

MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT

RESOLUTION NO. 21-11

RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR PLUMBING TRADE SERVICES FOR MOUNTAIN VIEW HIGH SCHOOL NEW CLASSROOM BUILDINGS AND RATIFYING CHANGE ORDER APPROVAL FOR THAT WORK

WHEREAS, the Board of Trustees (“Board”) of the Mountain View-Los Altos High School District (“District”) formally and publicly opened bids for Bid Package E – Plumbing Trades (“Bid Package E”) for the Mountain View High School New Classroom Buildings Project (“Project”), located at Mountain View High School, 3535 Truman Avenue, Mountain View, California 94040; and

WHEREAS, of the two (2) bids submitted for Bid Package E, O.C. McDonald was determined to be the lowest responsive responsible bidder, and on or about August 12, 2019, the Board awarded a contract to perform the work for Bid Package E on the Project in the amount of Six Hundred Thirty-Nine Thousand Three Hundred Seventy Dollars (\$639,370.00); and

WHEREAS, since commencement of the Project, DSA approval of the plans and specifications necessitated changes in the scope of work from bid documents; and

WHEREAS, the Project adjustments represent additions in scope and cost for services to be performed on the Project pursuant to Bid Package E (“Work”); and

WHEREAS, the Project adjustments are integral and inseparable from, and inherent to, the Work on the Project for Bid Package E; and

WHEREAS, the Contractor issued documentation supporting final pricing for the integral and additional necessary work to the Mountain View High School New Classroom Buildings Project via Change Order #1E for O.C. McDonald (“O.C. McDonald CO #1E”) totaling \$48,001.00, which brings the total current cost of all approved and pending change orders to \$67,819.00 (10.61% of the original contract amount); and

WHEREAS, District staff have concluded that the O.C. McDonald CO #1E cost is reasonable; and

WHEREAS, requesting bids for the Additional Work, and having another contractor perform the adjusted Work, would result in waste and delay on the Project, which would ultimately be at the expense of the District; and

WHEREAS, bringing in a new Contractor to perform the Additional Work would have created coordination and interference problems at the Project, for example, the

need to perform the work within the same area, and would expose the District to liability for delay and/or disruption damages; and

WHEREAS, bringing in a new contractor to perform the Additional Work could have created a potential dispute over the warranty for that work and the surrounding work being performed by the Contractor; and

WHEREAS, bringing in a new contractor (or contractors) to perform the Bid Package E Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since O.C. McDonald is already familiar with and mobilized on the Project site and any other bids are likely to result in increased costs to the District; and

WHEREAS, it is imperative to perform the Additional Work immediately to prevent delay to the Project, which may expose the District to a significant increase in cost; and

WHEREAS, the Board previously approved O.C. McDonald CO #1E at its February 10, 2020 Board Meeting and now wishes to ratify this approval pursuant to the futility exception authorized under California law;

WHEREAS, California courts allow a narrow exception to the public bidding law in circumstances in which public bidding would be futile, undesirable or impractical and would cause additional delay and additional cost; (See, e.g., Los Angeles Dredging Company v. City of Long Beach (1930) 2 Cal. 348; Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631, 645.); and

WHEREAS, notwithstanding the requirements of Public Contract Code sections 20111(b) or 20118.4(a), California law provides that, “[w]here competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply.” (Hiller v. City of Los Angeles (1961) 197 Cal.App.2d 685, 694); and

WHEREAS, bidding the Additional Work for Bid Package E will not affect the final result to the District except to further increase the cost of the Project; and

WHEREAS, bidding the Additional Work will not produce an advantage to the District;

NOW THEREFORE, the Governing Board of the Mountain View-Los Altos High School District hereby resolves, determines, and finds the following:

Section 1. That the above recitals are true and correct.

Section 2. For the reasons stated above, public bidding of the Additional Work for Project Bid Package E would not produce an advantage to the District, and would produce a net burden and distinct disadvantages to the District.

Section 3. That based on the foregoing, it would be incongruous, futile, and unavailing to attempt to bid the Additional Work for Project Bid Package E.

Section 4. The Board hereby ratifies its prior approval of the Change Order to perform the Additional Work, without further advertising for or inviting of bids.

Section 5. The Board hereby authorizes the District's Superintendent, or her designee, to take all steps and perform all actions necessary to execute and implement O.C. McDonald CO #1E.

APPROVED, PASSED AND ADOPTED this 26th day of October, 2020 by the following vote of the Board of Trustees of the Mountain View-Los Altos High School District:

AYES:

NOES:

ABSENT:

ABSTAIN:

I certify that the foregoing resolution was duly introduced, passed, and adopted as stated.

Dr. Nellie Meyer
Superintendent
Mountain View-Los Altos High School District