

**OAKLAND UNIFIED SCHOOL DISTRICT**  
Office of the Board of Education

November 18, 2009

**TO:** Board of Education

**FROM:** Tony Smith, Ph. D, Superintendent,  
Timothy White, Assistant Superintendent, Facilities Planning &  
Management

**SUBJECT:** Contracts - CUPCCA - Roof Systems Emergency Repairs Burbank  
and Marshall Elementary Schools

**ACTION REQUESTED:**

Resolution No. 0910-0123 - Contracts - CUPCCA - Roof Systems Emergency Repairs  
Burbank and Marshall Elementary Schools.

**DISCUSSION:**

As part of its annual roofing maintenance program, the District's Buildings and Grounds Department regularly monitors and inspects the roofing systems on all District Facilities in order to identify those roofs in need of repair and / or in danger of premature failure and to have sufficient time to plan for the public procurement process required to be followed to initiate the repair work.

It has been brought to the attention of the Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services that the roof systems at the Burke Elementary School site and the Marshall Elementary School site have degraded much sooner than could have been anticipated under the normal inspection processes followed by Buildings and Grounds and are in immediate need of repair to avoid significant damage to District property.

In cases of emergency, the Board of Education may proceed, pursuant to the recently adopted CUPCCAA, to immediately replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts.

Emergency work under CUPCCAA section 22035 must be done pursuant to the terms of Public Contract Code section 22050, and **requires a four-fifths vote of the Board**, before the District may 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.

**FISCAL IMPACT:**

There will be a limited fiscal impact, if any, to letting the emergency Roof Repair Projects through the CUPCCA alternative process.

**RECOMMENDATION:**

Adoption of a resolution authorizing the award of emergency contracts to complete the roofing system repairs at the Burbank and Marshall Elementary Schools sites and begin the immediate repair without giving formal notice for bids to let contracts.

(Pub. Contract Code, § 22035)

**ATTACHMENTS:**

Resolution No. 0910-0123 - Contracts - CUPCCA - Roof Systems Emergency Repairs Burbank and Marshall Elementary Schools.

**RESOLUTION  
OF THE  
BOARD OF EDUCATION  
OF THE OAKLAND UNIFIED SCHOOL DISTRICT  
NO. 0910-0123**

**CONTRACTS - CUPCCA - ROOF SYSTEMS EMERGENCY REPAIRS  
BURBANK AND MARSHALL ELEMENTARY SCHOOLS**

**WHEREAS**, as part of its annual roofing maintenance program, the District's Buildings and Grounds Department regularly monitors and inspects the roofing systems on all District Facilities to identify those roofs in need of repair and / or in danger of premature failure; and

**WHEREAS**, during its inspections, Buildings and Grounds closely reviews all components of the roofing systems, and records signs of deterioration, unusual traffic patterns, poor drainage, accumulated debris, displacement or loss of ballast; and

**WHEREAS**, it has been brought to the attention of the Assistant Superintendent of Facilities Planning & Management, Buildings & Grounds and Custodial Services that the roof systems at the Burbank Elementary School site and the Marshall Elementary School site have degraded much sooner than could have been anticipated under the normal inspection processes followed by Buildings and Grounds and are in immediate need of repair to avoid significant damage to District property; and

**WHEREAS**, generally, Public Contract Code section 20111 requires a school district to competitively bid any contract for services exceeding the bid limit, currently \$76,700, and construction work exceeding \$15,000 in value; and

**WHEREAS**, for school districts subject to the California Uniform Public Construction Cost Accounting Act (Pub. Contract Code, § 22000, et seq., "CUPCCAA"), including the District, construction contracts of \$125,000 or more require formal competitive bidding; and

**WHEREAS**, an exception to section 20111 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 the CUPCCAA to immediately 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 the following steps be taken:

- (1) Pursuant to a four-fifths vote of the Board, the District may 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) The Board, by a four-fifths (4/5) vote, may delegate the District Superintendent and/or its designee, the authority to order any action pursuant to paragraph (1);
- (4) If a person with authority delegated pursuant to paragraph (3) orders any action specified in paragraph (1), that person shall report to the Board, at its next meeting, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency;
- (5) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, 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. If the Board meets weekly, it may review the emergency action in accordance with this paragraph every 14 days;
- (6) If a person with delegated authority orders any action specified in paragraph (1), the Board shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur not later than 14 days after the action, and at least 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, unless a person with delegated authority has terminated that action prior to the Board reviewing the emergency action and making a determination pursuant to this subdivision. If the Board meets weekly, it may, after the initial review, review the emergency action in accordance with this paragraph every 14 days;

- (7) 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

**WHEREAS**, immediate action must be taken by the District at the Burbank and Marshall Elementary School sites (“Impacted Facilities”) including, without limitation, the following (“Roof Repair Work”):

1. Relocating programs, activities and other uses of the Impacted Facilities as necessary during the repairs,
2. Taking all actions required to make the school sites safe and secure to both preserve the property to the extent feasible and to prevent and minimize any possible injury to persons,
3. Repairing the failed roofing systems to mitigate and prevent any adverse conditions that could cause damage to District facilities and/or injury to students, teachers, other District staff, other users of the Impacted Facilities and members of the Public,
4. Procuring and/or performing other associated services and public works required to resume and continue the use of the Impacted Facilities; and

**WHEREAS**, the Roof Repair Work must be performed without delay to respond to the emergency and to (1) mitigate any damage to the District’s facilities at the School Sites and (2) to minimize as quickly as possible the potential health and safety impact on students, teachers, and other District staff at the School, other users of the Impacted Facilities, and the general public; and

**WHEREAS**, because of the requirement that Roof Repair Work be done without delay, District staff must to direct firms to perform Roof Repair Work related to the emergency without following formal bidding practices; and

**NOW, THEREFORE, BE IT RESOLVED** that 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 the imminent failure of the Roofing Systems at the Burbank Elementary School Site and the Marshall Elementary School Site is an emergency as defined by applicable statute(s) (“Emergency”);
3. That the Board of Education hereby finds that the roof repair emergency projects must commence immediately and therefore will not permit the delays which would result from a competitive bidding process, and that approval of this resolution is necessary to respond to the Emergency;
4. That the District’s superintendent and/or his designees are authorized to execute contracts or change orders, as appropriate and as necessary with firms to perform Roof Repair Work related to the Emergency, without further advertising for or inviting of bids, and to take all steps and perform all actions necessary to execute and implement those contracts;
5. That the District’s superintendent and/or his designees are authorized to execute change orders, as appropriate and as necessary, and to take all steps and perform all actions necessary to execute and implement those contracts;
6. That District staff report on the status of this Emergency to the District’s 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 Governing Board of the Oakland Unified School District this 18<sup>th</sup> day of November, 2009; by the following vote, to wit:**

AYES:

NOES:

ABSTAINED:

ABSENT:

## **CERTIFICATION**

I, Edgar Rakestraw, Secretary of the Governing Board 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 Regular Meeting Thereof held on the 18<sup>th</sup> day of November, 2009 with a copy of such Resolution being on file in the Office of the Governing Board of said district.

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Edgar Rakestraw, Jr.