



# Follow-Up Review: TCG Investment Advisory Services Contract

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## Final Report

**Audit Plan Code: 22-15**

The contract was acquired using an approved procurement method and the specific interlocal agreement was appropriate. According to District administration, TCG has been providing satisfactory investment advisory services and EPISD will earn approximately \$16,000 more than the cost of the service.

However, conflict of interest disclosures were not filed by the former Superintendent and the vendor (TCG) as required by the Texas Local Government Code Chapter 176. We also identified issues related to the budgeting, vendor setup, and timing of payments related to this contract.



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## Abbreviations

EPISD	El Paso Independent School District
BEFM	Budget and External Financial Management
DSFO	Deputy Superintendent of Finance and Operations
CIS	Conflicts Disclosure Statement
CIQ	Conflict of Interest Questionnaire
TCG	Trusted Capital Group Advisory Services, LLC



# Follow-up Review Report

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## Background

According to the Internal Audit Charter outlined in Board Policy CFC (Exhibit), the scope of internal audit activities encompasses, but is not limited to, objective examinations of evidence to provide independent assessments to the Board, management, and outside parties on the adequacy and effectiveness of governance, risk management, and control processes for the El Paso Independent School District (EPISD). Internal audit assessments include evaluating whether the actions of the EPISD's employees and vendors/contractors comply with the District's policies, procedures, and applicable laws, regulations, and governance standards.

During the audit of "Contracted Services – Academics" performed in fiscal year 2021, EPISD administrators raised concerns regarding additional contracts with vendors. The Board of Trustees approved revisions to the 2020-2021 and 2021-2022 Audit Plans to perform a follow-up review on these concerns.

One of the concerns was reported to the Chief Internal Auditor by the Deputy Superintendent of Finance and Operations (DSFO) on May 3, 2021. The DSFO reported she had just become aware TCG Advisory Services, LLC (hereinafter referred to as TCG), a District vendor, was employing the former Superintendent's son, which could represent a conflict of interest disclosure concern.

This follow-up review focused on a contract with TCG for investment advisory services in the amount of \$42,500. The term of this contract is from October 1, 2020, through September 30, 2021, with two-year(s) annual renewal(s) at the EPISD's option, unless terminated earlier in accordance with the contract.

## Objective and Scope

The scope of the follow-up review was from July 2020 through June 2021 and was limited to the contract with TCG for investment advisory services for \$42,500.

The objectives of the follow-up review were to determine whether:

1. The investment advisory services were identified as a need by the contract owners,
2. Funds were properly budgeted for the investment advisory services contract,
3. Purchasing policies and procedures related to procurement of the contracted services and conflicts of interest disclosures were followed, and
4. Services were delivered/paid in accordance with the contract.

## Methodology

To achieve our audit objectives, we:

- Researched relevant federal/state laws and regulations, Board policies, and the department manual/guidelines,
- Obtained and analyzed relevant emails for the scope of the review,
- Obtained and examined pertinent procurement, budget, and contract documents for the scope of the review,
- Contacted TCG for information verification,
- Virtually interviewed relevant current EPISD personnel, and
- Sent questionnaires via email to the former Superintendent and current EPISD personnel.

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## Inherent Limitations

Because of the inherent limitations in a system of internal controls, there is a risk that errors or irregularities occurred and were not detected. Due professional care requires the internal auditor to conduct examinations and verifications to a reasonable extent.

Accordingly, an auditor can provide reasonable, but not absolute, assurance that procedures and internal controls are followed and adhered to in accordance with federal, state, local policies and guidelines. This was a limited scope follow-up review, which only reviewed the areas stated in the Objectives and Scope section of this report.

The following represents a scope limitation encountered during our follow-up review; however, it did not significantly impact our ability to achieve the objectives. We sent a questionnaire to the former Superintendent to request information related to the TCG Investment Advisory Services Contract. The former Superintendent provided answers to some (but not all) specific questions in the questionnaire. We were later informed he would not answer additional questions beyond those he has already answered.

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## Conclusion and Results

In summary, we identified the following:

- We received conflicting information as to who identified the need for the investment advisory services contract.
- Funds were not initially allocated under the contract owners' budget (Finance and Treasury Departments), and a budget transfer was processed to acquire the services.
- Purchasing procedures were not properly followed by Procurement when TCG Advisory Services, LLC was added as a new vendor.
- The investment advisory services contract was acquired using an approved procurement method, and the specific interlocal agreement is appropriate.
- The former Superintendent should have disclosed that his son was employed with TCG before approving the contract for investment advisory services in the amount of \$42,500.
- TCG did not disclose to EPISD a conflict of interest when they began discussions with EPISD staff and again when Procurement requested they submit a conflict of interest questionnaire.
- According to District administration, TCG has been providing satisfactory investment advisory services. The Treasurer estimates that for the full 12 months of the contract, as a result of following TCG's recommendations, EPISD will earn about \$16,000 more than the cost of the service.
- The Treasury Department released payments totaling \$21,250 to TCG prior to fully receiving services for quarters two and three of the contract.

### Result 1

#### ***Objective 1: Were the investment advisory services identified as a need by the contract owners?***

The DSFO stated the Treasurer is the contract owner. However, as the supervisor of the Treasurer, she stated she also owns the contract. As such, both were asked questions regarding the need identification of these investment advisory services. They provided conflicting information on who had identified the need.

The DSFO stated she established the need for the District to acquire investment advisory services for the following reasons:



1. To further diversify the District's investment portfolio.
2. To develop a succession strategy for the Treasury Department.
3. To mitigate the risks and threats associated with having one person (Treasurer) manage the District's investment portfolio.

The DSFO stated she involved the Treasurer when establishing the need for these services and asked his assistance in developing the scope of work.

We interviewed the Treasurer, and he provided the following comments and information:

1. He (the Treasurer) did not identify the need for these investment advisory services. However, he met with *"reps from TCG a couple of years before this, and [DSFO] had also mentioned the service to me in the past."*
2. The DSFO made it clear to him that the former Superintendent identified the need for these services. He also said:
  - 2.1. *"In August of 2020, [DSFO] told me that [former Superintendent] was telling her that he wanted us to pursue the contract."*
  - 2.2. *"When [DSFO] and I discussed the contract we did not factor [former Superintendent] wishes into the decision."*
3. He was not involved in putting the TCG contract together.
4. He was hesitant about acquiring the investment advisory services due to current market conditions. However, TCG has been providing satisfactory investment advisory services. He estimates that for the full 12 months of the contract, as a result of following TCG's recommendations, EPISD will earn about \$16,000 more than the cost of the service.

We asked the former Superintendent about his involvement in acquiring investment advisory services. He stated: *"I asked our finance team to look at the program and only bring it to me if they could not do better with the funds. In other words evaluate and determine what was better for the district. When it was brought to me I assumed we did not have better internal capability."*

## Result 2

### **Objective 2: Were funds properly budgeted for the investment advisory services contract?**

Funds were not allocated in either contract owners' budgets (Finance or Treasury Departments) for fiscal year 2020-2021 to pay for investment advisory services. The DSFO requested funds to be transferred to the Treasury Department's budget on September 2, 2020. The funds were transferred from a "District-wide" account by the Executive Director Budget & External Financial Management (BEFM) into the Treasury Department's Miscellaneous Contracted Services budget.

In an email dated September 2, 2020, to the BEFM, the DSFO wrote: *"We are in the final stages of getting a contract through Legal to engage TCG for Treasury Management services. Cost is approximately \$42,500 and we need this additional budget in the Treasury Services Department. Will you please add this to their budget? In light of the budget, I understand but this is an initiative from the Super."*

## Result 3

### ***Objective 3: Were purchasing policies and procedures related to the procurement of the contracted services followed?***

#### **3.1 Procurement of Services**

The DSFO used an approved procurement method known as interlocal agreements (See Exhibit A – Criteria No. 1). The contract approval form shows they used interlocal agreement TCPN – Region 4 Contract RFP #18-08 to procure investment advisory services in which TCG is an approved vendor. When we asked the DSFO how and why she determined to use this vendor, she provided the following information:

1. She met with TCG on July 2, 2020, to discuss “finance issues.” The meeting was set up by the former Superintendent, who was also in attendance. She stated that no commitments were made to acquire investment advisory services during this meeting
2. TCG is a known vendor that has been providing the EPISD other services for approximately 15 years.
3. The costs seemed reasonable given the level of expertise the EPISD was seeking.
4. When asked if she had considered other vendors besides TCG, she stated: “she did not remember discussing other vendors.”

#### **3.2 Purchasing Policies and Procedures**

TCG Advisory Services, LLC was added as a new vendor without completing the required Conflict of Interest Questionnaire (CIQ) form. The Texas Ethics Commission provides this form for vendors doing business with local governmental entities like EPISD. At that time, TCG Group Holdings was a current vendor to the District. However, TCG Advisory Services, LLC is a subsidiary of TCG Group Holdings and needed to be added as a new vendor. Although Procurement staff reached out to TCG requesting the CIQ form on October 8, 2020, the vendor was added on October 16, 2020 without the form. According to the Executive Director Procurement and School Resources, he approved the vendor because TCG agreed to provide the form the next day. However, there was no follow-up by Procurement staff to obtain the form. If TCG had submitted a completed and accurate CIQ form during the vendor setup process, the conflict of interest issues described in sections 3.3 and 3.4 could have been identified by Procurement and should have followed up accordingly.

#### **3.3 Conflict Disclosure Statement (CIS) – Former Superintendent**

The former Superintendent should have disclosed that his son was employed with TCG before approving the contract for \$42,500 according to the conditions outlined in Chapter 176 of the Texas Local Government Code (See Exhibit A – Criteria No.’s 2 and 3). This disclosure should have been filed using the CIS form with the District’s Procurement Department. According to Procurement staff and the Operations Manager Superintendent/Board of Managers, their records do not show any CIS forms filed by the former Superintendent related to this vendor.

Below are additional reasons we determined the former Superintendent should have filed a CIS form:

1. A representative from TCG confirmed the former Superintendent's son has been a paid intern and employee of TCG. As of May 2021, and according to

a professional networking website (LinkedIn), the son has been working for TCG for the following periods:

- 1.1. May 2019 to May 2020 – Part-time Intern
- 1.2. May 2020 to August 2020 - Part-time Trainee
- 1.3. August 2020 – Present (May 2021) - Full-time Institutional Sales Associate

2. The former Superintendent's son likely received more than the limit of taxable income (\$2,500) allowed under Chapter 176 of the Texas Local Government Code during a 12-month period preceding the date when the former Superintendent approved the contract with TCG. **Figure 1** shows a conservative estimate of compensation based on minimum hours worked and minimum hourly rate for the 12-month period preceding October 26, 2020, which is the date the former Superintendent approved the contract with TCG.

Figure 1.  
Estimated Minimum Compensation (October 2019 to October 2020)

Position Held	<sup>1</sup> Length in Position	Minimum Hourly Rate	Average Hours per Week	Weeks	Compensation
Part-time Intern	October 2019 to April 2020	\$7.25	20	27	\$3,915
Part-time Trainee	May 2020 to July 2020	\$7.25	20	13	\$1,885
Full-time Institutional Sales Associate	August 2020 to <sup>2</sup> October 2020	\$7.25	40	12	\$3,480
Total Estimated Minimum Compensation					\$9,280

<sup>1</sup> Dates presented are based on months shown in the LinkedIn profile.

<sup>2</sup> On October 26, 2020, the former Superintendent approved the contract according to contract-related records.

3. When asked about his son's employment with TCG, the former Superintendent responded: *"I knew my son was in an internship and simultaneously interviewing with and looking for permanent employment with multiple employers. I am not sure when he was offered employment as he did not live at home. I believe I was in the process of leaving the District, but do not recall (sic) timing."*

### **3.4 Conflict of Interest Questionnaire – TCG**

TCG did not disclose the former Superintendent's son was a paid employee once discussions or negotiations started with the District for investment advisory services as early as July 2020. TCG should have disclosed this within seven business days when they began discussions or negotiations to enter into the contract, according to Chapter 176, Local Government Code. Also, TCG did not submit the Conflict of Interest Questionnaire (CIQ) when Procurement requested it in an email dated October 8, 2020.

A CIQ dated May 6, 2021, was subsequently filed by TCG, which stated "None" when asked if they were disclosing a conflict of interest with a local government officer of EPISD. At the time of this filing, the son is an employee of TCG, but the former Superintendent is no longer employed at EPISD.

## Result 4

### ***Objective 4: Were services delivered/paid in accordance with the contract?***

We noted two payments for quarters two and three (totaling \$21,250) were released (approved) by the Treasurer before the District fully received investment advisory services from TCG (See Exhibit A – Criteria No. 4). Since the Treasury Department received the budget to pay for this contract, the Treasurer is responsible for acknowledging receipt of services and approving payments to TCG. The Treasurer said he was releasing payments as invoices were received instead of following the “Compensation” schedule in the TCG contract.

Figure 2.  
Treasury Department Payments to TCG

Billed Quarter	For Services Ending and Payable	Invoice Date	Released for Payment	# of Days Released for Early Payment
Quarter 2	March 31, 2021	January 31, 2021	February 4, 2021	39
Quarter 3	June 30, 2021	April 14, 2021	April 21, 2021	50

## Recommendations

- 1** We recommend the Treasurer perform a needs assessment and/or a business analysis to assist the interim Superintendent in determining if EPISD should continue with these services. The interim Superintendent should consult with General Counsel to know the options available to EPISD before making any final decisions regarding this contract.
- 2** We recommend the Treasurer approves all future compensation to TCG after fully receiving all services and following the dates outlined in the “Compensation” schedule of the contract.
- 3** Procurement should finalize activity five outlined in the Corrective Action Plan for the Vendor Master File Audit (22-19). The purpose of this activity is to implement additional controls to ensure Procurement does not add vendors without the proper, completed, and required forms.
- 4** In consultation with the District's General Counsel, we recommend the Executive Director of Procurement and School Resources determine the consequences, if any, for the failure to disclose a conflict of interest by the former Superintendent and TCG.



## Exhibit A – Criteria

Criteria No.	Criteria
1	<p><b><i>EPISD Procurement Manual (January 2020):</i></b></p> <p>10.4 <u>Cooperative Purchasing Groups-Interlocal Agreements</u>: A centralized purchasing function can also be performed on a regional level through a cooperative/interlocal agreement among districts or the regional education service center. Cost savings through a regional centralized purchasing function are achieved through both discounted prices and administrative cost savings to individual districts. If the district participates in a cooperative purchasing program, it satisfies any law requiring it to seek competitive bids. Local Government code 271.102; Atty Gen. Op. JC-37 (1999)</p> <p>12.3 <u>New Vendor Requirements</u>: To become a vendor with the District, vendors must complete, sign, and submit the following documents:</p> <ul style="list-style-type: none"> <li>• The requesting campus/department must submit a New Vendor Form, Vendor Acknowledgement form, W-9 Form, Purchasing Category Checklist Form, Suspension and Debarment Form, and <i>Conflict of Interest Form</i> to the vendor for completion.</li> <li>• When the required documentation is returned, the Purchasing Clerk will verify the new vendor forms for completeness and set up the new vendor in the TEAMS system.</li> <li>• The Executive Director of Procurement Services will then review the vendor setup for completeness and approve or deny the new vendor.</li> <li>• If approved, the requesting campus/department will then be notified by the Procurement Services Department of the new approved vendor account number.</li> <li>• If the required documentation is not received from the vendor, the vendor will not be added to the TEAMS system, and other arrangements for purchases will have to be made.</li> </ul>
2	<p><b><i>Texas Local Government Code §176.003. Conflicts Disclosure Statement Required</i></b> (Only applicable criteria listed below).</p> <p>(a) A local government officer shall file a conflict disclosure statement with respect to a vendor if:</p> <ol style="list-style-type: none"> <li>1. The vendor enters into a contract with the local governmental entity, or the local governmental entity is considering entering into a contract with the vendor; and</li> <li>2. The vendor: <ul style="list-style-type: none"> <li>(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that: <ul style="list-style-type: none"> <li>(i) a contract between the local governmental entity and the vendor has been executed; or</li> <li>(ii) the local governmental entity is considering entering into a contract with the vendor;</li> </ul> </li> <li>(b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh (7th) business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a).</li> </ul> </li> </ol> <p><b><i>Texas Local Government Code §176.006. Disclosure Requirements for Vendors and Other Persons; Questionnaire.</i></b> (Only applicable criteria listed below).</p> <p>(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:</p> <ol style="list-style-type: none"> <li>1. has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A); <ul style="list-style-type: none"> <li>(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:</li> </ul> </li> </ol>

	<p>(1) the date that the vendor:</p> <p>(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or</p> <p>(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or</p> <p>(2) the date the vendor becomes aware:</p> <p>(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);</p> <p>(C) of a family relationship with a local government officer.</p> <p>(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business and family relationships with a local governmental entity.</p> <p>(c) The questionnaire adopted under Subsection (b) must require, for the local government entity with respect to which the questionnaire is filed, that the vendor filing the questionnaire:</p> <p>(1) describe each employment or business and family relationship the vendor has with each local government officer of the local governmental entity;</p> <p>(2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government office receives, or is likely to receive, taxable income, other than investment income, from the vendor;</p> <p>(d) A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate.</p>
3	<p><b>Board Policy BBFA (LEGAL) (October 15, 2019)</b> (Only applicable criteria listed below):</p> <p><u>Conflict Disclosure Statement:</u> A local government officer shall file a conflicts disclosure statement, as adopted by the Texas Ethics Commission, with respect to a vendor if the vendor enters into a contract with the district or the district is considering entering into a contract with the vendor; and the vendor:</p> <ol style="list-style-type: none"> <li>Has an employment or other business relationship with the local government officer or a family member of the officer, and the business relationship results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that: <ol style="list-style-type: none"> <li>A contract between the district and the vendor has been executed; or</li> <li>The district is considering entering into a contract with the vendor.</li> </ol> </li> </ol> <p><b>Board Policy CHE (LEGAL) (November 2, 2015)</b> (Only applicable criteria listed below):</p> <p><u>Required Vendor Disclosure:</u> The Texas Ethics Commission shall adopt a conflict of interest questionnaire that requires disclosure of a vendor's business and family relationships with a district. <i>Local Gov't Code 176.006(b)</i></p> <p>A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with the district and:</p> <ol style="list-style-type: none"> <li>Has an employment or other business relationship with a local government officer of the district, or a family member of the officer, described by Local Government Code 176.003(a)(2)(A);</li> <li>Has given a local government officer of the district, or a family member of the officer, one or more gifts with the aggregate value specified by Local Government Code 176.003(a)(2)(B), excluding any gift described by Local Government Code 176.003(a-1); or</li> <li>Has a family relationship with a local government officer of the district.</li> </ol> <p><i>Local Gov't Code 176.006(a)</i></p> <p>The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the date that the vendor:</p> <ol style="list-style-type: none"> <li>Begins discussions or negotiations to enter into a contract with a district;</li> </ol>

	<ol style="list-style-type: none"> <li>2. Submits to the district an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the district; or</li> <li>3. The date the person becomes aware: <ol style="list-style-type: none"> <li>a. Of an employment or other business relationship with a local government officer, or a family member of the officer;</li> <li>b. That the person has given one or more gifts; or</li> <li>c. Of a family relationship with a local government officer.</li> </ol> </li> </ol> <p><i>Local Gov't Code 176.006(a-1)</i></p>
4	<p><b><i>EPISD Financial Services Administrative Reference Guide (August 2019):</i></b></p> <p>5.8 <u>Payment of Invoices/General Invoices Information</u>: The District pays for goods/services only after they are received/rendered. Consultants and contracted services are to be paid according to the District's standard terms and schedule.</p>
5	<p><b><i>EPISD Procurement Manual (January 2020):</i></b></p> <p>6.4 <u>Internal Code of Ethics</u></p> <ul style="list-style-type: none"> <li>• Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications.</li> <li>• Demonstrate loyalty to your employer by diligently following the lawful instructions of your employer, using reasonable care and only authority granted.</li> <li>• Refrain from any private business or professional activity that would create a conflict between personal interests and those of your employer.</li> <li>• Refrain from soliciting or accepting money, loans, credits, discounts, gifts, entertainment, favors, or services from present or potential suppliers.</li> </ul>



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