



CAMBRIAN SCHOOL DISTRICT

Board of Trustees

Resolution No. 22-23-11

DECLARING THE FUTILITY OF PUBLIC BIDDING FOR HVAC TRADE SERVICES FOR PHASE 1 MODERNIZATIONS AT FARNHAM ELEMENTARY SCHOOL AND SARTORETTE ELEMENTARY SCHOOL 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 H – HVAC Trades (“Bid Package H”) for the Phase 1 Modernizations at Farnham Elementary School and Sartorette Elementary School Project (“Project”), located at Farnham Elementary School, 15711 Woodard Road, San Jose, CA 95124; and Sartorette Elementary School, 3850 Woodford Drive, San Jose, CA 95124; and

WHEREAS, of the four (4) bids submitted for Bid Package H, O.C. McDonald Co. Inc. was determined to be the lowest responsive responsible bidder, and on March 17th, 2022, the Board awarded a contract to perform the work for Bid Package H on the Project in the amount of Eight Hundred Ninety-Eight Thousand Six Hundred Ninety Dollars (\$898,690.00); and

WHEREAS, since commencement of the Project, the installation orientation of new condensing units were revised to allow for necessary maintenance access, requiring additional refrigerant lines, insulation, protective aluminum jackets, and associated labor (PCOs #076, #077 from CO #2H); and premium time for after-hours weekday work and weekend work, as well as additional time to complete work that needed to be performed out of standard sequence, was required to meet the school start deadline with functional mechanical systems (PCOs #102, #103 from CO #3H); and

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 the integral and additional necessary HVAC work to the Phase 1 Modernizations at Farnham Elementary School and Sartorette Elementary School Project via PCOs #076, #077 from CO #2H and PCOs #102, #103 from CO #3H totaling \$99,877.00, which brings the total current cost of all approved and pending change orders to \$152,449.00 (16.96% of the original contract amount); and

WHEREAS, District staff have concluded that O.C. McDonald Co. Inc. CO #3H cost is reasonable; and that O.C. McDonald Co. Inc. CO #2H (approved by the Board on 08/04/22) 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 and Changed 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 H Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since O.C. McDonald Co. 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 Changed 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 H 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 H 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 H
- Section 4.** The Board hereby ratifies the approvals of Change Orders #2H and #3H 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. Inc.’s COs #2H and #3H.

PASSED AND ADOPTED by the Board of Trustees of the Cambrian School District of the Santa Clara County, State of California, on this 3rd day of November 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Carol Presunka, President
Governing Board of Trustees
Cambrian School District

ATTEST:

Kristi Schwiebert, Secretary to Board
Governing Board of Trustees
Cambrian School District