

RESOLUTION NO. 202-20/21

AUTHORIZING EMERGENCY PROCUREMENT OF NECESSARY PRODUCTS AND SERVICES TO ADDRESS
THE SPREAD OF COVID-19 TO ALLOW FOR THE OPENING OF DISTRICT SCHOOLS FOR THE 2021-2022
ACADEMIC YEAR

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a statewide emergency arising from SARS-CoV-2 coronavirus (“**COVID-19**”); and

WHEREAS, on March 5, 2020, the Alameda County Interim Health Officer declared the existence of a local and public health emergency arising from COVID-19, which was ratified by the Alameda County Board of Supervisors on March 10, 2020; and

WHEREAS, on March 7, 2020, the California Department of Public Health issued guidance advising, in part, that "community transmission of COVID-19 has occurred in California. Educational institutions should prepare for possible impacts of COVID-19 and take precautions to prevent the spread of COVID-19 as well as other infectious diseases, including influenza and gastroenteritis"; and

WHEREAS, on March 10, 2020, the Contra Costa County Board of Supervisors (Alameda County and Contra Costa County shall be collectively referred to as “**County**”) declared the existence of a local and public health emergency arising from COVID-19; and

WHEREAS, on March 12, 2020, Governor Newsom issued an executive order directing Californians to cancel large public gatherings (over 250 people) and to enforce social distancing; and

WHEREAS, on March 13, 2020, President Donald Trump declared a national state of emergency; and

WHEREAS, at the Livermore Valley Joint Unified School District (“**District**”) Emergency Board of Education (“**Board**”) Meeting held on March 13, 2020, the Board dismissed the District’s schools through the remainder of the 2019-2020 academic year and began distance learning, and due to the persistent public health threat posed by the COVID-19, and the level of community spread, the Board elected at the beginning of the 2020-2021 academic year to begin the year with distance learning; and

WHEREAS, in or about June 2020, the California Department of Education (“**CDE**”) released “Stronger Together: A Guidebook for the Safe Reopening of California’s Public Schools”, and on February 26, 2021, the Center for Disease Control (“**CDC**”) released its “Operational Strategy for K-12 Schools Through Phased Mitigation” (“**CDC Guidelines**”) (collectively “**School Opening Guidance**”), both of which provide guidelines for the safe reopening of public schools during the COVID-19 Pandemic; and

WHEREAS, in addition to the School Opening Guidance, the State of California, the State Board of Education, the State Superintendent of Schools, the County, and the CDC, are all continuing to monitor the impact of COVID-19 and are continuing to issue orders, and establish social distancing requirements, guidelines, and recommendations that will impact how the District will educate its students (“**COVID-19 School Guidelines**”) during full-time in-class learning beginning August 24, 2021; and

WHEREAS, the District re-opened District schools on March 22, 2021, for a hybrid learning model, and the District currently anticipates that it will return to full-time in-person learning for students for the 2021-2022 academic year; and

WHEREAS, Article I, Section 28, of the California Constitution declares that “all students and staff of public, primary, elementary, junior high, and senior high school ... have the inalienable right to attend campuses which are safe, secure and peaceful;” and

WHEREAS, Public Contract Code Section 20111 requires a school district to competitively bid a contract for the purchase of equipment, materials, supplies, services, repairs, and routine maintenance, exceeding \$96,700, or construction services exceeding \$15,000; and

WHEREAS, the District anticipates that there will be a significant increase in students attending District schools for the 2021-2022 academic year, and in order to comply with the School Opening Guidelines and COVID-19 School Guidelines, and any other federal or California guidance that may be released thereafter, to make District campuses safe for District students and faculty, and given the uncertainties arising from COVID-19, the District will have to make purchases of equipment and supplies to accommodate social distancing for District students and staff, and to accommodate a sharp influx of District students, including, without limitation, the purchase of kitchen and related equipment as a result of thousands of students taking advantage of federally supported free lunch programs; and

WHEREAS, the above-referenced purchases will exceed the bid limits set forth in Public Contract Code section 20111; and

WHEREAS, if the District is unable to expeditiously purchase materials and supplies without public bidding, the District may not be able to provide safe educational environments to District students in compliance with the School Opening Guidance and COVID-19 School Guidelines, which poses a significant risk that the District will be unable to safely and fully open schools for all students to in-person learning for the 2021-2022 academic year; and

WHEREAS, the District has opted to comply and be subject to the California Uniform Public Construction Cost Accounting Act (Public Contract Code, § 22000 et seq.) (the “**Act**”); and

WHEREAS, an exception to sections 20111 and the Act exists that allows the District, “[i]n cases of emergency when repair or replacements are necessary...[to] proceed at once to replace or repair any public facility...without... notice of bids to let contracts” (Pub. Con. Code § 22035(a)), “pursuant to a four-fifths vote of its governing body,” and permitting the District to “take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, **without giving notice for bids to let contracts**” (Pub. Con. Code § 22050(a)(1), emphasis added); and

WHEREAS, an emergency is 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 (Public Contract Code § 1102), including the continuance of existing school classes (Public Contract Code § 20113); and

WHEREAS, Public Contract Code section 22050 requires the following steps be taken for the District to take action in an emergency situation:

- (1) Pursuant to a four-fifths (4/5) vote of the Board, the District may take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, **without giving notice for bids to let contracts**;

- (2) Before taking any action pursuant to paragraph (1), the Board shall make a finding, based on substantial evidence set forth in the minutes of its meeting, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency;
- (3) The Board, by a four-fifths (4/5) vote, may delegate the District Superintendent and/or the Assistant Superintendent of Business Services, the authority to order any action pursuant to paragraph (1);
- (4) If a person with authority delegated pursuant to paragraph (3) orders any action specified in paragraph (1), that person shall report to the Board, at its next meeting required pursuant to this section, the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency;
- (5) If the Board orders any action specified above, the Board shall review the emergency action at its next regularly scheduled meeting and, except as specified below, at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths (4/5) vote, that there is a need to continue the action. If the Board meets weekly, it may review the emergency action in accordance with this paragraph every 14 days;
- (6) If a person with delegated authority orders any action specified in paragraph (1), the Board shall initially review the emergency action not later than seven days after the action, or at its next regularly scheduled meeting if that meeting will occur no later than 14 days after the action, and at least at every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths (4/5) vote, that there is a need to continue the action, unless a person with delegated authority has terminated that action prior to the Board reviewing the emergency action and making a determination pursuant to this subdivision. If the Board meets weekly, it may, after the initial review, review the emergency action in accordance with this paragraph every 14 days;
- (7) When the Board reviews the emergency action, it shall terminate the action at the earliest possible date that conditions warrant so that the remainder of the emergency action may be completed by giving notice for bids to let contracts; and

WHEREAS, Education Code section 35161 permits the Board to delegate to an officer or employee of the District any of the Board's powers and duties, and the Board desires to delegate to the District Superintendent or Assistant Superintendent of Business Services certain powers and duties to address the COVID-19 pandemic as it relates to the reopening of District schools;

NOW THEREFORE, the Governing Board of the Livermore Joint Unified School District hereby finds, determines, declares, orders, and resolves as follows:

Section 1. That the foregoing recitals are true.

Section 2. That the circumstances described in the Resolution require entering into contracts for and /or making purchases of services, equipment, materials and/or supplies and taking other required actions as needed in order to improve the District's facilities to mitigate the effects of COVID-19 and allow the District to safely, fully, and effectively open schools for in-person learning for the 2021-2022 academic year, and that those circumstances constitute an emergency condition ("**Emergency**"); and

Section 3. These services and purchases include any necessary purchases that the District requires to safely and fully open District schools for the 2021-2022 academic year, comply with the School Opening Guidance and

COVID-19 School Guidelines, and to ensure the orderly and efficient operation of District programs in light of issues arising from COVID-19.

Section 4. The circumstances of the Emergency necessitate that required contracts and other actions related to the Emergency be let without a competitive solicitation for bids to respond to the Emergency; and

Section 5. That the District’s Superintendent or Assistant Superintendent of Business Services is authorized to execute contracts or amendments and take other required actions, as appropriate and as necessary with firms to perform work related to the Emergency, without further advertising for or inviting of bids, and to take all steps and perform all actions necessary to execute and implement those contracts, amendments or other actions; and

Section 6. That all contracts with firms to perform work related to the Emergency for which performance has already begun are hereby ratified and the District’s Superintendent or Assistant Superintendent of Business Services is authorized to execute amendments, as appropriate and as necessary, and to take all steps and perform all actions necessary to execute and implement those contracts; and

Section 7. That District staff report on the status of this Emergency to the District’s Board at the Board’s next regularly scheduled Board meeting and at all subsequent regularly scheduled Board meetings until the Board terminates the Emergency action.

BE IT FURTHER RESOLVED, that the District’s Superintendent or Assistant Superintendent of Business Services is authorized pursuant to this Resolution to take any action which is necessary to carry out, give effect to, and comply with the terms and intent of this Resolution.

PASSED AND ADOPTED by the Governing Board of the Livermore Valley Joint Unified School District on this 15th day of June, 2021, by the following vote:

AYES: Bueno_____ Guzmán _____ Prusso_____ Wang_____ White_____

NOES: Bueno_____ Guzmán _____ Prusso_____ Wang_____ White_____

ABSTENTIONS: Bueno_____ Guzmán _____ Prusso_____ Wang_____ White_____

ABSENT: Bueno_____ Guzmán _____ Prusso_____ Wang_____ White_____

Clerk of the Board of Education
Livermore Valley Joint Unified School District of Alameda County
and Contra Costa County, State of California