



CAMBRIAN SCHOOL DISTRICT

Board of Trustees

Resolution No. 24-25-05

DECLARING THE FUTILITY OF PUBLIC BIDDING FOR SITE CONCRETE TRADE SERVICES FOR INCREMENT 1 SITEWORK FOR MODULAR CLASSROOMS AT 4 SCHOOL SITES AND RATIFYING A CHANGE ORDER FOR THAT WORK

WHEREAS, the Board of Trustees (“Board”) of the Cambrian School District (“District”) formally and publicly opened bids for Bid Package C – Site Concrete Trades (“Bid Package C”) for the Increment 1 Sitework for Modular Classrooms at 4 School Sites (“Project”).

WHEREAS, McGuire and Hester (formerly named Casey-Fogli Concrete at the time of bid) was the sole bidder for Bid Package C, Site Concrete Trades, and was determined to meet the requirements of a responsive responsible bidder, and on May 18th, 2023, the Board awarded a contract to perform the work for Bid Package C on the Project in the amount of Six Hundred Thirty Thousand Nine Hundred Forty-Five Dollars (\$630,945.00); and

WHEREAS, since commencement of the Project, it was required per DSA to furnish and install a concrete ramp, curbs, and metal handrails to create an ADA-compliant ramp between the existing Fammatre Classroom Building F and the new classroom building, ensuring an accessible site path of travel (PCO #151 from CO #3C)

WHEREAS, by virtue of its design and function, the Additional Work is integral and inseparable from, and inherent to, the work already in progress on the Project; and

WHEREAS, the Contractor issued documentation supporting final pricing for required ADA ramp to the Increment 1 Sitework for Modular Classrooms at 4 School Project via PCO #151 from CO #3C totaling \$ 49,322.00, which brings the total current cost of all approved and pending change orders to \$91,553.00 (14.51% of the original contract amount); and

WHEREAS, District staff have concluded that McGuire and Hester (Casey-Fogli Concrete) CO#3C (approved by the Board on 10/01/24) costs are reasonable; and

WHEREAS, requesting bids for the Additional and Changed 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 and Changed 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 C Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since

McGuire and Hester (Casey-Fogli Concrete) 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, 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 C 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 Cambrian 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 C 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 C.
- Section 4.** The Board hereby ratifies the approvals of Change Order #3C 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 McGuire and Hester (Casey-Fogli Concrete) CO #3C.

APPROVED, PASSED AND ADOPTED this 19th day of December, 2024 by the following vote of the Board of Trustees of the Cambrian School District:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Kristi Schwiebert
Superintendent
Cambrian School District