

PROGRAM AUDIT OF THE CALIFORNIA CLEAN ENERGY JOBS ACT

Audit Report

PROPOSITION 39 PROGRAM

Chapter 29, Statutes of 2013

July 1, 2019, through June 30, 2020



BETTY T. YEE
California State Controller

August 2021



BETTY T. YEE
California State Controller

August 9, 2021

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

Dear Ms. Alvord:

The State Controller's Office audited a selection of completed projects related to the California Clean Energy Jobs Act for the period of July 1, 2019, through June 30, 2020.

As of June 30, 2020, 313 local educational agencies (LEAs) reported \$213,837,359 in completed project costs and 31 community college districts (CCDs) reported \$36,403,651 in completed project costs. From the list of completed projects, we selected for audit 16 LEAs and four CCDs, which together reported total expenditures of \$39,178,611. Our audit found that:

- Six LEAs and two CCDs sole-sourced a portion of their project costs, resulting in unallowable costs of \$1,411,867;
- One LEA has unspent planning funds totaling \$25,355, and two LEAs have unspent implementation funds totaling \$102,725;
- One LEA and one CCD spent Proposition 39 funds on ineligible expenditures, resulting in unallowable costs of \$40,321;
- Two LEAs earned interest, totaling \$37,992, on their Proposition 39 funds but did not spend it;
- Eleven LEAs and three CCDs did not identify the projected energy savings in the awarded contracts, and five LEAs and two CCDs did not have signed contracts with one or more of their vendors;
- Twelve LEAs submitted their final project completion reports after the deadline; and
- One LEA is in violation of the energy measure payback period.

We also identified an issue that is not significant to the audit objective, but warrants the attention of management. Specifically, we found that one LEA applied its unused planning funds to program implementation. However, as these funds were not included in the LEA's approved energy expenditure plan, the amount of Proposition 39 funds paid to this LEA exceeded its approved energy expenditure plan by \$235,475.

This final audit report identifies six LEAs and two CCDs that sole-sourced a portion of their project costs, in violation of Public Resources Code section 26235(c). This final audit report also identifies one LEA and one CCD that spent Proposition 39 funds on ineligible expenditures.

Public Resources Code section 26240(h) states:

The Superintendent of Public Instruction shall require local educational agencies to pay back funds if they are not used in accordance with state statute or regulations...The Chancellor of the California Community Colleges shall require a community college to pay back funds if they are not used in accordance with state statute or regulations...

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

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

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

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

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

Amanda Voie, Specialist
Fiscal Accountability
College Finance and Facilities Planning Division
California Community Colleges Chancellor's Office
1102 Q Street
Sacramento, CA 95811

You may also call the California Community Colleges Chancellor's Office Fiscal Accountability Office at (916) 323-1759 for more information.

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

Sincerely,

Original signed by

KIMBERLY TARVIN, CPA
Chief, Division of Audits

KT/lr

cc: Jim Bartridge, Program and Policy Advisor
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Contents

Audit Report

Summary	1
Background	1
Audit Authority.....	4
Objective, Scope, and Methodology	4
Conclusion	6
Follow-up on Prior Audit Findings	7
Views of Responsible Officials.....	8
Restricted Use	8
Schedule 1—Total Completed Proposition 39 Program Costs for Local Educational Agencies	9
Schedule 2—Total Completed Proposition 39 Program Costs for Community College Districts	16
Findings and Recommendations.....	17
Observation and Recommendation	27
Appendix—Audit Results by Local Educational Agency and Community College District.....	A1
Attachment A—Antelope Valley Union High School District’s Response to Audit Results	
Attachment B—Children of Promise Preparatory Academy’s Response to Audit Results	
Attachment C—Madera Unified School District’s Response to Audit Results	
Attachment D—Romoland School District’s Response to Audit Results	
Attachment E—Sunnyside Union School District’s Response to Audit Results	
Attachment F—Foothill–De Anza Community College District’s Response to Audit Results	
Attachment G—Glendale Community College District’s Response to Audit Results	

Audit Report

Summary

The State Controller's Office (SCO) audited a selection of completed projects related to the California Clean Energy Jobs Act for the period of July 1, 2019, through June 30, 2020.

As of June 30, 2020, 313 local educational agencies (LEAs) reported \$213,837,359 in completed project costs and 31 community college districts (CCDs) reported \$36,403,651 in completed project costs. From the list of completed projects, we selected for audit 16 LEAs and four CCDs, which together reported total expenditures of \$39,178,611. Our audit found that:

- Six LEAs and two CCDs sole-sourced a portion of their project costs, resulting in unallowable costs of \$1,411,867;
- One LEA has unspent planning funds totaling \$25,355, and two LEAs have unspent implementation funds totaling \$102,725;
- One LEA and one CCD spent Proposition 39 funds on ineligible expenditures, resulting in unallowable costs of \$40,321;
- Two LEAs earned interest, totaling \$37,992, on their Proposition 39 funds but did not spend it;
- Eleven LEAs and three CCDs did not identify the projected energy savings in the awarded contracts, and five LEAs and two CCDs did not have signed contracts with one or more of their vendors;
- Twelve LEAs submitted their final project completion reports after the deadline; and
- One LEA is in violation of the energy measure payback period.

We also identified an issue that is not significant to the audit objective, but warrants the attention of management. Specifically, we found that one LEA applied its unused planning funds to program implementation. However, as these funds were not included in the LEA's approved energy expenditure plan (EEP), the amount of Proposition 39 funds paid to this LEA exceeded its approved EEP by \$235,475.

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

Background

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

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

An eligible energy project is an installation at or modification to a school site that improves energy efficiency or expands clean energy generation. Energy efficiency measures include heating, ventilation, and air conditioning (HVAC) system retrofits and various interior and exterior retrofits; clean energy generation measures include photovoltaic (solar) panels. All facilities within an LEA are eligible for Proposition 39 program funding.

Citizens Oversight Board

Proposition 39 also established the Citizens Oversight Board to review expenditures, audit the Clean Energy Job Creation Fund, and maintain transparency and accountability of the Fund. The California Treasurer, Attorney General, and State Controller each appoint three members of the Citizens Oversight Board; the California Energy Commission (CEC) and the California Public Utilities Commission appoint two ex officio members.

California Department of Education

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

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

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

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

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

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

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

California Energy Commission

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

On December 19, 2013, the CEC adopted program implementation guidelines, to which substantive revisions have been made. For this audit period, we referred to *Proposition 39: California Clean Energy Jobs Act – 2016 Program Implementation Guidelines (2016 Program Implementation Guidelines)*. These guidelines provide direction to LEAs on the types of awards and the required proposals, explain the screening and evaluation criteria, describe the standards to be used to evaluate project proposals, and outline the award process.

The *2016 Program Implementation Guidelines* include a savings-to-investment ratio (SIR) calculation. To be approved for Proposition 39 funding, energy projects must achieve an SIR above 1.0. For example, for every dollar invested in the eligible energy project, the LEA must accrue over \$1 in savings. The SIR calculation is based on the present value of the savings divided by project installation costs, subtracting rebates and other grant funding sources. The *2016 Program Implementation Guidelines* also include a formula for estimating job creation benefits, pursuant to PRC section 26235(e)(10).

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

California Community Colleges Chancellor's Office

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

On May 29, 2013, the CCCCCO issued the *California Community Colleges Energy Project Guidance* to assist CCDs with implementing projects that meet the Proposition 39 requirements. The CCCCCO subsequently published an addendum to the *California Community Colleges Energy Project Guidance*; the *Proposition 39 Implementation Guidelines* were issued in October 2013 and revised in January 2014, April 2015, and April 2016. For this audit period, we referred to the April 2015 version of the *Proposition 39 Implementation Guidelines*. We also verified that the Project Funding Application (Form B) and the CCC Proposition 39 Job Creation Tracking Report (Form J) submitted by each CCD complied with revisions contained in the April 2016 guidelines.

Projects must be consistent with the State's energy loading order, which guides the State's energy policies and decisions according to the following priority order: 1) decreasing electricity demand by increasing energy efficiency and reducing energy usage in periods of high demand or cost, 2) meeting new energy supply needs with renewable resources, and 3) meeting new energy generation needs with clean fossil-fuel generation.

CCDs have been pursuing and implementing energy efficiency and renewable energy projects for many years. The California Public Utilities Commission administers the California Community Colleges/Investor Owned Utilities Energy Efficiency Partnership, a joint program of the CCDs and California's four investor-owned utilities. This public-private partnership has been advocating, promoting, and supporting energy efficiency in the California Community College system since 2006. The partnership has successfully reduced energy usage throughout the community college system, resulting in savings of over \$12 million.

Audit Authority

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

Government Code section 12410 states, in part, "The Controller shall superintend the fiscal concerns of the state and audit the disbursement of any state money for correctness, legality, and for sufficient provisions of law for payment."

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

Objective, Scope, and Methodology

On July 21, 2020, we entered into an agreement with the Citizens Oversight Board to conduct an audit of a selection of completed projects (80% LEA projects and 20% CCD projects) to evaluate their effectiveness in meeting the objectives of the Clean Energy Job Creation Fund's program guidelines. We selected 16 LEAs and four CCDs for audit.

To achieve our audit objective for the LEA K-12 Proposition 39 Program, we selected 16 of 313 LEAs with project costs totaling \$30,994,040 and determined whether:

- Planning funds were expended in accordance with program requirements and unspent planning funds were applied towards implementing eligible energy projects approved by the CEC;
- The LEA submitted an EEP to the CEC consistent with the LEA's priority of eligible projects;
- The CEC approved the EEP in compliance with the 2016 *Program Implementation Guidelines* and EEP Handbook;
- The approved EEP included:
 - A signed utility data release form from the LEA allowing the CEC to access both historical and future utility billing data;

- A benchmarking process established by the CEC to determine a prioritized plan for implementing the eligible energy projects;
 - An identification of eligible energy projects according to any one of the three methods available to LEAs (these include an energy survey; an American Society of Heating, Refrigerating and Air-Conditioning Engineering Level 2 energy audit; or data analytics);
 - A SIR that adheres to the cost-effectiveness determination set forth by the CEC; and
 - A job-creation benefits estimation that adheres to the formula set forth by the CEC.
- The final report to the CEC contained the information outlined in PRC section 26240, subdivision (b), paragraphs (1) through (7);
 - The LEA did not use a sole-source process to award funds;
 - The LEA had a signed contract that identified project specifications, costs, and projected energy savings;
 - The LEA supported project costs;
 - The LEA paid back Proposition 39 funds if the project was torn down, remodeled, or deemed surplus and sold prior to the payback of the project; and
 - If the LEA received funds for the Bus Replacement Program, the replacement bus was present and in operation.

Our audit responsibilities included verifying the existence of school buses purchased through the State's Bus Replacement Program, pursuant to PRC section 26205.5 (a) (1). The CDE provided information to us verifying that the following LEAs received such funds during the fiscal year ended June 30, 2020:

- Anaheim Elementary School District – \$2,501,732;
- Madera Unified School District – \$1,660,045; and
- Thermalito Union Elementary School District – \$1,660,047.

California schools were closed for the 2020-21 school year while following statewide COVID-19 protocols. As a result, we were unable to verify the existence of the school buses purchased by these three LEAs with funds allocated from the Bus Replacement Program.

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

To achieve our audit objective for the CCD Proposition 39 Program, we selected four of 31 CCDs with completed project costs totaling \$8,184,571 and determined whether:

- The CCD submitted a Proposition 39 Funding Application to the CCCCCO, and the CCCCCO approved the application consistent with its *Proposition 39 Implementation Guidelines*;
- The CCD submitted a Call for Projects form that identified projects as energy efficiency or renewable energy generation;

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

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

We did not audit the LEAs' and CCDs' financial statements.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Conclusion

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

We selected 16 LEAs and four CCDs with completed projects for audit. These 20 agencies reported total completed project costs of \$39,178,611 (\$30,994,040 for LEAs and \$8,184,571 for CCDs). Our audit found:

- Six LEAs and two CCDs sole-sourced a portion of their project costs, resulting in unallowable costs of \$1,411,867;

- One LEA has unspent planning funds totaling \$25,355, and two LEAs have unspent implementation funds totaling \$102,725;
- One LEA and one CCD spent Proposition 39 funds on ineligible expenditures, resulting in unallowable costs of \$40,321;
- Two LEAs earned interest, totaling \$37,992, on their Proposition 39 funds but did not spend it;
- Eleven LEAs and three CCDs did not identify the projected energy savings in the awarded contracts, and five LEAs and two CCDs did not have signed contracts with one or more of their vendors;
- Twelve LEAs submitted their final project completion reports after the deadline; and
- One LEA is in violation of the energy measure payback period.

We also identified an issue that is not significant to the audit objective, but warrants the attention of management. Specifically, we found that one LEA applied its unused planning funds to program implementation. However, as these funds were not included in the LEA's approved EEP, the amount of Proposition 39 funds paid to this LEA exceeded its approved EEP by \$235,475. This issue is described in the Observation and Recommendation section of this report.

Follow-up on Prior Audit Findings

We previously conducted an audit of 17 LEAs and four CCDs. The audit scope included projects completed between July 1, 2018, and June 30, 2019. We issued our audit report on June 30, 2020. The report found that:

- Six LEAs sole-sourced a portion of their project costs, resulting in unallowable costs of \$9,537,047;
- Twelve LEAs and four CCDs did not identify the projected energy savings in the awarded contracts, and four LEAs did not have a signed contract;
- One LEA spent Proposition 39 funds on ineligible expenditures, resulting in unallowable costs of \$3,034;
- Nine LEAs submitted their final project completion reports after the deadline; and
- Two LEAs applied their unspent planning funds to program implementation. However, as these funds were not included in the LEAs' approved EEPs, the amount of Proposition 39 funds paid to these LEAs exceeded their approved EEPs by \$232,713.

The 16 LEAs and four CCDs selected for the current audit were not previously audited under the Proposition 39 Program. However, we found that the current audit identifies the same issues noted in prior audit reports.

**Views of
Responsible
Officials**

We discussed our audit results with representatives of the 16 LEAs and four CCDs selected for testing during audit fieldwork, and via email at the end of the audit. All responses to the findings have been included in the LEA's or CCD's respective section of the Appendix; and each formal response received on letterhead has been included as an Attachment to this report.

Restricted Use

This report is solely for the information and use of the Citizens Oversight Board, the CDE, the CEC, the CCCCCO, Allan Hancock Joint Community College District, Anaheim Elementary School District, Antelope Valley Union High School District, Children of Promise Preparatory Academy, Coast Unified School District, Community Collaborative Charter School, Cotati-Rohnert Park Unified School District, Desert Sands Unified School District, Foothill-De Anza Community College District, Glendale Community College District, Madera Unified School District, Mattole Valley Charter School, Modesto City Elementary School District, Mountain Empire Unified School District, Romoland School District, San Francisco Community College District, San Francisco Unified School District, San Juan Unified School District, Sunnyside Union School District, Thermalito Union Elementary School District, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record, and is available on the SCO website at <https://www.sco.ca.gov>.

Original signed by

KIMBERLY TARVIN, CPA
Chief, Division of Audits

August 9, 2021

Schedule 1— Total Completed Proposition 39 Program Costs for Local Educational Agencies July 1, 2019, through June 30, 2020

Local Educational Agency	Program Implementation	Planning Funds ¹	Total	Amount Unallowable	Reference ^{2, 3}
<u>Completed projects selected for audit:</u>					
Anaheim Elementary	\$ 1,824,952	\$ 293,311	\$ 2,118,263	\$ (76,871)	Finding 1, 5, 6
Antelope Valley Union High School District ³	3,832,092	82,595	3,914,687	(16,298)	Finding 1, 4, 5
Children of Promise Preparatory Academy	267,668	-	267,668	(25,846)	Finding 1, 5, 7
Coast Unified	224,784	57,272	282,056	-	Finding 5, 6
Community Collaborative Charter	197,200	114,500	311,700	-	Finding 5, 6
Cotati-Rohnert Park Unified School District (EEP #4951, #5126)	1,190,735	130,000	1,320,735	-	Finding 5, 6
Desert Sands Unified School District	6,521,118	-	6,521,118	-	Finding 6
Madera Unified	4,790,235	292,039	5,082,274	(339,941)	Finding 1, 5, 6
Mattole Valley Charter (#159)	168,197	26,362	194,559	(82,933)	Finding 2, 6
Modesto City Elementary ³	3,707,593	230,589	3,938,182	-	Finding 4, 6
Mountain Empire Unified	459,915	114,629	574,544	(574,544)	Finding 1, 5, 6
Romoland Elementary	839,484	42,400	881,884	-	Finding 3, 6
San Francisco Unified	1,177,670	720,401	1,898,071	(32,074)	Finding 1, 5
San Juan Unified School District (EEP #1895, #1897)	2,480,055	400,049	2,880,104	-	Finding 5, 6
Sunnyside Union Elementary	218,192	-	218,192	(45,147)	Finding 2, 5
Thermalito Union	590,003	-	590,003	-	Finding 5, 6
Total, completed projects selected for audit	\$ 28,489,893	\$ 2,504,147	\$ 30,994,040 ⁴	\$ (1,193,654)	
<u>Completed projects not selected for audit:</u>					
ABC Unified School District	\$ 515,315	\$ 245,671	\$ 760,986		
Academia Avance Charter	254,194	24,200	278,394		
Academy for Academic Excellence	419,354	15,000	434,354		
Alliance Collins Family College-Ready High	267,378	22,912	290,290		
Alliance Dr. Olga Mohan High	72,543	24,125	96,668		
Alliance Marc & Eva Stern Math and Science	238,840	23,216	262,056		
Alta-Dutch Flat Union Elementary	22,352	15,745	38,097		
Amador County Office of Education	209,824	53,121	262,945		
Amador County Unified School District	753,213	130,000	883,213		
American River Charter	202,519	50,760	253,279		
Antelope Elementary	53,511	45,801	99,312		
Apple Valley Unified	3,171,159	-	3,171,159		
Aspire Lionel Wilson Academy	277,974	3,000	280,974		
Bay Area Technology	238,707	26,334	265,041		
Beardsley Elementary	538,068	69,640	607,708		
Beverly Hills Unified	727,510	130,000	857,510		
Big Lagoon Union Elementary	61,732	15,808	77,540		
Borrego Springs Unified	272,956	5,600	278,556		
Briggs Elementary	249,681	-	249,681		
Browns Elementary	244,892	8,900	253,792		
Buellton Union Elementary	236,273	30,000	266,273		
Burbank Unified	1,176,556	86,000	1,262,556		
Burlingame Elementary	598,361	79,624	677,985		
Butte County Office of Education	206,080	51,568	257,648		
Butte Valley Unified	210,167	53,406	263,573		
Butteville Union Elementary	182,129	51,702	233,831		
Calexico Unified	2,349,489	-	2,349,489		
Caliber: Beta Academy	137,799	-	137,799		
California Military Institute	361,874	-	361,874		
California Virtual Academy @ Los Angeles	302,991	40,751	343,742		

Schedule 1 (continued)

Local Educational Agency	Program Implementation	Planning Funds ¹	Total
<u>Completed projects not selected for audit (continued):</u>			
Campbell Union High	282,626	83,000	365,626
Camptonville Academy	261,617	3,900	265,517
Camptonville Elementary	69,400	7,500	76,900
Cardiff Elementary	226,272	30,900	257,172
Castro Valley Unified (EEP #481)	1,873,513	70,230	1,943,743
Castro Valley Unified (EEP #1008)	43,653	70,230	113,883
Cayucos Elementary	241,501	13,808	255,309
Central Elementary	1,109,381	-	1,109,381
Central Union Elementary School District	109,559	-	109,559
Centralia Elementary	1,080,655	-	1,080,655
Chaffey Joint Union High School District	1,155,044	177,543	1,332,587
Charter Oak Unified	1,201,778	27,393	1,229,171
Chawanakee Unified	281,778	-	281,778
Chula Vista Elementary School District	1,279,516	-	1,279,516
Chula Vista Elementary School District – Chula Vista Learning Community Charter	153,599	-	153,599
Classical Academy	466,339	51,815	518,154
Cloverdale Unified	559,030	-	559,030
Clovis Unified	5,960,995	20,300	5,981,295
Coastal Academy	419,590	46,769	466,359
Colusa Unified	560,368	-	560,368
Community Outreach Academy	383,256	118,500	501,756
Community School for Creative Education	232,342	25,523	257,865
Competitive Edge Charter Academy	210,874	52,978	263,852
Connecting Waters Charter	37,537	-	37,537
Coronado Unified	636,727	-	636,727
Corona–Norco Unified	1,702,434	-	1,702,434
Cottonwood Creek Charter	203,810	50,874	254,684
Cox Academy	198,098	58,967	257,065
Creative Connections Arts Academy	264,314	15,133	279,447
Culver City Unified	1,510,184	130,000	1,640,184
Davis Joint Unified	664,543	127,429	791,972
Di Giorgio Elementary	152,100	32,033	184,133
Dinuba Unified	1,649,005	-	1,649,005
Douglas City Elementary	205,295	36,814	242,109
Downtown Value	271,098	-	271,098
Dunsmuir Joint Union High School District	15,000	-	15,000
e3 Civic High	214,766	-	214,766
Edison Elementary	527,054	44,514	571,568
El Dorado Union High School District – Virtual Academy at Shenandoah	75,370	-	75,370
Excellence in Justice and Education – Elementary Academy Charter	159,871	24,228	184,099
Excellence in Justice and Education – Middle Academy	148,984	21,551	170,535
El Dorado Union High	1,393,215	-	1,393,215
El Rancho Unified	2,182,312	107,790	2,290,102
El Tejon Unified	229,949	50,505	280,454
Elk Hills Elementary	139,934	45,000	184,934
Environmental Charter Middle	251,369	22,500	273,869
Etiwanda Elementary	1,390,710	86,801	1,477,511
Eureka Union	654,661	-	654,661
Fairfax Elementary	560,089	96,347	656,436
Feaster (Mae L.) Charter	167,051	-	167,051
Fillmore Unified	870,808	76,618	947,426
Franklin Elementary	247,930	11,407	259,337

Schedule 1 (continued)

Local Educational Agency	Program Implementation	Planning Funds ¹	Total
<u>Completed projects not selected for audit (continued):</u>			
Fuente Nueva Charter	65,804	15,437	81,241
Fullerton Elementary	2,967,739	186,943	3,154,682
Fusion Charter	154,692	-	154,692
Futures High	264,505	8,642	273,147
Glenn County Office of Education	134,302	13,630	147,932
Golden Feather Union Elementary	168,850	17,363	186,213
Grenada Elementary School	250,000	-	250,000
Harvest Ridge Coop Charter	72,500	50,030	122,530
Hemet Unified	4,961,020	308,652	5,269,672
Heritage K-8	241,660	25,050	266,710
Heritage Peak Charter	300,925	108,979	409,904
High Tech Elementary North County	173,616	-	173,616
High Tech High North County	250,372	10,000	260,372
High Tech Middle North County	249,716	10,000	259,716
Higher Learning Academy	212,161	52,804	264,965
Highland Academy	202,235	-	202,235
Highlands Community Charter	171,157	-	171,157
Hilmar Unified	408,824	-	408,824
Holtville Unified	575,865	-	575,865
Hughson Unified	239,449	-	239,449
Ida Jew Academies	267,016	-	267,016
Inspire Charter School	30,138	-	30,138
Inspire Charter School - South	30,964	-	30,964
Ivy Academia	225,803	103,902	329,705
Janesville Union Elementary	243,425	15,974	259,399
Jefferson Elementary	33,804	-	33,804
Jefferson Union High	1,024,930	-	1,024,930
John B. Riebli Elementary	255,633	-	255,633
Journey	209,649	15,000	224,649
Julian Charter (EEP #2442)	48,336	76,516	124,852
Julian Charter (EEP #2464)	23,220	76,516	99,736
Julian Charter (EEP #5276)	305,280	103,069	408,349
Julian Union High	227,079	-	227,079
Jurupa Unified School District	2,866,610	-	2,866,610
Kashia Elementary	19,155	-	19,155
Kenwood	200,250	-	200,250
Keppel Union Elementary	680,616	-	680,616
Kerman Unified (EEP #5691)	1,114,936	100,220	1,215,156
Kerman Unified (EEP #5693)	82,953	100,220	183,173
Kernville Union Elementary	275,004	17,766	292,770
Kings County Office of Education	247,465	17,422	264,887
Kingsburg Joint Union High	426,665	105,002	531,667
La Habra City School District	400,060	1,469	401,529
La Mesa–Spring Valley (EEP #1634)	2,502,000	-	2,502,000
La Mesa–Spring Valley (EEP #2227)	663,148	-	663,148
Lakeside Union Elementary	26,675	54,610	81,285
Lamont Elementary	766,365	14,449	780,814
Las Virgenes Unified	748,330	30,515	778,845
Lassen Union High	213,316	53,046	266,362
Laytonville Unified	270,142	-	270,142
Lazear Charter Academy	172,688	54,435	227,123
Lemoore Middle College High	254,724	-	254,724
Lemoore Union Elementary	724,322	-	724,322
Leroy Greene Academy	213,136	51,913	265,049
Liberty Elementary	242,897	22,404	265,301

Schedule 1 (continued)

Local Educational Agency	Program Implementation	Planning Funds ¹	Total
<u>Completed projects not selected for audit (continued):</u>			
Liberty Union High	1,676,113	29,640	1,705,753
Lincoln Street	43,142	-	43,142
Lindsay Unified	582,408	47,315	629,723
Literacy First Charter	265,823	2,000	267,823
Live Oak Elementary	576,660	-	576,660
Livermore Valley Joint Unified School District	1,067,942	159,280	1,227,222
Loma Vista Immersion Academy	206,794	-	206,794
Long Valley Charter	182,793	-	182,793
Los Alamitos Unified	649,435	101,500	750,935
Los Banos Unified	2,403,936	143,945	2,547,881
Los Feliz Charter School for the Arts	236,934	26,327	263,261
Los Olivos Elementary	200,702	50,206	250,908
Lost Hills Union Elementary	285,625	-	285,625
Lucerne Valley Unified	292,354	-	292,354
Madera County Office of Education	136,717	22,469	159,186
Maricopa Unified	265,435	5,000	270,435
Mark West Charter	82,761	5,000	87,761
Mark West Union Elementary	238,895	25,642	264,537
McCloud Union Elementary	69,500	9,000	78,500
Mendocino County Office of Education	123,009	30,000	153,009
Merced City Elementary	2,554,393	144,172	2,698,565
Mesa Union Elementary	241,496	15,000	256,496
Mill Valley Elementary	444,140	-	444,140
Minarets Charter High	254,974	-	254,974
Miwok Valley Language Academy Charter	205,650	55,355	261,005
Modesto City High	3,478,316	-	3,478,316
Modoc Joint Unified School District	106,651	-	106,651
Monte Rio Union Elementary	79,097	-	79,097
Moreno Valley Unified School District	3,168,481	154,000	3,322,481
Morongo Unified	1,153,768	-	1,153,768
Mount Pleasant Elementary	600,247	-	600,247
Napa County Office of Education	257,130	-	257,130
Napa Valley Language Academy	184,675	26,065	210,740
Nevada County Office of Education	252,803	-	252,803
New Designs Charter	272,111	29,764	301,875
New Hope Elementary	210,147	53,000	263,147
Newcastle Charter	252,930	-	252,930
Newcastle Elementary School District	252,546	-	252,546
NextGeneration STEAM Academy	87,764	16,036	103,800
Novato Charter School	110,415	-	110,415
Oakland Charter Academy	229,724	26,242	255,966
Oakland Military Institute, College Preparatory Academy	219,125	20,975	240,100
Oakley Union Elementary School District	1,136,222	-	1,136,222
Orange County School of Arts	516,492	-	516,492
Ojai Unified	592,810	-	592,810
Old Adobe Elementary Charter	256,375	-	256,375
Old Adobe Union	197,750	53,802	251,552
Old Town Academy K-8 Charter	201,299	50,491	251,790
Orchard View	145,060	50,158	195,218
Orland Joint Unified	550,494	-	550,494
Oroville Union High	483,023	64,485	547,508
Oxford Preparatory Academy--South Orange County	230,653	25,654	256,307
Pacific View Charter	268,984	-	268,984
Pajaro Valley Unified	1,874,426	-	1,874,426
Palmdale Elementary School District	267,905	215,000	482,905

Schedule 1 (continued)

Local Educational Agency	Program Implementation	Planning Funds ¹	Total
<u>Completed projects not selected for audit (continued):</u>			
Panama–Buena Vista Union	604,080	124,191	728,271
Pathways Charter	173,976	43,650	217,626
Patterson Joint Unified	1,336,732	75,000	1,411,732
Peninsula Union	61,816	15,459	77,275
Petaluma Accelerated Charter	30,439	-	30,439
Pioneer Union Elementary	79,827	-	79,827
Pixley Union Elementary	548,978	28,341	577,319
Placer County Office of Education	232,359	24,052	256,411
Pleasant Valley Joint Union Elementary	162,275	26,054	188,329
Princeton Joint Unified	258,758	-	258,758
PUC Santa Rosa Charter Academy	32,965	26,450	59,415
Raisin City Elementary	248,869	24,645	273,514
Ramona City Unified	1,260,328	17,651	1,277,979
Redwood Academy of Ukiah	115,080	51,100	166,180
Richfield Elementary School District (EEP #85)	101,046	50,523	151,569
Richfield Elementary School District (EEP #5367)	105,758	50,523	156,281
River Delta Joint Unified	533,710	34,904	568,614
River Montessori Elementary Charter	219,906	32,354	252,260
River Oak Charter	111,787	51,883	163,670
Riverbank Language Academy	205,502	55,513	261,015
Riverbank Unified	538,386	42,315	580,701
Riverdale Joint Unified	556,855	41,790	598,645
Riverside Unified School District	1,458,325	-	1,458,325
Robla Elementary	568,675	-	568,675
Rocketship Discovery Prep	47,832	22,989	70,821
Rocketship Los Suenos Academy	107,117	3,000	110,117
Rocketship Mateo Sheedy Elementary	108,056	3,000	111,056
Rocketship Mosaic Elementary	47,070	22,988	70,058
Rocketship Si Se Puede Academy	86,113	3,000	89,113
Rocky Point Charter	245,504	-	245,504
Rowland Unified	3,566,146	523	3,566,669
Saddleback Valley Unified School District	938,474	354,087	1,292,561
Saint Helena Unified	425,000	70,548	495,548
San Bruno Park Elementary	542,327	68,134	610,461
San Dieguito Union High	1,238,876	145,004	1,383,880
San Jacinto Unified School District	1,176,797	136,615	1,313,412
San Lorenzo Unified (EEP #690)	2,278,595	135,000	2,413,595
San Lorenzo Unified (EEP #2620)	324,530	135,000	459,530
San Lucas Union Elementary	78,960	404	79,364
San Luis Coastal Unified School District	394,252	130,000	524,252
San Luis Obispo County Office of Education (EEP #1679)	231,062	21,047	252,109
San Luis Obispo County Office of Education (EEP #2588)	7,894	21,048	28,942
San Miguel Elementary	232,735	25,642	258,377
Sanger Academy Charter	281,532	-	281,532
Sanger Unified School District	2,329,544	138,419	2,467,963
Santa Clara Elementary	65,448	10,000	75,448
Santa Cruz City Elementary	600,396	-	600,396
Sausalito Marin City School District	225,608	33,402	259,010
SAVA: Sacramento Academic and Vocational Academy	201,882	59,500	261,382
Scotts Valley Unified	154,916	-	154,916
Sherman Thomas Charter High	64,503	12,000	76,503
Sherman Thomas Charter School	135,808	22,000	157,808
Sherwood Montessori	206,788	-	206,788
Shiloh Charter	67,917	10,063	77,980
Shiloh Elementary	24,636	3,600	28,236

Schedule 1 (continued)

Local Educational Agency	Program Implementation	Planning Funds ¹	Total
<u>Completed projects not selected for audit (continued):</u>			
Sierra Charter	218,724	53,420	272,144
Sierra Sands Unified	1,117,243	29,900	1,147,143
Silver Oak High Public Montessori Charter	73,105	3,750	76,855
Simi Valley Unified	1,746,135	20,000	1,766,135
Smythe Academy of Arts and Sciences	456,715	113,755	570,470
Snowline Joint Unified School District	1,442,806	130,000	1,572,806
Solana Beach Elementary	598,908	35,500	634,408
Somis Union	262,170	-	262,170
Sonoma Mountain Elementary	255,892	-	255,892
Soquel Union Elementary	393,251	-	393,251
South Fork Union	247,544	15,662	263,206
Southern Trinity Joint Unified School District	73,100	-	73,100
Spencer Valley Elementary	67,482	5,875	73,357
Sunridge Charter School	150,060	50,269	200,329
Sutter County Office of Education	256,947	13,822	270,769
Taylton High Desert Academy/Adelanto	100,071	-	100,071
Taylton San Diego Academy	59,578	-	59,578
Tehama County Office of Education	137,991	9,500	147,491
Temecula Preparatory	298,228	-	298,228
Temecula Valley Charter School	118,606	-	118,606
Temecula Valley Unified School District (EEP #669)	4,030,524	-	4,030,524
Temecula Valley Unified School District (EEP #2256)	1,439,247	-	1,439,247
Tierra Pacifica Charter	144,056	-	144,056
Tracy Joint Unified (EEP #5647)	2,571,013	-	2,571,013
Tracy Joint Unified (EEP #5648)	899,155	-	899,155
Travis Unified	1,190,057	6,500	1,196,557
Trona Joint Unified	264,408	-	264,408
Tustin Unified School District	107,737	-	107,737
Twain Harte	254,236	7,853	262,089
Twin Hills Charter Middle School	152,430	50,935	203,365
Twin Hills Union Elementary	154,120	51,648	205,768
Twin Ridges Elementary	25,906	4,720	30,626
Twin Rivers Charter	266,677	-	266,677
Two Rock Union	206,869	47,500	254,369
Ukiah Unified School District (EEP #2417)	1,133,153	43,359	1,176,512
Ukiah Unified School District (EEP #2421)	241,018	43,359	284,377
University Preparatory Academy Charter	254,012	-	254,012
Urban Corps of San Diego County Charter	250,000	-	250,000
Urban Discovery Academy Charter	256,376	-	256,376
Urban Montessori Charter	181,486	25,709	207,195
Vacaville Unified	83,563	85,898	169,461
Ventura Unified	1,601,709	166,865	1,768,574
Victor Elementary	2,879,234	127,145	3,006,379
Vineland Elementary	304,508	-	304,508
Visalia Unified (EEP #2301)	100,000	-	100,000
Visalia Unified (EEP #5032)	367,650	379,039	746,689
Wasco Union High	570,476	28,125	598,601
Washington Middle College High	218,918	-	218,918
Weaver Union	438,448	95,351	533,799
West Covina Unified School District	251,283	136,277	387,560
Western Center Academy	122,184	6,500	128,684
Western Placer Unified	1,427,559	47,976	1,475,535
Westminster	2,381,332	-	2,381,332
Westside Preparatory Charter	215,497	54,128	269,625
Willits Elementary Charter	218,732	2,500	221,232

Schedule 1 (continued)

Local Educational Agency	Program Implementation	Planning Funds ¹	Total
<u>Completed projects not selected for audit (continued):</u>			
Woodlake Unified	285,677	21,000	306,677
Woodward Leadership Academy	82,772	-	82,772
Yreka Union Elementary	297,727	1,272	298,999
Yuba County Career Preparatory Charter	247,059	17,632	264,691
Yuba County Office of Education	209,221	52,852	262,073
Total, completed projects not selected for audit	171,797,027	11,046,292	182,843,319
Total completed projects	<u>\$ 200,286,920</u>	<u>\$ 13,550,439</u>	<u>\$ 213,837,359</u>

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

² See the Findings and Recommendations section.

³ The following districts earned interest on Proposition 39 allocations but did not spend it: Antelope Valley Union High School District (\$15,829) and Modesto City Elementary School District (\$22,163). The unspent earned interest is not included in the Amount Unallowable column, as it was not part of the overall EEP total. See Finding 4 – Unspent earned interest.

⁴ We tested 100% of the costs reported, totaling 30,994,040, for the 16 LEAs selected for audit.

Schedule 2— Total Completed Proposition 39 Program Costs for Community College Districts July 1, 2018, through June 30, 2019

Community College District	Program Implementation	Amount Unallowable	Reference ¹
<u>Completed projects selected for audit:</u>			
Allan Hancock Joint Community College District	\$ 1,061,036	\$ (126,552)	Finding 1, 3, 5
Foothill–De Anza Community College District	2,726,499	(219,741)	Finding 1, 5
Glendale Community College District	1,913,134	-	Finding 5
San Francisco Community College District	2,483,902	-	Finding 5
Total, completed projects selected for audit	<u>\$ 8,184,571</u> ²	<u>\$ (346,293)</u>	
<u>Completed projects not selected for audit:</u>			
Antelope Valley Community College District	\$ 929,063		
Compton Community College District	397,311		
Copper Mountain Community College District	97,928		
El Camino Community College District	437,754		
Feather River Community College District	26,763		
Gavilan Joint Community College District	148,082		
Imperial Community College District	252,607		
Lassen Community College District	271,822		
Long Beach Community College District	2,167,096		
Los Angeles Community College District	12,367,389		
Los Rios Community College District	1,478,202		
Merced Community College District	576,807		
Mt. San Jacinto Community College District	691,421		
Napa Valley Community College District	441,699		
North Orange County Community College District	323,791		
Pasadena Area Community College District	1,202,000		
Rancho Santiago Community College District	370,781		
Redwoods Community College District	254,213		
Rio Hondo Community College District	1,172,061		
Riverside Community College District	1,362,786		
San Bernardino Community College District	471,464		
San Joaquin Delta Community College District	882,818		
Santa Clarita Community College District	501,448		
Santa Monica Community College District	276,830		
Solano Community College District	552,010		
Sonoma County Junior College District	357,497		
West Kern Community College District	207,437		
Total, completed projects not selected for audit	<u>\$28,219,080</u>		
Total completed projects	<u><u>\$36,403,651</u></u>		

¹ See the Findings and Recommendations section.

² We tested 100% of the costs reported, totaling \$8,184,571, for the four CCDs selected for audit.

Findings and Recommendations

FINDING 1— Sole-sourced project costs

We found that six LEAs and two CCDs sole-sourced a portion of their project costs, totaling \$1,411,867, as follows:

Local Educational Agency/ Community College District	Contract Amount
Anaheim Elementary School District	\$ 76,871
Antelope Valley Union High School District	16,298
Children of Promise Preparatory Academy	25,846
Madera Unified School District	339,941
Mountain Empire Unified School District	574,544
San Francisco Unified School District	32,074
Subtotal, Local Educational Agencies	1,065,574
Allan Hancock Joint Community College District ¹	126,552
Foothill–De Anza Community College District	219,741
Subtotal, Community College Districts	346,293
Total	<u>\$ 1,411,867</u>

¹ We found that of the \$126,552 that Allan Hancock Joint Community College District expended on sole-sourced contracts; \$34,513 was also applied to ineligible expenditures (see Finding 3).

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

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

PRC section 26240(h) states:

The Superintendent of Public Instruction shall require local educational agencies to pay back funds if they are not used in accordance with state statute or regulations...The Chancellor of the California Community Colleges shall require a community college to pay back funds if they are not used in accordance with state statute or regulations...

PUC section 388(b) states:

The Department of General Services or any other state or local agency intending to enter into an energy savings contract or a contract for an energy retrofit project may establish a pool of qualified energy service companies based on qualifications, experience, pricing, or other pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a competitive selection process to individuals or firms identified in the pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

The CCCCCO's *Proposition 39 Implementation Guidelines* ("Step 9. Fully Develop Project Workscope, Schedule and Contracts for Project Implementation," page 21) states, in part:

Districts shall not use a sole-source process to award grant proceeds. Districts may use the best-value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds. Best value is defined as "a value determined by objective criteria related to price, features, functions, and life-cycle costs."

Exhibit N (Contracting "Best Practices" Fact Sheet) of the CCCCCO's *Proposition 39 Implementation Guidelines* states, in part:

To fully comply with that "Best Value" criteria and the prohibition against sole source contracting when utilizing [its] Prop 39 funds, a District will need to engage in a two-step process that accomplishes the following:

1. Request for Qualification (RFQ): Pre-qualifies energy project contractors based on several criteria including energy project history, team member qualifications, firm financial viability, and experience working with Community Colleges, **AND**
2. Request for Proposals (RFP): Identifies and evaluates the specific project workscope, schedule, and other requirements where multiple contractors (at least two, three would be better) submit proposals for District evaluation and consideration. Typically, the RFP should include the following elements and respondent submittal requirements:
 - Proposed workscope
 - Request price and life-cycle economics
 - Technical proposal and identification of specific equipment to be installed
 - Energy savings
 - Project approach
 - Schedule
 - Exceptions

Exhibit N continues:

A comprehensive RFQ/RFP evaluation process should always be used when implementing Proposition 39 funded projects. This process can either be combined into a single solicitation, or can use a two-step, separate RFQ & RFP process.

We have interpreted the PRC section 26235(c) prohibition against "[using] a sole source process to award funds" as a requirement to use a competitive bidding process. Competitive processes improve cost-effectiveness, prevent favoritism, and make the procurement process transparent.

These LEAs and CCDs contracted with various vendors for their Proposition 39 Program energy upgrade projects. Despite the implementation guidance and best practices, the LEAs and CCDs used noncompetitive processes to sign contracts with these vendors and, thus, did not ensure the cost effectiveness of these services.

Recommendation

We recommend that:

- The CDE take appropriate action to recover Proposition 39 funds from LEAs that sole-sourced their project costs in violation of PRC section 26235(c); and
- The CCCC take appropriate action to recover Proposition 39 funds from CCDs that sole-sourced their project costs in violation of PRC section 26235(c).

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

LEAs' and CCDs' Responses

We notified the six LEAs and two CCDs of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for individual LEAs and CCDs are included in the Appendix. All responses to the findings have been included in the LEA's and CCD's respective section of the Appendix; and each formal response received on letterhead has been included as an Attachment to this report.

**FINDING 2—
Unspent funds**

We found that one LEA has unspent planning funds of \$25,355, and two LEAs have unspent program implementation funds totaling \$102,725. These LEAs spent less on their projects than they had budgeted. The following table summarizes this finding:

Unspent planning funds:

Mattole Valley Charter School	\$ 25,355
Subtotal, unspent planning funds	<u>25,355</u>

Unspent program implementation funds:

Mattole Valley Charter School	57,578
Sunnyside Union Elementary School District	<u>45,147</u>
Subtotal, unspent program implementation funds	<u>102,725</u>
Total unspent funds	<u><u>\$ 128,080</u></u>

The CEC's 2016 *Program Implementation Guidelines* state on page 5:

The SSPI [State Superintendent of Public Instruction] is responsible for administering awards to LEAs that serve grade K-12 students. These funds may be used by LEAs for energy efficiency and clean energy projects, related energy planning, energy training, energy management, and energy projects with related non-energy benefits. LEAs are required to submit an energy expenditure plan to the Energy Commission for consideration and approval. Funds are released to the LEA only after the Commission approves an LEA's energy expenditure plan(s).

PRC section 26240(b) states:

As a condition of receiving funds from the Job Creation Fund...the entity shall submit a report of its project expenditures to the Citizens Oversight Board....

PRC section 26240(h)(1) states:

The Superintendent of Public Instruction shall require local educational agencies to pay back funds if they are not used in accordance with state statute or regulations...

Recommendation

We recommend that the districts return the unspent funds to the State. Although the Proposition 39 program has ended, the unspent funds must be returned.

LEAs' Responses

We notified the LEAs of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for individual LEAs are included in the Appendix. All responses to the findings have been included in the LEA's respective section of the Appendix; and each formal response received on letterhead has been included as an Attachment to this report.

CDE's Response

We notified CDE of the unspent funds for the LEAs. CDE advised that it will issue invoices to these districts in order to recover the unspent funds and return them to the Job Creation Fund.

FINDING 3— Ineligible expenditures

We found that one LEA and one CCD applied Proposition 39 funds to project costs not approved by the CCCC, resulting in ineligible expenditures of \$40,321.

Local Educational Agency/ Community College District	Amount
Romoland Elementary School District	\$ 5,808
Subtotal, Local Educational Agencies	5,808
Allan Hancock Joint Community College District	34,513
Subtotal, Community College Districts	34,513
Total	<u>\$ 40,321</u>

PRC section 26235(f) states:

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

The CEC's 2016 *Program Implementation Guidelines* ("Energy Planning Funds Reservation Option," page 10) state:

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

The CCCCO's *Proposition 39 Implementation Guidelines* ("Step 10. Energy Project Implementation," page 22) states:

Districts will be responsible for the implementation of projects funded by Proposition 39. If, after approval and during implementation of a project, the scope changes such that the energy savings, construction costs, or cost-effectiveness are significantly affected, the Chancellor's Office will require that Districts provide a revised Project Application (Form B) documenting the change of scope....

Step 10 of the CCCCO's *Proposition 39 Implementation Guidelines* also includes "adding a project not included in the approved Funding Application" in the list of significant changes.

Recommendation

We recommend that:

- The CDE take appropriate action to recover Proposition 39 funds from LEAs whose project costs are not in compliance with the 2016 *Program Implementation Guidelines*; and
- The CCCCO take appropriate action to recover Proposition 39 funds from CCDs whose project costs are not in compliance with the *Proposition 39 Implementation Guidelines*.

LEA's and CCD's Responses

We notified the LEA and the CCD of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for individual LEAs and CCDs are included in the Appendix. All responses to the findings have been included in the LEA's respective section of the Appendix; and each formal response received on letterhead has been included as an Attachment to this report.

**FINDING 4—
Unspent earned
interest**

We found that two LEAs earned interest, totaling \$37,992, on their Proposition 39 allocations but did not spend it. These LEAs completed all of their energy projects, and applied all of their awarded Proposition 39 funds to all projects within their approved EEPs. As the Proposition 39 program has ended and there are no remaining eligible energy projects on which the LEAs can expend the earned interest, it should be returned to the Clean Energy Job Creation Fund, as shown in the table below:

Unspent earned interest:

Antelope Valley Union High School District	\$ 15,829
Modesto City Elementary School District	22,163
Total unspent earned interest	<u>\$ 37,992</u>

The CEC's 2016 *Program Implementation Guidelines* ("Interest Earned on Proposition 39 Funds," page 10) state:

Any interest earned on Proposition 39 funds shall be expended only toward Proposition 39 eligible energy projects. LEAs should make every effort to track interest earned from Proposition 39 allocations separately for use on Proposition 39 eligible energy projects and to facilitate auditing in accordance with PRC 26206(e) and 26240(h)(1).

PRC section 26206(e) states, "All projects shall be subject to audit."

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

Recommendation

We recommend that the districts return the unspent earned interest to the State. Although the Proposition 39 program has ended, the unspent funds must be returned.

LEAs' Responses

We notified the two LEAs of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for individual LEAs are included in the Appendix. All responses to the findings have been included in the LEA's respective section of the Appendix; and each formal response received on letterhead has been included as an Attachment to this report.

CDE's Response

We notified CDE of the unspent interest earned by the two LEAs. Prior to issuance of this report, CDE emailed instructions to the LEAs on how they can return the unspent earned interest to CDE. CDE will follow up with the LEAs to assist with this recovery.

**FINDING 5—
No projected energy
savings identified
and/or no signed
contract**

We found that 11 LEAs and three CCDs did not identify projected energy savings in the awarded contracts as required. In addition, five LEAs and two CCDs did not have signed contracts. The table below summarizes this finding:

	Projected Energy Savings Not Identified	No Signed Contract
<u>Local Educational Agency</u>		
Anaheim Elementary School District ¹	X	X
Antelope Valley Union High School District ²	X	X
Children of Promise Preparatory Academy ³	X	
Coast Unified School District ⁴	X	
Community Collaborative Charter	X	
Cotati-Rohnert Park Unified School District	X	
Madera Unified School District		X
Mountain Empire Unified School District	X	X
San Francisco Unified School District ⁵	X	
San Juan Unified School District (EEP #1895 and EEP #1897)	X	X
Sunnyside Union Elementary School District ⁶	X	
Thermalito Union Elementary School District	X	
<u>Community College District</u>		
Allan Hancock Joint Community College District		X
Foothill-De Anza Community College District ⁷	X	X
Glendale Community College District ⁸	X	
San Francisco Community College District	X	

¹ We found that Anaheim Elementary School District did not have signed contracts for six vendors. In addition, we found that two of the awarded contracts did not identify the projected energy savings as required.

² We found that Antelope Valley Union High School District did not have signed contracts for two vendors.

³ We found that two of Children of Promise Preparatory Academy's awarded contracts did not identify the projected energy savings as required.

⁴ We found that two of Coast Unified School District's awarded contracts did not identify the projected energy savings as required.

⁵ We found that two of San Francisco Unified School District's awarded contracts did not identify the projected energy savings as required.

⁶ We found that two of Sunnyside Union Elementary School District's awarded contracts did not identify the projected energy savings as required.

⁷ We found that four of Foothill-De Anza Community College District's awarded contracts did not identify the projected energy savings as required.

⁸ We found that three of Glendale Community College District's awarded contracts did not identify the projected energy savings as required.

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

The CCCC's *Proposition 39 Implementation Guidelines* ("Step 9. Fully Develop Project Workscope, Schedule and Contracts for Project Implementation," page 21) states, "Projects funded by awards shall require contracts that identify the project specifications, costs, and projected energy savings."

This finding does not result in questioned costs; however, ensuring that contracts are signed and include projected energy savings helps to ensure that program objectives are achieved.

Recommendation

No recommendation for LEAs and CCDs is applicable to this finding, as the Proposition 39 program has ended and the finding does not identify any questioned costs.

LEAs' and CCDs' Responses

We notified the affected LEAs and CCDs of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for individual LEAs and CCDs are included in the Appendix. All responses to the finding have been included in the LEA or CCD's respective section of the Appendix; and each formal response received on letterhead has been included as an Attachment to this report.

**FINDING 6—
Final project
completion report
submitted late**

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

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

<u>Local Educational Agency</u>	<u>Months</u>
Anaheim Elementary School District	37
Coast Unified School District	31
Community Collaborative Charter School	23
Cotati-Rohnert Park Unified School District:	
EEP #4951	61
EEP #5126	16
Desert Sands Unified School District	52
Madera Unified School District	22
Mattole Valley Charter School	21
Modesto City Elementary School District	16
Mountain Empire Unified School District	23
Romoland Elementary School District	17
San Juan Unified School District (EEP #1895)	23
Thermalito Union Elementary School District	19

PRC section 26240(b) states:

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

- (1) The total final gross project cost before deducting any incentives or other grants and the percentage of total project cost derived from the Job Creation Fund...

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

LEAs should submit timely final reports to the CEC to allow the CEC to respond promptly to changing situations and maintain effective program oversight. Information contained in the final reports is compiled into a report that the CEC submits annually to the Citizens Oversight Board.

Recommendation

No recommendation for LEAs is applicable to this finding, as the Proposition 39 program has ended and the finding does not identify any questioned costs.

LEAs' Responses

We notified the 12 LEAs of this finding during audit fieldwork and at the end of the audit via email. Findings and Recommendations for individual LEAs are included in the Appendix. All responses to the finding have been included in the LEA's respective section of the Appendix; and each formal response received on letterhead has been included as an Attachment to this report.

FINDING 7— Violation of energy measure payback period

We found that one LEA is in violation of the energy measure payback period.

Children of Promise Preparatory Academy closed on June 30, 2020, after Inglewood Unified School District denied the school's charter petition. As a result, the school ceased operations. A court-appointed receiver has been designated to oversee disposal of the charter school's assets.

The facility is currently vacant and for sale as a charter school site; however, until this facility is sold to an entity that will continue using the facility as a school site, the LEA is in violation of the energy measure payback period.

Per the CEC's 2016 *Program Implementation Guidelines* ("Step 8: Energy Project Tracking and Reporting," page 33), "LEAs must not sell or demolish the approved energy measure installed with Proposition 39 program award funding prior to the payback of the energy measure."

Recommendation

We recommend that the CEC monitor the sale of Children of Promise Preparatory Academy facilities to ensure that they continue being used as school sites.

LEA's Response

We notified the LEA of this finding during audit fieldwork and at the end of the audit via email. The Finding and Recommendation for this LEA, in addition to a summary of the LEA's response, is included in the Appendix. The school's formal response, received on letterhead, has been included as an Attachment to this report.

Observation and Recommendation

OBSERVATION— Unused planning funds

We found that one LEA applied its unused planning funds to program implementation. However, as these funds were not included in the LEA's approved EEP, the amount of Proposition 39 funds paid to the LEA exceeded its approved EEP by \$235,475, as follows:

Local Educational Agency	Program Implementation	Planning Funds	A	B	C = B-A
			Total EEP Approved	Total CDE Apportionment	Unused Planning Funds
Antelope Valley Union High School District	\$ 5,017,378	\$ 107,595	\$ 5,124,973	\$ 5,360,448	\$ 235,475

We reviewed Antelope Valley Union High School District's accounting ledgers and found that the district received funds in excess of the total amounts indicated in the EEPs approved by the CEC.

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

The district opted to use only a portion of its planning funds, and did not apply the remaining funds toward program implementation. Therefore, the district has unused planning funds of \$235,475.

PRC section 26235(f) states:

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

The CEC's 2016 *Program Implementation Guidelines* ("Energy Planning Funds Reservation Option," page 10) state:

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

The CEC's 2016 *Program Implementation Guidelines* ("Unused Energy Planning Awards," page 13) also state that "Any unused energy planning funds shall be applied toward implementing eligible energy project(s) approved as part of an LEA's energy expenditure plan(s)."

Recommendation

We recommend that:

- CDE take appropriate action in response to the LEA's unused planning funds; and
- CDE and CEC account for unused planning funds that were applied to program implementation without being included in an approved EEP.

CDE's Response

We notified CDE of the Observation via email on June 14, 2021. The CDE responded by email on June 14, 2021, stating that it will contact the LEA about the unused planning funds.

Appendix— Audit Results by Local Educational Agency and Community College District

Local Educational Agencies

Anaheim Elementary School District	A2
Antelope Valley Union High School District	A5
Children of Promise Preparatory Academy	A14
Coast Unified School District	A17
Community Collaborative Charter School.....	A19
Cotati–Rohnert Park Unified School District	A21
Desert Sands Unified School District	A23
Madera Unified School District	A25
Mattole Valley Charter School	A30
Modesto City Elementary School District	A32
Mountain Empire Unified School District	A35
Romoland School District.....	A37
San Francisco Unified School District.....	A40
San Juan Unified School District.....	A42
Sunnyside Union School District.....	A44
Thermalito Union Elementary School District	A46

Community College Districts

Allan Hancock Joint Community College District	A48
Foothill–De Anza Community College District	A52
Glendale Community College District.....	A57
San Francisco Community College District	A60

Anaheim Elementary School District Proposition 39 Program

Background

The California Energy Commission (CEC) approved Anaheim Elementary School District's energy expenditure plan (EEP) for \$1,824,952, consisting of \$373,000 for energy management services and \$1,451,952 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
District Office	\$ 51,236	Interior/exterior lighting retrofit	\$ 16,644
Guinn (James M.) Elementary	15,509	Interior lighting retrofit	7,690
Henry (Patrick) Elementary	6,949	HVAC—Packaged/split system AC/Heat Pump/VRF	433
Jefferson (Thomas) Elementary	7,604	HVAC—Packaged/split system AC/Heat Pump/VRF	1,168
Juarez (Benito) Elementary	113,100	Building envelope—insulation; interior lighting retrofit	7,338
Keys preschool and training facility	13,328	Interior lighting retrofit	7,415
Marshall (John) Elementary	9,000	HVAC Controls—Energy management system	-
Olive Street Elementary	32,205	HVAC—Packaged/split system AC/Heat Pump/VRF	2,116
Orange Grove Elementary	2,896	HVAC—Packaged/split system AC/Heat Pump/VRF	621
Revere (Paul) Elementary	4,480	Building envelope—insulation	4,125
Ross (Betsy) Elementary	4,021	HVAC—Packaged/split system AC/Heat Pump/VRF	643
Stoddard (Alexander J.) Elementary	1,167,910	Interior lighting retrofit; building envelope—windows/ skylights; HVAC—Packaged/split system AC/Heat Pump/VRF	14,947
Sunkist Elementary	23,714	HVAC—Packaged/split system AC/Heat Pump/VRF	3,155
Total	<u>\$ 1,451,952</u>		<u>\$ 66,295</u>

*HVAC: heating, ventilation, and air conditioning; AC: air conditioning; VRF: variable refrigerant flow

With these energy efficiency measures, the district reported a combined savings-to-investment ratio (SIR) of 1.01 and the creation of 8.13 direct job-years.

In addition, the district received \$293,311 in planning funds directly from the California Department of Education (CDE), which it used for screening and audits.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

Sole-sourced project costs

We found that the district sole-sourced its contracts with Global Lighting Organization (\$28,837), Geary Pacific Supply (\$6,949), US Air Conditioning Distributors (\$24,044), Johnson Controls (\$9,000), and Johnstone Supply (\$8,041). The district did not provide supporting documentation to show that it considered other vendors before awarding contracts to these five vendors. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$76,871.

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

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

Public Utilities Code (PUC) section 388(b) states:

The Department of General Services or any other state or local agency intending to enter into an energy savings contract or a contract for an energy retrofit project may establish a pool of qualified energy service companies based on qualifications, experience, pricing, or other pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a competitive selection process to individuals or firms identified in the pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

No projected energy savings identified and/or no signed contracts

We reviewed the district’s contracts with DJM Construction Company and Erickson-Hall Construction Co., and determined that the contracts do not identify the projected energy savings. In addition, the district did not support that it had signed contracts with Global Lighting Organization, Geary Pacific Supply, Howard Industries, US Air Conditioning Distributors, Johnson Controls, and Johnstone Supply.

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

Final project completion report submitted late

The district’s final report was submitted on September 12, 2019, 37 months after the reported project completion date of August 31, 2016.

PRC section 26240(b) states:

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

Recommendation

We recommend that the CDE take appropriate action to recover Proposition 39 funds that the district expended on sole-sourced project costs, in violation of PRC section 26235(c).

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

District's Response

We informed the district of the audit findings via email on June 1, 2021. Priscilla Martinez, Director of Business Services, responded via email on June 10, 2021.

The district's response to Finding 1 – Sole-sourced project costs, and Finding 5 – No projected energy savings identified and/or no signed contract, is as follows:

The District purchased equipment and supplies from the aforementioned vendors [Global Lighting Co., Geary Pacific Supply, Howard Industries, US Air Conditioning Distributors, and Johnstone Supply] in accordance with Public Contract Code (PCC) section 20111(a) and section 22002(c). PCC 20111(a) allowed the District to issue a purchase order with an informal quote given that the amount purchased fell below the bid limit threshold. Secondly, PCC 22002(c) established that the equipment and supplies did not constitute a “public project” as defined by said code. With this in mind, the District purchased equipment and supplies via a legal binding instrument; a purchase order.

However, the District recognizes that the Prop. 39 CA Clean Energy Jobs Act grant stipulated that districts obtain more than one quote for the purchase of equipment and supplies. Moving forward, the District will be consistent in applying this as best practice.

The district did not respond to Finding 6 – Final project completion report submitted late.

SCO Comment

Our findings and recommendation remain unchanged.

Antelope Valley Union High School District Proposition 39 Program

Background

The CEC approved Antelope Valley Union High School District's EEP for \$3,832,092. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
Antelope Valley High	\$ 279,179	Interior/exterior lighting retrofit	\$ 20,238
Eastside High	595,019	Interior/exterior lighting retrofit	43,417
Lancaster High	374,475	Interior/exterior lighting retrofit	32,210
		Interior/exterior lighting retrofit; HVAC–Packaged/split system	
Littlerock High	2,191,912	AC/Heat Pump/VRF	67,524
Quartz Hill High	391,507	Interior/exterior lighting retrofit	28,561
Total	<u>\$ 3,832,092</u>		<u>\$ 191,950</u>

*HVAC: Heating, ventilation, and air conditioning; AC: air conditioning; VRF: variable refrigerant flow

With these energy efficiency measures, the district reported a combined SIR of 1.06 and the creation of 21.46 direct job-years.

In addition, the district received \$82,595 in planning funds directly from the CDE, which it used for screening and audits.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and the EEP Handbook. We identified the following audit issues.

Sole-sourced project costs

The district contracted with Lozano Smith, LLP for legal services (\$6,398), and Brian Hayes for inspection services (\$9,900). The district did not provide supporting documentation to show that it considered other vendors or agencies before awarding contracts to Lozano Smith, LLP and Brian Hayes. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$16,298.

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

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

PUC section 388(b) states:

The Department of General Services or any other state or local agency intending to enter into an energy savings contract or a contract for an energy retrofit project may establish a pool of qualified energy service companies based on qualifications, experience, pricing, or other

pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a competitive selection process to individuals or firms identified in the pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

Unspent earned interest

The district accumulated interest, totaling \$15,829, on its allocations from the Proposition 39 Program. The district's approved EEP was completed and the final report was submitted. The district applied all of its awarded Proposition 39 funds to all projects within its approved EEP. As the Proposition 39 program has ended and there are no remaining eligible energy projects on which the district can expend the earned interest, it should be returned to the Clean Energy Job Creation Fund.

We notified CDE of the unspent earned interest. Prior to issuance of this report, CDE emailed instructions to the district on how it can return the unused interest earned on Proposition 39 funds to CDE. CDE will follow up with the district to assist with this recovery.

The CEC's 2016 *Program Implementation Guidelines* ("Interest Earned on Proposition 39 Funds," page 10) state:

Any interest earned on Proposition 39 funds shall be expended only toward Proposition 39 eligible energy projects. LEAs should make every effort to track interest earned from Proposition 39 allocations separately for use on Proposition 39 eligible energy projects and to facilitate auditing in accordance with PRC 26206(e) and 26240(h)(1).

PRC section 26206(e) states, "All projects shall be subject to audit."

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

No projected energy savings identified and/or no signed contract

We reviewed the district's contract with Trane, and determined that the contract does not identify the projected energy savings. In addition, the district did not provide support that it had a signed contract with Lozano Smith, LLP.

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

We also made the following observation:

Unused planning funds

We found that the district applied unused planning funds to program implementation. However, these funds were not included in the district's approved EEP. As a result, the district received funding that exceeded its approved EEP by \$235,475.

We notified CDE of the Observation via email on June 14, 2021. The CDE responded by email on June 14, 2021, stating that it will contact the LEA about the unused planning funds.

PRC section 26235(f) states:

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

The CEC's 2016 *Program Implementation Guidelines* ("Energy Planning Funds Reservation Option," page 10) state:

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

The CEC's 2016 *Program Implementation Guidelines* ("Unused Energy Planning Awards," page 13) also state that "Any unused energy planning funds shall be applied toward implementing eligible energy project(s) approved as part of an LEA's energy expenditure plan(s)."

Recommendation

We recommend that the CDE take appropriate action to recover Proposition 39 funds that the district expended on sole-sourced project costs, in violation of PRC section 26235(c).

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

District's Response

We informed the district of the audit findings and Observation via email on June 3, 2021. Brian Hawkins, Assistant Superintendent of Business Services, responded by email dated June 22, 2021. The district's response letter is included as Attachment A.

The district's response to Finding 1 – Sole-sourced project costs, is as follows:

The District believes that it acted in good faith and complied with the relevant program requirements in entering into these contracts.

A. It was not Clear that Proposition 39's Limitation on Sole Sourcing Applied to these Contracts.

Public Resources Code section 26235(c) ("Section 26235(c)") provides that an "LEA shall not use a sole source process to award funds pursuant to this chapter. [An] LEA may use the best value

criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter.” Notably, Section 26235(c) does not define the term “sole source” or describe the precise scope of the sole source limitation.

Section 26235(c) provides that an “LEA may use the best value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter.” Public Contract Code section 20133, which has since been **repealed and replaced** with Public Contract Code section 22161, defines the term “best value” in the context of design-build projects. (See Pub. Contract Code, § 22161, subd. (a).) In the absence of other clear statutory language or guidance, it was not clear that the sole source limitation also applied to the retention of project consultants, such as legal counsel or the project inspector.

B. The District complied with the Sole Source Limitation even if it applied to these Contracts.

Section 26235(c) limits sole sourcing but otherwise provides little detail regarding the procurement methods that an LEA may use in the Proposition 39 context. Importantly, however, the California Energy Commission (“CEC”), in its “Frequently Asked Questions California Clean Energy Jobs Act (Proposition 39),” (“FAQ”) sheds some light on this issue, indicating that an **“LEA shall defer to [its] own procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations, and do not conflict with the minimum legal standards specified above.”**...

Here, the District used its own procurement regulations and applicable law. Public Contract Code section 20111 and corresponding California Department of Education guidance indicate that a school district, as of 2016, did not need to competitively bid contracts for services that were valued at less than \$87,800. (Pub. Contract Code, § 20111, subd. (a)(1).) Government Code section 50360 also permits a school district to “contract with and employ any persons for the furnishing [of] special services and advice in financial, economic, accounting, engineering, legal, or administrative matters,” without bid or with a very informal process.

The contracts at issue are for legal and inspection services and thus fall within the purview of Government Code section 53060. (See also Education Code sections 35041.5 and 35204.) Additionally, the contracts are valued at \$945; \$6,398; and \$9,900, respectively, and thus fall well-below the competitive bidding threshold. As a result, according to general procurement law and District policy, **the District was permitted to contract with “any person[]” for these services and was not required to undergo a competitive process.**

The Guidelines permit LEAs to follow their own procurement regulations and applicable law, so long as they do not conflict with the Proposition 39 standards. In this case, the District informally retained the firms and inspector in good faith and in compliance with longstanding law, based on the belief it did not conflict with the sole source limitation, as that limitation did not clearly apply to contracts for these services.

C. The District Did Not Sole Source these Contracts.

Finally, the District did not “sole source” these contracts. While Section 26235(c) does not define “sole source” as used in that section, Public Resources Code section 25620.5(e) presents analogous language, indicating that “single source” procurement involves choosing from “two or more parties.” This statute further explains that “sole source” procurement involves less competition than single source, seemingly implying that sole source procurement involves no form of choice between one option or another. (Pub. Resources Code, § 25620.5, subd. [e].) So it is reasonable to view “sole source” for the purposes of Proposition 39 to mean direct contracting with one vendor without even considering other vendors.

By using two different legal firms, by definition, the District did not Sole Source its legal representation.

Thus, the District substantially and in good faith complied with the sole source limitation.

The district’s response to Finding 4 – Unspent earned interest, and to the Observation is as follows:

The District agrees with the SCO as to the amount of unused funds in the amount of \$46,373.00 and with the amount of interest earned for the duration of the project of \$15,829.00.

The district’s response to Finding 5 – No projected energy savings identified and/or no signed contract, is as follows:

The District believes that it acted in good faith and complied with the relevant program requirements in entering into these contracts.

A. Section 26206(d) Does not Apply to the District’s Contracts with Atkinson and Lozano Smith.

Section 26206(d) provides, “All projects shall require contracts that identify the project specifications, costs, and projected energy savings.” Section 26206(d) is limited to contracts for “projects,” as that term is used in the context of Proposition 39. The relevant statutes do not define this term, but the Guidelines indicate that an “eligible energy project” is “[a]n energy efficiency measure or bundled group of energy efficiency measures and/or clean energy installations (in or at one or more school sites) within an LEA.” (Guidelines, H-3.) Accordingly, Section 26206(d) must be read to mean that a contract for the implementation of energy efficiency measures must include a description of projected energy savings. Other related contracts—such as those for legal services—need not include this information.

Therefore, the District’s contracts with Atkinson and Lozano Smith need not include estimates of the Project’s energy savings.

B. The District’s Contract with Trane Complied with Section 26206(d).

Section 26206(d) requires that a contract “identify” a project’s “projected energy savings.” **Neither the statute nor the Guidelines provide any guidance on how an LEA must satisfy this**

requirement. For example, neither expressly requires this projection to be expressed as a dollar figure. As a result, LEAs were left with reasonable discretion to attempt to identify expected savings in good faith.

Here, the District's contract with Trane ("Contract") does, in fact, identify the Project's projected energy savings, although not in a specific dollar amount. Section 6 of the Contract states as follows:

Anticipated Savings. As required under SB 73, the District anticipates savings on energy expenditures to result from the Project in the amount determined by the approved CEC expenditure plan, over the life cycle of the Project. That anticipated sum exceeds the Total System Price by a ratio of at least 1.01.

The Contract identifies the District's anticipated energy savings in terms of a savings-to-investment ratio ("SIR"), which is recognized in the Guidelines as a measure of cost-effectiveness that is explicitly sanctioned by the CEC. (See Guidelines, p. 23 ["An eligible energy project must achieve a minimum savings-to-investment ratio (SIR) of 1.01 to be approved for a Proposition 39 award."].)....

Section 6 of the Contract states that the Project will yield an SIR of at least 1.01. The Contract indicates that the Project price is \$3,340,934; so, by multiplying this number by 1.01, one can reasonably understand from the face of the Contract that the District's anticipated savings are at least \$3,374,343.34. (Contract, Section 7.)

Additionally, the Contract states that the anticipated energy savings would be "in the amount determined by the approved CEC expenditure plan." (Contract, Section 6.)

The District could not articulate its anticipated savings with greater specificity at the time of contracting. Due to the structure of the Prop 39 program, the savings was based on the scope of work that could be accomplished. The scope of work in turn affected the contract price, and contract price was based on Prop 39 funding amount. In addition to identify the anticipated savings in Section 6, the parties accounted for this potential change in contract price in Section 7 of the Contract....

The parties were cognizant of the fact that the District's EEP had not yet been approved and that the Contract's scope of work could change as a function of the District's Proposition 39 allocations. Thus, the parties did not finalize the scope of work at the time of contracting. Accordingly, the District could not describe its anticipated energy savings in more specific terms, as the District did not yet know what energy efficiency measures would be implemented.

The District's submitted EEP thereafter described the Project's estimated energy savings in great detail. Specifically, the District presented its projected energy savings in terms of: (1) demand savings, measured in kilowatts; (2) annual electric savings, measured in kilowatt hours; and (3) annual cost savings, measured in dollars. The District thereby reported its anticipated savings to the CEC.

In sum, the Contract identified the District's projected energy savings in terms of: (1) an SIR, which is a savings measurement that has been explicitly adopted by the CEC; and (2) the information presented in the District's EEP, which was reviewed and approved by the CEC. Since neither the relevant statutes nor the Guidelines establish that a contract must identify projected savings via any particular method or measurement, the method used by the District here substantially complied with the projected energy savings requirement.

It is evident that the District made a good faith effort to strictly and substantially comply with the requirements of Proposition 39 and did so to the greatest extent possible.

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

The SCO has received information from CDE regarding the specific amounts provided to [Antelope Valley Union High School District] for Prop 39 projects, and those funds have been fully accounted for by the SCO.

During the course of construction, it was found that the initial contractor did not comply specifically with the Architect's original drawings for the installation of the many air conditioning units. The District was required to issue a change order for those services. These costs were not part of the original EEP approved by the Energy Commission and therefore became an added cost to the District. It appears funds may have been transferred into Resource 62300.0 to cover the impending change order. The net change order was finalized at \$187,452, but was not paid from Resource 62300.0.

Resource 62300.0 currently has a balance of \$37,998.23, which is the initial amount the District accounted for as the difference between EEP funds received and expended. Those funds now reside in Object code 9520 to provide for reimbursement to the CDE. These are the only funds in Resource code 62300.0 at this time.

SCO Comment

Our findings and recommendations remain unchanged. We will address the district's response in the order presented.

Sole-sourced project costs

The district's response indicates its reliance on the provisions of Government Code section 53060, PRC section 25620.5(e), the "best value" provisions of Public Contract Code section 20133(c), and its own procurement policies and procedures. The district cites its compliance with these sources as a valid reason for not complying with the sole-source language of PRC section 26235(c).

The district is correct that the CEC's Proposition 39 "Frequently Asked Questions" document¹ states:

The LEA shall defer to [its] own procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations, and do not conflict with the minimum legal standards specified above.

¹ Available under the "Program Information" tab on the "California Clean Energy Jobs Act K-12 Program – Prop 39" page of the CEC's website. The quoted text is in the second paragraph on page 27.

In addition, the CEC's 2016 *Program Implementation Guidelines* ("Energy Project Construction Compliance Requirements," page 35) state:

....The guidelines defer to the LEA's own procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations, and do not conflict with the minimum legal standards specified above.

However, the district fails to recognize that the guidelines defer to the LEA's own procurement regulations as long as they "*do not conflict with the minimum legal standards specified above*" [emphasis added].

The "minimum legal standards specified above" are PRC sections 26206(d), 26235(a)(2), and 26235(c). The district's procurement regulations conflict with the sole-source prohibition contained in PRC section 26235(c); therefore, we found that the district's reliance on Government Code section 53060, PRC section 25620.5(e), the "best value" provisions of Public Contract Code section 20133(c), and its own policies and procedures in lieu of PRC section 26235(c) was misplaced.

Furthermore, the California State Legislature repealed the "best value" provisions of PCC section 20133(c) in 2014. As a result, this statute was not applicable when the district entered into these contracts with its vendors.

The district's response includes a legal theory of sole-sourcing that is based on PRC section 25620.5(e). We are not qualified to opine on the validity of legal arguments. The district may choose to pursue an appeal of the audit findings. We provide guidance on filing an appeal elsewhere in this report.

The district's response conveys the district's belief that legal services related to the Proposition 39 Program do not constitute a "project" under the provisions of the Program and, therefore, no contract is required. We disagree. To the extent that a vendor provides legal services to the district for its Proposition 39 projects, those expenditures constitute part of the overall project(s)—similar to engineering, inspection, and other "soft" costs. Accordingly, the district should support program costs for legal services with a properly executed contract.

No projected energy savings identified

The district states that the program guidelines provide no clear guidance on how districts can comply with the provisions of PRC section 26206(d). We disagree. The CEC Proposition 39 Implementation Guidelines state, "All contracts need a clear and accurate description of the energy project, including material, products, or services to be procured, and a budget that includes cost and *an estimate of the projected energy savings*" [emphasis added]. The program's provisions require only an estimate of the projected energy savings. In addition, no financial impacts apply to districts for violations of this program provision.

In addition, the district states that it does not need to include projected energy savings in a contract with its legal counsel. Our finding does not recommend that the district include projected energy saving in its contract for legal counsel; rather, our finding identifies the district's lack of a signed contract.

Unused planning funds

We found that the district received Proposition 39 Program allocations from the CDE totaling \$5,171,346. The district's two EEPs contained approved program costs totaling \$5,124,973. We reported the difference of \$46,373 to the CDE as unused planning funds that should be repaid to the Clean Energy Job Creation Fund.

The district's accounting records for the Proposition 39 Program include \$189,102 of additional revenue postings that do not indicate the source of the funds. We advised the district of the need to provide documentation to substantiate that these funds did not originate from the Proposition 39 Program. The district did not provide such documentation.

Children of Promise Preparatory Academy Proposition 39 Program

Background

The CEC approved Children of Promise Preparatory Academy's EEP for \$267,668, consisting of \$21,538 for energy management services, \$4,308 for training, and \$241,822 for program implementation. The charter school used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
Children of Promise Preparatory Academy	\$ 241,822	Interior/exterior lighting retrofit, lighting controls, and HVAC-Packaged/Split System AC/Heat Pump/VRF	\$ 11,009

*HVAC: Heating, venting, and air conditioning; AC: air conditioning; VRF: variable refrigerant flow

With these energy efficiency measures, the charter school reported a combined SIR of 1.05 and the creation of 1.35 direct job-years.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

Sole-sourced project costs

The charter school sole-sourced its contract with First Note Finance, Inc. (\$26,533) for its energy manager services. The charter school did not provide supporting documentation to show that it considered other vendors before awarding its contract to First Note Finance, Inc. Therefore, we found that the charter school sole-sourced this Proposition 39 contract, totaling \$26,533.

However, the charter school requested only \$25,846 in its EEP, for an energy manager and training costs. Because we audited only the amount approved in the charter school's final project completion report, we found that the charter school sole-sourced a total of \$25,846.

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

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

PUC section 388(b) states:

The Department of General Services or any other state or local agency intending to enter into an energy savings contract or a contract for an energy retrofit project may establish a pool of qualified energy service companies based on qualifications, experience, pricing, or other pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a

competitive selection process to individuals or firms identified in the pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

No projected energy savings identified and/or no signed contract

We reviewed the charter school's contracts with Stinson Mechanical Contractors, and Felix Electrical and Construction Service, and determined that the contracts do not identify the projected energy savings.

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

Violation of energy measure payback period

The charter school closed on June 30, 2020 after Inglewood Unified School District denied the school's charter petition. The facility is currently vacant and for sale as a charter school site. The school completed its energy projects in 2018 using \$241,822 of Proposition 39 funds with energy payback periods of seven years for its lighting project and 27.7 years for its HVAC system project. Until this facility is sold, the charter school is in violation of the energy measure payback period.

Per the CEC's 2016 *Program Implementation Guidelines* ("Step 8: Energy Project Tracking and Reporting," page 33), "LEAs must not sell or demolish the approved energy measure installed with Proposition 39 program award funding prior to the payback of the energy measure."

PRC section 26235(i) states, "...an LEA receiving moneys pursuant to this chapter for a project for that facility shall require that the school repay to the state all moneys received from the Job Creation Fund for the project if the school voluntarily vacates the facility within five years of project completion...."

Recommendation

We recommend that:

- The CDE take appropriate action to recover Proposition 39 funds that the district expended on sole-sourced project costs, in violation of PRC section 26235(c); and
- The CEC monitor the sale of the Children of Promise Preparatory Academy facility to ensure that they will continue being used as a school site.

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

Charter School's Response

We informed the charter school of the audit findings via email on May 4, 2021. Carleton Lincoln, Ed.D., Founder/CEO, responded by letter dated June 4, 2021. The charter school's response letter is included as Attachment B.

The charter school's response to our audit findings is as follows:

COPPA [Children of Promise Preparatory Academy] was forced to close in June 2020 due to Inglewood Unified School District's (IUSD) unwarranted denial of COPPA's charter petition. This closure happened before the State Controller's Office initiated the audit on September 28, 2020.

Because of the closure, COPPA had no staff, no paid hours, no facility, and no resources to locate and provide answers and supporting documents to the auditor. The few resources that COPPA did have was used for the wind-down and dissolution of the school as required by state and federal law. In addition, all of the school's documents were archived in long term storage with no intent to be in active use. Former staff that had knowledge about where and how the records were stored and organized were no longer employed.

Moreover, the school was impacted by COVID-19, an unprecedented event and global in nature. Access to physical storage and to former contractors and organizations related to Prop 39 was severely limited.

In the month of May 2021, most of COPPA's activities had to be suspended due [to] Dr. Carleton Lincoln's, the CEO's, medical emergency. Dr. Lincoln makes up the majority of the school's staff.

At the end of May, COPPA received a court order for the appointment of a receiver who is to marshal and dispose of the school property and school's assets. This means that COPPA will no longer have any resources, including Dr. Lincoln and his assistant, to even wind down and dissolve the school and there will be no one at COPPA to continue correspondence with your office.

The school has attempted to cooperate and provide what little documentation could be provided, despite the school's closure and discontinued operation months before the audit.

We are concerned that the audit findings are unreasonable because a closed school that is no longer in operation cannot realistically provide adequate answers. It seems that auditing a closed school would inevitably conclude with negative findings because the school could not proffer an appropriate response.

COPPA respectfully ask the auditor to reconsider and dismiss their findings and/or forgive any penalties assessed against the school due to the extraordinary impact of COVID-19 and the unfortunate and unwarranted closing of the school.

SCO Comment

Our findings and recommendation remain unchanged.

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

SCO provides audit services for the Citizens Oversight Board related to the Proposition 39 Program, but does not have authority to dismiss and/or forgive related audit findings and/or penalties assessed against the school.

Coast Unified School District Proposition 39 Program

Background

The CEC approved Coast Unified School District's EEP for \$224,784, consisting of \$1,983 for energy management services and \$222,801 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
Cambria Grammar	\$ 16,686	Exterior lighting retrofit	\$ 2,501
Coast US District Office	34,148	Interior/exterior lighting retrofit; HVAC controls; HVAC-Condensing furnace	1,647
Coast Union High	95,302	Interior/exterior lighting retrofit; HVAC controls; HVAC-Condensing furnace	7,645
Leffingwell High	7,093	Exterior lighting retrofit; HVAC controls	514
		HVAC-condensing furnace; HVAC controls; interior/exterior lighting retrofit;	
Santa Lucia Middle	69,572	HVAC-Packaged/split system AC/Heat Pump/VRF	4,773
Total	\$ 222,801		\$ 17,080

*HVAC: Heating, ventilation, and air conditioning; AC: air conditioning; VRF: variable refrigerant flow

With these energy efficiency measures, the district reported a combined SIR of 1.39 and the creation of 1.25 direct job-years.

In addition, the district received \$57,272 in planning funds directly from the CDE, which it used for an energy manager.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

No projected energy savings identified and/or no signed contract

We reviewed the district's contracts with JR Barto (HVAC) and Energy Retrofit Co. (lighting), and determined that the contracts do not identify the projected energy savings.

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

Final project completion report submitted late

The district's final report was submitted on March 13, 2020, 31 months after the reported project completion date of September 21, 2017.

PRC section 26240(b) states:

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

Recommendation

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

District's Response

We informed the district of the audit findings via email on March 3, 2021. Annie Lachance, Chief Business Official, responded via email on March 11, 2021.

The district's response to Finding 5 – No projected energy savings identified and/or no signed contract, is as follows:

All projected energy savings was included in the studies done prior to the contracts. The projected energy savings was not included as part of the contract.

The district's response to Finding 6 – Final project completion report submitted late, is as follows:

- Per CEC reporting process, the "Final Report" is generated based on the completion status of the "Annual Progress Report." After reviewing the timeline, it appears [that] the completion status in the 2018 "Annual Progress Report" (APR) was mistakenly checked as "NOT Completed." This error was corrected in 2019 Annual Progress Report, but unfortunately it put us 12 months behind.
- We indicated the completion status as complete in the 2019 Annual Progress Report and were awaiting the release of the Final Report around October, 2019. After waiting for several months for the FINAL REPORT, we contacted CEC in December 2019. We began working with the project manager in January, 2020 to complete an amendment, then we received the FINAL REPORT in February, 2020. Please note that both CEC and CLEAResult's operations (IT and management support) were severely challenged by COVID 19 related "Shelter-in-Place" order but we were able to get the Final Report released in February and completed in March of 2020. This set us back a few months as well.

SCO Comment

Our findings remain unchanged.

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

Community Collaborative Charter School Proposition 39 Program

Background

The CEC approved Community Collaborative Charter School's EEP for \$197,200. The charter school used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
Community Collaborative Charter	\$ 197,200	Interior/exterior lighting retrofit; HVAC controls	\$ 9,687

*HVAC: Heating, ventilation, and air conditioning

With these energy efficiency measures, the charter school reported a combined SIR of 1.05 and the creation of 1.10 direct job-years.

In addition, the charter school received \$114,500 in planning funds directly from the CDE, which it used for screening and audits, and program assistance.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

No projected energy savings identified and/or no signed contract

We reviewed the district's contract with Alliance Building Solutions, and determined that the contract does not identify the projected energy savings.

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

Final project completion report submitted late

The district's final report was submitted on November 26, 2019, 23 months after the reported project completion date of December 17, 2017.

PRC section 26240(b) states:

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

Charter School's Response

We informed the charter school of the audit findings via email on March 19, 2021. The school responded later that day requesting a formal exit conference. We conducted a formal telephone exit conference with the school representatives on March 25, 2021. Aaron Thornsberry, Chief Business Official, responded via email later that day agreeing with the audit findings.

The charter school's response to Finding 5 – No projected energy savings and/or no signed contract, is as follows:

We agree with the State Controller's Office finding in accordance with section 26206(d). Projected energy savings were not included in the contract, but [were] shared with us outside of the contract to ensure the contract scope was appropriate. This was an oversight by our organization.

The charter school's response to Finding 6 – Final project completion report submitted late, is as follows:

We agree with the State Controller's Office Finding in accordance with section 26240(b). Unfortunately, we could not file timely as the data needed to file the report was delayed from the utility companies and was not received until well after the deadline. The report was submitted as quickly as possible after receiving the data.

Cotati-Rohnert Park Unified School District Proposition 39 Program

Background

The CEC approved Cotati-Rohnert Park Unified School District's EEP Number 4951 for \$1,055,335, consisting of \$103,004 for energy management services and \$952,331 for program implementation. In addition, the CEC approved the district's EEP Number 5126 for \$135,400, consisting of \$10,000 for energy management services and \$125,400 for program implementation. The district used its program implementation funds for the following efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency and Renewable Energy Generation Measures*	Reported Annual Cost Savings
<u>EEP #4951:</u>			
Evergreen Elementary	\$ 250,176	HVAC Controls-Programmable/Smart Thermostats; HVAC-	\$ 9,663
John Reed Primary	110,632	Packaged/split system AC/heat pump/VRF; HVAC-Duct sealing	9,286
Rancho Cotati HS	379,879	Interior/exterior lighting retrofit; interior linear fluorescent relamping	38,868
Thomas Page Academy	99,809	Interior/exterior lighting retrofit; interior linear fluorescent relamping	9,935
Waldo Rohnert Intermediate	111,835	Interior/exterior lighting retrofit; interior linear fluorescent relamping	8,471
Total, EEP #4951	<u>\$ 952,331</u>		<u>\$ 76,223</u>
<u>EEP #5126:</u>			
Technology High	\$ 125,400	HVAC-Chiller/boiler replacement	\$ 1,936
Total, EEP #5126	<u>\$ 125,400</u>		<u>\$ 1,936</u>

*HVAC: Heating, venting, and air conditioning; AC: air conditioning; VRF: variable refrigerant flow

With the energy efficiency measures from EEP Number 4951, the district reported a combined SIR of 1.46 and the creation of 5.33 direct job-years. With the energy efficiency measures from EEP Number 5126, the district reported a combined SIR of 1.01 and the creation of 0.70 direct job-years.

In addition, the district received \$130,000 in planning funds directly from the CDE, which it used for screening and audits, and an energy manager.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

No projected energy savings identified and/or no signed contract

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

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

Final project completion report submitted late

The district's final report for EEP Number 4951 was submitted on December 3, 2019, 61 months after the reported project completion date of November 1, 2014. The district's final report for EEP Number 5126 was submitted on December 3, 2019, 16 months after the reported project completion date of August 31, 2018.

PRC section 26240(b) states:

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

Recommendation

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

District's Response

We informed the district of the two audit findings on March 2, 2021. Robert Marical, Chief Business Official, responded via email on March 8, 2021.

The district's response to Finding 5 – No projected energy savings identified and/or no signed contract, is as follows:

The District included the projected energy savings as an attachment to the Board Resolution that was approved by the Board. Additionally, energy savings calculations were performed with the help of the on-line Energy Saving Calculators developed by California Energy Commission (CEC). These on-line calculators are offered by CEC as a part of Proposition 39 program. The projected savings were then submitted as part of the process and approved by the CEC. All documents were approved as part of the project. We think the District acted within the spirit and guidelines of the program. We will include projected savings in future contracts moving forward.

The district's response to Finding 6 – Final project completion report submitted late, is as follows:

Our contractor reported that there was an issue gathering data from PG&E in a timely manner, which caused delays in completing the Final Reports for EEP 5126 within the 15 month timeframe. They were submitted a few weeks after the deadline. Final Reports from EEP 4951 also had data retrieval issues after the amendment was approved.

SCO Comment

Our findings remain unchanged.

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

Desert Sands Unified School District Proposition 39 Program

Background

The CEC approved Desert Sands Unified School District's EEP for \$6,521,118. The district used its program implementation funds for the following energy efficiency measures and renewable energy generation measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency and Renewable Energy Generation Measures*	Reported Annual Cost Savings
Indio Middle	\$ 566,865	Interior/exterior lighting fixture retrofit	\$ 35,093
La Quinta High	1,100,932	HVAC-Packaged/Split System AC/Heat Pump/VRF	62,818
La Quinta Middle	560,657	Interior/exterior lighting fixture retrofit	32,210
Madison Elementary	281,749	Interior/exterior lighting fixture retrofit	18,067
Monroe Elementary	278,540	Interior/exterior lighting fixture retrofit	16,185
Palm Desert High	3,329,610	Photovoltaic panels	241,308
Truman Elementary	402,765	Interior/exterior lighting fixture retrofit	24,306
Total	<u>\$ 6,521,118</u>		<u>\$ 429,987</u>

*HVAC: Heating, ventilation, and air conditioning; AC: air conditioning; VRF: variable refrigerant flow

With these energy efficiency and renewable energy generation measures, the district reported a combined SIR of 1.03 and the creation of 31.85 direct job-years.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issue:

Final project completion report submitted late

The district's final report was submitted on May 10, 2019, 52 months after the reported project completion date of December 31, 2014.

PRC section 26240(b) states:

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

Recommendation

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

District's Response

We informed the district of the audit finding via email on March 11, 2021. Sonya Melendez, Director of Fiscal Services, responded via email on March 22, 2021.

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

Due to turnover in key positions overseeing this project, there was an oversight on the timely submission of the report of project expenditures to the Citizens Oversight Board. Once this was brought to the District's attention, the report was submitted.

SCO Comment

Our finding remains unchanged.

Madera Unified School District Proposition 39 Program

Background

The CEC approved Madera Unified School District's EEP for \$4,790,235, consisting of \$331,843 for energy management services, \$66,368 for training, and \$4,392,024 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
Alpha Elementary	\$ 32,839	Exterior lighting fixture retrofit, HVAC controls	\$ 3,359
Berenda Elementary	15,908	Exterior lighting fixture retrofit, HVAC controls	2,587
Cesar Chavez Elementary	53,054	Exterior lighting fixture retrofit, HVAC controls	3,482
District Office Maintenance, Transportation	60,728	Exterior lighting fixture retrofit, HVAC controls	7,234
Dixieland Elementary	5,616	Exterior lighting fixture retrofit, HVAC controls	1,280
Eastin Arcola	8,200	Exterior lighting fixture retrofit, HVAC controls	2,138
Furman (Duane E.) High**	14,926	Exterior lighting fixture retrofit, HVAC controls	1,300
George Washington Elementary	9,092	Exterior lighting fixture retrofit, HVAC controls	1,768
Howard Elementary	13,977	Exterior lighting fixture retrofit, HVAC controls	1,921
Jack G. Desmond Middle	98,261	Exterior lighting fixture retrofit, HVAC controls	9,730
James Madison Elementary	13,523	Exterior lighting fixture retrofit, HVAC controls	1,929
James Monroe Elementary	9,538	Exterior lighting fixture retrofit, HVAC controls	1,627
John Adams Elementary	9,043	Exterior lighting fixture retrofit, HVAC controls	1,544
John J. Pershing Elementary	21,583	Exterior lighting fixture retrofit, HVAC controls	2,778
La Vina Elementary	12,734	Exterior lighting fixture retrofit, HVAC controls	1,874
Lincoln Elementary	286,975	Exterior lighting fixture retrofit, HVAC controls;	
Madera High	164,866	HVAC controls-EMS	19,248
		Interior/exterior lighting fixture retrofit; HVAC controls	15,228
		Interior/exterior lighting fixture retrofit; HVAC controls;	
		HVAC-chiller/boiler replacement; HVAC controls-	
Madera South High	1,667,751	EMS; Pumps, motors, drives	77,066
		Interior/exterior lighting fixture retrofit; HVAC controls;	
		HVAC-chiller/boiler replacement; HVAC-packaged/ split	
Martin Luther King Jr. Middle	1,756,732	system AC/heat pump/VRF	41,197
Millview Elementary	9,983	Exterior lighting fixture retrofit, HVAC controls	1,739
Nishimoto Elementary	32,837	Exterior lighting fixture retrofit, HVAC controls	3,148
Parkwood Elementary	33,386	Exterior lighting fixture retrofit, HVAC controls	3,458
Ripperdan Community Day	3,178	HVAC controls	1,081
Sierra Vista Elementary	10,035	Exterior lighting fixture retrofit, HVAC controls	1,679
Thomas Jefferson Middle	47,259	Interior/exterior lighting fixture retrofit; HVAC controls	5,342
Total	\$ 4,392,024		\$ 213,737

*HVAC: Heating, ventilation, and air conditioning; EMS: emergency medical services (fire alarms); AC: air conditioning;

VRF: variable refrigerant flow

**Independent Study

With these energy efficiency measures, the district reported a combined SIR of 1.10 and the creation of 24.60 direct job-years.

In addition, the district received \$292,039 in planning funds directly from the CDE, which it used for screening and audits, and program assistance.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

Sole-sourced project costs

The district contracted with the following vendors:

- ThinkWire Energy Services – \$12,395 for solar consulting services;
- US Air Conditioning Distributors – \$165,719 for thermostats;
- Knorr Systems – \$32,581 for a pool pump control; and
- Cenergistic – \$129,246 for an energy conservation program.

The district did not provide supporting documentation to show that it considered other vendors before awarding contracts to ThinkWire Energy Services, US Air Conditioning Distributors, Knorr Systems, and Cenergistic. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$339,941.

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

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

PUC section 388(b) states:

The Department of General Services or any other state or local agency intending to enter into an energy savings contract or a contract for an energy retrofit project may establish a pool of qualified energy service companies based on qualifications, experience, pricing, or other pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a competitive selection process to individuals or firms identified in the pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

No projected energy savings identified and/or no signed contracts

We reviewed the district's supporting documentation and determined that no contract was prepared for the services provided by Knorr Systems.

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

Final project completion report submitted late

The district's final report was submitted on September 4, 2019, 22 months after the reported project completion date of November 30, 2017.

PRC section 26240(b) states:

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

Recommendation

We recommend that the CDE take appropriate action to recover Proposition 39 funds that the district expended on sole-sourced project costs, in violation of PRC section 26235(c).

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

District's Response

We informed the district of the audit findings and Observation via email on February 1, 2021. Sandon Schwartz, Deputy Superintendent, responded by letter dated February 10, 2021. The district's response letter is included as Attachment C.

The district's response to Finding 1 – Sole-sourced project costs, is as follows:

The District feels they complied with the spirit of sole-sourcing and in the case of the thermostats received multiple quotes from vendors before purchasing with the lower priced vendor.

Think Wire – The courts have noted that the Legislature has recognized the right to hire certain special services without competitive bidding by enacting Government Code section 53060. In this case, the District selected Think Wire to conduct a solar analysis based on this government code.

US Air Conditioning Distributors – As the energy projects were initiated in phases over several years, the district purchased the thermostats over a wide time frame to meet scope of the various phases. The thermostats were purchased over a two-year period following appropriate and acceptable procurement procedures. The district did not competitively bid these [thermostats] but received pricing from multiple vendors prior to initiating the first purchase order in February of 2017. These additional quotes are included as backup on the purchase requisitions. These thermostats provided the district a best value based on pricing and allowed the district to have a consistent wi-fi thermostat that could enable a functioning EMS system on a single platform throughout the district, promoting efficiency.

Knorr Systems – The district purchased the VFD [variable-frequency drive]-based pool controls system for Madera South High School, as part of the Prop 39 project, from Knorr Systems. Since the cost of the product was below the bid threshold limit, the district did not receive multiple bids.

Cenergistic – The district contracted with Cenergistic in 2015 to provide energy management services. Cenergistic then hired a district employee to serve as the energy manager. The contract guaranteed savings and if contract costs exceeded savings, then the district would be refunded those costs. No other consultant would offer those [terms]. The district hired Cenergistic on a best-value basis using Government Code section 53060. The consultant was not originally funded using Prop 39 funding. The district shifted some of these expenses to our Prop 39 program in the final year of the funding cycle.

The district did not respond to Finding 5 – No projected energy savings identified and/or no signed contract.

The district’s response to Finding 6 – Final project completion report submitted late, is as follows:

The district acknowledges and accepts this finding. Final reporting was part of the scope of the contract with IES. IES stated to the district that the report was filed late due to their ability to obtain utility data from PG&E. PG&E had changed nearly all of the meter numbers and IES was having difficulties retrieving several meters’ data even with PG&E’s help. IES ended up using one of their software programs to directly retrieve the data for us through PG&E’s servers. This setup process took longer than expected but did provide the utility information they were unable to obtain in any other manner.

SCO Comment

Our findings and recommendation remain unchanged.

The scope of our audit was to ensure compliance with state statutes and regulations. Although the district cites using the “best value” criteria as defined in Government Code section 53060 to support its use of sole-sourced contracts, PRC section 26235(c) states:

A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter. A community college or LEA may use the best value criteria *as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code* to award funds pursuant to this chapter [emphasis added].

The CEC’s Proposition 39 “Frequently Asked Questions” document² defines the “best value” criteria as follows:

In 2014, Section 20133 of the Public Contract Code was repealed and amended. The legislation that repealed Section 20133 also added a new statute to the Public Contract Code containing a more precise definition of “best value” (Pub. Contract Code §21161). That definition has been refined several times, and the LEA should refer to the current language of Section 21161 for guidance on use of the best value criteria.

²Available under the “Program Information” tab on the “California Clean Energy Jobs Act K-12 Program – Prop 39” page of the CEC’s website. The quoted text is in the first paragraph of page 27.

PCC section 21161 states, in part, “All contracts shall be let to the lowest responsible bidder or bidders in the manner provided in this article.”

The district provided two additional quotes for the thermostats ultimately purchased from US Air Conditioning Distributors. However, the district did not identify the vendor’s name for either quote; nor did it provide documentation to show when these quotes were obtained or printed.

In its response, the district indicates its reliance on the provisions of Government Code section 53060, and its own procurement policies and procedures. The district cites its compliance with these sources as a valid reason for not complying with the sole-source language of PRC section 26235(c).

However, the CEC’s Proposition 39 Implementation Guidelines state that “the guidelines defer to the LEA’s own procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations *and do not conflict with the minimum legal standards specified above*” [emphasis added]. The “minimum legal standards specified above” are PRC sections 26206(d), 26235(a)(2), and 26235(c). Therefore, we found that the district’s reliance on Government Code section 53060 and its own policies and procedures in lieu of PRC section 26235(c) was misplaced.

Mattole Valley Charter School (Mattole Unified School District) Proposition 39 Program

Background

The CEC approved Mattole Valley Charter School's EEP for \$168,197. The charter school used its program implementation funds for the following energy efficiency and renewable energy generation measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency and Renewable Energy Generation Measures*	Reported Annual Cost Savings
Beginnings Learning Center	\$ 44,935	Photovoltaic (solar)	\$ 2,138
Campus House	3,014	Interior lighting fixture retrofit	199
Caspar Creem Learning Center	33,025	Interior lighting fixture retrofit; HVAC—Packaged	666
Creekside Learning Center	18,000	Photovoltaic (solar)	1,668
Diamond View Mattole Learning Center	27,189	Interior lighting fixture retrofit; HVAC—Split system AC/heat pump	5,734
Lost Coast High Learning Center	6,337	Interior/exterior lighting fixture retrofit	1,962
Mattole Valley Charter-Registrar	3,536	Interior/exterior lighting fixture retrofit	380
North Coast Learning Academy	24,511	Interior/exterior lighting fixture retrofit	3,066
Resource Center	7,650	Interior lighting fixture retrofit	1,672
Total	<u>\$ 168,197</u>		<u>\$ 17,485</u>

*HVAC: Heating, ventilation, and air conditioning; AC: air conditioning

With these energy efficiency and renewable energy generation measures, the district reported a combined SIR of 1.75 and the creation of 0.85 direct job-years.

In addition, the district received \$51,717 in planning funds directly from the CDE, which it used for program assistance and an energy manager.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

Unspent funds

The charter school was awarded \$51,717 in planning funds and \$225,776 in implementation funds. Of those two amounts, the charter school used only \$26,362 and \$168,198, respectively. Therefore, the charter school has a total of \$82,933 (\$25,355 for planning and \$57,578 for program implementation) in unspent funds.

On February 2, 2021, we notified CDE of the unspent funds. Prior to issuance of this report, CDE followed up with the Humboldt County Office of Education to recover the unspent funds from Mattole Valley Charter School.

The CEC's 2016 *Program Implementation Guidelines* state on page 5:

The SSPI [State Superintendent of Public Instruction] is responsible for administering awards to LEAs that serve grades K-12 students. These funds may be used by LEAs for energy efficiency and clean energy

projects, related energy planning, energy training, energy management, and energy projects with related non-energy benefits. LEAs are required to submit an energy expenditure plan to the Energy Commission for consideration and approval. Funds are released to the LEA only after the Commission approves an LEA's energy expenditure plan(s).

PRC section 26240(b) states, "As a condition of receiving funds from the Job Creation Fund...the entity shall submit a report of its project expenditures to the Citizens Oversight Board..."

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

Final project completion report submitted late

The charter school's final report was submitted on March 13, 2020, 21 months after the reported project completion date of June 30, 2018.

PRC section 26240(b) states:

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

Recommendation

We recommend that the district return the unspent funds to the State. Although the Proposition 39 program has ended, the unspent funds must be returned.

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

Charter School's Response

We informed the charter school of the audit findings via email on January 25, 2021. Shari Lovett, Director, Northern United-Humboldt Charter School (formerly the Director of Mattole Valley Charter School), responded via email on February 8, 2021, stating that Karen Ashmore, Superintendent, Mattole Unified School District, will not be providing a response.

Modesto City Elementary School District Proposition 39 Program

Background

The CEC approved Modesto City Elementary School District's EEP for \$3,707,593. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Alberta Martone Elementary	\$ 272,561	Interior/exterior lighting fixture retrofit	\$ 14,373
Bret Harte Elementary	62,701	Exterior lighting fixture retrofit	3,290
Burbank Elementary	29,461	Exterior lighting fixture retrofit	1,303
Catherine Everett Elementary	234,288	Interior/exterior lighting fixture retrofit; lighting controls	12,730
District Nutrition Services	147,379	Interior/exterior lighting fixture retrofit	11,941
El Vista Elementary	239,460	Interior/exterior lighting fixture retrofit	12,477
Elihu Beard Elementary	249,007	Interior/exterior lighting fixture retrofit	10,970
Enslin Elementary	190,593	Interior/exterior lighting fixture retrofit	8,920
Evelyn Hanshaw Middle	74,342	Exterior lighting fixture retrofit; lighting controls	4,209
Fairview Elementary	42,267	Exterior lighting fixture retrofit	2,414
Franklin Elementary	22,998	Exterior lighting fixture retrofit	1,776
Harriette Kirschen Elementary	194,806	Interior/exterior lighting fixture retrofit; lighting controls	10,932
James Marshall Elementary	25,299	Exterior lighting fixture retrofit	1,247
John Fremont Elementary	275,072	Interior/exterior lighting fixture retrofit	14,778
John Muir Elementary	206,940	Interior/exterior lighting fixture retrofit; lighting controls	12,971
La Loma Junior High	37,236	Exterior lighting fixture retrofit; lighting controls	3,050
Lakewood Elementary	14,098	Exterior lighting fixture retrofit	890
Mark Twain Junior High	23,359	Exterior lighting fixture retrofit; lighting controls	2,610
Orville Wright Elementary	25,807	Exterior lighting fixture retrofit	1,933
Robertson Road Elementary	9,015	Exterior lighting fixture retrofit	765
Roosevelt Junior High	362,735	Interior/exterior lighting fixture retrofit; lighting controls	16,507
Rose Avenue Elementary	275,845	Interior/exterior lighting fixture retrofit	13,769
Shackelford Elementary	217,147	Interior/exterior lighting fixture retrofit; lighting controls	10,730
Sonoma Elementary	25,643	Exterior lighting fixture retrofit	1,374
Tuolumne Elementary	19,951	Exterior lighting fixture retrofit	879
William Garrison Elementary	275,830	Interior/exterior lighting fixture retrofit	14,221
Wilson Elementary	153,753	Interior/exterior lighting fixture retrofit	7,112
Total	<u>\$ 3,707,593</u>		<u>\$ 198,171</u>

With these energy efficiency measures, the district reported a combined SIR of 1.06 and the creation of 20.76 direct job-years.

In addition, the district received \$230,589 in planning funds directly from the CDE, which it used for screening and audits.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

Unspent earned interest

The district accumulated interest, totaling \$22,163, on allocations it received from the Proposition 39 program. The district's approved EEP was completed and the final report was submitted. The district applied all

of its awarded Proposition 39 funds to all projects within its approved EEP. As the Proposition 39 program has ended and there are no remaining eligible energy projects on which the district can expend the earned interest, it should be returned to the Clean Energy Job Creation Fund.

We notified CDE of the unspent earned interest on May 4, 2021. CDE responded by email on May 4, 2021, stating:

Similar to the way CDE recovers interest on other funds, the district can send a check referencing the specific program and the funds will be credited accordingly. So there will not be an invoice. We sent instructions to Modesto City Elementary on how the district can return the unused interest earned on Prop 39 funds to CDE and will follow up with the district to assist with this recovery.

The CEC's 2016 *Program Implementation Guidelines* ("Interest Earned on Proposition 39 Funds," page 10) state:

Any interest earned on Proposition 39 funds shall be expended only toward Proposition 39 eligible energy projects. LEAs should make every effort to track interest earned from Proposition 39 allocations separately for use on Proposition 39 eligible energy projects and to facilitate auditing in accordance with PRC 26206(e) and 26240(h)(1).

PRC section 26206(e) states, "All projects shall be subject to audit."

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

Final project completion report submitted late

The district's final report was submitted on April 8, 2020, 16 months after the reported project completion date of December 15, 2018.

PRC section 26240(b) states:

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

Recommendation

We recommend that the district return the unspent earned interest to the State. Although the Proposition 39 program has ended, the unspent funds must be returned.

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

District's Response

We informed the district of the audit findings via email on May 4, 2021. Carole Phipps, Accountant – Capital Funds, responded via email on May 14, 2021.

The district's response to Finding 4 – Unspent earned interest, was "Acknowledged."

The district's response to Finding 6 – Final project completion report submitted late, is as follows:

JCI attempted to retrieve utility information from the Modesto Irrigation District [MID] for the report; however, due to COVID-19, MID was shut down temporarily while they reorganized to a work from home model. Once they were established it took some time to retrieve the numerous billings associated with the MCSD [Modesto City School District] project. During that time JCI was corresponding with the CEC Project Manager about the delay regularly to provide status updates and his approval.

SCO Comment

Our findings remain unchanged.

Mountain Empire Unified School District Proposition 39 Program

Background

The CEC approved Mountain Empire Unified School District's EEP for \$459,915, consisting of \$45,833 for energy management services, \$9,167 for training, and \$404,915 for program implementation. The district used its program implementation funds for the following energy efficiency and renewable energy generation measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency and Renewable Energy Generation Measures	Reported Annual Cost Savings
Mountain Empire High	\$ 48,736	Exterior lighting fixture retrofit	\$ 4,382
Potrero Elementary	356,179	Photovoltaic (solar)	25,498
Total	<u>\$ 404,915</u>		<u>\$ 29,880</u>

With these energy efficiency measures, the district reported a combined SIR of 1.20 and the creation of 1.77 direct job-years.

In addition, the district received \$114,629 in planning funds directly from the CDE, which it used for screening and audits, an energy manager, and training.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

Sole-sourced project costs

The district sole-sourced its contracts with IES for its energy manager and training services (\$68,750), energy efficiency improvements and installation of solar systems (\$497,175), and facility energy master plan services (\$29,520). The district did not provide supporting documentation to show that it considered other vendors before awarding these contracts to IES. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$595,445.

However, CEC approved only \$574,544 for the district's EEP. Because we audited only the amount approved by the CEC in the district's final project completion report, we found that the district sole-sourced a total of \$574,544.

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

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

PUC section 388(b) states:

The Department of General Services or any other state or local agency intending to enter into an energy savings contract or a contract for an energy retrofit project may establish a pool of qualified energy service companies based on qualifications, experience, pricing, or other pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a competitive selection process to individuals or firms identified in the pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

No projected energy savings identified and/or no signed contracts

We reviewed the district's contract with IES, and determined that the contract does not identify the projected energy savings. In addition, the district did not have a signed contract with IES for its facility energy master plan services.

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

Final project completion report submitted late

The district's final report was submitted on July 1, 2019, 23 months after the reported project completion date of July 20, 2017.

PRC section 26240(b) states:

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

Recommendation

We recommend that the CDE take appropriate action to recover Proposition 39 funds that the district expended on sole-sourced project costs, in violation of PRC section 26235(c).

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

District's Response

We informed the district of the audit findings via email on March 11, 2021. The district did not respond to the audit findings.

Romoland School District Proposition 39 Program

Background

The CEC approved Romoland Elementary School District's EEP for \$839,484. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
Boulder Ridge Elementary	\$ 190,953	Interior lighting retrofit	\$ 30,422
Harvest Valley Elementary	375,467	Interior lighting retrofit; HVAC--Packaged/split system AC/Heat Pump/VRF	34,784
Mesa View Elementary	195,633	Interior lighting retrofit	35,799
Romoland Administration Office	33,341	Interior lighting retrofit	3,341
Romoland Elementary	44,090	Interior lighting retrofit	19,716
Total	<u>\$ 839,484</u>		<u>\$ 124,062</u>

*HVAC: Heating, ventilation, and air conditioning; AC: air conditioning; VRF: variable refrigerant flow

With these energy efficiency measures, the district reported a combined SIR of 1.58 and the creation of 4.70 direct job-years.

In addition, the district received \$42,400 in planning funds directly from the CDE, which it used for screening and audits.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issue:

Ineligible expenditures

We reviewed the district's accounting ledgers and found that it received and expended \$887,962 in Proposition 39 funds. However, the district's approved EEP, Number 5698, authorized only \$881,884 in Proposition 39 expenditures. Therefore, the district's expenditures, totaling \$5,808, in excess of the approved EEP amount constitute ineligible expenditures.

We notified CDE of the finding via email on June 14, 2021. The CDE responded by email on June 14, 2021, stating that it would contact the LEA.

PRC section 26235(f) states:

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

The CEC's 2016 *Program Implementation Guidelines* ("Energy Planning Funds Reservation Option," page 10) state:

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

The CEC's 2016 *Program Implementation Guidelines* ("Unused Energy Planning Awards," page 13) also state that "Any unused energy planning funds shall be applied toward implementing eligible energy project(s) approved as part of an LEA's energy expenditure plan(s)."

Final project completion report submitted late

The district's final report was submitted on November 25, 2019, 17 months after the reported project completion date of June 30, 2018.

PRC section 26240(b) states:

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

Recommendation

We recommend that the CDE take appropriate action to recover Proposition 39 funds that the district expended on project costs that are not in compliance with the 2016 *Program Implementation Guidelines*.

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

District's Response

We informed the district of the audit findings via email on February 16, 2021. Keith Bacon, Chief Business Official, responded by letter dated February 26, 2021. The district's response letter is included as Attachment D.

The district's response to Finding 6 – Final project completion report submitted late, is as follows:

The district regrets this tardiness of filing. There were various vendor-related issues that delayed the completion of these documents and as a result, they were submitted late. It is always the intention of the district to submit documentation within required deadlines, and this is an unusual occurrence for these to have been submitted late. In the future, we will provide a better framework [for] submissions of this type.

The district's response to Finding 3 – Ineligible expenditures, is as follows:

The district is holding these funds in reserve to be collected by the California Department of Education (CDE) or to be utilized as instructed, once we have received guidance. A project of this magnitude is likely to have a different final expenditure total than planned and this is the result [of] such an occurrence. In future projects, we will be mindful of the planning process to ensure complete expenditure of all revenues collected for projects such as this.

San Francisco Unified School District Proposition 39 Program

Background

The CEC approved San Francisco Unified School District's EEP for \$1,177,670, consisting of \$205,200 for energy management services and \$972,470 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
Chin (John Yehall) Elementary	\$ 427,470	Interior lighting fixture retrofit; DHW (domestic hot water) heater; HVAC—chiller/boiler replacement; building envelope—windows/skylights	\$ 3,525
El Dorado Elementary	545,000	Interior lighting fixture retrofit; HVAC—chiller/boiler replacement; building envelope—windows/skylights	4,858
Total	<u>\$ 972,470</u>		<u>\$ 8,383</u>

*HVAC: Heating, ventilation, and air conditioning

With these energy efficiency measures, the district reported a combined SIR of 1.33 and the creation of 5.45 direct job-years.

In addition, the district received \$723,104 in planning funds directly from the CDE, which it used for screening and audits, and program assistance.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

Sole-sourced project costs

The district sole-sourced its contract, totaling \$32,074, with Strategic Energy Innovations for several different services, including conservation management. The district did not provide supporting documentation to show that it considered other vendors before awarding its contract to Strategic Energy Innovations. Therefore, we found that the district sole-sourced this Proposition 39 contract, totaling \$32,074.

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

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

PUC section 388(b) states:

The Department of General Services or any other state or local agency intending to enter into an energy savings contract or a contract for an energy retrofit project may establish a pool of qualified energy service companies based on qualifications, experience, pricing, or other

pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a competitive selection process to individuals or firms identified in the pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

No projected energy savings identified and/or no signed contract

We reviewed the district's contracts with Vila Construction, and Zolman Construction & Development, and determined that the contracts do not identify the projected energy savings.

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

Recommendation

We recommend that the CDE take appropriate action to recover Proposition 39 funds that the district expended on sole-sourced project costs, in violation of PRC section 26235(c).

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

District's Response

We informed the district of the audit findings via email on May 20, 2021. The district did not respond to the audit findings.

San Juan Unified School District Proposition 39 Program

Background

The CEC approved San Juan Unified School District's EEP Number 1895 for \$683,383, consisting of \$62,000 for energy management services and \$621,383 for program implementation. In addition, the CEC approved the district's EEP Number 1897 for \$1,796,672. The district used its program implementation funds for the following energy efficiency and renewable energy generation measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency and Renewable Energy Generation Measures*	Reported Annual Cost Savings
<u>EEP #1895:</u>			
Encina Preparatory High	\$ 587,510	Interior/exterior lighting fixture retrofit; HVAC—chiller/boiler replacement	\$ 26,755
Transportation Center – San Juan Unified	33,873	Exterior lighting fixture retrofit	2,065
Total, EEP #1895	<u>\$ 621,383</u>		<u>\$ 28,820</u>
<u>EEP #1897:</u>			
Bella Vista High	\$ 1,796,672	Interior lighting fixture retrofit; photovoltaic (solar)	\$ 122,680
Total, EEP #1897	<u>\$ 1,796,672</u>		<u>\$ 122,680</u>

*HVAC: Heating, ventilation, and air conditioning

With the energy efficiency measures from EEP Number 1895, the district reported a combined SIR of 1.16 and the creation of 3.48 direct job-years. With the energy efficiency and renewable energy generation measures from EEP Number 1897, the district reported a combined SIR of 1.11 and the creation of 7.55 direct job-years.

In addition, the district received \$536,164 in planning funds directly from the CDE, which it used for screening and audits, program assistance, and an energy manager.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

No projected energy savings identified and/or no signed contract

The district did not have a signed contract with Innovative Construction Services for its Proposition 39 planning services. For EEP Number 1895 and EEP Number 1897, we reviewed the district's contracts with IES and determined that the contracts do not include the projected energy savings.

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

Final project completion report submitted late

For EEP Number 1895, the district's final report was submitted on November 4, 2019, 23 months after the reported project completion date of December 31, 2017.

PRC section 26240(b) states:

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

Recommendation

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

District's Response

We informed the district of the audit findings via email on May 6, 2021. The district did not respond to the audit findings.

Sunnyside Union School District Proposition 39 Program

Background

The CEC approved Sunnyside Union Elementary School District's EEP for \$218,192, consisting of \$21,779 for energy management services, \$4,356 for training, and \$192,057 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures	Reported Annual Cost Savings
Sunnyside Elementary	\$ 192,057	Interior/exterior lighting retrofit; interior linear fluorescent relamping; HVAC Controls–Energy Management System	\$ 10,056

*HVAC: Heating, ventilation, and air conditioning

With these energy efficiency measures, the district reported a combined SIR of 1.11 and the creation of 1.08 direct job-years.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

Unspent funds

The district was awarded \$272,590 in implementation funds. The district used only \$227,443 of its implementation funds. Therefore, the district has total unspent funds of \$45,147.

On February 22, 2021, we notified CDE of the unspent funds. Prior to issuance of this report, CDE followed up with the district to recover the unspent funds.

The CEC's 2016 *Program Implementation Guidelines* state on page 5:

The SSPI is responsible for administering awards to LEAs that serve grades K-12 students. These funds may be used by LEAs for energy efficiency and clean energy projects, related energy planning, energy training, energy management, and energy projects with related non-energy benefits. LEAs are required to submit an energy expenditure plan to the Energy Commission for consideration and approval. Funds are released to the LEA only after the Commission approves an LEA's energy expenditure plan(s).

PRC section 26240(b) states, "As a condition of receiving funds from the Job Creation Fund...the entity shall submit a report of its project expenditures to the Citizens Oversight Board...."

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

No projected energy savings identified and/or no signed contract

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

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

Recommendation

We recommend that the district return the unspent funds to the State. Although the Proposition 39 program has ended, the unspent funds must be returned.

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

District’s Response

We informed the district of the audit findings via email on February 22, 2021. Steve Tsuboi, Superintendent-Principal, responded by letter dated March 2, 2021. The district’s response letter is included as Attachment E.

The district’s response to Finding 2 – Unspent funds, is as follows:

The district agrees with this finding and currently has these funds in an identified account, pending request for return.

The district’s response to Finding 5 – No projected energy savings identified and/or no signed contract, is as follows:

The district agrees with the finding, although the Projected Energy Savings is located in other documents. The district provided such documents from Trane and an email response from IES and their justification.

Thermalito Union Elementary School District Proposition 39 Program

Background

The CEC approved Thermalito Union Elementary School District's EEP for \$590,003, which consists of \$11,599 for an energy manager and \$578,404 for program implementation. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Reported Annual Cost Savings
District Office	\$ 14,277	Interior/exterior lighting retrofit; HVAC Controls– Programmable/Smart Thermostats	\$ 924
Heritage Community Day	20,648	Interior/exterior lighting retrofit; HVAC Controls– Programmable/Smart Thermostats	646
Maintenance	11,510	Interior/exterior lighting retrofit	1,049
Nelson Avenue Middle	176,814	Interior/exterior lighting retrofit; HVAC Controls– Programmable/Smart Thermostats; retrofit interior lamps to LED; LED exit signs	8,813
Pioneer Community Day	17,163	Interior/exterior lighting retrofit; HVAC Controls– Programmable/Smart Thermostats	609
Plumas Avenue Elementary	99,569	Programmable/Smart Thermostats; retrofit interior lamps to LED	5,748
Poplar Avenue Elementary	112,442	Interior/exterior lighting retrofit; HVAC Controls– Programmable/Smart Thermostats; retrofit interior lamps to LED	6,548
Sierra Avenue Elementary	125,981	Interior/exterior lighting retrofit; HVAC Controls– Programmable/Smart Thermostats; HVAC– Packaged/split system AC/heat pump/VRF	5,475
Total	<u>\$ 578,404</u>		<u>\$ 29,812</u>

*HVAC: Heating, ventilation, and air conditioning; LED: light-emitting diode; VRF: variable refrigerant flow

With these energy efficiency measures, the district reported a combined SIR of 1.06 and the creation of 3.24 direct job-years.

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CEC's 2016 *Program Implementation Guidelines* and EEP Handbook. We identified the following audit issues.

No projected energy savings identified and/or no signed contract

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

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

Final project completion report submitted late

The district's final report was submitted on September 25, 2019, 19 months after the reported project completion date of February 28, 2018.

PRC section 26240(b) states:

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

Recommendation

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

District's Response

We informed the district of the two audit findings via email on February 16, 2021. Cody Walker, Assistant Superintendent, responded via email on February 17, 2021, stating that the district does not have a response to the findings.

Allan Hancock Joint Community College District Proposition 39 Program

Background

The California Community Colleges Chancellor's Office (CCCCO) approved Allan Hancock Joint Community College District's Proposition 39 Funding Application (Form B) for \$1,061,036. The district used its program implementation funds for the following renewable energy generation measure:

School Site	Proposition 39 Share Used at School Site	Renewable Energy Generation Measures*	Year 1 Cost Savings	Savings-to- Investment Ratio	Direct Job-Years Created
ALLANH-1617-001 Lompoc Valley Center	\$ 1,061,036	20 kW PV System			
Total	<u>\$ 1,061,036</u>		<u>\$ 45,509</u>	<u>1.27</u>	<u>4.50</u>

*kW: Killwatt; PV: photovoltaic

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CCCC's *Proposition 39 Implementation Guidelines*. We identified the following audit issues.

Sole-sourced project costs

The district sole-sourced its contracts with the following vendors:

- JMPE Electrical Engineering Lighting Design (JMPE) – \$9,200 for engineering services;
- Ravatt, Albrecht & Associates Inc. – \$29,265 for design and bidding construction;
- John R. Byerly Inc. – \$23,059 for engineering and inspection;
- Tom Little Inspection – \$30,515 for DSA inspection services; and
- J&P Construction, Inc. – \$34,513 for accessible parking lot resurfacing.

The district did not provide supporting documentation to show that it considered other vendors before awarding contracts to JMPE, Ravatt, Albrecht & Associates Inc., John R. Byerly Inc., Tom Little Inspection, and J&P Construction, Inc. Therefore, we found that the district sole-sourced these Proposition 39 contracts, totaling \$126,552.

In addition, we found that the contract with J&P Construction, Inc., totaling \$34,513, was for ineligible expenditures (see “Ineligible expenditures,” on page A50).

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

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

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

The CCCCCO’s *Proposition 39 Implementation Guidelines* (“Step 9. Fully Develop Project Workscope, Schedule and Contracts for Project Implementation,” page 21) states, in part:

Districts shall not use a sole-source process to award grant proceeds. Districts may use the best-value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds. Best value is defined as “a value determined by objective criteria related to price, features, functions, and life-cycle costs.”

Exhibit N (Contracting “Best Practices” Fact Sheet) of the CCCCCO’s *Proposition 39 Implementation Guidelines* states:

To fully comply with that “Best Value” criteria and the prohibition against sole source contracting when utilizing [its] Prop 39 funds, a District will need to engage in a two-step process that accomplishes the following:

1. Request for Qualification (RFQ): Pre-qualifies energy project contractors based on several criteria including energy project history, team member qualifications, firm financial viability, and experience working with Community Colleges, **AND**
2. Request for Proposals (RFP): Identifies and evaluates the specific project workscope, schedule, and other requirements where multiple contractors (at least two, three would be better) submit proposals for District evaluation and consideration. Typically, the RFP should include the following elements and respondent submittal requirements:
 - Proposed workscope
 - Request price and life-cycle economics
 - Technical proposal and identification of specific equipment to be installed
 - Energy savings
 - Project approach
 - Schedule
 - Exceptions

Exhibit N continues:

A comprehensive RFQ/RFP evaluation process should always be used when implementing Proposition 39 funded projects. This process can either be combined into a single solicitation, or can use a two-step, separate RFQ & RFP process.

Ineligible expenditures

We reviewed the invoice from Jeff Ploutz Construction, Inc. (dba J&P Construction), and determined that the district applied Proposition 39 funds to project costs not included in the application approved by the CCCCCO. The district's contractor for the solar installation project, Elevated Solar Performance, Inc., did not submit a change order for asphalt repair or indicate that it was required. In addition, the district described the scope of work as "ADA Parking Lot Resurfacing" and did not execute a contract with J&P Construction, Inc., which would have clarified the scope of work involved. Therefore, we found that \$34,513 for resurfacing the accessible parking lot is ineligible for Proposition 39 funding. As discussed earlier in these audit results, we also found that this amount was sole-sourced.

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

The CCCCCO's *Proposition 39 Implementation Guidelines* ("Step 10. Energy Project Implementation," page 22) states:

Districts will be responsible for the implementation of projects funded by Proposition 39. If, after approval and during implementation of a project, the scope changes such that the energy savings, construction costs, or cost-effectiveness are significantly affected, the Chancellor's Office will require that Districts provide a revised Project Application (Form B) documenting the change of scope....

Step 10 of the CCCCCO's *Proposition 39 Implementation Guidelines* also includes "adding a project not included in the approved Funding Application" in the list of significant changes.

No projected energy savings identified and/or no signed contract

We reviewed the district's supporting documentation and found that no contract was prepared for services provided by J&P Construction.

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

The CCCCCO's *Proposition 39 Implementation Guidelines* ("Step 9. Fully Develop Project Workscope, Schedule and Contracts for Project Implementation," page 21) states, "Projects funded by awards shall require contracts that identify the project specifications, costs, and projected energy savings."

Recommendation

We recommend that the CCCCCO take appropriate action to recover Proposition 39 funds that the district expended on sole-sourced project costs, in violation of PRC section 26235(c).

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

District's Response

We informed the district of the three audit findings via email on May 19, 2021. Laura Becker, Director of Business Services, responded via email on June 1, 2021.

The district's response to Finding 1 – Sole-sourced project costs, is as follows:

It is the District's belief that the contracts in question were appropriately procured at the time the contracts were signed. During the time of this project, the District moved to a new financial system and our Purchasing Supervisor's computer hard drive [which stored most, if not all, of the procurement records] crashed.... The Business Services offices have since moved to storing all documents on a server to prevent this from re-occurring in the future. In addition, all of the Allan Hancock employees associated with this project have since retired. The District has completed an extensive search of email accounts of those employees and was unable to locate documentation to substantiate that appropriate procurement provisions were followed.

The district's response to Finding 3 – Ineligible expenditures, is as follows:

The District concurs that it did not submit a revised Project Application (Form B) to the Chancellor's Office documenting the change in scope for the additional expense of the ADA Parking Lot Resurfacing.

The district's response to Finding 5 – No projected energy savings identified and/or no signed contract, is as follows:

The District has adopted the State of California Uniform Public Construction Cost Accounting (CUPCCA) informal bidding procedures. Public Contract Code 22032 states "... (b) Public projects of two hundred thousand dollars (\$200,000) or less may be let to contract by informal procedures...". The District followed the CUPCCA procurement process for the contract in question.

SCO Comment

Our findings and recommendation remains unchanged.

Although the district adopted the CUPCCA informal bidding procedures, the scope of our audit is to ensure compliance with applicable state statutes and regulations, which require that all projects shall require contracts that identify the project specifications, costs, and projected energy savings.

Foothill–De Anza Community College District Proposition 39 Program

Background

The CCCCO approved Foothill–De Anza Community College District’s Proposition 39 Funding Application (Form B) for \$2,726,499. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Year 1 Cost Savings	Savings-to- Investment Ratio	Direct Job-Years Created
FOOTHI-1314-005					
De Anza College	\$ 545,848	Pool boiler and distribution retrofit			
De Anza College	133,326	HHW pump VFD retrofit			
	<u>679,174</u>		<u>\$ 53,215</u>	<u>1.64</u>	<u>4.00</u>
FOOTHI-1415-006					
Foothill College	195,548	Foothill library boiler replacement and pump upgrade with VFD			
	<u>195,548</u>		<u>5,701</u>	<u>1.64</u>	<u>1.11</u>
FOOTHI-1718-001					
De Anza College	882,239	ATC central chilled water plant cooling towers			
	<u>882,239</u>		<u>74,327</u>	<u>1.66</u>	<u>4.94</u>
FOOTHI-1718-002					
De Anza College	969,538	De Anza exterior LED & stelling garage LED			
	<u>969,538</u>		<u>57,974</u>	<u>1.58</u>	<u>5.43</u>
Total	<u>\$ 2,726,499</u>		<u>\$191,217</u>		

*HHW: Heating hot water; VFD: variable-frequency drive; ATC: Automatic Temperature Control; LED: light-emitting diode

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CCCCO’s *Proposition 39 Implementation Guidelines*. We identified the following audit issues.

Sole-sourced project costs

The district sole-sourced its contracts with the following vendors:

- Gilbane Building Co. – \$88,078 for construction and design management;
- Axiom Engineers Inc. – \$117,900 for design and professional services;
- HP Inspections Inc. – \$5,620 for special inspections and construction; and
- Clean Harbors Environmental Services Inc. – \$8,143 for cleaning and pressure washing cooling towers.

The district did not provide supporting documentation to show that it considered other vendors before awarding contracts to Gilbane Building Co., Axiom Engineers Inc., HP Inspections Inc., and Clean Harbors Environmental Services Inc.. Therefore, the district sole-sourced these Proposition 39 contracts, totaling \$219,741.

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

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

The CCCCCO’s *Proposition 39 Implementation Guidelines* (“Step 9. Fully Develop Project Workscope, Schedule and Contracts for Project Implementation,” page 21) states, in part:

Districts shall not use a sole-source process to award grant proceeds. Districts may use the best-value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds. Best value is defined as “a value determined by objective criteria related to price, features, functions, and life-cycle costs.”

Exhibit N (Contracting “Best Practices” Fact Sheet) of the CCCCCO’s *Proposition 39 Implementation Guidelines* states:

To fully comply with that “Best Value” criteria and the prohibition against sole source contracting when utilizing [its] Prop 39 funds, a District will need to engage in a two-step process that accomplishes the following:

1. Request for Qualification (RFQ): Pre-qualifies energy project contractors based on several criteria including energy project history, team member qualifications, firm financial viability, and experience working with Community Colleges, **AND**
2. Request for Proposals (RFP): Identifies and evaluates the specific project workscope, schedule, and other requirements where multiple contractors (at least two, three would be better) submit proposals for District evaluation and consideration. Typically, the RFP should include the following elements and respondent submittal requirements:
 - Proposed workscope
 - Request price and life-cycle economics
 - Technical proposal and identification of specific equipment to be installed
 - Energy savings
 - Project approach
 - Schedule
 - Exceptions

Exhibit N continues:

A comprehensive RFQ/RFP evaluation process should always be used when implementing Proposition 39 funded projects. This process can either be combined into a single solicitation, or can use a two-step, separate RFQ & RFP process.

No projected energy savings identified and/or no signed contract

We reviewed the district's contracts with Environmental Systems Inc., Kitchell CEM Inc., Comfort Dynamics Inc., and Clear Blue Energy Corp., and determined that the contracts do not identify the projected energy savings. In addition, no contract was prepared for services provided by American Reprographics Co.

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

The CCCCCO's *Proposition 39 Implementation Guidelines* ("Step 9. Fully Develop Project Workscope, Schedule and Contracts for Project Implementation," page 21) states, "Projects funded by awards shall require contracts that identify the project specifications, costs, and projected energy savings."

Recommendation

We recommend that the CCCCCO take appropriate action to recover Proposition 39 funds that the district expended on sole-sourced project costs, in violation of PRC section 26235(c).

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

District's Response

We informed the district of the audit finding via email on May 19, 2021. Susan Cheu, Vice-Chancellor, Business Services, responded by letter dated June 1, 2021. The district's response letter is included as Attachment F.

The district's response to Finding 1 – Sole-sourced project costs, is as follows:

Gilbane Building Co. – This contract leveraged the competitive bid award RFP No. 1073 to Gilbane for Construction Management / Program Management awarded in 2007 as part of District Measure C.

This contract was separate from, but related to an existing Measure C project contract with Gilbane for the provision of long-term construction/project management services. As such, Gilbane is an integral part of District's construction/program management services, and thus uniquely qualified.

In addition, the Public Contract Code § 20652 allows us to leverage other agencies competitive bid contracts, in this case we leveraged our own competitive bid contract. By leveraging the competitive bid procurement process and existing relationship with Gilbane, they were able to begin work immediately and expedite the project.

Axiom Engineers – The original agreement (\$99,800) was submitted to the governing board and approved on 04/02/2018. This contract was awarded based on Government Code §53060 Special/Professional Services. Note the Board Agenda item states "... during the contracting phase, Axiom will assist in the bid process." A subsequent change order in the amount of \$18,100 was approved by the governing board on 02/04/2019.

HP Inspectors – This contract did not exceed the District’s small purchase threshold (per Purchasing Policy BP 3140, contracts greater than \$10,000 require competitive bid process) which is stricter than Federal small purchase threshold of \$100,000.

In addition, special/professional services are not required to go out to bid per Government Code 4525.

Clean Harbors – this contract leveraged the competitive bid award RFP No. 1739 [Hazardous Materials] Waste Collection Services approved by the governing board on 12/07/2015.

This contract was separate but related to the hazardous material services provided by Clean Harbors in the RFP, and awarded through the [California Uniform Public Construction Cost Accounting Act] process.

In addition, this separate contract did not exceed the District’s small purchase threshold (per Purchasing Policy BP 3140, contracts greater than \$10,000 require competitive bid process) which is stricter than [the] Federal small purchase threshold of \$100,000.

The district’s response to Finding 5 – No projected energy savings identified and/or no signed contract, is as follows:

The district was under the impression that the project review by NAM [Newcomb Anderson McCormick] would suffice to meet the requirement for statement of energy savings. It acknowledges that it did not include this information in the noted contracts....

[Regarding] American Reprographics Co., due to the low dollar amount, this [contract] was not required to go to bid.

SCO Comment

Our findings and recommendation remain unchanged.

The scope of our audit was to ensure compliance with state statutes and regulations. The district cites reliance on Government Code section 53060, Public Contract Code section 20652, and its own procurement policies to support its use of sole-sourced contracts. However, PRC section 26235(c) states:

A community college district or LEA shall not use a sole source process to award funds pursuant to this chapter. A community college or LEA may use the best value criteria *as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code* to award funds pursuant to this chapter [emphasis added].

Furthermore, the CCCCCO’s *Proposition 39 Implementation Guidelines* (“Step 9. Fully Develop Project Workscope, Schedule and Contracts for Project Implementation,” page 21) states, in part,

These Guidelines defer to the District’s own procurement regulations and procedures *as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified below:*

- Projects funded by awards shall require contracts that identify the project specifications, costs, and projected energy savings.

- Districts shall follow applicable law related to contractor qualifications, licensing, and certification requirements related to the project.
- Districts shall not use a sole-source process to award grant proceeds. Districts may use the best value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds. Best value is defined as “a value determined by objective criteria related to price, features, functions, and life-cycle costs” [emphasis added].

As noted in the body of the finding, Exhibit N of the CCCCCO’s *Proposition 39 Implementation Guidelines* provides additional guidance for college districts on how to best comply with the Proposition 39 Program prohibition against sole-source bids.

Concerning the district’s contract with Gilbane Building Co., the bidding process cited in the district’s response took place in 2006. The initial contract with Gilbane Building Co., which resulted from that bidding process, was in effect from July 1, 2008, through June 30, 2009. The Proposition 39 contract with Gilbane Building Co. was in effect from January 1, 2019, through December 31, 2019. Because the RFQ process was conducted 13 years prior to the Proposition 39 project and involved the issuance of two separate contracts for widely different time periods, we concluded that the district relied on its previous experience with this vendor rather than conducting a new bidding process. A competitive bidding process would have allowed other vendors to compete for the related energy work at the district.

Therefore, although the district followed other provisions contained in state statutes related to contracting, and its own procurement regulations and procedures, we found that it did not follow the requirements of PRC section 26235(c) for its contracts with Gilbane Building Co., Axiom Engineers Inc., HP Inspections Inc., and Clean Harbors Environmental Services Inc.

Glendale Community College District Proposition 39 Program

Background

The CCCCCO approved Glendale Community College District's Proposition 39 Funding Application (Form B) for \$1,913,134. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Year 1 Cost Savings	Savings-to- Investment Ratio	Direct Job-Years Created
GLENDAL-1415-001					
Glendale Community College	\$ 80,165	Advanced Tech HVAC Controls–Economizer – Electric Savings			
Glendale Community College	116,082	Advanced Tech HVAC Controls–Economizer – Gas Savings			
Glendale Community College	116,082	Library HVAC Controls–Economizer – Electric Savings			
Glendale Community College	116,082	Library HVAC Controls–Economizer – Gas Savings			
	<u>428,411</u>		<u>\$ 41,983</u>	<u>1.39</u>	<u>3.52</u>
GLENDAL-1718-001					
Glendale Community College	<u>599,402</u>	Stadium Lighting Retrofit			
	<u>599,402</u>		<u>\$ 14,355</u>	<u>1.39</u>	<u>3.46</u>
GLENDAL-1718-002					
Glendale Community College	<u>195,232</u>	Verdugo Gym BAS Upgrade			
	<u>195,232</u>		<u>\$ 19,389</u>	<u>1.39</u>	<u>2.00</u>
GLENDAL-1718-003					
Glendale Community College	<u>690,089</u>	San Gabriel BAS Upgrade			
	<u>690,089</u>		<u>\$ 51,325</u>	<u>1.39</u>	<u>6.62</u>
Total	<u>\$ 1,913,134</u>		<u>\$ 127,052</u>		

*HVAC: Heating, ventilation, and air conditioning; BAS: building automation system

Audit Results

We audited Proposition 39 program costs to ensure compliance with the Job Creation Fund program guidelines, as well as the CCCCCO's *Proposition 39 Implementation Guidelines*. We identified the following audit issue.

No projected energy savings identified and/or no signed contract

We reviewed the district's contracts with Rosendin Electric for the Stadium Lighting project, Sunbelt Controls for the Verdugo Gym – BAS project, and Emcor Services (Mesa Energy Systems, Inc.) for the San Gabriel – BAS project, and determined that the contracts do not identify the projected energy savings.

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

The CCCCCO's *Proposition 39 Implementation Guidelines* ("Step 9. Fully Develop Project Workscope, Schedule and Contracts for Project Implementation," page 21) states, "Projects funded by awards shall require contracts that identify the project specifications, costs, and projected energy savings."

Recommendation

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

District's Response

We informed the district of the audit findings via email on May 20, 2021. Susan Courtney, Director of Business Services, responded by letter dated June 1, 2021. The district's response letter is included as Attachment G.

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

The projected and expected energy savings for the District's energy conservation measures were included in the Energy Efficiency Measure (EEM) Matrix as part of Board Resolution No. 24-2018-2019 approved at the June 18, 2019 board meeting. The Prop 39 EEMs (1-4) were noted as such in the matrix submitted in support of the energy conservation measures.

The scopes of work and the specifications that were required to be implemented by qualified contractors to generate the savings were included in the RFPs issued for each respective project. Due to the complexity of the systems and the fact that all components of the systems need to work together to achieve the optimum savings, each RFP listed very detailed scopes of work and specifications along with the expectations for the contractor's installation and the required performance of those systems. The contractor requirements also included the commissioning and an extended guarantee for the systems.

The energy savings numbers were not expressly included in the RFPs partially because it would have created confusion around whether or not a contractual savings guarantee was required by respective bidders rather than the system as a whole and more importantly would have limited the contractor's that would have been able to respond. The college was looking for contractors with the most cost effective skilled trade labor to implement the systems as a whole. Traditional mechanical, electrical, and controls contractors don't necessarily have in-house energy engineers and might have considered themselves disqualified by an RFP with implied energy savings guarantees. In order to make sure the most qualified contractors responded to the RFPs and at the lowest cost, the energy savings and project budgets included in Board Resolution No. 24-2018-2019 were generated by the District, prior to the projects and associated RFPs being approved by the Board.

The systems covered under the agreement are complex and are a combination of following components:

- The projected energy savings approved by the Board Resolution
- The comprehensive specifications of the RFP
- The obligations under the individual contracts
- The required performance of the system

Based upon the foregoing, it is the District's position that these components taken as whole would equate to contracts that identify project specification, costs, and projected energy savings that would fall within the intent of PRC Section 26206(d).

SCO Comment

Our finding remains unchanged.

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

San Francisco Community College District Proposition 39 Program

Background

The CCCCCO approved San Francisco Community College District's Proposition 39 Funding Application (Form B) for \$2,483,902. The district used its program implementation funds for the following energy efficiency measures:

School Site	Proposition 39 Share Used at School Site	Energy Efficiency Measures*	Year 1 Cost Savings	Savings-to- Investment Ratio	Direct Job-Years Created
SANFRA-1516-001					
San Francisco Downtown CC Center	\$ 602,567	Downtown Center–Boiler Replacement			
San Francisco Downtown CC Center	456,138	Downtown Center–VFD add-on to CHW and HHW Pumps			
San Francisco Downtown CC Center	363,795	Downtown Center–Replace chiller			
San Francisco Downtown CC Center	132,778	Downtown Center–Replace cooling tower			
San Francisco Downtown CC Center	439,940	Downtown Center–Controls upgrade			
San Francisco Downtown CC Center	358,078	Downtown Center–AHU motor VFDs and controls			
San Francisco Downtown CC Center	130,606	Downtown Center–AHU motor replacement			
Total	<u>\$ 2,483,902</u>		<u>\$ 188,644</u>	<u>1.18</u>	<u>19.75</u>

*VFD: Variable-frequency drive; CHW: chilled water; HHW: heating hot water; AHU: air handling unit

Audit Results

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

No projected energy savings identified and/or no signed contract

We reviewed the district's contract with Southland Industries, and determined that the contract does not identify the projected energy savings.

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

The CCCCCO's *Proposition 39 Implementation Guidelines* ("Step 9. Fully Develop Project Workslope, Schedule and Contracts for Project Implementation," page 21) states, "Projects funded by awards shall require contracts that identify the project specifications, costs, and projected energy savings."

Recommendation

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

District's Response

We informed the district of the audit finding via email on March 15, 2021. Marian Lam, Assistant Director of Capital Planning, responded via email on March 25, 2021.

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

The district's contract with Southland Industries comprises scope of work and basis of design of projected energy savings as identified by Enpowered Solutions (formerly Enernoc and Cogent Energy) and energy calculations provided by Newcomb Anderson McCormick (NAM).

1. Enpowered Solutions prepared a report for the District with energy savings measures for Prop. 39 along with project scope. The Downtown Center was one of those identified projects.
2. NAM (now Wildan Energy) assisted the District with completing all required Prop. 39 paperwork for submission to the State. NAM provided the energy calculations based on the design and submitted it and received approval for the Prop. 39 funding.
3. The design team from S&K Engineers provided engineering for the scope of the project as outlined by Enpowered, and developed plans and specifications for bidding based on the projected energy savings calculations from NAM that [were] approved by the State for Prop. 39 funding.
4. The district awarded the contract to Southland Industries. On Page 2 of 4 of the Agreement Form it is stipulated that:

The parties hereto incorporate by reference herein the Contract Documents, which include:

1. The Drawings and Specifications,
2. The General Conditions and any Supplemental or Special Conditions,
3. The Bid Documents (as Defined in the Instructions to Bidders), and
4. Any documents incorporated by reference into the foregoing documents.

The Energy Conservation Audit Report developed by Enpowered Solutions and the energy calculations provided by NAM are not specifically named in the contract documents but were reference documents shared with the engineer as the basis of design to create the project scope, generate drawings and specifications, and were integral in all aspects of this project. These reference documents were also shared with the contractor, Southland Industries, that constructed and executed the plans.

SCO Comment

Our finding remains unchanged.

We agree that the district identifies the projected energy savings in the Energy Conservation Audit Report prepared by Enpowered Solutions, and in the calculations provided by NAM. However, these two documents were not referenced as part of the district's contract documents. The scope of our audit is to ensure compliance with state statutes and regulations, which require that the projected energy savings be identified in the awarded contract.

**Attachment A—
Antelope Valley Union High School District's Response
to Audit Results**



June 22, 2021

By E-Mail: jvenneman@sco.ca.gov

Jim Venneman, CPA / Audit Manager
Liliana Juarez, Auditor
Office of the State Controller Betty T. Yee
Division of Audits, Compliance Audits Bureau
3301 C Street, Suite 725A
Sacramento, CA 95816

Re: Revised Audit Findings June 3, 2021

Dear Mr. Venneman and Ms. Juarez:

I write this letter in response to your June 3, 2021 email. In that correspondence, you indicated that your office had conducted an audit of the Antelope Valley Union High School District's ("District") Proposition 39 expenditures spanning from July 1, 2019 through June 30, 2020. You further stated that your office had identified several "audit issue(s)" regarding the District's contract with Trane U.S., Inc. ("Trane") for the design and installation of energy efficiency measures ("Project") and other related contracts. In this letter, we respond to each issue.

As an initial matter, we emphasize that, despite any potential discrepancies identified, the Project undeniably served to advance the purposes of Proposition 39. The Legislature has indicated that Proposition 39's primary objectives include "[c]reat[ing] good-paying energy efficiency and clean energy jobs in California" and "[p]utt[ing] Californians to work repairing and updating schools and public buildings to improve their energy efficiency and mak[ing] other clean energy improvements that create jobs and save energy and money." (Pub. Resources Code, § 26201, subds. (a), (b).) The Project, as evidenced by the District's Energy Expenditure Plan ("EEP"), achieved these goals, as it created an estimated 21.46 direct job-years and generated the following: (1) total demand savings of 1,034 kilowatts; (2) annual electric savings of 1,989,031 kilowatt-hours; and (3) annual cost savings of \$183,407.14. The District has worked with due diligence to achieve these goals and has, at all times, made a good faith effort to comply with Proposition 39.

Sole-Sourced Funds

Your office made the following finding:

The district contracted with Atkinson Law Firm for legal services, Lozano Smith Law Firm for legal services, and Brian Hayes for inspection services. The district did not provide any documentation to show that it considered other vendors/agencies when it awarded the



contracts to Atkinson Law Firm for \$945, Lozano Smith Law Firm for \$6,938, and Brian Hayes for \$9,900. Therefore, we found that \$17,243 of Prop 39 funds were sole-sourced.

The District believes that it acted in good faith and complied with the relevant program requirements in entering into these contracts.

A. It was not Clear that Proposition 39's Limitation on Sole Sourcing Applied to these Contracts.

Public Resources Code section 26235(c) ("Section 26235(c)") provides that an "LEA shall not use a sole source process to award funds pursuant to this chapter. [An] LEA may use the best value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter." Notably, Section 26235(c) does not define the term "sole source" or describe the precise scope of the sole source limitation.

Section 26235(c) provides that an "LEA may use the best value criteria as defined in paragraph (1) of subdivision (c) of Section 20133 of the Public Contract Code to award funds pursuant to this chapter." Public Contract Code section 20133, which has since been **repealed and replaced** with Public Contract Code section 22161, defines the term "best value" in the context of design-build projects. (See Pub. Contract Code, § 22161, subd. (a).) In the absence of other clear statutory language or guidance, it was not clear that the sole source limitation also applied to the retention of project consultants, such as legal counsel or the project inspector.

B. The District complied with the Sole Source Limitation even if it applied to these Contracts.

Section 26235(c) limits sole sourcing but otherwise provides little detail regarding the procurement methods that an LEA may use in the Proposition 39 context. Importantly, however, the California Energy Commission ("CEC"), in its "Frequently Asked Questions California Clean Energy Jobs Act (Proposition 39)," ("FAQ") sheds some light on this issue, indicating that an "**LEA shall defer to [its] own procurement regulations and procedures, as long as they reflect applicable state and local laws and regulations and do not conflict with the minimum legal standards specified above.**" (FAQ (2020) California Energy Commission, at p. 27 <https://www.energy.ca.gov/sites/default/files/2020-05/prop39_k-12_fa_q_ada.pdf> [as of Mar. 18, 2020].)

Here, the District used its own procurement regulations and applicable law. Public Contract Code section 20111 and corresponding California Department of Education guidance indicate that a school district, as of 2016, did not need to competitively bid contracts for services that were valued at less than \$87,800. (Pub. Contract Code, § 20111, subd. (a)(1).) Government Code section 53060 also permits a school district to "contract with and employ any persons for the furnishing [of] special services and advice in financial, economic, accounting, engineering, legal, or administrative matters," without bid or with a very informal process.

The contracts at issue are for legal and inspection services and thus fall within the purview of Government Code section 53060. (See also Education Code sections 35041.5 and 35204.) Additionally, the contracts are valued at \$945; \$6,398; and \$9,900, respectively, and thus fall well-below the competitive bidding threshold. As a result, according to general procurement law and District policy, **the District was permitted to contract with “any person[]” for these services and was not required to undergo a competitive process.**

The Guidelines permit LEAs to follow their own procurement regulations and applicable law, so long as they do not conflict with the Proposition 39 standards. In this case, the District informally retained the firms and inspector in good faith and in compliance with longstanding law, based on the belief it did not conflict with the sole source limitation, as that limitation did not clearly apply to contracts for these services.

C. The District Did Not Sole Source these Contracts.

Finally, the District did not “sole source” these contracts. While Section 26235(c) does not define “sole source” as used in that section, Public Resources Code section 25620.5(e) presents analogous language, indicating that “single source” procurement involves choosing from “two or more parties.” This statute further explains that “sole source” procurement involves less competition than single source, seemingly implying that sole source procurement involves no form of choice between one option or another. (Pub. Resources Code, § 25620.5, subd. (e).) So it is reasonable to view “sole source” for the purposes of Proposition 39 to mean direct contracting with one vendor without even considering other vendors.

By using two different legal firms, by definition, the District did not Sole Source its legal representation.

Thus, the District substantially and in good faith complied with the sole source limitation.

Energy Savings

Your office made the following finding:

Although the district complied with contract agreement with Trane, the contract did not specify projected energy savings. Additionally, the district did not execute contracts with Atkinson, Andelson, Loya, Ruud & Romo Law Firm, or Lozano Smith, LLP.

The District believes that it acted in good faith and complied with the relevant program requirements in entering into these contracts.

A. Section 26206(d) Does not Apply to the District's Contracts with Atkinson and Lozano Smith.

Section 26206(d) provides, "All projects shall require contracts that identify the project specifications, costs, and projected energy savings." Section 26206(d) is limited to contracts for "projects," as that term is used in the context of Proposition 39. The relevant statutes do not define this term, but the Guidelines indicate that an "eligible energy project" is "[a]n energy efficiency measure or bundled group of energy efficiency measures and/or clean energy installations (in or at one or more school sites) within an LEA." (Guidelines, H-3.) Accordingly, Section 26206(d) must be read to mean that a contract for the implementation of energy efficiency measures must include a description of projected energy savings. Other related contracts—such as those for legal services—need not include this information.

Therefore, the District's contracts with Atkinson and Lozano Smith need not include estimates of the Project's energy savings.

B. The District's Contract with Trane Complied with Section 26206(d).

Section 26206(d) requires that a contract "identify" a project's "projected energy savings." **Neither the statute nor the Guidelines provide any guidance on how an LEA must satisfy this requirement.** For example, neither expressly requires this projection to be expressed as a dollar figure. As a result, LEAs were left with reasonable discretion to attempt to identify expected savings in good faith.

Here, the District's contract with Trane ("Contract") does, in fact, identify the Project's projected energy savings, although not in a specific dollar amount. Section 6 of the Contract states as follows:

Anticipated Savings. As required under SB 73, the District anticipates savings on energy expenditures to result from the Project in the amount determined by the approved CEC expenditure plan, over the life cycle of the Project. That anticipated sum exceeds the Total System Price by a ratio of at least 1.01.

The Contract identifies the District's anticipated energy savings in terms of a savings-to-investment ratio ("SIR"), which is recognized in the Guidelines as a measure of cost-effectiveness that is explicitly sanctioned by the CEC. (See Guidelines, p. 23 ["An eligible energy project must achieve a minimum savings-to-investment ratio (SIR) of 1.01 to be approved for a Proposition 39 award"].) The Guidelines provide the following explanation of this measurement:

This ratio compares the investment the LEA will make now with the dollar savings the LEA will realize from the energy savings of the eligible energy project. For every dollar invested in the eligible energy project, the LEA will accrue \$1.01 in savings. The SIR is



based on the cumulative present value of the savings benefits realized over the life of the eligible energy project.

(Guidelines, p. 23.)

Section 6 of the Contract states that the Project will yield an SIR of at least 1.01. The Contract indicates that the Project price is \$3,340,934; so, by multiplying this number by 1.01, one can reasonably understand from the face of the Contract that the District's anticipated savings are at least \$3,374,343.34. (Contract, Section 7.)

Additionally, the Contract states that the anticipated energy savings would be "in the amount determined by the approved CEC expenditure plan." (Contract, Section 6.)

The District could not articulate its anticipated savings with greater specificity at the time of contracting. Due to the structure of the Prop 39 program, the savings was based on the scope of work that could be accomplished. The scope of work in turn affected the contract price, and contract price was based on Prop 39 funding amount. In addition to identify the anticipated savings in Section 6, the parties accounted for this potential change in contract price in Section 7 of the Contract:

In order to minimize risk to the District, Trane will not procure any equipment or commence installation before receiving the following:

1) Approval of Energy Expenditure Plan submitted to the California Energy Commission

.....

The Total System Price for the total scope of work set forth in Exhibit 1 is \$3,340,934.00. The parties understand, however, that the District may not receive approval for the total scope of the work set forth in Exhibit 1. Therefore, the parties agree that in the event the total scope of work is not approved by CEC, the parties shall negotiate a lesser amount for the Total System Price to reflect the unapproved scope of work.

The parties were cognizant of the fact that the District's EEP had not yet been approved and that the Contract's scope of work could change as a function of the District's Proposition 39 allocations. Thus, the parties did not finalize the scope of work at the time of contracting. Accordingly, the District could not describe its anticipated energy savings in more specific terms, as the District did not yet know what energy efficiency measures would be implemented.

The District's submitted EEP thereafter described the Project's estimated energy savings in great detail. Specifically, the District presented its projected energy savings in terms of: (1) demand savings, measured in kilowatts; (2) annual electric savings, measured in kilowatt hours; and (3)



annual cost savings, measured in dollars. The District thereby reported its anticipated savings to the CEC.

In sum, the Contract identified the District's projected energy savings in terms of: (1) an SIR, which is a savings measurement that has been explicitly adopted by the CEC; and (2) the information presented in the District's EEP, which was reviewed and approved by the CEC. Since neither the relevant statutes nor the Guidelines establish that a contract must identify projected savings via any particular method or measurement, the method used by the District here substantially complied with the projected savings requirement.

It is evident that the District made a good faith effort to strictly and substantially comply with the requirements of Proposition 39 and did so to the greatest extent possible.

Unspent Implementation and Interest Income Funds

The District agrees with the SCO as to the amount of unused funds in the amount of \$46,373.00 and with the amount of interest earned for the duration of the project of \$15,829.00.

Additional Observation – Unused Planning Funds

The SCO has received information from CDE regarding the specific amounts provided to AVUHSD for Prop 39 projects, and those funds have been fully accounted for by the SCO.

During the course of construction, it was found that the initial contractor did not comply specifically with the Architects original drawings for the installation of the many air conditioning units. The District was required to issue a change order for those services. These costs were not part of the original EEP approved by the Energy Commission and therefore became an added cost to the District. It appears funds may have been transferred into Resource 62300.0 to cover the impending change order. The net change order was finalized at \$187,452, but was not paid from Resource 62300.0.

Resource 62300.0 currently has a balance of \$37,998.23, which is the initial amount the District accounted for as the difference between EEP funds received and expended. Those funds now reside in Object code 9520 to provide for reimbursement to the CDE. These are the only funds in Resource code 62300.0 at this time.

Sincerely,

Brian Hawkins
(Signed digitally)



Brian Hawkins
Assistant Superintendent of Business Services

**Attachment B—
Children of Promise Preparatory Academy’s Response
to Audit Results**



June 4, 2021

Dear Christine Kwong:

Children of Promise Preparatory Academy (COPPA) respectfully submits its response to the State Controller's Proposition 39 audit findings sent on June 1, 2021.

COPPA was forced to close in June 2020 due to Inglewood Unified School District's (IUSD) unwarranted denial of COPPA's charter petition. This closure happened before the State Controller's Office initiated the audit on September 28, 2020.

Because of the closure, COPPA had no staff, no paid hours, no facility, and no resources to locate and provide answers and supporting documents to the auditor. The few resources that COPPA did have was used for the wind-down and dissolution of the school as required by state and federal law. In addition, all of the school's documents were archived in long term storage with no intent to be in active use. Former staff that had knowledge about where and how the records were stored and organized were no longer employed.

Moreover, the school was impacted by COVID-19, an unprecedented event and global in nature. Access to physical storage and to former contractors and organizations related to Prop 39 was severely limited.

In the month of May 2021, most of COPPA's activities had to be suspended due Dr. Carleton Lincoln's, the CEO's, medical emergency. Dr. Lincoln makes up the majority of the school's staff.

At the end of May, COPPA received a court order for the appointment of a receiver who is to marshal and dispose of the school property and school's assets. This means that COPPA will no longer have any resources, including Dr. Lincoln and his assistant, to even wind down and dissolve the school and there will be no one at COPPA to continue correspondence with your office.

The school has attempted to cooperate and provide what little documentation could be provided, despite the school's closure and discontinued operation months before the audit.

We are concerned that the audit findings are unreasonable because a closed school that is no longer in operation cannot realistically provide adequate answers. It seems that auditing a closed school

would inevitably conclude with negative findings because the school could not proffer an appropriate response.

COPPA respectfully ask the auditor to reconsider and dismiss their findings and/or forgive any penalties assessed against the school due to the extraordinary impact of COVID-19 and the unfortunate and unwarranted closing of the school.

Sincerely,

A handwritten signature in black ink, appearing to read "Carleton Lincoln". The signature is fluid and cursive, with the first name "Carleton" and last name "Lincoln" clearly distinguishable.

Carleton Lincoln, Ed.D
Founder/CEO of Children of Promise Preparatory Academy

**Attachment C—
Madera Unified School District's Response
to Audit Results**



Madera Unified School District
1902 Howard Road, Madera, CA 93637
(559) 675-4500
Fax (559) 675-1186
www.madera.k12.ca.us

Board of Trustees
Ruben Mendoza, President
Joetta Fleak, Clerk
Israel Cortes, Brent Fernandes,
Ed McIntyre, Lucy Salazar, Ray G. Seibert

Todd Lile, Superintendent

February 10, 2021

Via E-Mail

Ckwong@sco.ca.gov

Christine Kwong, Auditor
Office of the State Controller Betty T. Yee
Division of Audits, Compliance Audits Bureau
3302 C Street, Suite 725A
Sacramento, CA 95816

Dear Ms. Kwong:

Please let this serve as the district's response to the Prop 39 Audit findings provided to the district on February 1, 2021.

Finding 1: Sole-sourced project costs

The district sole-sourced its contract with ThinkWire Energy Services for its solar consulting services (\$12,395), US Air Conditioning Distributors for purchasing large quantities of thermostats (\$165,719), Knorr Systems for the pool pump control (\$32,581), and Cenergistic for its energy conservation program (\$129,246). The district did not provide supporting documentation to show that it considered vendors before awarding its contract to ThinkWire Energy Services, US Air Conditioning Distributors, Knorr Systems, and Cenergistic. Therefore, the district sole-sourced these Prop 39 contracts totaling \$339,941.

District Response:

The District feels they complied with the spirit of sole-sourcing and in the case of the thermostats received multiple quotes from vendors before purchasing with the lower priced vendor.

Think Wire - The courts have noted that the Legislature has recognized the right to hire certain special services without competitive bidding by enacting Government Code section 53060. In this case, the District selected Think Wire to conduct a solar analysis based on this government code.

US Air Conditioning Distributors - As the energy projects were initiated in phases over several years, the district purchased the thermostats over a wide time frame to meet scope of the various phases. The thermostats were purchased over a two year period following appropriate and acceptable procurement procedures. The district did not competitively bid these stats but received pricing from multiple vendors prior to initiating the first purchase order in February of 2017. These additional quotes are included as back up on the purchase requisitions. These thermostats provided the district a best value based on pricing and allowed the district to have a consistent wi-fi

Our Vision: Madera Unified will set the standard for hard work, creativity and resiliency with a fearless drive to continuously improve.



thermostat that could enable a functioning EMS system on a single platform throughout the district promoting efficiency.

Knorr Systems- The district purchased the VFD based pool controls system for Madera South High School, as part of the Prop 39 project, from Knorr Systems. Since the cost of the product was below the bid threshold limit, the district did not receive multiple bids.

Cenergistic - The district contracted with Cenergistic in 2015 to provide energy management services. Cenergistic then hired a district employee to serve as the energy manager. The contract guaranteed savings and if contract costs exceeded savings, then the district would be refunded those costs. No other consultant would offer those items. The district hired Cenergistic on a best value basis using Government Code section 53060. The consultant was not originally funded using Prop 39 funding. The district shifted some of these expenses to our Prop 39 program in the final year of the funding cycle.

Finding 2: Projected energy savings not identified and/or no signed contracts

The district's Facility Solutions Agreement with IES for Phase I and Phase II does not identify the projected energy savings. In addition the district did not have a signed contract with Knorr Systems.

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

District Response:

The District included the projected energy savings as part of the contract with IES for Phase I and Phase II. These savings were included as an attachment to the contract and Board Resolution that was approved by the Board on April 26, 2016. The contract met the requirements of identifying project specifications, costs, and cumulative savings as well as utility savings over a 25 year period. Energy savings calculations were performed with the help of the on-line Energy Saving Calculators developed by California Energy Commission (CEC). These on-line calculators are offered by CEC as a part of the Proposition 39 program. The projected savings were then submitted as part of the process and approved by the CEC. All documents were approved as part of the project. We feel the District acted within the spirit and guidelines of the program. We will continue to include projected savings in future contracts moving forward.

Finding 3: The district's final report was completed online on September 4, 2019, 22 months after project completion date of November 30, 2017.

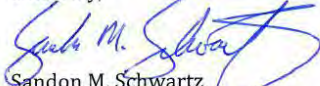
Per PRC section 26240(b), it states in part that "as a condition of receiving funds from the Job Creation Fund, not sooner than one year but no later than 15 months after an entity completes its first eligible project with a grant, loan, or other assistance from the Job Creation Fund, the entity shall submit a report of its project expenditures to the Citizens Oversight Board....."

District Response:

The district acknowledges and accepts this finding. Final reporting was part of the scope of the contract with IES. IES stated to the district that the report was filed late due to their ability to obtain utility data from PG&E. PGE had changed nearly all of the meter numbers and IES was having difficulties retrieving several meters' data even with PG&E's help. IES ended up using one of their software programs to directly retrieve the data for us through PG&E's servers. This setup process took longer than expected but did provide the utility information they were unable to obtain in any other manner.

We thank the CEC and the State Controller's Office for their continued support and assistance in making our schools a better place for the students of Madera.

Sincerely,



Sandon M. Schwartz
Deputy Superintendent

**Attachment D—
Romoland School District's Response
to Audit Results**



ROMOLAND SCHOOL DISTRICT

25900 Leon Road, Homeland, CA 92548
Phone: 951.926.9244 ♦ Fax: 951.926.2170

Trevor J. Panton
Superintendent
Michelle Wise
Assistant Superintendent
Keith Bacou
Chief Business Official
John Murray
Director of Human Resources
Vince Butler
Chief Technology Officer

February 26, 2021

Liliana Juarez, Auditor
Office of the State Controller Betty T. Yee
Division of Audits, Compliance Audits Bureau
3301 C Street, Suite 725A
Sacramento, Ca 95816

RE: Exit Conference for Romoland SD - Prop 39 CA Clean Energy Jobs Act Audit

Ms. Juarez,

This letter is intended to serve as a response to the audit issues identified in "Romoland School District's California Clean Energy Jobs Act Program Expenditures – Proposition 39, July 1, 2019, through June 30, 2020."

As to audit issue #1; "the district's final report was submitted on November 25, 2019, which is 17 months after the reported project completion date of June 30, 2018."

This district regrets this tardiness of filing. There were various vendor-related issues that delayed the completion of these documents and as a result, they were submitted late. It is always the intention of the district to submit documentation within required deadlines, and this is an unusual occurrence for these to have been submitted late. In the future we will provide a better framework submissions of this type.

As to audit issue #2; "After review of the district's general ledgers, we determined that the district received funds in excess of the total amounts indicated in its Energy Expenditure Plan (EEP), totaling \$5,808. The district's Energy Expenditure Plan (EEP) was approved for \$881,884; however, the district received \$887,692 from the CDE."

The district is holding these funds in reserve to be collected by the California Department of Education (CDE) or to be utilized as instructed, once we have received guidance. A project of

Board of Trustees

Manuel Aguirre ♦ Maria Clites ♦ Debbie Moon ♦ Gerard "Gary" Reller ♦ David Sperry

this magnitude is likely to have a different final expenditure total than planned and this is the result such an occurrence. In future projects, we will be mindful of the planning process to ensure complete expenditure of all revenues collected for projects such as this.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Keith Bacon', with a stylized flourish at the end.

Keith Bacon
Chief Business Official
Romoland School District

**Attachment E—
Sunnyside Union School District's Response
to Audit Results**



Sunnyside Union School District

21644 Avenue 196
Strathmore, California 93267

Website: www.sunnysideunion.com
Email: comments@sunnysideunion.com

March 2, 2021

Liliana Juarez, Auditor
Office of the State Controller Betty T. Yee
Division of Audits, Compliance Audits Bureau
3301 C Street, Suite 725A
Sacramento, Ca 95816

This letter is Sunnyside Union District's response to the Preliminary Audit report for Proposition 39 Clean Energy Jobs Act Program Expenditures – Proposition 39, July 1, 2019, through June 30, 2020.

Response to Item #1: Unspent Funds

The district agrees with this finding and currently has these funds in an identified account, pending request for return.

Response to Item #2: Projected Energy Savings, Not Included in the Contracts

The district agrees with the finding, although the Projected Energy Savings is located in other documents. The district provided such documents from Trane and an email response from IES and their justification.

The district appreciates all the help and assistance during the initial audit stages and will continue to work with the State Controller's Office through the entirety of the process.

Much Appreciated,

Steve Tsuboi
Sunnyside Union School District

Board of Trustee: Kimberly Brazier | Humberto Cardenas | Schuyler Glover | Rudy Ruiz | Humberto Quezada
Administration: Steve Tsuboi, Superintendent-Principal | Jody Gunderman, Vice Principal-Categorical Manager
Candy Alari, Business Manager | Jeannette Torres-Marquez, Administrative Secretary



**Attachment F—
Foothill-De Anza Community College District's Response
to Audit Results**



FOOTHILL-DE ANZA
Community College District

Susan Cheu, Vice Chancellor, Business Services

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

May 31, 2021

Dear Ms. Juarez,

Thank you for meeting with us on May 26th to discuss the results of your audit of the district's Proposition 39 Clean Energy Job Acts Program expenditures. We appreciate the professionalism and responsiveness of you and your team members throughout the audit. It is important to ensure that the Foothill-De Anza Community College District is following all applicable regulations related to the funding it receives, and this type of audit is important to ensure that those practices are being followed. Though our understanding of the conditions that resulted in the findings may differ slightly, we welcome the opportunity to review our internal procedures and improve our operations and processes.

Item #1 – Sole Sourced Contracts:

The district contracted with Gilbane Building Co. for construction & design management, Axiom Engineers for design & professional services, HP Inspectors for special inspection & construction, and Clean Harbors for clean cooling towers & pressure wash. The district did not provide any documentation to show that it considered other vendors/agencies when it awarded contracts to Gilbane Building Co. for \$88,078, Axiom Engineers for \$117,900, HP Inspectors for \$5,620, and Clean Harbors for \$8,143. Therefore, we found that \$219,741 of Prop 39 funds were sole-sourced.

DISTRICT RESPONSE:

Contractor Name	RFP/Contract Comments/Response
Gilbane Building Co. for construction & design management (\$88,078).	<p>This contract leveraged the competitive bid award RFP No. 1073 to Gilbane for Construction Management / Program Management awarded in 2007 as part of District Measure C.</p> <p>This contract was separate from, but related to an existing Measure C project contract with Gilbane for the provision of long-term construction/project management services. As such, Gilbane is an integral part of District's construction/program management services, and thus uniquely qualified.</p> <p>In addition, the Public Contract Code § 20652, allows us to leverage other agencies competitive bid contracts, in this case we leveraged our own competitive bid contract. By leveraging the competitive bid procurement process and existing relationship with Gilbane, they were able to begin work immediately and expedite the project.</p>
Axiom Engineers for design & professional services (\$117,900).	<p>The original agreement (\$99,800) was submitted to the governing board and approved on 04/02/2018. This contract was awarded based on Government Code §53060 Special/Professional Services. Note the Board Agenda item states "... during the contracting phase, Axiom will assist in the bid process." A subsequent change order in the amount of \$18,100 was approved by the governing board on 02/04/2019.</p>
HP Inspectors for special inspection & construction (\$5,620).	<p>This contract did not exceed the District's small purchase threshold (per Purchasing Policy BP 3140, contracts greater than \$10,000 require competitive bid process) which is stricter than Federal small purchase threshold of \$100,000.</p> <p>In addition, special/professional services are not required to go out to bid per Government Code 4525.</p>
Clean Harbors for clean cooling towers & pressure wash (\$8,143).	<p>This contract leveraged the competitive bid award RFP No. 1739 Haz/Mat Waste Collection Services approved by the governing board on 12/07/2015.</p> <p>This contract was separate but related to the hazardous material services provided by Clean Harbors in the RFP, and awarded through the CUPCCAA process.</p> <p>In addition, this separate contract did not exceed the District's small purchase threshold (per Purchasing Policy BP 3140, contracts greater than \$10,000 require competitive bid process) which is stricter than Federal small purchase threshold of \$100,000.</p>

Item #2 – Proposition 39 Funds Applied to Ineligible Expenditures

We reviewed the district's invoices and general ledger transaction activity reports and determined that the district spent \$8,143 on ineligible expenditures. The district charged a total of \$8,143 to fund cleaning and pressure wash of the cooling towers. Although, this expense relates to ATC Central Chilled Water Plan, Project 1718-001 this was not an activity that was approved by the Chancellor's Office and/or not listed on FORM B, and thus, not allowable.

DISTRICT RESPONSE:

Response to	RFP/Contract Comments/Response
\$8,143.00	<p>This expenditure is an activity and not a stand-alone project and therefore, does not need to be addressed separately on Form B. Furthermore, the District contends that the \$8,143 amount is not a significant scope change to the project and therefore, it was not listed on the Project Application (FORM B).</p> <p>NAM (Newcombe, Anderson & McCormick) was the firm hired by the Chancellor's Office to audit all Prop 39 projects. The Chiller Project was reviewed by NAM and found to be within the allowable expenditures for a project.</p>

Item #3 – Signed contract that identified project specifications, costs, and projected energy savings.

We reviewed the district's contract with Environmental Systems, Kitchell, Comfort Dynamics, and Clear Blue Energy and determined that the contracts do not include projected energy savings. Additionally, the district did not prepare a contractual agreement for American Reprographics Co.

DISTRICT RESPONSE:

Contractor Name	RFP/Contract Comments/Response
Environmental Systems	The district was under the impression that the project review by NAM (Newcombe, Anderson & McCormick) would suffice to meet the requirement for statement of energy savings. It acknowledges that it did not include this information in the noted contracts.
Kitchell	Same as above.
Comfort Dynamics	Same as above.
Clear Blue Energy	Same as above.
American Reprographics Co.	Due to the low dollar amount, this was not required to go to bid.

We appreciate the opportunity to provide further information regarding the findings. Foothill-De Anza Community College District is committed to ensuring that it has the proper internal controls and business processes in place to ensure effective and efficient use of the resources it is provided to improve the learning environment of its students.

Sincerely,



Susan Cheu (May 31, 2021 14:28 PDT)

Susan Cheu
Vice Chancellor, Business Services
Foothill-De Anza Community College District

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



SUPERINTENDENT/PRESIDENT
DR. DAVID VIAR

BOARD OF TRUSTEES

Sevan Benlian • Yvette Vartanian Davis • Dr. Armine Hacopian • Desireé Portillo Rabinov • Ann H. Ransford

June 1, 2021

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

Re: Glendale CCD: Prop 39 Audit

Dear Ms. Kwong:

Glendale Community College hereby takes the opportunity to respond to the audit finding that the District's contracts with Rosendin Electric for the Stadium Lighting project, Sunbelt Controls for the Verdugo Gym – BAS project, and Emcor Services (Mesa Energy Systems, Inc.) for the San Gabriel – BAS project did not identify projected energy savings under PRC section 26206(d).

The projected and expected energy savings for the District's energy conservation measures were included in the Energy Efficiency Measure (EEM) Matrix as part of Board Resolution No. 24-2018-2019 approved at the June 18, 2019 board meeting. The Prop 39 EEMs (1-4) were noted as such in the matrix submitted in support of the energy conservation measures.

The scopes of work and the specifications that were required to be implemented by qualified contractors to generate the savings were included in the RFPs issued for each respective project. Due to the complexity of the systems and the fact that all components of the systems need to work together to achieve the optimum savings, each RFP listed very detailed scopes of work and specifications along with the expectations for the contractor's installation and the required performance of those systems. The contractor requirements also included the commissioning and an extended guarantee for the systems.

The energy savings numbers were not expressly included in the RFPs partially because it would have created confusion around whether or not a contractual savings guarantee was required by respective bidders rather than the system as a whole and more importantly would have limited the contractor's that would have been able to respond. The college was looking for contractors with the most cost effective skilled trade labor to implement the systems as a whole. Traditional mechanical, electrical, and controls contractors don't necessarily have in-house energy engineers and might have considered themselves disqualified by an RFP with implied energy savings guarantees. In order to make sure the most qualified contractors responded to the RFPs and at the lowest cost, the energy savings and project budgets included in Board Resolution No. 24-2018-2019 were generated by the District, prior to the projects and associated RFPs being approved by the Board.

The systems covered under the agreement are complex and are a combination of following components:

- The projected energy savings approved by the Board Resolution
- The comprehensive specifications of the RFP
- The obligations under the individual contracts
- The required performance of the system

Based upon the foregoing, it is the District's position that these components taken as whole would equate to contracts that identify project specification, costs, and projected energy savings that would fall within the intent of PRC Section 26206(d).

Thank you for all your efforts on this engagement.

Very truly yours,



Susan Courtney
Director, Business Services

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250**

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