

Board Office Use: Legislative File Info.	
File ID Number	16-0777
Introduction Date	05/25/2016
Enactment Number	16-0714
Enactment Date	5-25-16 <i>el</i>



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

Memo

To Board of Education

From Antwan Wilson, Superintendent
Hitesh Haria, Chief Operations Officer
John Krull, IT Officer, Technology Services

Board Meeting Date May 25, 2016

Subject Billing Services Consultation Agreement – RDV Consulting – Technology Services

Action Requested Approval by the Board of Education of Billing Services Consultation Agreement between the District and RDV Consulting Services, Oakland, CA, for the latter to audit current and past years' billing for services by AT&T with expected significant savings to District, for the period April 26, 2016 to June 20, 2017, in an amount not to exceed \$70,000.

Background Oakland Unified School District has used RDV Consulting as an e-rate consultant and the district will be using the service to audit past years and current years' billing.

Discussion The use of consulting to examine AT&T billing over the past years expects to yield a net gain many times over the cost of the services.

Recommendation Approval by the Board of Education of Billing Services Consultation Agreement between the District and RDV Consulting Services, Oakland, CA, for the latter to audit current and past years' billing for services by AT&T with expected significant savings to District, for the period April 26, 2016 to June 20, 2017, in an amount not to exceed \$70,000.

Fiscal Impact Measure J funds allocated to Technology Services / Common Core

Attachments Billing Services Consultation Agreement



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

Legislative File ID No. _____

Department: Technology

Vendor Name: RDV Consulting

Contract Term: Start Date: April 26, 2016 End Date: June 20, 2017

Annual Cost: \$ 70,000

Approved by: John Krull, Jackie Minor

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 review past invoices and payments and reconcile to get the District funds.

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**

Billing Services Consultation Agreement

This Agreement is made between Oakland Unified School District ("Client") with a principal place of business at 1000 Broadway, Oakland, CA, 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. This is for monies recovered for any previous fiscal/E-Rate year, for services in which RDV Consulting Services was not the consulting firm of record. It also includes recovery of monies due to billing errors or omissions in which RDV Consulting Services was not involved in contributing to those errors.

2. Payment

In consideration for the services to be performed by Consultant, Client agrees to pay Consultant a total of **\$70,000.00** for services rendered.

3. Terms of Payment

Consultant shall be paid **\$25,000.00** upon signing this Agreement, and the remaining amount is due when Consultant bills the final amount in an invoice after successful completion of Consultant services. Client shall pay Consultant within 30 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 B, 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

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

With reasonable cause, either party may terminate this Agreement effective immediately by giving written notice of cause for termination. Reasonable cause includes:

- 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.

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. Limited Liability

This provision allocates the risks under this Agreement between Consultant and Client.

Consultant's pricing reflects the allocation of risk and limitation of liability specified below.

Consultant's total liability to Client under this Agreement for damages, costs, and expenses shall not exceed the compensation received by Consultant under this Agreement. However, Consultant shall remain liable for bodily injury or personal property damage resulting from grossly negligent or willful actions of Consultant or Consultant's employees or agents while on Client's premises to the extent such actions or omissions were not caused by Client.

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 James Harris

Typed or Printed Name: President, Board of Education

Title: _____

Date: _____

Antwan Wilson
Secretary, Board of Education

Consultant: RDV Consulting Services

By: _____
Signature Henry Del Valle

Typed or Printed Name: Henry Del Valle

Title: Owner

Taxpayer ID Number: 20-3871858

Date: 5/10/2016

File ID Number: 16-0777
Introduction Date: 5/25/16
Enactment Number: 16-0714
Enactment Date: 5/25/16
By: OR

OAKLAND UNIFIED SCHOOL DISTRICT

[Signature]
Attorney at Law

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
[Signature]
Attorney at Law

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 vendors, including billing invoices, reports of E-Rate disbursements, and from online bill access.
2. Consultant will work with vendors directly to get copies of bills and/or invoices, when the client cannot provide those copies without incurring excessive man-hours (as defined by client).
3. Consultant will work with vendors to provide any missing discounts or reimbursements to client, by check or credits applied on bills rendered to client. It is estimated that the recovery of missing reimbursements/discounts will amount to between \$200,000 and \$1,500,000. A more specific amount will be available within 60 days of commencement of the work identified in this contract.
4. Consultant will work with client to streamline any billing provided by vendors to the client. i.e.: this could be a reduction in number of bills rendered by vendor, such as providing a smaller group of summary bills instead of individual bills.
5. 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.