

Regular Board Meeting

7. A.

Meeting Date: 11/19/2013

Title: Professional Services Contract with The Schlueter Group

Submitted For: Karla Cantu, Superintendent's Office

Submitted By:

Karla Cantu

Recommended Action: Approve

HCDE Goal(s):

- 2. Develop effective programs
- 1. Implement research initiatives
- 3. Gather data information

Additional Resource Personnel: John Sawyer, Jesus Amezcua, Jorgannie Garza, Kendra Jackson

Facilities/Technology Approval Needed?:

None

Information

Summary:

Consider approval of a Professional Services Contract with The Schlueter Group to provide consulting services to HCDE for the period of 11/19/2013 through 08/31/2015 in an amount not to exceed \$269,500.

Subject:

Consider approval of a Professional Services Contract with The Schlueter Group to provide consulting services to HCDE for the period of 11/19/2013 through 08/31/2015 in an amount not to exceed \$269,500.

Rationale:

Consultant will provide services as outlined in the scope of work in the contract for the period of 11/19/2013 through 08/31/2015 at a rate of \$12,250.00 per month for the Term of the Contract, including November 2013.

Contract is in accordance with Government Code 2254 - Professional and Consulting Services.

Attachments

Schlueter Contract 2013-2015

Form Review

Inbox	Reviewed By	Date
Superintendent's Office (Originator)	Karla Cantu	10/29/2013 09:31 AM
Purchasing Alternate	Kendra Jackson	10/31/2013 12:45 PM
Purchasing	Jorgannie Garza	11/01/2013 01:40 PM
Assistant Superintendent - Business	Jesus Amezcua	11/05/2013 06:14 PM
Form Started By: Karla Cantu		Started On: 10/23/2013 03:40 PM
	Final Approval Date: 11/05/2013	

PROFESSIONAL SERVICES CONTRACT

This Professional Services Contract ("Contract") is made and entered into by and between the Harris County Department of Education ("HCDE") located at 6300 Irvington Boulevard, Houston, Texas 77022, and The Schlueter Group, ("Consultant"), located at 1122 Colorado Street, Suite 200, Austin, Texas 78701, for Consultant to provide professional services to HCDE in accordance with the terms and conditions specified herein.

RECITALS

WHEREAS, HCDE is a political subdivision, local governmental entity, and county school district established to promote education in Harris County, Texas;

WHEREAS, this Contract will further the public purposes necessary in the conduct of HCDE; and

WHEREAS, HCDE and Consultant desire to set forth in writing the terms and conditions of their agreement.

THEREFORE, in consideration of the mutual covenants and conditions contained in this Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

Article 1 Purpose

HCDE agrees to retain Consultant and Consultant agrees to provide professional governmental relations consulting services to HCDE and to perform the duties and all the necessary labor and resources needed to provide the services set forth in Article 3-*Scope of Work*. Consultant shall also perform such other related services and duties as are customarily performed by a consultant in a similar position. This Contract specifically retains the services of Stan Schlueter and Rob Eissler; however, the Contract is not limited to these individuals, should HCDE determine other individuals' services are required.

Article 2 Term

This Contract is for services beginning November 19, 2013, and ending August 31, 2015 ("Term"). All Contract extensions shall be subject to the terms and conditions specified herein.

Article 3 Scope of Work

Exhibit A includes a detailed scope of work that sets out the services Consultant agrees to provide.

Article 4 Independent Contractor Status

It is the intention of the parties that Consultant be an independent contractor and not an employee, agent, joint venturer, or partner of HCDE. Nothing in this Contract shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, joint venture, or partner between HCDE and either Consultant or any employee or agent of Consultant.

Consultant has no power or authority to assume or create any obligation or responsibility on behalf of HCDE. This Contract shall not be or deemed an endorsement of Consultant by HCDE. Consultant agrees that HCDE has no responsibility for any conduct of any of Consultant's employees, agents, representatives, contractors, or subcontractors.

Article 5 Review of Progress

Consultant will work to meet all timelines mutually established by Consultant and HCDE. HCDE reserves the right to monitor the progress of Consultant.

Article 6 Changes & Amendments

During the Term of the Contract (see Article 2), HCDE and Consultant reserve the right to make changes to the work the Consultant is required to provide pursuant to this Contract. This Contract may be amended only by the mutual agreement of the parties, in a writing to be attached to and incorporated in this Contract. All such changes shall be made in writing and agreed to by both parties.

Article 7 Assignment

Neither this Contract nor any duties or obligations under it shall be assignable by Consultant without the prior written acknowledgment and authorization of HCDE. Any attempted assignment of this Contract by Consultant shall be null and void.

Article 8 Compensation

HCDE will pay Consultant \$12,250.00 per month for the Term of the Contract. HCDE shall not pay for any expenses incurred by Consultant. HCDE agrees to make payment upon receipt of invoices, as detailed in Article 21, below, and IRS Form W-9. HCDE will be invoiced monthly for an amount of \$12,250.00 including November 2013.

Tex. Gov't Code § 2251.021 shall govern when payments are due to the Consultant. Payments are due to Consultant by HCDE within forty-five (45) days after the later of the following: (1) the date HCDE receives the services under the Contract; (2) the date the performance of the service under the Contract is completed; or (3) the date HCDE receives an invoice for the products or service. The exceptions to payments made by HCDE listed in Tex. Gov't Code § 2251.002 shall apply to this Contract.

Article 9 Conflict of Interest and Notice of Material Change

During the Term of Consultant's service to HCDE, Consultant shall not, directly or indirectly, whether for Consultant's own account or for or with any other person or entity whatsoever, employ, solicit or endeavor to entice away any person who is employed by HCDE.

Consultant shall notify HCDE within 24 hours of any potential or actual conflict of interest between the interest(s) of HCDE and any other client of Consultant's and agrees to not represent HCDE on the issue in question until the conflict is resolved to the satisfaction of HCDE or this Contract is terminated.

Consultant is required to notify HCDE when any material change in operations occurs, including bankruptcy, material changes in financial condition, change of ownership, revocation of lobbyist registration, and the like, within two (2) business days of such change.

Article 10 Felony Conviction Notice

Contractor acknowledges receipt of Exhibit C, Felony Conviction Notice and represents to HCDE that Contractor has accurately completed, executed and delivered the Notice to HCDE.

Contractor's failure to provide such notice shall result in a material breach of this Contract. HCDE may terminate this Contract with Contractor upon determination that Contractor failed to give notice as required by this Article and Felony Conviction Notice or that Contractor misrepresented the conduct resulting in the conviction as indicated on Felony Conviction Notice.

Article 11 Indemnity

CONSULTANT SHALL PROTECT, HOLD HARMLESS, AND INDEMNIFY HCDE FROM ANY AND ALL CLAIMS, ASSESSMENTS, AND SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, AND DAMAGES ARISING FROM CONSULTANT'S ACTS OR OMISSIONS IN CONNECTION WITH THE SERVICES DESCRIBED IN THIS CONTRACT.

Article 12 Non-Appropriation of Funds

This Contract is a commitment of HCDE current revenue only. While not assumed, renewal of this Contract, if any, will be in accordance with Tex. Local Gov't Code § 271.903 concerning non-appropriation of funds for multi-year contracts. Notwithstanding any other provision of this Contract or obligation imposed on HCDE by this Contract, HCDE shall have the right to terminate this Contract without default or liability to Consultant resulting from such termination, effective as of the expiration of each budget period of HCDE if it is determined by HCDE, in their sole discretion, that there are insufficient funds to extend this Contract.

Article 13 Non-Exclusivity

Nothing in this Contract may be construed to imply that Consultant has the exclusive right to provide HCDE professional services. During the Term of this Contract, HCDE reserves the right to use all available resources to procure other professional services as needed and doing so will not violate any rights of Consultant.

Article 14 Performance and Compliance with Laws

Consultant agrees that Consultant is not an employee of HCDE and is solely responsible for all social security, unemployment compensation and taxes, both state and federal. Consultant further agrees that Consultant's services will be performed with reasonable care, skill, judgment, and experience and in a professional business-like manner, with no direct supervision from HCDE. If Consultant is unable to complete the work in this manner based on the mutually agreed upon time, Consultant shall notify the County Superintendent, Harris County in writing.

Consultant shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, without limitation, all applicable lobbyist regulations. For the entire duration of this Contract, Consultant shall maintain all

required licenses, registrations, certifications, permits, and any other documentation necessary to perform this Contract, including, without limitation, registration as a lobbyist with the Texas Ethics Commission.

Article 15 Termination

Either of the two individual parties for any reason upon thirty (30) days written notice may terminate this Contract without cause. HCDE will be responsible for payment for services that have been accepted by HCDE up to the termination date.

HCDE may by written notice, terminate this Contract if Consultant has defaulted in whole or in part, refuses or fails to comply with the provisions of this Contract, fails to make progress, does not cure such failure after written notice within a reasonable period of time, or fails to adequately perform the services, as determined by HCDE at their sole discretion. In such event, HCDE may obtain comparable services elsewhere and either deduct the costs of obtaining such services from any amount owed Consultant or Consultant shall reimburse HCDE for such costs incurred by HCDE.

Article 16 Notice

Any notice provided under the Terms of this Contract by either party to the other shall be in writing and may be affected by certified mail, return receipt requested. Notice shall be sufficient if made or addressed to the address listed in the signature lines below.

Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified mail, return receipt requested.

Article 17 Governing Law & Venue

This Contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to its conflicts of laws provisions. The mandatory and exclusive venue for the adjudication or resolution of any dispute arising out of this Contract shall be in Harris County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts.

Article 18 Entire Agreement

This Contract is the sole agreement by which the above parties will abide relative to the purpose(s) of this Contract. The Contract, Exhibit A, Scope of Work, Exhibit B, and Exhibit C represent the entire and exclusive agreement between the parties thereto and replace in their entirety any previous agreements, written or oral.

Article 19 Severability

In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

Article 20 Debarment and Suspension

Pursuant to 7 C.F.R. 3017, during any period in which a person is suspended, debarred, proposed for debarment, ineligible, or voluntarily excluded from eligibility for covered

transactions by any Federal department or agency, that person shall be excluded from any and all work hereunder that is considered a covered transaction including, but not limited to, participation in any HCDE program or purchase of any goods or services from HCDE. Generally, work that is expected to equal or exceed the Federal procurement small purchase threshold as defined in 7 C.F.R. 3017.110 (currently \$100,000) is considered a covered transaction. With respect to work hereunder that is considered a covered transaction, Consultant agrees to comply with any and all requirements of 7 C.F.R. 3017 including, but not limited to, obtaining and/or providing the certification attached hereto as Exhibit B and providing immediate written notice upon discovery of any errors in a certification previously obtained and/or provided, as necessary for such compliance. Consultant acknowledges that, with respect to debarment and suspension, Federal law may impose additional, more specific, and/or more restrictive requirements for certain work hereunder that is considered a covered transaction; Consultant agrees to comply with any and all such requirements.

Article 21 Invoices

Consultant is required to submit original invoices to the HCDE Business Office ATTN: Accounts Payable. The invoices can be mailed through the postal service to HCDE Business Office ATTN: Accounts Payable, 6300 Irvington Boulevard, Houston, Texas 77022 or emailed to accountspayable@hcde-texas.org.

The invoice(s) should include the following:

1. Date of invoice
2. Period of service (i.e. month of)
3. Invoice Number
4. Contact Information
5. Certification of service provided through a signature by company representative

Failure to send the invoices as directed above will delay payment. Invoices submitted by Consultant for work performed prior to the effective date of the Contract will not be honored.

Article 22 Confidentiality

Consultant agrees to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations.

HCDE agrees to provide Consultant with confidential information regarding HCDE and access to certain confidential and proprietary information and materials belonging to HCDE and/or to vendors of HCDE and/or participants in HCDE's programs or services (hereinafter "vendors and/or participants"). Such confidential and proprietary information and materials (collectively "Confidential Information") includes, without limitation and regardless of whether such information or materials is expressly identified as confidential or proprietary, the following: technical information, proposals, employee information, customer lists, vendor lists and relationships, participant lists, marketing strategies, certain financial information relating to HCDE or vendors and/or participants; plans of HCDE or vendors and/or participants; and other trade secrets and valuable, confidential information of HCDE or vendors and/or participants.

Consultant understands and agrees that all Confidential Information and every portion thereof constitutes valuable property of HCDE and/or vendors and/or participants, and Consultant further acknowledges the importance of maintaining the security and confidentiality of the Confidential Information.

Consultant agrees to keep the Confidential Information, and all documentation, access, and information relating thereto, strictly confidential. Specifically, Consultant agrees that, except as required for the performance of the services in this Contract or as expressly authorized in writing by HCDE, or as may be required by law or court order, Consultant:

- (1) will not disclose or provide access to Confidential Information to any third party;
- (2) will not copy Confidential Information for any reason; and
- (3) return to HCDE or destroy all Confidential Information upon the expiration or termination of this Contract.

Consultant also acknowledges that HCDE is subject to the Texas Public Information Act, and Consultant waives any claim against and releases from liability HCDE, their respective officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise written, produced, created, assembled, maintained, or held by Consultant, HCDE, and determined by HCDE, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

--- Remainder of this page intentionally left blank. Signature page follows. ---

The Schlueter Group

Harris County Department of Education

By: [Signature]
(Signature)

By: _____
(Signature)

Date: 11/5/2013

Date: _____

Name: Stan Schlueter
Title: Owner

John E. Sawyer
County School Superintendent
6300 Irvington Blvd
Houston, TX 77022-5618
713-696-8210
FAX: 713-696-0723
jsawyer@hcde-texas.org

1122 Colorado Street, Suite 200
Austin, Texas 78701
512-477-5200

FAX: 512/476-6989
Email: Stan@Schluetergroup.com

EXHIBIT A: SCOPE OF WORK

Consultant shall timely provide the following services:

- Serve as an HCDE liaison with state government, agencies, and entities impacting HCDE's work and divisions, including, but not limited to:
 - Texas Education Agency,
 - Texas Higher Education Coordinating Board,
 - Texas Workforce Commission,
 - Texas Department of Health and Human Services,
 - Texas House of Representatives,
 - Texas Senate,
 - Governor of Texas,
 - Lieutenant Governor of Texas,
 - Speaker of the Texas House of Representatives,
 - Others as necessary.
- Advise and assist HCDE and HCDE divisions regarding interfacing with state government, agencies, and entities, legislative matters, and promotion and protection of the interests of HCDE, with particular emphasis on Adult Education, After School Services, Early Childhood Intervention, Virtual Schools and other HCDE divisions as assigned by HCDE's Superintendent.
- Advise and assist HCDE regarding any study or review of HCDE undertaken by the Texas House of Representatives, Texas Senate, or any committee thereof.
- Serve as an information resource for state government stakeholders about the work of HCDE.
- Prepare reports and provide professional advice regarding matters as stated herein and as requested by the Superintendent.
- Report regularly (at least monthly) to HCDE's Superintendent on any developments or changes in state legislative policy or administrative action at the state government level which require the Superintendent's awareness or action.
- Attend Legislative meetings and other meetings of public policy bodies as requested by HCDE. Within applicable legal parameters, guidelines, and priorities, Consultant may communicate directly with any appropriate public official for the purpose of acquiring and disseminating necessary available information regarding HCDE and HCDE's work, as directed or requested by HCDE's Superintendent.
- Schedule, coordinate, and attend meetings between HCDE representative(s) and state government, agencies, and entities as requested by HCDE's Superintendent.
- Monitor the Texas Legislature during regular session, special sessions, and interim sessions and report all bills or other legislative activity that would affect, or potentially affect HCDE to HCDE's Superintendent and on the Superintendent's request, to the Board of Trustees.

EXHIBIT B:

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

I. Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 and 7 C.F.R. 1017.105. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—
Lower Tier Covered Transactions**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

[60 FR 33042, 33043, June 26, 1995]

Stan Schueter
(Printed Individual or Company Name)

By: [Signature]
(Signature)

Date: 11/5/2013

EXHIBIT C: Felony Conviction Notice

Section 44.034, Texas Education Code, Notification of Criminal History of Contractor, Subsection (a): "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Subsection (b): "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a), or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

Subsection (c): This section does not apply to a publicly held corporation.

You must check A, B or C, and sign below:

- A) _____ Firm is a publicly held corporation; therefore the above reporting requirement does not apply per Section 44.034, Texas Education Code, Subsection (c).
- B) Contractor/Firm is **not** owned nor operated by anyone who has been convicted of a felony.
- C) _____ Contractor/Firm is operated or owned by the following individual(s) who has/have been convicted of a felony:

Name of Individuals: _____

Detail of Conviction(s): _____

Attach additional pages labeled Exhibit B if required.

I, the undersigned or agent for the firm named below, certify that the information concerning notification of felony convictions has been reviewed by me and the information furnished is true to the best of my knowledge:

Contractor's Name/Company Name: The Schlueter Group

Authorized Official's Name (Printed or Typed): Stan Schlueter

Signature: [Signature] Date: 11/5/2013