



**CAMBRIAN SCHOOL DISTRICT**

**Board of Trustees**

**Resolution No. 22-23-13**

**DECLARING THE FUTILITY OF PUBLIC BIDDING FOR PLUMBING TRADE SERVICES FOR PHASE 1 MODERNIZATIONS AT BAGBY ELEMENTARY SCHOOL, FAMMATRE ELEMENTARY SCHOOL, AND PRICE MIDDLE SCHOOL, AND APPROVING 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 – Plumbing Trades (“Bid Package C”) for the Phase 1 Modernizations at Price Middle School, Bagby Elementary School, and Fammatre Elementary School Project (“Project”), located at Price Middle School, 2650 New Jersey Avenue, San Jose, CA 95124; Bagby Elementary School, 1840 Harris Avenue, San Jose, CA 95124; and Fammatre Elementary School, 2800 New Jersey Avenue, San Jose, CA 95124; and

**WHEREAS**, of the three (3) bids submitted for Bid Package C, MBS Engineering was determined to be the lowest responsive responsible bidder, and on March 3rd, 2022, the Board awarded a contract to perform the work for Bid Package C on the Project in the amount of Six Hundred Ninety-Two Thousand Two Hundred Twelve Dollars (\$692,212.00); and

**WHEREAS**, since commencement of the Project, premium time for after-hours weekday work and weekend work was required to meet the school start deadline with functional gas and mechanical systems (PCO #187 from CO #5C and PCOs #136, #137, #138, #162, #163, #164 from CO #6C), and a revised gas tie-in location was necessary to connect the new gas lines at Bagby to the existing cafeteria building, following preliminary work and investigation which resulted in the discovery that existing utilities were not located as previously documented (PCO #186 from CO #6C); 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 plumbing work to the Phase 1 Modernizations at Price Middle School, Bagby Elementary School, and Fammatre Elementary School Project via PCO #187 from CO #5C and PCOs #136, #137, #138, #162, #163, #164, #186 from CO #6C totaling \$59,468.94, which brings the total current cost of all approved and pending change orders to \$91,741.71 (13.25% of the original contract amount); and

**WHEREAS**, District staff have concluded that the MBS Engineering CO #6C cost is reasonable; and that MBS Engineering CO #5C (approved by the Board on 10/20/22) costs are reasonable; and

**WHEREAS**, requesting bids for the 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 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 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 C Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since MBS Engineering 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 approves the Change Order #6C 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 MBS Engineering’s COs #5C and #6C.

**PASSED AND ADOPTED** by the Board of Trustees of the Cambrian School District of the Santa Clara County, State of California, on this 17<sup>th</sup> day of November 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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Kristi Schwiebert, Secretary to Board  
Superintendent  
Cambrian School District