With the commissioning of the new Student Services Building 7 on the Fremont Campus, several issues developed regarding the design of the HVAC system. Working with the architect, the District has approved several construction repairs to address the problems. These include adding a “pony” boiler and upgrading duct work and controls. Although the work needs to be done by the original contractor to maintain the warranty on the building, the normal “change order” process to proceed with this work is not available to the District since the building was accepted as complete before these issues were discovered. Therefore, new contracts must be issued for this work.

It is possible that the work under this project may exceed the limits established in Public Contract Code Section 22000 et seq for formal or informal bidding. However, Public Contract Code Section 3400 provides relief from competitive bidding in subdivision (c), (2) “In order to match other products in use on a particular public improvement either completed or in the course of completion” and in (c) (3) “In order to obtain a necessary item that is only available from one source.” The statute codifies court rulings that have long-held that where going out to bid will yield no benefit or advantage, a public entity may declare a “sole source” and make a contract without the need for formal bidding. California case law (Graydon v. Pasadena Redev. Agcy. (1980) 104 Cal. App 3d 631 636-637)) allows exceptions to competitive bidding “where it has appeared that competitive bidding would be incongruous or would not result in any advantage to the public entity in efforts to contract for the greatest public benefit. . . [for example, where] …contracts for the purchase of patented products; …and….contracts for the acquisition or disposition of property for a particular use.”

The terms of the construction contract with S. J. Amoroso call for the contractor to provide a one year warranty on the building and all of its systems (i.e. ensure they work as designed). The District has discovered that the systems need to be redesigned for efficient operation. The process of soliciting bids for this work would be detrimental to the District, as use of any other contractor than S. J. Amoroso would necessarily void the warranty on these systems. Further, since S. J. Amoroso did the original installation, they are most familiar with the work to be done. Therefore, bidding this work would not result in any advantage to the District; and, in fact, bidding would result in a cost disadvantage since other bidders will not warranty prior work done on the building.

RECOMMENDATION
The President/Superintendent recommends that the Board find that competitive bidding for repair and construction work on the Student Services Building HVAC system would yield no
benefit or advantage to the district and approve the issuance of contracts 6011001, 6061001, and 6101001 to S. J. Amoroso Construction, Inc. for this purpose in a total amount not-to-exceed amount of $108,556.00