

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT

Resolution No. 01-122018, Declaring the Futility of Public Bidding for 2-Story Modular Classroom Building at Slater Elementary School

WHEREAS, on March 28, 2017, the Mountain View Whisman School District (“District”) issued a Request for Proposals for modular building manufacturers for the Slater Elementary School (“Slater”) and District office (collectively the “Project”); and

WHEREAS, on April 20, 2017, the District received three proposals for the Project, including a proposal from Enviroplex, Inc. (“Enviroplex”) based on the January 9, 2015 “Piggyback Contract” awarded to Enviroplex by the Las Lomas School District (the “Las Lomas Piggyback”); and

WHEREAS, Enviroplex included in its April 20, 2017 response to the District’s RFP, a quotation for a proposed 2-story modular classroom at Slater; and

WHEREAS, on June 1, 2017 the District Board of Trustees (“Board”) approved the selection of Enviroplex as the modular building manufacturer for the Project, incorporating the Las Lomas Piggyback Contract as being in the best interest of the District, and as authorized by Public Contract Code section 20118 and District Board Policy 3311; and

WHEREAS, on December 7, 2017, the District Board authorized the “Award of Enviroplex Contract for Slater and District Office for Modular Buildings”, and thereafter the District issued a Purchase Order to Enviroplex for the modular buildings at Slater Elementary School and for the District Office Building, including a 2-story classroom building at Slater Elementary School (the “Purchase Order”); and

WHEREAS, Enviroplex is in the process of production and delivery of the classroom building, the administrative building, and library building at Slater and the District office building; and

WHEREAS, while most of the components of a 2-story classroom modular building was part of the Las Lomas Piggyback, the configuration for a 2-story classroom was not specifically identified in the Las Lomas Piggyback, but was included in Enviroplex’s April 20, 2017 proposal and was part of the Board’s December 7, 2017 award to Enviroplex, as well as the Purchase Order; and

WHEREAS, Public Contract Code section 20111 dictates that the District shall let any contracts involving an expenditure of more than \$90,200 for the purchase of equipment, materials or supplies; and

WHEREAS, California law provides that, “Where 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 that public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve the purposes of

competitive bidding. (*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631); and

WHEREAS, bidding the 2-story modular classroom building configuration for Slater would not produce an advantage to the District and in fact would produce a distinct disadvantage by requiring the District to incur additional costs to repackage the 2-story modular classroom configuration and would require modular vendors to bid at a premium to meet existing Project deadlines in time for the 2019-2020 Slater E.S. academic year; and

WHEREAS, requesting bids for the 2-story classroom modular configuration at this juncture of the Project would disrupt and imperil the Project schedule, and would require the purchase and delivery of the modular building on an expedited basis in order to meet the District's strict time constraints for the 2019-2020 academic year for Slater; and

WHEREAS; obtaining bids from alternate classroom modular configuration contractors would result in inconsistencies in the appearance and operation of the new modular building at the Project, including inconsistent window appearance and operation, inconsistent roof appearance and warranty, inconsistent HVAC and HVAC controls, operation and maintenance including spare parts and filters, inconsistency of design and patterns of exterior expansion joints, inconsistency of points of connection of utilities, including sewer, water, and electrical services; and

WHEREAS, purchasing the 2-story modular classroom configuration from Enviroplex will not affect the already approved Project cost; Enviroplex has confirmed its pricing for the 2-story modular classroom at Slater as quoted in its April 20, 2017 proposal and as reflected in the District's Purchase Order; and

WHEREAS, Enviroplex has already mobilized, is on the Project site, and has warranted that it can deliver the 2-story modular classroom at the Purchase Order price and within the Project's existing schedule.

NOW THEREFORE, the Governing Board of the District hereby finds, determines, declares, orders, and resolves as follows:

- Section 1. That the foregoing recitals are true.
- Section 2. For the reasons stated above, public bidding for the 2-story modular classroom building for the Project would not produce an advantage to the District and would produce a net burden and distinct disadvantage to the District.
- Section 3. Based on the foregoing, it would be incongruous, futile, and unavailing to publicly bid the 2-story modular classroom building for the Project.
- Section 4. The Board hereby approves the purchase of the 2-story modular classroom building from Enviroplex without further advertising for or inviting of bids – consistent with the pricing in the April 20, 2017 Enviroplex proposal to the District and as quoted in the Purchase Order.

Section 5. That the District's Superintendent or his designee is authorized to take all steps and perform all actions necessary to execute and implement this Resolution.

PASSED AND ADOPTED by the Board of Education of the Mountain View Whisman School District of Santa Clara County, State of California, this 20th day of December 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

President of the Board of Trustees
Mountain View Whisman School District
Santa Clara County, California