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**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Tadashi Nakadegawa, Deputy Chief, Division of Facilities Planning and Management Department

Board Meeting Date June 30, 2021

Subject Award of Purchase Order Agreement – MB Contract Furniture, Inc. – Fremont High School CTE Classroom Furniture Project – Division of Facilities Planning and Management

Action Requested Approval by the Board of Education to the Purchase Order Agreement between the District and MB Contract Furniture, Inc., Concord, California, to purchase furniture needed for the Achitecture/Design classroom for the Fremont High School CTE Classroom Furniture Project, in the not to exceed amount of **\$59,800.73**, which includes a lump sum purchase of \$43,800.73 and a contingency of \$16,000.00, with a delivery deadline of **August 15, 2021** and an end date of **October 31, 2021**.

Discussion Vendor was selected without competitive bidding because contract price is \$96,700 or less, thus competitive bidding is not required by law. (Public Contract Code §20111(a).

LBP (Local Business Participation Percentage) 00.00%

Recommendation Approval by the Board of Education to the Purchase Order Agreement between the District and MB Contract Furniture, Inc., Concord, California, to purchase furniture needed for the Achitecture/Design classroom for the Fremont High School CTE Classroom Furniture Project, in the not to exceed amount of **\$59,800.73**, which includes a lump sum purchase of \$43,800.73 and a contingency of \$16,000.00, with a delivery deadline of **August 15, 2021** and an end date of **October 31, 2021**.

Fiscal Impact Fund 35

Attachments

- Agreement
- Scope of Work
- Insurance Certificate

2) Please check the competitive bidding exception relied upon:

Construction Contract:

- Price is at or under UPCCAA threshold of \$60,000 (as of 1/1/19)
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Emergency contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding – *contact legal counsel to discuss if applicable*
- Sole source contractor – *contact legal counsel to discuss if applicable*
- Completion contract – *contact legal counsel to discuss if applicable*
- Lease-leaseback contract RFP process – *contact legal counsel to discuss if applicable*
- Design-build contract RFP process – *contact legal counsel to discuss if applicable*
- Energy service contract – *contact legal counsel to discuss if applicable*
- Other: _____ – *contact legal counsel to discuss if applicable*

Consultant Contract:

- Construction project manager, land surveyor, or environmental services – selected based on demonstrated competence and professional qualifications (Government Code §4526)
- Architect or engineer – use of a fair, competitive RFP selection process (Government Code §§4529.10 et seq.)
- Architect or engineer when state funds being used – use of competitive process consistent with Government Code §§4526-4528 (Education Code §17070.50)
- Other professional or specially trained services or advice – no bidding or RFP required (Public Contract Code §20111(d) and Government Code §53060) – *contact legal counsel to discuss if applicable*
- For services other than above, the cost of services is \$96,700 or less (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*

Purchasing Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- Certain instructional materials (Public Contract Code §20118.3)
- Data processing systems and supporting software – choose one of three lowest bidders (Public Contract Code §20118.1)

- Electronic equipment – competitive negotiation (Public Contract Code §20118.2) – *contact legal counsel to discuss if applicable*
- CMAS contract [may only include “incidental work or service”] (Public Contract Code §§10101(a) and 10298(a)) – *contact legal counsel to discuss if applicable*
- Piggyback contract for purchase of personal property (Public Contract Code §20118) – *contact legal counsel to discuss if applicable*
- Supplies for emergency construction contract (Public Contract Code §§22035 and 22050) – *contact legal counsel to discuss if applicable*
- No advantage to bidding (including sole source) – *contact legal counsel to discuss if applicable*
- Other: _____

Maintenance Contract:

- Price is at or under bid threshold of \$96,700 (as of 1/1/21)
- No advantage to bidding (including sole source) – *contact legal counsel to discuss*
- Other: _____

3) Explain in detail the facts that support the applicability of the exception marked above:

- Vendor will provide furniture needed for the Architecture/Design classroom for the Fremont High School CTE Classroom Furniture Project.
- Contract price is under the threshold of \$96,700.00.

OAKLAND UNIFIED SCHOOL DISTRICT

PURCHASE ORDER CONTRACT

This Agreement is made this **1st day of July 2021** by and between **Oakland Unified School District**, "District" and **MB CONTRACT FURNITURE, INC.** "Seller" with respect to the following recitals:

1. District is a public school district organized and existing under the laws of the State of California.
2. District desires to contract with MB Contract Furniture, Inc. for the delivery of furniture. They will provide furniture for the Architecture/Design classroom at Fremont High School to create a professional architecture environment for the students.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. Delivery of Equipment. Seller agrees to deliver the furniture as listed in **Exhibit A** ("Equipment") to District at the following address: **Fremont HS New Construction, 4610 Foothill Blvd, Oakland, CA.**
2. Time of Commencement and Completion. Delivery shall take place no later than **August 15, 2021**, and the Agreement shall have an end date of October 31, 2021. Time is of essence for this purchase order.
3. Contract Sum. District agrees to pay Seller the sum of **FIFTY-NINE THOUSAND EIGHT HUNDRED DOLLARS AND SEVENTY-THREE CENTS (\$59,800.73)**, which includes a contingency fee of \$16,000.00 to be used for purchase of, or exchange for additional furniture, following timely receipt of the Equipment and submission of an invoice to District.
4. Liquidated Damages. Seller agrees to deliver the Equipment to District pursuant to the terms of this Contract by the Delivery Date unless Seller receives a written extension of time for delivery from District. Seller's failure to deliver the Equipment on time shall subject Seller to liquidated damages. The actual occurrences of damages and the actual amount of damages which District will suffer if the Equipment is not delivered by the Delivery Date is dependent upon many circumstances and conditions and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages occasioned by delay. Damages which District would suffer in the event of delay include loss of use of the Equipment, disruption of school activities, cost of administration and the loss suffered by the public by reason of delay. Accordingly, the parties agree that the amount herein set forth as liquidated damages shall be presumed to be the amount of damages actually sustained by Seller's failure to deliver the Equipment by the Delivery Date.

The amount of liquidated damages to be paid by Seller to District for failure to deliver the Equipment on or before the Delivery Date will be Five Hundred Dollars and No/100 (\$500.00)

for each calendar day by which delivery is delayed beyond the Delivery Date, such amount being the actual cash value agreed upon as the loss to the District resulting from the Seller's default.

If Seller becomes liable for liquidated damages, District, in addition to all other remedies provided by law, shall have the right to deduct the amount owed as liquidated damages from the contract sum due Seller. In all events, Seller and its sureties, if any, shall remain liable to the District until all such liabilities are satisfied in full.

5. [Not used].

6. Indemnity. Seller shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature, and description (collectively, the "Claims") directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of Seller, or Seller's employees, agents, or volunteers (collectively, the "Seller Parties"), in the performance of or failure to perform Seller's obligations under this Contract or for any infringement of the patent rights, copyright or trademark of any person or persons in consequence of the use by the District of Equipment supplied pursuant to this Contract.

7. Transportation Charges. Seller agrees to deliver all Equipment prepaid unless otherwise specified. All costs for delivery and packaging of Equipment are the responsibility of Seller unless otherwise stated.

8. Inspection. All Equipment furnished must be in conformity with the specifications and Contract documents and will be subject to inspection and approval by the District after delivery. District reserves the right to reject and return at the risk and expense of the Seller any portion of the Equipment which may be defective or which fails to comply with the specifications in Contract documents.

9. Insurance. Without in any way limiting Seller's liability, or indemnification obligations set forth in Paragraph 6 above, Seller shall secure and maintain throughout the Term of this Agreement the following insurance: (i) comprehensive general liability insurance with limits of not less than One Million \$1,000,000 each occurrence and Two Million \$2,000,000 in the aggregate; (ii) commercial automobile liability insurance with limits not less than One Million \$1,000,000 each occurrence and Two Million \$2,000,000 in the aggregate, if applicable; and (iii) worker's compensation insurance as required by Labor Code section 3200, *et seq.*, if applicable. Neither Seller nor any of the Seller Parties shall commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverages have been delivered to and approved by District. All insurance policies shall include an endorsement stating that District and District Parties are named additional insureds. All of the policies shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to District. If such a notice is not given or even if District receives a notice, District may, at its sole option,

terminate this Agreement. All insurance policies shall include an endorsement stating that it is primary to any insurance or self-insurance maintained by District and shall waive all rights of subrogation against District and/or the District Parties. A copy of the declarations page of Seller's insurance policies shall be attached to this Agreement as proof of insurance.

10. Independent Contractor Status. Seller is engaged in an independently established trade, occupation, or business to provide the Services required by this Agreement and is hereby retained to provide specialized services for District that are outside the usual course of District's business. Seller is free from the control and direction of District in connection with the manner in which it provides the Services to District. Seller understands and agrees that Seller and the Seller Parties shall not be considered officers, employees, agents, partners, or joint venturers of District, and are not entitled to benefits of any kind or nature normally provided to employees of District and/or to which District's employees are normally entitled.

11. Taxes. All payments made by District to Seller pursuant to this Agreement shall be reported to the applicable federal and state taxing authorities as required. District will not withhold any money from fees payable to Seller, including FICA (social security), state or federal unemployment insurance contributions, or state or federal income tax or disability insurance. Seller shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Seller and the Seller Parties and otherwise in connection with this Agreement.

12. Fingerprinting Notice and Acknowledgement. Seller and the Seller Parties shall at all times comply with the fingerprinting and criminal background investigation requirements of the California Education Code ("Education Code") section 45125.1, and shall complete the Fingerprinting Notice and Acknowledgement Form.

13. Tuberculosis Certification. Seller and the Seller Parties shall at all times comply with the tuberculosis ("TB") certification requirements of Education Code section 49406. Accordingly, by checking the applicable boxes below, Seller hereby represents and warrants to District the following:

A. Seller and Seller Parties shall **only have limited or no contact** (as determined by District) with District students at all times during the Term of this Agreement.

B. The following Seller and Seller Parties shall have **more than limited contact** (as determined by District) with District students during the Term of this Agreement and, at no cost to District, have received a TB test in full compliance with the requirements of Education Code section 49406:

_____. [Attach and sign additional pages, as needed.]

Seller shall maintain on file the certificates showing that the Seller and Seller Parties were examined and found free from active TB. These forms shall be regularly maintained and updated by Seller and shall be available to District upon request or audit.

Seller further agrees and acknowledges that all new personnel hired after the Effective Date of this Agreement by Seller and Seller Parties are subject to the TB certification requirements and shall be prohibited from having any contact with District students until the TB certification requirements have been satisfied and District determines whether any contact is permissible.

14. Confidential Information. Seller shall maintain the confidentiality of, and protect from unauthorized disclosure, any and all individual student information received from the District, including but not limited to student names and other identifying information. Seller shall not use such student information for any purpose other than carrying out the obligations under this Agreement. Upon termination of this Agreement, Seller shall turn over to District all educational records related to the services provided to any District student pursuant to this Agreement.

15. Assignment/Successors and Assigns. Seller shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations under this Agreement without the prior written consent of District. Subject to the foregoing, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

16. Severability. If any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

17. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by both parties and approved by the governing board.

18. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Alameda, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by the District.

19. Written Notice. Written notice shall be deemed to have been duly served if delivered in person to Seller at the address located next to the party signatures below, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who sends the notice.

20. Compliance with Law. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein. Seller shall comply with all applicable

federal, state, and local laws, rules, regulations and ordinances, including but not limited to fingerprinting under Education Code section 45125.1, confidentiality of records, Education Code section 49406 and others. Seller agrees that it shall comply with all legal requirements for the performance of duties under this Agreement and that failure to do so shall constitute material breach.

21. Non-Discrimination. There shall be no unlawful discrimination in the contracting of persons under this Agreement because of race, color, national origin, age, ancestry, religion, sex, or sexual orientation of such persons.

22. Attorneys' Fees. If any legal action is taken to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other reasonable costs and expenses incurred in connection with that legal action.

23. Liability of District. Notwithstanding anything stated herein to the contrary, District shall not be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.

24. Time. Time is of the essence to this Agreement.

25. Waiver. No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude the District from any or further exercise of any right or remedy.

26. Entire Agreement. This Agreement is intended by the parties as the final expression of their agreement with respect to such terms as are included herein and as the complete and exclusive statement of its terms and may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement, nor explained or supplemented by evidence of consistent additional terms.

27. Execution of Other Documents. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

28. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, facsimile, or an original, with all signatures appended together, shall be deemed a fully executed agreement.

29. Warranty of Authority. The persons who have signed this Agreement warrant that they are legally authorized to do so on behalf of the respective parties, and by their signatures to bind the respective parties to this Agreement.

~~30. Local Business. Seller shall comply with the requirements of the District's Local, Small Local, and Small Local Resident Business Enterprise Program, which may require a 50% minimum local participation requirement in the performance of this Agreement. A copy of this~~

program may be obtained at www.ousd.k12.ca.us, under the Facilities Planning & Management Department drop-down menu, at "Bids and Requests for Proposals."

31. **Forms.** The following forms, which must be executed by the Seller, are incorporated into the contract:

- Fingerprinting Notice and Acknowledgement.
- Workers' Compensation Certification.
- Drug-Free Workplace Certification.
- ~~Buy American Certification.~~
- ~~Local Business Participation Form.~~

Within ten (10) days after award and before commencement of the services, the signed agreement, insurance documentation, and Student Contract Form (see Exhibit B to the Fingerprinting Notice and Acknowledgement) shall be submitted to the District.

32. **Mediation.** A party to this Agreement shall, as a condition precedent to initiating any litigation against the other party, demand mediation of any dispute. The parties shall endeavor to include any third party claimant in the mediation. The parties shall select a mediator and schedule the mediation within thirty (30) days of the initial demand for mediation. If the parties cannot agree on a mediator, the mediator shall be appointed by JAMS. The parties to the mediation, including the parties to this Agreement, shall pay equal shares of the mediator's fees. Each party shall bear its own attorney's fees related to the mediation.

33. **Safety Regulations.** All equipment and supplies furnished, and/or all work performed, shall meet all applicable safety regulations of the Division of Industrial Safety of the State of California, and Health & Safety code of the State of California.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first hereinabove written.

OAKLAND UNIFIED SCHOOL DISTRICT

Signature

Tadashi Nakadegawa, Deputy Chief,
Facilities Planning & Management



Shanthi Gonzales, President, Board of Education

6/30/2021

Date



Kyla Johnson-Trammell, Superintendent

6/30/2021

Date

Approved as to form:


OUSD Facilities Counsel

6/3/21

Date

MB CONTRACT FURNITURE, INC
Seller


Signature



CONTRACTFURNITURE
Creating Comfortable Workplaces

EXHIBIT A

Product	Qty	Sell	Extend Sell
Low Chest	4	\$619.16	\$2,476.65
Storage Credenza	4	\$565.96	\$2,263.85
Client Interview Chairs	3	\$193.00	\$579.00
Mobile whiteboard	2	\$708.92	\$1,417.84
Wall mounted flip white board	10	\$1,197.26	\$11,972.63
Industrial stool	32	\$70.50	\$2,256.00
Teacher's chair	1	\$149.50	\$149.50
Top for height adjustable 72x30	13	\$157.81	\$2,051.56
Height adj frame for 72x30	13	\$401.10	\$5,214.30
Top-corner for height adjustable 60x72x30	2	\$410.31	\$820.63
Height adj frame for 60x72x30	2	\$580.25	\$1,160.50
Prevailing Wage labor	1	\$9,729.75	\$9,729.75
			\$40,092.20
Sales tax			\$3,708.53
Total			\$43,800.73



DIVISION OF FACILITIES PLANNING & MANAGEMENT ROUTING FORM

Project Information			
Project Name	Fremont HS CTE Classroom Furniture Project	Site	302

Basic Directions	
Services cannot be provided until the contract is awarded by the Board or is entered by the Superintendent pursuant to authority delegated by the Board.	
Attachment Checklist	<input checked="" type="checkbox"/> Proof of general liability insurance, including certificates and endorsements, if contract is over \$15,000 <input checked="" type="checkbox"/> Workers compensation insurance certification, unless vendor is a sole provider

Contractor Information							
Contractor Name	MB Contract Furniture, Inc.	Agency's Contact	Jane Mele				
OUSD Vendor ID #	002771	Title	Vice President				
Street Address	1001 Galaxy Way, Ste. 100	City	Concord	State	CA	Zip	94520
Telephone	925-388-8971	Policy Expires					
Contractor History	Previously been an OUSD contractor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Worked as an OUSD employee? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
OUSD Project #	21100						

Term of Original/Amended Contract			
Date Work Will Begin (i.e., effective date of contract)	7-1-2021	Date Work Will End By (not more than 5 years from start date; for construction contracts, enter planned completion date)	10-31-2021
		New Date of Contract End (If Any)	

Compensation/Revised Compensation			
If New Contract, Total Contract Price (Lump Sum)	\$	If New Contract, Total Contract Price (Not To Exceed)	\$59,800.73
Pay Rate Per Hour (If Hourly)	\$	If Amendment, Change in Price	\$
Other Expenses		Requisition Number	

Budget Information				
<i>If you are planning to multi-fund a contract using LEP funds, please contact the State and Federal Office before completing requisition.</i>				
Resource #	Funding Source	Org Key	Object Code	Amount
7710/9846	Fund 35	350-7710-0-9846-8500-4432-302-9180-9903-9999-99999	4432	\$59,800.73

Approval and Routing (in order of approval steps)				
Services cannot be provided before the contract is fully approved and a Purchase Order is issued. Signing this document affirms that to your knowledge services were not provided before a PO was issued.				
	Division Head	Phone	510-535-7038	Fax 510-535-7082
1.	Acting Director, Facilities Planning and Management			
	Signature	Date Approved		6/4/21
2.	General Counsel, Department of Facilities Planning and Management			
	Signature	Lozano Smith, as to form only	Date Approved	6/3/21
3.	Deputy Chief, Facilities Planning and Management			
	Signature	Date Approved	6/4/21	
4.	Chief Financial Officer			
	Signature	Date Approved		
5.	President, Board of Education			
	Signature	Date Approved		