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OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education

From Jacqueline Minor, General Counsel

Board Meeting Date April 27, 2016

Subject **AGREEMENT WITH LEADERSHIP ASSOCIATES TO CONDUCT GENERAL COUNSEL SEARCH**

Action Requested **Ratification of Agreement with LEADERSHIP ASSOCIATES To Conduct General Counsel Search**

Background and Discussion The Board is engaging LEADERSHIP ASSOCIATES of La Quinta, California, an executive search firm to conduct the General Counsel search. The term is from April 1, 2016 to December 30, 2016, in an amount not to exceed \$19,500 plus expenses not to exceed \$2500

Recommendation **Ratification of Agreement with LEADERSHIP ASSOCIATES To Conduct General Counsel Search**

Fiscal Impact Funding resource name: GP \$19,500 plus expenses not to exceed \$2500

Attachments • Agreement



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

Legislative File ID No. 16-0874

Department: Legal

Vendor Name: Leadership Associates

Contract Term: Start Date: 4-1-2016 End Date: 12-30-2016

Annual Cost: \$ 19,500.00+2500.00 max

Approved by: Vice President Nina Senn

Is Vendor a local Oakland business? Yes ☐ No ☒

Why was this Vendor selected?

Leadership Associates specializes in conducting executive searches and has assisted school boards in California in their selection of superintendents and other executives.

Summarize the services this Vendor will be providing.

This vendor will conduct the search for the District's General Counsel.

Was this contract competitively bid? Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

Price same as search for Deputy Chief, Facilities.

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**

AGREEMENT
BETWEEN THE
OAKLAND UNIFIED SCHOOL DISTRICT
AND
LEADERSHIP ASSOCIATES, EXECUTIVE SEARCH FIRM

This Agreement is entered into between the Oakland Unified School District ("District" or "OUSD") and **LEADERSHIP ASSOCIATES** of La Quinta, California, an executive search firm to conduct the General Counsel search on behalf of the District. The parties agree as follows:

1. Term. **LEADERSHIP ASSOCIATES** shall commence work immediately upon both Parties' execution of this Agreement. The work shall be completed no later than December 30, 2016, unless the District terminates this Agreement as provided below. The Agreement may be extended by mutual agreement of the Parties.

2. Fees and Expenses.

2.1 The District agrees to pay **LEADERSHIP ASSOCIATES** \$19,500 plus expenses not to exceed \$2500 for the services provided. Payment shall be in two (2) installments: 1) \$9,750 upon close of applications, and 2) \$9,750 plus expenses upon selection of the finalist. Leadership Associates shall submit invoices to the District for each of the installments. Payments are due within 30 days of receipt of the invoice.

2.2 All invoices for fees and expenses shall be emailed or personally delivered during normal business hours or sent by U.S. Mail to:

Jacqueline P. Minor, General Counsel
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607-4099
jacqueline.minor@ousd.org

3. Candidates' Expenses. **LEADERSHIP ASSOCIATES** agrees that the District shall not be liable for the expenses of a candidate without the District's express prior written approval.

4. Services. **LEADERSHIP ASSOCIATES** agrees to provide the following services as provided in Attachment A.

5. Confidentiality. **LEADERSHIP ASSOCIATES** will preserve the confidential nature of any information that becomes available to it, including that information which is obtained during the closed session of the Board.

6. Termination. The District may terminate this Agreement at any time with 30 days prior written notice to **LEADERSHIP ASSOCIATES**. In the event the District terminates this Agreement prior to the selection of a new General Counsel, the District agrees to pay **LEADERSHIP ASSOCIATES** for services satisfactorily provided and expenses reasonably incurred through the date of the termination.

7. Satisfaction Guaranteed. If the Board and Superintendent are dissatisfied with the within twelve months from the date of employment of the General Counsel, and if the Board of Education and the Superintendent have not changed, and the employment of the General

Counsel is terminated, by resignation or termination within the first twelve month period of the initial employment, **LEADERSHIP ASSOCIATES** will conduct a new General Counsel search at no cost to the District, except for expenses, and in accordance with all other terms set forth herein.

8. MISCELLANEOUS PROVISIONS

- a. Laws Governing Contract.** This contract shall be in accordance with the laws of the State of California. The parties stipulate that this contract was entered into in the County of Alameda, in the State of California. The parties further stipulate that the County of Alameda, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from. All claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to, the initiation of any adjudicative action or proceeding, including arbitration. The Parties further agree that the final resolution of any dispute in the event mediation is not successful shall be by binding arbitration.
- b. Time.** Time is of the essence of this Contract.
- c. Severability.** If any provisions, or portions of any provisions, of this contract are held invalid, illegal, or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.
- d. Assignment.** The Agreement shall not be assigned without the prior written consent of the District.
- e. Status As Independent Contractor.** This is not an employment contract. **LEADERSHIP ASSOCIATES**, in the performance of this Agreement, shall be and act as an independent Contractor. **LEADERSHIP ASSOCIATES** understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. **LEADERSHIP ASSOCIATES** shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to **LEADERSHIP ASSOCIATES'** employees. In the performance of the work herein contemplated, **LEADERSHIP ASSOCIATES** is an independent Contractor or business entity, with the sole authority for controlling and directing the performance of the details of the work, OUSD being interested only in the results obtained.
- f. Insurance.**

 - i.** Unless specifically waived by OUSD, the following insurance is required:

If **LEADERSHIP ASSOCIATES** employs any person to perform work in connection with this Agreement, **LEADERSHIP ASSOCIATES** shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws when applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) per accident or disease.

- ii. **LEADERSHIP ASSOCIATES** shall maintain Commercial General Liability insurance, including automobile coverage with limits of One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured. Evidence of insurance must be attached. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against **LEADERSHIP ASSOCIATES**. The policy shall protect **LEADERSHIP ASSOCIATES** and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.
- iii. **LEADERSHIP ASSOCIATES** shall maintain errors and omissions insurance or professional liability insurance with coverage limits of One Million (\$1,000,000) per claim.
- g. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against anyone engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, **LEADERSHIP ASSOCIATES** agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and OUSD policy. In addition, **LEADERSHIP ASSOCIATES** agrees to require like compliance by all its subcontractors. **LEADERSHIP ASSOCIATES** shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex or sexual orientation.
- h. **Indemnification.** **LEADERSHIP ASSOCIATES** agrees to hold harmless, indemnify, and defend the District and its officers, agents and employees from any and all claims or losses resulting from injury, damage, or death of any person, firm or corporation in connection with the performance of this Agreement. **LEADERSHIP ASSOCIATES** also agrees to hold harmless, indemnify and defend the District and its elective Board, officers, agents and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor, furnishing work, services or materials to **LEADERSHIP ASSOCIATES** in connection with the performance of this Agreement. The District shall indemnify and defend **LEADERSHIP ASSOCIATES** from third-party claims or losses that are brought as a result of the services performed under this Agreement, and which are determined by a court of competent jurisdiction to have been caused by the sole negligence or willful misconduct of the District and its officers, agents and employees. This provision survives the termination of this Agreement.
- i. **Assignment.** The obligations of **LEADERSHIP ASSOCIATES** under this Agreement shall not be assigned without the express prior written consent of the District.
- j. **Waiver.** No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of the Agreement.
- k. **Integration/Entire Agreement of Parties.** This Agreement and Attachment A constitute the entire agreement between the parties and supersedes all prior

discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.

I. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary

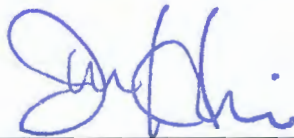
Exclusion: The District certifies to the best of its knowledge and belief, that it and its officials: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List.

<https://www.sam.gov/portal/public/SAM>

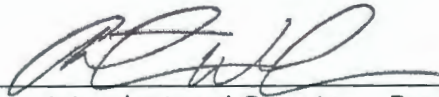
WHEREAS, the parties have agreed upon the above terms and conditions, they have this date set their signatures as evidence of said agreement.

LEADERSHIP ASSOCIATES

THE OAKLAND UNIFIED SCHOOL DISTRICT

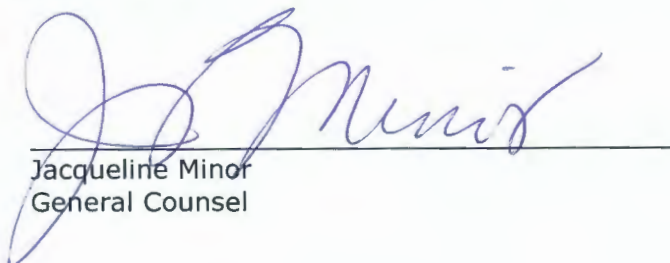


President, Board of Education
Oakland Unified School District



Superintendent and Secretary, Board of Education
Oakland Unified School District

Approved As to Form



Jacqueline Minor
General Counsel

File ID Number: 16-0574
Introduction Date: 4/27/16
Enactment Number: 16-0620
Enactment Date: 4/27/16
By: JS



LEADERSHIP ASSOCIATES

PROPOSAL TO CONDUCT A SEARCH FOR
GENERAL COUNSEL

FOR



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

APRIL 2016



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April 12, 2016

Board of Education
Oakland Unified School District
1000 Broadway, Suite 680
Oakland, CA 94607

Dear Members of the Board:

Leadership Associates would be pleased to partner with the Oakland Unified School District in conducting a comprehensive search for the Oakland USD General Counsel. This is a wonderful professional opportunity for an exceptional leader and attorney to assist the Board in finalizing both strategy and decisions that ultimately lead the district to the outcomes you desire for students, parents and the Oakland community.

Leadership Associates has previously established a positive working relationship with the Oakland Unified Board of Education and community in 2014 as we partnered together in the hiring of Superintendent Antwan Wilson. We would welcome the opportunity to partner with you once again in the recruitment and selection of this essential position.

Leadership Associates is an executive search firm that focuses its work in California. As a result of our work and deep commitment to California public education we have developed a clear understanding of the ever-changing California educational landscape. This understanding enables us to both recruit and guide candidates and Boards of Education into a lasting relationship.

Leadership Associates is a partnership composed of 12 former California superintendents and has over twenty years of work in California assisting boards of education, non-profits, and charter schools in identifying superintendents and executive leaders. All partners have been involved in major leadership positions in California public education and have a thorough understanding of the systems, structures, and processes that are characteristic of our state's public and legal education system.

Dr. Kent Bechler and Dr. Dennis Smith will be actively dedicated to this search, although all other ten partners will assist in the identification and recruitment of candidates. Kent Bechler is former superintendent of the Corona-Norco, Walnut Valley and Duarte unified school districts. Dennis Smith is former superintendent of the Orange County Public Schools (Florida), the 16th largest school district in the United States, Placentia-Yorba Linda, Irvine, Cajon Valley and Laguna Beach unified school districts.

We have carefully reviewed the necessary fundamentals for a search intended to produce an outstanding General Counsel. A keen intellect and exceptional interpersonal skills, along with the ability to *"effectively represent the District, provide advice and counsel designed to achieve ongoing compliance to support the District's mission, and to aggressively protect and advance the interests of*

the District and the students it exists to serve”, as so clearly articulated in the department’s mission statement is essential. Our professional experiences provide us with an in depth understanding of the leadership qualities that will be required to manage and lead the District’s many complex legal affairs.

Added to these experiences is the professional record of our firm helping Boards in over 350 districts find new superintendents, and executive directors for the Association of California School Administrators (ACSA), California Collaborative for Educational Excellence (CCEE), Gates/WestEd and charter schools. Examples of recent superintendent searches also include the Oakland, Riverside, Santa Ana, Fontana, Mt. Diablo and Sacramento City unified school districts. A list of our searches from 2013 to present is included with this proposal.

We know that a successful search such as the one for the Oakland General Counsel position will require both “passive and active recruiting”. In addition to extensive advertising in such publications as California Counsel of School Attorneys and ACSA/EdCal, we know that the most important work involves very proactive candidate recruitment. This requires significant personal outreach to outstanding legal minds, many whom would be unlikely to apply without this kind of personal contact. Additionally, our ongoing relationship with all the major California legal firms and with members of the California Counsel of School Attorneys will be a key resource to our portfolio of recruitment efforts.

Thorough reference checking is essential. While we ask candidates to submit references, we know extensive vetting through personal contacts and database searches is essential. We never want any Board to be surprised by finding something out about a candidate that we had not previously indicated.

Understanding the interest of the Oakland USD Board of Education in having a process that is both “efficient and thorough,” Leadership Associates proposes the following steps:

- Consult with the Board of Education to finalize the search process and timeline, determine key attributes needed in the General Counsel position and determine any modification desired in position description.
- Meet with the Superintendent, General Counsel and any other key leaders identified by the Board to review key attributes, along with personal and professional skills essential in the new General Counsel.
- Establish a timeline for the search with a goal of having identified top finalists for the Board’s consideration by early June 2013. *6 EK*
- Advertise in California Counsel of School Attorneys, ACSA/EdCal, and other publications as needed.
- Initiate affirmative recruiting actions.
- Complete thorough references checks.
- Prepare a written profile for each recommended candidate describing how that candidate meets the profile in the position description.

- Meet with the Board of Education to review all candidates to be invited for an interview.
- Board of Education interviews selected finalists by mid June. Leadership Associates will assist in the process as desired by the Board.
- Selection of a finalist by late June 2016
- Leadership Associates is committed to working with the school district until the General Counsel position is identified and hired. Should the General Counsel leave the position within two years, and there has not been a change in the Board majority, we will repeat the process at no charge except actual expenses.

The proposed cost for all of the above search services is **\$19,500, plus expenses not to exceed \$2,500.**

We look forward to having an opportunity to work with you in the recruitment and selection of a new General Counsel. We realize how important it is for the Board to have a relationship with its search firm that is based on trust and respect. We will work to build that relationship and provide the Board with high quality candidates who are a good match for the special community that is the Oakland Unified School District.

Respectfully,



Kent L. Bechler, Ph.D



Dennis M. Smith, Ed.D



LEADERSHIP ASSOCIATES
50-855 Washington Street #C-205
La Quinta, CA 92253
Phone (760) 771-4277

AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made this **April 2016** between LEADERSHIP ASSOCIATES, hereinafter called the Contractor, and **OAKLAND UNIFIED SCHOOL DISTRICT** hereinafter called the District.

The Contractor agrees to perform services for the District as follows:

The Contractor will conduct a General Counsel search as delineated in the search proposal.

The District agrees to pay the Contractor **NINETEEN THOUSAND, FIVE HUNDRED DOLLARS (\$19,500) plus expenses not to exceed \$2,500** for services provided. Payment is to take place in two increments: **(1) \$9,750** upon close of applications, and **(2), \$9,750 plus expenses** upon selection of a finalist. The Contractor will submit invoices to the District for each of the payment increments. Payments are due within 30 days of receipt of invoice.

The Contractor is to perform the above services beginning April 2016.

Contractor agrees to hold harmless and indemnify the District, its officers, agents, and employees with respect to all damages, costs, expenses or claims, in law or in equity, arising or asserted because of injuries to or death of person or damage to, destruction, loss, or theft of property arising out of faulty performance of the services to be performed by Contractor hereunder.

It is expressly understood and agreed to by both parties hereto that the Contractor, while engaged in carrying out and complying with any of the terms and conditions of this contract, is an independent contractor and is not an officer, agent, or employee of the aforesaid District. Either party may terminate this agreement by providing the other party with ten (10) days written notice. Upon such termination, fees will be determined on a pro rata basis.

Leadership Associates does not participate in a California public pension system. Leadership Associates and the District understand that the work/services provided should not be considered creditable toward the STRS earnings limit as the work is not normally performed by employees of the District and requires less than 24 months (496 business days). REF. CA Education Code § 26135.7 (2014)

CONTRACTOR:
LEADERSHIP ASSOCIATES
Taxpayer ID#: 68-038 3653

By

Name Dennis M. Smith, Ed.D

Date April 2016

DISTRICT:
OAKLAND UNIFIED SCHOOL DISTRICT

James Harris
President, Board of Education

By

Name

Date

Antwan Wilson
Secretary, Board of Education