

MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT

Resolution No. 04-081723

RESOLUTION OF THE BOARD OF EDUCATION OF THE MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT DECLARING THE FUTILITY OF PUBLIC BIDDING FOR A CERTAIN DARK FIBER AND ASSOCIATED WORK CONNECTING THE DISTRICT’S NETWORK OPERATIONS CENTER AND STAFF HOUSING PROJECT, AND APPROVING AGREEMENT FOR THAT WORK

The Board of Education of the Mountain View Whisman School District (“**Board**”) does hereby resolve as follows:

WHEREAS, on June 3, 2004, the District opted to be subject to the California Uniform Public Construction Cost Accounting Act pursuant to Public Contract Code section 22030 et seq. (the “**Act**”); and

WHEREAS, section 22032 of the Act requires the District to informally bid construction projects valued at more than \$60,000 but less than \$200,000, and formally bid construction projects valued at more than \$200,000, but allows the District to negotiate with contractors for construction projects valued at less than \$60,000; and

WHEREAS, fiber optic cable connections are only installed by a few vendors with specialized expertise and established infrastructure. Fiber optic lines installed for later use are referred to as “Dark Fiber”. Normally with Dark Fiber installations, a vendor builds off existing fiber optic infrastructure it already has installed to complete a connection.

WHEREAS, the District must connect its Staff Housing Project with its Network Operations Center via fiber optic cables to ensure requisite connectivity for the housing project (“**Work**”); and

WHEREAS, Zayo Group, LLC (“**Contractor**”) is the only vender capable of installing Dark Fiber for the Work. Contractor has agreed to install the Dark Fiber at a net cost to the District of \$165,530 (“**Quote**”), which breaks down as follows:

Dark Fiber.	\$530
Installation.	\$165,000
Total	\$165,530

WHEREAS, Public Contract Code section 20111 states that a school district is required to competitively bid any public works project with a contract value over \$15,000. However, 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, Contractor has the requisite expertise and Contractors has significant existing fiber optic infrastructure in Mountain View. The District has existing fiber optic cables running from its Network Operations Center from Contractor. The other vender that provides fiber optic connections in the surrounding area is Crown Castle. Crown Castle does not have any existing fiber in Mountain View. Crown Castle’s existing fiber optics infrastructure, obtained from its website, is attached hereto as **Exhibit A**. District staff believe that it would be futile to proceed with a formal or informal bid as it would have resulted in waste and delay to the Project, which would be at the expense of the District. Additional factors that warrant a finding of futility include:

1. If the District were to bid the Work, it is unlikely to receive others bids or the prices of those bids would likely be more than the price of the Quote where Contractor’s costs to perform that work would remain lower than other contractors who may bid because Contractor is the only vender with existing fiber optic cable in the Mountain View area.
2. The value of each of the Work is less than the \$200,000 public bidding requirement threshold in section 22034 of the Act.

WHEREAS, the Work and the costs thereof are described in the Quotes is attached hereto as **Exhibit B**. A proposed Dark Fiber Construction Agreement (“**Agreement**”) is attached hereto as **Exhibit C**. District staff believe that the costs associated with the Work (\$165,530) are reasonable and reflect the market rate for this type of work, such that the District is not paying any more in costs than it would if this work were competitively bid.

NOW THEREFORE, IT IS RESOLVED, DETERMINED AND ORDERED by the **Board of Education of the Mountain View Whisman School District** as follows:

Section 1. That the foregoing recitals are true and correct.

Section 2. For the reasons stated above, public bidding of the scope for the Work would not produce an advantage to the District and would produce a net burden and distinct disadvantages to the District.

Section 3. Based on the foregoing, it would be incongruous, futile, and unavailing to publicly bid the Work.

Section 4. That the Board hereby approves the Agreement for \$165,530 as reflected in Exhibit “C”, without further advertising for or inviting of bids.

Section 5. That the District’s Superintendent or designee is authorized to take all steps and perform all actions necessary to execute and implement the Agreement attached as Exhibit “C”, and to take all necessary acts to implement this Resolution.

PASSED AND ADOPTED this August 17, 2023, by the Board of Education of the Mountain View Whisman School District of the County of Santa Clara, State of California, by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

This is to certify that this is a true and correct copy of the resolution as adopted and approved at a regular meeting of the Board of Education of the Mountain View Whisman School District.

Attest:

Clerk of the Governing Board
Mountain View Whisman School District
Santa Clara County, California