

CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

August 19, 2008

Agenda Item: 6.6

Subject: Adoption of Resolution No. 03-0809 - Approval and Award of Contracts Using an Alternate Procurement Method for the Multi-Disciplinary Education Building (MD Building) and the Physical Education (PE) Complex

Background: The District engaged LPA, Inc. and Lionakis Beaumont Design Group to design the Multi-Disciplinary Education Building (MD Building) and the Physical Education (PE) Complex, respectively. The firms completed construction documents and the construction contracts for each project were awarded to Sierra Bay Contractors.

The projects were occupied in June 2007 and August 2005, respectively. Subsequently both facilities have suffered significant water incursions during winter storms and the MD Building ADA Accessible lifts, which provide Title 24 mandated access for students, faculty, staff and the community to both of the subject facilities have continually malfunctioned. Richard Avelar & Associates (Avelar) has completed testing, analysis, reports, and design of temporary mitigation measures on behalf of the District.

In view of the significant impacts of the defective work on campus operations it is recommended that the Board of Trustees authorize procurement of design and construction of necessary temporary mitigation and permanent repairs on an emergency basis by approving the attached resolution.

Recommended Action: That the Board of Trustees adopts Resolution No. 03-0809 for the Approval and Award of Contracts using an Alternate Procurement Method for the Multi-Disciplinary Education Building (MD Building) and the Physical Education (PE) Complex.

---

Submitted: Jeffrey M. Kingston/Date

---

Approved: Joel L. Kinnamon/Date

---

\_\_\_\_\_ APPROVED

\_\_\_\_\_ DISAPPROVED

\_\_\_\_\_ TABLED

CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

RESOLUTION NO. 03-0809

APPROVAL AND AWARD OF CONTRACTS USING  
AN ALTERNATE PROCUREMENT METHOD FOR THE  
MULTI-DISCIPLINARY EDUCATION BUILDING (MD BUILDING) AND THE  
PHYSICAL EDUCATION (PE) COMPLEX

WHEREAS, on October 27, 2003, the Chabot Las Positas Community College District ("District") awarded a professional services contract to LPA, Inc. for architectural services relating to the design of a Multi-Disciplinary Building ("MD Building") at the Las Positas Campus; and

WHEREAS, on or about June 30, 2005, the District awarded a contract to Sierra Bay Contractors ("Sierra Bay") for the construction of the MD Building after a competitive bidding process; and

WHEREAS, the MD Building was substantially completed on or about July 7, 2007; and

WHEREAS, on March 19, 2002, the District awarded to Lionakis Beaumont ("Lionakis") a professional services contract for the design of a Physical Education Complex ("PE Complex") at the Las Positas Campus; and

WHEREAS, on April 7, 2004, the District awarded a contract to Sierra Bay for the construction of the PE Complex; and

WHEREAS, included within the scope of Sierra Bay's work on the MD Building was the construction of two (2) handicap lifts; and

WHEREAS, Sierra Bay's work on the PE Building was complete on or about January 24, 2007; and occupied by the District on or about August of 2005; and

WHEREAS, subsequent to Sierra Bay's construction of the MD Building and PE complex, both buildings suffered significant incursions of water after winter rains; and

WHEREAS, the incursions of water forced the relocation of staff and faculty and required the District to incur considerable cleanup and remediation costs; and

WHEREAS, the District retained the service of Avelar and Associates ("Avelar") to study the causes of the water incursions and recommend corrective action; and

WHEREAS, the ADA lifts have never consistently worked as designed, despite repeated notices by the manufacturer and installer; and

WHEREAS, the inoperable ADA lifts are impeding easy access to the PE Complex and the MD Building by handicapped students, faculty, staff and members of the public; and

WHEREAS, the parties involved in the construction of the aforesaid building are currently engaged in negotiations to determine how the buildings might be repaired;

WHEREAS, any agreement reached between the parties could involve portions of the work being performed by the designers and builders of the buildings, or outside vendors, or a combination of both for a scope of work that is at present undetermined; and

WHEREAS, the 2008-2009 school year commences on August 18, 2008; and

WHEREAS, the rainy season in the area of the campus traditionally starts in late November; and

WHEREAS, to design and bid projects of these type normally take 4 to 6 months; and

WHEREAS, California State Law recognizes exceptions to traditional competitive bid processes in certain circumstances, including: (1) Work performed to a settlement agreement; (2) Leaseback Agreements; (3) Where bidding the work would gain the District no competitive advantage; and (4) Building the work exposes the District to additional costs or external dangers; and

WHEREAS, delaying the project to account for the traditional bid process, will unnecessarily restrict handicapped persons from portions of the campus and subject the buildings to the possibility of further water incursion and damage to the buildings; and

WHEREAS, given the urgency and immediate need for handicap access and the need to secure the buildings against the elements, the above described work meets the requirements of Public Contracts Code section 22050; and

WHEREAS, the California Supreme Court in Los Angeles Dredging v. Long Beach (1930) 210 Cal. 348 ruled that statutes requiring competitive bidding do not apply where competitive bidding would work an incongruity and not produce any advantage to the District; and

WHEREAS, the competitive bid process would likely not benefit the District because any financial advantage gained would be offset by potential rain damage to the buildings and the fact that the denial of free and full access to the campus by students, faculty and the public cannot be offset by any savings gained in the competitive bid process, the above described work meets the requirements of Public Contracts Code section 20654.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees for the District makes the following findings regarding repair work to the ADA lift, the MD Building and the PE Complex of the District:

1. The foregoing recitals are true.
2. The repair work on the handicap lifts must begin immediately to provide access to handicapped staff and students.
3. Repair work on the MD Buildings and PE Complex must commenced immediately to avoid further water damage to the buildings as the rainy season approaches.
4. That the District be provided flexibility in the manner it chooses to perform the repair work mentioned into this agreement. Any method chosen by the District should take into account the following considerations (1) The best price for the District through a competitive process if possible; (2) an approach that meets the deadlines imposed by the approach of the rainy season and (3) Reflects, if appropriate, any settlement agreement reached by the parties.

PASSED AND ADOPTED by a roll call vote on the 19<sup>th</sup> day of August 2008 by the Governing Board of Chabot-Las Positas Community College District of Alameda County, State of California.

AYES:

NOES:

ABSENT:

ABSTENTIONS:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary of the Board of Trustees of the  
Chabot-Las Positas Community College District,  
State of California

