

PIEDMONT UNIFIED SCHOOL DISTRICT

RESOLUTION NO. 13-2011-12

**AUTHORIZING INFORMAL CONTRACTING
FOR HVAC REPLACEMENT AT FOUR SCHOOLS
AND FINDING FUTILITY OF PUBLIC BIDDING**

WHEREAS, the Piedmont Unified School District (“District”) has determined, through its Board of Education, that portions of the heating, ventilation and air conditioning (“HVAC”) systems at the following schools are in need of significant maintenance, repair, and upgrading as described in the Request for Proposals or other document (the “Projects”) for student and teacher comfort and health:

Piedmont High School;
Piedmont Middle School;
Beach Elementary School;
Wildwood Elementary School;

WHEREAS, the District pursued state modernization funding in conjunction with its seismic safety bond program and was notified in January, 2012, that the certain amounts of funding was approved and would be received by March, 2012;

WHEREAS, due to the limited funds for construction available to the District, the Board was only able to conclude on May 23, 2012, that it would have sufficient funds on hand to complete the seismic retrofit of Beach Elementary School and proceed with the Projects;

WHEREAS, the Projects can not be performed while school is in session, due to noise and interference with ongoing HVAC operations that are necessary for student and teacher comfort and health;

WHEREAS, unless the Projects can be completed before start of school on August 22, 2012, the work could not be performed until the summer of 2013 after another school year;

WHEREAS, waiting for the end of another school year to implement the Projects would further subject students and teachers at the four schools to further discomfort and other impacts of the HVAC systems in their current condition, and would likely result in higher costs for the Projects;

WHEREAS, to secure contracts to perform the Projects before start of school on August 22, 2012, there is not sufficient time for formal public bidding per the Public Contract Code;

WHEREAS, the District has not been dilatory in securing the funding for the Projects, nor in acting to obtain pricing for the Projects once the funding was approved;

WHEREAS, in order to obtain the best possible pricing for the Projects without formal public bidding, the District obtained competitive price proposals from three contractors who were researched as qualified to perform the Projects, and had the proposals reviewed by its construction manager, Vila Construction, for completeness and reasonableness in pricing;

WHEREAS, the District identified the following proposals as meeting its needs for all of the Projects:

Indoor Environmental Services: \$478,543
R.H. Tinney Incorporated: \$458,415
Kevin Sullivan, Heating & Air, Inc: \$373,000

WHEREAS, the District wishes to enter into contracts with Kevin Sullivan, Heating & Air, Inc, the lowest priced of the qualified proposals for furnishing of all prevailing wage labor, materials, mechanical workmanship, transportation, equipment and services necessary to perform the Projects;

WHEREAS, District staff and the District's construction manager believe that the price proposal for the Projects is reasonable;

WHEREAS, District staff believes that waiting until the summer of 2013 to perform the Projects would result in teacher and student discomfort, and also waste and delay, as well as projected significant cost increases, which would be at the expense of the District;

WHEREAS, Public Contract Code section 20111 states that a school district is required to competitively bid any public works project with a contract value over \$15,000;

WHEREAS, notwithstanding Public Contract Code section 20111, California courts allow a narrow exception to the public bidding law in circumstances in which it would be futile, undesirable or impractical and would cause additional delay and additional cost (*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.);

WHEREAS, California law provides that, "Where 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.);

WHEREAS, the majority of the Projects' cost is for HVAC equipment, the prices on the units identified for this project are consistent with prices under the California Multiple Awards Schedule and would remain relatively the same regardless of how the Projects were bid;

WHEREAS, the District recognizes an efficiency in oversight by the District's construction manager to meet the stated timeframe and economy of scale associated with awarding a single contract for several units on multiple sites;

WHEREAS, bidding the Projects will not affect the final result to the District except to force work on the Projects to be delayed until summer 2013 and increase the cost of the Projects to the District; and

WHEREAS, bidding the Projects will not produce an advantage to the District;

NOW THEREFORE, the Board of Education of the Piedmont Unified School District hereby resolves, determines, and finds the following:

1. That the foregoing recitals are true.

2. For the reasons stated above, public bidding of the Projects would not produce an advantage to the District, and would produce a net burden and distinct disadvantages to the District, and to its students and teachers.

3. Based on the foregoing, it would be undesirable, impractical, futile, and unavailing to publicly bid the Projects.

4. That the District's Board hereby approves award of a contract to Kevin Sullivan, Heating & Air, Inc to perform the Projects at each of the listed schools, based on its proposal, without further advertising for or inviting of bids, and authorizes the Superintendent and designees to take all steps and perform all actions necessary to execute and implement that Contract.

PASSED AND ADOPTED by the Board of Education of the Piedmont Unified School District, City of Piedmont, County of Alameda, State of California, this 11th day of July, 2012, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

I certify that the above Resolution was adopted and passed by the Board of Education on the date indicated above.

Constance Hubbard, Secretary
Board of Education
Piedmont Unified School District,
Alameda County, State of California