

SYLVAN UNION SCHOOL DISTRICT

RESOLUTION NO. 2018/2019 - #18

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**A RESOLUTION OF THE BOARD OF TRUSTEES
TO DETERMINE THAT AN EMERGENCY EXISTS AND THAT IT WOULD BE FUTILE TO
SOLICIT BIDS OR PROPOSALS TO PROCURE SERVICES TO REMOVE MALWARE AND
TO REPAIR, RESTORE, AND PROTECT DISTRICT SYSTEMS
FROM FUTURE CYBER INFECTIONS**

WHEREAS, Public Contract Code section 20111(a)(1) requires the school district's governing board to let to the lowest responsible bidder any contracts for services, except construction services, involving an expenditure of more than \$92,600, the adjusted competitive bid threshold for 2019.

WHEREAS, Public Contract Code section 20118.2 authorizes the school district, after certain findings made by the governing board, to procure contracts for technology and related services through competitive procurement.

WHEREAS, Public Contract Code section 1102 defines an emergency as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

WHEREAS, on February 28, 2019, the Sylvan Union School District ("District") detected symptoms of infection ("Malware") with its computers, networks and their ancillary systems ("System") and immediately disconnected its internet connection to disable the System and in an attempt to prevent the Malware from continuing to attack the District's computer and System.

WHEREAS, the District has been unable to perform and maintain its essential services and is functionally non-operational with no access to its cloud-based data, network, and other programs and platforms operating under and using the District's internet connection.

WHEREAS, soon after detecting the Malware and disabling its System, the District secured services from Datapath, a local technology consultant specializing in removal of Malware and restoration and repair of systems after an infection ("Tech Consultant").

WHEREAS, the District needed to take immediate action to procure the services of the Tech Consultant to prevent and/or mitigate the loss or impairment of property and/or essential public services.

WHEREAS, any delay in performing the prevention and mitigation work to the District's System to combat and further obstruct the Malware could have exposed and placed at risk sensitive student, employee, and financial data and immobilized essential public services, specifically, the operation of the District's schools.

WHEREAS, due to the time-sensitive nature of the cyberattack, there was and is insufficient time for formal bidding or to publish a competitive bidding process to perform the Tech Consultant's work in accordance with Public Contract Code sections 20111(a)(1) and 20118.2, respectively, and therefore, it would have been futile to elicit bids or proposals.

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NOW THEREFORE, BE IT RESOLVED that the District Board of Trustees hereby approves, adopts, and determines the following:

1. That the foregoing recitals are true.
2. That the foregoing facts constitute an emergency as defined in Public Contract Code section 1102 and that the Board determines that it would be futile to attempt to elicit bids or proposals for this work, in accordance with the pertinent Public Contract Code provisions, due to the emergency nature of the work to prevent and/or mitigate further loss or impairment of property and essential public services.
3. That the Board approves and ratifies the contract with the Tech Consultant to perform services to remove the Malware and other correlating services to repair, restore, and protect the District's System from further infections.
4. That the Board authorizes staff to enter into one or more contracts for additional related scopes of work, and to take all other actions necessary, to perform all necessary work to remove the Malware from the District's System and to repair, restore, and set up protections to the District's System, including replacement of any portions or components of the System, without advertising for bids or issuing a request for proposals.

PASSED AND ADOPTED this 12th day of March, 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Collins,
President of the Board of Trustees

ATTEST:

George Rawe,
Vice President of the Board of Trustees