

# Proposition R: Focused Special Review

Approved for public release by the  
Governing Board of the  
Southwestern Community College District

March 14, 2012



# Message from the Superintendent/President



Dear Southwestern College Students, Staff and Community Members,

Today the Governing Board has approved the release of a Focused Special Review conducted by an independent auditor addressing procurement and related issues connected to Proposition R.

Southwestern College and its Governing Board Members have acted in a thorough and responsive manner as soon as they became aware of potential problems. Not only did we move forward with the review but we have also worked to strengthen our procedures, improve policies, and to proactively set a new standard for transparent decision-making at all levels. This work continues.

It is our goal to exceed compliance standards. We are using this challenge as an opportunity to reshape ourselves – to realize and be recognized as reaching a new standard of excellence. Our students, our college, and our community demand and deserve nothing less.

A stylized, handwritten signature in black ink.

Melinda Nish, Ed.D.  
*Superintendent/President*



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Letter from Southwestern College Superintendent/President Melinda Nish

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# Focused Special Review Overview

Following ten months of interviews with involved parties and extensive review of Southwestern College (SWC) and Secretary of State records, Seo Consulting, Inc. has presented findings that identify key issues in district procurement practices and expenditures and fundraising activities of the Southwestern College Foundation.

In April 2011, Seo was retained by the college district's outside counsel to perform a Focused Special Review of issues involving Proposition R contracting as well as Foundation operations for the fiscal years ending June 2009 and June 2010. The firm was hired through the college's legal counsel to ensure the investigation would be carried out without any undue influence.

The length of time taken for the review is due to a number of complex issues and the need for extensive interviews of people involved, many of whom are no longer employed by the college or involved in Foundation activities. The review included interviews with individuals involved with the procurement process and a review of information that included email, Request for Proposal documentation, Governing Board minutes, proposals from bidders, expense reports and invoices, Form 700s, and campaign contribution information submitted to the California Secretary of State.

The review's executive summary identified nine general issues regarding Proposition R contracting and another 14 regarding the Foundation. All have been evaluated and analyzed internally and specific actions to address each of them have been developed and are outlined on the following pages.

Throughout this period, the Governing Board and college administration have fully cooperated, and continue to cooperate, with the San Diego District Attorney's Office.

## Prop R

The first phase of the review focused specifically on events surrounding the selection of the project manager, architect and construction manager, as well as some subcontractor work for the project to be funded by Prop. R. The review notes issues in negotiating and business practices.

In the review of SWC records for the Corner Lot project, the investigator found problems with incomplete record keeping and lack of adequate documentation. Noted are discrepancies in costs, issues with contract negotiation practices, inconsistent methods of reviewing bids, missing documents, and lack of oversight.

There appeared to be no clear guidelines, or enforcement of guidelines, limiting social interaction between developers and the college officials. Such activities contributed to the potential of conflict of interest.

## Foundation

The Foundation, while closely affiliated with the college, is a separate nonprofit (501c3) corporation with its own independent board. Its offices are located on the SWC Chula Vista campus and the Foundation is staffed by SWC employees.

The Focused Special Review notes that internal controls in the Foundation were disrupted when Foundation staff was reorganized in early 2008, leaving the organization without any specifically assigned administration for three years. The review also notes that the internal controls that were lacking during the 2008-2010 timeframe were put back in place when Foundation staffing was reinstituted in 2011.

The review noted that while the 2010 Southwestern College Foundation Gift of Scholarship Gala was fraught with problems, the success of the 2011 Gala has provided a solid framework for reestablishing itself as a productive fundraising activity—even though it was modest in terms of resources it raised.

## Next Steps

SWC staff has reviewed and developed an analysis of the report's conclusions and has identified action plans to develop and implement processes, policies, and procedures which will assure appropriate and transparent procurement practices.

What follows are staff recommendations and action plans to improve the college's business and fiduciary practices. All of these recommendations and proposed actions have been developed with the objective of maintaining transparency and ensuring the public trust.

Implementation of the action plan outlined in the staff analysis is a first step. Southwestern College and its Governing Board are embarking on a process of continual evaluation and improvement of the college's business practices.

# Recommendations based on Southwestern College's Internal Analysis of Focused Special Review

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Each of the recommendations was written with the intent of developing ways to strengthen Southwestern College's commitment to transparency and strong fiduciary oversight to protect the public trust. Altogether, the recommendations address the eight main issues raised in the conclusions of the Focused Special Review.

## **RECOMMENDATION 1**

The standard of practice at Southwestern College will be that all decisions will be made openly, publicly and with appropriate documentation being included in the public agenda.

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## **RECOMMENDATION 2**

Southwestern College must develop and strengthen policy and procedure for procurement and contracting and have the documents reviewed by legal counsel before being approved by the Governing Board.

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## **RECOMMENDATION 3**

Southwestern College will implement an appropriate recordkeeping system to maintain Business and Financial Affairs department contract documentation and other vital information.

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## **RECOMMENDATION 4**

Southwestern College will take responsibility for, and ownership of, all projects and will not delegate that authority to any outside firm. Southwestern College will not use any potential contractor, or its owner or employee, to develop any Request for Proposal (RFP) or Request For Qualifications (RFQ) for the college.

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## **RECOMMENDATION 5**

No Southwestern College-awarded contract may be modified by staff to add any third-party work not identified in the contract. Governing Board action in public session will be required to add third-party contracts.

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## **RECOMMENDATION 6**

Southwestern College's Conflict of Interest codes should be reviewed, strengthened and strictly enforced. Forms 700 will be posted on college's website.

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## **RECOMMENDATION 7**

The Southwestern College Foundation will review and make any necessary modifications to its Code of Ethics and fundraising policies and work with Southwestern College to ensure all fundraising activities are appropriately accounted for. Southwestern College will continue to maintain appropriate staff to run Foundation activities.

# Southwestern College's Action Plan

## Based on Internal Analysis of Focused Special Review

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Southwestern College has started the process of strengthening its fiduciary oversight and ensuring the transparency of all college business practices and procedures.

### **Southwestern College has taken the following actions:**

1. The Governing Board in July 2011 revised and adopted a procedure for Code of Ethics.
2. The Governing Board in August 2011 passed a resolution that authorized Southwestern College's staff to award public works bids subject to Governing Board ratification.
3. The Governing Board in October 2011 adopted a resolution approving Bidder Pre-Qualification Procedures Documents as they pertain to Proposition R Projects.
4. Southwestern College began ethics training for the college management team in January 2012.
5. A Governing Board workshop on procurement and contracting was held February 21, 2012.

### **The following actions are in process:**

6. A new Southwestern College Foundation Code of Ethics and Conflict of Interest Policy is being reviewed by the Foundation Board Executive Committee and will be presented to the full Foundation Board at its March meeting.
7. The Southwestern College Foundation's Investment Policy is being reviewed to update its criteria, content and processes.
8. Effective immediately, all appropriate documentation must be included as enclosures on the public agenda for the award of any contract or procurement matter.
9. Documentation for contract award consideration will include, but not be limited to, the RFP or RFQ announcement, all firms that responded, the selection committee members, and the rationale for the firm being recommended.

### **The following actions will be implemented:**

10. Services of the California Community College League will be retained to help develop and update Southwestern College policies, including those concerning procurement and contracting matters during 2012-13 fiscal year.
11. All new procurement and contracting policies developed will require Governing Board approval during the 2012-13 fiscal year.
12. College staff will develop procedures to implement the policies by Fall 2012.
13. The college will hire a highly qualified, experienced Vice President for Business and Financial Affairs, who will be tasked with proposing procedures to implement the concept of "construction as owner" and assign staff appropriately.
14. When resources allow, Southwestern College should prioritize hiring an internal auditor.
15. Southwestern College's Superintendent/President will review, and if necessary, modify the college's Conflict of Interest Policy. Conflict of Interest Training for the Governing Board and Southwestern College staff will be scheduled.
16. A Governing Board workshop will be scheduled on Fair Political Practice Commission guidelines.
17. The Business and Financial Affairs staff will evaluate and make recommendations to the Superintendent/President by July 1 on a system needed to adequately maintain essential procurement and contracting records.
18. The college will continue to maintain Foundation staff to run Foundation activities.
19. Ongoing training of Foundation directors and staff will take place at the time of orientation of new members and at the annual Foundation retreat.
20. A status workshop on progress made on the action plan will be presented to the Governing Board in the fall of 2012.

Attachment A:  
Focused Special Review  
Southwestern College

# Special Focused Review

## Southwestern College

Prepared by  
Seo Consulting, Inc.

March 12, 2012

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## **Executive Summary**

In April 2011, Seo Consulting, Inc. ("Seo Consulting") was retained by Dannis Woliver Kelley, outside counsel to the Governing Board for Southwestern College ("SWC") to perform a Focused Special Review of issues involving the award of certain contracts for professional services related to Proposition R. Seo Consulting was asked to review the procurement of services for the contracts awarded to the Program Manager (Seville Construction Services) and the Architect (BCA Architects) and the Construction Manager at Risk (Echo Pacific Construction) for the Corner Lot Project.

Seo Consulting was also asked to review the activities of the Southwestern College Foundation ("Foundation"), primarily the expenditures for fiscal years that ended June 30, 2009 and 2010 and the Southwestern College Foundation Gift of Scholarship Gala that took place on March 27, 2010 ("2010 Gala"). As a follow-up analysis, expenditures after June 30, 2010 and the Scholarship Gala that occurred on May 7, 2011 ("2011 Gala") were also reviewed. The purpose was to evaluate certain aspects of the Foundation's operation during the same time period when the proposals for the Proposition R Program Manager, and the Architect and Construction Manager at Risk for the Corner Lot were being evaluated and the contracts awarded. The Governing Board requested this Review to identify any activities, transactions or practices that were improper or of concern and that should be corrected or identified as needing further and more detailed evaluation.

Seo Consulting is not affiliated with any law enforcement agency. This Review is based upon information that was available through SWC and other public entities and individuals.

Unlike law enforcement, Seo Consulting has no subpoena power or other authority to gain access to records, including those maintained on personal computers that do not belong to SWC, nor does Seo Consulting have the authority to obtain sworn testimony. Although, at the Board's request, I have been in contact with the District Attorney's Office, Seo Consulting is not authorized to review the DA's investigation files. The information upon which this report is

based is that information that was voluntarily provided and available at the time the Review was conducted.

The findings of this investigation are based on what has been reviewed to date; however, new information became available even during the drafting of the report. It is expected that new information will continue to be discovered and if it is relevant to the scope of this Review, SWC has requested that I analyze that data and update my findings accordingly.

The Review identified several issues related to the Proposition R procurement and the Foundation that are of concern and some that should be investigated more thoroughly.

### **Proposition R**

1. The documentation to support the basis for selecting the firm awarded the contract was inadequate. The selection process itself lacked transparency. The Governing Board should have had sufficient information that documented the selection process and the justification for the recommendation by SWC staff.
2. The contract price negotiating process took place in a vacuum and lacked transparency. In one instance, it appears that the finalists submitted cost proposals based upon different project assumptions. How those project assumptions were communicated needs to be investigated more thoroughly.
3. Based on the public record, it is not clear if the Governing Board was provided certain information about the contractor firms' qualifications and cost proposals that could have impacted the decision to award a particular contract.
4. A contractor who was awarded a contract may have inappropriately participated in the development of the RFP itself giving that contractor an unfair advantage over the other respondents.
5. The gifts provided by contractors to SWC employees who were in positions of influence is problematic and may have created a conflict of interest. Those gifts were not disclosed on the required Form 700, although it is possible that the SWC officials may

have paid for some or all of their share of these expenditures. Information was not available to make that determination.

6. The nature of the social relationship between contractors and SWC officials created the appearance of a, if not an actual, conflict of interest.
7. According to information on the website of the California Secretary of State, two contractors who were awarded contracts made contributions to the campaigns of Board Members.
8. A former SWC employee subcontracted with the contractor he had a role in selecting four months after his retirement from the College. While there appears to have been a rational reason to benefit from this individual's experience, the financial gain to this person was tangible. Further review of this issue should be conducted.
9. It was inappropriate for the Napa Trip to occur in terms of who attended and the timing of the event relative to the contract price negotiations that were taking place at the same time. What was actually discussed at this trip needs to be investigated further.

#### **Southwestern College Foundation**

1. The documentation supporting the transactions reviewed for Fiscal Years Ended June 30, 2009 and 2010 was inconsistent. In some instances, there was a lack of proper detail to support invoices.
2. It does appear that a family member of one of the Program Manager employees provided services to support the 2010 Gala and was compensated \$3,000. A more detailed review of this situation needs to be performed.
3. The funding of a Proposition R Community Outreach function in 2010 was awkward and poorly documented. Even though Foundation resources were ultimately not used to pay for the event, a more detailed accounting should have been prepared. That the Foundation initially funded the event and was later reimbursed by a donation from the Architect who was selected to prepare the design of the Corner Lot Project was ill advised.

4. The Foundation's management of the uncollected pledges for the 2010 Gala and the inability to readily determine the status of the amounts owed was problematic. It is unclear what attempts were made to collect these pledges.
5. The circumstances surrounding one of the auction prizes in the 2010 Gala, a San Diego Padres' game in a luxury suite with Superintendent/President Chopra and Vice President Alioto, should be reviewed in more detail.
6. It was inappropriate for the Vice President of Business and Financial Affairs to serve in a direct fundraising capacity for the 2010 Gala, especially considering his responsibilities in the Proposition R contractor selection process.
7. Some of the 2010 Gala maximum sponsorships and significant auction prizes were provided by Proposition R contractors who were already or would eventually be awarded contracts.
8. The Program Manager should not have been compensated to participate in fundraising or planning activities for the 2010 Gala or the 2010 Golf Tournament by Proposition R funds. A more detailed review of this issue should be performed.
9. There were material concerns identified by the Foundation's independent auditor and other individuals regarding the 2010 Gala accounting and internal controls. Based on the results of this Review, those concerns were justified.
10. The transactions reviewed for the Fiscal Year Ended June 30, 2011 were reasonable and the supporting documentation was compliant with Foundation disbursement guidelines.
11. The 2011 Gala appears to have been effectively organized and well-managed.
12. That the former Vice President of Business and Financial Affairs who resigned in February 2011 did not participate in the planning of the 2011 Gala eliminated the potential conflict between soliciting sponsorships/donations and the management and award of Proposition R contracts.
13. The 2011 Gala sponsorships and auction prizes appear to have been reasonably solicited and acquired. The substance of the auction prizes did not include inappropriate access to Southwestern officials.

14. While the 2011 Gala was modest in terms of resources raised for the Foundation, it provided a more reasonable framework for re-establishing itself as a productive fundraising activity.

### **Limitations**

There are some limitations with regard to my conclusions to-date.

### **Proposition R**

1. I have not spoken with Henry Amigable as of the date of this report. My contact information was provided to Mr. Amigable by his current employer, Chris Rowe of Echo Pacific, however, he has not contacted me.
2. I reviewed hundreds of the emails involving Mr. Alioto, Mr. Wilson and Mr. Amigable; however, there are many more that could potentially be analyzed.
3. The emails that I was provided was limited to what was available from SWC. To the extent that pertinent information is contained in other emails, it would be relevant to this review.
4. The expense reports I reviewed were limited to those of Henry Amigable and were provided by Seville.
5. I relied upon an audio record of the SWC Governing Board meetings. I was not able to determine if there were visual materials referenced during the presentations.
6. I have not referenced the Education Code or other Public Contracting Codes for my review.

### **Southwestern College Foundation**

1. It is not known what information Dr. Chopra and Daniel Hom could have provided. Dr. Chopra could not be contacted and Daniel Hom declined an invitation to be interviewed.

2. Only selected expense transactions were identified for a detailed review. The scope could be expanded to determine if the procedures followed and documentation provided is consistent with the expenditures that I analyzed.
3. To focus more on expenses, Foundation revenue information was reviewed on a cursory level. A more detailed analysis of these transactions could be performed.
4. Given the current status of the District Attorney's formal investigation and of the Corner Lot project, it was determined that additional attempts to contact Nicholas Alioto, Seville Construction Services and other Proposition R contractors would not be prudent.

## **I. Phase I – Proposition R**

### **A. Introduction**

Seo Consulting, Inc. (“Seo Consulting”) was retained in April 2011 by Dannis Woliver Kelley, outside counsel to the Governing Board for Southwestern College (“SWC”) to perform a Focused Special Review (“Review”) of issues involving the award of certain contracts for professional services related to Proposition R. Specifically, Seo Consulting was asked to conduct an independent review of the procurement of services for the contracts awarded to the Program Manager and to the Architect and the Construction Manager at Risk for the Corner Lot Project.

The purpose of this Review is to provide the Governing Board with an independent analysis in the process that resulted in the selection of the Program Manager, Seville Construction Services, Inc. (“Seville”), and BCA Architects (“BCA”) and Echo Pacific Construction (“Echo Pacific”) for their work on the Corner Lot Project.

It is important to note that Seo Consulting is not affiliated with any law enforcement agency. This Review is based upon information that was available through SWC and other public entities and individuals. Unlike law enforcement, Seo Consulting has no subpoena power or other authority to gain access to records, including those maintained on personal computers that do not belong to SWC, nor does Seo Consulting have the authority to obtain testimony under penalty of perjury. Although, at the Board's request, I have been in contact with the District Attorney's Office, Seo Consulting is not authorized to review the DA's investigation files. The information upon which this report is based is that information that was voluntarily provided and available at the time the Review was conducted.

### **1. Information Reviewed**

The information that was relied upon to perform the Review included interviews of several individuals who were familiar with or who participated in the procurement process. Seo Consulting interviewed the following:



<b>Name</b>	<b>Affiliation</b>	<b>Function</b>
Nicholas Alioto	Southwestern College	Vice President of Business and Financial Affairs (Former)
John Brown	Southwestern College	Director Facilities, Operations & Planning
Paul Bunton	BCA Architects	President
Bob DeLiso	Seville Construction Services	Program Director
Jeff Flores	Seville Construction Services	President/CEO
Linda Gilstrap	Southwestern College	Dean of the Office of Institutional Effectiveness and Executive Director of the Foundation.
Priya Jerome	Southwestern College	Director of Purchasing, Contracting & Central Services
Judy Johnson	Seville Construction Services	Executive Vice President/Director of Operations
Michael Kearns	Southwestern College	Vice President of Human Resources (Former)
Christopher Rowe	Echo Pacific Construction	President
Eric Stenman	Barnhart Balfour Beatty Construction	President
Angelica Suarez	Southwestern College	Vice President for Student Affairs
Robert Temple	Southwestern College	Vice President of Business and Financial Affairs (Interim)
John Wilson	Southwestern College	Senior Director of Business, Facilities & Planning (Retired)

I also reviewed significant amounts of information that included emails, RFP documentation, correspondence, Governing Board Meeting Minutes, proposals submitted by bidders, expense reports provided by Seville, invoices from Seville to SWC, Form 700s, and campaign contribution information from the California Secretary of State.

**B. Program Management – RFP 105**

Request for Proposals No. 105 for Program Management Services was released to the public on September 3, 2009. Ten proposals, that included both a qualifications and fee proposal components, were received on September 22, 2009. Three firms - O'Connor Construction; URS; and Seville Construction Services were chosen by the Selection Committee to be interviewed. The Selection Committee for RFP 105 consisted of:

**Selection Committee – RFP No. 105**

<b>Name</b>	<b>Affiliation</b>	<b>Function</b>
Nicholas Alioto	SWC	Vice President of Business and Financial Affairs
Corey Breininger	SWC	Professor, Southwestern College
John Wilson	SWC	Senior Director of Business, Facilities & Planning

The pricing proposals submitted by each of these finalists were as follows:

**Original Proposed Pricing**

	<b>O'Connor</b>	<b>URS</b>	<b>Seville</b>
First Year	\$877,518	\$470,360	\$996,480
5 Year Maximum Price	\$5,601,261	\$2,094,540	\$2,900,000

According to both Mr. Alioto and Mr. Wilson in interviews, the proposed staffing by URS was not realistic since they did not plan for a dedicated Project Manager. It was also suggested that O'Connor Construction was not a good fit since the interview team believed that O'Connor did not have the requisite experience. Mr. Wilson stated that Seville was the first choice of the group after the interviews; however, there wasn't any documentation to verify that the selection committee had ranked Seville above O'Connor Construction and URS.

After the committee had allegedly decided that Seville was the preferred Program Manager candidate, only Mr. Alioto entered into pricing negotiations with Seville in an attempt to negotiate a lower price than originally proposed. The result was a negotiated price by Seville for the 5 Year Guaranteed Maximum Price of \$2,725,000 which was \$175,000 lower than their original proposal. Even with this reduction, Seville's costs were \$630,000 higher than URS.

It appears that a comparison of the cost proposals by the three finalists was presented at the Governing Board meeting on November 18, 2009. At that meeting, Mr. Alioto recommended approval of the Seville contract for a fee of 2.75% and not to exceed \$2,750,000. The Governing Board approved the agreement. Trustee Aguilar (and the Student Advisory Member) cast the lone dissenting vote. Trustees Dominguez, Roesch, Salcido and Valladolid voted in favor of the agreement.

### **1. Campaign Contributions**

Information on the website of the California Secretary of State shows that Seville Construction Services, Inc. made the following campaign contributions from May 18, 2010 to October 26, 2010: Friends of Yolanda Salcido - \$ 30,000; Friends of Terri Valladolid - \$ 7,500; and Dominguez for SWC Board 2010 - \$ 4,500. A search of The Secretary of State website did not list any similar contributions being made by the other finalists.

### **2. Seville Expenditures**

At my request, Seville provided expense reports from May 2009 through December 2010 that were submitted by Henry Amigable who was hired by Seville in March 2009 to develop the San Diego business. Mr. Amigable was the Program Director for Seville until he left the company in January 2011. These expense reports contained numerous occasions of Mr. Amigable purchasing meals and rounds of golf for Mr. Alioto. In total, Seville expended approximately \$1,450 for ten rounds of golf for Mr. Alioto from October 2009 to November 2010. During that same time period, Mr. Amigable purchased approximately \$1,700 in meals for Mr. Alioto. There

were also a few instances of meal purchases for Mr. Wilson and Dr. Raj Chopra. I inquired to Jeffrey Flores, President and CEO of Seville, about the level of these expenditures. It appeared that Mr. Flores was aware of Mr. Amigable's expense practices, as he cited it was one of the reasons why Mr. Amigable's employment with Seville had ultimately ended. Our review was limited to Mr. Amigable's expense reports. Entertainment and gift giving expenditures that were reported on other expense reports were not available for our review. For example, there are emails that discuss a dinner at Morton's Steakhouse on October 8, 2009 that was attended by Jeff Flores and Henry Amigable of Seville, Nicholas Alioto and possibly John Wilson and Dan Hom of Focuscom, however the expense for this dinner was not included on Mr. Amigable's expense report.

Mr. Alioto's Form 700 for the time period from July 1, 2009 through December 31, 2009 did not disclose the receipt of any of the gifts he received from Seville. It appears that these gifts totaled approximately \$150 during this time period. As of February 27, 2012, Mr. Alioto had not submitted his Form 700 for the period from January 1, 2010 through December 31, 2010 as required.

### **3. Potential Conflict**

It appears that the relationship between Seville, John Wilson and Nicholas Alioto could have created a conflict that provided Seville an unfair advantage in being awarded the contract. There are emails between Seville and Nicholas Alioto that reference social events that were attended by the parties that took place while the award for RFP 105 was under consideration. It also appears that Seville may have participated in the development of the RFP itself. There are emails that were sent from Mr. Amigable to Mr. Wilson from July 15, 2009 to August 31, 2009 that included copies of RFP 109 and an agenda for a Pre-Proposal Conference. RFP 109 was not issued to the public until September 3, 2009.

#### **4. John Wilson Subcontract**

John Wilson retired from SWC in December 2009 where he held the position of Senior Director of Business, Facilities and Planning. Mr. Wilson reported directly to the Vice President of Business and Financial Affairs, who at the time of his retirement, was Nicholas Alioto.

According to Mr. Wilson, Mr. Alioto requested that he return to SWC and provide assistance to Priya Jerome, the Director of Purchasing, Contracting and Central Services, John Brown, the Director of Facilities, Operations and Planning and to Henry Amigable of Seville. Mr. Wilson indicated that he was paid by SWC on an hourly basis from January through March 2010. The original plan was for that arrangement to continue through June 2010, however, according to Mr. Wilson, two SWC Governing Board members questioned that plan. According to Jeffrey Flores, Mr. Alioto requested that Seville hire Mr. Wilson because there were no longer any funds available from SWC to compensate Mr. Wilson. On April 1, 2010, Mr. Wilson entered into a Subconsultant Agreement with Seville that would compensate Mr. Wilson at \$100 per hour. A review of the invoices that were submitted by Seville to SWC indicates that Seville billed SWC for 490 hours for Mr. Wilson's time from April 2010 through July 2010 at an hourly rate of \$165 for a total of \$80,850. According to the terms of the Subconsultant Agreement, Mr. Wilson would have received \$49,000 from Seville.

#### **C. Architectural Services – RFP 109**

Request for Qualifications No. 109 was released on December 15, 2009, about one month after the selection of Seville as Program Manager. Forty-one firms submitted proposals that included technical qualifications and fee proposals on January 19, 2010. Nineteen firms were then selected for interviews, however based on the available documentation; I have been unable to specifically identify who selected these nineteen firms to be interviewed. The interviews were held on January 25, 27, and 29, 2010. The interviews were to be conducted by the Vice President of Business and Financial Affairs (i.e., Nicholas Alioto) and the Bond Program Management staff. From these nineteen firms, the top seven were invited to participate in a

design competition that was ultimately presented to the Proposition R Steering Committee on March 15, 2010. These seven firms were:

- BCA Architects
- Gensler Architecture
- LPA, Inc.
- Mda Johnson Favaro, LLP
- MVE Institutional
- NTD Architects
- tBP Architecture

The Proposition R Steering Committee consisted of the following members:

<b>Name</b>	<b>Affiliation</b>	<b>Function</b>
Nicholas Alioto	Southwestern College	Vice President of Business and Financial Affairs
Henry Amigable	Seville Construction Services	Program Director
Raj K. Chopra	Southwestern College	Superintendent/President
Thomas Davis	N/A	Community Member
Valerie Goodwin	Southwestern College	Academic Senate President
Michael Kearns	Southwestern College	Vice President of Human Resources
Alicia Lee	Southwestern College	Classified Senate Representative
Mark Meadows	Southwestern College	Vice President for Academic Affairs
Jacqueline Reynoso	Southwestern College	President/CEO, National City Chamber of Commerce
Paul Souval	Unknown	Unknown
Angelica Suarez	Southwestern College	Vice President for Student Affairs
John Wilson	Southwestern College	Sr. Director of Business, Facilities & Planning (Retired)
Unknown	Southwestern College	Associated Student Organization

After the presentations by these finalists, BCA was the unanimous selection of the Steering Committee according to Mr. Wilson. At that point, it appears that Mr. Alioto directly negotiated price with BCA that resulted in an agreement for BCA to provide Architectural Services on the Corner Lot for a fee of 5.75% of construction costs. According to Paul Bunton, President of BCA Architects, Mr. Alioto pressured him into to this agreement by stating that he had other architects who were willing to execute the work for this price. Mr. Alioto recommended that BCA be awarded the Corner Lot contract and that Gensler Architecture the Central Plant Project. Gensler Architecture's proposed fee was 6.00% of construction costs. On April 20, 2010, the Board approved the award to BCA, however, the meeting minutes did not indicate the voting record. On April 21, 2010, BCA entered into a contract with SWC to provide architectural services related to the Corner Lot.

#### **1. BCA Expenditures**

I did not have access to the BCA expense reports or internal emails and are unable to determine the level of entertainment, gift giving or the extent of social interaction that could be considered a potential conflict of interest.

However, based on a series of emails in May 2010 between Paul Bunton, Nick Alioto, Henry Amigable and John Wilson, there does appear to be a social relationship between these individuals that could present a potential conflict in BCA being awarded the contract in April 2010 and subsequent contract administration issues going forward. The emails involved personal email accounts of Mssrs. Alioto and Amigable, and the business emails for Mssrs. Bunton and Wilson. These communications were obtained because Mr. Wilson used his SWC email address.

This particular function was a concert by the Eagles on May 23, 2010 at the Cricket Amphitheater in Chula Vista. Apparently, Mr. Bunton had arranged limousine transportation, dinner, and tickets to the concert for the Buntons, Mr. Alioto, the Amigables, and Mr. Wilson. I do not know if the outing took place as planned or if each of the parties paid for his own

expenses. If the event occurred and Mr. Alioto did not pay for his expenses, the gifts should have been disclosed on his Form 700 which he has not yet filed.

What is also troubling in this instance is the exchange that took place in emails on May 10, 2010 between Mr. Wilson, Mr. Amigable and Mr. Bunton in relation to the concert. The content of the dialogue raises concerns about the relationship between the Architect, Program Manager and potentially the Vice President of Business and Financial Affairs, although Mr. Alioto was not included in these series of emails and may not have been aware of the discussion.

## **2. Campaign Contributions**

A search of The Secretary of State website did not list any contributions being made by BCA Architects or Gensler Architecture toward any SWC Governing Board campaign.

### **D. Construction Manager at Risk – RFP 116**

Request for Qualifications No. 116 for Construction Manager at Risk services was released on April 8, 2010. Seventeen firms responded with technical proposals on May 20, 2010. The Selection Committee (see below) rated the firms based upon these proposals and identified five who would be granted interviews that were conducted on June 15 and 16, 2010.



**Selection Committee – RFP No. 116**

<b>Name</b>	<b>Affiliation</b>	<b>Function</b>
Nicholas Alioto	SWC	Vice President of Business and Financial Affairs
Henry Amigable	Seville	Bond Program Director
Thomas Davis	N/A	Community Member
Samer Kavar	BCA	Architect Representative
Michael Kerns	SWC	Vice President of Human Resources
Victoria Lopez	SWC	Professor
John Wilson	SWC	Sr. Director of Business, Facilities & Planning (retired); Seville Construction Services, Consultant

The five firms that were interviewed were Barnhart Balfour-Beatty, C.W. Driver, Echo Pacific Construction, PCL and Sundt. After the interviews, the Committee selected Echo Pacific and Barnhart Balfour-Beatty (“Barnhart”) as the two finalists. The firm that was selected was to be awarded the Corner Lot Project and the runner-up was to be awarded the Central Plant Project. Up to this point, pricing was not included in the proposals submitted by the firms, however, after Echo Pacific and Barnhart were identified as the final two, Mr. Alioto engaged both firms in pricing negotiations. Pricing negotiations did not happen in a clear or transparent manner, as described further below.

**1. Pricing Proposals**

On June 17, 2010, Mr. Alioto sent a memorandum to Eric Stenman of Barnhart and Chris Rowe of Echo Pacific outlining issues to be discussed at a meeting the following day. In addition to pricing considerations, Mr. Alioto suggested a joint venture between the two firms to work on

both the Corner Lot and Central Plant/Field House Projects. This suggestion was not accepted by Echo Pacific and Barnhart.

On June 21, 2010, Henry Amigable, sent an email to Echo Pacific and Barnhart requesting that cost proposals be submitted by June 23, 2010 at 4:00 PM to Mr. Alioto. Mr. Amigable specified the following parameters for the Corner Lot proposal:

- Estimated Construction Costs for Corner Lot = \$55 million.
- Substantial Completion for Corner Lot = August 2012
- Daily Liquidated Damages Rate

Mr. Alioto and Mr. Wilson were both copied on the email.

On June 23, 2010, Echo Pacific and Barnhart submitted cost proposals for both the Corner Lot and Central Plant/Field House. The proposals for the Corner Lot Project from each of the firms included the following terms:

**June 23, 2010 Cost Proposals**

<b>Item</b>	<b>Barnhart</b>	<b>Echo Pacific</b>
Lump Sum Fee – Preconstruction Services	\$258,940	\$292,000
Lump Sum Fee (\$55 million in construction costs)	\$2,094,231	\$2,420,000
Monthly General Conditions (20 months)	\$89,304 per month	\$97,000
Liquidated Damages per day	\$3,000	\$7,500
<b>Total</b>	<b>\$4,139,251</b>	<b>\$4,652,000</b>

On June 30, 2010, in response to a communication from Mr. Alioto that Echo Pacific had lowered its fee to 2.5% of the Corner Lot construction costs, Mr. Stenman of Barnhart revised the fee portion of his proposal from 3.8% to 3.0% of construction costs. Mr. Stenman based his proposal on estimated construction costs of \$55 million. The total revised fixed fee cost

proposal submitted by Barnhart was \$3,695,000. Mr. Stenman stated that Mr. Alioto did not respond to his June 30, 2010 revised proposal, an assertion with which Mr. Alioto disagrees.

Echo Pacific also revised their initial June 23, 2010 cost proposal by reducing the fee portion from 4.4% of construction costs to 2.5%. However, this new proposal was based on estimated construction costs of \$59 million, not the \$55 million that was used originally or that was relied upon by Barnhart. Echo Pacific increased their proposed preconstruction services costs to \$500,000 and assumed 21.5 months of general conditions costs compared to 20 months as originally submitted. The total of Echo Pacific's revised cost proposal was \$4,060,000. These revisions were reflected in handwritten notations, and initialed by Chris Rowe, on Echo Pacific's original June 23, 2010 cost proposal to Mr. Alioto. It is not clear when these notations were made or how it was presented to SWC. A comparison of the two final cost proposal submitted by Barnhart and Echo Pacific is presented below:

**Revised Cost Proposals**

<b>Item</b>	<b>Barnhart</b>	<b>Echo Pacific</b>
Lump Sum Fee – Preconstruction Services	\$258,940	\$500,000
Lump Sum Fee	\$1,650,000 (A)	\$1,475,000 (B)
General Conditions – Fixed Fee	\$1,786,070	\$2,085,000
<b>Total</b>	<b>\$3,695,010</b>	<b>\$4,060,000</b>

Notes: (A) Based on construction costs of \$55 million.

(B) Based on construction costs of \$59 million.

When asked why Echo Pacific based their final proposal on \$59 million in construction costs which was different than the \$55 million that was relied upon by Barnhart and that was used by both firms as the basis for the original cost proposals on June 23, 2010, both Mr. Alioto and Mr. Rowe were not sure how the \$59 million figure was communicated to Echo Pacific other than it was possible that the revised cost figure came from BCA Architects. I conferred with Paul

Bunton of BCA who firmly denied that allegation. Mr. Bunton stated that the first time he was aware that Echo Pacific used \$59 million in its pricing was when he read about the Echo Pacific contract award.

I had discussions with Mr. Alioto on his evaluations of the cost proposals and the negotiations with Echo Pacific and Barnhart. Mr. Alioto stated that he was executing the wishes of the Selection Committee who had identified Echo Pacific as their first choice and that he was leveraging both firms against each other to get a lower price for SWC for the Construction Manager at Risk services.

## **2. Echo Pacific Expenditures**

I did not have access to the Echo Pacific expense reports or internal emails and are unable to determine if there was any entertainment or gift giving.

## **3. Contract Award**

In his Memorandum to the Governing Board on July 14, 2010, Mr. Alioto recommended that the award of RFP 116 be made and that the Superintendent/President be authorized to enter into a contract with Echo Pacific for the Corner Lot project for a total fixed fee of \$4,060,000. This amount was based on estimated construction costs of \$59 million. There was no mention of the lower Barnhart cost proposal in the Memorandum to the Board and it is not clear if a presentation was made to the Board about the competing cost proposals.

In that same Memorandum, it was recommended that Barnhart Balfour-Beatty be awarded the Construction Management at Risk contract for the Central Plant/Field House. The Governing Board unanimously approved both awards on July 14, 2010.

## **4. Napa Trip**

On March 27, 2010, the Southwestern College Foundation ("Foundation") hosted its Gift of Scholarship Gala with the theme "Havana Nights." One of the fundraising activities of the

program was a live auction of which one of the items up for bid was Item #201 – “The Best California Has to Offer” that consisted of a golf and wine tasting weekend in Napa Valley. The prize was advertised as: *“Join Vice President, Nicholas Alioto for a weekend of golf and wine tasting in the beautiful Napa Valley.”.....* The prize was donated by BCA Architects. According to Mr. Bunton of BCA Architects, the trip he donated did not include the participation of Mr. Alioto. Mr. Bunton alleges that Mr. Alioto included himself as part of the trip that was to be auctioned.

Chris Rowe of Echo Pacific was successful in obtaining the prize by bidding \$15,000. Mr. Rowe, Mr. Bunton, Mr. Alioto and Mr. Amigable participated in the Napa trip that took place the weekend of June 25, 2010 which was immediately following the date that the initial cost proposals were submitted by Echo Pacific and Barnhart and prior to the Barnhart revised proposal on June 30, 2010.

The participants were responsible for their respective travel expenses. The Foundation paid \$1,700 for Mr. Alioto’s travel expenditures.

I asked Mr. Alioto what was discussed at this trip and he stated that he was able to negotiate with Mr. Rowe for a lower price on the Corner Lot project. Mr. Rowe has alleged that they did not discuss business.

## **5. Campaign Contributions**

Information on the website of the California Secretary of State shows that Echo Pacific Construction, Inc. made the following campaign contributions on August 1, 2010: For Southwestern College Governing Board 2010, Re-Elect Yolanda Salcido - \$ 6,000; and Friends of Terri Valladolid - \$ 2,000. A search of The Secretary of State website did not list any similar contributions being made by Barnhart.

## **E. Conclusions**

### **1. Program Management – RFP 105**

- The documentation supporting the process of selecting the three final firms to be interviewed was not complete. The selection process itself lacked transparency.
- The support for selecting Seville over the other two finalists was not evident in the documentation.
- The support for selecting Seville over URS is incomplete. Considering that the Seville cost proposal was significantly higher than URS warrants an analysis and justification that documents the decision.
- Based on the public record, it is unclear if information on the competing cost proposals was made to the Governing Board to assist in their decision to award the contract to Seville.
- According to information on the website of the California Secretary of State, Seville made contributions to the campaigns of Board Members.
- Acknowledging that pricing is but one factor in the decision to award the contract, an analysis that documents the justification for recommending Seville should have been performed.
- That Seville had the social interaction they had with Nicholas Alioto and possibly John Wilson prior to the award of the contract was inappropriate and creates the impression of a conflict of interest.
- If Seville had access to RFP information prior to its issuance, Seville could have had an unfair advantage over the other respondents to the RFP. That issue needs to be investigated thoroughly.
- That Seville expended over \$3,000, as recorded in Henry Amigable's expense reports, to entertain Nicholas Alioto is inappropriate. While most of those transactions in Mr.

Amigable's expense reports were after Seville was awarded the contract, it creates the impression that Mr. Alioto could favor continuation of the contract due to his personal benefit from the gift relationship. Furthermore, there is documentation that indicates Seville entertained Mr. Alioto and possibly Mr. Wilson more than what was included in Mr. Amigable's expense report and prior to contract award. It is possible that Mr. Alioto (and Mr. Wilson) paid for his share of the entertainment expenditures. Regardless, the impression of a conflict of interest exists.

- John Wilson's subcontract also appears improper, given that he participated in the selection of Seville, and within a four month timeframe, he was acting as a paid subconsultant under that very contract, when he otherwise would not be receiving any pay from the College. While there appears to have been a rational reason for the College to want to continue gaining the benefit of Mr. Wilson's expertise, the gain Mr. Wilson achieved as a result of a contract he participated in selecting is tangible. Further review of this matter is needed.

## **2. Architectural Services – RFP 109**

- There is concern about the relationship between Henry Amigable, Paul Bunton, John Wilson and Nicholas Alioto; however, the email documentation we were able to review was limited to emails from the SWC system.
- Based on the limited emails that were available for review, BCA had social interaction with Nicholas Alioto that could have created a conflict of interest.
- There is documentation that suggests BCA entertained Mr. Alioto. While it is possible that Mr. Alioto paid for his share of the entertainment expenditures, we have not been able to make that determination. Mr. Alioto has not filed his Form 700 for the time period during which those expenditures occurred.
- The practice employed by Nicholas Alioto to leverage the final firms against each other in cost negotiations, while it may have resulted in lower prices, could present some negative impact.

### **3. Construction Management at Risk – RFP 116**

- There is concern about the relationship between Henry Amigable, Chris Rowe, John Wilson and Nicholas Alioto; however, the email documentation we were able to review was limited to emails from the SWC system.
- That Barnhart submitted its final cost proposal based on construction costs of \$55 million while Echo Pacific based its successful proposal and was awarded a contract based on construction costs of \$59 million is inappropriate and should be investigated thoroughly, especially considering that neither Mr. Alioto nor Mr. Rowe could recall how that information was communicated to Echo Pacific.
- It was inappropriate for the Napa Trip to occur as it did both in terms of who attended and the timing of the event relative to the negotiations that were taking place between SWC, Echo Pacific and Barnhart. What was actually discussed and/or agreed upon needs to be investigated thoroughly.
- It is unclear if information on the competing cost proposals was made to the Governing Board to assist in their decision to award the contract to Echo Pacific. Acknowledging that pricing is but one factor in the decision to award the contract, an analysis that documented the justification for recommending Echo Pacific should have been performed.

### **F. Limitations**

There are some limitations with regard to my conclusions to-date.

- I have not spoken with Henry Amigable as of the date of this report. My contact information was provided to Mr. Amigable by his current employer, Chris Rowe of Echo Pacific, however, he has not contacted me.



- I reviewed hundreds of the emails involving Mr. Alioto, Mr. Wilson and Mr. Amigable; however, there are many more that could be analyzed.
- The emails that I was provided was limited to what was available from SWC. To the extent that pertinent information is contained in other emails would be relevant to this review.
- The expense reports I reviewed were limited to those of Henry Amigable and were provided by Seville.
- I relied upon an audio record of the SWC Governing Board meetings. I was not able to determine if there were visual materials referenced during the presentations,
- I have not referenced the Education Code or other Public Contracting Codes for my review.

## **II. Phase II – Southwestern College Foundation**

### **A. Introduction**

Coinciding with the analysis of the Proposition R contracts discussed in Phase I, Seo Consulting was asked to review the activities of the Southwestern College Foundation (“Foundation”). The primary scope of this review included Foundation expenditures for fiscal years that ended June 30, 2009 and June 30, 2010, and the Southwestern College Foundation Gift of Scholarship Gala that took place on March 27, 2010 (“2010 Gala”). An analysis of disbursements for the Fiscal Year Ended June 30, 2011 and for the current fiscal year up through January 2012 in addition to a review of the 2011 Scholarship Gala was also performed.

The primary purpose of this Review was to analyze certain aspects of the Foundation’s operation during the same time period when the proposals for the Proposition R Program Manager, and the Architect and Construction Manager at Risk for the Corner Lot were being evaluated and the contracts awarded. The Governing Board requested that an independent review of the Foundation take place in order to identify any activities, transactions or practices that were improper or of concern and that should be corrected or identified as needing further and more detailed evaluation.

#### **1. Information Reviewed**

The information that I reviewed included the Foundation By-Laws and Policies for Disbursement Procedures; Foundation Board Meeting Minutes and Notes; accounting information such as Payment Orders, copies of checks and supporting invoices for expenditures; donor and expense data, audited Financial Statements; and documents related to the 2010 and 2011 Galas. I also had discussions with the following individuals:

<b>Name</b>	<b>Affiliation</b>	<b>Function</b>
Paul Bunton	Design Acquisition Corporation and BCA Architects	President
J.R. Chantengco	Southwestern College Foundation	Former President
Linda Gilstrap	Southwestern College Foundation	Executive Director
Holly Hiding	Southwestern College Foundation	Former Treasurer
Gabriel Martinez	Armando Martinez & Co. , CPA	Foundation Independent Auditor
Dawn Perez	Southwestern College Foundation	Foundation Compliance Coordinator
Alma Wasson	Wasson & Associates	Foundation Bookkeeper
Halim Yudiono	Armando & Martinez & Co., CPA	Foundation Independent Auditor

I contacted Daniel Hom, former Director of the Foundation and President of Focuscom but he preferred not to discuss the issues surrounding this Review. I attempted to contact Dr. Raj Chopra, former Superintendent/President of Southwestern College, but the number listed on his March 20, 2011 Form 700 has been disconnected.

**B. Disbursements for Fiscal Years Ended June 30, 2009 and June 30, 2010**

I obtained the Foundation Check Register for Fiscal Years Ended June 30, 2009 and June 30, 2010 and identified several transactions based upon dollar amount, expense description and payee, to investigate in detail. Foundation staff provided the backup documentation for these transactions that included the Payment Order that is used to process the expense request, a copy of the check and additional supporting information such as invoices and correspondence related to the item. I also reviewed the Foundation's Disbursement Procedures that specified their policies for evaluating funding requests to determine if these selected transactions were in compliance with established guidelines.

A Payment Order that included information related to the specific request was included in nearly all of the transactions, however, in many instances, if the disbursement was not

approved at a Foundation Board Meeting, there was no identification of the individual who approved/reviewed the expense prior to obtaining the required approval of the Foundation President or Treasurer and the Superintendent/President.

My review of the disbursements identified several transactions that are of a concern either because of the nature of the expenditure, the lack of supporting information or other issues that I have identified. The more significant transactions include the following:

Transaction #1

Date: May 5, 2010  
Amount: \$3,000  
Payee: Angela Amigable

Comments: The purpose of the expenditure, according to the Payment Order and supporting invoice is for services related to the 2010 Gala. The backup documentation did not include any contract or agreement between Ms. Amigable and the Foundation. Emails indicate that Nick Alioto hired Ms. Amigable with the Foundation's approval. Ms. Amigable is the wife of Henry Amigable of Seville Construction Services, Inc.

Transaction #2

Date: August 8, 2010  
Amount: \$1,700  
Payee: BCA Architects

Comments: The purpose of the expenditure was to reimburse BCA Architects for Nick Alioto's costs for the Napa Valley trip. The documentation consists only of an invoice from BCA and does not include any airline, rental car or other travel-related receipts. I asked Paul Bunton what the basis was for the \$1,700 and he said the amount was provided to him by Mr. Alioto.

Transactions #3 and #4

Date: June 16, 2010  
Amounts: \$4,144.35 and \$4,796.70  
Payee: First Bankcard

Comments: The purpose of these expenditures was for a Proposition R Community Outreach event that was held at Frida's Restaurant on May 24, 2010. This event purportedly included a

presentation by BCA Architects on the Corner Lot design. Based upon a review of the accounting documentation and discussions persons familiar with these transactions, Foundation funds were utilized to pay for the event that was originally charged to District credit cards. On October 27, 2010, Paul Bunton of Design Acquisition Corporation (and BCA Architects) made a \$12,000 payment to the Foundation for this event. According to Mr. Bunton, Nick Alioto requested that he make this contribution. The end result is that the Foundation initially funded the program but it was ultimately paid for by the Design Acquisition Corporation donation.

On a related note, the Foundation issued a receipt to Design Acquisition Corporation for the \$12,000 payment on Foundation letterhead with the notation that the amount was tax deductible. The Foundations' independent auditor has stated that the transaction is not a tax deductible contribution and that the Foundation should notify Design Acquisition Corporation as such.

### **C. Southwestern College Foundation Gift of Scholarship Gala – March 23, 2010**

The evaluation of the Foundation and the 2010 Gala primarily consisted of reviewing accounting reports and supporting documentation, correspondence and emails and interviews with individuals familiar with the event. Issues related to the Napa Trip, a 2010 Gala auction item, were addressed in Phase 1 of this Report.

#### **1. Uncollected Pledges**

Based on information provided by the Foundations' bookkeeper and independent auditor, there are over \$14,000 in uncollected pledges for auction items. The individual amounts range from \$50 up to \$6,000. It has been communicated that some of the auction items were not redeemed (e.g., Dinner with the Superintendent/President), but those specific items haven't been identified. If an auction item was not distributed, the corresponding bid amount should be removed from the receivables list.

The Foundation's accounting of the 2010 Gala was of concern to the independent auditor, Armando Martinez & Company, CPA such that they issued a Management Letter addressed to the Board of Trustees for the Foundation. An excerpt from this letter is included below:

*"However, during our audit we became aware of matter that is an opportunity for strengthening internal control and operating efficiency.*

**2010 Gala Revenue:**

*During our review of the March 2010 Gala revenue, we noted that the proceeds as reported by the Gala Coordinator did not agree with the total Gala bank deposit. The discrepancy, which was uncovered in September 2010 when the Foundation's bookkeeper performed the reconciliation, is approximately \$12,300. This uncollected amount is not included as part of the Special Event revenue in the Foundation's financial statements. It appears that the Foundation did not collect all pledges from Raise the Paddle (a special appeal encouraging every attendee to give a little extra at the event) and all final bids from the silent and live auctions. We requested a list of items auctioned and their respective winners in October 2010, but such a list was not provided to us until January 10, 2011."*

One of the unpaid items was for \$4,500 and included attending a San Diego Padres' baseball game in a luxury suite with Superintendent/President Chopra and Vice President Nicholas Alioto in May 2010. The auction item is of note because having this particular prize could present a problem in that gaining an audience of this nature with a Southwestern College official who was influential in selecting contractors for Proposition R work during such a critical time period in the process could present the impression that the successful auction bidder (if that entity/person was seeking Proposition R work), could have an advantage over other contractors who were not successful in winning the auction prize. However, it is not clear if this auction item was redeemed.

In addition to the uncollected auction pledges, there was \$3,000 in uncollected sponsorships and an overpayment of \$1,047 to one of the vendors who provided services for the 2010 Gala.

## **2. Sponsorships and Donations**

The maximum sponsorship level for the 2010 Gala was for \$15,000 and was designated as a Fellow Circle sponsorship. A review of the sponsorship data shows that many of the firms who were awarded Proposition R contracts also contributed these maximum sponsorships. The sponsorships included the \$15,000 Fellow Circle, \$5,000 for the President's Circle sponsors and

\$2,500 for a Table Sponsor. In total, \$191,300 was pledged for these sponsorships. Similarly, some of the Proposition R contractors made contributions to the auction.

That many entities, including individuals, organizations and companies provided sponsorships and auction prizes for the 2010 Gala was critical to the amount that was raised for that event. However, to the extent that contributions were made in response to aggressive solicitations made by Southwestern College officials who were in positions of awarding Proposition R contracts would have been inappropriate.

### **3. Involvement of the Vice President of Business and Financial Affairs and Seville Construction Services**

Nicholas Alioto, as the Vice President of Business and Financial Affairs, played a significant role in the selection of the Proposition R professional service contractors. His involvement, for example, in Seville, BCA and Echo Pacific being awarded Proposition R contracts is discussed in Phase I of this report. Mr. Alioto volunteered to be a member of the 2010 Gala Committee and, based on a review of emails and discussions with Foundation personnel, he was a major reason why amounts raised through sponsorships, contributions and auction prizes were significant.

The situation that existed where Mr. Alioto had such an influence in the selection of Proposition R contractors at the same time that he was actively performing fundraising activities for the 2010 Gala could have the appearance of a potential conflict. It is not unreasonable to suggest that a potential donor could have been compelled to make a donation based on a solicitation from Mr. Alioto if his/her firm was currently or could potentially be considered for a contract that was under the control of Mr. Alioto and his responsibility as the Vice President of Business and Financial Affairs.

It appears that Seville Construction Services, the Bond Program Manager, participated in planning and fundraising activities for the 2010 Gala and the 2010 Golf Tournament with the full knowledge of and possible direction from Mr. Alioto. To the extent that Seville was

compensated for these activities from Proposition R funds under their contract with SWC would be inappropriate.

#### **4. Internal Control**

As a result of the reorganization by Superintendent/President Chopra, Foundation staff was reassigned in early 2008 leaving the Foundation without full time administration until early 2011 when the same personnel returned to the Foundation.

Concern was expressed that internal controls for the 2010 Gala were insufficient. The independent auditor discussed their observations in their Management Letter to the Foundation Board. Other personnel I interviewed expressed similar opinions that ranged from a lack of proper accounting for the 2010 Gala to frustration that the receivables from the auction proceeds were not managed appropriately to the possibility that duplicate receipts for donor contributions were distributed.

#### **D. Disbursements for Fiscal Year Ended June 30, 2011 and for the current Fiscal Year.**

I reviewed similar disbursement information for the Fiscal Year Ended June 20, 2011 and for the current Fiscal year up through January 2012. Unlike the earlier time periods, the transactions I reviewed appeared to be for reasonable expenditures with documentation that was consistent with the Foundation's written guidelines.

#### **E. Southwestern College Foundation Gift of Scholarship Gala – May 7, 2011**

I also reviewed accounting data and other information for the Gala that was held on May 7, 2011. The issues that were of a concern for the 2010 Gala were not evident for the 2011 event. Specifically, the Foundation collected all of the auction pledges and has one \$1,250 outstanding receivable for an unpaid sponsorship.

The sponsorship levels for the 2011 Gala were significantly less than in 2010, largely because there was only one \$15,000 sponsor in 2011 – Sycuan, compared to the five \$15,000 sponsors



in 2010. The \$5,000 and \$2,500 sponsorships in 2011 were much lower as well. In total, the 2011 Gala raised \$80,000 from sponsorships compared to \$191,300 in 2010.

### **1. Management of the 2011 Gala**

The 2011 Gala was managed by an Event Planner who had prior experience with the Foundation. Oversight was provided by Foundation staff who had been reassigned from the Foundation in 2008 and who was not involved with the 2010 Gala, but had been reassigned back to the Foundation in early 2011. Nicholas Alioto, the former Vice President of Business and Financial Affairs who played a prominent role in the 2010 Gala had resigned prior to the 2011 Gala and did not participate in its planning or management.

### **2. Internal Control**

The lack of internal control that was a problem for the 2010 Gala was corrected and was not an issue for the 2011 Gala, according to the Foundation's outside auditor.

## **F. Conclusions**

### **1. Disbursements for Fiscal Years Ended June 30, 2009 and June 30, 2010**

- The documentation supporting the transactions reviewed was inconsistent. For expenses that were not approved by the Foundation Board, a more detailed description of the funding request should have been consistently provided. There should have been more detailed from the individual(s) who submitted the request when applicable.
- In some instances, there was a lack of proper detail to support invoices. For example, the \$1,700 invoice from BCA did not include any receipts for the originating expenses. It is inappropriate, if what Paul Bunton has stated is accurate, that Nick Alioto instructed him how much to invoice the Foundation for the Napa travel expenses without any backup documentation.

- It does appear that Angela Amigable provided services to support the 2010 Gala; however, because of the circumstances involving Seville and that Ms. Amigable is related to Henry Amigable, a more detailed review needs to be performed.
- The funding of the Proposition R Community Outreach function at Frida's Restaurant was awkward and poorly documented. Even though Foundation resources were ultimately not used to pay for the event, a more detailed accounting and justification for the process should have been prepared.

## **2. Southwestern College Foundation Gift of Scholarship Gala – March 23, 2010**

- The Foundation's management of the uncollected pledges and the inability to readily determine the status of the amounts owed is problematic. It is unclear, what, if any attempts were made to collect these pledges. This situation needs to be corrected for future Galas.
- The circumstances surrounding the San Diego Padres' game in a luxury suite with Superintendent/President Chopra and Vice President Alioto should be reviewed in more detail.
- It was inappropriate for the Vice President of Business and Financial Affairs to serve in such a direct fundraising capacity for the 2010 Gala, especially considering his responsibilities in the Proposition R contractor selection process.
- Some of the maximum sponsorships and significant auction prizes were provided by Proposition R contractors who were already or would eventually be awarded contracts.
- Seville should not have been compensated to participate in any fundraising or planning activities for the 2010 Gala or the 2010 Golf Tournament by Proposition R funds. A more detailed review of this issue should be performed.
- There were material concerns identified by the Foundation's independent auditor and other individuals regarding the 2010 Gala accounting and internal controls. Those concerns are justified.

**3. Disbursements for Fiscal Year Ended June 30, 2011 and for the current Fiscal Year**

- The transactions reviewed were reasonable and the supporting documentation was compliant with Foundation disbursement guidelines.

**4. Southwestern College Foundation Gift of Scholarship Gala – May 7, 2011**

- The 2011 Gala appears to have been effectively organized and well-managed.
- That the Vice President of Business and Financial Affairs (Nicholas Alioto who resigned in February 2011) did not participate in the planning of the 2011 Gala eliminated the potential conflict between soliciting sponsorships/donations and the management and award of Proposition R contracts.
- The sponsorships and auction prizes appear to have been reasonably solicited and acquired and did not include inappropriate access to Southwestern officials.
- While the 2011 Gala was relatively modest in terms of resources raised for the Foundation, it provided a more reasonable framework for re-establishing itself as a productive fundraising activity.

**G. Limitations**

There are some limitations regarding the Phase II conclusions to date:

- It is not known what information Dr. Chopra and Daniel Hom could have provided. Dr. Chopra could not be contacted and Daniel Hom declined an invitation to be interviewed.
- Only selected expense transactions were identified for a detailed review. The scope could be expanded to determine if the procedures followed and documentation provided is consistent with the expenditures that I analyzed.
- To focus more on expenses, Foundation revenue information was reviewed on a cursory level. A more detailed analysis of these transactions could be performed.

- Given the current status of the District Attorney's formal investigation and of the Corner Lot Project, it was determined that additional attempts to contact Nicholas Alioto, Seville Construction Services and other Proposition R contractors would not be prudent.