

PERALTA COMMUNITY COLLEGE DISTRICT
Board of Trustees Agenda Report
For the Trustee Meeting Date of October 23, 2012

ITEM TITLE:

Consider Approval of Resolution 12/13-18, Award of Contract for Emergency Construction to Ascent Elevator Services for Modifications to the Forum and G Building Elevators at Laney College

SPECIFIC BOARD ACTION REQUESTED:

Approval is requested of Resolution 12/13-18, to award a contract for emergency construction to Ascent Elevator Services for Modifications to the Forum and G Building Elevators at Laney College, in the amount of \$27,500.00.

ITEM SUMMARY:

The Forum and G Building elevators at Laney College are currently inoperable and inaccessible. There is an urgent need to immediately commence modifications to the elevators to provide accessibility to students under ADA (Americans with Disabilities Act) regulations and to comply with the terms of a settlement agreement resulting from a court action.

These two elevators were constructed as part of an ADA Improvements project at Laney College. Ascent Elevator Services was the elevator subcontractor to IMR Construction Corporation and filed the currently open permit with the California Department of Industrial Relations for the elevators. IMR declared bankruptcy in May 2011. The follow-on contractor to IMR (hired by IMR's bonding company) certified initial elevator work as being complete. In February 2012, the State of California Department of Industrial Relations OSHA Elevator, Ride and Tramway Unit performed an initial inspection and issued a report identifying deficiencies in the elevator work, primarily due to Title 8 code revisions not contemplated in the initial scope of work.

These code changes require certain upgrades in order to comply with Title 8 code requirements, correct accessibility issues, and pass final inspection by the State of California Department of Industrial Relations OSHA Elevator, Ride and Tramway Unit. Until the required modifications to the elevators are performed and the elevators pass final inspection, the elevators remain inaccessible and are not code compliant.

Under Section 20654 (a) of the California Public Contract Code, *"In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of the college, or to permit the continuance of existing college classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, do either of the following: (1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids. (2) Notwithstanding Section 20655, authorize the use of day labor or force account for the purpose."*

The work qualifies as an emergency because the Laney College elevators are currently inoperable and inaccessible. Until the required modifications to the elevators are performed and the elevators pass final inspection, the elevators are not code compliant

and classes are inaccessible to disabled students. In accordance with this code, approval of the Superintendent of the Alameda County Office of Education to award a construction contract for the elevator work has been requested. As further required by the Public Contract Code, unanimous approval of this resolution by the Board of Trustees is requested.

It is recommended that the District award a contract for this work on a sole source basis, rather than through a competitive bid process, for the following reasons:

- Unicity/Proprietary Services: Ascent Elevator Services possesses specialized knowledge of the Laney College elevators that are the subject of this contract and possesses the expertise and ability to provide a unique service to the District based on its history of performance concerning this specific facility and the applicable code regulations.
- Immediacy: There is an urgent need to immediately commence modifications to the Forum and G Building elevators at Laney College in order to comply with various statutory requirements, including the requirements of Title 8 of the California Code of Regulations.
- Impracticability/Unavailability: Delays resulting from competitive solicitation are not acceptable. Previous efforts at competitive solicitation have failed, as other vendors contacted by the Department of General Services staff who are unfamiliar with existing systems at Laney College are unwilling to undertake wholesale modifications and responsibility for system performance.
- Legitimacy: Ascent Elevator Services' track record of successfully working on various elevator projects for the District over the past fifteen years is justification for a non-competition of sources in this situation.
- Competitive Advantage: Based on research by Department of General Services staff, Ascent Elevator Services' cost of the work is reasonable and consistent with market costs for performance of similar work. Moreover, Department of General Services staff has negotiated a competitive contract with Ascent. Ascent's proposal includes design responsibility for the work they upgrade and install.
- Exigency: It is in the best interest of the District, e.g., administrative cost savings, excessive learning curve for a new contractor, to proceed with this sole source procurement with Ascent Elevator Services. Time is of the essence, as the Laney College elevators are currently inoperable and inaccessible. Ascent Elevator Services has over fifteen years of experience performing elevator maintenance and upgrades on behalf of the District.

For these reasons, sole source procurement in this instance is in the best interest of the District, and approval of Resolution 12/13-18 is recommended.

SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):

Measure A, as approved by the voters in Peralta's constituency and authorized under Resolution 05/06-45, Exhibit A-1, Laney College, "Handicap accessibility."

BACKGROUND/ANALYSIS:

CONTRACT FOR ADA IMPROVEMENTS

On or about August 5, 2010, the Peralta Community College District entered into a contract ("Contract") with IMR Contractors Corporation for construction of ADA Improvements at Laney College (the "Project") in the amount of \$2,318,000.00. The Notice to Proceed was issued on August 23, 2010. The Contract required completion of the Project by March 25, 2011. The Project included a Barrier Removal Implementation Plan, roadway renovations, and various other construction projects that impact disabled access in and around the Laney College Campus. On or about August 31, 2010, the District entered into an ADA Settlement Agreement and Order. The Project completion date of March 25, 2011 was incorporated as a term of the Settlement Agreement. Performance of the terms of the Settlement Agreement, including the timely completion of the Project, is subject to supervision by the United States District Court for the Northern District of California, Case No. C08-03133 RS (JL).

IMR BANKRUPTCY

On May 20, 2011, IMR filed a petition in bankruptcy under Chapter 11 of the Bankruptcy Code, Case No. 11-45500 WJL. IMR ceased work on the Project and the IMR Bankruptcy was subsequently converted to a Chapter 7 case. Relief from the automatic stay was granted to the District and the District default terminated IMR's contract. As of the date of IMR's ceasing work and default, certain work remained to be performed under the Contract.

At the time IMR ceased work, required work on the Forum and G elevators was 30% complete, awaiting structural calculations from the Engineer of Record.

ELEVATOR MODIFICATIONS REQUIRED

The follow-on contractor to IMR certified initial elevator work as being complete by September, 2011. On February 29, 2012, the State of California Department of Industrial Relations OSHA Elevator, Ride and Tramway Unit performed an initial inspection and issued a two-page report identifying deficiencies in the elevator work, primarily due to Title 8 code revisions not contemplated in the initial scope of work. Until the required modifications to the elevators are performed and the elevators pass final inspection, the elevators remain inaccessible and are not code compliant, comprising an element of the ADA Settlement Agreement that has not yet been fulfilled.

RECOMMENDED ELEVATOR SOLUTION

To remedy the deficiencies identified in the elevator inspection and ensure the elevators comply with the current requirements of Title 8, it is recommended that the following modifications to the elevators be performed:

- Add exterior heat detectors at each elevator landing
- Remove fire alarm devices from elevator pit
- Furnish fire extinguisher and signage
- Furnish new fire rated machine room door with lock and closer
- Furnish elevator inspection and elevator permit fees

SOLE SOURCE PROCUREMENT OF ELEVATOR CONTRACT

The purposes of the competitive bidding requirements are as follows: 1) to guard against favoritism, improvidence, extravagance, fraud and corruption; 2) to prevent waste of public

funds; and 3) to obtain the best economic results for the public. The Courts, however, particularly in Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631, have recognized a limited exception to the requirements of competitive bidding for public works projects if competitive bidding would not be useful, or would not produce a public advantage, and would thus be undesirable, impractical, or impossible.

When District staff sought pricing from elevator vendors to perform the scope of work outlined by its architect, Ascent Elevator Services was the only vendor willing to undertake the required modifications. Other elevator vendors were unwilling to undertake and warrant the required modifications to the elevators. Thus, it is not clear that a further competitive procurement for this scope of work would produce a public advantage. What is clear is that further delay in the required modifications would be undesirable and impractical for the District and the public. In the case of the Settlement Agreement, the District remains subject to court supervision of the completion of its terms. A public bidding process would cause further delay to the required elevator modifications, which could result in the imposition of civil penalties, and would be contrary to the public interest.

The Courts also, for example in Meakin v. Steveland, Inc. (1977) 68 Cal.App.3d 490 and Los Angeles Dredging Co. v. City of Long Beach (1930) 210 Cal. 348, have recognized a limited exception to the requirements of competitive bidding for public works projects if competitive bidding would be unavailing and contrary to public interest where there is really only one party, i.e., a sole source, who can enter into the contract the public agency needs. For this public bidding exception to be justified, the burden of proof to justify sole source procurement falls to the requester, and one or more specific factors must be demonstrated, as follows:

- unicity, i.e., the item is only available from one single supplier; or
- immediacy, i.e., delays resulting from competitive solicitation are not acceptable; or
- emergency, i.e., delays resulting from other methods of solicitation are not bearable; or
- legitimacy, i.e., specific contexts (geographic, contractual, political, legal, military, security, etc.) may allow such a non-competition of sources; or
- inadequacy, i.e., all sources are qualified as inadequate (compatibility, compliance, price, quality, service, support, etc.); or
- exigency, i.e., any other specific reason dictating the choice of a given provider.

As set forth above, each of the above factors can be demonstrated. Ascent Elevator Services is the only elevator vendor willing to provide the type of proprietary services required to meet new Title 8 code requirements. Because delays resulting from a competitive solution are not acceptable or bearable, and because the Ascent Elevator Services is the only elevator vendor willing and qualified to provide the proprietary services required to accomplish the required elevator modifications, District staff believes the factors of unicity, immediacy, emergency, inadequacy, and exigency justify the sole source procurement of Ascent Elevator Services to provide the services immediately required by the District. Accordingly, utilizing Ascent Elevator's services in this case is in the public's interest.

Finally, other considerations that further demonstrate that the continued retention of Ascent Elevator Services is in the public interest are as follows: a) Ascent Elevator Services has already performed the investigative work at the Forum and G Elevators at Laney College; b) Ascent Elevator Services is familiar with the site, the existing permit, and the deficiency list issued by the State; and c) Ascent Elevator Services will warrant its work on the Forum and G Elevators, ensuring that any future repairs or modifications identified by subsequent inspections will be performed at no incremental cost to the District.

DELIVERABLES/SCOPE OF WORK:

Following is the scope of work for the required modifications:

- Add exterior heat detectors at each elevator landing
- Remove fire alarm devices from elevator pit
- Furnish fire extinguisher and signage
- Furnish new fire rated machine room door with lock and closer
- Furnish elevator inspection and elevator permit fees

ANTICIPATED COMPLETION DATE:

The project is anticipated to be complete sixty (60) days from the Notice to Proceed.

ALTERNATIVES/OPTIONS:

Not applicable.

EVALUATION AND RECOMMENDED ACTION:

Approval is recommended of Resolution 12/13-18, to award a contract for emergency construction to Ascent Elevator Services for Modifications to the Forum and G Building Elevators at Laney College, in the amount of \$27,500.00.

OTHER DEPARTMENTS IMPACTED BY THIS ACTION (E.G. INFORMATION TECHNOLOGY):

YES _____ NO X

COMMENTS:

No additional comments.

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING? (VICE CHANCELLOR)

Vice Chancellor Ikhara

(****Board contract approval is subject to negotiation and execution by the Chancellor.)

DOCUMENT PREPARED BY:

Prepared by: Dr. Sadiq B. Ikharo Date: October 15, 2012
Vice Chancellor of General Services

DOCUMENT PRESENTED AND APPROVED BY:

Presented and approved by: Dr. Sadiq B. Ikharo Date: October 15, 2012
Vice Chancellor of General Services

FINANCE DEPARTMENT REVIEW

Finance review required Finance review *not* required

If Finance review is required, determination is: Approved Not Approved

If not approved, please give reason: _____

Signature: Ronald Gerhard Date: 10-19-12
Ronald Gerhard, Vice Chancellor of Finance

GENERAL COUNSEL (Legality and Format/adherence to Education Codes):

Legal review required Legal review *not* required

If Legal review is required, determination is: Approved Not Approved

Signature: Thuy Thi Nguyen Date: 10-19-12
General Counsel

CHANCELLOR'S OFFICE APPROVAL

Approved, and Place on Agenda Not Approved, but Place on Agenda

Signature: José M. Ortiz Date: 10-16-12
José M. Ortiz, Chancellor

**PERALTA COMMUNITY COLLEGE DISTRICT
RESOLUTION 12/13-18**

**AWARD OF CONTRACT FOR EMERGENCY CONSTRUCTION
MODIFICATIONS TO THE FORUM AND G BUILDING ELEVATORS
AT LANEY COLLEGE
ASCENT ELEVATOR SERVICES**

WHEREAS, Section 20654 of the California Public Contract Code authorizes the Governing Board, with the approval of the County Superintendent of Schools, to make emergency repairs, alterations, work, or improvement without advertising for bids if, in the unanimous opinion of the Board, such work is necessary to permit the continuance of existing college classes or to avoid danger to life or property; and

WHEREAS, the Forum and G Building elevators at Laney College are currently inoperable and inaccessible; and

WHEREAS, there is an urgent need to immediately commence modifications to the elevators to provide accessibility to students under ADA (Americans with Disabilities Act) regulations and to comply with the terms of a settlement agreement resulting from a court action; and

WHEREAS, it has been determined that this qualifies as an emergency situation because until the required modifications to the elevators are performed and the elevators pass final inspection, the elevators are not code compliant and classes are inaccessible to disabled students; and

WHEREAS, approval has been received from the Alameda County Superintendent of Schools to proceed with the required work on an emergency basis under Section 20654 of the Public Contract Code.

NOW, THEREFORE, BE IT UNANIMOUSLY RESOLVED by this Board that an emergency exists wherein certain repairs, alternations, work or improvements are necessary to permit accessibility to existing college classes; and

BE IT FURTHER RESOLVED that the Board authorizes entering into a contract, without advertising or formal bidding, with Ascent Elevator Services for the Modifications to the Forum and G Building Elevators at Laney College, in the amount of TWENTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$27,500.00) on behalf of the District for the performance of labor and the furnishing or materials or supplies for the purpose of remedying the emergency situation.

PASSED AND ADOPTED by the unanimous vote of the Board present and voting this 23rd day of October, 2012.

Secretary of the Board of Trustees
Peralta Community College District
Alameda County

State of California