

Board Office Use: Legislative File Info.	
File ID Number	16-1048
Introduction Date	5/11/16
Enactment Number	16-0688
Enactment Date	5/11/16 JR



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
From Jacqueline P. Minor, General Counsel
Board Meeting Date May 11, 2016
Subject **Agreement with NIAM Consulting, LLC**

Action Requested **Ratification by the Board of Education of the Agreement with NIAM Consulting, LLC.**

Background and Discussion Niam developed and supported the successful implementation of the community engagement plan for the Central Kitchen project to be located at Marcus Foster School, currently used as the administrative headquarters for Programs for Exceptional Children. The scope of Agreement before the board is to support community engagement as per Board Policy 7155, Community Engagement for Facility Projects through the construction phase until the Grand Opening. The scope includes community meetings, continued meetings with the community based site committee, newsletters, and post cards updates.

Recommendation **Ratification by the Board of Education of the Agreement with NIAM Consulting, LLC.**

Fiscal Impact Measure J, not to exceed an additional \$86,000

Attachments • Agreement



CONTRACT JUSTIFICATION FORM

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

Legislative File ID No. _____

Department: Legal

Vendor Name: Niam Consulting

Contract Term: Start Date: May 1, 2016 End Date: May 31, 2017

Annual Cost: \$ 86,000

Approved by: General Counsel

Is Vendor a local Oakland business? Yes ☒ No ☐

Why was this Vendor selected?

Ongoing work supporting community engagement
for the Central Kitchen Project

Summarize the services this Vendor will be providing.

Community engagement as per Board
Policy 7155, community meetings, postcards,
Newsletters, special events

Was this contract competitively bid? Yes ☐ No ☒

If No, answer the following:

1) How did you determine the price is competitive?

Competitive with community engagements
for other OUSD projects. Comparable
scope

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**

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16-1848

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5/11/16 JZ



OAKLAND UNIFIED
SCHOOL DISTRICT

PROFESSIONAL SERVICES CONTRACT 2015-2016

This Agreement is entered into between the Oakland Unified School District (OUSD) and (CONTRACTOR). OUSD is authorized by Government Code Section 53060 to contract for the furnishing of special services and advice in financial, economic, accounting, engineering, legal, and administrative matters with persons specially trained, experienced, and competent to perform such services. CONTRACTOR warrants it is specially trained, experienced, and competent to provide such services. The parties agree as follows:

1. **Services:** The CONTRACTOR shall provide the ("Services" or "Work") as described in **Exhibit "A,"** attached hereto and incorporated herein by reference.
2. **Terms:** CONTRACTOR shall commence work on May 1, 2016. The work shall be completed no later than May 31, 2017.
3. **Compensation:** OUSD agrees to pay CONTRACTOR for services satisfactorily rendered pursuant to this Agreement, a total fee not to exceed \$86,000. This sum shall be for full performance of this Agreement and includes all fees, costs, and expenses incurred by Contractor including, but not limited to, labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs, and other costs.

If CONTRACTOR will be compensated hourly for services provided under this Contract, CONTRACTOR shall describe in Exhibit "A," attached hereto, the specific scope of services to be delivered on an hourly basis to OUSD.

Payment for Work shall be made for all undisputed amounts in monthly installment payments within forty-five (45) days after the CONTRACTOR submits an invoice to OUSD for Work actually completed and after OUSD's written approval of the Work, or the portion of the Work for which payment is to be made.

The granting of any payment by OUSD, or the receipt thereof by CONTRACTOR, shall in no way lessen the liability of CONTRACTOR to correct unsatisfactory work, although the unsatisfactory character of that work may not have been apparent or detected at the time a payment was made. Work, which does not conform to the requirements of this Agreement, may be rejected by the District and in that case must be replaced by CONTRACTOR without delay.

4. CONTRACTOR Qualifications / Performance of Services.

CONTRACTOR Qualifications. CONTRACTOR warrants it is specially trained, experienced, competent and fully licensed to provide the Services required by this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply.

Standard of Care. CONTRACTOR warrants that CONTRACTOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. CONTRACTOR's services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts.

5. Invoicing

Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to OUSD. All amounts paid by OUSD shall be subject to audit by OUSD.

Invoices shall include, but not be limited to: Consultant name, consultant address, invoice date, invoice sequence number, purchase order number, name of school or department service was provided to, period of

service, number of hours of service, brief description of services provided, hourly rate, total payment requested.

6. **Status of Contractor:** This is not an employment contract. CONTRACTOR, in the performance of this Agreement, shall be and act as an independent contractor. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR's employees. In the performance of the work herein contemplated, CONTRACTOR 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.

7. **Insurance:**

1. Commercial General Liability Insurance: Unless specifically waived by OUSD, the following insurance is required:

- i. If CONTRACTOR employs any person to perform work in connection with this Agreement, CONTRACTOR 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.

Check one of the boxes below:

☒ CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and will comply with such provisions before commencing the performance of the Work of this Contract.

☐ CONTRACTOR does not employ anyone in the manner subject to the workers' compensation laws of California.

- ii. CONTRACTOR 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 CONTRACTOR. The policy shall protect CONTRACTOR 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. If CONTRACTOR is offering OUSD professional advice under this Contract, CONTRACTOR shall maintain Errors and Omissions insurance or Professional Liability insurance with coverage limits of One Million Dollars (\$1,000,000) per claim.

8. **Licenses and Permits:** CONTRACTOR shall obtain and keep in force all licenses, permits, and certificates necessary for the performance of this Agreement.

9. **Assignment:** The obligations of CONTRACTOR under this Agreement shall not be assigned by CONTRACTOR without the express prior written consent of OUSD.
10. **Anti-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the CONTRACTOR 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, the CONTRACTOR agrees to require like compliance by all its subcontractor(s). Contractor 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.
11. **Drug-Free / Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, CONTRACTORS, or subcontractors are to use drugs on these sites.
12. **Indemnification:** CONTRACTOR agrees to hold harmless, indemnify, and defend OUSD and its officers, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation in connection with the performance of this Agreement. CONTRACTOR also agrees to hold harmless, indemnify, and defend OUSD 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 CONTRACTOR in connection with the performance of this Agreement. This provision survives termination of this Agreement.
13. **Copyright/Trademark/Patent/Ownership.** CONTRACTOR understands and agrees that all matters produced under this Agreement shall become the property of OUSD and cannot be used without OUSD's express written permission. OUSD shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark, and/or patent of said matter in the name of OUSD. CONTRACTOR consents to use of CONTRACTOR's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by CONTRACTOR or its Sub-CONTRACTORS in connection with the Services performed under this Agreement. All works shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD.
14. **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.
15. **Termination:** OUSD may at any time terminate this Agreement upon written notice to CONTRACTOR. OUSD shall compensate CONTRACTOR for services satisfactorily provided through the date of termination. In addition, OUSD may terminate this Agreement for cause should CONTRACTOR fail to perform any part of this Agreement. In the event of termination for cause, OUSD may secure the required services from another contractor. If the cost to OUSD exceeds the cost of providing the services pursuant to this Agreement, CONTRACTOR shall pay the additional cost.
16. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
17. **Limitation of OUSD Liability.** Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event, shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.
18. **Confidentiality.** The CONTRACTOR and all CONTRACTOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services. CONTRACTOR understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond

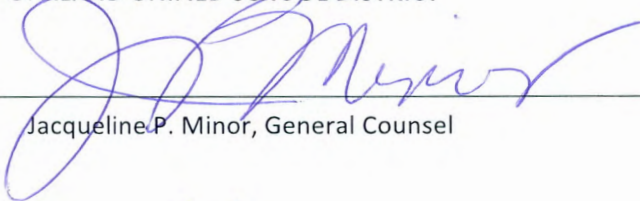
the termination of this Agreement. Contractors will be permitted access to student data only where permissible under state and federal law and only after executing OUSD's Confidentiality Agreement Regarding Student Data.

19. **Integration/Entire Agreement of Parties.** This Agreement constitutes 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.
20. **Litigation:** This Agreement shall be performed in Oakland, California and is governed by the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any state court litigation initiated to enforce or interpret this Agreement. If litigation is initiated, the prevailing party shall be entitled to reasonable attorney's fees and costs.
21. **Contract Contingent on Governing Board Approval:** The District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Governing Board, and no payment shall be owed or made to CONTRACTOR absent formal approval. This Agreement shall be deemed to be approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.
22. **Signature Authority:** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.
23. **Counterparts:** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
24. **Incorporation of Recitals and Exhibits:** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
25. **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>

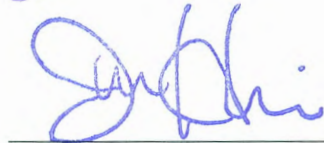
Summary of terms and compensation:

Anticipated start date: 5/1/2016 Work shall be completed by: 5/31/2017 Total Fee: \$86,000

OAKLAND UNIFIED SCHOOL DISTRICT



Jacqueline P. Minor, General Counsel

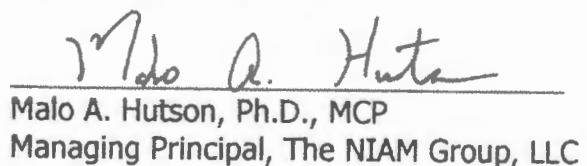


☐ President, Board of Education

☒ Superintendent and Secretary

CONTRACTOR

NIAM Consulting, LLC



Malo A. Hutson, Ph.D., MCP
Managing Principal, The NIAM Group, LLC

File ID Number: 16-1048
Introduction Date: 5/11/16
Enactment Number: 16-008
Enactment Date: 5/11/16
By: EH

Superintendent and Secretary

Proposed Scope of Work for Community Engagement
for
Rethinking School Lunch—The Center
Phase 3

THE NIAM GROUP

The NIAM Group, LLC
Lead Consultant: Malo A. Hutson, PhD, MCP
Contact: malo@niamgroup.com
510-219-2440

Project Context

The Oakland Unified School District (“OUSD” or “the OUSD”) has implemented Rethinking School Lunch Oakland, a district-wide initiative integrating school food and education innovations. This program includes a new district-wide school food system network that connects nutrition, education, and community programs through use of a Central Kitchen, Urban Farm and Education Center (the “Central Kitchen” or “Center”). The OUSD has committed to a process of community engagement and requires an immediate and upfront community engagement process to address the concerns of all stakeholders. In October 2014, the OUSD hired The NIAM Group, LLC (“Consultants” or “the team” or “our team”) to initiate community engagement using strategies that both comply with Board Policy 7155 and are specifically tailored to this work with food and nutrition. On July 1, 2015, the Oakland Public Education Fund (“Ed Fund”) hired our team to continue this engagement work.

The construction and operation of the Center will directly impact the neighborhood immediately surrounding the site. The operation of the Center will also impact the OUSD families and students throughout the city because of the food that it will provide and because of its programming component. As the design of the Center is completed, community engagement going forward needs to focus on communicating information about the Center’s construction, and gathering input around proposed community benefits tied to the Center and future operation of the Center (particularly any programming that will benefit the community).

This proposal lays out the strategy for Phase 3 of the community engagement around the Center’s development, to cover the period of time between May 1, 2016 through May 31, 2017, although the completion of construction is tentatively set for Fall 2017.

Overall Project Goals

In keeping with Board Policy 7155 on community engagement for facilities projects, and OUSD’s broader Student, Family, and Community Engagement goals, our team will work closely with OUSD and the Oakland Public Education Fund to continue to engage the community surrounding the project site.

Successfully meeting the requirements of Board Policy 7155 and engaging the community will require regular and frequent conversation and collaboration between the Team and the OUSD to ensure that proposed strategies meet OUSD's needs, and that related materials are accurate and approved in a timely manner. **Achieving these goals will also require OUSD's willingness to incorporate community concerns and ideas into their decisions and planning.**

Scope of Work

Phase 3 Work Only

When hired, we proposed community engagement over several phases. The first phase began in October 2014. That first phase involved initial communications and outreach to key leaders and residents in the neighborhood surrounding the development site. The second phase coincided with the California Environmental Quality Act (CEQA) review process. The third phase commenced when demolition began.

- **Phase 1: Design Phase and Initial Outreach. COMPLETED**
- **Phase 2: Construction/Transition Planning. COMPLETED**
- **Phase 3: Construction and Program Development.** This phase begins with construction and will require regular progress updates to the neighboring community as needed, answering questions and concerns regarding the details of the project's construction, and maintaining open channels for community input into finalizing any plan for community benefits associated with this project. This phase will last as long as the construction timeline and will incorporate the requirements of Board Policy 7155.

Specific Strategy and Deliverables

The proposed strategy is informed by past engagement efforts and outcomes. For example, past engagement has shown that neighbors' feelings and opinions about the project range from being highly supportive of this project to strongly opposed. There is a consensus, however, among community members that the Center should provide benefits to the local community. While prior meetings, and the neighborhood survey, have collected some information about what neighbors would like to see in terms community benefits, this topic requires further discussion. Also, we know from prior engagement in this neighborhood that

all outreach must include multiple methods, including telephone calls and mailers, and cannot rely exclusively on email or website communications.

Accordingly, to both meet the requirements of Board Policy 7155, while also engaging the community around proposed community benefits and addressing the concerns raised to date about this project, we recommend that OUSD:

- Convene 1 additional Public Meetings over the course of the construction period between November 2016 and May 2017 to coincide with major construction milestones to discuss construction updates and future programming/operations;
- Convene 3 Community Engagement Advisory Committee meetings between June 2016 and October 2016 to conclude gathering input around potential community benefits, community activities at and access to The Center once operational, and provide updates about construction related topics and future operations;
- Mail a quarterly newsletter to households immediately around the project site until the Center is operational (requiring mailings to the area surrounding the project in June, and September 2016, and then again in January, April, June, and September 2017) and post this newsletter on the website www.ousdthecenter.org;
- Use robo-calls to provide immediate construction-related alerts to all neighbors who have provided their telephone number and are interested in receiving robo-calls; and
- Use post-card mailers to invite neighbors to public meetings, and telephone calls and emails to invite CEAC members to meetings.

To implement this strategy, our team will immediately work with Ed Fund and Facilities staff to coordinate the community engagement schedule with the current construction project schedule. We will then schedule and convene the required engagement meetings, generate and distribute the newsletter based on content provided by OUSD team members responsible for managing the construction and future operation of The Center, document the activities at these meetings and document our protocols and processes. We will assist with meeting facilitation as needed. We will utilize the community communication networks established since October 2014 to gather telephone numbers from neighbors seeking regular updates.

Limitations of the Proposed Budget and Proposed Scope of Work

The budget below is for work beginning on May 1, 2016 and ending on May 31, 2017. It assumes substantial advance planning and **does not provide for work required to support either crisis communications work related to this project, urgent outreach associated with construction-related impacts, or requested work outside of the proposed strategy detailed above. This budget also includes the following limitations:**

- This budget assumes that OUSD will schedule public meetings at least 3 weeks in advance and that OUSD will limit invitations to neighbors within the contacts database.
- This budget assumes that OUSD will schedule CEAC meetings at least 3 weeks in advance.
- This budget assumes OUSD will continue to provide translation services for all materials and meetings as needed.
- This budget assumes OUSD Nutrition Services will continue to provide food and refreshments for meetings and events.
- This budget assumes that the Ed Fund team will maintain and update the project website, www.ousdthecenter.org, and generate the preliminary content for regular updates and newsletters.
- This budget assumes that either OUSD, Ed Fund personnel, or the Community Construction Liaison will assist with monitoring a project related email address.
- This scope of work also assumes the timely exchange of information and materials approval from OUSD. Unless otherwise agreed upon, we will expect that 72 hours is sufficient for OUSD to review and approve or comment on communications materials. Consultants will draft required communications and submit to OUSD's General Counsel and one member of the Communications team for review, input, and approval where appropriate. This budget does not provide for additional hours worked associated with additional approvals and/or delays in providing necessary approvals.

Estimated Costs – Phase 3

The team will bill for hours worked only and actual expenses for materials (printing) and child care costs. Additional work required by the scope of the project will be billed at \$150/hour for Consultant time and \$65 an hour for Program Associate time. We bill for the actual cost of child care at community meetings; we use a professional child care staffing agency that hires and places OUSD graduates with us for on-call child care services at community meetings.

This estimate assumes OUSD will provide translation services at community events for languages not spoken by our team, and that OUSD Nutritional Services will continue to provide food and beverages at community events.

This estimate does not include the cost for postage for mailings that do not include Direct Mail services, it assumes that the OUSD mail department will provide postage.

Projected Costs	Rate	Hours	Item Total
Consultant Time:			
1 Public Meetings			
3 CEAC Committee Meetings	150.00	352	52,800.00
Quarterly Newsletter			
Event Coordinator/Program Associate			
Time			
1 Public Meetings	65.00	374	24,310.00
3 CEAC Committee Meetings			
Quarterly Newsletter			
Printing			
Post Card invitations, Quarterly	Actual Cost	–	8,220.00
Newsletters Only			
Childcare costs	–	–	600.00
Total Projected Budget			85,930.00