary based on the request of the same Director. No evidence of the hiring process was provided except e-mails requesting the hiring and requesting an update of PB’s staffing order.

- Ana Lasso was hired under PB’s contract as a project manager in October 2006 at the request of the Director of Planning and Development, a consultant. According to the e-mail requesting her hiring, she was to be brought in “as a PB employee until such a time as they can create a permanent LAUSD position” for her. She was promoted to program manager in August 2007.

- Steve Redmond was hired in October 2006 as a consultant under the PB contract at the request of an LAUSD management employee. The LAUSD employee stated that she “would like to bring Steve to the LAUSD project working for her”, and requested that PB should make it happen. Steve’s name was added to PB’s staffing order which was reviewed and approved by the same employee.

We recommend formal policies and procedures be implemented on the hiring and promotion process for PB consultants. Such policies and procedures should ensure that there is proper documentation of evaluation and approval by District management employees, and that there are no conflicts of interest involved in the process. The qualification requirements for the positions should be specified for the position, and there should be documentation in the evaluation package demonstrating that the candidate qualified for the position. Consultants from the same firms as the candidates should not be involved in any part of the process, including drafting the qualification requirements, evaluation, and recommendation.

_FSD’s Response:_

FSD stated that the hiring and the subsequent promotions of Scott Lewis were based on the extensive knowledge of the organization (the District) he possessed and the fact that he was a seasoned Project Manager. Bob Temple possessed the necessary financial experience required to undertake the changes required in Program Controls and he was the most qualified person provided by his firm for the position. FSD also stated that all the consultants mentioned in the report above provided key competencies to the program and that their appointments were well-justified. As for the recommendation that formal policies and procedures be implemented on the hiring and promotion process for PB consultants, FSD indicated that Policy CT-006 and the new
PM contract addressed the issue. The new PM contract added the requirement that all staffing requests be approved by the (District employee) Deputy and/or Chief Facilities Executive. In addition, FSD indicated that documentation would be maintained.

OIG’s Response:

FSD’s response did not justify or explain how Mr. Lewis could have effectively held the positions of Director, Operations Center, Acting Director, Project Development and Director of Project Controls, 3 high level management positions, at the same time. The fact that he was a seasoned project manager or that he had extensive knowledge of the District is not a qualification and is subjective at best. It should be noted that the extensive knowledge of the District that Mr. Lewis claims to have was obtained while working for the District as a consultant in the same positions he occupied on the basis of the experience he was supposed to already have. None of the District employees in Existing Facilities who were seasoned project managers and had more organizational experience than Mr. Lewis were ever considered for these management positions.

FSD stated that Bob Temple possessed the necessary financial experience required to undertake the changes required in Program Controls and he was the most qualified person provided by his firm for the position. Mr. Temple is self-employed. He is the president and the only employee of his firm, Robert Temple Consulting. It is not credible to suggest that Mr. Temple is allowed to telecommute from his office in Atlanta, Georgia and spends only 1 week each month in Los Angeles because no one in the State of California or anywhere else is as qualified as he is or possessed the necessary financial experience for his position.

There is also no record to support FSD’s contention that all the other consultants mentioned above provided key competencies to the program and that their appointments were well-justified. No evidence of the hiring process was provided except e-mails requesting their hiring and requesting an update of PB’s staffing order.

VII. Consultants Changing Firm Affiliations

Based on our audit, we found that some consultants, while working at the District, have chosen to change their consulting firm affiliation, at times, working in the same capacity or work scope (i.e. retaining the same position) without having to compete for the position under the new firm. Some consultants have switched from one CM firm to another, and some have outright formed their own consulting firm and became a sub-consultant of another prime CM firm. The effect of these changes in firm affiliations is not only lost revenues for the firms that the consultants leave, but also loss of good faith partnership the firms have formed with the District. The firms may be hesitant to provide good people to the District for fear that they will eventually lose them to a competitor.

According toExisting Facilities and New Construction management, such changes are discouraged. However, there are no formal policies and procedures in place to effectively manage such changes in affiliations.
We recommend that FSD should develop and implement appropriate policies and procedures such that consultants are not allowed to retain their position with the District if they change employers. The position should be vacated by the consultant and if it needs to be filled again, FSD should allow all CM firms to submit candidates to compete for the position.

**FSD’s Response:**

FSD indicated that it has a policy in place to discourage the movement of consultants between firms. FSD indicated that the audit did not provide any evidence that there is a risk of harm to the District when a consultant changes firm affiliation. The policy to discourage movement of consultants is for the benefit of the District to minimize the administrative issues associated with such changes. FSD policy requires that when a contract professional changes employer, the position is vacated and FSD will evaluate the position to confirm if it must be refilled. If the position is to be filled, the contract professional must re-compete with applicants for the position, following the process in CT-006.

**OIG’s Response:**

In FSD’s response, it stated that it has a policy to discourage the movement of consultants between firms. However, during the audit, we were informed that there were no such formal policies in place.

Furthermore, FSD indicated that its policy requires that when a consultant changes employer, the position is vacated and if it must be refilled, the consultant must re-compete with applicants for the position. We found during our audit that consultants changed firm affiliations without vacating their positions although FSD management claimed that “they did not allow” such changes. When asked why such changes occurred without the consultant vacating and re-competing for the position, we were told that those instances occurred without their knowledge. Therefore, we recommend that FSD implement formal policies and procedures to exercise adequate control over such practices.

**VIII. Analysis of Program Management (PM) Versus Construction Management (CM): What is the Difference Between PM Consultants and CM Consultants? Is This Two-Tier System of Consultants Necessary and Beneficial?**

FSD’s Existing Facilities and New Construction branches each have a bench of construction management firms (CM firm) contracted to provide consultants to FSD. Most of the consultants working in FSD are construction management consultants (CM consultants) provided by these CM firms.

FSD also has a contract with PB Americas Inc. (PB) to provide program management (PM) services to augment Existing Facilities staff in the budgeting, development, control, and execution of the Repair and Modernization Program. According to the most recent request for qualification issued for program management services, FSD’s intent was to have the program management firm, PB, provide senior level program management services, and supervise and
manage the work of CM consultants. We examined the differences between these two tiers of consultants in this audit.

According to FSD records, twenty-eight (28) PB consultants were working in the District in August 2008. We interviewed fifteen (15) PB consultants and three (3) CM consultants who worked with the PB consultants to obtain an understanding of their scope of work.

Based on our review of the records and our interviews, we found that even though the intent of FSD was to have PM consultants perform senior-level program management work and supervise CM consultants, the reality did not match that intent. The following were our findings:

- Eleven (11) PB consultants occupied senior level management positions (Deputy Director or Director level positions). However, a majority (17 out of 28) of the PB consultants did not occupy senior level management positions. These consultants occupied positions such as Project Manager, Communication Manager, and Interns.

- Eleven (11) out of the fifteen (15) PB consultants we interviewed did not supervise any CM consultants or any staff. Four (4) of those consultants were in fact supervised by CM consultants.

- PB consultants were not limited to performing program management work. For example, we noted that a PB consultant (a Senior Project Manager) was performing the same construction management work as some CM consultants. We found another PB consultant occupying a position that was originally designated for CM consultants. On the other hand, we also found that CM consultants were performing program management work and supervised PB consultants.

Although PB was expected to provide senior-level program management services, the contract did not specifically restrict PB from providing lower-level or non-program management type services. On the other hand, CM firms may also provide consultants at senior-level management positions, as the CM contract includes positions such as Director and Deputy Director.

Comparing PB’s program management contract provisions to the CM firms’ construction management contract provisions; we found that PB was allowed greater flexibility in many areas compared to the CM firms.

1. Staff placement/promotions and negotiating hourly rates - PB has greater flexibility in staff placement and negotiating hourly rates compared to the CM firms. Newly created positions may be staffed by PB consultants with relative ease. The PB contract only identified key positions and indicated that other positions may be added on an as-needed basis. When a new PB consultant is placed in the District, the only official paperwork is the staffing order indicating the position and the hourly rate, signed by a PB representative and District officials. With regard to CM firms, they are limited to providing the positions identified in the CM contract, at the specified hourly rates. A contract amendment is needed if there should be any changes in the positions and hourly rates.
2. Consultant qualifications – PB’s contract did not specify minimum qualification requirements for its consultants while the CM contracts specify minimum education and experience requirements for all the positions listed. As such, it is easier to qualify as a PB consultant than a CM consultant.

3. Subcontractor qualifications – PB’s contract did not specify minimum qualification requirements for its subcontractors while the CM contract specified minimum experience and licensing requirements for any subcontractors. As such, it is easier to qualify as a PB subcontractor than a CM subcontractor.

As a result of a lack of minimum qualification requirements for PM consultants, some PM consultants did not have qualifications the CM consultants or employees were required to have, though they were at the same position or level. The following are examples that we noted:

- A PB consultant occupying the position of Project Manager in Program Controls (Derek Tran) has a B.S. in Economics and Finance and no project/construction management experience. His colleagues in the department at the same level are CM consultants. Those CM consultants were required to have a minimum of 5 years of experience in project/construction management and bachelor’s degree in Architecture, Engineering, Urban Planning, Construction Management, or a closely related field.

- A PB consultant occupying the position of Deputy Director in Project Development (Rodney Nassiri) has a law degree and a B.S. in Health Science. A Deputy Director from a CM firm is required to have a minimum of 15 years of experience in Project Management-Construction/Facilities. His experience was in law and he was a government contract analyst prior to working for the District. When he was appointed to the position of Deputy Director, he did not have 15 years of experience in Project Management-Construction/Facilities.

- A PB consultant occupying the position of Deputy Director in Program Controls (Victoria Yan) was appointed to the position in 2007, at which time she had 9 years of experience in project/construction management as opposed to the 15 years of experience required for a consultant from a CM firm.

In addition to having greater flexibility in staff placement, billing rate negotiations, and signing on subcontractors, PB also places consultants into the District without any competition. Positions for CM consultants are required to be filled via a call-for-resumes/candidate evaluation and selection process where the CM firms are invited to submit resumes for the position, and the consultant is selected from a short list of candidates after an interview and evaluation process. Positions identified for PM consultants are filled by PB without any competition from any other firms.
Two-Tier System for Consultants Not Necessary and Not Beneficial

We do not see a need for a two-tier system for consultants with two separate types of contracts. The Program Management Contract and the Construction Management Contracts with PB and the CM firms are both staff augmentation contracts. In other words, PB and the CM firms are contracted to provide consultants to FSD for its staffing needs, and not to perform program management or construction management for the FSD as a firm. Even though PB or the CM firms might have been selected by FSD based on their experience in providing program management/construction management services to other large governmental agencies, the quality of the services FSD receives essentially depends on the qualifications of the individual consultants and not the firms themselves.

The experience and qualifications that the consultants possess may have little to do with their firms’ experiences. The consultants may not have worked for the firms prior to being hired and placed into FSD. We found that as positions open up, these firms recruit and present potential job candidates to FSD based upon the degree of alignment with any written or verbal desired qualifications for the open positions. We also found instances where the consultants were hired by PB and placed into the FSD based on request from FSD management. Therefore, the experience of the firms may not necessarily translate to the experience of its consultants and vice versa.

As such, it is reasonable to believe that CM firms are able to supply FSD with consultants to perform program management work. In fact, we noted during our audit that consultants from CM firms were performing program management work and occupying senior level management positions within FSD.

We also believe that designating only one firm to provide consultants for program management positions may not be beneficial to FSD. Under the current system, when a position opens up and is identified as a PM position rather than a CM position, PB is the only firm that is in a position to provide candidates to FSD and negotiate rates, without any competition from the other firms. The candidates are also not required by contract to meet minimum qualifications. However, with a position that is designated for CM firms, all CM firms are invited to present candidates, and the candidates are required to meet certain minimum qualifications. It is reasonable to believe that the District can obtain well-qualified, if not better-qualified, consultants to perform program management duties from a bench of firms through a competitive process for each position, rather than from just one firm.

We recommend that FSD should terminate the two-tier system of consultants and require all consulting firms to be subject to the same terms and conditions and policies and procedures.

In addition, as stated in section II, the risk of a loss of government control and accountability exists with the use of consultants in senior level management positions. Decisions affecting the District and its employees should not be made or influenced by consultants.
We recommend that FSD should staff all senior level management positions with District employees instead of consultants.

*FSD’s Response:*

FSD agreed with the recommendation to staff senior level management positions with District employees. However, FSD indicated that it has made efforts to find the staff for such top level positions but have encountered difficulties. It indicated that the PM contract allows the District the flexibility to fill senior level positions that could not be filled with District employees.

FSD disagreed with the recommendation to eliminate the PM tier from the building program. It indicated that FSD procured the PM firm through a competitive procurement process and that there is no legal requirement to add additional competition as FSD has structured the bench of CM firms. It indicated that it was essential to the program’s success for FSD to have the flexibility in staff placement and negotiating appropriate rates based on the consultant’s qualifications. Structuring the PM contract exactly the same as the CM contracts, with pre-approved rates and terms, limits the opportunity to recruit an appropriate candidate. Another reason FSD gave for using a separate PM firm was to eliminate conflicts of interest that can arise when a CM firm manages individual projects as well as programs. FSD acknowledged that the lines between PM and CM activities have been blurred in some cases. It is the intent of FSD to more clearly define and differentiate the PM role and related positions. In addition, FSD stated that it was evaluating the benefit of expanding the PM pool.

*OIG’s Response:*

FSD agreed that senior level management positions should be staffed with District employees but indicated that it has encountered difficulties in finding the right staff to fill such positions. However, it should be noted that FSD has successfully filled senior level management positions in recent years. According to the Personnel Commission, the following are some senior level management positions filled by outside candidates within the last fiscal year:

- Director of Facilities Contracts – Greg Garcia
- Director of School Building and Planning – Mark Hovatter

In FSD’s response, FSD indicated that the recruitment for the Director of Facilities Contracts position continued for over a year and required a salary review, as an example of the difficulties it had to recruit top management employees. However, according to the Personnel Commission, the last recruitment for the Director of Facilities Contracts position only lasted 14 days, and an eligibility list of 6 qualified candidates were created less than a month after open recruitment began.

FSD also pointed out its past success of converting consultants into employees. In Attachment B of its response, FSD listed examples of consultants who have become District employees, some of which are senior level management. They include Eric Blum, Ken Hargreaves, Jim O’Reilly, Raju Kaval, Christine Marez, etc. Based on the above, it did not seem impossible or improbable to hire District employees to fill all senior management positions.
In fiscal year 2006-2007, we found that FSD had twenty-seven (27) consultants in top level management positions. According to the Personnel Commission, FSD did not and has not requested the Personnel Commission to recruit employees to fill any of these positions.

It is worth noting that the job title of these positions do not fit the District’s employee classifications, and before these positions may be filled by District employees, each position has to be matched with a classified position. Based on a classification study conducted by the Personnel Commission on twenty-five (25) of those positions, it did match thirteen (13) of the twenty-five (25) positions studied to existing District employee classifications. For the remaining twelve (12) positions, the Personnel Commission indicated that if FSD were to request that these positions be filled by regular District classified employees instead of consultants, it could create the class descriptions and determine the appropriate salary range. After that, the Personnel Commission will begin recruiting employees to fill these positions. (See Exhibit D for a listing of the top management positions filled by consultants).

In fact, according to Personnel Commission, it had been recruiting for the position of Regional Construction Director, and there was already an eligibility list with 19 qualified candidates for the position as of February 12, 2009. Since four (4) of the top level consultants have been matched to the classified position of Regional Construction Director, FSD could actually replace those consultants with District employees without further ado. Since FSD agreed that senior level management positions should be staffed with District employees, we recommend that the FSD work with the Personnel Commission to recruit and hire employees for its top management positions.

FSD disagreed with eliminating the PM tier of consultants. Its primary reason for using the PM contract is that it allows greater flexibility to staff top management positions, and for eliminating potential conflict of interests to have the same firm managing the program and individual projects. We believe there is no compelling reason to have a PM contract, for reasons explained in our audit report, and especially if FSD were to hire employees for its top management positions.

**IX. What Do the Employees Have to Say About the Use of Consultants in Management Positions?**

We conducted an employee survey to determine the effect of using consultants in management positions on employee morale and their views on its impact to the District. We sent the surveys to 209 employees that worked in those FSD branches and departments in which consultants occupied senior level management positions (see Exhibit D). We received responses from 82 employees. We posed a total of 11 questions, 7 of which required a reply that could be rated from 1 to 5 and 4 questions that required a yes or no answer. To maintain confidentiality and avoid the possibility of retaliatory actions, respondents were not required to disclose their names or work locations. To encourage frank responses from employees the OIG clearly stated in the survey cover letter that “individual response and participation will be kept strictly confidential”. (See Exhibit E for copy of survey questions).
A majority of the respondents indicated that the use of consultants in management positions has an overall negative impact on District affairs, working relationships, fair treatment of employees, job security of employees, overall employee morale. Most respondents also believed that the consultants in management positions were not performing well in managing the department where they worked, that they were not unbiased in their work, and were not working for the benefit of the District.

The following are the questions that we asked of each employee which required a reply that could be rated from 1 to 5 and a chart to show the results.

**Consultants in Management Positions Have Negative Impact on District Affairs and Employee Morale According to the Survey.**

The following are the survey questions and the results.

1. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on District affairs?

   Sixty-eight percent (68%) of the respondents indicated that the District’s use of consultants in management positions had an overall negative or extremely negative impact on District affairs.

2. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on working relationships between employees and consultants?

   Seventy-four percent (74%) responded that the District’s use of consultants in management positions had an overall negative or extremely negative impact on working relationships between employees and consultants.

3. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on fair treatment of employees and consultants?

   Seventy-six percent (76%) indicated that the District’s use of consultants in management positions had an overall negative or extremely negative impact on the fair treatment of employees and consultants.

4. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on job security of employees?

   Sixty-nine percent (69%) responded that the District’s use of consultants in management positions had an overall negative or extremely negative impact on the job security of employees.

5. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on employees overall morale?
Seventy-eight percent (78%) indicated that the District’s use of consultants in management positions had an overall negative or extremely negative impact on employees’ overall morale.

6A. To what extent do you agree with the statement that the consultant(s) in management positions are doing a good job managing the department where I work?

Sixty-two percent (62%) had an extremely negative or negative impression of the job that consultants were doing in managing the department where they worked.

6B. To what extent do you agree with the statement that the consultant(s) in management positions are unbiased and work for the benefit of the District?

Sixty-seven percent (67%) disagreed or disagreed strongly with the statement that consultants are unbiased and work for the benefit of the District.
The following are the questions that we asked of each employee which required a yes or no answer. The results of the 4 yes or no questions are summarized below in graphical representation.

7. Have you benefitted (i.e. increased in skills or technical expertise) by working alongside the consultants in your department?

![Summary of Responses to Survey Question #7](image)

8. Have you witnessed any preferential treatment given to consultants over district employees?

![Summary of Responses to Survey Question #8](image)

9. Have you applied for a position wherein a consultant ended up filling it? If so, do you know why you were not selected for the position? What was the position? Who ended up filing the position?

![Summary of Responses to Survey Question #9](image)
10. Have you observed any fraud, abuse or waste by consultants?

![Summary of Responses to Survey Question #10]

In the survey, we asked the surveyed employees to provide additional comments to the survey questions. We reviewed the written comments submitted by the employees and found that many employees expressed similar views in their responses. With a few exceptions, those written comments expressed negative views of using consultants. The following are recurring views expressed by those District employees who provided written comments with their survey response. It should be noted that these are only opinions of those survey respondents who submitted comments. 127 out of 209 District employees to whom we sent the surveys did not respond, and not all respondents submitted written comments.

The District should use employees instead of consultants. There are too many consultants. Job assignment to consultants should be temporary in nature. There should be a policy as to how long the consultants could work at the District.

Consultants do not have a vested interest in the District’s goals and mission and they do not have the District’s long term benefits in mind when making decisions. Consultant managers’ interests are to maximize revenues for their firms. They make decisions to benefit their firms or to protect their own interests. Management positions should only be filled by District employees and not consultants.

Morale among District employees is very low. Employees are not being treated fairly. Promotional opportunities are limited because key positions are filled by consultants. Consultants favor consultants whether in hiring/promotion decisions or in work assignment and training decisions. District employees are not considered in filling consultants' positions. Current eligibility lists are ignored while consultants are used for various positions. Consultants in management positions use their power to hire their friends and relatives into the District. Consultants are being hired or promoted to positions for which they are not qualified, bypassing the District employees who meet the required minimum qualifications for the positions. There is no testing and reference checks in the employment process for consultants. The resumes of some consultants are embellished in order to justify their promotions and billing rates. Employees can do the work but they are not given the opportunity.
Consultant managers assign the large dollar projects to consultants, rather than to employees, thus enhancing the consultants’ experience and resume. Consultants in management positions exclude District employees in training. Consultants also tend to keep information and knowledge to themselves, sometimes to the detriment of the projects, causing jobs to be done over and over.

District employees trained many consultants who were hired in the District with few skills. Then, these consultants become the supervisors and the evaluators of the District employees who trained them.

Top management positions being filled by consultants threatens the job security of District employees at all levels. Senior District management employees who have been loyal to the District are being isolated or pushed out to make room for more consultants. Employees cannot voice dissent to their consultant superiors for fear of being displaced or laid-off at the consultants’ discretion. Consultants are also performing evaluations of District employees, which is not appropriate. Consultants should not be given such power over District employees.

Consultants create a hostile working environment. Consultants feel superior to employees and treat District employees with bad attitude or arrogance. District employees are discredited and disregarded.

Consultants receive higher compensation than employees do, even though they perform the same work. Employees are affected by budget cuts and consultants are not similarly affected. Consultants are given nicer accommodations such as larger monitors, nicer chairs, larger cubicles, and window cubicles. Consultants are allowed schedules such as working from home for nine months out of the year when no such work schedule exists for employees.

**FSD’s Response:**

FSD indicated that the questions asked in the survey were overly broad and presented in such a general way that the results could not be used to effectively evaluate or improve aspects of the organization. For example, there was no comparative reference to questions regarding opinions of District managers. Additionally, the results were presented as a sweeping statement with no analysis presented of the differences in results by department or consultant manager.

**OIG’s Response:**

The OIG does not believe the survey questions were general in nature. The questions were open ended to allow those surveyed to discuss their opinions without being overly restricted to a particular answer. The survey was conducted to determine the effects, if any, of the use of consultants on employees who worked with or for consultants within FSD. The purpose of the survey was not to conduct a comparative analysis of employee attitudes towards management consultants vis a vis District management. As stated in the report, the survey was directed at District employees working in FSD branches and departments in which consultants occupied senior level management positions.
CONCLUSIONS

Based on our audit we found that:

- During fiscal year 2006-2007, the Facilities Services Division employed 1,277 consultants at an annual cost of $186 million.

- On average, the cost of a consultant was 1.7 times the cost of an employee. The cost to the District of having consultants in the positions we examined was about 70 percent higher than employing classified employees in those positions in fiscal year 2006-2007. The District might have saved about $77 million on costs for personnel services for that fiscal year if it had used employees.

- The use of consultants provides FSD certain benefits, such as increased flexibility in fulfilling immediate needs and obtaining expert knowledge when not present in the District. However, there is a concern/risk that the use of consultants in performing Inherently Governmental Functions could lead to a loss of government control over and accountability for mission-related policy and program decisions.

- Consultants in FSD managed and supervised District employees made or influenced decisions affecting employees’ positions and compensation, performed District employees’ annual evaluations, and approved their timecards. There are also no policies and procedures within FSD limiting the types of functions consultants may perform.

- The line separating District employees from consultants are blurry. There was no way to determine who is consultant and who is an employee. Consultants were not identified as such in their correspondences such as letters and e-mails or on their business cards and identification badges. Consultants are not required to identify themselves as such when conducting District business.

- Consultants in FSD were making hiring and promotional decisions with respect to consultants from their own firm. We also found that consultants were approving timesheets for other consultants from their own firm.

- Eighty-four (84) percent of consultants have been employed at the FSD for a period of more than two years and sixteen percent (16) have been employed for more than five years.

- Several consultants hired or promoted did not have the required minimum qualifications for their positions.

- PB consultants were not limited to performing program management work and some CM consultants were performing program management work and supervised PB consultants.

- The PM contract allows for greater flexibility in staff placement, billing rate negotiations, and signing on subcontractors than the CM contracts. Positions identified for PM consultants are filled by PB without any competition from any other firms. Positions for
CM consultants are required to be filled via a call-for-resumes/candidate evaluation and selection process where the CM firms are invited to submit resumes for the position, and the consultant is selected from a short list of candidates after an interview and evaluation process.

- Designating only one firm to provide consultants for program management positions may not be beneficial to FSD. The District can obtain well-qualified, if not better-qualified, consultants to perform program management duties from a bench of firms through a competitive process for each position, rather than from just one firm.

- A majority of the respondents in an employee survey indicated that the use of consultants in management positions has an overall negative impact on District affairs, working relationships, fair treatment of employees, job security of employees and overall employee morale. Most respondents also believed that the consultants in management positions were not performing well in managing the department where they worked, that they were biased in their work, and were not working for the benefit of the District.

**RECOMMENDATIONS**

As a result of the above conclusions we recommend as follows:

- We recommend that the FSD should identify functions being performed by consultants which are either inherently governmental functions or closely supporting inherently governmental functions. For the inherently governmental functions, FSD should determine personnel needs and develop ways to meet those needs using employees instead of consultants. For the functions that closely support inherently governmental functions, FSD should develop policies and procedures to ensure that appropriate District control is preserved.

- We recommend that the FSD should establish policies to mitigate the risk of consultants being mistaken for District employees. When appearing for or speaking for the District, consultants should be required to identify themselves as such.

- We recommend that FSD management should observe and enforce the CT-005 policy guidelines to prevent any conflict of interest in the timesheet approval process and observe and enforce the CT-006 policy guidelines to prevent any conflict of interest in the hiring/promotion process.

- We recommend that FSD should clearly define in its policy the maximum timeframe for which consultants are allowed to be used to fill a vacant position.

- We recommend that FSD should implement policy to prevent consultants from supervising other consultants when they are from the same firm or when their firms have a prime/subcontractor relationship.
• We recommend that Existing Facilities should implement proper policies and procedures to ensure that the consultants it hires meet the minimum qualification requirements for the positions they occupy.

• We recommend formal policies and procedures be implemented on the hiring and promotion process for PM consultants. Such policies and procedures should ensure that there is proper documentation of evaluation and approval by District management employees and that there are no conflicts of interest involved in the process.

• We recommend that the qualification requirements for PM positions should be specified and there should be documentation in the evaluation package demonstrating that the candidate qualified for the position. Consultants from the same firms of the candidates should not be involved in any part of the process, including drafting the qualification requirements, evaluation, and recommendation.

• We recommend that FSD should develop and implement appropriate policies and procedures to bar consultants from changing their firm affiliation while working at the District.

• We recommend that FSD should terminate the two-tier system of consultants (PM/CM) and require all consulting firms to be subject to the same terms and conditions and policies and procedures.

• We recommend that FSD should staff all senior level management positions with District employees instead of consultants.

REPORT DISTRIBUTION

This report is privileged and confidential and prepared solely for Facilities Contracts. This report may not be released, in full or part, to any entity outside LAUSD or to any internal department without the prior approval of the Office of the Inspector General.
EXHIBIT A

Comparison of Cost between Consultants and LAUSD Employees
## Comparison of Cost between Consultants and LAUSD Employees

<table>
<thead>
<tr>
<th>#</th>
<th>Consultant Position</th>
<th>Cost of Consultant</th>
<th>Job Classification</th>
<th>LAUSD Employee Cost</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Acting Deputy Chief Facilities Exec</td>
<td>$359,040</td>
<td>Dep Chief Exec-School Bldg Planning</td>
<td>$289,679</td>
<td>69,361</td>
</tr>
<tr>
<td>2</td>
<td>Director</td>
<td>412,800</td>
<td>Director of Facilities Programs</td>
<td>219,419</td>
<td>193,381</td>
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<tr>
<td>3</td>
<td>Regional Director, South</td>
<td>387,840</td>
<td>Regional Construction Director</td>
<td>213,349</td>
<td>174,491</td>
</tr>
<tr>
<td>4</td>
<td>Regional Director, Valley Region</td>
<td>387,840</td>
<td>Regional Construction Director</td>
<td>213,349</td>
<td>174,491</td>
</tr>
<tr>
<td>5</td>
<td>Regional Director</td>
<td>387,840</td>
<td>Regional Construction Director</td>
<td>213,349</td>
<td>174,491</td>
</tr>
<tr>
<td>6</td>
<td>Regional Director-NC, Central Region</td>
<td>387,840</td>
<td>Regional Construction Director</td>
<td>213,349</td>
<td>174,491</td>
</tr>
<tr>
<td>7</td>
<td>Regional Project Management Director</td>
<td>387,840</td>
<td>Regional Project Management Dir.</td>
<td>184,613</td>
<td>203,227</td>
</tr>
<tr>
<td>8</td>
<td>Director, Modified Consent Decree Unit</td>
<td>337,440</td>
<td>Senior Facilities Project Manager</td>
<td>164,814</td>
<td>172,626</td>
</tr>
<tr>
<td>9</td>
<td>Board Liaison Coordinator</td>
<td>178,560</td>
<td>Asst. Administrative Analyst</td>
<td>89,116</td>
<td>89,444</td>
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<tr>
<td>10</td>
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<td>159,360</td>
<td>Asst. Administrative Analyst</td>
<td>89,116</td>
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<td>159,360</td>
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<tr>
<td>12</td>
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<td>Asst. Administrative Analyst</td>
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<td>Building Project Estimator</td>
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<td>Building Project Estimator</td>
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<td>15</td>
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<td>147,840</td>
<td>Computer Technologist III</td>
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<td>Facilities Services Coordinator</td>
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<td>Planning Lead</td>
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<td>Facilities Services Coordinator</td>
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<tr>
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<td>IT Help Desk Technician</td>
<td>138,240</td>
<td>Micro-Computer Support Assistant</td>
<td>71,848</td>
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<tr>
<td>19</td>
<td>IT Technician</td>
<td>138,240</td>
<td>Micro-Computer Support Assistant</td>
<td>71,848</td>
<td>66,392</td>
</tr>
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<td>Senior Administrative Analyst</td>
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<tr>
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<td>Senior Office Technician</td>
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<tr>
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<td>Senior Office Technician</td>
<td>57,561</td>
<td>140,199</td>
</tr>
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<td>Senior Project Cost Estimator</td>
<td>259,200</td>
<td>Senior Building Project Estimator</td>
<td>122,897</td>
<td>136,303</td>
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<td>26</td>
<td>Assistant Project Manager</td>
<td>197,760</td>
<td>Assistant Project Manager</td>
<td>141,069</td>
<td>56,691</td>
</tr>
<tr>
<td>27</td>
<td>Data Base Administrator</td>
<td>82,944</td>
<td>Data Base Administrator</td>
<td>163,665</td>
<td>(80,721)</td>
</tr>
<tr>
<td>28</td>
<td>Electrical Inspector</td>
<td>153,600</td>
<td>Electrical Inspector</td>
<td>101,780</td>
<td>51,820</td>
</tr>
<tr>
<td>29</td>
<td>Photographer</td>
<td>197,760</td>
<td>Photographer</td>
<td>77,155</td>
<td>120,605</td>
</tr>
<tr>
<td>30</td>
<td>Plumbing Inspector</td>
<td>153,600</td>
<td>Plumbing Inspector</td>
<td>99,265</td>
<td>54,335</td>
</tr>
<tr>
<td>31</td>
<td>Sr Tech Proj Manager</td>
<td>268,800</td>
<td>Sr Tech Project Manager</td>
<td>164,814</td>
<td>103,986</td>
</tr>
<tr>
<td>32</td>
<td>Steel Inspector</td>
<td>124,800</td>
<td>Steel Inspector</td>
<td>127,003</td>
<td>(2,203)</td>
</tr>
<tr>
<td>33</td>
<td>Safety Manager</td>
<td>334,080</td>
<td>Safety Manager</td>
<td>123,484</td>
<td>210,596</td>
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</table>
# Consultant Position

<table>
<thead>
<tr>
<th>#</th>
<th>Consultant Position</th>
<th>Cost of Consultant</th>
<th>Job Classification</th>
<th>LAUSD Employee Cost</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
<td>Business Application Manager</td>
<td>297,600</td>
<td>Business Manager</td>
<td>4</td>
<td>260,928</td>
</tr>
<tr>
<td>35</td>
<td>Construction Manager I</td>
<td>218,880</td>
<td>New Construction Manager</td>
<td>4</td>
<td>200,203</td>
</tr>
<tr>
<td>36</td>
<td>Project Manager II</td>
<td>276,693</td>
<td>Facilities Project Manager II</td>
<td>4</td>
<td>156,412</td>
</tr>
<tr>
<td>37</td>
<td>FTPMG Electrical Engineer I</td>
<td>148,480</td>
<td>Electrical Engineer</td>
<td>4</td>
<td>128,566</td>
</tr>
<tr>
<td>38</td>
<td>Logistics Lead</td>
<td>197,760</td>
<td>Logistics Supervisor</td>
<td>4</td>
<td>99,759</td>
</tr>
<tr>
<td>39</td>
<td>Real Estate Escrow / Title Coordinator</td>
<td>134,400</td>
<td>Escrow and Title Supervisor</td>
<td>4</td>
<td>135,871</td>
</tr>
<tr>
<td>41</td>
<td>Project Manager I</td>
<td>257,851</td>
<td>Facilities Project Manager I</td>
<td>4</td>
<td>148,852</td>
</tr>
</tbody>
</table>

**Totals**  
Cost of Consultant: **$9,260,247**  
LAUSD Employee Cost: **$5,445,256**  
Difference: **$3,814,991**

**Percentage difference:** 70.06%

**Note 1:** Annual cost was based on 1,920 hours because LAUSD did not pay consultants 160 hours for holidays, vacations, and sick leave.

**Note 2:** Equivalent job classification was provided by Personnel Commission.

**Note 3:** We matched the consultant position to the job class title of the Personnel Commission's Salary Schedule FY 2007-2008 (rates effective as of 07/01/06).

**Note 4:** We were unable to find the equivalent LAUSD classified position to match the consultant position and used a job class title in the Salary Schedule that was considered a close match of the consultant position.

**Note 5:** Employee Cost was based on the LAUSD 2007-2008 Salary Schedule (rates effective as of 07/01/06) and Financial Guide No. 1 dated July 17, 2006 (Revised). We added fringe cost such as payroll taxes and health care insurance which is not included in the base pay for each position.
EXHIBIT B

Copy of FSD’s Response to Audit Report
February 9, 2009

Mr. Austin Onwualu
Director, Contract Audit Unit
Office of the Inspector General
333 South Beaudry Avenue, 12th Floor
Los Angeles, CA 90017

Dear Mr. Onwualu:

RE: Draft Contract Audit Report, CA 0-000, dated December 19, 2008
    Audit of the Use of Consultants
    Facilities Service Division

We have received the Draft Contract Audit Report on the Use of Consultants. Below is our Executive Summary and detailed feedback on the findings and recommendations of the audit. We look forward to discussing any issues addressed in the audit or on our response prior to release of the final report.

Executive Summary

A report that examines the advantages and disadvantages of using consultants is incomplete if it doesn’t address the District’s core business needs, personnel commission capacity, flexibility, fully burdened costs, productivity, and effectiveness. A report needs to include the accomplishments of the program, especially in light of the complete failure of the organization a decade ago. The current program is widely regarded as one of the most successful public works programs in the nation. Compare this track record to the former building program that was best known by the Belmont Learning Center debacle, delays in the Ambassador site project, the number of large construction contractors unwilling to bid on our work, and the number of contracts in default with no plan for remedy.

The Facility program has built 76 new schools in the last 7 years, currently has 33 schools under construction, and the remaining 22 new schools are on track to be completed by 2012/2013. The program and project management costs are within their budgets, and have a
reserve. This has been accomplished by the District that had built very little in 30 years and was best known in the construction industry for its high profile facilities problems. On the Modernization side, 18,000 projects have been completed; the program remains within budget and is planned to complete prior to 2012. Seven (7) years ago, there was a $600 million deficit and very little had been completed despite the Proposition BB having passed in 1997.

Construction is not a core business function of a school district. Management experts advise organizations to concentrate on their core business functions and contract with experts for the non-core needs. A survey of other districts throughout California would find that most districts contract for all of their program’s construction management scope. In general, the best and brightest industry professionals want to work for a company that will be able to provide them with training and a career path in the industry and that is what a school district can or should try to offer to potential employees. Consequently, LAUSD’s ability to even hire the number of construction and project management professionals required to run a program of this size and complexity cannot be met with just District employees.

LAUSD has been successful because of the partnership that has developed from using the best strengths and attributes of its employees with those offered by consultants. The combination of staff and consultants has resulted in a very capable team that has the experience of managing thousands of repair and modernization projects and large-complex construction projects with a proven record of being able to get the job done. This team has been recognized by the State and local agencies, organizations, and unions for its accomplishments. In addition to the projects completed, other program-related accomplishments include: one of the Nation’s most successful and largest project labor agreement; a thriving We-Build program that has trained 60,000 workers in the construction industry; Small Business Enterprise participation of over 55%; a State recognized Labor Compliance Program; a strong construction process that has significantly increased the pool of contractors working with the District; the only K-12 Job Order Contracting program in the State; a program contracting capability of awarding $50 million per month, and a financial tracking and reporting system overseeing the $21 billion capital program. These accomplishments have been successful through the integration of the team of experts.

With the passage of the first bond in 1997, a new era started for the District and the local community. The District’s educational mission had not changed, but it needed a structure for the capital program that was capable and flexible enough to address the anticipated increases and decreases in staffing required in implementing a robust capital program, which ultimately grew to $21 billion. Most school districts and public agencies that find themselves in that situation turn the capital program over to consultants for the execution. LAUSD’s proven approach consists of establishing a core District employee team and augmenting it with contract professionals. This approach has provided the flexibility to recruit and train the required expertise while simultaneously ensuring the District’s interests are represented within the primary goal of delivering a successful capital facilities program. The analysis should include a comparison of the cost of using 100% consultants to the cost savings of utilizing employees for non-core business functions. Through the judicious use of both District employees and consultants, the FSD program has achieved a saving of approximately $450 million over the past 6 years. With over 50 firms providing nation-wide recruiting for

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candidates with key skill sets, we have obtained additional savings and reached a larger pool of expertise.

The search, recruitment, and screening process for professional expertise is time consuming and expensive. To fill a District position, from the start of creating the position through the selection and appointment process, requires over 6 months time. A District executive search costs approximately $50,000 per position. It must be recognized that the District has not always been successful in filling Senior Management positions. Examples of positions that the District has had difficulty filling are the Deputy Chief Facilities Executive, New Construction, which remains unfilled by a District employee; and the Director of Facilities Contracts. That search continued for over a year and required a salary review. If searches are not successful, then the option to fill the positions with consultants is critical to maintain operations. The program management contract fills this need while preventing conflicts of interest with the construction management and other contract professional firms hired. The program manager role is an industry-wide recognized role of managing multiple interdisciplinary projects towards accomplishing the strategic vision.

As the program shifts phases, the District retains its core employees and the consultant positions change and reduce, as required. For the time period of fiscal year 06/07 through September 2008, 395 consultants have been released, a reduction of 31%; in contrast to the addition of 120 District employees. For the fiscal year 08/09 the trend of reduction in consultants continues as the various bond programs near completion.

As LAUSD moves into Measure Q, the leadership and team structures that were developed and executed with the prior bond programs are instrumental to our continued success. Under Measure Q, LAUSD will continue to use the team approach but are evaluating changes to the structure that will meet the needs of the 10 year program. Our goal will continue, as it has been, to ensure successful delivery of the program’s scope of work as approved by the electorate of LAUSD. We will continue to manage our staffing approach to direct the maximum financial resources possible to bond projects while maintaining a level of professional management that will ensure the continued success of the program.

Response to Audit

The remainder of our response will be formatted by listing the objectives of the report with the roman numerals as noted in the report; the findings referenced by number that we have added based upon the order listed in the report, the recommendations referenced by alphabet that we have added based upon the order listed in the report; and our response referencing each.

Objective ii is: determine the number of consultants employed within FSD and the related costs for the fiscal year 2006-2007.

Findings:
1. During fiscal year 2006-2007, the Facilities Services Division employed 1,277 consultants at an annual cost of $186 million.
FSD Response:

In order to utilize this information in a helpful manner, it should reference other fiscal years, the number of District employees in FSD, and the growth and phases of the capital program. As an example, the report (page 5) states that the number of consultants had decreased by 395 for the period of FY 06/07 through September 2008, a 31% decrease in the number of consultants; over that same period 120 District employees were added.

**Objective (ii) is: compare the cost of using consultants against the cost of using employees.**

**Findings:**

2. On average the cost of a consultant was 1.7 times the cost of an employee. The cost to the District of having consultants in positions we examined was about 70 percent higher than employing classified employees in those positions in fiscal year 2006-2007. The District might have saved about $77 million for that fiscal year if it had used employees.

FSD Response:

FSD believes that the conclusions of Finding 2 are based on a fundamentally flawed premise that the program could be executed with 100% District employees. FSD maintains that the program would not have experienced its current progress and success if the District had used only employees to execute the program.

Construction is not a core business function of a school district. Management experts advise organizations to concentrate on their core business functions and contract with experts for the non-core needs. Most school districts and public agencies do not have the expertise to manage and implement a capital program which is not part of their core mission. A significant construction program is usually funded through bonds and occurs infrequently over decades of time. Although a base level of staff are maintained for the consistent workload related to repairs and maintenance projects, the expertise and numbers of positions of staff to support a major construction program are not maintained. In fact, a survey of other districts throughout California would find that most school districts and public agencies hire construction and program management firms to execute their capital programs. In general, the best and brightest industry professionals want to work for a company that will be able to provide them with training and a career path in the industry and that is not what a school district can or should try to offer. Consequently, LAUSD’s ability to even hire the number of industry professionals required to run a program of this size cannot be met with just employees. LAUSD’s model of building a team of experts consisting of District employees and contract professionals has been successful. Most public sector facilities programs use 100% consultant staffing to execute their programs. As such, FSD suggests that the LAUSD program should be compared against the cost of using 100% consultant staffing. From that perspective, the FSD program has saved about $450 million in bond funds over the past 6 years by using an optimal mix of District staff and consultants instead of 100% consultants.

In particular, regarding Finding 2, FSD does not concur with the analysis of the cost comparison between a contract professional (CP) and District position. The analysis is
incomplete. The cost of the employee used in the report does not include similar components that are included in the cost of the consultant.

The billing rate of a consultant has built-in costs that are part of the consulting firm's general overhead cost. Examples are the indirect labor such as salaries of management, administrative staff, accounting, and human resources including recruiting, relocation, and severance of an individual. The consulting firm incurs the costs associated with the searching, recruiting and screening of possible candidates, and the submittal of the candidates for consideration by the District. Another consultant overhead cost is overtime. On the LAUSD program, consultants are limited to billing a maximum of 40 hours per week, regardless of the number of additional hours worked. Thus, overtime is built-in to the billing rate of a contract professional. In addition, upon notification to the consulting firm an individual may be removed or released from duties on the District program. That action can occur in one day's time. It does not require a progressive action for inadequate performance, nor advance notice of an anticipated workload reduction. The costs associated with these actions are all part of the overhead which is included in the billing rates for consultants.

For an accurate comparison, the cost of the employee needs to be calculated with the similar components of the overhead; which should include recruiting, training, payroll administration, and workers' compensation insurance and retirement. In the report, it is not clear whether the retirement contributions were included. Many factors such as Education Code, Personnel Commission, merit system, freeze requirements, and others limit the flexibility and the speed at which managers can hire LAUSD employees. This inability to rapidly hire District employees results in inability to move projects forward. The District's hiring process takes a minimum of 6 months from the start of creation of a position through the selection and appointment process. A District executive search costs approximately $50,000 per position. In addition, termination for inadequate performance takes anywhere from 6 to 12 months and frequently even more time. Employee layoffs are a slow arduous process. Notice must be given 45 days prior to action for bumping, and time is required for Budget and Personnel Commission processing. Since bumping can have a ripple effect through the organization, layoffs are lengthy and disruptive. For the period of FY 06/07 through September 2008, the number of consultants had decreased by 395. If these individuals had been District employees, the layoffs would have had a monumental effect on the capital program. The costs associated with all of these actions need to be included in the audit analysis.

The use of consultants provides the ability to address the workload fluctuations in the time frame required as management responds to the various stages of the multi-year, multi-billion dollar Repair and Modernization Program; staffing requirements remain fluid and can change rapidly based on the project execution cycle, available Program resources, and the passage of additional bonds. The need for staff with various knowledge base, skills, and ability sets shifts as each bond program matures. The passage of a new bond triggers the need for additional staff with the knowledge, skills, and abilities specific to the needs of the Program in such areas as project definition, scoping, and planning. Overlap of bond staffing requirements does occur where the planning phase for an earlier bond may be completing at the same time that the planning phase for a latter bond is just beginning. As such, management is constantly assessing the needs of the Program and balancing staffing.
accordingly with the goal of completing the program on time and within budget. Delays in providing experienced staff could result in significant costs to the District in delay claims by the contractors, loss of funding from the State due to missed funding deadlines, etc.

FSD management maintains a careful balance between the available Program resources and the remaining Program requirements. As such, management is constantly assessing the needs of the Program and balancing staffing needs. As evidence, the program and project management costs are within their budgets, and have a reserve. Accordingly, the complete cost related to employee human resources efforts is not included in the cost of an employee in the report.

Objective (iii) is: determine the advantages versus the disadvantages of using consultants

Findings:

3. Consultants in FSD managed and supervised District employees, made or influenced decisions affecting employee’s positions and compensation, performs District employees annual evaluations and approved their time-cards. There were also no policies and procedures with FSD limiting the types of functions consultants may perform.

4. The line separating District employees from consultants was blurry. There was no way to determine who was a consultant and who was an employee. Consultants were not identified as such in their correspondences such as letters and e-mails or on their business card and identification badges. Consultants are not required to identify themselves as such when conducting District business.

5. Consultants in FSD were making hiring and promotional decisions with respect to consultants from their own firms. We also found that consultants were approving timesheets for other consultants from their own firms.

Recommendations:

A. We recommend that the FSD should identify functions being performed by consultants which are either inherently governmental functions or closely supporting inherently governmental functions. For the inherently governmental functions, FSD should determine personnel needs and develop ways to meet those needs using employees instead of consultants. For the functions that closely support inherently governmental functions, FSD should develop policies and procedures to ensure that appropriate District control is preserved.

B. We recommend that the FSD should establish policies to mitigate the risk of consultants being mistaken for District employees. When appearing for or speaking for the District, consultants should be required to identify themselves as such.

FSD Response:

The findings do not provide analysis of the advantages of using consultants. FSD believes a balanced review and analysis of the use of consultants includes the effectiveness and
efficiency of the program. The report references 6 reasons, stated by FSD, why FSD uses consultants instead of hiring employees and concurs that certain benefits are provided.

LAUSD has been successful because of the partnership that has developed from using the best strengths and attributes of its employees with those offered by consultants. The combination of staff and consultants has resulted in a very capable team that has built 76 new schools in the last 7 years, currently has 33 schools under construction, and the remaining 22 new schools are on track to be completed by 2012/2013. The program and project management costs are within their budgets, and have a reserve. This has been accomplished by the District that had built very little in 30 years and was best known in the construction industry for its high profile facilities problems. On the Modernization side, 18,000 projects have been completed; the program remains within budget and is planned to complete prior to 2012. Seven (7) years ago, there was a $600 million deficit and very little had been completed despite the Proposition BB having passed in 1997.

This team has been recognized by the State and local agencies, organizations, and unions for its accomplishments. In addition to the projects completed, other program-related accomplishments include: one of the Nation’s most successful and largest project labor agreement; a thriving We-Build program that has trained 60,000 workers in the construction industry; Small Business Enterprise participation of over 55%; a State recognized Labor Compliance Program; a strong construction process that has significantly increased the pool of contractors working with the District; the only K-12 Job Order Contracting program in the State; a program contracting capability of awarding $50 million per month, and a financial tracking and reporting system overseeing the $21 billion capital program. These accomplishments have been successful through the integration of the team of experts.

In general, the best and brightest industry professionals want to work for a company that will be able to provide them with training and a career path in the industry and that is not what a school district can or should try to offer to potential employees. Consequently, LAUSD’s ability to even hire the number of construction and project management professionals required to run project of this size and complexity cannot be met with just District employees.

It must be recognized that the District has not always been successful in filling positions. A few examples of positions that the District has had difficulty filling are: the Deputy Chief Facilities Executive, New Construction, which remains unfilled by a District employee; the Director of Facilities Contracts which required a search that continued for over a year and a salary review; and the DSA inspector recruitment that occurred over a 6 month period produced only one candidate that had the competency to be placed as an Inspector of Record on a Middle/High School type project (See Attachment C). Currently, competition to find the talent is tight. In November 2008, voters supported the passage of construction bonds for 87 school districts in the State; and just 5 months earlier, 33 school financing measures passed. LAUSD is now competing with numerous districts all across that state for the same pool of talent.

Other difficulties with filling District positions relate to creation of the position and salary range. Some positions needed to support a complex capital program have unique aspects not

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found in public agencies. Sometimes, it is difficult for the personnel commission to capture the unique aspects of a position and a search for a comparable compensation package in other organizations. In those situations, a District position does not exist. Therefore contract professionals are needed and used.

An added benefit of using contract professionals is that many times consultants have been a good source of talent to convert to District employees. Numerous consultants have become District employees after working with LAUSD as a contract professional. Attachment B provides examples with names of District employees that had previously worked with FSD as contract professionals.

As LAUSD moves into Measure Q, the leadership and team structures that were developed and executed with the prior bond programs are instrumental to our continued success. Under Measure Q, LAUSD will continue to use the team approach but FSD is evaluating changes to the structure that will meet the needs of the 10 year program. Our goal will continue, as it has been, to ensure successful delivery of the program’s scope of work as approved by the electorate of LAUSD. We will continue to manage our staffing approach to direct the maximum financial resources possible to bond projects while maintaining a level of professional management that will ensure the continued success of the program.

The report discusses the risks and concerns for: 1) risk of loss of governmental control, 2) consultants performing inherently governmental functions, 3) consultants not always identified as such, and 4) risk of organizational or personal conflicts of interest.

**Risk of loss of governmental control:**
The integrity of control for the District is maintained by District employees in the positions that require them to make fiduciary or binding commitments for the District (i.e. Chief Facilities Executive or the Director, Facilities Contracts, Director Facilities Support Services). This is in compliance with the State laws and regulations that establish the control of fiduciary and legal commitments for a school district.

Most of the success of the District’s construction and modernization program is due in fact to the team approach which enables consultants to speak on behalf of the District and act as our agents. As such, they are also subject to the requirements of filing Form 700’s and complying with the Code of Conduct. They make decisions and recommendations that are not fiduciary or contractually binding when exercising their daily functions. Any decision that binds the District either contractually or financially is made by a District employee.

**Consultants performing inherently governmental functions:**
To support its points, the report references the Federal Acquisition Regulation (FAR). LAUSD is subject to the California Education Code, California Public Contract Code, and California Government Code; which are significantly different from FAR. As mentioned above, building and modernizing schools is not inherently a core business function of a school district. In many cases, the entire program, including construction management of capital improvement programs, are contracted out by other school districts, public agencies and Federal entities. The type of services provided by our contract professionals are precisely the kinds of “consultant” agreements that are not subject to the FAR provisions.
cited in the report. FAR provision 37.104 authorizes the type of personal services that are more appropriately analogous to our use of consultants. However, the point is that FAR is merely advisory. FAR does not govern the District in any way. The legal relationship between District employees and contract professionals are governed by different California legal provisions and District policies.

Consultants are not always identified as such:
Finding 4 and Recommendation B refer to consultants that were not specifically identified as consultants. However, the report does not define the risk or conflict. Consultants are part of the FSD team to accomplish the planning, design, and construction of the District's capital program. It is this team approach that has helped to create the success of our capital program. Contract professionals are selected for their expertise and experience. The unified team that LAUSD presents is a blend of core District employees and contract professionals. This team concept is the key to LAUSD's successful Facilities Construction and Modernization Program.

One of FSD's goals is to achieve a perfect balance between management controls and creating a positive atmosphere of internal partnership that fosters unity and productivity and not one that drives barriers between District employees and contract professionals. In this dynamic program and fluctuating economy, FSD will continue to implement the Board of Education's vision and directives and proactively work with the OIG, Legal, Personnel Commission and all branches to ensure that there is full accountability, transparency and stewardship in managing the District's resources.

To illustrate FSD's commitment and provide greater transparency, FSD implemented policy “FSD 001 Business Card Policy” in October 2008. It requires that all “contract professionals” have that title on their business cards. The implementation of this policy is being phased in. Additionally in the future, FSD will consider other actions to distinguish contract professionals from employees (i.e., changes on the identification badges).

Risk of organizational or personal conflicts of interest:
Finding 3 and Recommendation A relate to the functions a consultant may perform. FSD has developed various policies and procedures to provide consistency and control related to consultants in execution of their responsibilities on behalf of the District. Attachment A lists these policies and procedures which are in addition to other District procedures, i.e. contracting responsibilities are delegated from the Board of Education to District employees and documented through the Board Rules and delegation memorandums, memorandums of signature authorities for various business operations, etc.

FSD continuously considers policies and procedures that improves its business operations and benefits the District's goals. For example, to address the conflicts that can arise from relationships of the hiring and supervision of staff associated with consultants firms, in June 2008 FSD implemented policies “CT-005 Standard Protocol for Validation of Contract Professional Hours” and “CT-006 Contract Professional Staff Appointment Policy”.

In summary, the Facilities Construction and Modernization Program is the largest and most successful Public Works building program in the country. The unified team that LAUSD
presents a blend of District employees and contract professionals. This one team approach has made LAUSD’s program very successful in providing and enhancing quality learning environments for teachers and students.

Objective (iv) is: determine whether consultants are complying with the Contractor Code of Conduct.

Recommendations:
C. We recommend that FSD management should observe and enforce the CT-005 policy guidelines to prevent any conflict of interest in the timesheet approval process and observe and enforce the CT-006 policy guidelines to prevent any conflict of interest in the hiring/promotion process.

FSD Response:

In FY 06-07 FSD instituted additional management controls to the process of consultant time approval. Extra checks were put in place to ensure contract professionals were paid appropriately for time worked. The policy was formalized and on June 28, 2008, FSD approved, with input from the Office of Inspector General (OIG), Ethics and Office of General Counsel, policies “CT-005 Standard Protocol for Validation of Contract Professional Hours” and “CT-006 Contract Professional Staff Appointment Policy”. To assist with the implementation of the policies a training session was held in October 2008 for District and Contract Professionals in supervisory positions. The policies are currently in place and being followed.

Objective (v) is: review the policies and procedures that govern the use of consultants.

Findings:
6. Eighty four (84) percent of consultants have been employed at the FSD for a period of more than two years and sixteen (16) percent have been employed for more than five years.

Recommendations:
D. We recommend that FSD should clearly define in its policy the maximum timeframe for which consultants are allowed to be used to fill a vacant position.
E. We recommend that FSD should implement policy to prevent consultants from supervising other consultants when they are from the same firm or when their firms have a prime/subcontractor relationship.

FSD Response:

By law, every contract has a maximum term of five years. The report does not make a valid business case to justify the restriction of a maximum amount of time a consultant may work on the building program as stated in Recommendation D. The use of consultants for the program is meant to ensure successful execution of the District’s program. There is no
evidence presented to justify the recommendation of placing restrictions on the length of time a consultant’s expertise can be utilized.

Numerous factors affect the determination of how to fill a position. The criteria includes whether there is an established equivalent District position, the ability to fill the District position (i.e. a list of candidates exists, the position is approved and funded, hiring restrictions do not effect it), the duration of the project and/or program, and the need and availability of “resident knowledge”. Consequently, not every position that is filled with a consultant is a District position, nor should it be. A major factor in determining whether to use consultants is the amount of fluctuation anticipated in the construction program. This was clearly shown in the decrease of 395 consultants noted during the reporting period in the audit report. If LAUSD had hired District employees instead of consultants, LAUSD would have had to deal with the difficult and costly task of terminating almost 400 permanent employees.

The District regularly evaluates the need to continue the use of consultants. The contract durations are limited and the firm’s performance is evaluated and documented prior to renewals of option years. The staffing order includes a specified duration for each individual in a position. An evaluation of the individual’s performance and the need for the position is conducted prior to extending the contract professional for an additional term. Moreover, if the individual is not performing according to the contract and District Managers are not satisfied with the contract professional, then the individual is let go prior to the end of the staffing order. This has been done many times during this capital program.

FSD endeavors to fill staffing needs with District Employees when the position is appropriate. However, we are competing with other Districts, Government agencies and the private sector for the same talent. Therefore, despite our diligent efforts, we are often unsuccessful and unable to fill positions with District employees in the numbers needed, with the required experience, and at the District’s lower than industry average pay schedules. Some examples are: inspector positions, project manager positions, etc. During the period of the report, the fight for talent was extremely challenging because the economy was still flourishing. Now that LAUSD is one of the agencies that is offering such a long-term program through the completion of Measure Q, the District’s leverage in hiring the right people where the long-term requirement exists may be easier. That is until the next economic construction boom.

Recommendation E states that FSD should implement a policy to prevent consultants from supervising other consultants from the same firm. First of all, there is nothing in the public contracting codes that prohibit this. Additionally, the recommendation is not consistent with construction management industry’s standard practices. However, Policies CT-005 and CT-006 were developed and approved to address the conflicts that can arise from relationships of the hiring and supervision of staff associated with consultants firms. The policies were developed with input from the OGC, Ethics, and Office of General Counsel, and have been implemented.

The broad statements in Finding 6, regarding percentages of consultants and the duration they have worked on the program, do not show the complete story. A better measurement of
the use of consultants is the changes to staffing requirements. The staffing actions over the audit period provide a different perspective. From the period of FY 06/07 to September 2008, the District hired 120 employees, while over that same period 395 contract professionals were released. One of the essential benefits of utilizing consultants is the fluctuating staffing needs due to the nature of the capital program.

As noted in the audit, there are several reasons why consultants are utilized. FSD’s goal is to hire and retain experienced and talented District employees and contract professionals. FSD will continue to actively manage the staffing needs and whenever possible will hire qualified people as District employees where the long term requirement exists.

**Objective (vi) is: review the hiring process for consultants.**

**Findings:**

7. Consultants were hired or promoted that did not have the required minimum qualifications for their positions.

**Recommendations:**

**F.** We recommend that Existing Facilities should implement proper policies and procedures to ensure that the consultant; it hires meet the minimum qualification requirements for the positions they occupy.

**C.** We recommend that FSD management should observe and enforce the CT-005 policy guidelines to prevent any conflict of interest in the timesheet approval process and observe and enforce the CT-006 policy guidelines to prevent any conflict of interest in the hiring/promotion process.

**G.** We recommend formal policies and procedures be implemented on the hiring and promotion process for PM consultants. Such policies and procedures should ensure that there is proper documentation of evaluation and approval by District management employees and that conflicts of interest are not involved in the process.

**H.** We recommend that the qualification requirements for PM positions should be specified and there should be documentation in the evaluation package demonstrating that the candidate qualified for the position. Consultants from the same firms of the candidate should not be involved in any part of the process, including drafting the qualification requirements, evaluation, and recommendation.

**FSD Response:**

First and foremost, when contracting with professional services consultants, there is no legal or contracting code that requires competition for every position or mandates that every candidate needs to meet the minimum qualifications. FSD’s goal is to attract and retain the best and the brightest professionals across the country to help manage the Nation’s largest Public Construction and Modernization Program.

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However, FSD in partnership with OIG, Legal and Ethics have self-imposed a policy that creates a transparent hiring system that is flexible and responsive to the constant requirement of having to change staff to adequately support the Capital Program. This policy and process of hiring and replacing staff is critical to the success of the program. For example, currently, the Ambassador project is spending approximately $1 million per day and has over 800 construction workers on site. Each day numerous questions arise that require answers from the District. To avoid costly delays, FSD staff needs to have the capability to respond in a timely manner. One day of delay due to the owner’s unresponsiveness would cost the District thousands of dollars. Therefore, FSD does not want to create another bureaucratic personnel hiring organization that would limit its ability to hire and terminate staff. A transparent, flexible hiring policy is key to the success of the program and the current policy achieves that goal.

Finding 7 states that minimum qualifications were not met. While that statement is correct, the construction management contracts have a provision to allow experience to offset the educational requirements at the discretion of LAUSD. These provisions have been in place since 2003. The minimum qualifications act as a guideline in helping to choose the right person for the job. For example, a project manager that has a degree with 5 years experience may meet the minimum standards, but a better choice might be a 20 year project manager that is just shy of the educational requirement but has managed numerous multiple million dollar projects. Senior District Management currently approves the exceptions of a proposed consultant. Any deviation from the stated qualifications is to be documented in the hiring folder of the applicant. For Existing Facilities, beginning in early 2007 all consultant hires, including those with an experience for education substitution; have been discussed in detail and approved by Bruce Kendall, District Employee, Deputy Chief Facilities Executive. If the consultant does not perform effectively, as stated in the OIG report as a concern, the consultant is removed from the position and/or released from the program.

The details listed below are regarding the specific consultants and points referenced in the report.

Consultants not meeting minimum qualifications:

• Chloe Thornburg – Originally hired July 15, 2002, Chloe Thornburg had previously worked in Project Controls under Bob Fundis where she was involved in the development and delivery of detailed financial reports for senior project managers. Ms. Thornburg left the program in order to pursue her education and was rehired in October 2007. At the time, a compelling case was made to Mr. Kendall regarding her experience, prior work performance, and the fit of her skills to the needs of the program. Her experience was substituted for education and her promotion was approved by Mr. Kendall.

• Deborah Leister – Records do not show the process or approval for the original hire on February 16, 2004 or the first promotion, June 1, 2005. The second promotion, December 1, 2006 was approved by Mr. Kendall. While Ms. Leister did not possess the requisite degree, these first two promotions were approved under a CM contract with the educational equivalency allowance. The final promotion, to Project Cost, Special Advisor on September 24, 2007 was approved by Mr. Kendall based on her knowledge and experience. Ms. Leister went on to contribute to the success of the reorganization, assisting with the dissemination of her institutional knowledge and training. This effort...
limited the disruption which would have occurred had she left LAUSD several months later.

- Francesca Tomishen – Hired and promoted by the Local Region. During the time period encompassing the original hire as well as the promotion, the Local Region acted somewhat independently in the hiring and promoting of consultants. Documentation on the hire could not be found. As mentioned above, a policy has been put in place to address this and in the future, such hiring actions require appropriate documentation.

- Erin Weems - Upon review of the final two promotions, were awarded by the Acting Director, a District employee. Again when exceptions are made to use experience in the case of education requirements, the decision will come from Senior District Management and will be documented appropriately.

Conflict of interest:
The findings mentioned below have been addressed by FSD’s June 2008 a new policy CT-06 Contract Professional Staff Appointment Policy was implemented. This policy precludes individuals from the same prime firm or sub consultant firm under the same as a candidate from participating in an interview. At the time of the interviews of the people listed below, LAUSD did not have a policy that prohibited it.

New Construction:

- Hope Fang (Prime: CCG/Harris, Sub: TBI) was interviewed by: two consultants from TBI and KRML for project engineer position, interview date on 6/5/2003; and two LAUSD employees, and one CCG/Harris, consultant for project manager position, interview date on 3/19/2004.

- Kimberly Emerson (Prime: CCG/Harris, Sub: CMTS) was interviewed by: CCG/Harris – Boro, CCG/Harris – CMTS, and 3 consultants from CCG/Harris, CCG/Harris, CCG/Harris and one consultant form URS as well as one from Turner for admin assistant position interview date on 10/1/2002.

Existing Facilities:

In reviewing the hiring and promotion/change of duties records of the sample of consultants in EF, we found instances where individuals were interviewed and evaluated by only one person, a consultant from their own consulting firm. This was not the policy for Existing Facilities at the time. Three evaluators consisting of at least one District employee should have conducted the interview. Training was provided in October 2008 for Policy CT-006. It is currently being followed.

- William Ritchie (HNTB-Yang) documentation was incomplete for Controls Lead 6/16/2004 and Controls Manager I position 7/27/07; was interviewed by one consultant from HNTB-Yang for Senior Scheduler 3/15/2007.

- Eric O’Connor (Jacobs, sub: Pacifica) was interviewed by one Jacobs consultant and a District employee for controls manager II on 2/23/1007; and one Parsons Brinckerhoff consultant and one District employee for promotion to Deputy Director on 3/31/2008.

- Nathaniel Wheeler (HNTB-Yang, sub: Project Control Services, Inc.) was interviewed by one HNTB-Yang, sub: Project Control Services, Inc. consultant, and one PM consultant and one District employee for Project Manager III on 12/21/2006.
• Gajiwala Dhvanil (HNTB-Yang, sub: E-Square) was interviewed by two consultants from HNTB-Yang and HNTB-Yang, sub: E-Square for Senior Scheduler on 10/5/2007.
• Carolyn Wong (HNTB-Yang, sub: Global) was interviewed by one consultant from HNTB-Yang for Senior Scheduler on 4/27/2007.
• Nilesh Shah (HNTB-Yang, sub: E-Square) was interviewed by one consultant from HNTB-Yang for Senior Scheduler on 7/28/2006.

Non-compliance with policies and procedures:

For the period from January 1 Jan 2004 through January 2009, New Construction sent more than 425 resume requests to construction management firms; received 8,279 resumes and hired more than 725 contract professionals. Without the specific information such as names of the contract professional hired and date of the resume call, we are unable to verify the hiring process violations for 8 consultants noted in the report.

No evidence of interview and approval of change of duties:

A review of two of the consultants with change of duties, Vance Warhurst and Vince Jarecki, yielded the following: Mr. Kendall approved the change of duties performed. This approval took into careful consideration qualifications, work history and performance throughout their tenure with the District.

Program management (PM) consultants:

As part of the February, 2006 reorganization of Existing Facilities, the Operations Center, Project Development and Program Controls were created as program level departments responsible for oversight and execution of the massive modernization and repair program. Each of these departments formed the basis for what would result in an over 35% increase in project starts for the next and following years; and our ability to 'hold that line' against prior years of project slips and failure to deliver the program in a timely manner and according to published costs and schedules.

Prior to the February 2006 reorganization, under then Deputy Chief Executive James Delker, the Facilities Projects Department was headed up by Robert Fundis, a District employee; subsequently by William Wilkerson, a PB employee, was at the helm of Project Controls. The Construction Department, which encompassed both regional construction management and design management, was under the leadership of John Doyle, a PB employee.

With the creation of the Operations Center, Project Development, and Program Controls in February 2006; Deputy Chief Executive, Bruce Kendall determined that each of these newly created departments necessitated the placement of program level management. Mr. Kendall selected Scott Lewis for the position of Director of the Operations Center. Mr. Lewis had served under Mr. Delker, had extensive knowledge of the organization, and was a seasoned project manager. In that selection, Mr. Kendall made the determination that he had in Mr. Lewis, the caliber of employee and the program management capability necessary for the success of the program.

When, Mr. Kendall later determined that the efforts of Project Development were not making the progress he had directed; he asked Mr. Lewis to serve as acting director until such time as
he could find a suitable replacement to head that team. Similarly, when the Director of Program Controls left unexpectedly after only 4 months with the District, Mr. Kendall again asked Mr. Lewis to serve as Acting Director of Program Controls until such time as a replacement for Mr. Darwie Labordo could be supplied by PB.

In March of 2008, Existing Facilities undertook a subsequent reorganization, refining improvements realized following the first reorganization, and combining the departments of Construction and Central Design Management into Existing Facilities Repair and Modernization (R&M). Based on his knowledge of the organization, having run the Operations Center, Project Development, and Program Controls; Mr. Kendall felt comfortable moving Mr. Lewis to the position of Director of R&M. He assumed the basic responsibilities of Mr. Doyle who had been in charge of regional project management prior to moving to Construction Support. This consolidation of departments placed the onus on Parsons Brinkerhoff for total delivery of the Program from the design of projects through their close-out.

Finding a person with the caliber of leadership, financial acumen, and program management level ability to manage Program Controls for our $7.6 billion bond effort proved a difficult task. The direction we needed to take in that department was one of reorientation and preparation of financial documentation in line with industry accepted accounting principles. In August of 2006, Robert Temple joined Program Controls as a Controls Manager IV. Based on his background, and understanding of financial principles and industry standard accounting practices; Mr. Temple was promoted to Deputy Director under Acting Director Scott Lewis shortly thereafter. In Mr. Temple, Mr. Kendall saw the necessary financial experience required to undertake the changes required in Program Controls; and Mr. Temple was selected as Director of Program Controls by Mr. Kendall based on his experience and work performance on January 1, 2007. As far as telecommuting from his office in Atlanta, Georgia; Mr. Temple is the most qualified person provided by his firm for the position, has distinguished himself with solid progress in our ability to tie out program financials to the bottom line, and has provided high caliber leadership and understanding critical for the program.

In short, Mr. Lewis and Mr. Temple have been a large part of the success of the Existing Facilities Repair and Modernization Program; providing critical program level support and key competencies essential to its success.

Use of the program management compact:
The purpose of the PM contract is for the provision of senior management and unique program management positions. As part of their services, the firm provides recruiting services for positions identified by the District. In addition, if a person with the skill set, experience and education is identified by the District, for a program management position, the PM firm will bring the person under their contract. Frequently, these people convert to a District employee position. Examples are: Erik Blum, Director of Facilities Support Services; Raj Kaval, Deputy Director of Operations, New Construction; the following 3 people are no longer with the District: James O'Reilly, Director of Construction, New Construction James Sohn Director of Operations, and Sam Yoshida, Director of Facilities Contracts. The following 3 people were identified:
• Mike Bejerano was hired March 2006 at the rate of $63.50 per hour to work on the Small Business Enterprise program by the Director of the program that is under a CM contract (Seville and prior under Jenkins Gale & Martinez). The Director is responsible for the SBE and We-Build programs for FSD. It was appropriate for the position to be open on the program site and he was not proposed through a CM firm. In November 2007, not 2006 as the draft report incorrectly states, he was moved into a higher position when another person left the position. Since Bejerano had been performing very well and brought unique expertise of financial literacy regarding credit and bonds to the program, he was well qualified for the position. A compensation change was requested that was more comparable to the new position responsibilities. His new rate increase was 8.5% lower than the person previously in the position.

• Anna Lasso was originally considered for a position reporting to the Chief Facilities Executive. Since she had a degree in planning from MIT, her resume was forwarded to the Director of Planning and Development, a department which had only recently been created. The department was created to address a new direction in planning and development with a component of partnerships between public and private sectors. The Director was selected for his experience and skills and was under a CM contract (Vanir/Ben Rodriguez). Lasso was selected for her planning education, experience, and her knowledge of third party transactions and the District. Currently, the personnel commission is working to capture the unique aspects of this position and is searching for a comparable compensation package.

• Steve Redmond was hired in October 2006 to work in the Existing Facilities Project Development Department, a department that had been newly created in February 2006. The Director was a District employee and responsible for the creation and development of the unit, including staffing, developing procedures and work product. The Director became aware of Redmond's availability for work, and his experience and skills were needed in the department. It was appropriate for him to be in a PM role as he would be managing consultants from various CM firms. The Director forwarded the resume to the PM Unit with the understanding that she was considering hiring him. The staffing order was provided for approval, reviewed and found to be appropriate for the position and thus approved. In October 2008 Redmond was released from the LAUSD program. He is currently working for the PM firm in the local area.

Regarding recommendations F. and C., in FY 07/08 FSD developed, with input from the OIG, Ethics and Office of General Counsel, and approved on June 28, 2008 policies “CT 005 Standard Protocol for Validation of Contract Professional Hours” and “CT 006 Contract Professional Staff Appointment Policy”. In October 2008, a training session on the policies was held for District and Contract Professionals in supervisory positions. The policies are currently in place and being followed.

As for the recommendation G, regarding policies and procedures on hiring and promotions process for PM consultants, Policy “CT 006 Contract Professional Staff Appointment Policy” and the new PM contract addresses this issue. The contract adds the requirement that all
staffing requests be approved by the (District employee) Deputy and/or Chief Facilities Executive. Documentation will be maintained.

Objective (vii) is: determine the process followed when a consultant changes firm affiliation.

Recommendations:
1. We recommend that FSD should develop and implement appropriate policies and procedures to bar consultants from changing their firm affiliation while working at the District.

FSD Response:
FSD has a policy in place to discourage movement of consultants between firms. The report renders a legal opinion that is in conflict with the legal opinion from the Office of General Counsel regarding the recommendation to bar consultants from changing their affiliation with a firm. The report does not provide any evidence that there is a risk of harm to the District when a consultant changes firm affiliation. The policy to discourage movement of consultants is for the benefit of the District to minimize the administrative issues associated with such changes. The FSD policy requires that when contact professional changes employers, then the position is vacated and FSD will evaluate the position to confirm if it must be refilled. If the position is to be filled, the contract professional must re-compete with applicants for the position, following the process in CT-006.

Objective (viii) is: determine if consultants working in program management positions are performing construction management functions.

Findings:
8. PB Americas, Inc (PB) consultants were not limited to performing program management work and some Construction Management (CM) consultants were performing program management work and supervised PB consultants.

9. The Program Management (PM) contract allow for greater flexibility in staff placement, billing rate negotiations, and signing on subcontractors than the CM contracts. Positions identified for PM consultant are filled by PB without any competitions from any other firms. Positions for CM consultants are required to be filled via a call-for-resumes/candidate evaluation and selection process while the CM Firms are invited to submit resumes for the positions and the consultant is selected from a short list of candidates after an interview and evaluations process.

10. Designating only one firm to provide consultants for program management positions may not be beneficial to FSD. The District can obtain well-qualified, if not better-qualified, consultants to perform program management duties from a bench of firms through a competitive process for each positions, rather than from just one firm.

Recommendations:
J. We recommend that FSD should terminate the two-tier system of consultants (PM/CM) and require all consulting firms to be subject to the same terms and conditions and policies and procedures.

K. We recommend that FSD should staff all senior level management positions with District employees instead of consultants.

FSD Response:

FSD agrees with the OIG recommendation to staff senior level management positions with District employees. However, the report fails to recognize the efforts that FSD has made and the difficulties encountered to find the top level staff that is required for such positions. The PM contract allows the District the flexibility to fill senior level positions that can’t be appropriately filled with District employees.

FSD disagrees with the recommendation to eliminate the Program Management tier from the building program. The report points to the lack of competition to fill positions when utilizing only one PM firm. However, FSD competitively procured the PM contract based on PM qualifications. There is no legal requirement to add additional competition as FSD has structured the bench of CM firms.

The nature and complexity of the District’s construction and modernization program makes the use of program managers essential to the success of the overall Bond program. By definition, program management is the process of managing multiple interdependent projects that lead towards an improvement in an organization’s performance. Project/construction management (CM) is designed to deliver a specific deliverable such as a new school within budget, on time and to specification. Indeed, the industry acknowledges that very large programs are successful when they contain the following factors:

- **Leader/Owner:** Person has full authority to do whatever they feel is necessary for success. The leader surrounds themselves with a group of the best of the best to help execute the project/program.
- **Mega Project Expert:** Someone on the project/program with several successful mega projects under their belt. They are in a leadership role.
- **Projects are run by project managers:** When design and construction issues get politicized practicality and common sense are not available to the team. The project needs a motto of “let the experts use their expertise.”
- **Unique structure and culture:** The project team members are empowered to set new norms, policies and procedures that they feel are needed for success. The program structure should enable the team, not stifle its ability to be successful.
- **A Program Approach:** A program of projects is highly inter-related. This means that systems procedures and tools are in place that allows one to manage a program of projects rather than managing project by project.
- **An atmosphere of partnership:** Everyone must work together toward the common end. Without an atmosphere of true partnership, communication will be poor resulting in project failures.
• Expect Chaos: It is the team and team leaders who assure that the program and the projects stay focused on project success by identifying when the project is off course and a system is in place that allows a course correction when necessary

• Provide Accountability: Successful programs have a culture and systems for holding team members accountable for their commitments

• Integrated Activation Team: An integrated activation effort must be started early in the construction phase to achieve buy-in and acceptance.

FSD feels it is essential to the success of the program to have the flexibility to recruit appropriate top experts and negotiate appropriate compensation. Structuring the PM contract exactly the same as the CM contracts which utilize numerous consultants in the same positions with pre-approved rates and the same terms, limits the opportunity to recruit an appropriate candidate.

One of the important functions of the PM is to eliminate conflict of interests that can arise when a CM firm manages individual projects as well as the programs. FSD acknowledges that the lines between PM and CM activities have been blurred in some cases. It is the intent of FSD to more clearly define and differentiate the PM role and related positions. In addition, FSD is evaluating the benefit of expanding the Program Management pool.

Finally, the purpose of the PM is to allow greater flexibility in staff placement, negotiating rates, and finding talent across the United States. As mentioned earlier, the cost to find and recruit talent is expensive. FSD would rather leverage the ability of a nation-wide firm, with the ability to draw experienced personnel from projects worldwide. As for negotiating rates, this often plays to FSD's advantage, especially when talent is hard to find. This gives FSD the flexibility to stan a person at lower end of the pay scale when some qualifications are not met. It may appear that the selected PM has all the advantages and no disadvantage of being a CM. A major disadvantage, is the PM is prohibited from participate as an A/E or CM for LAUSD. In essence, the PM is exempt from being able to compete for larger Architectural/Engineering and CM contracts that LAUSD has or will execute in the future.

In addition to the objectives of the report, the OIG conducted a survey, what do the employees have to say on the use of consultants in management positions?

Findings:
11. A majority of the respondents in an employee survey indicated that the use of consultants in management positions has an overall negative impact on District affairs, working relationships, fair treatment of employees, job security of employees, and overall employee morale. Most respondents also believed that the consultants in management positions were not performing well in managing the department where they worked, that they were biased in their work, and were not working for the benefit of the District.

FSD Response:

FSD feels that a survey to evaluate the climate and effectiveness of the organization and can be a useful management tool. Such a survey should be designed in a scientific manner in order to obtain usable information. Indeed, the complexity of the field is such that there are
firms that focus solely on market research design and execution. FSD feels that the questions asked in the survey are overly broad and the results are presented in such a general way that, unfortunately, the results cannot be used to effectively evaluate or improve aspects of the organization. For example, there is no comparative reference to questions regarding opinions of District managers. Additionally, the results are presented as a sweeping statement with no analysis presented of the differences in results by department or consultant manager.
Conclusion

FSD appreciates the OIG's effort to evaluate the use of consultants. However, there are several aspects of the audit that are not addressed in the OIG report that FSD feels is critical to the overall success of the program. The evolution of the District's building and modernization program, from the rocky start of the Belmont project to the successful status of the current program, including 76 new schools in the last 7 years and $5 additional new schools on track to be completed by 2012/2013, demonstrates the successful team approach that utilizes a blend of District employees and consultants.

FSD believes that the audit should acknowledge that the core business of the District is education, not to build and modernize schools. Indeed, most school districts and public agencies contract out 100% of their Capital program execution. The model that has been established by FSD allows the District the flexibility to recruit and train permanent employees when possible and to utilize consultants to provide the subject matter expertise for the limited time period that such expertise is needed to execute the program.

The audit analyzed the cost of consultants compared to employees for a one year time period. The audit did not consider the cost of such a program if it was completely contracted out in the manner that most public agencies execute their programs. When viewed from that perspective, the Bond Program would have cost the District approximately $450 million more over the past 6 years. Additionally, the audit did not consider the long-term costs of employees versus consultants. From the fiscal year 06/07 to September 2008, 595 consultants (31%) were released. The cost and disruption to the District to lay off 395 employees with possible bumping rights, as well as long-term retirement costs for vested employees would be significant.

The option of utilizing consultants in the Repair and Modernization Program gives FSD the ability to respond quickly to workload fluctuations. It also gives FSD the ability to find staff with the skills and abilities specific to the needs of the Program. Consultant and employee staffing levels are reviewed frequently and adjusted based on the needs of the Program and staffing is balanced accordingly in order to meet the goal of completing the program on time and within budget.

FSD maintains control of the fiduciary and financially binding aspects of the program (e.g. Chief Facilities Executive, Facilities Contracts Director, and Facilities Support Services Director). The audit comments on the risk of loss of control of inherently governmental activities utilizing definitions provided in the FAR. The parts of FAR that the audit references are relevant only to acquisition services which FSD recognizes as an essential District employee managed function. The California Codes recognize that the District’s core business is not building schools and as such may decide to use consultants to execute building programs. The OIG relies heavily on FAR however, the FAR is merely advisory. It does not govern the District.

While the audit recommends that consultants have specified limited assignments, be barred from changing firms, and be prohibited from supervising other consultants, FSD believes that its flexible, responsive and team based approach best meets the needs of the program.

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audit’s recommendation that the 2-tier approach of Program Management and Construction Management be eliminated does not recognize the essential value of a distinct Program Management function to the District’s complex multi-layered and multi-project construction program.

FSD acknowledges the audit recommendation that senior managers should be employees. FSD has had difficulty filling some senior management positions, even though expensive and long term nationwide executive search efforts have been undertaken.

FSD acknowledges the intent to provide information regarding employees’ feelings about consultants in management positions and that such information could be used as a management tool. However, FSD does not feel the information provided can be used constructively because the information provided is vague, it does not have comparative references to opinions of District employees as managers and the questions were not worded in such a way as to elicit objective responses.

As the District moves towards implementing Measure Q, FSD anticipates utilizing fewer consultants and more employees because of the long term nature of measure Q. However, FSD will continue to need to engage consultants to ensure responsiveness, to obtain construction management field expertise and to meet the goals of the program. FSD is proud of its accomplishments and the continuing successful implementation of the $21 billion program.

We look forward to discussing any issues addressed in the audit or on our response prior to release of the final report.

Sincerely,

[Signature]

Greg Garcia
Director, Facilities Contracts

cc: File
Guy Mehula
Bruce Kendall
Raju Kaval
Kathleen Grigsby
Erik Blum
Michelle Meghrouni

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Title of Policy or Procedure

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CT-003 Change Order Policy
CT-004 Release of Retention (DRAFT)
CT-005 Standard Protocol for Validation of Contract Professional Hours
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Mohammad Bagheri
Mohammad Baig
Nomanican Banks
Alejandro Barrera
Erik Blum
Margaret Caputo
Christos Chrysiiou
Jacqueline Cole
Oscar Corcios
Paul Deeds
Miguel Garcia
Julie Gravel
Shannon Haber
Ken Hargreaves
Karen Henderson
Raju Kavai
Christine Martinez
Timothy Misted
James O'Reilly
Yung-Ping Shih
Amanda Rios
Joel Shadrer
Teodorico Sierra
James Soltz
Krisztina (Anahid) Tokes
Rafael Vasquez
Shelel Vaughan
Michael Vega
Sybil Ward
Sam Yoshida
EXHIBIT C

New Construction and Existing Facilities Staffing History
EXHIBIT D

Top Management Consultants and Their Equivalent Classifications
<table>
<thead>
<tr>
<th>#</th>
<th>Name</th>
<th>Company Prime/Sub</th>
<th>Branch</th>
<th>Department/Unit</th>
<th>FY 06-07 Billing Rate</th>
<th>Consultant Job Title</th>
<th>Recommended Classification Per Personnel Commission</th>
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<td>Planning &amp; Development</td>
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<td>New Construction</td>
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<td>$174.00</td>
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<td>8</td>
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<td>Construction Support Services</td>
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<td>9</td>
<td>Givens, Larry</td>
<td>PARSONS 3DI</td>
<td>Existing Facilities</td>
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<td>Pre-Development Manager</td>
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<td>Hoffinan, Bruce</td>
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<td>Jarecki, Vince</td>
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<td>Johnson, George R.</td>
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<td>15</td>
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<td>Lewis, Scott</td>
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<td>No Existing Classification</td>
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<td>Construction/Valley</td>
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<td>21</td>
<td>Sanchez, Anthony</td>
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<td>Construction/Additions</td>
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<td>Regional Construction Director</td>
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<td>Sharr, Stephen</td>
<td>Parsons / GKK</td>
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<td>Construction/Central</td>
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<td>Deputy Chief Executive - School Building Planning</td>
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<td>Existing Facilities</td>
<td>FTPMG</td>
<td>$166.00</td>
<td>Deputy Director of FTPMG</td>
<td>No Existing Classification</td>
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</tbody>
</table>
EXHIBIT E

Copy of Survey
The Office of the Inspector General ("OIG") is conducting an audit of the Use of Consultants by the District's Facilities Services Division ("FSD"). As part of the audit, the OIG is conducting a survey of District employees working within the FSD. The objective of our survey is to determine the effects, if any, of the use of consultants on employees working for or with consultants within FSD.

As a District employee within FSD we would appreciate your participation in this survey. Your input is very important to us and any information provided by you will go a long way in helping us address any problems, if they exist, or if there are no problems, help us make useful recommendations to make things better. While the overall survey results will be analyzed and discussed in the audit report, your individual response and participation will be kept strictly confidential.

Please send us your response to the survey in the enclosed self-addressed envelope. We will appreciate it if you mail the envelope including your survey to the OIG by close of business on Friday, July 25, 2008.

Sincerely,

Austin E. Onwuala, CPA, OIG
Deputy Inspector General, Contract Audit
Instructions:

Please provide your answers to our following survey questions by checking the appropriate box. You may provide additional comments or elaborations in the space provided if you wish. You may attach additional sheets of paper if necessary.

Survey Questions:

1. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on District affairs?

   | 1 | 2 | 3 | 4 | 5 |

   (1 – Extremely Negative Impact; 2 – Negative Impact; 3 – No Impact; 4 – Positive Impact; 5 – Extremely Positive Impact)

   Additional comments:

   ____________________________________________________________

   ____________________________________________________________

   ____________________________________________________________

   ____________________________________________________________

   ____________________________________________________________

2. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on working relationships between employees and consultants?

   | 1 | 2 | 3 | 4 | 5 |

   (1 – Extremely Negative Impact; 2 – Negative Impact; 3 – No Impact; 4 – Positive Impact; 5 – Extremely Positive Impact)

   Additional comments:

   ____________________________________________________________

   ____________________________________________________________

   ____________________________________________________________

   ____________________________________________________________

   ____________________________________________________________
3. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on fair treatment of employees and consultants?

(1 – Extremely Negative Impact; 2 – Negative Impact; 3 – No Impact; 4 – Positive Impact; 5 – Extremely Positive Impact)

Additional comments:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

4. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on job security of employees?

(1 – Extremely Negative Impact; 2 – Negative Impact; 3 – No Impact; 4 – Positive Impact; 5 – Extremely Positive Impact)

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

5. Do you believe the District’s use of consultants in management positions has an overall positive, negative, or no impact on employees overall morale?

(1 – Extremely Negative Impact; 2 – Negative Impact; 3 – No Impact; 4 – Positive Impact; 5 – Extremely Positive Impact)

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________
6. Have you benefited (i.e. increased in skills or technical expertise) by working alongside the consultants in your department?

7. To what extent do you agree with the following statements? Please check the appropriate box.

   (1 – Strongly Disagree; 2 – Somewhat Disagree; 3 – Neither Agree Nor Disagree; 4 – Agree; 5 – Strongly Agree)

   a. In my opinion, the consultant(s) in management positions are doing a good job managing the department where I work.

   b. The decisions made by the consultant(s) in management positions are unbiased and for the benefit of the District.

8. Have you witnessed any preferential treatment given to consultants over District employees? Please provide details.
9. Have you applied for a position wherein a consultant ended up filling it? If so, do you know why you were not selected from the position? What was the position? Who ended up filling the position?

10. Have you observed any fraud, abuse, or waste by consultants?

11. Please provide additional information or any comments for issues not addressed in any of the above questionnaires. Attach additional pages if necessary.
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Board Secretariat
Personnel Director
Chief of Staff, Superintendent
Chief Operating Officer
General Counsel
Ethics Officer
Know about fraud, waste or abuse?

Tell us about it.

Maybe you are a School District employee, or maybe you are a private citizen. Either way, you are a taxpayer.

Maybe you know something about fraud, or waste, or some other type of abuse in the School District.

The Office of the Inspector General has a hotline for you to call. You can also write to us.

If you wish, we will keep your identity confidential. You can remain anonymous, if you prefer. And you are protected by law from reprisal by your employer.

Call the Hotline:
(213) 241-7778
or
1-866-LAUSD-OIG

Write to us:
Fraud Hotline Center
333 S. Beaudry Ave., 12th Fl.
Los Angeles, CA 90017

Website:
www.laoig.org