

# METROPOLITAN EDUCATION DISTRICT

## Governing Board Meeting Minutes January 31, 2011

### I. CALL TO ORDER/ROLL CALL

The meeting of the Governing Board of the Metropolitan Education District was called to order by President Canova at 7:00 p.m., in the CCOC Auditorium, San Jose, California. Althea Polanski was asked to call roll of the Governing Board and she noted all members were present.

Frank Biehl	East Side Union High School District
Jim Canova	Santa Clara Unified School District
Cynthia Chang	Los Gatos-Saratoga Union High School District
Richard Garcia	San Jose Unified School District
Diane Gordon	Campbell Union High School District
Daniel Bobay	Milpitas Unified School District

### II. DISCLOSURE OF CLOSED SESSION DISCUSSION ITEMS

President Canova read the closed session item which is exempt under the Ralph M. Brown Act prior to asking for public comments.

- A. Conference with Legal Counsel-Anticipated Litigation-Significant exposure to litigation pursuant to subdivision (b) of Government Code Section 54956.9, one case.

### III. PUBLIC COMMENTS REGARDING CLOSED SESSION ITEMS

President Canova read the disclosure of how members of the public may address the Board prior to asking if there were any requests to speak. President Canova noted there were no requests to speak at this time.

### IV. ADJOURN TO CLOSED SESSION

President Canova adjourned the meeting to closed session at 7:05 PM to CCOC Room 810.

### V. RECONVENE FROM CLOSED SESSION

President Canova reconvened the special meeting of the Governing Board at 8:00 PM in the CCOC Auditorium.

### VI. REPORT OF CLOSED SESSION ACTIONS

President Canova reported there was no action to report from closed session.

### VII. PLEDGE OF ALLEGIANCE

President Canova asked Member Frank Biehl to lead the Pledge of Allegiance.

### VIII. ADOPT AGENDA

**MOTION:** It was moved to adopt the agenda of the special meeting. M/Chang, S/Biehl; Vote: 5 Ayes, 0 Noes, 1 Absent (Gordon)

Member Gordon returned to the dais at 8:05 PM.

## **IX. PUBLIC COMMENTS**

President Canova read the disclosure of how members of the public may address the Board prior to asking if there were any requests to speak on any subject not on the agenda. President Canova noted there were no requests to speak under public comments.

## **X. ACTION ITEM**

### **1. Action Item: Hearing and Possible Action Regarding and Relating to Appeal of Rejected Bid Protest for Health Career Center**

Superintendent Hay: He introduced the item. At its August 18, 2010 meeting, the Governing Board approved a Call for Bids for the CCOC building 200 Health Careers Center. The Call for Bids was advertised in the San Jose Mercury News on December 8 and December 15, 2010. Sixteen contractors submitted bids on January 13, 2011. Of the bids submitted, S&H Construction's bid was incomplete and withdrawn. D. L. Falk's bid was incomplete and disqualified. On January 19, 2011, the MetroED Board awarded the bid to Eternal Construction as the lowest responsible bidder. On January 18, 2011, Trident Builders filed protest of the bids submitted by Eternal Construction and D.L. Falk Construction, claiming the bids were non-responsive and, therefore, should be disqualified, leaving Trident as the lowest bidder.

The item before the Board this evening is to consider the appeal from Trident Builders of the bid award to Eternal Construction for modernization of CCOC building 200. He asked if Mr. Hsu from Trident Builders was present and he asked Mr. Hsu if he minded coming up to the podium as he had a couple of clarifying questions for you to get us focused on how to proceed.

We understand that you feel that some of the license numbers listed in Eternal Construction's bid were not accurate but do you agree that Eternal Construction at least listed a license number, even though it might not have been accurate, for each subcontractor that was listed?

Mr. Hsu: I suppose so, yes.

Superintendent Hay: OK, thank you. Was the basis of Trident Builders' bid protest and appeal - your allegation that the subcontractors' names or license numbers listed in Eternal Construction's bid were inaccurate?

Mr. Hsu: That was one of the allegations.

Superintendent Hay: OK, then do you agree that the alleged inaccuracies in the subcontractors' names and license numbers cannot be determined from a review of the bid itself, from just looking at the bid document?

Mr. Hsu: I would agree with that.

Superintendent Hay: OK, thank you very much. Those were the only clarifying questions I had of Mr. Hsu. (Mr. Hsu left the podium.) Due to the issue on appeal being one of inaccuracy of information provided in the bid, the analysis is actually one of bidder responsibility, not responsiveness of the bid. The alleged inaccuracies cannot be determined from a review of the bid itself, therefore they are issues of responsibility under California law, including the case of *Great West Contractors v. Irvine Unified School District*. A responsible bidder is one who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the project, based on Public Contract Code 1103.

So at this point, it is a matter of going through the actual hearing process.

President Canova: We will begin with Trident Builders who will have up to 10 minutes to make their case as to why they feel Eternal Construction was not a responsible bidder under Public Contract Code 1103. So we do have 10 minutes and I believe our Clerk will be keeping the time.

Clerk Bobay: He said he was ready whenever they were ready to proceed.

Superintendent Hay: He asked if the Board President could go through the process the Governing Board would be going through this evening for the parties involved.

President Canova: He went through procedures a through g.

- a. Trident Builders has up to 10 minutes to argue why it feels that Eternal Construction is not a responsible bidder under Public Contract Code §1103.
- b. Eternal Construction may respond for up to 10 minutes on the issue of whether it is a responsible bidder.
- c. District staff may address the Board on the issue of whether Eternal Construction is a responsible bidder and there is no time limit on staff.
- d. Trident Builders may rebut for up to 5 minutes and then it will be followed by
- e. Eternal Construction which may also rebut for up to 5 minutes, and then finally,
- f. District staff may rebut with no time limit.
- g. That brings it to Board discussion.

President Canova: The hearing begins with Trident Builders.

Mr. Hsu: Good evening, my name is Walter Hsu. I am the President and owner of Trident Builders, Inc. I would like to start out by thanking the Board for taking the time to hear our appeal. I know that this is a special meeting of the Board and required extra effort on your part to make this possible. First, I have distributed an informational packet that I will be referring to during the course of my presentation. These are actually excerpts of rules and regulations that bear on tonight's issues. I think everyone received a copy. At the heart of our bid protest is a fairly straight forward concept. In order to legally represent oneself as a contractor in the State of California and conduct business as a contractor one must first be licensed by the state. In the recent bid for the Health Careers Center project, we filed a protest alleging that three of the names for the contractors contained in the bid from Eternal did not possess valid contractor licenses. Now this should be a simple issue of fact. Every licensed contractor is issued a certificate which he must post in his main office and a pocket license as evidence of licenseship.

Pursuant to section 7075 of the license law, exhibit 1 in your packet, one must produce this evidence of license on demand. I have with me the two pocket licenses, one in the name of Walter Hsu, currently inactive, and the other in the name of Trident Builders, Inc. which I have if anyone is interested in seeing what one looks like (showed license). The license is issued in the exact name of the entity authorized to conduct business as a contractor.

Exhibit 2 in your packet shows the first page of the application form for a license.

President Canova: Mr. Hsu, is it alright if we take a look at, you said it would be OK to look at that if we like (pocket license). Could we pass that down, it might be helpful? Thank you.

Mr. Hsu: Exhibit 2 in your packet shows the first page of the application form for a license, where under business name, one is required to provide the actual name under which he will conduct business. The reason for this is readily apparent. You can imagine that if this were not the case, after getting my license, Walter Hsu, I could turnaround the next day and start soliciting carpeting installation work under the name Home Depot. Were something to go wrong, everyone would be pointing fingers at Home Depot as the culprit, leaving my license unscathed.

So what is happening in our specific situation? When confronted with the allegation that three of the names of their subcontractors were unlicensed, did Eternal Construction simply produce copies of their license in the matter. The simple answer is no because none of three actually possess a valid license. Instead, we were provided with the following explanations. HQC Electric acknowledged that they did not possess a valid license but stated they were in the process of getting one by having the name on the license that Hong Liu Cai possessed changed to HQC Electric. They produced no evidence that they, HQC Electric, is entitled to conduct business as a contractor on the date of the bid and the CSLB web site still reflects the license in the name of Hong Liu Cai as of today.

Exhibit 3 in your packet, it states the process for changing one's business name beginning with the requirement that one formally do so. The response from Architectural Millworks was more troubling. It demonstrated a complete lack of understanding licensing requirements. They claimed that Architectural Millworks was a registered DBA of JMA Construction, Inc. with the City of San Francisco and that JMA Construction, Inc. possesses a valid contractor's license. All of which is apparently true. Unfortunately, with respect to contractor licensing requirements, this is not enough and JMA Construction, Inc. must register Architectural Millworks as their DBA with the California State License Board to have a valid license to operate as Architectural Millworks. Moreover, if Architectural Millworks is in fact the DBA for JMA Construction, Inc. then it could not also be the DBA for JMA Construction, no Inc. At the same, which is the name of the license associated with the company with the license number provided by Eternal on their subcontractor list? I know this sounds a bit confusing but this is what happens when someone starts playing fast and loose with the law. The bottom line is that there is no contractor entitled to do business in the State of California under the name of Architectural Millworks which was the listed name by Eternal and DBAs are irrelevant for licensing purposes unless formally registered with California State Licensing Board.

The explanation offered by Consolidated Services is actually technically correct but only from his point of view. As material supplier, he is not required to possess a contractor's license. The installer of materials supplied by Consolidated is the one to possess a contractor's license. However, our complaint is not against Consolidated but Eternal. Eternal listed Consolidated and by so doing represented him as a contractor performing the work when in fact he does not possess a license. Now, one could make the argument that these are simply clerical errors, not worthy of disqualifying the bid for Eternal, maybe so, if this were the case, however, the law actually provided a remedy. A bidder may request a correction of a clerical error within a 48-hour period following submission of one's bid and there is a process by which a special request may be granted. However, since no such request was timely made, Eternal cannot, now, claim a clerical error and request relief on that basis. Instead, realizing that they had missed their opportunity to claim clerical error, Eternal is left with asking the District to essentially waive the subcontractor listing law and allow the substitution of licensed entities for their unlicensed ones. There is no legal basis for the District to grant this request. The only mechanism for any change other than clerical error is only available after entering into a contract which the District is legally barred from doing with unlicensed contractors, may I refer you to our exhibits 4 and 5. As such Eternal's bid must stand as submitted on bid day; no promises of future corrective action that might be taken by Eternal may be considered in the award process.

Lastly, our original protest was denied on the grounds that violations did not provide a material advantage to Eternal and, therefore, waivable by the district. This is hardly the case. The named subcontractors comprised approximately 35% of the value of the work on this project. There is an obvious advantage to Eternal where they can simply not pay these unlicensed contractors for their work, or any portion of their work, for example retention, which they would be legally entitled to do. In conclusion, we suspect that you are going to hear a lot of hemming and hawing from Eternal that their listed subcontractors were DBAs using fictitious business names and were, therefore, sort of, kind of licensed. Don't be fooled. Simply ask them to show you their licenses. Alternatively, they will suggest that if you simply look the other way, and allow them to substitute licensed contractors for their unlicensed contractors, everything

will be OK. While this may solve the problem with the violations of the license law, it would be doing so by violating the subcontractor listing law instead. How is this better? We suggest that the District put an end to this nonsense and do the right thing by disqualifying the bid submitted by Eternal as both nonresponsive for failure to provide complete and accurate license information and non-responsible for utilizing unlicensed subcontractors. This will set the precedent from this point going forward that this is a no nonsense District that will enforce the public bidding rule and guarantee the integrity of the process. We respectfully request you uphold our appeal in this matter. Finally, as the lowest responsible, responsive bidder, we request that Trident Builders be awarded this contract. Thank you again for your consideration. If I have time left can I open it up for questions?

Clerk Bobay: You have 54 seconds.

Mr. Hsu: If anyone has questions, I would be happy to answer them.

President Canova: He asked if the Board had any questions. Do you have any more comments?

Mr. Hsu: Not at this time.

President Canova: Now it will take us to Eternal Construction which now has 10 minutes to make their presentation.

Jack Ng: I am the Vice President and Secretary of Eternal Construction and our bid package has three license numbers in question. One is a C10 license, # 865889, in the name of Cai, Hong Liu and apparently he submitted a name change to CSLB to change the name to HQC Electric company and so we, I mean 865889 is the number we intend to use. It is a C10 electrical contractor license. Another contractor license number #743286 belongs to JMA Construction Company.

President Canova: Let me interject here to make the point that you need to respond to the issue of, if you are a responsible bidder here. So, just don't lose sight of the fact that you need to address that.

Mr. Ng: The bid package, we did list #743286 as the contract license for JMA Construction. It is an active B general contractor license. It has a DBA certificate. It is in the City and County of San Francisco. The JMA Construction DBA is Architectural Millwork. Architectural Millwork is the manufacturer of the cabinets for the project and JMA Construction is the installer of those cabinets for the project. The last contractor license number in question, #562690, belongs to K&M Installation and they are the installer of lockers provided by Consolidated Services Inc. So Consolidated Services Inc. is basically the distributor of the lockers for the project and K&M Installation is the installing unit and both JMA Construction and HQC Electric, their owners came to a meeting on January 25 to clarify the license number. They are the ones who are the RMO of the license and they are the one who provided the bid to Eternal Construction. On January 26, we had a conference call with Consolidated Services and they also verified that they are the provider of lockers for the project and K&M Installation is their installing unit. So, in all three licenses in question, all three license numbers are active, properly classified. Whether the names might have some uncertainties at the time of the bid and we were able to verify them with the RMO on site and conference call, verified by the Metropolitan Education District. He said that is his story for the protest.

President Canova: He asked if there were any questions from the Board and if those were all of your comments. I believe you have extra time, what is our time?

Clerk Canova: Five minutes and twenty seconds.

President Canova: There is quite a bit of time.

Mr. Ng: That is all my comments.

President Canova: If that is all your comments, OK, thank you. That brings us to District staff. District staff may now address the Board whether Eternal Construction is a responsible bidder.

Dan Gilbertson: My name is Dan Gilbertson. I am Chief Business Official at the Metropolitan Education District. As staff, we believe the Metropolitan Education District responded quickly and appropriately to the protest submitted January 18, 2011 by Mr. Walter Hsu, President of Trident Builders and the issues raised in that letter were thoroughly researched and investigated. The research and investigation was coordinated by Mr. Mark Bartos, Bartos associates at Bartos Architecture which is the Board approved architect for the Metropolitan Education District and who also serves as construction manager for its construction projects. Throughout this process, District staff was directly involved. District staff included Superintendent Paul Hay, Assistant Principal Tom Mullin, Executive Assistant Sandy Smith, and I who attended the construction meeting on January 26, 2011 conducted by Mark Bartos for two of the subcontractors mentioned in the protest were personally here. Sandy Smith and I were included in the conference call the following day with the third subcontractor involved. We have kept up with every aspect of the process. Staff has reviewed the research conducted by Bartos Architecture and the references provided. We find no reason to think that Eternal Construction is not a capable and trustworthy bidder. I think at this point it is important to turn the podium over to our architect, Mr. Bartos, who will explain in more detail on the investigatory process.

Mark Bartos: I want to start by actually saying thank you to both Mr. Hsu and Eternal, Jack Ng, for your professionalism in how you have addressed all of these issues. I think to the issue is to focus on responsibility. Is that correct?

President Canova: Yes.

Mr. Bartos: I want to start by saying that the essence of the subcontractor listing laws, I am not an attorney, is to ensure that bid shopping doesn't occur and so our research is has been essentially one of things that we want to make sure that bid shopping wasn't occurring, would not occur. What that is and Mr. Sandberg you can amplify if necessary or add to my explanation. A bid comes in to the school district and the subcontractors are listed and what we want to make sure that doesn't happen with public funds is that a bidder, the winning bidder, says this is great, I won the bid, and I want to go talk to a couple other subcontractors for this work and get a lower price. So I am going to use this subcontractor instead of that subcontractor. So what he does with the money is takes it and puts it in his pocket but doesn't share that with the school district. Thus, the public has sort of been taken in a sense. So that is the essence of what we are talking about in terms of why we ask for the name and location of the subcontractor. So, to cut to the chase, in terms of our research, we don't see any evidence of that being intent or having occurred or any plan of that to occur in the future. So what we did in terms of a process to make sure we were very careful. We had an interview with Eternal and we asked that their subcontractors be present, the ones that are in question, and they met with us over a span of two days because the first day Consolidated wasn't available. The first day we had HQC and Cai Hong Liu, the owner of HQC was present and Architectural Millworks and JMA. This is probably beyond the level of responsibility, back to responsiveness, to be very quick about it. It's very clear that the entities that submitted the bids are the entities that are going to be doing the work. It is also very clear that there couldn't be, one couldn't question whether or not there is intent to say shop between JMA and Architectural Millworks. It is very clear that our understanding is that they are essentially the same entity and JMA will be out on site installing the case work that is manufactured by Architectural Millworks. In terms of HQC and Cai Hong Liu, yes, there is this question about the DBA, however, it is clear that Cai Hong Liu owns the company that listed their license number and is going to be doing the electrical work.

President Canova: Could you make me clear on this DBA issue, are we talking about the difference between a sole proprietorship and a corporation?

Mr. Bartos: No, it is just the name of the company. Well, maybe, I think the attorney should speak to that but essentially a DBA was submitted to the California Licensing Board and that was filled out in early January.

President Canova: To me it suggests that it is a sole proprietorship because you are doing business as.

Mr. Bartos: That may be the case.

President Canova: And it is typically a fictitious name if you filed with the county, am I correct?

Arne Sandberg: A corporation can also do business under a DBA. So it could be a sole proprietorship and in the case of Mr. Cai, I think he was a sole proprietor. Is that right or is he a corporation?

Mr. Bartos: Can they answer the question.

Mr. Sandberg: Actually, they will have a rebuttal in a little bit. Either way, whether it is a sole proprietorship or a corporation can do business under a different name and that is the name you hold out to the public as you try to get their business, etc.

President Canova: So you can file a fictitious business name doing business as.

Mr. Sandberg: I believe so. In fact, I think that is the case with Architectural Millwork. JMA is a corporation but they are doing business part of the time as Architectural Millwork. Is that correct?

Mr. Bartos: Yes and they have two license numbers. We want to focus on responsibility. Let's talk about Consolidated and K&M for a moment. We talked to them the next day. In terms of responsibility, the intent of having this discussion with Eternal and their subcontractors, we had district staff, my staff was there, and in terms of responsibility, we asked very hard questions of Eternal and we wanted to make sure there was no intent to shop for bids, these guys intended to do business, the guys who submitted the bids were the people who were going to be doing the work. Consolidated we interviewed the next day just because they were not available and that was via telephone. I think Dan Gilbertson and Sandy Smith were on the other end of the line. To look at it again in terms of responsibility, Consolidated is a representative of, a manufacturer's rep for lockers. They don't actually have to have a license, they manufacture something. The scope of their work is about \$10,000 which is really close to half a percent which is when you would have to list a contractor. K&M are the installers. K&M, if they are on site, have to be licensed. K&M has a license. So K&M, the company that will be on site installing this manufactured item, are licensed. If it is an inaccuracy or an error, or whatever you may call it, they listed Consolidated, the manufacturer or the manufacturer's rep. They put down the license number for K&M. Well, one could interpret that as being overly cautious because Consolidated wouldn't have had a license but K&M does and they are the entity that is actually going to be doing the work. I think the same is probably for the other one; you can look at this in terms of that the case work being done, the cabinetry, which is being manufactured. The installation will be done by JMA, we were told. That company is licensed again. That was the license number provided.

In terms of responsibility again, what we did is we took Mr. Hsu's concerns very seriously and we would have done this anyway, we asked for references.

Clerk Bobay: The timer went off and he said his time is up.

Vice President Chang: She said there is no time limit for staff.

President Canova: He concurred and stated staff had no time limit.

Mr. Bartos: What we did is we had a post-bid interview because the District has the option of rebidding always and if you interview the company and feel uncomfortable with them, you don't have to go forward, you can rebid the project. So we had a post-bid interview with Eternal and we asked them very serious questions about their qualifications and we checked their references. We checked references with San Francisco State and San Francisco Unified School District and both references, we talked to two people at San Francisco Unified and one individual at San Francisco State, and I am not trying to support anyone by any means, but the answers were excellent. They were, one entity said they walk on water and another entity said they are our favorite contractor and the other one, the comment was that they are the best contractor they have ever worked with. Now I can't, I don't have any experience with Eternal, I can only go on based on what the references say. So, in terms of responsibility, it looked like they were a responsible contractor. He asked if there were any questions.

President Canova: So the next opportunity we have here is for Trident Builders. They may rebut for up to five minutes.

Mr. Hsu: I am a little confused by some of the comments made here tonight and I am going to try and tackle them. With all due respect to Mark Bartos, the architect, the practice of bid shopping is much more insidious than the sort of simplistic description he provided. He says he interviewed the contractor and afterwards everyone says that everything is hunky dory when we are not being shopped and we are prepared to do the work. The reality is, is that, if you think about it, first of all the reason that the subcontractor listing form is there is, it is supposed to be an iron clad bid by the general contractor to use a specific contractor to perform the work so that you can't engage in bid shopping after the fact. Emphasis on iron clad. I mean, when you give the guy's name you commit to using that person. The issue of licenses actually is a little bit secondary because most subcontractors listing forms don't even ask you for a license number. OK, in this particular case Mr. Bartos included a requirement for license numbers and actually went to the trouble of issuing an addendum, a statement to the effect that if you don't provide complete and accurate license information, your bid will automatically be deemed non-responsive. Somehow in this process, that statement has been totally ignored. I don't understand how. Back to the issue of bid shopping, if the face of your subcontractor listing form is ambiguous, it makes it a little difficult for that iron clad commitment to use that particular subcontractor, no matter, and I don't think you are allowed to take assurances from the bidder after the fact, actually. That's what I meant or that's not what I meant. The form itself has to speak for itself. So, in this particular case, we are told HQC Electric, well, under the laws of California, HQC Electric doesn't exist. How is that an iron clad commitment to use anyone? If, I as a general contractor, had done what he did, and I come back to you later on and say well, we just realized that HQC is not licensed so we are going to have to substitute somebody else for HQC Electric, you, the District, would have no choice but to say, well you are not allowed to use unlicensed contractors so I guess we are going to have to agree to your subcontractor substitution. Who do you think you want to use? So, what's to prevent him from doing that tomorrow, substituting, shopping, HQC's bid to some other contractor? There's no contract in place, there's a commitment to use HQC. HQC claims that he realizes he is not properly licensed and oh the license is any change we put in for didn't come through in time, so we have to do something else and go start shopping tomorrow for a better bid. There's nothing to stop him from doing that. That is in direct contravention to the principle of a subcontractor listing law. The face of this document is absolutely unclear; he listed a name and a license number. These are not the same. You are not allowed to submit a public bid with ambiguous information. So, on its face, the document is not correct whether you define that legally as non-responsive without further research or not, I don't know, I am not a lawyer. All I know is what is on the face of the document is not correct. It is in direct contravention with the law.

The second point I would like to make is there seems to be some ignoring of the fact that there isn't a proper license in place. I can pretty much guarantee and I think you guys are actually obligated to check with the California State License Board this matter. I doubt seriously that they are going to take this issue as lightly as what I have heard here today. If you go to the California State License Board, again like you are required to do by law, and you ask the question, is there a license for HQC Electric in place today, or actually in place on the date of the bid, I think it was January 14, they are going to give you the answer no. I don't know how you guys are going to ignore that fact because it is against the law to award the contract to Eternal when they are, on the face, proposing to use an unlicensed contractor. So, I don't know how much time I have left but I think that basically sums up my most important points.

President Canova: The next opportunity we have is for Eternal Construction to rebut for up to five minutes.

Mr. Ng: I just want to extend that when a sole proprietor applies for a name change with the Contractors State License Board, the license number does not change. So, if Cai Hong Liu with the license number 865889 changes to HQC Electric Company, as long as the entity is a sole proprietorship, the license number is still the same. When a sole proprietorship changes the entity to a corporation, the license number does change.

President Canova: That makes sense because a sole proprietorship is an individual doing a business as, while a corporation is a group of people, is that correct? So that is why the number would change. It would be a separate entity.

Mr. Ng: Once we enter contracts with the contractor, we have no control if the contractor wants to change to a different name but we would care if that license was active and is a properly classified license capable of doing the work that the contractor agrees to do. That is all I have. Thank you.

Superintendent Hay: Question, when you say properly classified, what do you mean? What does that mean?

Mr. Ng: An electrical contractor with a C10 license to do electrical work. That is the proper classification. If a plumbing contractor with a C33 license is considered a proper license.

President Canova: The next opportunity we have here is for District staff to rebut with no time limit.

Dan Gilbertson: Are there District staff members that would like to make comments at this time? Mr. Bartos.

Mr. Bartos: One other thing that we utilize in our office in terms of this research that we do and have done in this case, we have a consultant-attorney, Cheri Love, who gives advice when necessary to us in terms legal issues such as this and we looked into this issue of, this goes back to responsiveness I suppose and I don't know if this really matters in terms of this discussion but since it has been brought up, the form for the name change for HQC, from Cai Hung to HQC, was filled out on January 4. This is what we received from Eternal and according to our legal consultant; the name change becomes effective when that application is received by the Contracting License Board. This being put in the mail on January 4, none of us can know exactly the date it was put in the mail, but I think it is fair to make the assumption that by the date the bids were due and received on January 13, this application would have been received by the state licensing board and the other point that we would like to make about this is that that state's web site is not going to be constantly up to date. So to find out if that form was received by the state on the 13<sup>th</sup>, I suppose you could do some additional research on it but I think that the other comment along these lines in terms of bid shopping is that I believe, the District has legal recourse in the case where they find that Eternal does shop out bids. Again, if they come and decide to change from HQC to a different entity, or any

of these contractors to a different entity, there is a clear process outlined in the law for them to request and you have to have reasons for why this has occurred. They would have to request that through the District, the District has to agree to changing out the contract and if it turns out that a different entity is actually out on site doing the work, other than the licensed entity, I think the District would then definitely take legal action against Eternal if they found that to be the case. So, I think that is all I have to share with you.

Dan Gilbertson: Superintendent Hay would you like to make any comments at this time?

Superintendent Hay: Not at this time.

Dan Gilbertson: Mr. Sandberg.

Arne Sandberg: No.

Dan Gilbertson: There are no further comments from staff.

President Canova: No questions from the Board.

Superintendent Hay: If there are none, I would recommend the Board adjourn to closed session to consider the information they have received, the testimony.

President Canova: Would the Board like to adjourn to closed session?

Member Biehl: I would like to adjourn to closed session and I would assume that we would be able to make a decision there and come back and report. Is that what our intent would be?

President Canova: Yes, the Board will adjourn to closed session

President Canova adjourned to closed session in CCOC Room 810 at 8:46 PM.

President Canova reconvened the special meeting in the CCOC Auditorium at 9:30 PM.

President Canova: First of all, he would like to thank the representatives from both Eternal Construction and Trident Builders for being here and for your professionalism. It is a really difficult issue and we really appreciate the input from both parties very much and of course we appreciate the information staff has provided us as well. At this time I would like to call for a motion from the Board.

**MOTION:** Vice President Chang moved that based on the evidence presented, the Board finds that the bid protest by Trident Builders concerned the accuracy of information provided in the Eternal Construction bid; the Board finds that the issue in this bid protest was one of the responsibility, not responsiveness, based in part on the recent case of *Great West Contractors v. Irvine Unified School District*; and the Board finds that Eternal Construction was, and is, a responsible bidder under Public Contract Code 1103; and Trident Builders' appeal of the rejection of its bid protest is denied; and Eternal Construction may proceed with the project. M/Chang, S/Biehl; Vote: 6 Ayes, 0 No, 0 Abstain; Motion passed unanimously.

President Canova: He asked Superintendent Hay if he had any comments.

Superintendent Hay: I would just like to thank the Board for the process. It is very important that we honor the process and the Board, at very short notice, made yourselves available to make sure that the process was followed and it is very much appreciated. It made it a little easier on us at the staff level as we try to make sure that everything was done properly. I thank Bartos for the work that you have done on this as we have moved forward and also Eternal and Trident. This has been a difficult process but it has been a process and it has been fair and I think everybody has had an opportunity to be heard and present their cases.

Vice President Chang: She just wanted to wish everyone a happy Chinese New Year. It is coming up on February the 3<sup>rd</sup>, the year of the rabbit.

**XI. OTHER MEETINGS**

February 16, 2011 will be the next regular meeting of the Governing Board beginning at 6:00 PM for closed session and 7:00 PM for open session.

**XII. ADJOURNMENT**

President Canova said seeing there was no further business on the agenda; he adjourned the meeting at 9:35 p.m.

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Daniel Bobay, Clerk of the Board