

**BEFORE THE BOARD OF EDUCATION OF THE LODI UNIFIED SCHOOL DISTRICT OF THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA**

**RESOLUTION NO. 2024-134**

**AUTHORIZING DECLARING THE FUTILITY OF BIDDING FOR WORK AND APPROVING THAT WORK FOR THE LAKEWOOD ELEMENTARY SCHOOL MODERNIZATION PHASE II PROJECT NO. 0921-8221-1**

**WHEREAS**, the Lodi Unified School District (“District”) has adopted the Uniform Public Construction Cost Accounting Act (“Act”), Public Contract Code section 22000 et seq., which establishes a uniform cost accounting standard and allows for an alternate method for bidding of public works projects by local public agencies; and

**WHEREAS**, the limits for the bidding of public works projects by local public agencies under the Act provide that (a) public projects of \$60,000 or less may be performed by District employees by force account or by negotiated contract (Public Contract Code § 22032(a)); (b) public projects of \$200,000 or less may be contracted by informal procedures (Public Contract Code § 22032(b)); and (c) public projects over \$200,000 are subject to formal bidding procedures (Public Contract Code § 22032(c)); and

**WHEREAS**, Diede Construction, Inc. (“Contractor”) agreed to construct the Lakewood Elementary School Phase II (“Project”) and entered into a contract (“Contract”) dated December 12, 2023 for the Project for One Million Four Hundred Eighty and Sixty Dollars (\$1,480,600.00) (“Contract Price”), which includes a 10% contingency for unforeseen conditions; and

**WHEREAS**, the District and Contractor have now discovered that extra-scope work is necessary to cement treat approximately 34,000 sq. ft. of soils that exceed moisture levels, per geotechnical engineering testing requirements (“Extra Scope Work”); and

**WHEREAS**, as a result of the Extra Scope Work, Contractor is required to incur extra costs performing the Project, which resulted in Contractor submitting a proposed change order for the Project in the amount of One Hundred Fifty-Seven Thousand Nine Hundred Two Dollars and Fifty-Six Cents (\$157,902.56), increasing the Contract Price to a total of One Million Six Hundred Thirty-Eight Thousand Five Hundred Two Dollars and Fifty-Six Cents (\$1,638,502.56); and

**WHEREAS**, Public Contract Code section 20118.4 states that the governing board of a school district may, “authorize the contractor to proceed with performance of the change or alteration [of contract], without the formality of securing bids, if the cost so agreed upon does not exceed the greater of the following: (a) The amount specified in Section 20111 or 20114, whichever is applicable to the original contract; or (b) Ten percent of the original contract price;” and

**WHEREAS**, notwithstanding Public Contract Code sections 20111 and 20118.4 or the Act, 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); and

**WHEREAS**, California law provides that, “where competitive proposals work an incongruity and are unveiling as affecting the final result, or where they do not produce any advantage . . . a statute requiring competitive bidding does not apply” (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694); and

**WHEREAS**, based on the circumstances, the price of the Extra Scope Work is reasonable; and

**WHEREAS**, if the District were to have to bid the Extra Scope Work and the District did, in fact, receive any bids for such a relatively low-dollar project, the Project would be delayed and the prices of those bids would likely be more than the price of the Extra Scope Work because the Contractor has already begun working on the Project, and any new contractor would need to mobilize and demobilize, which would increase its pricing; and

**WHEREAS**, bringing in new contractors to perform the Extra Scope Work could create coordination and interference problems with the Contractor; and

**WHEREAS**, bidding the Extra Scope Work will not produce an advantage to the District.

**NOW, THEREFORE**, the Governing Board of the Lodi Unified School District hereby resolves, determines, and finds the following:

1. That the foregoing recitals are true.
2. For the reason stated above, public bidding of Extra Scope Work would not have produced an advantage to the District and would have produced a net burden and distinct disadvantages to the District.
3. Based on the foregoing, it would be incongruous, futile, and unavailing to publicly bid the Extra Scope Work.
4. That the Board hereby approves Contractor’s increased Contract Price of One Million Six Hundred Thirty-Eight Thousand Five Hundred Two Dollars and Fifty-Six Cents (\$1,638,502.56) without further advertising for or inviting of bids.
5. That the District’s Superintendent or designee is authorized to take all steps and perform all actions necessary to execute and implement the Extra Scope Work.

**BE IT FURTHER RESOLVED** that the Superintendent of the District, the Associate Superintendent, the Executive Director of Financial Services, Executive Director of Operations, and other officers of the District, and each of them individually, are hereby authorized and directed, for and in the name of and on behalf of the District, to execute and deliver any and all documents, to do any and all things, and take any and all actions that may be necessary or advisable, in their discretion, in order to complete the changes, and to effect the purposes of this Resolution. All actions heretofore taken by officers, employees, and agents of this District that are in conformity with the purposes and intent of this Resolution are hereby approved, confirmed, and ratified.

**PASSED AND ADOPTED** this 19th day of November 2024, by the following vote of the Board of Education of the Lodi Unified School District:

- AYES:**
- NOES:**
- ABSTAIN:**
- ABSENT:**
- ATTEST:**

---

**Clerk of the Board of Education**

---

**President of the Board of Education**