

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	13-1861
Committee	Facilities
Introduction Date	8-28-2013
Enactment Number	13-1795
Enactment Date	8-28-13



OAKLAND UNIFIED  
SCHOOL DISTRICT

Memo

To Board of Education

From Dr. Gary Yee, Acting Superintendent  
and Secretary of the Board of Education  
Timothy White, Associate Superintendent, Facilities Planning and Management

Board Meeting Date August 28, 2013

Subject Division of Facilities Planning and Management P.O.'s. Less than \$50,000.00

Action Requested: Ratification by the Board of Education of the attached contracts for the Division of Facilities Planning and Management.

Legistar #	Name	Amount	Funding Source	P.O.	Project	Date	City
13-1859	Air Sea Containers	\$1,948.00	County School Facilities Fund	P.O.	Ralph Bunche Portable Installation	5-17-2013	Oakland
13-1860	Asbestos Management Group	\$2,600.00	Measure B	P.O.	Lowell MS Modernization	7-2-2013	Oakland
13-1861	Associates Comfort Systems	\$980.00	County School Facilities Fund	P.O.	La Escuelita Educational Center	7-25-2013	San Leandro
13-1862	Bayview Environmental Services Inc.	\$7,850.00	County School Facilities Fund	P.O.	Oakland Tech Seismic Retrofit	7-11-2013	Oakland
13-1863	Charles M. Salter Associates, Inc.	\$2,650.00	Measure B	P.O.	Highland New Classroom Building	7-11-2013	San Francisco
13-1864	Danda Hauling & Trucking	\$1,400.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	5-28-2013	Brisbane
13-1865	Digital Design Communications	\$3,851.19	Developer Fee	P.O.	La Escuelita Educational Center	4-2-2013	Oakland
13-1866	Elation Systems	\$35,200.00	Measure B	P.O.	Labor Compliance Software	6-26-2013	Pleasanton
13-1867	Graham Tree Services, Inc.	\$4,500.00	County School Facilities Fund	P.O.	Ralph Bunche Portable Installation	7-8-2013	San Leandro
13-1868	H&M Mechanical Group	\$3,800.00	Measure B	P.O.	Highland New Classroom	7-24-2013	Oakland
13-1869	HY Hibser Yamauchi Architects, Inc.	\$20,000.00	Fund 67	P.O.	District Administration Planning Studies	6-18-2013	Oakland
13-1870	J&R Fence, Inc.	\$21,213.00	County School Facilities Fund	P.O.	J&R Fence, Inc.	4-18-2013	San Leandro
13-1871	Musson Theatrical	\$12,952.00	County School Facilities Fund	P.O.	Oakland Technical Seismic Retrofit AB300	4-2-2013	Santa Clara
13-1872	NVB Playgrounds, Inc.	\$2,452.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	5-17-2013	Indianapolis, IN
13-1874	Peninsulators	\$1,745.00	County School Facilities Fund	P.O.	Stonehurst CDC Building Replacement	5-17-2013	San Jose
13-1875	School Dude	\$6,648.31	Fund 40	P.O.	Building & Grounds	4-9-2013	Cary, NC
13-1876	School Dude	\$19,300.95	Deferred Maintenance	P.O.	Building & Grounds	4-22-2013	Cary, NC



# OAKLAND UNIFIED SCHOOL DISTRICT

13-1877	School Outfitters	\$3,866.16	County School Facilities Fund	P.O.	School Outfitters	6-12-2013	Cincinnati, OH
13-1878	Telex Communications	\$30,000.00	Fund 1	P.O.	Telex Communications	6-7-2013	Dublin
13-1879	The Davey Tree Expert Tree Company	\$6,800.00	Measure A	P.O.	Arroyo Viejo CDC Renovation of Building	4-8-2013	San Ramon
13-1881	WiLine	\$35,000.00	Fund 67	P.O.	District Administration Relocation	6-18-2013	San Mateo

### Discussion:

Among the key purposes of the District’s Facilities Master Plan is to provide an academic environment for the Oakland community that will give every student, educator, and community member using our facilities the best possible opportunity for learning.

Through implementation of the Facilities Master Plan, the District intends to improve the District’s facilities in terms of structural integrity, safety, reliability of operating (mechanical) systems, access to modern resources, number and type of appropriate laboratories and specialized instruction rooms, opportunities for physical education, and attractiveness, such that the Oakland Public Schools are second to none. Operation of the District schools under the planned approach is intended to ensure safety, cleanliness, and orderliness for all individuals participating in the learning process.

The basic facility needs of students such as proper lighting, functional roofs, noise control and well maintained buildings, not only convey the message that we value our students and teachers but may foster a sense of school pride and community ownership which may improve attitudes towards learning. The implementation of the Facilities Master Plan is our first step in that direction.

### Fiscal Impact:

Various

### Recommendation:

The Board of Education is requested to approve the Facilities Planning and Management contracts and Purchase Order for the OUSD school sites.

OAKLAND UNIFIED SCHOOL DISTRICT  
Division of Facilities Planning & Management

P.O. Number:

P.O. Date:

**PURCHASE ORDER TERMS AND CONDITIONS**

**Associates Comfort Systems**

**1. Definitions.**

**A)** "Bid" means the Contractor's offer made in response to a solicitation to perform a contract to supply goods or perform services at a specified price.

**B)** "Bidder" means a supplier who submits a Bid to the District in response to a solicitation.

**C)** "Contract" means Contractor's Bid; drawings or specifications, if any; these bid/purchase order terms and conditions together with the terms appearing on the reverse side hereof; and any other documents identified therein or herein as incorporated by reference and inclusive of any subsequently issued addenda and/or amendments.

**D)** "Contractor" means the business entity designated on the face of this purchase order that is supplying Deliverables to the District. Contractor shall be synonymous with "supplier", "vendor", or other similar term.

**E)** "Deliverables" means the tangible and/or intangible personal property, product, service, software, information technology, telecommunications technology, and other items to be delivered pursuant to this purchase order including any such items furnished incident to the provision of services.

**F)** "District" means the Oakland Unified School District.

**2. Assignment; Subcontracting.** The Contractor may not assign this Contract in whole or in part, and/or monies due Contractor, without the prior written consent of the District and surety, if any. Subject to the foregoing, this Contract shall be binding upon the parties and their respective successors and assigns. All subcontractors must be approved in advance by the District. Upon the District's written request, Contractor shall terminate any subcontractor.

**3. Audit.** The District shall have the right to examine and audit Contractor's records related to this Contract. Contractor and its subcontractors shall maintain and preserve all such records for a period of at least three (3) years after final payment to Contractor or after final Contract closeout, as determined by the District.

**4. Award of Contract.** The Bidder's Bid or quotation is deemed a firm offer; issuance of this document as a purchase order evidences the District's acceptance of that offer. If an award is made on a bid, the contract will be awarded according to the authority granted by the Board of Education of the District ("Board") pursuant to California law

**5. Acceptance/Rejection of Bids.** The District may award a contract on an individual item or combination of items, whichever is in the best interest of the District. A bidder may specify that the District's acceptance of one item shall be contingent upon the District's acceptance of one or more additional items submitted in the same Bid. Bids shall remain open and valid for 120 days after bid opening date unless otherwise stipulated and may be accepted without further written notice by the District. The Bidder may withdraw its Bid at any time before the Bid opening.

**6. District Name May Not Be Used.** The name and/or logo of the District or any school of the District may not be used in any advertisements or communications which may convey the impression that the District authorizes the solicitation and/or that there may be some connection or endorsement between the District and the Contractor.

17. **Compliance:** The contractor and its subcontractors shall fully comply with the provisions of Education Code Section 45125.1 when Contractor and/or its subcontractors will have more than limited contact with District pupils

8. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the state of California, without regard to conflicts of laws.

9. **Indemnification.** Contractor agrees to indemnify and hold harmless the District, the Board, and their employees, agents, volunteers, affiliates, officers and directors from, and defend each of them against, any injury to person or property, claims, suits, liabilities or expenses (including reasonable attorneys' fees and costs) resulting from or connected with Contractor's performance hereunder, breach of its representations, warranties or obligations hereunder, or Contractor's failure to comply with any applicable law, or regulation.

10. **Independent Contractor.** Contractor shall perform its obligations under this Contract as an independent contractor of the District. Nothing herein shall be deemed to constitute Contractor and the District as partners, joint venturers, or principal and agent. Contractor has no authority to represent the District. Contractor shall not at any time or manner represent that it or any of its subcontractors or agents are in any manner agents or employees of the District.

11. **Independence of Bid.** Unless Bidder is furnishing a joint bid, by submitting this Bid, Bidder swears under penalty of perjury that it did not conspire with any other supplier to set prices in violation of antitrust laws.

12. **Insurance.** Upon the District's request, Contractor shall provide, and require its subcontractors to maintain, insurance policy/policies and limits of coverage acceptable to the District to protect against claims that may arise from this Contract.

13. **Joint Bids.** A joint bid submitted by two or more bidders participating jointly in one bid may be submitted, and each participating bidder must sign the joint bid. If the contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable under this contract. In addition, the joint contractors must designate, in writing, one individual having authority to represent them all in matters relating to the contract. The District assumes no responsibility or obligation for the division of orders or purchases among joint contractors.

14. **License.** Upon payment in full for software, Contractor grants the District a perpetual, non-exclusive, worldwide, irrevocable, fully paid right and license, to install and use the software on all computing devices used by or for the benefit of the District. This license is subject to the limitation on the maximum number of end users or other scope limitations listed on the facing page and, if none are listed, this license shall be deemed to be enterprise-wide and the software may be used by all District end users without any maximum number of users. The license shall extend to permit contractors working for the District to use the software in the performance of their duties for the District.

15. **Non-Discrimination.** Contractor shall comply with all laws prohibiting discrimination in employment and shall include this nondiscrimination requirement in all subcontracts to perform work under the Contract.

16. **Order of Precedence.** This Contract constitutes the entire agreement between the parties and supersedes any prior or contemporaneous written or oral understanding or agreement and any contrary provisions on packing slips, invoices, or other documents submitted by the Contractor. Any conflict or inconsistency among the components of this Contract shall be resolved by giving precedence in the following order: (1) Contractor's Bid; (2) these Contract Terms and Conditions; (3) all other attachments incorporated into the Contract by reference. No term or condition of this Contract may be terminated, modified, rescinded, or waived except by a writing signed by both parties. No modification or waiver of this Contract shall be deemed effected by Contractor's acknowledgment, confirmation or other documentation containing other or different terms. Should any such document from Contractor contain additional or different terms than this Contract, those terms shall be considered proposals by Contractor which are hereby rejected.

**A) Packaging.** Items shall be packaged to protect them from damage during transit. Packing slips must include the District Purchase Order number, contents, quantity, and description. Material Safety Data Sheets shall be included when applicable.

**B) Delivery.** Contractor shall be responsible for delivery on a free-on-board (FOB) Destination basis and shall incur all costs associated with the delivery unless otherwise specified in this Contract. All deliveries shall be set on the District's dock and/or pallets or as otherwise prescribed by the District. All Deliverables are subject to acceptance by District. District will notify Contractor in writing of any defect or nonconformity and Contractor will repair or replace such defective or nonconforming goods or, at the District's option, refund the purchase price to District.

**C) Acceptance.** If items are not properly packaged or identified, or if items are determined by the District to be defective or non-conforming, deliveries or any part thereof may be rejected, and all costs (return and re-delivery) shall be at the Contractor's expense. All goods to be delivered hereunder may be subject to final inspection, test and acceptance by the District at destination, notwithstanding any payment or inspection at source. The District shall give written notice of the rejection of goods delivered or services performed hereunder within a reasonable time after receipt of such goods or performance of such services. Such notice of rejection will state the respects in which the goods do not substantially conform to their specifications. Acceptance shall not be construed to waive any warranty rights the District may have at law or by express reservation in this Contract with respect to conformity. Title to and risk of loss of Deliverables shall vest in the District upon acceptance.

**18. Performance Guarantee.** A performance guarantee may be required on award of annual contracts which exceed \$81,000.

**19. Samples.** Samples of items may be required by the District for inspection and specification testing and must be furnished free of expense to the District. The samples furnished must be identical in all respects to the items bid and/or specified in the Contract. Samples must be plainly marked with the name of Bidder, bid number, and date of bid opening. Samples may be retained for comparison with deliveries and if not destroyed by tests, may, upon request at the time the sample is furnished, be returned at Contractor's expense. Bidder/Contractor assumes all risk of loss of or damage to samples.

**20. Severability.** If any provision or part of this Contract shall be declared illegal, void, or unenforceable, such term or provision shall be deemed stricken and the remaining provisions shall continue in full force and effect to the extent permitted by law.

**21. Substitutions.** Product substitutions require the prior, express written authorization from an authorized District representative.

**22. Tax.** The District shall pay only California sales tax and use tax and/or Alameda County sales and use tax, as applicable. Contractor shall separately list all applicable taxes on the invoice. The District is exempt from payment of Federal Excise Tax. Contractor shall cooperate with the District in all matters related to taxation and the collection of taxes. The District may, at its option, self-accrue tax and remit same to the state of California pursuant to the District's permit with the state of California.

**23. Termination.** The District may, by written notice to Contractor, terminate this Contract in whole or in part at any time at the District's convenience or for Contractor default. The District shall hold Contractor liable and responsible for all damages which may be sustained because of the Contractor's default. If Contractor fails or neglects to furnish or deliver any of the deliverables listed herein at the prices named and at the time and places stated herein or otherwise fails or neglects to comply with the terms of the Contract, the District may, upon written notice to the Contractor, cancel the Contract in its entirety, or cancel any or all items affected by such default; and may, whether or not the Contract is cancelled in whole or in part, purchase the Deliverables elsewhere without notice to the Contractor. The prices paid by the District at the time such purchase is made shall be the prevailing market prices. Any extra costs incurred by such default may be collected by the District from the Contractor.

**24. Title.** Title to and risk of loss of Deliverables shall pass to and vest in the District upon final acceptance by the District.

**B)** At the time of delivery, no software shall contain any virus, "Trojan horse," timer, counter or other limiting design, instruction, or routine that would erase data or programming or cause the software or any hardware or computer system to become inoperable or otherwise incapable of being used in the full manner for which it was designed and created.

**C)** No Deliverable shall violate or infringe upon the rights of any third party, including, without limitation, any patent, copyright, trademark, trade secret, or other proprietary rights of any kind. There is no action, suit, proceeding, or material claim or investigation pending or threatened against Contractor, that, if adversely determined, might affect any Deliverable or restrict the District's right to use any Deliverable. Contractor knows of no basis for any such action, suit, claim, investigation, or proceeding.

**D)** Contractor warrants it has full title to the Deliverables and has the right to grant the District the rights and licenses contemplated herein without the requirement for consent of any third party.

AGREED and ACCEPTED: John C. Byrd  
By: JOHN BYRD  
Its: \_\_\_\_\_

Date: 7-24-13

**OAKLAND UNIFIED SCHOOL DISTRICT I**  
**Department of Facilities Planning and Management**  
**AGREEMENT REQUEST FORM**

1053514

DATE SUBMITTED: 7/16/2013  
 SUBMITTED BY: Saya Nhim

REVIEWED BY:

**SECTION I. TYPE OF AGREEMENT (PLEASE CHECK ONE BOX)**

1.) A/E (Architect and Engineers) Contract <input type="checkbox"/>	5.) "Small" (under \$15,000.00) Construction Contract <input type="checkbox"/>
2.) IOR (Inspector of Record Contract) <input type="checkbox"/>	6.) Resolution Awarding Bid and Construction Contract <input type="checkbox"/>
3.) Agreement for Professional Services - Testing Etc. <input type="checkbox"/>	7.) Change Order <input type="checkbox"/>
4.) Amendment to Agreement for Professional Services <input type="checkbox"/>	8.) Purchase Order <input type="checkbox"/>

Bond Program Director  
 Vendor Number: \_\_\_\_\_  
 Fiscal Year: 2013-2014  
 P.O. Under \$50K: \_\_\_\_\_  
 Date Processed: 7-24-2013  
 To: MB 7/24 To DR: \_\_\_\_\_

[Signature]  
 Timothy E. White  
 Asst. Superintendent

[Signature]  
 Tadashi Nakadegawa  
 Facilities Director

**SECTION II. LOCAL BUSINESS PARTICIPATION PERCENTAGE:**

Local Business	Small Local Business	Small Local Resident Business	Total Percentage
0.00%	0.00%	0.00%	0.00%

**SECTION III. AGREEMENT INFORMATION:**

Project Name:	Downtown Educational Complex Relocation	Project No:	07034 <u>1219003821-6262</u>
Vendor Name:	Associates Comfort Systems	Vendor Contact:	John Cbyal
Vendor Phone Number:	(510) 331-4927	Vendor Mailing Address:	P.O. Box 1956 San Leandro, CA 94577
Agreement Start and Stop Dates:	Start: 7/16/2013 Stop: 12/31/2013	Amounts:	Current Contract Amount: \$0.00 Not to Exceed Amount: \$980.00 Revised Contract Amount: \$980.00
Has Work Started?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <u>13-1861</u> If yes give an explanation: _____ Production Date: <u>8-26-2013</u>	Has Work Been Completed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Date: _____
Certificate of Insurance Attached	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <u>13-1795</u> <u>8/28/13</u>	Date provided:	<u>7-25-2013</u>

Certified: [Signature]  
 Gary Yee Ed.D., Secretary  
 Board of Education

**RECEIVED**  
7-25-2013

**For Construction Contracts >\$15,000, please provide or attach the following:**

- |   |  |
|---|--|
| 1) Number of Bids Received, List of Bidders and Amounts (Bid Form) (Attach Bid Documents) | 6) Performance Bonds Attached  |
| 2) Date(s) of Bid Advertisement -   | 7) Payment Bonds Attached  |
| 3) Date of Bid Opening -  | (Sections 6 and 7 to be completed by Contract Administration department) |
| 4) Name of Architect -  |  |
| 5) Liquidated damages per day - \$  |  |
- JC byal  
Contract  
net

**Scope of Work:** (Needed to prepare Executive Summary) Please attach separately along with Vendor's proposal.  
Contractor to seal all open pipe penetrations as well as provide material to divert the air supply at the Data Center at Cole Campus.

**Discussion Info:** (Needed to prepare Executive Summary) (Provide detailed background - Why is contract required and what is the benefit to students) - Add additional pages as needed

A fan suppression test was performed and was not successful to due to several areas throughout the Data Center that had open pipe penetrations that needed to be sealed and caulked.

FACILITIES PLANNING & MGMT  
 ACCOUNTING DEPARTMENT

Funding Source: Fund 35 Budget Number:

165 0000

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List. <https://www.sam.gov/portal/public/SAM>

**OAKLAND UNIFIED SCHOOL DISTRICT I**  
**Department of Facilities Planning and Management**  
**AGREEMENT REQUEST FORM**

**SECTION IV. L/LS/LSRBE - RATIONAL FOR NON COMPLIANCE CHECK LIST**

1.)	<p><b>Specialty Service:</b> This contractor provides a unique / specialty service that is currently not available from a certified L/S/SLRBE. Government Code § 53060 / school districts may contract without bidding for, "special services and advice in financial, economic, accounting, . . . legal, or administrative matters if such persons are specially trained and experienced and competent to perform the special services required."</p>	✓
2.)	<p><b>District Discretion</b> under L/SL/SLRBE due to lack of certified firms at time of bid: If at least three L/SL/SLRBEs are not certified, then the requirement may, subject to the discretion of the District, be waived, or the 20% requirement may be re-set from 19 % to 0%, depending on the particular circumstances at time of bid.</p>	
3.)	<p><b>Futility:</b> It would be futile to require that the contract be subjected to the L/SL/SLRBE due to (circle one) COST / TIME CONSTRAINTS / NO CERTIFIED BIDDERS. 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.)</p>	
4.)	<p><b>Field Test</b> / (1) In order that a field test or experiment may be made to determine the product's suitability for future use. PUBLIC CONTRACT CODE SECTION 3400-3410</p>	
5.)	<p><b>Product Match</b>/(2) In order to match other products in use on a particular public improvement either completed or in the course of completion. PUBLIC CONTRACT CODE SECTION 3400-3410</p>	
6.)	<p><b>Sole Source</b> / (3) In order to obtain a necessary item that is only available from one source. PUBLIC CONTRACT CODE SECTION 3400-3410</p>	
7.)	<p><b>Emergency Repair</b> / (4) (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals. PUBLIC CONTRACT CODE SECTION 3400-3410 / See also: Public Contract Code Section 1102. "Emergency," as used in this code, means 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.</p>	



# ASSOCIATES COMFORT SYSTEMS

# INVOICE

California License No. 452274  
 P.O. Box 1956  
 San Leandro, CA 94577

Email: [jcbyal@comcast.net](mailto:jcbyal@comcast.net)  
 Phone: 510.331.4927  
 Fax: 510.481.9816

**EXHIBIT A**

**Layas Partnership**  
 6726 Gunn Drive.  
 Oakland, Ca. 94566

**DATE: July 9, 2013**

**INVOICE # 20327**

**ATTN:** Saya Nhim / *ASD*

**CUSTOMER ORDER #**

**TERMS NET 10 DAYS**

**REFERENCE:**

Computer room. Cole School 1011 Union St.

**DESCRIPTION OF WORK:**

All the work in the quote has been completed and checked for  
 good air deflection . The window sealed and penetrations filled with  
 Fire calked.

Amount due per quote.....	\$	<b>980.00</b>
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SUBTOTAL	\$	<b>980.00</b>
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SALES TAX ON MATERIALS ONLY		<b>INCLUDED</b>
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OTHER

**THANK YOU FOR YOUR BUSINESS!**

TOTAL DUE	\$	<b>980.00</b>
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