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File ID Number	15-1129
Introduction Date	6/10/15
Enactment Number	15-0759
Enactment Date	6/10/15 OA

Memo

To Board of Education
From Jacqueline P. Minor, General Counsel
Lance Jackson, Interim Deputy Chief, Facilities
Board Meeting Date June 10, 2015
Subject **Authorizing EMERGENCY CONTRACTS FOR THE REMOVAL OF PORTABLES AT BELLA VISTA ELEMENTARY SCHOOL 1028 EAST 28th Street, OAKLAND**

Action Requested **Adoption of Resolution No. NO. 1415-1163 AUTHORIZING EMERGENCY CONTRACTS FOR THE REMOVAL OF PORTABLES AT BELLA VISTA ELEMENTARY SCHOOL**

Background On Friday, March 28, 2014, a student at Bella Vista was lured off the play structure in the City public park adjacent to the school that is used by Bella Vista as a play area and was assaulted. The District immediately worked with the Staff at the Bella Vista to improve security measures and oversight at the school. The District through the Office of General Counsel issued an RFP for a security and vulnerability assessment of Bella Vista which has now been finalized. After reviewing and analyzing the security and vulnerability assessment of Bella Vista, the District has determined that it must immediately this summer 1) remove the portables at Bella Vista that are not necessary to support the current enrollment of the school, 2) plan and create a play area for Bella Vista and 3) lock the gates such that during school hours there is no access to the school from the adjoining City park.

Discussion The District is subject to the California Uniform Public Construction Cost Accounting Act (Pub. Contract Code § 22000, et seq., "CUPCAA"), which requires that construction contracts of \$175,000 or more be formally and competitive bidding. There is an exception to the competitive bidding requirements if the Board declares an emergency exists. In order to declare an emergency, the Board must find by 4/5 vote of the Board that:



(1) based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;

(2) the Board shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths vote, that there is a need to continue the action; and

(3) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts.

In addition, the Board is being asked to authorize the Superintendent to enter into all necessary contracts subject to ratification of the contracts by the Board at its meeting in August.

Recommendation

**Adoption of Resolution No. NO. 1415-1163
AUTHORIZING EMERGENCY CONTRACTS FOR THE
REMOVAL OF PORTABLES AT BELLA VISTA ELEMENTARY
SCHOOL**

Fiscal Impact

The final amount will be approved by the Board in August 2015; Measure J funds will be used

Attachments

- Resolution No. 1415-1163

**RESOLUTION
OF THE
BOARD OF EDUCATION
OF THE OAKLAND UNIFIED SCHOOL DISTRICT
NO. 1415-1163
AUTHORIZING EMERGENCY CONTRACTS FOR THE REMOVAL OF PORTABLES AT
BELLA VISTA ELEMENTARY SCHOOL
1028 EAST 28th Street, OAKLAND**

WHEREAS, on Friday, March 28, 2014, a student at Bella Vista was lured off the play structure in the City public park that is used by Bella Vista as a play area and was assaulted; and

WHEREAS, the District immediately worked with the Staff at the Bella Vista to improve security measures and oversight at the school; and

WHEREAS, the District through the Office of General Counsel issued an RFP for a security and vulnerability assessment of Bella Vista which has now been finalized; and

WHEREAS, after reviewing and analyzing the security and vulnerability assessment of Bella Vista, the District has determined that it must immediately 1) remove the portables at Bella Vista that are not necessary to support the current enrollment of the school, 2) plan and create a play area for Bella Vista and 3) lock the gates such that during school hours there is no access to the school from the adjoining City park; and

WHEREAS, the District has determined that due to the significant security concerns posed, the portables must be demolished this summer in order to create play area for Bella Vista;

WHEREAS, the District is subject to the California Uniform Public Construction Cost Accounting Act (Pub. Contract Code § 22000, et seq., "CUPCCAA"), which requires that construction contracts of \$175,000 or more be formally and competitive bidding; and

WHEREAS, an exception to Pub. Contract Code § 22000 and the CUPCCAA competitive bidding requirements exists in cases of emergency when repair and/or replacements are necessary; and

WHEREAS, in cases of emergency, the governing board of the District ("Board") may proceed pursuant to CUPCCAA to immediately remove, replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts (Pub. Contract Code § 22035); and

WHEREAS, an emergency is a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services (Pub. Contract Code, § 1102); and

WHEREAS, emergency work under section 22035 must be done pursuant to the terms of Public Contract Code section 22050; and

WHEREAS, section 22050 requires, in relevant part, that the following steps be taken:

- (1) Pursuant to a **four-fifths** vote of the Board, the District may remove, repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts;
- (2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;
- (3) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four- fifths vote, that there is a need to continue the action;
- (4) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; and

NOW THEREFORE, the governing board of the Oakland Unified School District hereby finds, determines, declares, orders, and resolves as follows:

1. That the above recitals are true and correct;
2. That there is an emergency as defined by applicable statute(s) ("Emergency");
3. That the Board of Education hereby finds that in view of the security and vulnerability assessment of Bella Vista, the District must immediately and without delay 1) remove the portables at Bella Vista that are not necessary to support the current enrollment of the school, 2) plan and create a play area for Bella Vista and 3) lock the gates such that during school hours there is no access to the school from the adjoining City park;
4. Authorizes the Superintendent to execute agreements necessary to demolish the portables at Bella Vista and to plan and create a play area for the school;
5. Directs that all such contracts entered into by the Superintendent be ratified by the Board of Education no later than the Board's first meeting in August 2015;
6. That the Board of Education further directs that the costs of removal of the portables and planning and creation of the play area for Bella Vista be paid out of Measure J bond funds; and
7. That District staff report on the status of this Emergency to the Board at the Board's next regularly scheduled Board meeting and at all subsequent regularly scheduled Board meetings until the Board terminates the Emergency action.

PASSED AND ADOPTED by a four-fifths (4/5) vote by the Board of Education of the Oakland Unified School District this 10th day of June, 2015, by the following vote, to wit:

AYES: Roseann Torres, Aimee Eng, Nina Senn, Shanthi Gonzales, Jumoke Hinton Hodge, President James Harris

NOES: None

ABSTAINED: None

ABSENT: Vice President Jody London

CERTIFICATION

I, Antwan Wilson, Superintendent and Secretary of the Board of Education of the Oakland Unified School District, Alameda County, State of California, do hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a meeting thereof held on the 10th day of June, 2015 with a copy of such Resolution being on file in the Administrative Office of said district.



Antwan Wilson,
Superintendent and Secretary, Board of Education

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