

**TAMALPAIS UNION HIGH SCHOOL DISTRICT**

**RESOLUTION NO. 18-11**

**DECLARING THE FUTILITY OF PUBLIC BIDDING FOR BID #59 – INTERIM HOUSING  
AND NEW ACCESSIBLE MODULAR RESTROOMS – REDWOOD HIGH SCHOOL  
AND APPROVING CHANGE ORDERS FOR THAT WORK**

**WHEREAS**, the Board of Education (“Board”) of the Tamalpais Union High School District (“District”) formally and publicly opened bids for bid package #59 – Interim Housing and New Accessible Modular Restrooms – Redwood High School (“Bid Package 59”) for the interim housing and restroom Project (“Project”), located at Redwood High School, 395 Doherty Drive, Larkspur, California 94939; and

**WHEREAS**, CESCORP dba Cal Elite Builders (“Contractor”) was determined to be the lowest responsive responsible bidder, and on or about May 8, 2018, the Board accepted Contractor’s bid for the Project in the amount of Three Hundred and Thirty-Three Thousand Dollars (\$333,000); and

**WHEREAS**, in the course of the Project, Contractor submitted Proposed Change Orders 1, 2, 3, and 8, under which Contractor would perform additional work relating to foundation adjustments, and the additional costs relating to schedule delays, and which District staff have grouped as Change Order 1 (“CO 1 Work”), totaling Thirty-Seven Thousand, Eight Hundred and One Dollars and Fifty-Three Cents (\$37,801.53); and

**WHEREAS**, in the course of the Project, Contractor submitted Proposed Change Orders 4, 5, 6, and 7, under which Contractor would perform additional work relating to portable classroom ramps, and which District staff have grouped as Change Order 2 (“CO 2 Work”), totaling Thirty-Nine Thousand, Two Hundred Seventy-Three Dollars and Two Cents (\$39,273.02); and

**WHEREAS**, the CO 1 Work and CO 2 Work totals Seventy-Seven Thousand, Seventy-Four Dollars and Fifty-Five Cents (\$77,074.55), and are each supported by documentation submitted by Contractor; and

**WHEREAS**, the amount contained in the Change Orders 1 and 2 has been reviewed by District staff and determined to be reasonable; and

**WHEREAS**, there is substantial time pressure on the District to complete this Project for interim student housing and restrooms as the school year has already begun; and

**WHEREAS**, the Project adjustments are integral and inseparable from, and inherent to, the Work on the Project for Bid Package 59; and

**WHEREAS**, bringing in a new contractor or contractors to perform the CO 1 and CO 2 Work would expose the District to significant cost increase, because Contractor is already familiar with the Project site, is already mobilized, and any other bids are likely to result in increased costs to the District; and

**WHEREAS**, bringing in a new contractor or contractors to perform the CO1 and CO2 Work would significantly delay completion of the Project, which further delays student use; and

**WHEREAS**, it is imperative to perform the CO 1 and CO 2 Work immediately to prevent further delays to the Project, which may expose the District to a significant increase in cost; and

**WHEREAS**, change orders for formal bids follow the requirements of Public Contract Code section 20118.4; and

**WHEREAS**, Public Contract Code section 20118.4, provides that a school district may authorize a change order without the formality of securing bids, if the cost so agreed upon does not exceed the greater of \$15,000 or ten percent (10%) of the original contract price;” and

**WHEREAS**, ten percent of the original contract price for Contractor is Three Hundred and Thirty-Three Thousand Dollars (\$333,000); and

**WHEREAS**, the CO 1 and CO 2 Work will exceed the bid threshold of ten percent (10%) of the original contract price; and

**WHEREAS**, the CO 1 and CO 2 Work will result in a Twenty-Three and Fifteen Hundredths of a percent (23.15%) increase in the original Contract Price for the Project; and

**WHEREAS**, the Board previously approved Contractor’s bid at its May 8, 2018 Board Meeting and now wishes to ratify the Contract approval pursuant to the futility exception authorized under California law; 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 CO 1 and CO 2 Work for Bid Package 59 will not affect the final result to the District except to further increase the cost of the Project; and

**WHEREAS**, bidding the CO 1 and CO 2 Work will not produce an advantage to the District;

**NOW THEREFORE**, the Board of Trustees of the Tamalpais Union 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 lease for the CO 1 Work and CO 2 Work for Project Bid Package 59 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 CO 1 Work and CO 2 Work for Project Bid Package 59.

**Section 4.** The Board hereby ratifies its prior approval of the acceptance of the bid from CESCOP dba Cal Elite Builders, and award of the contract for this Project thereto.

**Section 5.** The Board hereby approves Change Orders 1 and 2 in the amount of Seventy-Seven Thousand, Seventy-Four Dollars and Fifty-Five Cents (\$77,047.55), attached hereto as Exhibit 1, for Contractor without further advertising for or inviting of bids.

**Section 6.** That the District's Superintendent or designee is authorized to take all steps and perform all actions necessary to execute and implement those Change Orders.

**APPROVED, PASSED AND ADOPTED** by the Board of Trustees the Tamalpais Union High School District on this 11<sup>th</sup> day of September, 2018, by the following vote:

AYES:                    5     Anderson, Ford, Futterman, Harlander, Owens  
NOES:                    0  
ABSTENTIONS:        0

*Leslie Harlander*

\_\_\_\_\_  
President, Board of Trustees  
Tamalpais Union High School District

Attested to:

*[Signature]*  
\_\_\_\_\_  
Clerk, Board of Trustees  
Tamalpais Union High School District

Exhibit 1  
Change Order 1, Change Order 2

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