

# Editorial: Hanson and board must fix construction contract problems

By The Bee Editorial Board

Fresno Unified School District Superintendent Michael Hanson and most of the district's trustees have been notably silent since the 5th District Court of Appeal ruled that the contract awarded to Harris Construction to build Rutherford B. Gaston Middle School didn't follow state law.

The news has only gotten worse for the district since the court issued its opinion.

The Bee's Hannah Furfaro reported that Harris Construction agreed to do pre-construction consulting on the Gaston project for free in exchange for winning the project's contracts worth nearly \$42 million, according to district documents.

It was further stipulated that if Harris wasn't awarded the Gaston job, the company would charge the district just \$5,000 — a small fraction of what a consultant would charge for the many duties listed in the contract: evaluate the site, identify potential obstacles to construction, set a construction schedule, assist the architect and the district in selecting "systems and products" for the school and identify value engineering opportunities.

And there were three more duties that the district assigned to Harris: estimate the project's cost and "consult with architect and district for timing of bids, development of bid packaging scoping. ... Evaluate bids for deficiencies, capabilities and compliance with bid documents."

It is clear that this agreement gave Harris a leg up on competitors seeking the construction contracts.

It is equally clear that many months before the Board of Trustees approved the selection of a contractor to build Gaston that Hanson had all but officially handed the job to Harris.

Understand: When Harris agreed to the token \$5,000 payment for pre-construction consulting, it freed Hanson from telling trustees about it. The board's stamp of approval is only required on contracts for \$15,000 or more.

A question that trustees should ask the superintendent is whether he approved other consulting contracts with builders for projects that the board later awarded to them?

We hope Hanson and the trustees are using this silent time to figure out how to legally award contracts, especially those that use the lease-leaseback method.

What is lease-leaseback? In a nutshell, the district leases land to the developer for a low price, typically \$1, and the developer pays all the upfront costs to construct the school on the leased land. Then the district pays to lease the school until it has paid off the building price.

However, the appellate decision said that the Gaston deal was never a true lease because the district paid for the building right away.

We also hope Hanson understands the public perception problem he has created for the district by not utilizing an independent consultant on the Gaston project.

Because he didn't, there wasn't a set of outside eyes looking out for the district and taxpayers. Harris was consultant, bidder and builder.

Concerns about the district's manner of handling lease-leaseback construction contracts were first raised by The Bee in a 2012 story.

At that time, other contractors said that it appeared that Fresno Unified had opened the door to influence-peddling.

Between May 2011 and October 2012, the district awarded seven contracts, including the Gaston construction and Fresno High's renovations, totaling about \$78 million, to Harris without taking bids from other contractors.

During the same time frame, five other projects totaling \$51 million were awarded to five separate contractors.

After publication of the story, the district began requesting bids from other contractors on projects.

Harris is owned by Richard Spencer of Fresno. He and his company have been cheerleaders for the lease-leaseback method of construction and for passage of school bond measures.

He also has been a major financial contributor to candidates in Fresno Unified trustee races and to Fresno Unified bond measures.

Lease-leaseback, if done right, has advantages for districts over the traditional method of selecting the lowest responsible bidder. Basically, it reduces the potential for conflicts among the district, architect, builder and sub-contractors.

But Fresno Unified didn't do lease-leaseback in accordance with the law on the Gaston construction, according to the 5th District Court of Appeal. And the pre-construction contract awarded to Harris, long before it was selected to build Gaston, drives home an important point.

That contract, said Fresno Unified Trustee Brooke Ashjian, was a case of the "fox guarding the chickens."

It's past time for Hanson and the trustees to get this fixed.