

Board Office Use: Legislative File Info.	
File ID Number	16-1891
Introduction Date	9-14-16
Enactment Number	16-1506
Enactment Date	9-14-16 <i>ef</i>



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Michael Smith, Deputy General Counsel
Andrea Epps, Staff Attorney

Board Meeting Date August 24, 2016

Subject **Professional Services Contract**

Action Requested Approval by the Board of Education of a professional services contract between the District and Dr. Bruce Gale, Ph.D for the latter to conduct an independent educational evaluation and attend an individualized education program meeting.

Background A complaint was filed with the Office for Civil Rights ("OCR") that alleged a special education student who was placed at a non-public school was subjected to numerous prone restraints of varying durations and was also secluded. District met with OCR's attorneys to finalize a resolution agreement to resolve the matter. The Agreement to resolve United States Department of Education OCR Case No. 09-14-1465 was adopted by Board Resolution 1516-0221.

Discussion The resolution agreement required the District to fund an independent educational evaluation ("IEE") focusing on the impact of the use of restraint and seclusion. This IEE will enable the District to comply with the Agreement to resolve United States Department of Education OCR Case No. 09-14-1465 which was adopted by Board Resolution 1516-0221.

Recommendation **Approval by the Board of Education of the Professional Services Contract.**

Fiscal Impact Not to exceed \$12,181.25 for the costs associated with conducting a specialized IEE.

Attachments

- **Professional Services Contract**



CONTRACT JUSTIFICATION FORM

**This Form Shall Be Submitted to the Board Office
With *Every* Consent Agenda Contract.**

Legislative File ID No. 16-1891

Department: General Counsel

Vendor Name: Dr. Bruce Gale, PhD

Contract Term: Start Date: August 17, 2016 End Date: December 31, 2016

Annual Cost: \$ 12,181.25

Approved by: General Counsel

Is Vendor a local Oakland business? Yes No

Why was this Vendor selected?

This vendor specializes in providing the services needed for the District to resolve a complaint filed with the Office for Civil Rights (Board Resolution 1516-0221; OCR Case No. 09-14-1465).

Summarize the services this Vendor will be providing.

Dr. Bruce Gale will conduct an independent psycho-educational evaluation ("IEE") focusing on the impact of the use of restraint and seclusion on a student eligible for special education and related services.

Was this contract competitively bid? Yes No

If No, answer the following:

1) How did you determine the price is competitive?

2) Please check the competitive bid exception relied upon:

- Educational Materials**
- Special Services** contracts for financial, economic, accounting, legal or administrative services
- CUPCCAA exception** (Uniform Public Construction Cost Accounting Act)
- Professional Service Agreements** of less than \$87,800 (increases a small amount on January 1 of each year)
- Construction related Professional Services** such as Architects, DSA Inspectors, Environmental Consultants and Construction Managers (require a "fair, competitive selection process)
- Energy** conservation and alternative energy supply (e.g., solar, energy conservation, co-generation and alternate energy supply sources)
- Emergency** contracts [requires Board resolution declaring an emergency]
- Technology** contracts
 - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$87,800 bid limit, must be competitively advertised, but any one of the three lowest responsible bidders may be selected
 - contracts for computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus, including E-Rate solicitations, may be procured through an RFP process instead of a competitive, lowest price bid process
 - Western States Contracting Alliance Contracts (WSCA)
 - California Multiple Award Schedule Contracts (CMAS) [contracts are often used for the purchase of information technology and software]
- "Piggyback" Contracts** with other governmental entities
- Perishable Food**
- Sole Source**
- Change Order for Material and Supplies** if the cost agreed upon in writing does not exceed ten percent of the original contract price
- Other, please provide specific exception**

PROFESSIONAL SERVICES AGREEMENT

This Agreement is a contract for services made and entered into this 17th day of August, 2016, by and between **Oakland Unified School District** ("DISTRICT") and **Dr. Bruce Gale** ("CONSULTANT"). The DISTRICT agrees to contract for the below services and costs from the CONSULTANT.

TERM

The term of this Agreement shall be from August 17, 2016 through December 31, 2016, inclusive. It is understood the DISTRICT is under no obligation to renew this Agreement upon its expiration.

SERVICES AND RESPONSIBILITIES

During the term of this Agreement, the services to be provided by the CONSULTANT to the DISTRICT shall include an independent psychoeducational evaluation ("IEE") focusing on the impact of the use of restraint and seclusion on a student eligible for special education and related services; and attendance at an individualized education program team meeting to discuss the results and recommendations based upon the IEE. CONSULTANT shall review pertinent student records, conduct observations, administer assessments, author an assessment report, and provide recommendations regarding services and programming. The foregoing services shall be completed no later than November 1, 2016.

CONSULTANT shall perform all services under this Agreement in accordance with all applicable Federal, State and local laws, rules, and regulations, as well as the established policy guidance from the DISTRICT.

CONSULTANT shall observe and comply with all applicable DISTRICT Policies and Regulations while on the grounds of the DISTRICT or providing services under this Agreement.

CONDITIONS

CONSULTANT will be engaged as an Independent Contractor. Neither CONSULTANT nor any of its employees, or assigns will be eligible for any employee benefits from the DISTRICT.

CONSULTANT and its agents, personnel, employees, and/or subcontractors shall maintain the confidentiality of all information received in the course of performing the services pursuant to the Agreement. CONSULTANT and its agents, personnel, employees, and/or subcontractors shall maintain records in accordance with all applicable federal and state laws and regulations and agree that records relating to individual pupils provided by the District are subject to the Family Educational Rights and Privacy Act ("FERPA"). Such records shall be confidential to the extent required by FERPA, 20 U.S.C. § 1232g; 34 C.F.R. Part 99; and California Education Code §§ 49060, et seq.; and other state and federal law. This requirement to maintain confidentiality shall extend beyond the termination of the Agreement. CONSULTANT

and its agents, personnel, employees, and/or subcontractors will be permitted access to student data only where permissible under state and federal law.

It is expressly understood that this Agreement shall not be assigned or transferred without prior written consent of the other party.

If any of the provisions of this Agreement are not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages will be difficult to determine. The Parties shall be entitled to specific performance of the terms hereof and injunctive relief, in addition to any other remedy at law or equity.

CONSULTANT agrees to defend, hold harmless, and indemnify the District and its directors, officers, employees, and agents against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including any direct, indirect or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including without limitation, attorneys' fees) for injury or death to persons or entities, including employees of School District, caused by the negligence, wrongful act or omission of, or violation of law by CONSULTANT in the performance of the Agreement. CONSULTANT's duty to defend, indemnify and hold harmless District under this Agreement shall not extend to loss, liability, damage, claim, costs, charges, demands, or expenses resulting from District's negligence or willful misconduct. This entire provision shall extend beyond the termination of the Agreement.

This Agreement, and any Amendment(s), will not be in effect until agreed to in writing and signed by both Parties and approved by the Board of Education.

SERVICE DATES AND COMPENSATION

Compensation to include all travel expenses shall not exceed \$12,181.25.

The CONSULTANT shall submit invoices for payment after the completion of services.

The DISTRICT shall pay CONSULTANT within forty five (45) days of receipt of the invoice. Said invoice shall include the services provided, dates, and total amount due for the specified period.

TERMINATION

The CONSULTANT's services shall be at the will of the DISTRICT. The DISTRICT may terminate this Agreement at any time prior to the end of the term with a thirty (30) day written notice.

In the event the DISTRICT terminates this Agreement with or without cause, such termination of the Agreement shall not discharge the parties' existing obligations to each other as of the effective date of termination.

ENTIRE AGREEMENT

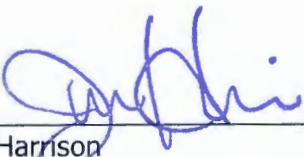
This Agreement is the complete and exclusive statement of the Agreement between the parties, and supersedes all prior, oral or written agreements, proposals, understandings, representations, conditions or covenants between the Parties relating to the subject matter of the Agreement. This Agreement may not be amended in any way except by a writing duly executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed, such parties acting by their representatives being thereunto duly authorized.

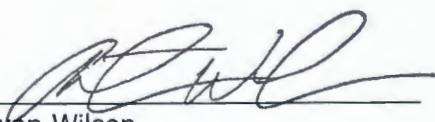
DR. Bruce Gale, PhD

By Bruce Gale, PhD
8/17/16

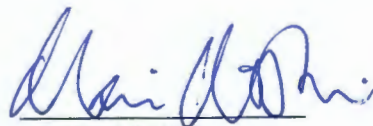
OAKLAND UNIFIED SCHOOL DISTRICT



James Harrison
President, Board of Education
Oakland Unified School District



Antwan Wilson
Superintendent and Secretary, Board of Education
Oakland Unified School District



Marion McWilliams
General Counsel

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