

RESOLUTION NO. 01-081221

GOVERNING BOARD OF THE MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT

RESOLUTION DECLARING THE FUTILITY OF PUBLICLY BIDDING PROPOSED CHANGE ORDER WORK ON THE DISTRICT'S CRITTENDEN MIDDLE SCHOOL PUBLIC ADDRESS SYSTEM PROJECT AND AUTHORIZING CHANGE ORDER NO. 1 WITH CONSOLIDATED NETWORKS CORPORATION

WHEREAS, Mountain View Whisman School District ("District") elected to be subject to Public Contract Code section 22000 et seq., the California Uniform Public Construction Cost Accounting Act ("Act"), which, among other things, allows the District to perform public projects of \$60,000 or less by District employees by force account, by negotiated contract, or by purchase order (Pub. Contract Code, § 22032(a)); and

WHEREAS, on or about May 7, 2021, pursuant to Pub. Contract Code § 22032(a), the District entered into a contract with Consolidated Networks Corporation ("CNC") for CNC to install a public paging system at Crittenden Middle School ("Project") for a total contract price of \$58,966.40 ("Contract Price"); and

WHEREAS, during CNC's construction work on the Project, CNC discovered that existing amplification equipment at Crittenden Middle School that was specified to be incorporated into the new public address system (the "System") was incompatible with newer equipment specified for the System ("Unforeseen Equipment Issue"); and

WHEREAS, on or about June 23, 2021, in response to a request from the District, CNC submitted a quotation of \$25,733.40 to supply and install upgraded amplifier switches and patch cords compatible with the System to address the Unforeseen Equipment Issue ("Change Order No. 1"); and

WHEREAS, the proposed cost of Change Order No. 1 of \$25,733.40, would cause the Contract Price to exceed the \$60,000 limit in Pub. Contract Code § 22032(a), and exceed the bid limits in Pub. Contract Code § 20118.4 (a) (1) and (2); and

WHEREAS, notwithstanding Pub. Contract Code § 22032(a) and Pub. Contract Code § 20118.4 (a) (1) and (2), 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 that public entities need not comply with public bidding processes where to do so would be impractical or futile and would not serve the purposes of competitive bidding (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 635-637); and

WHEREAS, the District's construction manager on the Project, Greystone West Construction Management ("CM") and District staff have determined:

- (1) That bidding for the equipment and work necessitated by the Unforeseen Equipment Issue and awarding that work to an entity other than CNC could create a potential

dispute over the warranties for the System performed by a separate contractor and CNC; and

(2) That the cost of Change Order No. 1 is commercially reasonable and competitive with market pricing; and

(3) That bidding out the equipment and work necessitated by the Unforeseen Equipment Issue would result in waste and delay at the expense of the District; and

(4) That the Project is a summer project that needs to be completed prior to the start of the fall academic year, and packaging the work necessitated by the Unforeseen Equipment Issue and informally bidding the work pursuant to the Act would inject excessive delay into the Project schedule compromising the completion of the Project before the end of summer; and

(5) That bringing in a new contractor to perform the work necessitated by the Unforeseen Equipment Issue would create coordination and interference problems with the work performed by a new contractor and CNC; and

(6) That if the District either informally bid the work necessitated by the Unforeseen Equipment Issue, the cost for that work would be more than the price of Change Order No. 1 because CNC is already mobilized on the Project, and CNC's costs to perform the work necessitated by the Unforeseen Equipment Issue would be lower than other contractors' who might bid the work as a new contractor would have to mobilize and coordinate its work with the work already performed by CNC; and

WHEREAS, bidding the work for Change Order No. 1 will not produce an advantage to the District; and

WHEREAS, bidding the work for Change Order No. 1 would be futile and would not serve the purposes of competitive bidding.

NOW THEREFORE, the Governing Board of the Mountain View Whisman School District hereby resolves, determines, and finds the following:

1. That the foregoing recitals are true.
2. For the reasons stated above, bidding the work for Change Order No. 1 would not produce an advantage to the District and it would be incongruous, futile, and unavailing to publicly bid the work for Change Order No. 1 for the Project.
3. That the District's Superintendent or designee is authorized to approve, execute, and enter into Change Order No. 1 to perform the work for the Project.

PASSED AND ADOPTED by the Board of Education of the Mountain View Whisman School District, County of Santa Clara, State of California, this 12th day of August, 2021, by the following vote:

AYES:

NOES:

_____, President

_____, Clerk

Exhibit A
Change Order No. 1