

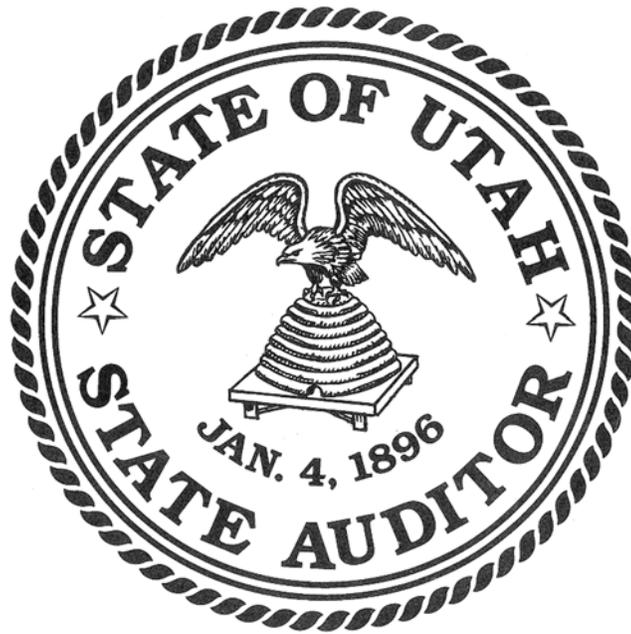
# PARK CITY SCHOOL DISTRICT

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Special Project Report  
December 7, 2017

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Report No. PCSD-16-SP



## OFFICE OF THE STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor  
Julie M. Wrigley, CPA, Audit Manager  
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**PARK CITY SCHOOL DISTRICT**

Special Project Report

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**TABLE OF CONTENTS**

	<u>Page</u>
<b>LETTER TO MANAGEMENT</b>	1
<b>FINDINGS AND RECOMMENDATIONS:</b>	
1. NONCOMPLIANCE WITH PROCUREMENT CODE IN AWARD OF SUBCONTRACT	2
2. DISTRICT'S CONTRACT WITH CM/GC VIOLATES UTAH PROCUREMENT CODE AND DISTRICT POLICY	3
<b>ENTITY'S RESPONSE</b>	ATTACHMENT A



OFFICE OF THE  
STATE AUDITOR

**REPORT NO. PCSD-16-SP**

December 7, 2017

Andrew Caplan, President  
Park City School District Board of Education  
2700 Kearns Blvd.  
Park City, UT 84060

Dear Mr. Caplan:

The Office of the State Auditor has a hotline program, through which we receive complaints with financial or compliance implications related to state and local governments, and various other public entities including school districts. We received an allegation that a contract for an LED lighting project was conducted and awarded improperly by Park City School District's (the District) Construction Manager/General Contractor (CM/GC).

We performed the procedures described below to evaluate certain aspects of the District's internal control and compliance related to the LED lighting project and its CM/GC contract. The project occurred in 2016 and the CM/GC contract was executed in 2013. The purpose of these procedures was to determine whether the District properly monitors its CM/GC contract.

1. We reviewed the Notice for Bid issued by the CM/GC for an LED lighting project for compliance with Utah Procurement Code.
2. We reviewed the contract between the District and the CM/GC for compliance with the Utah Procurement Code and District Policy.

The results of our investigation are included in the attached findings and recommendations section of this report.

Our procedures were more limited than would be necessary to express an opinion on any of the items referred to above or to express an opinion on the effectiveness of the District's internal control or any part thereof. Accordingly, we do not express such opinions. Had we performed additional procedures or had we made an audit of the effectiveness of the District's internal control, other matters might have come to our attention that would have been reported to you.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciated the courtesy and assistance extended to us by the personnel of the District during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please call Julie Wrigley, Audit Manager, at 801-538-1340.

*Office of the State Auditor*

Office of the State Auditor

## BACKGROUND

Park City School District (District) is considered an educational procurement unit and, as such, must follow procurement requirements set forth by Utah Code 63G-6a. The District has contracted with an outside general contractor to provide Construction Manager/General Contractor services (CM/GC) for various construction projects. Projects range from emergency construction work to planned projects such as the LED lighting upgrade project which is the subject of this review. The District's contract obligates the CM/GC to follow Utah State Code. Utah Code 63G-6a-1302(5) requires the CM/GC to comply with the procurement process described in the Utah Procurement Code when entering into any subcontracts that were not included in the District's original cost proposal. Nevertheless, the District is ultimately responsible to ensure that contracts are awarded properly and comply with state law.

## FINDINGS AND RECOMMENDATIONS

### 1. NONCOMPLIANCE WITH PROCUREMENT CODE IN AWARD OF SUBCONTRACT

The CM/GC did not follow a standard procurement process outlined in the Utah Procurement Code in the advertising and evaluation of bids for the LED lighting upgrade project. The CM/GC's process most closely resembled an "Invitation for Bids" or a "Request for Proposal" as described in Utah Code 63G-6a Part 6 and Part 7. An Invitation for Bids allows only objective criteria to be used in the evaluation of the bid. A Request for Proposal allows objective and subjective criteria but prohibits the evaluation committee from knowing or having access to any information relating to the costs until after evaluation of other criteria without a signed waiver. Both procurement processes prohibit the use of criteria not described in the advertisement to be used in the evaluation of the responses. The "Notice to Contractors" and evaluation process used by the CM/GC, and in part, the District, did not meet the requirements of either procurement process because it included both objective and subjective criteria and because cost data was viewed contemporaneously with other criteria without a waiver. Further, the evaluation process included criteria that was not included in the Notice to Contractors. One such criteria was "owner's selection" which appears to have been based on the District's prior experience with the vendor and other subjective factors.

The District failed to sufficiently monitor the CM/GC's compliance with the Utah Procurement Code. Also, it appears that District personnel involved in the procurement process did not have a thorough and sufficient understanding of State procurement requirements to recognize that the addition of the "owner selection" criteria was improper. It is unclear whether this subcontract would have been awarded to another bidder had a standard procurement process been used.

#### Recommendation:

**We recommend that the District's Board of Education and management:**

- **Ensure its CM/GC meets the contractual obligations to comply with the Utah Procurement Code.**

- **Provide procurement training to personnel involved in the CM/GC process.**
- **Establish policies and procedures to ensure adequate monitoring of CM/GC sub-contract awards.**
- **Recover any funds paid to the CM/GC beyond what the District would have paid had the CM/GC complied with Utah Procurement Code from the time when the contract was executed.**

## **2. DISTRICT'S CONTRACT WITH CM/GC VIOLATES UTAH PROCUREMENT CODE AND DISTRICT POLICY**

The District's contract with its CM/GC appears to be a cost-plus-percentage-of-cost contract. The contract provides that the District will pay for all costs, plus a construction manager's fee of 10% of all costs. Both Utah Code 63G-6a-1205(5) and District policy 4005-V-G prohibit this form of contract. This error likely occurred due to an improper review of the contract for compliance upon execution of the contract in 2013.

### **Recommendation:**

**We recommend that the District's Board of Education:**

- **Review the contract with the CM/GC and take necessary action to comply with State Code and District policy by either amending or canceling the contract.**
- **Establish policies and procedures to ensure future contracts comply fully with the Utah Procurement Code and District policy.**
- **Ensure District personnel attend quarterly procurement training provided by the State Division of Purchasing.**
- **Recover any funds paid to the CM/GC as a percentage of project costs beyond what the District would have paid had the contract been permitted by Utah Procurement Code.**



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December 6, 2017

Mr. John Dougall  
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East Office Building, Ste 310  
Salt Lake City, Utah 84114-2310

Dear Auditor Dougall:

The Board of Education of Park City School District ("Board") acknowledges receipt your draft report of Findings and Recommendations regarding the results of your audit of the District's procurement processes by the Office of the State Auditor ("OSA"). The Board appreciates the opportunity to provide a response and the extension of time in which to do so.

As you know, the Audit as was focused on two specific issues related to the District's January 1, 2013 contract with Hughes General Contractors, Inc. ("the Hughes CM/GC Contract"), and the LED lighting upgrade performed pursuant to that contract. We appreciate the efforts of your office in responding to constituent complaints and always seek to be in compliance with applicable state laws.

The Board's specific responses to the audit findings and recommendations are as follows:

The OSA has concluded that the Hughes CM/GC Contract was entered into in violation of the Procurement Code and District policy prohibiting cost-plus-percentage-of-cost contracts. The OSA states "the District's contract with its CM/GC appears to be a cost-plus-percentage of cost contract."

The Board acknowledges that as of the effective date of the Hughes CM/GC Contract, the Utah Procurement Code prohibited cost-plus-percentage of cost contracts. The Board further acknowledges that at the time the Hughes CM/GC Contract was signed there was a Board policy prohibiting the use of cost-plus percentage of cost contracts.

More specifically, the law in effect as of January 1, 2013 stated: "Subject to the limitations of this section, any type of contract which will promote the best interests of the state may be used; provided that the use of a cost-plus-percentage-of-cost contract is prohibited." Utah Code Ann. § 63G-6a-416 (2012). It should be noted, however, that at the time, the Procurement Code did not contain a definition of a "cost-plus-percentage-of-cost contract."

The term "cost-plus-percentage-of-cost contract" was not defined until the 2013 legislative session. At that time, the Utah Procurement Code was specifically amended to allow cost-plus-percentage of cost contracts under certain prescribed circumstances. In connection with its

decision to permit cost-plus contracts, the Legislature defined the term as “a contract where the contractor is paid a percentage over and above the contractor’s actual expenses or costs.” Senate Bill 190 (2013 Leg., effective May 1, 2013.)

Although it was not the understanding of relevant District personnel at the time, the Board acknowledges (without necessarily conceding), that the CM/GC Contract at issue contains certain provisions that could result in it being construed as a cost-plus-percentage-of-cost contract. The Board further acknowledges that SB190’s requirements for entering into a cost-plus-percentage-of-cost contract do not appear to have been satisfied.

We are generally in agreement with the audit’s recommendation that the Board take certain steps to remedy this situation. We are actively working with the District’s legal counsel and administration to review applicable Procurement Code provisions, provide training (including attendance at quarterly procurement training provided by the State Division of Purchasing), ensure compliance with the Procurement Code by our CM/GC and review policies and procedures to ensure adequate monitoring of CM/GC subcontract awards.

That said, while we are certainly in agreement that it is important for the District to take steps to prevent a recurrence of similar issues by reviewing policies, providing training, and generally improving our procurement processes, we cannot state at this time that we are fully in agreement with the audit’s recommendations as it relates to remedial actions regarding the CM/GC contract. In conjunction with this determination, it should be noted that the contract expires on December 31, 2017. Any future contracts will obviously be carefully reviewed for compliance with the Procurement Code. To the extent the audit recommends that the Board take certain actions regarding the contract with the CM/GC and to recover funds paid to the CM/GC, we are in the process of assessing the extent to which such action may or may not be feasible and cost-effective for the District based on the contract. At this time, we are reluctant to commit the Board to a course of action that could potentially be more costly to pursue than is warranted based on the degree of financial harm incurred, which, as your auditors acknowledged, may be difficult to quantify. That said, we intend to carefully analyze the situation and proactively take such steps as we determine are reasonable and advisable under the circumstances.

Again, we thank you for your attention to these matters and want you to know that we take your recommendations very seriously as we strive to be in compliance with all relevant laws and requirements.

Please feel free to contact me should you wish to discuss these issues further.



Andrew Caplan  
President  
Park City School District Board of Education