



CAMBRIAN SCHOOL DISTRICT

Board of Trustees

Resolution No. 22-23-14

DECLARING THE FUTILITY OF PUBLIC BIDDING FOR GENERAL TRADE SERVICES FOR PHASE 1 MODERNIZATIONS AT BAGBY ELEMENTARY SCHOOL, FAMMATRE ELEMENTARY SCHOOL, AND PRICE MIDDLE 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 A – General Trades (“Bid Package A”) 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 two (2) bids submitted for Bid Package A, Beals Martin & Associates 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 A on the Project in the amount of Two Million, Seven Hundred Ninety-Four Thousand, One Hundred Fifty-Three Dollars (\$2,794,153.00); and

WHEREAS, since commencement of the Project, various unidentified conflicts between planned new furnace closets and existing conditions including structural elements warranted relocation, rotation, or expansion of new closets. These changes resulted in relocations and modifications of ductwork, casework, tack boards, whiteboards, paper towel dispensers, and soap dispensers in conflict with new closets, as well as electrical conduits and plumbing installations (PCO #008 from CO #1A; PCOs #021, #031 from CO #2A; PCOs #077, #140 from CO #5A; PCOs #036, #044 from CO #6A; PCO #028 from CO #7A, PCO #035 from CO #8A; PCO #165 from CO #9A); and

New louver locations were discovered to conflict existing structural elements in shear walls and necessitated additional bracing to maintain structural capacity with added louver locations and HVAC penetrations (PCO #054 from CO #5A; PCO #055 from CO #6A; PCO #078 from CO #7A); and

Original countertops were planned to be reinstalled following installation of modified or new modified casework, but were not salvageable, warranting furnishing of new countertops for installation (PCOs #066, #067, #068, from CO #2A); and

Planned closet wall connections to unidentified shear walls would incur costs for partial removal and replacement of shear wall as well as any associated necessary abatement. A revised wall connection was implemented to avoid encroachment into shear walls and prevent need for abatement (PCOs #074, #075, #076 from CO #6A); and

Additional over excavation, base rock, and compaction at condensing unit pads and ADA student drop-off areas was required per Geotech report (PCOs #084, #085 from CO #2A; PCO #024 from CO #4A; PCOs #22, #25 from CO #7A); and

A high volume of overtime after normal working weekday hours as well as overtime on weekends was necessary from Beals Martin and its subcontractors due to schedule compression to achieve occupancy by the start of the school year, and complete remaining work after the start of the school year when students

were not present in classrooms. Schedule compression was required due to additional scope for abatement and time required to achieve clearances, as well as scope generated from unforeseen conditions (PCO #081 from CO #4A; PCOs #120, #121, #122, #146 from CO #5A; PCOs #117, #118, #119 from CO #6A; PCOs #079, #080, #083, #111, #112, #113 from CO #7A; PCOs #101, #102, #103 from CO #8A; PCOs #205, #209, #210, #211, #212, #213, #217, #239, #240, #244, #245 from CO #9A); and

Additional sound mitigation was necessary between mechanical units and the teaching walls of adjacent classrooms to ensure minimal disturbances from normal mechanical unit operation, which required replacement of existing plywood with drywall (PCO #125 from CO #7A; PCOs #088, #089 from CO #9A); and

Accessibility (ADA) upgrades on campus were required for state certification of said project, including revised restroom layouts to reflect current code (PCO #108 from CO #7A); and

Original install location of heat detectors in furnace closets was discovered to be unfeasible due to mechanical equipment causing obstruction for maintenance access. Heat detector install location required revision which included addition of access panels in furnace closets to allow for maintenance access (PCOs #128, #129, #130 from CO #4A); 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 general trades work to the Phase 1 Modernizations at Price Middle School, Bagby Elementary School, and Fammatre Elementary School Project via PCO #008 from CO #1A; PCOs #021, #031, #066, #067, #068, #084, #085 from CO #2A; PCOs #024, #081, #128, #129, #130 from CO #4A; PCOs #054, #077, #120, #121, #122, #140, #146 from CO #5A; PCOs #036, #044, #055, #074, #075, #076, #117, #118, #119 from CO #6A; PCOs #022, #025, #028, #078, #079, #080, #083, #108, #111, #112, #113, #125 from CO #7A; PCOs #035, #101, #102, #103 from CO #8A; PCOs #088, #089, #165, #205, #209, #210, #211, #212, #213, #217, #239, #240, #244, #245 from CO #9A totaling \$418,518.00, which brings the total current cost of all approved and pending change orders to \$464,484.00 (16.62% of the original contract amount); and

WHEREAS, District staff have concluded that the Beals Martin CO #9A cost is reasonable; and that Beals Martin CO #1A (approved by the Board on 06/16/22), Beals Martin CO #2A (approved by the Board on 08/04/22), Beals Martin CO #4A (approved by the Board on 09/15/22), Beals Martin CO #5A (approved by the Board on 10/06/22), Beals Martin CO #6A (approved by the Board on 10/20/22), Beals Martin CO #7A (approved by the Board on 11/03/22), Beals Martin CO #8A (approved by the Board on 11/17/22) 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 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 A Work pursuant to the Project adjustments would potentially expose the District to significant cost increase, since Beals Martin 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 A 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 A 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 A.
- Section 4.** The Board hereby approves the Change Order #9A 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 Beals Martin’s COs #1A, #2A, #4A, #5A, #6A, #7A, #8A, and #9A.

PASSED AND ADOPTED by the Board of Trustees of the Cambrian School District of the Santa Clara County, State of California, on this 15th day of December 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Kristi Schwiebert, Secretary to Board
Superintendent
Cambrian School District