

**RESOLUTION NO. 16/17-36**

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE  
MT. DIABLO UNIFIED SCHOOL DISTRICT  
WAIVING FURTHER FORMAL BIDDING REQUIREMENTS  
FOR SUPPLEMENTAL STUDENT TRANSPORTATION SERVICES**

**WHEREAS**, the Mt. Diablo Unified School District (“District”) solicited bids under Education Code section 39802 for Supplemental Student Transportation Services, RFP No. 1768, on October 11, 2016 and January 10, 2017; and

**WHEREAS**, the District received no responsive bids pursuant to the competitive bidding procedures set forth in the Education and Public Contracts Code; and

**WHEREAS**, despite a good faith effort, the District was not able to procure a long term contract for said services through formal bidding; and

**WHEREAS**, the District staff has determined that further compliance with the procedures set forth in Education Code section 39802 and Public Contracts Code section 20111 will not produce any responsive bids for a long term agreement; and

**WHEREAS**, in the case of *Kennedy v. Ross* (1946) 28 Cal.2d 569, 581, the California Supreme Court stated: “It has been held that where competitive proposals work an incongruity and are unavailing as affecting the final result, or where they do not produce any advantage or it is practically impossible to obtain what is required and observe such forms, a statute requiring competitive bidding does not apply.” (See also *Cobb v. Pasadena City Bd. of Educ.* (1955) 134 Cal. App.2d 93, 95.); and

**WHEREAS**, a waiver of further formal bidding will further the ability of the district to meet the educational needs of students of the District on a timely basis.

**NOW THEREFORE**, be it resolved by the Governing Board of the Mt. Diablo Unified District as follows:

1. That the above recitals are true and correct.
2. That the Board hereby waives further formal bidding procedures under Education Code section 39802 and Public Contract Code section 20111 for this fiscal year 2016-17 and fiscal year 2017-18.
3. That the waiver will promote efficiency and benefit the public by allowing the District to select the most qualified entity that is the best fit for the necessary supplemental student transportation services and to negotiate short-term agreements for service by invoice and purchase order on a case-by-case basis using on informal bids. Specifically, this Resolution would waive the Education Code imposed requirement of formal bidding with which the District has already complied twice. To comply a third time would likely result in another unsuccessful bid process. The continued application of these Education Code requirements would dramatically

limit the District's ability to find a suitable supplemental student transportation services on a timely basis.

4. That the waiver will not substantially increase costs and, in fact, will allow the District greater flexibility in negotiating a successful agreement with an entity for the supplemental student transportation services.

5. That the waiver will further the ability of the District to meet the educational needs of students of the District on a timely basis.

**APPROVED, PASSED AND ADOPTED** by the Governing Board of the Mt. Diablo Unified School District on this 27<sup>th</sup> day of March, 2017, by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTENTIONS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

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Debra Mason  
President of the Governing Board of the  
Mt. Diablo Unified School District

Attested to:

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Nellie Meyer, Ed.D  
Clerk of the Governing Board of the  
Mt. Diablo Unified School District