



# MORENO VALLEY UNIFIED SCHOOL DISTRICT

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Board of Education: Jacqueline L. Ashe • Victoria Baca • Richard Coz • Jesus M. Holguin • Rick Sayre  
Superintendent of Schools: Rowena T. Lagrosa

August 28, 2007

Mr. John B. Todd, Foreperson  
Riverside County Grand Jury  
P.O. Box 829  
Riverside, California 92502

Re: Response to Grand Jury Report – School Bus Contracts

Dear Mr. Todd:

The Moreno Valley Unified School District has received the 2006-2007 Grand Jury Report regarding District "Bus Contracts." This is the District's response to that Report. It should be clear that the District respects the function of the Grand Jury to investigate and report on the operations of local government agencies. The District has fully cooperated with Grand Jury requests, including production of documents and testimony of witnesses. The Grand Jury plays an important role as a check and a balance against abuses of authority and misuses of public funds. In this case, however, it appears that the Grand Jury's findings and recommendations suffer from factual and legal errors. Further, other findings are so unspecific or unsupported by fact as to have little meaning or relevance. Our response to the Report is set out below.

## Background Information

The Report states that "[a]t the beginning of the 2006 school year, MVUSD reverted to a traditional school year schedule, which caused an increase in the number of school bus routes. The District did not have sufficient buses and drivers for the increase and went to Laidlaw Transportation Services to fill the shortages."

## Response

The shortage of drivers during the current 2006-07 year was exacerbated by, but not solely attributable to, conversion to a traditional calendar. The District has had a shortage of bus drivers for the past several years, which in prior years resulted in late arrivals or departures to and from school, and required many students to ride buses for long periods of time. In approximately July 2006, the District realized that, with its current staffing levels and the change to a traditional calendar, it could not possibly provide the transportation services needed for the coming school year through its own work force. Although the District was engaged in recruiting efforts, it was unable to hire and train sufficient numbers to meet its needs. Only by utilizing the existing Laidlaw contract for home-to-school student transportation was the District able to handle the shift to traditional calendar and correct the pre-existing problems.

### Findings

- 1. MVUSD is operating 20-22 home-to-school bus routes with Laidlaw without a formal written contract signed by both parties. Instead, they are using a bid proposal document received from Laidlaw as an operational contractual agreement, which is outside the scope of the work to be performed exposing each party to substantial risk, litigation and unlimited cost. This agreement does not meet the requirements of California Public Contracts Codes (CPCC) §20111, §20112 and Moreno Valley Administrative Regulation (AR) §3310.**

### Response

The District disagrees partially with this Finding.

Important elements of the Grand Jury's finding are simply wrong, legally and factually. The Grand Jury appears unaware that contracts for student transportation services are governed by Education Code section 39800 *et seq.* and not merely the Public Contract Code or Education Code section 17596. Section 39802 incorporates the competitive bid process set out in Public Contract Code section 20111 and 20112, with some important differences as it relates to award of bids, and allows contracts of longer duration than authorized under Section 17596. (See, Educational and Recreational Services, Inc. v. Pasadena Unified School District (1977) 65 Cal.App.3d 775.) Nevertheless, Laidlaw was the low bidder for 84 passenger buses and was awarded the contract.

The Grand Jury appears to contend that no contract exists between the District and Laidlaw. In the public bidding context, however, a contract is generally complete and binding when a valid bid is accepted. (Menefee v. County of Fresno (1985) 163 Cal.App.3d 1175.) The bid was accepted and an award was made by the District Board of Education on August 17, 2004. Therefore, even though no contract has been signed by both parties, upon acceptance by the District Governing Board, Laidlaw's bid became a binding contract, subject to the terms set forth in the bid documents.

The bid documents contain all of the "classic" elements of a transportation contract, such as duration, price, required permits and licenses, payment terms, equipment requirements, compliance with law, and termination. The contract also contains provisions requiring Laidlaw to maintain satisfactory insurance and to hold harmless and indemnify the District for any claim or demand arising from injury to persons or property caused by Laidlaw.

The bid was entitled "Charter Bus Service" and specifically referenced "field trip transportation," although the latter term was undefined. The bid specifications, however, would be equally useful for home-to-school transportation. Further, the contract documents did not expressly preclude use of the buses for home-to-school transportation. In any event, Laidlaw has provided home-to-school transportation under the Charter Bus Service contract. This has not exposed the District to "substantial risk, litigation and unlimited cost" as suggested by the Grand Jury. The cost of service is specifically stated in the contract. The District has complete control

and decision-making authority as to the amount of services obtained and, therefore, also of the resultant cost. Risk and liability arising from potential litigation are actually reduced under the contract, due to the insurance and hold harmless/indemnification provisions of the contract. Laidlaw carries \$10 million in liability insurance – \$5,000,000 more than the minimum required by the contract. Thus, the potential for liability under the Laidlaw contract is actually less than for services rendered by District employees, for which the District would be liable.

2. **As of the end of January 2007, Laidlaw has been paid over \$700,000 for home-to school bus service with MVUSD without a contract. MVUSD is non-compliant with state code and its own policy for not advertising for competitive bidding for home-to-school bus service. State code requires advertising for contracts over \$65,000 for school year 2006 and \$69,000 for 2007, and awarding the contract to the lowest qualified bidder, in accordance CCCC §20112 and MVUSD Business Policy (BP) §3311.**

Response

The District disagrees partially with this Finding.

Again, important elements of the Grand Jury's finding are simply wrong. As explained above, the District did comply with competitive bidding laws for the "Charter Bus Service" contract. A valid contract exists with Laidlaw, under which the current home-to-school transportation services have been obtained. However, the District has decided to conduct another competitive bidding process to expressly address "home-to-school" transportation services.

It should be noted that, although competitive bidding is a mandatory requirement in the award of transportation contracts by school Districts, exceptions have been recognized by the courts. In Taylor Bus Service, Inc. v. San Diego Board of Education (1987) 195 Cal.App.3d 1331, the court wrote that, because the competitive bidding requirement is "tied to a policy of insuring efficient, economic and responsible government, if those goals would be offended by competitive bidding the bidding requirement yields." In that case, the two low bidders for a school transportation contract were found to be non-responsive. District staff indicated that, "with school starting in September, it was too late to advertise for, screen and award new contracts." The Court held that, "[g]iven the need for buses and the lateness of the hour, the District could properly forego the requirements for competitive bidding for the remaining buses needed to cover the contract originally awarded to Taylor." The District faced similar exigent circumstances when making its decision to obtain home-to-school transportation services pursuant to the existing contract with Laidlaw.

3. **MVUSD is not planning to follow the Education Code, as it pertains to contract extension. The code only allows a contract to be extended for a total period of five years. Special provision #3 of MVUSD bid proposal document for charter bus service of 2004 states their agreement ends on June 30, 2005. The time frame of the bid proposal includes an option to extend for up to two additional years; therefore, the duration of the service will end not later than June 30, 2007. MVUSD**

**plans to extend the bid proposal document an additional five years beginning July 1, 2007. The extension will exceed the five-year limitation, in accordance with California Education Code (CEC) §17596.**

Response

The District disagrees partially with this Finding.

This finding is factually and legally inaccurate. The District has no plans to violate the Education Code or to extend the contract "for an additional five years beginning June 30, 2007." The District is actively engaged in a bus driver recruiting program, and intends to reduce or eliminate the use of outside contractors for home-to-school transportation as soon as possible.

The Grand Jury mistakenly cites Education Code section 17596 as prohibiting bus transportation contracts exceeding five years in duration. However, Education Code section 39803, which specifically addresses bus transportation contracts, authorizes terms "not to exceed five years . . . renewable at the option of the school District and the party contracting to provide transportation services, jointly, at the end of the term of the contract." Therefore, bus transportation contracts may legally exceed the five year limit set forth in Education Code section 17596.

4. **Laidlaw was the low bidder for 84 passenger vehicles in the bid proposal document of 2004. The bid proposal document did not include 22-passenger vehicles, however, MVUSD is using eleven (11) Laidlaw 22-passenger vehicles. Therefore the District is not in compliance with state code and District policy, CPCC §20111m §20112 and AR §3310.**

Response

The District disagrees partially with this Finding.

Laidlaw was the low bidder for 84 passenger vehicles. The District contracts with Laidlaw for the use of twenty-five 84 passenger buses. The District does not use any Laidlaw 22-passenger vehicles. The Grand Jury's finding regarding 22-passenger vehicles is simply wrong.

5. **In 2006, MVUSD's governing board (school board) approved the purchase of 10 buses at \$150,000 each, without a comprehensive plan, to replace Laidlaw as the bus service provider. As of January 2007, MVUSD has failed to hire a sufficient number of qualified drivers for the new buses; therefore, the governing board approved making this \$1.5 million expenditure while also paying for student transportation by Laidlaw.**

Response

The District disagrees partially with this Finding.

Again, important elements of the Grand Jury's finding are simply wrong. The Grand Jury apparently desires to create the (mistaken) impression that the District has doubly wasted public money on school buses that are sitting unused while contracting with a third party for the same services that could be provided through proper use of those buses. However, such is not the case.

The 10 buses were purchased in accordance with a comprehensive plan – and each bus is currently in service having replaced aging and obsolete District equipment. The new buses were not purchased to replace Laidlaw as a bus provider. Again, these buses were purchased to replace old, deteriorating buses in the District's fleet. The comprehensive bus replacement plan was approved by the District's budget committees through normal processes, as well as the Board of Education. The plan shows bus purchases each year through 2014-2015. The plan was prepared based upon a recommendation from TransPar, a transportation consulting and management firm, which showed that the District had too many old buses in its fleet. For example, six buses were model year 1986, and five buses were model year 1989. Most of the parts were obsolete and could not be obtained. The new buses were purchased for the safety of our children and not to replace Laidlaw routes.

Recommendations

- 1. MVUSD comply with the California Code. Specifically, discontinue the practice of using a bid proposal document as a contract and enter into a written contract signed by both parties that defines the scope of the work or services to be performed, pursuant to CPC §20111, §20112, and AR§3310.**

Response

The recommendation will not be implemented because it is not warranted or is not reasonable.

Although the District usually enters into formal, written agreements signed by both parties, as explained in response to Finding #1, in the public bidding context, a contract is generally complete and binding when a valid bid is accepted. The District will continue to enter into valid and binding contracts, consistent with the law.

- 2. MVUSD advertise for a home-to-school bus service and award a contract to the lowest qualified bidder in accordance with California Code, and MVUSD regulations in order to award contracts that ensure fair competition, pursuant to CPC §20110 and §20111.**

Response

The recommendation will not be implemented, as written, because it is not warranted or is not reasonable. However, the District is in the process of obtaining formal bids for home-to-school transportation.

As indicated in the response to Finding #1, contracts for student transportation services are governed by Education Code section 39800 *et seq.* Section 39802 incorporates the competitive bid process set out in Public Contract Code section 20111 and 20112, with some important differences as it relates to the criteria for award of contract. The District will continue to follow lawful procedures to ensure fair competition. As explained in the response to Finding #2, although a valid contract exists with Laidlaw, under which the current home-to-school transportation services have been obtained, the District has decided to conduct another competitive bidding process to expressly address "home-to-school" transportation services. The District has already initiated the formal bidding process, and expects to complete it and award the bid within approximately 30 days.

- 3. MVUSD review the requirements of CEC §17596 and consistently comply with the California Code as it applies to contract extensions. Consult with legal counsel before extending any contracts.**

Response

The recommendation will not be implemented, as written, because it is not warranted or is not reasonable.

As indicated in the response to Finding #3, Education Code section 39803 allows school Districts to contract for transportation services under contracts "not to exceed five years" in duration. However, such contracts are "renewable at the option of the school District and the party contracting to provide transportation services, jointly, at the end of the term of the contract." Therefore, bus transportation contracts may legally exceed the five year limit set forth in Education Code section 17596. The District will continue to contract within the limits specified in Education Code section 39803, including lawful extensions. The District regularly consults with legal counsel regarding contracting issues, including extensions of contracts, but does not do so in every case. Such a practice would be cost prohibitive.

- 4. MVUSD proceed with the competitive bid process for 22-passenger vehicle for home-to-school service contract. The contract be awarded to the lowest qualified bidder, pursuant to CPCC §20111, §20112 and AR §3310.**

Response

The recommendation will not be implemented because it is not warranted or is not reasonable.

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As explained in the response to Finding #4, the District is not contracting with Laidlaw for use of 22-passenger vehicles.

5. **MVUSD governing board must fully research and ensure there is a comprehensive plan for complete implementation for purchases of this magnitude to fulfill their fiduciary responsibilities to the taxpayers.**

Response

The District has implemented this recommendation.

As explained in the response to Finding #5, the District has implemented a comprehensive, Board-approved bus replacement plan. It provides for cyclical replacement of older buses. Reasonable amounts of money are budgeted each year to replace buses, so the District will not be confronted with the need to provide large capital budgets to replace an aging fleet all in one or two years. The Governing Board will continue to fully research and ensure that there is a comprehensive plan for implementation of major capital expenditures and thereby fulfill their fiduciary responsibility to taxpayers of the District.

If you have any questions or need additional clarification, please feel free to contact me at (951) 571-7500 extension 17202.

Sincerely,



Rowena Lagrosa  
Superintendent

RL/ds

c: Honorable Richard Fields, Riverside Superior Court  
Kenneth M. Mohr, Assistant County Executive Officer  
Christopher Keeler, Fagen Friedman, & Fulfrost