

East Side Union High School District

RFP-22-16-17 for Testing & Inspection Services

February 2, 2017

East Side Union High School District is requesting a proposal from the District's approved Special Testing & Inspection firms to provide full service, comprehensive, professional DSA required special testing and inspections services.

General Project Information:

- Project Name: **FH Hooper Hall Modernization, Quad Upgrade & Site Infrastructure Improvements**
- Project Number: **Z-005-602; Z-005-601; I-005-002**
- DSA Application # 01-116131, File #43-H10.
- Project Address:
230 Pala Ave, San Jose, CA 95127
- Estimated Construction Value: \$1,900,000.00
- Delivery Method:
 - Design, Bid, Build
- Respondent should review construction documents for complete scope of work. Generally, the Project consists of the following:
 - Building F: Hooper Hall – Complete gut prep and rebuild of building
 - Site Hardscape improvements for accessibility and to connect to Hooper Hall
- Drawings and Specifications for the project are available on the project documents web site:
 - <http://www.esuhd.org/Community/Purchasing/Capital-Purchasing/Current-RFQ-RFP-BIDS/index.html>
 - The documents are also available for viewing at the Capital Purchasing Office at the Education Center, 830 N. Capitol Avenue, San Jose, CA 95133; contact Janice Unger to make an appointment.
- Project Team Members:
 - Hazardous Materials Consultant: HazMat Doc
 - Construction Manager: Kitchell CEM
 - General Contractor: Pending
 - Special Testing & Inspections: TBD
 - Geotechnical: None

Project Attachments to this RFP:

- DSA Form 103 Testing & Inspection Sheet

Schedule:

- Schedule: Construction is expected to begin in **Mid-March, 2017**. Construction duration is estimated as **4 months**.

Testing & Inspection Responsibilities

- Coordinate inspections and report to DSA Inspector of Record
- Provide semi-monthly reports to DSA, IOR, District, CM, A/E
- Review progress of work as needed with IOR, A/E, CM, District
- Provide review and comment on proposed contractor change orders for any work with special testing/inspection ramifications.
- Provide Form 6 Final Verified Report to DSA, with copies to IOR, District, CM, A/E

Form of Contract

- The awarded respondent will be required to execute a standard Contract Services Agreement (attached)

Proposals

- Please submit a services and fee proposal based on the drawings, specifications, Testing & Inspection Sheet and project schedule. Proposals should include, at a minimum, the following:
 - Indicate the point of contact proposed for this Project
 - Provide a fee proposal that delineates the following:
 - Estimated Cost Proposal
 - Standard Fee Schedule
 - Other expenses - identify (if none, please state none)
 - Provide clarifications, exceptions and exclusions as needed
 - If construction exceeds the preliminary anticipated schedule, specify if/how your firm will approach additional service consideration.
 - The District will not pay:
 - Mileage charges
 - Per diem charges
- Costs of preparation of proposals will be borne by the proposer.
- Proposals are due before **3:00 PM on February 16, 2017** and must be submitted via email to:
 - CapPurchasing@esuhsd.org Capital Purchasing Department, East Side Union High School District, 830 N. Capital Ave, San Jose, CA.
 - Please specify on email subject line: “RFP-22-16-17; FH Hooper Hall Modernization, Quad Upgrade, & Site Infrastructure Improvements; Testing & Inspection Services”

Selection Process and Criteria:

- Selection will be based on District review of respondents’ proposed services and fee, qualifications and experience, past project successes as it pertains to providing Testing and Inspection services.
- This request does not constitute an offer of employment or to contract for services.
- The District reserves the option to reject any or all proposals, wholly or in part, received by reason of this request.
- All proposals shall remain firm for forty-five (45) days following the closing date for receipt of proposals.
- The District reserves the right to award the contract to the Testing and Inspection Firm who presents the proposal which in the judgment of the District, best accomplishes the desired results.
- The District reserves the right to reject all proposals without cause.

Requests for Information:

- Direct questions pertaining to this Project to Kitchell CEM, Steven Corchado, (408) 605-0016 or macarson@kitchell.com and copy Capital Purchasing at CapPurchasing@esuhsd.org

End of Document

EAST SIDE UNION HIGH SCHOOL DISTRICT

CONTRACT SERVICES AGREEMENT IRS GUIDELINES

Please complete questionnaire below before completing Contract Services form.

Consultant Firm's Name _____

Brief Description of Services _____

PART I	YES	NO
1. Has this category of worker already been classified an "employee" by the IRS? Administrators tutors nurses teachers/instructors cafeteria workers psychologists substitutes counselors intern psychologists school bus drivers examination monitors specialty teachers clerical staff proctors librarians athletic coaches individuals "filling in" on an interim basis		
2. Is this individual working as an employee prescribed by the Education Code? Education Code Sections 45100-45451 define what constitutes the classified service. Education Code Sections 44800-45060 define the certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.		
3. Is the individual already an employee of the district in another capacity?		
4. Has the individual performed substantially the same services for the district as an employee in the past?		
5. Are there currently employees of the district doing substantially the same services as will be required of this individual?		
6. Does the district have the legal right to control the method of performance by this individual? Consider whether the District will train the individual or give instruction as to when, where, how, and in what order the work will be performed.		
7. Does the District require the individual to submit reports on the details of their work or work at a particular site? These factors indicate the District maintains control sufficient for an employer/employee relationship. However, it is not necessary that the District exercise this right, or have the expertise required to do so.		

If the answer to any of the above questions is "YES" --- **STOP HERE !!!**
 Do not complete the rest of the questions. The individual is a district employee and must be paid and reported accordingly. Call Human Resources for further details.

If all of the above are "NO", **continue...**

PART II	YES	NO
8. Will all the work be performed by this individual? Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval.		
9. Does the district have a continuing relationship with this individual? Is this a "one shot" assignment, or will the District continue to use this individual in the future? This could be on an infrequent or irregular basis, but a continuous relationship exists.		
10. Can this relationship be terminated without the consent of both parties?		

If the answer to the question 8, 9, or 10 is "YES", there is a good possibility that an employment relationship exists. Questions 8 & 9 are indicators of district control that in conjunction with other factors imply an employment relationship.

<p>11. Does the individual operate an independent trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, the District is considered to be a separate entity. Keep in mind: if the District is using this individual's services on a full-time basis, the individual is <u>not</u> available to the general public.</p>		
<p>12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.? This is indicative of economic risk inherent in business enterprises. An independent Consultant must be able to make a profit or sustain a loss.</p>		

If either 11 or 12 are "NO", the individual is a district employee **STOP HERE** and process the individual through Human Resources and payroll.

If 11 and 12 are both "YES", continue...

<p>13. Does the individual provide all materials and support services necessary for the performance of this service? The District should not be providing office space on a regular basis, clerical, secretarial, or other support for the individual such as materials, copying, printing, office supplies, etc. Any necessary assistance should be provided by the individual.</p>		
<p>14. Is this individual paid by the job or upon completion and acceptance of the work as a whole or milestones identified in the contract?</p>		
<p>15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? Generally the individual will pay the cost of any travel and business expenses incurred to perform the work. However, some agreements may be made to provide for payment of airfare, mileage, etc. for consultants.</p>		

If 11 and 12 are "YES", 13 through 15 should also be "YES" and are items that should be written into the Independent Contract.

This individual is an Independent Consultant. A "YES" on questions 13 through 15 supports the district's conclusion and substantiates a "reasonable basis" for treatment as independent Consultant. While there is circumstances where the district may pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.

By signing below, Consultant and Purchasing Manager attest that they have reviewed District guidelines and certify that the information above is true and correct.

Consultant Signature _____ Date _____

Purchasing Manager Signature _____ Date _____

Please attach questionnaire to completed Contract Services Agreement form and send to the Business Office.

(2015.08.28)

EAST SIDE UNION HIGH SCHOOL DISTRICT

CONTRACT SERVICES AGREEMENT (No. _____)

TO: BUSINESS SERVICES

FROM: Facilities/Capital Projects _____ Janice Unger _____ Ext.# _____
SCHOOL/DEPT. CONTACT PERSON

1. **PARTIES:** The East Side Union High School District (ESUHSD), whose address is 830 N. Capitol Avenue, San Jose, CA 95133, and the following named Consultant:

Consultant Firm's Name: _____

Address _____ CITY _____ ST _____ Zip _____

Telephone: _____ Fax No. _____

Email Address: _____ S.S. or Federal I.D. Number _____

Consultant's License # _____ Type _____ Expiration _____

mutually agree and promise as follows and as per terms and conditions set forth on the reverse side of this page (page 2):

2. **CONTRACT TERM:** Effective dates: _____ to _____.

3. **CONSULTANT'S OBLIGATION:** In consideration of the compensation, the Consultant shall provide the following services, materials, products, and/or reports. **Attach proposals and other documentation** if available.

The scope of services, hereinafter referred to as Services, covered by this Contract Service Agreement (CSA), which is incorporated and made part of this agreement by this reference and the accompanying vendor's, estimated breakdown of cost per proposal submitted on (date) _____ for the (school and project name) _____ Project # _____.

The scope of work includes _____ and/or _____. ESUHSD does not pay for mileage. Services not to exceed without District approval = \$ _____.

Invoices are to be submitted to East Side Union High School District in the following manner:

1. Invoices shall be in sufficient details to fully understand the services provided during the time period specified on the invoice, ie: dates, times, location, tasks, staff/sub consultant who provided the service, and any other information that is pertinent to the services provided.

2. Purchase order number, project name and number, DSA file number, along with application number assigned to this project needs to be listed on each invoice.

3. Invoices are to be sent electronically to **Capital Accounting Department, CapAcctg@esuhsd.org**, or mail to East Side Union High School District, 830 North Capitol Ave, San Jose, CA 95133 Attn: Capital Accounting.

(If applicable)

ESUHSD has retained the services of _____ as the Architect of the Construction Work.

ESUHSD has retained the services of _____ as the Construction Manager of the Construction Work.

ESUHSD has retained the services of _____ as the DSA Inspector of Record of the Construction Work.

Remit Address: ___ (Consultant's name and address)_____

4. **COMPENSATION:** In consideration of Consultant's provision of services as described above, ESUHSD shall pay Consultant upon completion of services, as follows:

Hourly Rate \$_____/hour Total hours _____ **Total Fees** \$_____

Other (i.e. monthly, quarterly, annually): _____

5. **BUDGET CODE AND FUNDING SOURCE:**

FUNDING SOURCE: _____

FD XX	LOC XXX	PROG XXX	GOAL XXXX	FUNC XXXX	OBJT XXXX	RESC XXXX	YR X	MGR XXX	\$ AMOUNT

6. **APPROVALS:** These signatures attest the parties' agreement hereto:

East Side Union High School District:

School Site/Dept. Administrator _____ Date _____

Business Services _____ Date _____

Associate Superintendent _____ Date _____

Board of Trustees _____ Date _____

Consultant:

Signature _____ Date _____

Printed Name _____ Title _____

(Form #3002-23 mdc 8/03)

Page 2 of 3

1. **COMPENSATION:** In consideration of Consultant's provision of services as described, and subject to the payment provisions expressed herein, ESUHSD shall pay Consultant as agreed, upon Consultant's submission of a properly documented demand for payment which shall be submitted not later than 30 days from the end of the month in which the contract services were rendered, and upon approval of such demand by ESUHSD.
2. **TERMINATION:** This contract may be terminated by ESUHSD at its sole discretion, upon five-day (5) advance written notice thereof to the Consultant, or cancelled immediately by written mutual consent.
3. **INDEPENDENT CONSULTANT STATUS:** This contract is by and between two independent Consultants and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association. In executing this agreement, the Consultant certifies that no one who has or who will have any financial interest under this agreement is an officer or employee of ESUHSD. Additionally, as the Consultant is not an ESUHSD employee, ESUHSD is not responsible for obtaining workers' compensation insurance coverage for the Consultant.
4. **COMPLETENESS OF AGREEMENT:** This agreement constitutes the entire understanding of the parties and any change or modification shall be in writing and signed by both parties hereto.
5. **INDEMNIFICATION:** The Consultant agrees and shall defend, indemnify, save, and hold harmless ESUHSD, its agents, officers and employees from any and all claims, costs and liability for any damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of the Consultant, its agents, servants, employees or subConsultants hereunder, and any other person, firm or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this agreement and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Consultant in the performance of this agreement. Consultant will reimburse the ESUHSD for any expenditures, including reasonable attorney's fees, ESUHSD may make by the reason of the matters that are the subject of this indemnification, and if requested by ESUHSD, will defend any claims or litigation to which this indemnification provision applies at the sole cost and expense of the Consultant.
6. **INSURANCE:** The Consultant will maintain general liability insurance, including automobile coverage, in an amount as may be reasonably necessary to assure compliance with the indemnification provision, herein above. Additional insurance may be required by ESUHSD. The Consultant agrees to produce copies of the required policies of insurance upon request of ESUHSD. The requirements of this provision may be waived by ESUHSD; however, any waiver shall not affect the Consultant's liability to ESUHSD under the indemnification provision.
7. **NON-DISCRIMINATION/AFFIRMATIVE ACTION:** No discrimination shall be made in the employment of persons under this agreement because of the race, color, national origin, age, ancestry, physical handicap, religion, or sex of such person or any other basis protected by law.
8. **LICENSE AND AUTHORITY:** The Consultant warrants that he/she/it will maintain all necessary licenses, registrations, and certifications during the term of this agreement, and that, if other than a natural person, it is duly authorized to enter into this agreement by its governing or controlling body. Consultant shall provide evidence or copies of all necessary licenses, registrations and certifications upon ESUHSD's request.
9. **EQUIPMENT AND FACILITIES:** The Consultant will provide all necessary equipment and facilities to render his/her/its services pursuant to this agreement, unless the parties to this agreement specifically agree in writing that said equipment and facilities will be provided in a different manner.
10. **EXPENSES:** The Consultant shall be responsible for all costs and expenses incident to the performance of services for ESUHSD, including but not limited to: all costs of equipment provided by the Consultant, all fees, fines, licenses, bonds, or taxes required of or imposed against the Consultant, and all other of the Consultant's costs of doing business. ESUHSD shall not be responsible for any expenses incurred by the Consultant in performing services for ESUHSD except as provided by the agreement.
11. **TAX REPORTING/PAYMENT RESPONSIBILITIES:** ESUHSD shall provide an annual statement of compensation paid on the appropriate federal and/or state information forms. The Consultant is responsible for payment of any federal and/or state tax amounts due.
12. **ASSIGNMENT:** Without the written consent of ESUHSD, this agreement is not assignable by the Consultant, either in whole or in part.
13. **GOVERNING LAW AND LABOR CODE:** The validity of this agreement and any of its terms or provisions as well as the rights and duties of the parties hereunder shall be governed by the laws of the State of California. The Consultant shall be subject to and shall comply with all Federal, State, and Local laws and regulations applicable with respect to its performance under this contract, including but not limited to, licensing, employment and purchasing practices, and wages, hours and conditions of employment, including non-discrimination. Consultant shall comply with the applicable provisions of the Labor Code, Section 1720-1861, State of California, especially in regards to prevailing wages, copies of which are available at the District Office.
14. **AMBIGUITY:** The parties to this agreement, and each of them, hereby represent that the language contained herein is to be construed as jointly proposed and jointly accepted, and in the event of any subsequent determination of ambiguity, all parties shall be treated as equally responsible for such ambiguity.
15. **FINGERPRINTING AND CRIMINAL RECORDS CHECK:** Consultant shall comply with the provisions of Education Code Section 45125.1 regarding the submission of employee fingerprints to the California Department of Justice and the completion of criminal background investigations of its employees. Consultant shall not permit any employees to have any contact with District pupils until such time as Consultant has verified in writing to the governing board of the East Side Union High School District that such employee has not been convicted of a felony as defined in Education Code Section 45125.1. Consultant's responsibility shall extend to all employees, subConsultants, and employees of subConsultants regardless of whether such individuals are paid or unpaid, concurrently employed by the District, and/or acting as independent Consultants of the Consultant. Verification of compliance with this section shall be provided in writing to the District prior to each individual's commencement of employment or participation in the project and prior to permitting contact with pupils. If the Consultant believes that Education Code section 45125.1 does not require fingerprinting, Consultant shall take the appropriate steps to provide for the safety of any pupils that may come into contact with its employees.



CONFLICT OF INTEREST STATEMENT East Side Union High School District (Consultants)

[This form must be filled out, signed, dated and submitted by all persons seeking to serve as a consultant to the District]

Board Policy 3600 of the East Side Union High School District provides in part:

“Independent contractors applying for a consultant contract shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend the consultant's employment.”

The Superintendent has determined that all persons seeking to serve as a consultant to the District shall fill out truthfully, sign, date and submit this Conflict of Interest Statement prior to performing any consultant work or services for the District.

I, _____ [NAME OF CONSULTANT], hereby certify the following:

1. I am not an employee of the District.
2. Within the past year I have not been a member of the District Board of Trustees of the District.
3. Neither I nor any member of my immediate family (includes parent, spouse, domestic partner, or child) or member or resident of my household is a member of the District's Citizens Bond Oversight Committee for the District's Measure G or Measure E bond programs.
4. Within the past year I have not provided or made, and will not provide or make, any promise of any gift¹ of any kind (money, meals, goods, services, entertainment tickets, etc.), in-kind services, commission, or fully or partially expense-paid trips to any District Board Member or District employee whose responsibilities include the selection of District consultants or the evaluation, supervision or oversight of District consultants (a “**Responsible Employee**”), except:

¹ “Gifts” do not include promotional or advertising items such as calendars, desk pads, notebooks and other office items valued less than \$25.00 and which are of the type usually offered by business concerns free of charge to all as part of their public relations programs.



5. I do not employ or retain, and will not employ or retain, any current District **Responsible Employee** as a consultant, independent contractor or employee during the term of my consultancy agreement with the District.

6. I am authorized to make, and do make, this certification on behalf of _____
[CONSULTANT].

The foregoing certifications are true and correct. I make this certification under penalty of perjury under the laws of the State of California.

Signature of Consultant

Signature Date

Attachment B
Insurance Requirements
Page 1 of 3

Without limiting the Vendor's indemnification of ESUHSD, the Vendor shall provide and maintain at its own expense, during the term of the Contract(s), or as may be further required herein, the following insurance coverage and provisions:

A. Evidence of Coverage

Prior to commencement of a Contract, the Vendor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained along a separate special endorsement executed by the insurance carrier which actually modifies the vendor's insurance policy to include ESUHSD as additionally insured. In addition, a certified copy of the policy or policies shall be provided by the Vendor upon request.

This verification of coverage shall be sent to the Purchasing Department at ESUHSD, unless otherwise directed. The Vendor shall not receive a Notice to Proceed with the work under the Contract until it has obtained all insurance required and such insurance has been approved by the ESUHSD. This approval of insurance shall neither relieve nor decrease the liability of the Vendor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by ESUHSD.

C. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury- \$1,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Contractual liability, expressly including liability assumed under the resulting contract.
- d. Personal Injury liability
- e. Owners' and Vendors' Protective liability
- f. Severability of interest

3. General liability coverage shall include the following endorsements, copies of which shall be provided to ESUHSD:

- a. Additional Insured Endorsement:

Attachment B
Insurance Requirements
Page 2 of 3

Insurance afforded by this policy shall also apply to ESUHSD, and members of the Board of Trustees, and the officers, agents, and employees of the ESUHSD, individually and collectively, as additional insureds. Such insurance shall also apply to any municipality in which the work occurs and they shall be named on the policy as additional insured (if applicable).

b. Primary Insurance Endorsement:

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the ESUHSD, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

c. Notice of Cancellation or Change of Coverage Endorsement:

Insurance afforded by this policy shall not be canceled or changed so as to no longer meet the specified ESUHSD insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the ESUHSD.

d. Contractual Liability Endorsement:

Insurance afforded by this policy shall apply to liability assumed by the insured under written contract with the ESUHSD.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

a. Statutory California Workers' Compensation coverage including broad form all-states coverage.

b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.

b. If coverage contains a deductible or self-retention, it shall not be greater than twenty-five thousand dollars (\$25,000) per occurrence/event.

7. Claims Made Coverage

If coverage is written on a claim made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

Attachment B
Insurance Requirements
Page 3 of 3

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Consultant will make every effort to maintain similar insurance during the required extended period of coverage following project completion, including the requirement of adding all additional insured.
- c. If insurance is terminated for any reason, Consultant agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement or Permit.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

D. Special Provisions

The following provisions shall apply to the resulting contract:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Vendor and any approval of said insurance by the ESUHSD or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Vendor pursuant to the resulting contract, including but not limited to the provisions concerning indemnification.
2. The ESUHSD acknowledges that some insurance requirements contained in the resulting contract may be fulfilled by self-insurance on the part of the Vendor. However, this shall not in any way limit liabilities assumed by the Vendor under the resulting contract. Any self-insurance shall be approved in writing by the ESUHSD upon satisfactory evidence of financial capacity. Vendor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under the resulting contract be sublet, the Vendor shall require each of its subVendors of any tier to carry the aforementioned coverages, or Vendor may insure subVendors under its own policies.
4. The ESUHSD reserves the right to withhold payments to the Vendor in the event of material noncompliance with the insurance requirements outlined above.