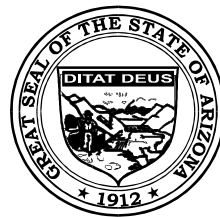


**Investigative
Report:
Procurement
Violations by
Amphitheater
Unified School
District No. 10**



**November
2000**

**Debra K. Davenport
Auditor General**



DEBRA K. DAVENPORT, CPA
AUDITOR GENERAL

**STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL**

November 27, 2000

Members of the Arizona Legislature

Governing Board
Amphitheater Unified School District No. 10

The Honorable Janet Napolitano
Office of the Attorney General

The Honorable Lisa Graham Keegan
State Superintendent of Public Instruction

At the request of the Office of the Attorney General, we have conducted a limited investigation of Amphitheater Unified School District No. 10 for the period March 1998 through June 2000. The purpose of our investigation was to determine whether there were procurement violations and the amount of money, if any, misused during that period and whether the District's procurement practices were consistent with legal requirements.

Our limited investigation consisted primarily of inquiries and examining selected records and documents. Therefore, our investigation was substantially less in scope than an audit conducted in accordance with generally accepted auditing standards. Accordingly, we do not express an opinion on the adequacy of the financial records or the internal controls of Amphitheater Unified School District No. 10. We also do not ensure that all matters involving the District's internal controls that might be material weaknesses under standards established by the American Institute of Certified Public Accountants or other conditions that may require correction or improvement have been disclosed.

The accompanying Investigative Report describes our findings and recommendations as a result of this special investigation.

After this report is distributed to the members of the Arizona State Legislature, the Attorney General, and the State Superintendent of Public Instruction, it becomes public record.

Debbie Davenport
Auditor General

**Investigative Report:
Procurement Violations by
Amphitheater Unified
School District No. 10**

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Summary

◆

Investigation Highlights:



The District paid a total of \$290,994 for security guard services without obtaining sealed bids



The Associate Superintendent improperly authorized two emergency procurements totaling \$181,905



The District paid a total of \$55,137 of unauthorized charges

◆

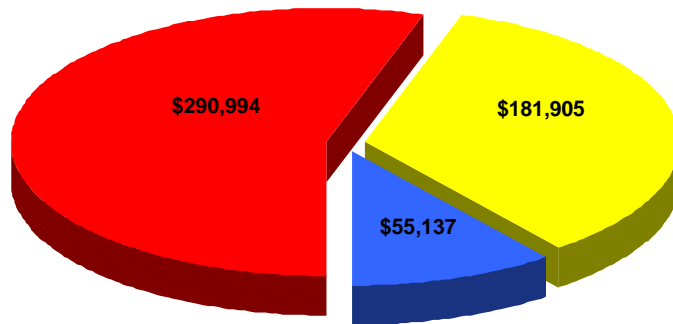
In 1994, Amphitheater Unified School District No. 10 purchased 73 acres of land in northwest Tucson for the potential site of a future high school. In March 1998, the District began construction at this site with the native plant salvaging process. However, on March 13, 1998, the United States District Court for the District of Arizona issued a temporary restraining order that halted further construction at the site. This injunction was the result of a Complaint for Declaratory and Injunctive Relief filed against the District by the Defenders of Wildlife (a national species and habitat conservation group), who cited that clearing the land would harm the habitat of the cactus ferruginous pygmy owl, an endangered species. Approximately 20 months later, on December 2, 1999, the United States 9th Circuit Court of Appeals lifted the injunction, thus permitting construction activity. Immediately after being notified of the court's ruling, the District's Associate Superintendent authorized two emergency procurements to complete the native plant salvage and begin the clearing and grubbing process (removal and disposal of all vegetation and surface debris).

Our investigation revealed that from March 1998 through June 2000, District officials failed to solicit competitive sealed bids for construction and security-related services totaling \$528,036, an amount significantly over the procurement threshold. Consequently, the Associate Superintendent improperly authorized construction services as emergencies and withheld relevant information from the Governing Board. Further, the District improperly paid construction vendors for unauthorized charges.

Lastly, the District did not maintain adequate records of procurement decisions and actions. Due to this departure from sound procurement practices and procedures, District taxpayers were denied the benefits of full and open competition. Accordingly, the District may have paid more than market value for these services as well as violated Arizona Revised Statutes, school district procurement rules, and District policies. See the Appendix, page 9, for a list of specific Arizona Revised Statutes and school district procurement rules that relate to our findings.

Exhibit 1

**Summary of Procurement Violations
March 1998 through June 2000**



■ Security Guard Services	\$290,994
■ Construction Related Services	\$181,905
■ Unauthorized Charges	\$ 55,137
Total Procurement Violations	<u>\$528,036</u>

Source: Records of Amphitheater Unified School District, investigation reports.

Finding I

The District Failed to Solicit Sealed Bids for Security Guard Services

—◆—
The District paid \$290,994 for security guard services at a desolate site without obtaining sealed bids.
—◆—

During the period March 1998 through December 1999, the District paid \$290,994 to a vendor providing security guard services for this construction site, without obtaining the required sealed bids. According to the District’s outside legal counsel, one of the purposes for 24-hour, 7-day-a-week security at the barren site was “To prevent illegal or improper tactics that might wrongly suggest that a pygmy owl uses or inhabits the property, i.e., placing evidence of such use on the property.”

At the time security services were initiated at this desolate site, a former District official reportedly obtained two written price quotations; however, the District was unable to provide such documentation. Regardless, within three months, the District paid more than \$30,000 to the vendor and thus exceeded the dollar limit prescribed by the State Board of Education that requires a sealed bid.

School district procurement rules exist to help ensure that districts receive the best possible value for the public money they spend by prohibiting the restraint of free trade and the unreasonable reduction of competition among vendors. Accordingly, due to the District’s failure to solicit competitive sealed bids for security services, full and open competition was denied, and the District may have paid more than fair market value for these services.

Finding II

The District Failed to Solicit Sealed Bids for Construction Services

— ◆ —
*The Associate Superintendent
improperly authorized
construction services as
emergencies.*
— ◆ —

On December 2, 1999, the Associate Superintendent, rather than soliciting for competitive sealed bids, improperly authorized two emergency procurements for construction services and failed to adequately inform the Governing Board. Under verbally negotiated agreements, the District paid \$122,540 to a vendor providing native plant salvage and \$59,365 to a vendor providing clearing and grubbing services, for a total of \$181,905. Given that there were no threats to public health, safety, or welfare, the District could have used normal procurement methods for these services; nonetheless, the Associate Superintendent failed to solicit competitive sealed bids. Accordingly, the District did not comply with procurement rules and regulations and may not have received the best value for these services.

The Associate Superintendent withheld relevant information from the Governing Board

The Associate Superintendent breached her fiduciary duty by withholding relevant information about the emergency procurements from the Governing Board. On December 7, 1999, the Associate Superintendent presented written statements to the Governing Board that she had prepared to document the basis for the emergency procurements and for the selection of particular vendors. These statements included a partial quote from the Arizona Administrative Code relative to emergency procurement for school districts [R7-2-1056(A)]; however, the document omitted the last sentence that provided key information and would have aided the Board's interpretation of an emergency. The Associate Superintendent inappropriately excluded the portion of the procurement rule that identifies specific examples of emergency conditions such as floods, epidemics, or other natural disasters.

The Associate Superintendent failed to present required information to the Governing Board

Two emergency procurements were authorized only four days before a Governing Board meeting.

Although required by the procurement rules, the Associate Superintendent did not include in her emergency procurement statements an explanation of why it was impracticable to convene a meeting of the Governing Board. In fact, the Associate Superintendent negotiated verbal agreements with both the plant salvage vendor and the clearing and grubbing vendor merely four days before a regularly scheduled Governing Board meeting. Clearing and grubbing of the site began only three days before the meeting.

The Associate Superintendent misstated information presented to the Governing Board

The Associate Superintendent misstated the basis for selecting particular vendors.

The Associate Superintendent misstated the basis for selecting particular vendors in her emergency procurement statement. The emergency procurement statement reported that the native plant salvage vendor was chosen because it had an existing “valid purchase order.” However, the purchase order was the result of improper procurement practices. In March 1998, prior to the court’s injunction halting construction, the District requested written quotes to begin the native plant salvaging process. However, the District failed to obtain three written price quotations as required and did not award the contract to the vendor with the lowest price. Further, the scopes of services were disparate, ranging from 6 acres in March 1998 to 73 acres in December 1999.

The emergency procurement statement also reported that the clearing and grubbing vendor was chosen because the District had an existing “valid contract” with that vendor. However, no such valid contract existed.

Finding III

The District

Paid Unauthorized Charges for Construction Services

The District paid a total of \$55,137 to two construction vendors for unauthorized charges during the period March 1998 through June 2000. This total represents charges for services that were not properly procured or for work not included in existing, lawful contracts.

*The District paid for services
that were not properly procured
or were not included in
existing, lawful contracts.*

- ◆ As previously stated, a purchase order was issued to the native plant salvage vendor as a result of improper procurement practices. In March 1998, the District failed to obtain three written price quotations and selected the vendor with the highest price. As a result, the District improperly paid \$15,302 to this vendor.
- ◆ In December 1999, the District finally issued a contract to the plant salvage vendor by improperly declaring an emergency. Still, in February 2000, the Associate Superintendent inappropriately authorized a \$5,000 change order to the plant salvage vendor for services she acknowledged were outside the contract's original scope.
- ◆ In May 1998, the District issued and published a sealed bid for the clearing and grubbing services of 73 acres. However, no clearing and grubbing was performed relating to this bid. Yet, in June 1998, the District paid the vendor \$22,260 for one day of unauthorized standby time. This amount represents the time spent mobilizing and demobilizing the equipment on June 9, 1998, at the construction site, due to the District's inaccurate presumption that the Court's injunction would be lifted on that day.

- ◆ In December 1999, the District ultimately issued a contract to the clearing and grubbing vendor although they improperly declared emergency procurement. In addition, in January 2000, the District paid for additional work in the amount of \$3,572 that, according to the contract terms, required a change order. The District failed to identify the basis for the change and did not issue a change order.
- ◆ In March 2000, months after the emergency procurement contract was completed, the District reopened the purchase order and paid the clearing and grubbing vendor \$9,003 for a separate project that was outside the contract's scope. At the least, the District was required to obtain three oral quotes for the work. However, the District failed to obtain any price quotations.

Recommendations

The Amphitheater Unified School District No. 10, as a governmental entity, is responsible to Arizona's taxpayers for the prudent use of public money and resources. To help ensure proper control over the District's assets and to ensure compliance with the school district procurement rules, applicable Arizona Revised Statutes, and the *Uniform System of Financial Records*, the District should more closely monitor the procurement process. District administrators should apprise the Governing Board of all pertinent information before seeking approval for large expenditures. In addition, the District should maintain adequate documentation of all procurement actions and decisions. Finally, in deciding if an emergency situation exists that does not fall within the examples stated in the school district procurement rules, the District should seek advice from legal counsel.

Appendix

◆

**Arizona Attorney General
Opinion I96-007**

Emergency conditions require:

- *a sudden, unexpected and unforeseen event that*
- *jeopardizes the public's health, welfare, or safety, and*
- *renders the procurement process impracticable, unnecessary, or contrary to the public interest.*

Arizona Procurement Code

A.R.S. §41-2616(B) states, “A person who intentionally or knowingly contracts for or purchases any material, services, or construction pursuant to a scheme or artifice to avoid the requirements of this chapter, rules adopted by the state board of education pursuant to section 15-213 ...is guilty of a class 4 felony.”

School District Procurement

A.A.C. R7-2-1056(A) states, “An emergency condition creates an immediate and serious need for materials, services, or construction that cannot be met through normal procurement methods and seriously threatens the functioning of the school district, the preservation or protection of property or the public health, welfare or safety. Some examples of emergency conditions are floods, epidemics, or other natural disasters, riots, fire or equipment failures.”

A.A.C. R7-2-1056(B) states, “An emergency procurement shall be limited to the materials, services, or construction necessary to satisfy the emergency need.”

A.A.C. R7-2-1057(B) states, “The designated board member or district official who makes an emergency procurement shall, at the first scheduled governing board meeting following the procurement, provide to the governing board a report concerning the emergency procurement including the following information:

1. The basis for the emergency which necessitated the emergency procurement, and why it was impracticable to convene a meeting of the governing board.
2. The basis for selection of the particular contractor, including an explanation of how the procurement was made with as much competition as was practicable under the circumstances; and
3. Why the price was reasonable.”



AMPHITHEATER PUBLIC SCHOOLS

OFFICE OF THE SUPERINTENDENT
701 W. Wetmore Road
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October 16, 2000

REVISED RESPONSE

Ms. Debra K. Davenport, CPA
Auditor General
State of Arizona
Office of The Auditor General
2910 North 44th Street, Suite 410
Phoenix, AZ 85018

RE: Amphitheater Unified School District No. 10 Response to Investigative Report:
Procurement Violations by Amphitheater Unified School District No. 10

Dear Ms. Davenport:

I am in receipt of the draft report dated October 3, 2000. The following information is provided as context for the Amphitheater response to this report.

The Amphitheater School District has experienced some tumultuous times during the past several years. On May 16, 2000, a recall election was held for three members of the Governing Board. As a result of that election, a majority of the Board was removed from office. Three newly-elected board members, Dr. Kent Barrabee, Mr. Mike Prout, and Ms. Mary Schuh, were sworn into office on Tuesday, May 23 and joined the two continuing members, Dr. Ken Smith and Ms. Nancy Young Wright, who had both previously been in the minority on most board actions. On that same night, the new Governing Board unanimously appointed me as the incoming Superintendent to replace the retiring superintendent, Dr. Robert Smith, as of Monday, June 12, 2000.

It has undoubtedly been difficult in recent years to focus community attention on the excellence Amphi achieves because of the distractions of board conflicts and the lawsuits and controversy surrounding the location of the new high school. With a new board composition and the construction of the new high school well underway, we are doing everything in our power to move forward and focus all efforts on ensuring a positive, quality education for our students.

I have reviewed this report. The following are responses on behalf of the District to each individual finding. The District will follow all recommendations provided in this report.

Finding I: *The District Failed to Solicit Sealed Bids for Security Guard Services*

District Response:

During the time period covered in the report, Amphitheater had four associate superintendents. The use of the title Associate Superintendent throughout the report does not properly identify the responsible official and may inappropriately identify other employees who did not play a part in the facts delineated. Other than the above, the District finds no reason to dispute the facts recited in your report.

Corrective Action:

The District will ensure that proper procedures are consistently followed and provide the documentation required substantiating all procurement decisions. The District will monitor the dollar limit thresholds and require sealed bids, as required by the procurement laws.

Finding II: *The District Failed to Solicit Sealed Bids for Construction Services*

Amphitheater Response:

During the time period covered in the report, Amphitheater had four associate superintendents. The use of the title Associate Superintendent throughout the report does not properly identify the responsible official and may inappropriately identify other employees who did not play a part in the facts delineated. Insofar as the issue of emergency procurement is concerned, that issue requires legal analysis. Assuming the legal correctness of your conclusion, the District would find no reason to dispute the facts recited in your report.

Corrective Action:

The District will ensure that proper procedures are consistently followed and provide the documentation required substantiating all procurement decisions. The District will monitor the dollar limit thresholds and require sealed bids, as required by the procurement laws.

Finding III: *The District Paid Unauthorized Charges for Construction Services*

Amphitheater Response:

During the time period covered in the report, Amphitheater had four associate superintendents. The use of the title Associate Superintendent throughout the report does not properly identify the responsible official and may inappropriately identify other employees who did not play a part in

Ms. Debra K. Davenport, CPA

October 16, 2000

Page 3

the facts delineated. Insofar as the issue of emergency procurement is concerned, that issue requires legal analysis. Assuming the legal correctness of your conclusion, the District would find no reason to dispute the facts recited in your report.

Corrective Action:

The District will ensure that proper procedures are consistently followed and provide the documentation required substantiating all procurement decisions. The District will monitor the dollar limit thresholds and require sealed bids, as required by the procurement laws.

Sincerely,

Vicki Balentine, Ph.D.

Superintendent

xc: Dr. Kenneth J. Smith, President, Amphitheater Governing Board