

RESOLUTION NO. 2009-04

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT
APPROVING AWARD OF SOLE SOURCE CONTRACT
TO HIGH DESERT UNDERGROUND FOR
CROSS DISTRICT / DEL ROSA PROJECT**

WHEREAS, the Phelan Pinon Hills Community Services District (“District”) is a Community Services District organized and operating pursuant to California Government Code Section 61000 et seq.;

WHEREAS, the District is subject to Public Contracts Code Section 20682.5(b), which provides that “[a]ll contracts for the construction of completion of any building, structure, or improvement, when the cost exceeds ... \$25,000 ..., shall be contracted for and let to the lowest responsible bidder after notice”;

WHEREAS, it is well-settled that exceptions to the competitive bidding requirement exist in the event that the specific facts and circumstances surrounding the particular work is such that the services sought for the proposed project are unique to a single contractor and the public agency must use such specialized services for efficient and effective completion thereof [see, e.g., Hiller v. City of Los Angeles (1962) 197 Cal. App. 2d 685, 17 Cal. Rptr. 579], or that engaging in the process would be undesirable or impracticable as a matter of public interest because a delay would result that would operate to undermine the public benefits to be gained by the proposed project [see, e.g., Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal. App. 3d 631, 164 Cal. Rptr. 56];

WHEREAS, on July 23, 2008, the District’s Board of Directors (“Board”) adopted Purchasing Policies and Procedures for the District (“the Purchasing Policy”) which established bidding and contract procedures as part of the District’s Rules and Regulations so as to provide guidance and direction to the District’s staff in obtaining outside services for projects initiated by the District;

WHEREAS, Section 5 of the Purchasing Policy provides that the District must comply with the competitive bidding requirements of Public Contracts Code Section 20682.5 with respect to the construction of completion of any building, structure, or improvement when the cost exceeds \$25,000;

WHEREAS, pursuant to legally-recognized exceptions to competitive bidding requirements, Section 6(D)(4) of the Purchasing Policy provides that the District may procure services on a negotiated basis “when competitive bidding would fail to produce an advantage and/or when the advertisement for Competitive Bidding would be undesirable, impractical, or impossible”;

WHEREAS, pursuant to legally recognized exceptions to competitive bidding requirements, Section 6(D)(3) of the Purchasing Policy also provides that the District may procure services on a negotiated basis for any project in which a “Sole Source Contractor” has been designated;

WHEREAS, for purposes of Section 6(D)(3) of the Purchasing Policy, the term “Sole Source Contractor” is defined in Section 2(O) thereof as “a contractor or consultant that has been evaluated to provide unique or specialized Services or Supplies that cannot be obtained from other contractors or consultants,” which designation must be approved by the Board;

WHEREAS, the facts and circumstances of the proposed installation of a 12” east-west transmission pipeline along Del Rosa Road from Reservoir 2-A to Eaby Road connected to Reservoir 2-C (“the Cross District / Del Rosa Project”), as described in the staff report attached hereto and incorporated herein (“the Staff Report”), supports a determination by the District’s Board of Directors that imposing a formal competitive bidding requirement for the construction of the proposed Cross District / Del Rosa Project would be undesirable or impracticable because the process could not be satisfactorily completed prior to the beginning of summer when water demands within the District are the most extreme, which demands would potentially be met or mitigated by installation and operation of the proposed Cross District / Del Rosa Project; and

WHEREAS, as further described in the Staff Report, High Desert Underground possesses unique background and knowledge of the District's water supply system and existing infrastructure that would be impacted and utilized in connection with the proposed Cross District / Del Rosa Project, and High Desert Underground has performed all prior pipeline installation and repair services for the District in a timely manner and with high-quality workmanship that has been accepted by both the District and other local governmental agencies possessing regulatory oversight.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Phelan Pinon Hills Community Services District that, based upon the unique facts and circumstances described in the Staff Report and other evidence presented to the Board, the Board hereby finds and determines that expedited construction of the Cross District / Del Rosa Project is exempt from any otherwise-applicable formal competitive bidding requirement pursuant to Section 6(D)(4) of the Purchasing Policy because compliance therewith would be undesirable and impracticable as a matter of public interest since engaging in the process would cause a delay that would result in the Cross District / Del Rosa Project not achieving satisfactory completion prior to the heavy water demands of the upcoming summer months..

BE IT FURTHER RESOLVED by the Board of Directors of Phelan Pinon Hills Community Services District that the Board hereby finds and determines that High Desert Underground be designated as a sole source contractor for the Cross District / Del Rosa Project pursuant to Section 6(D)(3) of the Purchasing Policy. The Board reserves the right to withdraw this designation in its entirety, or to suspend this designation on a project-by-project basis, in the exercise of its sole discretion.

BE IT FURTHER RESOLVED that the District's Board of Directors hereby approves construction of the Cross District / Del Rosa Project, and authorizes the award of a contract for the construction thereof to High Desert Underground for a price not to exceed \$644,600.00, based upon the recommendations of the District's General Manager in the Staff Report, as well as the oral and written statements presented to, and considered by, the District's Board of Directors prior to adoption of this Resolution.

ADOPTED this 28th day of January, 2009.

AYES: *Morrisette, Anderson, Johnson, Roberts, Fahrlander*

NOES:

ABSTAIN:

ABSENT:



President, Board of Directors

ATTEST:



Secretary, Board of Directors