

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	17-0271
Introduction Date	3/22/17
Enactment Number	17-0348
Enactment Date	3/22/17 <i>or</i>



# Memo

To Board of Education

From Vernon Hal, Senior Business Officer *VEH*  
Susan Beltz, Chief Technology Officer

Board Meeting Date February 22, 2017

Subject **E-rate Consultation Services Agreement**

Action Requested **Ratification by the Board of Education of the E-rate Consultation Services Agreement with Rick Del Valle aka RDV Consulting Services of Oakland**

Background and Discussion The District retains an E-rate consultant to support the E-rate process, including preparing all E-rate forms, serving as the first point of contact on all E-rate reviews, preparing appeals, if needed, and coordinating with suppliers on contract and billing issues. The current E-rate consultant has worked with the District since June 2014 under a contract that expired on June 30, 2016. The contract being ratified is for the period from July 1, 2016 to September 30, 2018. The District has issued an RFP for E-rate consulting services. Under the RFP the District will make a decision in the spring of 2017 for services to commence October 2018. The delay allows for a transition, completion of E-rate 20 cycle (the current E-rate cycle) and aligns the contract with the federal fiscal year.

Recommendation **Ratification by the Board of Education of the E-rate Consultation Services Agreement with Rick Del Valle aka RDV Consulting Services of Oakland**

Fiscal Impact Not to exceed \$65,000

Attachments

- Agreement



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

**Legislative File ID No.** 17-0271

**Department:** Technology Services

**Vendor Name:** RDV Consulting Services of Oakland

**Contract Term:** Start Date: 7/1/16 End Date: 9/30/18

**Annual Cost:** \$ 70,000

**Approved by:** Vernon Hal

**Is Vendor a local Oakland business?** Yes  No

**Why was this Vendor selected?**

RDV Consulting has been the e-rate consultant for the district for the last 2 years and has executed well. The principal, Rick Del Valle, has over 30 years experience working at AT&T and deeply understands their billing practices. He estimates he can get \$200,000 to over \$1Million in reimbursements from AT&T.

**Summarize the services this Vendor will be providing.**

Vendor will provide E-rate services: Submission of documentation and funding of e-rate discounts, writing/revising the RFP, evaluating vendor responses as well as Form 470/471 activities.

**Was this contract competitively bid?** Yes  No

If No, answer the following:

1) How did you determine the price is competitive?

No. The pricing reaps many times the cost in cash back to the district. See below.

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 \$86,000 (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
- Technology** contracts
  - electronic data-processing systems, supporting software and/or services (including copiers/printers) over the \$86,000 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**

## **E-Rate Consultation Services Agreement**

This Agreement is made between **Oakland Unified School District** ("Client") with a principal place of business at 1000 Broadway, Ste 680, Oakland, CA, 94607 and **Henry (Rick) Del Valle aka RDV Consulting Services** ("Consultant"), with a principal place of business at 7800 Crest Avenue, Oakland, CA 94605.

### **1. Services to be Performed**

Consultant agrees to perform the services described in Exhibit A, which is attached to this Agreement. Client agrees to provide information as described in Exhibit B, which is also attached to this Agreement.

### **2. Payment**

A. In consideration for the services to be performed by Consultant, Client agrees to pay Consultant **\$55,000.00** per year for E-Rate activities performed in support of submission of documentation and funding of E-Rate discounts for Client. This includes E-Rate Funding Years 2017-2018.

B. Activities performed in support of Category Two applications, including developing technical specifications, writing or revising the RFP, and evaluating vendor responses, as well as Form 470/471 activities, shall be billed at the additional amount of **\$10,000.00**. Consultant's total compensation shall not exceed **\$65,000.00** upon completion, without Client's written consent.

Client understands that a majority of the work (and payment to the Consultant) is during the fiscal years previous to the Years in which the discounts are applied for.

### **3. Terms of Payment**

Consultant shall be paid **\$25,000.00** within 45 days of the approval of this Agreement by the OUSD Board of Education and the remaining amount due when Consultant completes the services and submits an invoice. Completion of SLD Form 486, and SLD notification of acceptance, shall be considered as successful completion of Consultant services. Client shall pay Consultant within 45 days from the date of Consultant's invoice.

### **4. Expenses**

Consultant shall be responsible for all travel and lodging expenses incurred while performing services under this Agreement, except as previously approved by Client.

## **5. Materials**

Consultant will furnish all materials, equipment, and supplies used to provide the services required by this Agreement. Client shall provide any data related to client needs, qualifications for E-Rate services and discounts, and other related materials as needed by Consultant, in a timely manner to ensure compliance with FCC and SLD guidelines and critical activity dates.

## **6. Intellectual Property Ownership**

Consultant assigns to Client all patent, copyright, and trade secret rights in anything created or developed by Consultant for Client under this Agreement. This assignment is conditioned upon full payment of the compensation due Consultant under this Agreement. Consultant shall help prepare any documents Client considers necessary to secure any copyright, patent, or other intellectual property rights at no charge to Client. However, Client shall reimburse Consultant for reasonable out-of-pocket expenses.

## **7. Consultant's Reusable Materials**

Consultant owns or holds a license to use and sublicense various materials in existence before the start date of this Agreement ("Consultant's Materials"). Consultant's Materials include, but are not limited to, those items that may be identified in Exhibit C, if attached to and made part of this Agreement. Consultant may, at its option, include Consultant's Materials in the work performed under this Agreement. Consultant retains all right, title and interest, including all copyrights, patent rights and trade secret rights in Consultant's Materials. Consultant grants Client a royalty-free nonexclusive license to use any of Consultant's Materials incorporated into the work performed by Consultant under this Agreement. The license shall have a perpetual term and may not be transferred by Client.

## **8. Term of Agreement**

The term of this agreement is July 1, 2016 to September 30, 2018. This agreement will become effective when signed by both parties and will terminate on the earlier of:

- the date Consultant completes the services required by this Agreement
- or
- the date a party terminates the Agreement as provided below.
- 

## **9. Terminating the Agreement**

Either party may terminate this Agreement by giving 60 days prior written notice to the other Party. Either Party may terminate this Agreement effective immediately by giving written notice in the event of:

- a material violation of this Agreement, or
- nonpayment of Consultant's compensation after 20 days written demand for payment.

Consultant shall be entitled to full payment for services performed prior to the effective

date of termination.

## **10. Independent Contractor Status**

Consultant is an independent contractor, not Client's employee. Consultant's employees or subcontractors are not Client's employees. Consultant and Client agree to the following rights consistent with an independent contractor relationship.

Consultant has the right to perform similar services for others during the term of this Agreement.

Consultant has the sole right to control and direct the means, manner, and method by which the services required by this Agreement will be performed.

Consultant has the right to hire assistants as subcontractors or to use employees at Consultant's own cost to provide the services required by this Agreement.

Client shall not require Consultant or Consultant's employees or subcontractors to devote full time to performing the services required by this Agreement.

Neither Consultant nor Consultant's employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of Client.

## **11. Local, State, and Federal Taxes**

Consultant shall pay all income taxes and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. Client will not:

- withhold FICA from Consultant's payments or make FICA payments on Consultant's behalf
- make state or federal unemployment compensation contributions on Consultant's behalf, or
- withhold state or federal income tax from Consultant's payments.

The charges included here do not include taxes. If Consultant is required to pay any federal, state, or local sales, use, property, or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to Client. Client shall be responsible for paying any interest or penalties incurred due to late payment or nonpayment of any taxes by Client.

## **12. Exclusive Agreement**

This is the entire Agreement between Consultant and Client.

## **13. Modifying the Agreement**

Client and Consultant recognize that:

- Consultant's original cost and time estimates may be too low due to unforeseen events or to factors unknown to Consultant when this Agreement was made
- Client may desire a mid-project change in Consultant's services that would add time and cost to the project and possibly inconvenience Consultant, or

- other provisions of this Agreement may be difficult to carry out due to unforeseen circumstances.

If any intended changes or any other events beyond the parties' control require adjustments to this Agreement, the parties shall make a good faith effort to agree on all necessary particulars. Such agreements shall be put in writing, signed by the parties, and added to this Agreement.

**4. Indemnification.** Consultant shall indemnify and save harmless the District and its officers, State Trustee, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Consultant or loss of or damage to property, arising directly or indirectly from Consultant's performance of this Agreement, except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the District and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Consultant, its agents or employees.

## **5. Insurance**

Without in any way limiting Consultant's liability pursuant to the "Indemnification" section of this Agreement, throughout the term of the Agreement, Consultant shall pay for and maintain in full force and effect with an insurance company(s) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than A-, VIII or higher in Best Insurance Rating Guide, the following policies of insurance:

Comprehensive Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limits for bodily injury and property damage, including coverage for owned and non-owned and hired auto coverage, as applicable; and

Comprehensive General Liability Insurance with limits not less than one million dollars (\$1,000,000) for each occurrence, combined single limit for bodily injury and property damage, including contractual liability, personal injury, products and completed operations coverages.

Professional Liability Insurance with limit not less than one million dollars (\$1,000,000) each claim, with a deductible of not greater than one hundred thousand dollars (\$100,000) per claim, covering legal malpractice arising from any services provided under this Agreement.

Except for Professional Liability Insurance, all liability policies that this Section requires Consultant to maintain shall provide for the following: (i) name as additional insureds the District, the School Board, the State Trustee, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance

available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought.

Within thirty (30) days of approval of this Agreement, Consultant shall deliver to the General Counsel a certificate of insurance for each required policy with insurers and additional insured policy endorsements for the comprehensive general liability insurance and comprehensive automobile liability insurance. Each policy and certificate shall provide that no cancellation, major change in coverage or expiration shall become effective or occur until at least thirty (30) days after receipt of written notice by the General Consultant.

The above policies of insurance shall be written on forms acceptable to the Risk Manager of the OUSD and endorsed to name the Oakland Unified School District, its officers, employees, volunteers or agents, as additional insured. Said Additional Insured endorsement shall be provided to the Oakland Unified School District prior to the agreement based on this RFP becoming valid. If at any time said policies of insurance lapse or become canceled, this agreement shall become void. The acceptance by OUSD of the above-required insurance does not serve to limit the liability or responsibility of the insurer or Consultant to OUSD.

#### **14. Resolving Disputes**

If a dispute arises under this Agreement, any party may take the matter to court. If any court action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which the party may be entitled.

#### **15. No Special Damages**

NEITHER PARTY TO THIS AGREEMENT SHALL BE LIABLE FOR THE OTHER'S LOST PROFITS OR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE PARTY HAS BEEN ADVISED BY THE OTHER PARTY OF THE POSSIBILITY OF SUCH DAMAGES.

#### **16. Notices**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- when delivered personally to the recipient's address as stated on this Agreement
- three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated on this Agreement, or
- when sent by fax or electronic mail, such notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt.



**17. No Partnership**

This Agreement does not create a partnership relationship. Neither party has authority to enter into contracts on the other's behalf.

**18. Applicable Law**

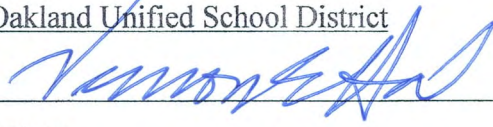
This Agreement will be governed by the laws of the state of California.

**19. Assignment and Delegation**

Either Consultant or Client may assign its rights or may delegate its duties under this Agreement.

**Signatures**

**Client:** Oakland Unified School District

By: 

Signature

Typed or Printed Name: Vernon Hal

Title: Senior Business Officer

Date: 2/3/2017

**Consultant:** RDV Consulting Services

By: 

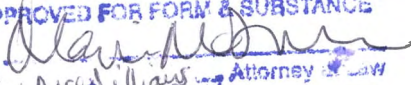
Signature

Typed or Printed Name: Henry Del Valle

Title: Owner

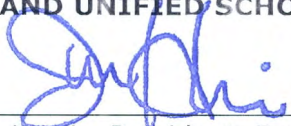
Taxpayer ID Number: 20-3871858


Date: 2/1/2017

OAKLAND UNIFIED SCHOOL DISTRICT  
Office of General Counsel  
APPROVED FOR FORM & SUBSTANCE  
By:   
Marion Neal, Attorney at Law

**ACCEPTED AND AGREED** on the date indicated below:

**OAKLAND UNIFIED SCHOOL DISTRICT**

  
\_\_\_\_\_ 3/23/17  
James Harris, President, Board of Education

  
\_\_\_\_\_ 3/23/17  
Dr. Devin Dillon, PhD, Board Secretary and Interim Superintendent

Blank Page

## Exhibit A

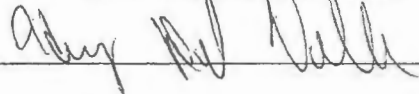
### Attachment to Agreement for E-Rate Consultation Services For Oakland Unified School District

Services to be provided by Consultant:

1. Collect data from Client and apply for E-Rate funding for Funding Years 2017-2018, 2018-2019, and 2019-2020
2. File SLD Form 470(s) on behalf of client by December 31 of each year (2016-2018)
  - a. Include specifications for voice, data, and networking requirements.
  - b. Assist Client personnel in evaluating vendor responses.
  - c. Work with Client to negotiate contracts with vendors to ensure compliance with E-Rate guidelines.
  - d. Collect and save data to comply with SLD guidelines for audit purposes.
3. Collect data on Free and Reduced Lunch Program Eligibility of students within Client organization
4. File SLD Form 471 and related items by February-March XX, of each year (2017-2019) (**dates pending School's & Library Division notification**)
  - a. Collect data from vendors as appropriate.
  - b. Determine discounts and funding amounts to be requested from E-Rate funds.
  - c. Ensure that Form 471 is accepted and approved by SLD.
  - d. Respond to any PIA audits from SLD in a timely manner, and ensure that responses are accurate and accepted by SLD.
5. File SLD Form 486 within 120 day window as defined by SLD
  - a. Ensure filing done within 120 days after Funding Commitment Decision Letter (FCDL) received by Client.
6. Ensure that vendor documentation (i.e. Grids and/or Signature Pages) are filled out and returned in a timely manner so as not to lose any funding as approved by SLD.
7. Ensure that SLD Forms, such as BEAR Forms (Form 472), are filled out and submitted to vendors for E-Rate reimbursements to Client.
8. Once all the above has been completed, work with Client to determine that the project has been completed and that final payment will be made to Consultant within 30 days of the agreed-to completion date.
9. Consultant will also provide help with auditing year-end activities, by providing

spreadsheets showing expenses, credits, and debits, related to E-Rate activities for each year of the contract.

**Consultant:** RDV Consulting Services

By: 

Signature

Typed or Printed Name: Henry Del Valle

Title: Owner

Date: 2/1/2017

**Exhibit B**

Attachment to Agreement for E-Rate Consultation Services

For Oakland Unified School District

In support of Consultant, Client will agree to the following:

1. Provide Consultant with data on Free and Reduced Lunch Program Eligibility of students within Client organization, in a timely manner, as soon as possible after the October report is provided to the State of California, for years 2016-2018.
2. Provide Consultant with copies of vendor Long Distance bills and/or cell phone bills in a timely manner for Form 471 Expense estimation, and for processing of discounts (Form 472-BEAR). Also, the client will provide copies of bills on a monthly basis that Consultant does not have access to using an online billing system.
3. Respond to Consultant requests for information relevant to USAC/SLD PIA audits, PQA payment audits, and/or Selective Review Audits, within a 7 day timeframe, when possible.
4. Client will maintain an E-Rate binder, or electronic copies, every year, per USAC guidelines, for audit purposes, and Consultant will provide originals or copies of documents as needed for the binder.
5. Client will provide a Purchase Order and any other required documents, so that Consultant can bill for services in a timely manner.

**Client:** Oakland Unified School District

By: \_\_\_\_\_

Signature

Typed or Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ACCOUNT NAME:

Contract # 810-5054932-002

Date Created: 02/21/2017

Commencement Date:

Invoice #	Due Date	Description	Amount
78005460	8/1/2015		\$ 27,359.98
78147761	8/16/2015		\$ 334.91
	4/1/2016		\$ 22,327.36
78907637	4/1/2017		\$ 22,327.36
			\$ 72,349.61

Check #	Rcvd Date	Amount Posted
50607617	9/24/2015	\$ 27,359.98
50639151	12/27/2015	\$ 27,694.89
		\$ 55,054.87

Billed Items	\$ 72,349.61
Less Payments	\$ 55,054.87
Due	\$ 17,294.74

ACCOUNT NAME:

Contract # 810-5054932-001

Date Created: 02/21/2017

Commencement Date:

Invoice #	Due Date	Description	Amount
77592351	12/1/2014		\$ 69,847.81
77700890	12/16/2014		\$ 613.15
77855672	5/1/2015		\$ 40,876.36
78004762	5/16/2015		\$ 613.15
78426939	5/1/2016		\$ 40,876.36
78517461	5/16/2016		\$ 613.15
			\$ 153,439.98

Check #	Rcvd Date	Amount Posted
50558787	4/26/2015	\$ 69,847.81
50540781	3/16/2015	\$ 613.15
50560964	6/19/2015	\$ 40,876.36
50607617	9/24/2015	\$ 613.15
50781756	5/27/2016	\$ 4,478.20
50784457	6/14/2016	\$ 37,011.31
		\$ 153,439.98

Billed Items	\$ 153,439.98
Less Payments	\$ 153,439.98
Due	\$ -



ACCOUNT NAME:

Contract # 810-5054932-003

Invoice #	Due Date	Description	Amount
78426940	5/1/2016		\$ 121,148.44
78605985	9/1/2016		\$ 97,373.10
78693652	9/16/2016		\$ 1,460.60
			\$ 219,982.14

Date Created: 02/21/2017

Commencement Date:

Check #	Rcvd Date	Amount Posted
50784457	6/14/2016	\$ 3,865.05
50786461	6/27/2016	\$ 19,910.29
50716947	5/14/2016	\$ 97,373.10
50787418	11/10/2016	\$ 98,833.70
		\$ 219,982.14

Billed Items	\$	219,982.14
Less Payments	\$	219,982.14
Due	\$	-

ACCOUNT NAME:

Contract # 810-5054932-004

Invoice #	Due Date	Description	Amount
78474759	2/1/2016		\$ -
78798931	6/1/2016		\$ 61,463.74
78818179	2/1/2017		\$ 50,510.87
	2/16/2017		\$ 757.66
			\$ 112,732.27

Date Created: 02/21/2017

Commencement Date:

Check #	Rcvd Date	Amount Posted
50847579	1/27/2017	\$ 61,463.74
		\$ 61,463.74

Billed Items	\$ 112,732.27
Less Payments	\$ 61,463.74
Due	\$ 51,268.53

ACCOUNT NAME:

Contract # 810-5054932-005

Date Created: 02/21/2017

Commencement Date:

Invoice #	Due Date	Description	Amount
78562339	8/1/2016		\$ 49,750.55
78861461	3/1/2017		\$ 42,397.69
			\$ 92,148.24

Check #	Rcvd Date	Amount Posted
50786461	6/27/2016	\$ 3,865.05
50804765	8/23/2016	\$ 3,486.85
WRITEOFF	2/1/2017	\$ 0.96
50802724	7/10/2016	\$ 42,397.69
		\$ 49,750.55

Billed Items	\$ 92,148.24
Less Payments	\$ 49,750.55
Due	\$ 42,397.69