

MOUNTAIN VIEW-LOS ALTOS HIGH SCHOOL DISTRICT

RESOLUTION NO. 20-10

RESOLUTION DECLARING THE FUTILITY OF PUBLIC BIDDING FOR EARTHWORK AND PAVING TRADE SERVICES FOR LOS ALTOS HIGH SCHOOL NEW CLASSROOMS, ENGINEERING LABS, AND AUXILIARY GYMNASIUM AND APPROVING A CHANGE ORDER 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 B – Earthwork and Paving Trades (“Bid Package B”) for the Los Altos High School New Classrooms, Engineering Labs, and Auxiliary Gymnasium Project (“Project”), located at Los Altos High School, 201 Almond Avenue, Los Altos, California 94022; and

WHEREAS, of the two bids submitted for Bid Package B, Galeb Paving, Inc. was determined to be the lowest responsive responsible bidder, and on or about August 5, 2019, the Board awarded a contract to perform the work for Bid Package B on the Project in the amount of One Million Six Hundred Sixteen Thousand Nine Hundred Dollars (\$1,616,900.00); and

WHEREAS, since commencement of the Project, adverse weather and unforeseen conditions have been encountered and quantified; and

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

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

WHEREAS, the Contractor issued documentation supporting final pricing for the integral and additional necessary work to the project via Change Order #1B for Galeb Paving, Inc. (“Galeb CO #1B”) totaling \$333,233.00 which brings the total current cost of all approved and pending change orders to \$333,233.00 (20.61%) of the original contract amount; and

WHEREAS, District staff have concluded that the Galeb CO #1B cost is reasonable; and

WHEREAS, requesting bids for the adjusted 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 create 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 B Work pursuant to the Project adjustments would expose the District to significant cost increase, because Galeb Paving, Inc. 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 adjusted Work immediately to prevent delay to the Project, which may expose the District to a significant increase in cost; and

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 adjusted Work for Bid Package B will not affect the final result to the District except to further increase the cost of the Project; and

WHEREAS, bidding the adjusted 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 adjusted Work for Project Bid Package B 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 adjusted Work for Project Bid Package B.

Section 4. The Board hereby approves 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 Galeb CO #1B.

APPROVED, PASSED AND ADOPTED this 13th day of January, 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