

CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

February 19, 2019

Agenda Item: 6.10

Subject: Acceptance of Modification to the Existing Design/Build Contract with Balfour Beatty Construction for the New Academic Classroom Building 100, Las Positas College

Background: On June 16, 2015, the Board of Trustees approved a design-build agreement between the District and Balfour Beatty Construction/HMC Architects for the New Academic Classroom Building 100 and the renovation of Building 700 at the Las Positas College. Four prior modifications to the agreement were approved on April 19, 2016, August 16, 2016, June 19, 2018 and September 18, 2018.

Construction contracts commonly experience unforeseen conditions; District requested on design changes that require an adjustment to the contract, scope, price and/or duration of the project in the form of a change order. Contract modification #5 includes: additional weatherproofing and material upgrades; weather stabilization of the project site and work areas: reduction in project interior and exterior scope; time extensions and additional general condition costs for other requested changes during the execution of the project.

Balfour Beatty Construction submitted written pricing proposals for these changes that include the applicable increases and decreases in materials, equipment, labor, time extensions and overhead and profit. The proposals have been reviewed and negotiated to ensure the pricing reflects compliance with contract terms.

Original Contract Amount	\$ 20,002,979
Previous Approved Changes	\$ 1,788,363
Contract Modification #5	\$ 560,013
Revised Contract Amount	\$ 22,351,355

The net change to Balfour Beatty Construction's contract as a result of all the changes issued is \$2,216,507 which equates to 10.8% of the original contract. This change will be funded from Measure B funds established in the project and bond program budget in expectation of this type of change.

Pursuant to the Public Contract Code Section 20118.4 and 20659 (applicable to community college districts), a contract may be increased or decreased after the bid is awarded due to changes that might arise during the course of the contract. These changes are limited to the bid limits or 10 percent of the original contract price, whichever is greater. These limits according to the California Attorney General "...appear to be inserted to ensure that substantial changes are not made which would, in effort, constitute the making of a new contract." Furthermore, it is in the Attorney General's view that "...change order are appropriately contemplated where, during

the performances of the contract, unforeseen matters are discovered which require some modification to complete the contract” (73 Ops. Cal. Att. Gen. 417 (1990)).

The purpose of sections 20118.4 and 20654 is to allow some flexibility following the awarded of the bid, and to ensure that substantial changes are not made which would constitute the making of a new contract. In effort, the change order provisions allow Districts to negotiate changes to a contract provided the contract is not materially altered by the change order to such an extent that it would create a new project or contract which should be bid separately. Public bidding of the increased scope of work would not have produced an advantage to the District, and would produce a net burden and distinct disadvantages to the District. Based on the foregoing, it would be incongruous futile, and unavailing to publicly bid the increased scope of work.

The potential contact modification presented within modification #5 were enhancements and additional work requested by the District during the construction and could not be anticipated prior to contract award. Details of the changed items can be viewed on the attached. These changes were a necessary and integral part of the work under the contract and the taking of the bids would delay the completion of the work, which were required to be completed prior to the fall 2018 semester. This has been reviewed with District Legal Counsel.

Recommended Action: That the Board of Trustees approve the proposed contract modifications to the existing Design/Build contract with Balfour Beatty Construction/HMC Architects of Oakland, CA for the New Academic Building 100 at Las Positas College in the amount not to exceed \$560,013. It is further recommended that the board authorize the Vice Chancellor of Business Services to execute the contract modifications on behalf of the District.

Funding Source: Measure A Bond Funds

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Submitted: Owen Letcher/Date

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Approved: Ronald P. Gerhard/Date

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