



Brownsville Independent School District

Agenda Category: General Function
Contracts/MOU Board of Education Meeting: 03/07/2023

Item Title: Solicit Request for Qualifications (RFQ's) X Action
for legal counsel or extend agreement Information
with O'Hanlon, Demerath & Castillo Discussion

BACKGROUND:

FISCAL IMPLICATIONS:

RECOMMENDATION:

Discussion, consideration and possible action to solicit Request for Qualifications (RFQ's) for legal counsel or extend agreement with O'Hanlon, Demerath & Castillo.

Dr. René Gutiérrez

Submitted by: Superintendent

Recommended by: Asst. Supt./CFO

Miguel Salinas *Miguel Salinas*

Reviewed by: Staff Attorney

Approved by: Deputy Superintendent

Approved for Submission to Board of Education:

René Gutiérrez
Dr. René Gutiérrez, Superintendent

When Necessary, Additional Background May Follow This.



Brownsville Independent School District

Agenda Category: Bids/Proposals Board of Education Meeting: 04/05/22

Item Title: RFQ #21-131 Board Legal Advisor Services X Action Information Discussion

BACKGROUND:

On June 1, 2021, the Brownsville Independent School District Board of Trustees awarded RFQ #21-131 Board Legal Advisor Services to O’Hanlon, Demerath, & Castillo from Austin, TX. The term was for one (1) year, effective August 1, 2021, with the option to renew for two (2) additional one (1) year terms. Administration is submitting this item to renew the current RFQ for one (1) year beginning August 1, 2022.

FISCAL IMPLICATIONS:

Local Maintenance Funds - \$240,000.00 per year.

RECOMMENDATION:

Recommend approval to renew RFQ #21-131 Board Legal Advisor Services to O’Hanlon, Demerath, & Castillo from Austin, TX for an additional one (1) year term beginning August 1, 2022, with the option to renew for one (1) additional one-year term, in the amount not to exceed \$240,000.00 from Local Maintenance Funds, as stated on the original RFQ.

Miguel Salinas
Miguel Salinas / Rosario Peña
Submitted by: Staff Attorney/Purchasing Director

Approved for Submission to Board of Education:

David Robledo
David Robledo
Recommended by: Asst. Supt./CFO

René Gutiérrez
René Gutiérrez
Dr. René Gutiérrez
Superintendent

Dr. Nellie Cantu
Dr. Nellie Cantu
Approved by: Deputy Superintendent *3/31/22*

When Necessary, Additional Background May Follow This.



Brownsville Independent School District

Agenda Category: General Function
Contracts/MOU Board of Education Meeting: 06/24/21

Item Title: Award Contract for RFQ #21-131 X Action
Board Legal Advisor Services to Information
O'Hanlon, Demerath, & Castillo Discussion

BACKGROUND:

During the Special Called Board of Trustees meeting held on June 1, 2021, the Brownsville Independent School District Board of Trustees awarded RFQ #21-131, Board Legal Advisor Services to O'Hanlon, Demerath, & Castillo. The term contract is for one (1) year, effective August 1, 2021. The District has the option to renew the contract for up to two (2) years.
(Miguel Salinas)

FISCAL IMPLICATIONS:

Local Maintenance Funds - \$240,000.00 per year.

RECOMMENDATION:

Recommend approval of the negotiated contract for RFQ #21-131, Legal Board Advisor services to O'Hanlon, Demerath, & Castillo from Austin, Texas for one year beginning August 1, 2021, with the option to renew for two additional one-year terms, in the amount not to exceed \$240,000.00 from Local Maintenance Funds.

Miguel Salinas Rosario Peña
Submitted by: Staff Attorney/Purchasing Director

Approved for Submission to Board of Education:

David Robledo
Recommended by: Asst. Supt/CFO

Dr. Nellie Cantu Dr. Nellie Cantu
Approved by: Deputy Superintendent 6/21/21

Dr. René Gutiérrez
Superintendent

When Necessary, Additional Background May Follow This.

LEGAL SERVICES AGREEMENT

This Legal Services Agreement is made and entered into by and between the Brownsville Independent School District, hereinafter referred to as "BISD," and O'Hanlon, Demerath & Castillo, hereinafter referred to as "Counsel."

RECITALS

WHEREAS, BISD requires the assistance of Counsel in carrying out its duties and responsibilities; and,

WHEREAS, on or about June 1, 2021, BISD Board of Trustees took action to award RFQ #21-131 to O'Hanlon, Demerath & Castillo; and,

WHEREAS, O'Hanlon, Demerath & Castillo agrees to act as BISD's Counsel under the terms and conditions set forth herein:

NOW THEREFORE, in consideration of the mutual covenants and terms and conditions herein contained, and of the execution hereof, the parties agree and bind themselves to the obligations set forth in this Legal Services Agreement.

I. PURPOSE

BISD hereby approves O'Hanlon, Demerath & Castillo as legal counsel to BISD and its BISD Board of Trustees during the term of this Agreement. The general purpose of this Agreement is for BISD to obtain Counsel to advise and assist BISD and its Board of Trustees in its course and scope of the performance its of duties and responsibilities as an independent school district in accordance with the laws and regulations of the United States and of the State of Texas.

II. NON-DELEGATION OF DUTIES

BISD is retaining O'Hanlon, Demerath & Castillo. No delegation of services outside of the firm may be utilized without prior authorization by the BISD Board of Trustees. Counsel shall obtain prior authorization from the Board of Trustees before engaging any experts or additional non-employee legal counsel.

III. SCOPE OF ENGAGEMENT

O'Hanlon, Demerath & Castillo will represent BISD in connection with all legal matters involving the District, its Board, or its staff in all legal matters to which they are assigned in accordance with the provisions of Brownsville ISD Board Policy BDD (Local), as they arise. These areas include, but are not limited to, issues of general school law, election law, contract

review, personnel matters (hiring practices, non-renewals, terminations, grievances, EEOC matters, employee investigations, Title VII Claims, Title IX Claims), student matters, policy review and policy interpretation, immigration issues, student discipline, defense of Office of Civil Rights complaints, open government issues, including responding to Public Information Act requests, responding to media requests related to Board of Trustee issues, Title VII Matters, ADA matters, Section 504 matters, Texas Open Meetings Act/Public Information Act compliance, including Board Agenda review, construction, real estate, inter-local agreements and other business matters, and all other matters for which the firm's advice and/or representation is sought by or on behalf of Brownsville ISD. Upon request, O'Hanlon, Demerath & Castillo shall perform departmental, employee, and/or Board training on issues requested by the Board of Trustees or BISD. Additionally, O'Hanlon, Demerath & Castillo shall maintain all legal deadlines, and keep the BISD reasonably informed of all pending matters.

O'Hanlon, Demerath & Castillo shall be present and provide legal representation at all Regularly Scheduled Board Meetings, Special Called Board Meetings and Committee Meetings when requested by the particular Committee Chairman. O'Hanlon, Demerath & Castillo shall also assist in the legal review of all Minutes of such Board meetings, as prepared by the Board Secretary, upon request. It is understood by the Parties that the Firm's primary representative at meetings of the Board of Trustees will be Kevin O'Hanlon, subject to scheduling conflicts.

O'Hanlon, Demerath & Castillo shall also be available to immediately respond to the BISD Board of Trustees President and or Superintendent of Schools or his/her designees, when legal advice concerning BISD is sought.

It is expressly understood by Counsel that no litigation will be initiated or terminated without the prior approval and official action of the BISD Board of Trustees.

IV. REPORTS TO THE BOARD

O'Hanlon, Demerath & Castillo shall regularly report to the Board in executive session and maintain a listing of all pending and potential litigation, including but not limited to all state, federal, special education, administrative law, administrative grievance pending, and any other legal issues with the BISD. Upon request, Counsel shall report a brief summary of the status of each case with a projected cost of defense and timeline.

V. TERM OF ENGAGEMENT

This Agreement shall commence on June 25, 2021 and shall terminate on June 30, 2022. ("Agreement Termination Date"), unless terminated earlier. BISD shall have the right, upon approval and in the sole discretion of the Board of Trustees, to extend the term of this Agreement for two additional one-year terms.

VI. FEES

O'Hanlon, Demerath & Castillo's total fees for the provision of the legal services, inclusive of the expenses described below, as are described in Sections III and IV, shall be TWENTY THOUSAND and NO/100 DOLLARS (\$20,000.00) per month for the duration of this Agreement, or any extension thereof. Such fees shall be payable, on a monthly basis to O'Hanlon, Demerath & Castillo. Any increases to this monthly flat fee during the term of this Agreement and any subsequent renewals thereof must be in writing and approved by the BISD Board of Trustees. The parties acknowledge and agree that nothing in this Agreement will be interpreted to create an obligation or liability in excess of the funds currently appropriated to BISD. Payment for partial months shall be appropriately prorated.

The parties acknowledge that the compensation provided for under this agreement is meant to be a flat-rate monthly fee. Counsel shall be solely responsible for all costs which Counsel may incur incidental to conduction the business of the BISD, such as travel expenses, meal reimbursements and mileage. In addition, the BISD will not provide clerical staff or office support to the Counsel. BISD shall not be responsible for providing Counsel with staff, employees, office supplies, office equipment, telephone services, telephone equipment, facsimile equipment, networking equipment or office supplies. BISD will not be responsible for any costs of overhead, including but not limited to legal research software, subscriptions, and or costs of maintaining professional certifications or costs for continuing legal education. BISD shall be responsible for direct costs such as Hearing Examiner Services, Court Reporter fees, expert witness fees, court costs, large scale document reproduction expenses, and other similar items of cost incurred by the firm on behalf of BISD.

VII. TERMINATION

If at any time during this agreement or any extension hereof, BISD determines that Counsel's performance under this agreement is unsatisfactory, BISD shall notify the Counsel in writing of BISD's determination. Such notice may also, in the Board's sole discretion terminate this Agreement upon the expiration of a thirty-day transition during which O'Hanlon, Demerath & Castillo will be responsible for the transition of all legal matters and files in their possession to substitute counsel designated by the BISD Board of Trustees. Upon notification from the Board, Counsel shall immediately cease all services, other than transition activities immediately, except such services which are necessary to windup all services being provided. If termination results in an incomplete month of services being provided, it shall result in the proration of such payment commensurate to the number of days worked.

VIII. PUBLIC ENTITY

The Counsel acknowledges that documents generated in the course of representation of a governmental body may be subject to the Texas Public Information Act. Counsel will exercise

professional judgment and care not to generate documents which are subject to public information requests that are intended to be confidential or confidential attorney-client communications. This is particularly important in the presentation of invoices where incidental notation may tend to reveal litigation strategies or confidential information. This subsection shall not be interpreted to limit Counsel's duty to provide full disclosure to BISD as necessary in Counsel's judgment to represent BISD with due professional care as required by applicable laws or disciplinary rules.

**IX.
GIFTS TO PUBLIC SERVANT**

Counsel warrants that it has not given, nor does he intend to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discounts, trips, favors, or service in exchange for this Agreement. Additionally, neither the Firm, nor its employees will contribute to the political campaign of any sitting BISD Trustee.

**X.
LICENSE/CONDUCT**

Counsel warrants that all of its attorneys are in good standing under the laws of the State of Texas. Counsel will notify BISD in writing within one (1) business day of any lapse in the licensed status of any attorney providing services to BISD. Counsel further acknowledges that, in performing services under this Agreement, Counsel and its attorneys must adhere to the Texas Disciplinary Rules of Professional Conduct.

**XI.
INDEPENDENT CONTRACTOR/
INDEMNIFICATION**

Counsel agrees and acknowledges that during the existence of this Agreement, it will be acting in the capacity of an independent contractor, and that Counsel is not an employee of BISD. Counsel will be solely and entirely responsible for his acts and the acts of his agents, employees, subcontractors, and representatives in the performance of this Agreement.

Counsel agrees and acknowledges that during the term of this Agreement, Counsel shall be entirely responsible for the liability and payment of its employees or assistants, of all taxes of whatever kind, arising out of the performances of this Agreement. Other than payments described in this Agreement, Counsel agrees and acknowledges that Counsel or its employees or assistants shall not be entitled to any local or state benefit on account of the services provided hereunder.

To the fullest extent permitted by law, Counsel shall indemnify and hold harmless BISD, its Trustees, administrators, and employees from and against any and all claims, costs, losses, and damages (including, but not limited to, all fees and charges of attorneys, and other professionals, and all court, arbitration or other dispute resolution costs) caused by the negligent acts or omissions of Counsel or Counsel's attorneys or employees, in the performance and furnishing of Counsel's legal services under this Agreement.

XII.
GENERAL PROVISIONS

This Agreement shall not be assigned, or any rights, duties or obligations hereunder, without the expressed approval of the BISD Board of Trustees in its sole and absolute discretion.

Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature, between BISD and Counsel, nor shall any employee of Counsel be deemed to be an employee of BISD.


This Agreement constitutes the entire Agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. Except as expressly set forth herein, this Agreement shall not be amended in any way except in writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

No waiver of any provision of this Agreement by either party hereto shall be deemed, or shall constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.


This Legal Services Agreement is entered into, upon board approval, as of this 24 day of June 2021.

BROWNSVILLE INDEPENDENT SCHOOL DISTRICT

By: _____


EDDIE GARCIA
President
Board of Trustees
Brownsville Independent School District

ATTEST:


DRUE BROWN

Secretary
Board of Trustees
Brownsville Independent School District

O'HANLON DEMERATH & CASTILLO

By: 
KEVIN O'HANLON
President
