CONSENT - #20

OHLONE COMMUNITY COLLEGE DISTRICT

MEMORANDUM

TO: Board of Trustees
FROM: Dr. Eric Bishop
DATE: April 14, 2021
SUBJECT: Futility Resolution – Emergency Responder Radio System – Academic Core Buildings Project

BACKGROUND

To award the Emergency Responder Radio System contract for the Academic Core Building Project (“Project”) to Contra Costa Electric and EMCOR Co. (“Contra Costa”) without competitive bidding, the Board of Trustees must approve a futility resolution. The purpose of the futility resolution is to find that the purposes of competitive bidding would not be served by putting the new construction portion of the Project out to bid.

The District completed the Academic Core Buildings Project in January 2020. Contra Costa was the electrical subcontractor for the Academic Core Buildings, and they were responsible for all the electrical, low voltage, fire alarm, and security systems. They have maintained a presence on-site over the last year to complete punch list and warranty work. The original contract documents for the academic core buildings referred to the Emergency Responder Radio System scope but not required unless confirmed necessary following the three buildings' completion. The District completed the emergency responder radio frequency testing on all three buildings and determined that there were dead spots within each building. Therefore, to meet local jurisdiction requirements and for safety, the Academic Core Buildings need to incorporate the emergency responder radio system is required as soon as possible.

This contract is subject to the competitive bidding rules that require the District to select the lowest responsive and responsible bidder. However, there are various exceptions to that rule, one of which is when bidding the project would be futile. California law provides that public entities need not comply with competitive bidding processes where to do so would be impractical or futile and would not serve the purposes of competitive bidding. (Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631); "[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).

Therefore, for an awarding body to utilize a futility resolution, it must demonstrate that the cost savings to the District in awarding the contract without bidding are so significant that prospective bidders would not be able to submit a bid that could compete with the contract price provided by the contractor to which, the District intends to award the contract directly.

Contra Costa has already performed all the electrical, fire alarm, low voltage, and security scopes for the Academic Core Buildings. They continue to be involved with warranty scope on site. There will be significant cost savings that can be realized if they are also awarded the Emergency Responder Radio System scope.
Contra Costa already visits the site off and on in assisting the District with warranty issues. If they were also awarded the Emergency Responder Radio System work, they would charge less for site work set up and storage as they already have a site presence. Furthermore, they are very familiar with the three buildings.

By using the previous ACB contractor for the electrical, low voltage, and fire alarm work, the District avoids the risk of a gap occurring between the scopes of work of the ACB project and the emergency responder radio system’s scope. Contra Costa has intimate knowledge of all three buildings as they have been on site for the last four years.

Contra Costa can also bring on the same low voltage and fire alarm subcontractors that installed the original scope of work for ACB, who also maintain an intimate knowledge of the buildings and original systems intelligence. Contra Costa will ensure the emergency responder system is compliant with and uniform with the existing system. Introducing a new contractor that is not familiar with the buildings or the existing systems could incur additional costs to the District in change orders for unforeseen or unknown conditions.

Another factor that should assist Contra Costa is the fact that since October 2016, they have been providing construction services under the ACB project. This has allowed ample time for Contra Costa to develop good communications with the District’s Construction Manager, Gilbane, as well as the Inspector of Record, Michael Henley Co., evaluate and investigate existing conditions, conduct project research, and become familiar with campus operations. Because of this experience and knowledge acquired over four years of Project involvement, Contra Costa should reasonably be expected to provide the most responsive/responsible pricing available for the Emergency Responder Radio System scope of work.

Another factor is that Contra Costa could start work immediately following board approval and contract execution. This would ensure all work is complete before the Fall semester. If the Emergency Responder Radio System was to be issued for public bidding, this would delay installation and likely push this code required scope beyond school opening in Fall.

For the reasons set forth above, District staff believes that there is an adequate basis to support a finding that bidding the Emergency Responder Radio System Scope would be futile. Therefore, staff endorses the adoption of a futility resolution to complete the Emergency Radio System for the Academic Core Buildings.

RECOMMENDATION

The Superintendent/President recommends that the Board of Trustees approves the Futility Resolution for Measure G Project 6105 Emergency Responder Radio System for the new Academic Core Buildings.