

BUTTE COUNTY OFFICE OF EDUCATION

Audit Report

MIGRANT EDUCATION PROGRAM

July 1, 2013, through June 30, 2014



BETTY T. YEE
California State Controller

January 2016



BETTY T. YEE
California State Controller

January 14, 2016

Veronica Aguilar, Director
California Department of Education
English Learner Support Division
Migrant Education Program
1430 N Street, Suite 2204
Sacramento, CA 95814-5901

Dear Ms. Aguilar:

The State Controller's Office (SCO), pursuant to an Interagency Agreement with the California Department of Education (CDE), conducted an audit of the Butte County Office of Education's (region) Migrant Education Program (MEP) for the period of July 1, 2013, through June 30, 2014.

The purpose of the audit was to determine whether the region complied with the United States Department of Education Office of Migrant Education's MEP requirements; specifically, that the region maintains proper internal controls to ensure that the program-related costs were incurred for eligible and approved increased costs, and that the accounts and records substantiate that the funds were expended for these allowable and increased costs.

The audit determined that the region maintains adequate internal controls to ensure MEP compliance, and that MEP funds were expended for allowable and increased costs. However, the audit found that a regional area office lacked proper internal controls over a MEP conference, which resulted in the provision of meals purchased with MEP funds to non-program recipients. Additionally, the region did not comply with state and federal procurement requirements for three sampled contracts, worth \$353,954. Therefore, we could not substantiate whether these MEP services were procured properly.

If you have any questions, please contact Mr. Finlayson, Chief, State Agency Audits Bureau, by telephone at (916) 324-6310.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/lis

Attachment

cc: Steve Olmos, Superintendent
Butte County Office of Education
Kevin Chan, Director
Audits and Investigations Division
California Department of Education
Celina Torres, Education Administrator I
English Learner Support Division
California Department of Education

Contents

Audit Report

Summary	1
Background	1
Objectives, Scope, and Methodology	3
Conclusion	3
Views of Responsible Officials.....	4
Restricted Use	4
Schedule 1—Summary of Reported, Audited, and Questioned MEP Costs	5
Findings and Recommendations.....	6
Attachment—Region’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller’s Office (SCO) conducted an audit of the Butte County Office of Education’s (region) Migrant Education Program (MEP) for the period of July 1, 2013, through June 30, 2014.

The purpose of the audit was to determine whether the region complied with the United States Department of Education Office of Migrant Education’s MEP requirements; specifically, that the region maintains proper internal controls to ensure that the program-related costs were incurred for eligible and approved increased costs, and that the accounts and records substantiate that the funds were expended for these allowable and increased costs.

The audit determined that the region maintains adequate internal controls to ensure MEP compliance, and that MEP funds were expended for allowable and increased costs. However, the audit found that a regional area office lacked proper internal controls over a MEP conference, which resulted in the provision of meals purchased with MEP funds to non-program recipients. Additionally, the region did not comply with state and federal procurement requirements for three sampled contracts, worth \$353,954. Therefore, we could not substantiate whether these MEP services were procured properly.

Background

The Migrant Education Program is authorized under the No Child Left Behind Act and is funded by Title I, Part C, with the mission of providing supplementary services to ensure that migrant children meet the same academic standards that non-migrant children are expected to meet.

Funds support high-quality education programs for migrant children and help ensure that those children who relocate are not penalized in any manner by disparities among states in curriculum, graduation requirements, or state academic content and student academic achievement standards. Funds also ensure that migrant children are provided with appropriate education services (including supportive services) that address their special needs, and receive full and appropriate opportunities to meet the same state academic content and student academic achievement standards that non-migrant children are expected to meet. Federal funds are allocated by formula to state educational agencies, based on each state’s per-pupil expenditure for education and counts of eligible migrant children, ages 3 through 21, residing within the state.

The allowable MEP efforts are identified, formulated, and developed in concert with the California Department of Education (CDE) and the State’s 23 MEP Regions/Subgrantees. The Regions/Subgrantees include county offices of education and or school districts. At the state level, the CDE also administers and monitors the federal pass-through MEP funds for the MEP subgrantees and recipients.

The Butte County Office of Education is a region that provides, administers, and directly oversees MEP services for some school districts, while sub-granting MEP funds to others through a District Service Agreement (DSA). These sub-recipient districts are responsible for directly providing and administering MEP services to its students and are subject to regional oversight. The region may also fund a consortium of school districts, typically with an enrollment of fewer than 200 migrant students, in which MEP services are provided through a Memorandum of Understanding (MOU). In fiscal year (FY) 2013-14, the region used the MOU to provide MEP services to its school districts and did not sub-grant MEP funds through a DSA. The region is also divided into three area offices. The Santa Rosa area office serves the counties of Del Norte, Humboldt, Lake, Marin, Mendocino, and Sonoma. The Woodland area office serves the counties of El Dorado, Napa, Placer, Sacramento, Solano, Sutter, Yolo, and Yuba. The Oroville area office serves the counties of Butte, Colusa, Glenn, Lassen, Modoc, Shasta, Siskiyou, and Tehama. The region offers migrant instructional services to eligible migrant students through various extended day settings: after school instruction, Saturday schools, summer school, etc. Other migrant services include federal work-study for migrant students, college outreach and readiness programs, and other education-based camps.

The OME conducted a review of the MEP and issued the review in September 2011. The California State Auditor audited the administration of the federally funded migrant education program administered by the CDE and issued its audit report in February 2013. The reviews did not identify any specific administrative oversight concerns of the Butte County Office of Education.

As a result of these reviews, the CDE requested that the SCO assess its administrative oversight efforts¹ and conduct this performance audit of the MEP subgrantees.

The SCO's authority to conduct this audit is given by:

- Interagency Agreement No. CN 140308 effective February 1, 2015, between the SCO and the CDE, which provides that the SCO will conduct an independent management review of the CDE's administrative oversight efforts, including technical assistance provided to MEP subgrantees, and an independent management review of MEP subgrantee fiscal administrative and reporting practices over MEP funding.
- Government Code section 12410, which states, "The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment"

¹ This assessment will be covered in a separate management letter to the CDE.

Objectives, Scope, and Methodology

The purpose of the audit was to determine whether the region complied with the Office of Migrant Education MEP requirements; specifically, that the region maintains proper internal controls to ensure that the region's efforts and program-related costs were incurred for eligible and approved MEP program activities, and that accounting records and source documents substantiate that the MEP funds were expended for approved and increased costs for the audit period of July 1, 2013, through June 30, 2014.

Audit methodologies included, but were not limited to the following:

- Reviewing applicable state and federal requirements related to the MEP, including the California Migrant Education Program Fiscal Handbook;
- Reviewing prior audits and single audit reports, and written policies and procedures, relating to the region's MEP;
- Reviewing the region's MEP regional application and budget and quarterly expenditure reports;
- Conducting inquiries with region personnel, and reviewing and assessing related internal controls; and
- Obtaining and reviewing supporting documentation to ensure that MEP expenditures for increased costs were necessary, reasonable, and allowable.

We conducted this performance 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Conclusion

The audit determined that the region maintains adequate internal controls to ensure MEP compliance, and that MEP funds were expended for allowable and increased costs. However, the audit found that a regional area office lacked proper internal controls over a MEP conference, which resulted in the provision of meals purchased with MEP funds to non-program recipients. Additionally, the region did not comply with state and federal procurement requirements for three sampled contracts, worth \$353,954. Therefore, we could not substantiate whether these MEP services were procured properly.

Views of Responsible Officials

We issued a draft report on November 20, 2015. Tad Alexander, Assistant Superintendent responded by letter dated December 19, 2015, disagreeing with the findings.

Restricted Use

This report is solely for the information and use of the Butte County Office of Education, the United States Department of Education, the California Department of Education, and the SCO. It is not intended to be and should not be used by anyone other than these specified parties. The restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

January 14, 2016

**Schedule 1—
Summary of Reported, Audited, and Questioned MEP Costs
July 1, 2013, through June 30, 2014 (includes 5th Quarter*)**

Object Code	Description	Woodland	Santa Rosa	Oroville	Region	Total Costs	Audited Costs	Questioned Costs
Certificated Personnel Salaries								
1100	Teachers	\$ 352,137	\$ 302,606	\$ 145,516	\$ -	\$ 800,259	\$ 800,259	\$ -
1200	Pupil Support Services	\$ -	\$ -	\$ 612	\$ -	\$ 612	\$ 612	\$ -
1300	Supervisor/Administrators	\$ 59,008	\$ 32,519	\$ 12,459	\$ 547,117	\$ 651,103	\$ 651,103	\$ -
1900	Other Certificated Salaries	\$ 407,057	\$ 697,021	\$ 130,334	\$ -	\$ 1,234,412	\$ 1,234,412	\$ -
	Subtotal	\$ 818,202	\$ 1,032,146	\$ 288,921	\$ 547,117	\$ 2,686,386	\$ 2,686,386	\$ -
Classified Salaries								
2100	Instructional Aides	\$ -	\$ 15,111	\$ -	\$ -	\$ 15,111	\$ 15,111	\$ -
2200	Support Services Salaries	\$ 1,234,574	\$ 878,594	\$ 652,152	\$ -	\$ 2,765,320	\$ 2,765,320	\$ -
2300	Supervisor/Administrators	\$ 41,758	\$ 48,786	\$ 39,786	\$ 52,901	\$ 183,231	\$ 183,231	\$ -
2400	Clerical, Technical and Office Staff	\$ 165,417	\$ 208,697	\$ 112,731	\$ 47,252	\$ 534,097	\$ 534,097	\$ -
2900	Other Classified Salaries	\$ 35,696	\$ -	\$ -	\$ 45,161	\$ 80,857	\$ 80,857	\$ -
	Subtotal	\$ 1,477,445	\$ 1,151,188	\$ 804,669	\$ 145,314	\$ 3,578,616	\$ 3,578,616	\$ -
Benefits								
3000-3900	Employee Benefits	\$ 801,593	\$ 770,359	\$ 466,436	\$ 187,628	\$ 2,226,016	\$ 2,226,016	\$ -
	Subtotal	\$ 801,593	\$ 770,359	\$ 466,436	\$ 187,628	\$ 2,226,016	\$ 2,226,016	\$ -
Books and Supplies								
4100	Textbooks Curricula Materials	\$ -	\$ -	\$ 344	\$ -	\$ 344	\$ 344	\$ -
4200	Books & Reference Materials	\$ 7,175	\$ 5,593	\$ -	\$ -	\$ 12,768	\$ 12,768	\$ -
4300	Materials & Supplies	\$ 112,538	\$ 74,507	\$ 50,761	\$ 5,081	\$ 242,887	\$ 242,887	\$ -
4400	Noncapitalized Equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4700	Food	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
	Subtotal	\$ 119,713	\$ 80,100	\$ 51,105	\$ 5,081	\$ 255,999	\$ 255,999	\$ -
Services and Other Operating Expenditures								
5100	Subagreements for Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5200	Travel & Conference	\$ 115,576	\$ 85,922	\$ 47,781	\$ 57,529	\$ 306,808	\$ 306,808	\$ -
5300	Dues & Memberships	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5400	Insurance	\$ -	\$ -	\$ -	\$ 2,100	\$ 2,100	\$ 2,100	\$ -
5500	Operations & Housekeeping Services	\$ 22,679	\$ 20,641	\$ 1,675	\$ -	\$ 44,995	\$ 44,995	\$ -
5600	Rentals, Leases, Repairs & Noncap Imp	\$ 84,799	\$ 64,798	\$ 11,944	\$ 11,845	\$ 173,386	\$ 173,386	\$ -
5700	Transfers of Direct Costs	\$ 5,169	\$ 7,951	\$ 1,257	\$ 34,608	\$ 48,985	\$ 48,985	\$ -
5800	Prof/Cons/Serv & Operating Exp.	\$ 194,827	\$ 230,859	\$ 56,679	\$ 431,397	\$ 913,762	\$ 559,808	\$ (353,954)
5900	Communications	\$ 8,682	\$ 5,668	\$ 10,381	\$ 4,141	\$ 28,872	\$ 28,872	\$ -
	Subtotal	\$ 431,732	\$ 415,839	\$ 129,717	\$ 541,620	\$ 1,518,908	\$ 1,164,954	\$ (353,954)
	Subtotal	\$ 3,648,685	\$ 3,449,632	\$ 1,740,848	\$ 1,426,760	\$ 10,265,925	\$ 9,911,971	\$ (353,954)
	Indirect Cost	\$ 21,030	\$ -	\$ -	\$ 696,427	\$ 717,457	\$ 717,457	\$ -
	Total	\$ 3,669,715	\$ 3,449,632	\$ 1,740,848	\$ 2,123,187	\$ 10,983,382	\$ 10,629,428	\$ (353,954)

*Note: the 5th quarter is the first quarter of the following fiscal year, during which the region is allowed to spend the funds that were not spent in the current fiscal year.

Findings and Recommendations

FINDING 1— Controls over MEP food expenditures need improvement

In a review of five food expenditures purchased with Migrant Education Program (MEP) funds, we found one instance for which we questioned a regional area office's internal controls over its purchases. Specifically, we reviewed documentation supporting meals purchased for parents attending an MEP conference and noted that attendance records specified whether parents were migrant or non-migrant. According to Woodland staff, former migrant parents, friends of migrant parents, and English Learner parents were allowed to attend the MEP conference. Thus, it appears that MEP funds and not another funding source were used to purchase and provide meals to non-program recipients. The 2007 MEP Fiscal Handbook provides guidelines to regions relating to parents of migrant children; the guidelines do not include non-migrant parents. In addition, the handbook states the following:

The MEP funds are solely for the benefit of migrant students and may not be used to support projects that include non-migrant students. It can be reasonably assumed then that this provision also holds true for migrant and non-migrant parents.

Although the total food expenditure was not significant in amount, stronger regional oversight and implementation of tighter controls by the area office is needed to reduce the risk of further expenditures of MEP funds for non-program recipients.

The 2007 MEP Fiscal Handbook Section 5.5 Audit Requirements and Record Retention, Part B.2, Internal Control, states:

Effective control and accountability shall be maintained for all grant or sub-grant cash, real and personal property and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purpose.

Section 7.0, Allowable and Unallowable Expenses, 7.1, Operating Agency states, in part:

Operating agencies assume responsibility for ensuring that federal program funds have been expended and accounted for consistent with applicable OMB cost principles, agency program regulations, and the terms of subgrant agreements to determine the reasonableness, allowability and allocability of costs...costs are allowable for federal reimbursement only to the extent of benefits received by federal programs, and costs must meet the basic guidelines of allowability and reasonableness.

To be allowable, costs shall meet the following criteria:

1. Be necessary and reasonable for proper and efficient performance and administration of federal awards, and be allocable under federal and state cost principles.

Recommendation

We recommend that:

- The region provide the necessary oversight by implementing control policies, procedures, and guidelines for prudent expenditure of MEP funds, specifically with regards to food expenditures.
- The Woodland area office complies with the aforementioned policies, procedures, and guidelines to ensure compliance with the current MEP Fiscal Handbook regarding food expenditures.

Region's Response

The Butte County Office of Education believes the statement, “internal controls were lacking in a regional office” is too broad a statement to be characterized of the Woodland Area office, as it believes this was an isolated incident. Further, the BCOE asserts that the logistics of the conference resulted in expenditures of MEP funds on non-program recipients and not an intentional attempt on the part of the Woodland Area office. Finally, the BCOE states that, as many migrant parents are also considered “English Language Learners,” they should be eligible as migrant parents.

SCO Comment

We agree that the Woodland Area office did not deliberately attempt to expend funds on non-program recipients, but the attendance records indicating “migrant” or “non-migrant” suggest that the Woodland area office did know in advance that non-migrant parents would attend the MEP conference. In addition, we agree that a parent who is indeed both a “migrant” and “English Language Learner” parent should be allowed to receive MEP benefits in normal circumstances; in this case, the Woodland staff informed the auditors that those parents who had marked “non-migrant” on the attendance records included former migrant parents, friends of migrant parents, and “English Language Learners.”

Therefore, the finding remains unchanged.

**FINDING 2—
Lack of adherence
to procurement
requirements**

We reviewed the Butte County Office of Education’s (region) MEP procurement activities for three sampled contracts worth \$353,954, and determined that all three contracts did not follow procurement requirements set forth in the 2007 MEP Fiscal Handbook and the criteria set forth in Title 34, *Code of Federal Regulations*, Part 80.36 (34 CFR 80.36). Our testing revealed the following:

- The region did not obtain price or rate quotations from an adequate number of qualified sources.
- The region did not follow federal procurement requirements by sealed bidding or competitive proposal for one sampled MEP contract totaling \$296,407.

- The region lacked written criteria for reviewing proposals and assessing the technical qualifications of contracted personnel.
- The region did not perform a cost or price analysis, including making independent estimates before receiving proposals.
- The region did not maintain detailed vendor selection records of the method of procurement, selection of contract type, and contractor selection or rejection.

Therefore, we could not determine if these MEP services were procured properly. We acknowledge that some vendors provide unique and specific MEP services that oftentimes preclude the region from obtaining price or rate quotations from multiple sources or reviewing multiple proposals. To adhere to applicable federal criteria, the region should incorporate noncompetitive procurements into its policies, procedures, and guidelines for vendor selection.

The 2007 MEP Fiscal Handbook, Part 3.2, Fiscal Responsibilities states, in part:

Use procurement procedures that reflect applicable federal and state statutes and standards. Local procedures must conform to applicable federal laws and to the procurement standards found in 34 CFR 80.36 and 34 CFR 89.36. Federal law supersedes any locally developed policies or procedures that is contradictory to federal statutes and requirements for all MEP funding. Therefore, all policies for procurement services under the MEP at the regional and district level *must* be consistent with the requirements in 34 CFR 80.36, 34 CFR 89.36, and OMB Circulars A-87 and A-133. The following applies:

- All procurement transactions must be conducted in a manner providing for full and open competition consistent with the standards in 34 CFR 80.36 and 34 CFR 89.36.
- Subgrantees will establish a clear process or written criteria for judging proposals, assessing technical qualifications of contracted personnel, and for assessing the quality of a technical approach.
- Awards will be made to the bidder whose proposal is most advantageous, with price considered.

34 CFR 80.36 (b) (9) states:

Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

34 CFR 80.36 (d) states:

Methods of procurement to be followed- (1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold fixed at 41 U.S.C. 403 (11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

34 CFR 80.36 (2), states, in part:

Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

34 CFR 80.36 (3), states, in part:

Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

34 CFR 80.36 (4), states, in part:

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
- (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (C) The awarding agency authorizes noncompetitive proposals; or
- (D) After solicitation of a number of sources, competition is determined inadequate.

34 CFR 80.36 (f), states, in part:

Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals....

Recommendation

We recommend that the region implement policies and procedures to ensure proper and uniform application and assessment of vendor selections. Implementing policies for identifying qualified vendors will strengthen the region’s compliance with applicable federal and state regulations. To ensure proper vendor qualification and rating, we recommend that the region:

- Obtain price or rate quotations from an adequate number of qualified sources.

- Adhere to procurement requirements by sealed bids or competitive proposals for MEP contracts exceeding the Simplified Acquisition Threshold.
- Establish written criteria for reviewing proposals and assessing the technical qualifications of contracted personnel.
- Maintain records sufficient to detail the history of procurement, including the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- Perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold.
- Adhere to applicable federal criteria regarding a noncompetitive procurement.

Furthermore, the region should consult with the CDE to make a determination of the \$353,954 in questioned MEP costs.

Region's Response

The BCOE believes that the draft report is misleading in its characterization of its sampling methodology in stating that “all” contracts did not follow MEP procurement requirements. In addition, each of the “questioned” contracts were presented to and approved by the CDE.

(Following is a synopsis of the BCOE's response for each of the three sampled contracts. The responses below are applicable either to each contract or all three)

Federal Work-Study Program

The agreement was not for the provision of the types of goods and services contemplated by the competitive bidding procurement requirements set forth in the federal regulations – i.e. purchase of supplies, materials or construction services.

The fiscal savings associated with hiring work-study employees pursuant to the agreement was significant (See 34 CFR, part 80.36(f) providing for cost analysis).

The region concluded that the small purchase, competitive bidding, and noncompetitive processes were not feasible or appropriate processes to use to identify and retain work-study candidates.

Migrant Student Leadership Institute

The SCO auditors agreed that costs associated with facilities rentals are not subject to the procurement provisions of part 80.36 and excluded rental agreements from this draft report on that basis...the amount in question should be reduced by the costs attributable to housing (\$118,800) and facilities fees (\$23,950).

Federal Work-Study Program, Migrant Student Leadership Institute and Professional Development Training

The region viewed all three agreements as constituting an “intergovernmental agreement” pursuant to 34 CFR 80.36(b)(5), which states, “To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.” The BCOE believes the provision does not contemplate that shared use of services provided by one of the subgrantees must be separately or competitively procured.

SCO Comment

Due to the nature of the Object Code 5800, it was necessary for the SCO auditors to thoroughly research and review significant expenditure transactions, so that only those transactions considered “procurements” were selected for testing. Consequently, five contracts were judgmentally selected as our original sample. However, two of the five contracts were determined later to be excluded from the sample (as mentioned above in the auditee’s response), leaving three sampled contracts.

The contracts themselves were not presented to and approved to the CDE; rather, it was the MEP service that was approved in the Regional Application by the CDE, later resulting in the contracts.

Federal Work-Study Program

The *Code of Federal Regulations* procurement requirements apply to every type of procurement involving federal grant money.

The SCO did not receive evidence of a cost analysis performed prior to the selection of the vendor. 34 CFR 80.36(f) states, “...as a starting point, grantees must make independent estimates before receiving bids or proposals (or price/rate quotations for small purchase procurement procedures).”

The agreement was between the federal work-study program at CSU, Sacramento, and Butte COE MEP. The region did not provide evidence that it reviewed, compared, or obtained price or rate quotations from other university federal work-study programs. As the contracted amount did not exceed the Simplified Acquisition Threshold, we expected only a simple and informal procurement method, such as small purchase procurement procedures. If the small purchase method was infeasible, then the region was required to satisfy the criteria for a procurement by noncompetitive proposal.

Migrant Student Leadership Institute

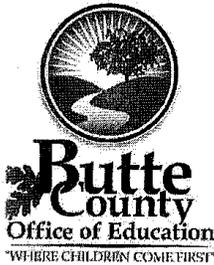
The facility rental was an element of the entire contract. As we questioned the procurement of the entire contract, then the costs of the facility rental must be questioned as well.

Federal Work-Study Program, Migrant Student Leadership Institute and Professional Development Training

34 CFR 80.36(b)(5) is a procurement standard intended to foster greater economy and efficiency amongst grantees and subgrantees; it does not grant an exemption from federal procurement requirements.

Therefore, the finding remains unchanged.

**Attachment—
Butte’s Response to
Draft Audit Report**



Tim Taylor
Superintendent
ttaylor@bcoe.org

Tad Alexander
Assistant
Superintendent
talexander@bcoe.org
(530) 532-5720

Board of Education

Amy Christianson
Howard M. Ferguson
Kyne Johnson
Jeannine MacKay
Brenda J. McLaughlin
Roger Steel
Mike Walsh

Administrative
Services
1859 Bird Street
Oroville, CA 95965
(530) 532-5761
Fax (530) 532-5762
<http://www.bcoe.org>

An Equal Opportunity
Employer

December 10, 2015

Andrew Finlayson, Chief
State Agency Audits Bureau
California State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874

Re: *Butte County Office of Education Response to State Controller's Migrant Education Program Draft Audit Report*

Dear Mr. Finlayson:

We are writing to confirm that on November 30, 2015, the Butte County Office of Education, MEP Region 2 ("BCOE" or "Region") received the State Controller's Draft Report on the audit of BCOE's Migrant Education Program ("MEP") for the period of July 1, 2013 through June 30, 2014 ("Draft Report"). We have carefully reviewed the Draft Report and are pleased that the audit generally "determined that the region maintains adequate internal controls to ensure MEP compliance, and to ensure that MEP funds were expended for allowable and increased costs." (Draft Report, p. 1.)

We note, however, that the audit identified two areas of concern: (1) controls over MEP food expenditures (Draft Report, Finding 1, p. 6); and (2) adherence to procurement requirements (Draft Report, Finding 2, p. 7). Pursuant to the directions accompanying the Draft Report, we offer the following comments and responses to the Findings and Recommendations set forth therein.

I. Response to Finding 1: Controls over MEP Food Expenditures

The Draft Report identifies a single instance in which it appears some non-program recipients – "former migrant parents, friends of migrant parents and English Language Learner parents" – received meals paid for with MEP funds. (Draft Report, p. 6.) This incident was specific to only one conference hosted by one area office (Woodland) out of the Region's three area offices. Collectively, the Region's area offices organize and host dozens of programs annually serving hundreds of migrant students in twenty-two Northern California counties. Moreover, as stated in the Draft Report, "the total food expenditure [at issue] is not significant in amount." (Draft Report, p. 6.)

Based on these facts and circumstances, BCOE does not concur with the broad statement that internal controls over food expenditures are "lacking." First, BCOE believes that this was an isolated incident in which the Woodland Area office hosted a MEP conference intended for migrant students and parents. In

"WHERE CHILDREN COME FIRST"

attempting to reach and serve the target migrant population, some non-program attendees were inadvertently allowed to participate.

Second, in reviewing this Finding with the Woodland Area office administrators, we determined that there was no intentional attempt to expend funds on non-program recipients or on unallowable costs. Rather, the logistics of conducting the MEP conference left little opportunity for administrators to identify during the conference whether the persons listed on the attendance sign-in sheets were in fact eligible to receive a MEP-funded meal.

Finally, the fact that an attendee is an "English Language Learner" parent does not in and of itself establish that they are a non-program recipient, as suggested in the Draft Report. Rather, migrant parents in many cases are also considered "English Language Learner" parents as well. As such, we do not believe that an attendee's designation as an ELL parent automatically prohibits their eligibility as a migrant parent.

Notwithstanding our disagreement with Finding 1, we hereby confirm that BCOE is already implementing the recommendations proposed in the Draft Report. Specifically, the BCOE Region, including all of its Area Offices, have taken the following steps:

- Received in-depth training on MEP fiscal policies and procedures through participation in the California Department of Education's ("CDE") recent roll-out and training on the California Migrant Education Program Fiscal Handbook, adopted June 2015; and
- Developed best practices for ensuring the appropriate expenditure of MEP funds, including seeking guidance from CDE on the allowability of particular expenditures.

Given that the Region has taken the measures outlined above, and collaborates with and monitors the activities of its Area offices on a regular basis, BCOE believes that it has and will continue to comply with Recommendation 1. The Woodland Area office likewise will continue to take all reasonable and necessary steps to ensure that MEP funds are appropriately expended as suggested in Recommendation 2.

II. Response to Finding 2: Adherence to Procurement Requirements

The Draft Report also finds that the Region did not adhere to procurement requirements in connection with three contracts. (Draft Report, p. 7.) However, the Draft Report is misleading in its characterization of its sampling methodology. In particular, the Draft Report claims that only three MEP contracts were sampled and it was determined that "all" three contracts did not follow MEP procurement requirements. (Draft Report, p. 7.) BCOE staff worked diligently with State Controller Audit staff to understand the preliminary audit findings and to provide relevant information to assist in the preparation of the Draft Report. During that period, and contrary to the assertion in the Draft Report, more than three contracts were sampled and reviewed, and many were found to be compliant. Thus, BCOE takes issue with the implication that "all" of its contracts fail to adhere to procurement standards.

Here, it is BCOE's understanding that the contracts at issue include the following:

Agreement	Contracting Party	Amount
Federal Work Study Program (Work Study Students)	Sacramento State University	\$27,000.00
University Enterprises Inc. (Migrant Student Leadership Institute)	Sacramento State University - College Assistance Migrant Program	\$296,407.00
San Joaquin COE Professional Development Training Package	San Joaquin County Office of Education - Professional Development Center	\$30,547.00
Total		\$353,954.00

The Draft Report finds that each of these agreements was not procured in accordance with applicable procurement requirements. While BCOE agrees that procurement protocols sometimes require competitive bidding, as outlined in the Draft Report, in the instances of the specific agreements at issue, BCOE did not conclude that such a process was feasible or required.

On a preliminary note, we point out that each of the "questioned" contracts were presented to and approved by CDE. However, we address each of the specific agreements as follows.

A. Federal Work-Study Program

The Federal Work-Study Program Agreement questioned by the Draft Report was merely a means for the Region to identify candidates for work-study employment with the Region. This Agreement was not for the provision of the types of goods and services contemplated by the competitive bidding procurement requirements set forth in the Federal Regulations; i.e., purchase of supplies, materials or construction services. Rather, the Region viewed the Agreement as an effective means to identify eligible migrant student work-study candidates for potential employment.

Employment decisions and practices, such as those contemplated in the Agreement, do not lend themselves to a blind competitive bidding process. It is undisputed that MEP funds may be used for work-study employment. Just as the BCOE Region is not required to competitively bid or utilize a "procurement" process to hire internal MEP staff, it should follow that no such process is required to identify and employ migrant work-study students.

Moreover, the Region determined that the fiscal savings associated with hiring work-study employees pursuant to this Agreement were significant. (See 34 Code of Federal Regulation,

part 80.36(f) providing for cost analysis.) By its terms, the Agreement provides that the Region would pay out of MEP funds only 30% of the student's hourly wage, while the balance would be paid by the sponsoring university through use of federal work-study grant funds. This demonstrated saving to the Region made for a unique and fiscally prudent decision to partner with Sacramento State University for the retention of work-study employees.

Even if the procurement requirements were applicable to this activity, for the same reasons as set forth above the Region concluded that neither the small purchase nor the competitive bidding were feasible processes to use to identify and retain work-study candidates. Therefore, the Region could conduct a noncompetitive process in accordance with 34 Code of Federal Regulation, part 80.36(4). But again, given the nature of the work-study agreement, even the noncompetitive process does not appear appropriate.

Finally, we note that the work-study agreement is between the Region and another sub-grantee and federal work-study grant recipient, Sacramento State University. BCOE viewed the agreement between the parties as constituting an "intergovernmental agreement" for the procurement or use of common goods and services pursuant to 34 CFR 80.36(b)(5). That provision states: "To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services."

This provision does not contemplate that shared use of services provided by one of the sub-grantees must be separately or competitively procured; that would completely frustrate one of the primary purposes of this provision. In other words, if one sub-grantee can use internal staff and professionals to provide a particular service, the fact that they agree through an inter-agency agreement to share those services with another sub-grantee should not trigger a competitive procurement obligation. Instead, the federal regulation seems to clearly contemplate that such an agreement is permissible and does not add a separate procurement process in the instance where the sub-grantees are the providers of the shared services.

In this case, the Region believed that the agreement was permissible under the "inter-agency agreement" provision and that given the nature of the agreement -- identification and retention of eligible work-study candidates - no additional procurement requirements applied.

B. Migrant Student Leadership Institute

The Migrant Student Leadership Institute Agreement reflects a collaboration between two MEP funding recipients, the BCOE Region 2 and University Enterprises through Sacramento State University College Assistance Migrant Program ("CAMP"). Just as the BCOE region develops and hosts programing for eligible migrant students, CAMP likewise provides those same programs for which it is authorized to use federal MEP/CAMP funding. If BCOE were providing these services, there would be no procurement requirement. Similarly, if CAMP was providing said services, it would have no procurement obligation.

As noted above, the federal regulations are quite clear that in order to "foster greater economy and efficiency, grantees and sub-grantees are encouraged to enter into State and local

intergovernmental agreements for procurement *or use* of common goods and services.” (See 34 CFR 80.36(b)(5).) Here, BCOE entered into an inter-agency agreement to *use the services* of another sub-grantee provider for which no procurement would have been required. As such, BCOE complied with the applicable procurement method set forth in the federal regulations.

Moreover, the inter-agency agreement between the Region and CAMP included use of facilities. These provisions are akin to a lease of facilities for the duration of the Leadership Institute. Expenditure of Migrant Education grant funds is permissible for leases of property. Nor are such agreements contemplated within the procurement provisions of the Code of Federal Regulations in that the code focuses on procurement of goods (including personal property such as equipment) and services (including construction services), rather than lease of space for the provision of services.

In fact, the Audit staff has agreed that costs associated with facilities rentals are not subject to the procurement provisions of part 80.36, and excluded Rental Agreements from this Draft Report on that basis. Therefore, even if the Controller’s final conclusion is that the contract should have been procured in a different manner, the amount in question should be reduced by the costs attributable to housing (\$118,800) and facilities fees (\$23,950). Nonetheless, BCOE maintains that the type of partnering reflected in the Leadership Institute Agreement demonstrates the efficiencies and economies of scale encouraged by the applicable federal regulations.

C. Professional Development Training

Finally, the Draft Report questions the procurement of a professional development training package for a 10-day Region-sponsored STEM camp. The Region contracted with San Joaquin County Office of Education which also serves as MEP Region 23. Thus, similar to the BCOE Region 2, San Joaquin COE can provide certain services with internal staff and professionals without needing to separately procure those services through a competitive process. As stated above, the federal regulations permit grantees and sub-grantees to enter into State and local intergovernmental agreements for procurement *or use* of common goods and services. (See 34 CFR 80.36(b)(5).)

Moreover, because San Joaquin COE staff was providing the requested service which it agreed (through an MOU) that BCOE could utilize for the STEM camp, BCOE believed that it was permitted to enter into such an agreement without the need for a separate procurement process. In short, interpreting the federal regulation as requiring sub-grantees to competitively bid services that are provided by another sub-grantee and can be commonly used through a mutually approved inter-agency agreement seems counter to the intent of part 80.36(b)(5).

D. Finding 2 Recommendations

Without waiving the concerns and objections to Finding 2 set forth above, the BCOE is mindful that the Region can improve its memorialization and retention of documents related to contracting and the procurement process. As such, the Region is amenable to adopting written internal policies for the processing of MEP-related agreements. These policies could include the

development of a checklist that would accompany contracts throughout the procurement process. The checklist would include, but not limited to, the following:

- Description of the goods and/or services being procured and the identification of the reasonable and necessary benefit to eligible MEP participants;
- Identification of the applicable procurement method, if required, together with criteria and instructions for implementation of each method;
- Description of any cost and/or price analysis, if required;
- Description of final disposition of contract, including contract award and/or rejection and final copy of fully executed agreement(s).

The BCOE will use every effort to retain all files for each MEP-related contract in an orderly fashion and for the required audit timeline as specified by the Office of Migrant Education and/or CDE. With the above measures in place, BCOE believes that going forward it will be able to easily substantiate the procurement process for each of its MEP contracts and that such procurement processes will be in full compliance with all applicable federal and state guidelines.

We thank your team for the opportunity to work collaboratively to address the concerns identified in the Draft Report. We are happy to answer any additional questions you might have and thank you for your thoughtful consideration of this response letter.

Sincerely,



Tad Alexander
Assistant Superintendent
Administrative Services

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

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