



## Interpreting Services

### *RFP #152605 Compliance Review*

---

Office of Internal Auditing  
August 2016

**David J. Bryant, CPA, CIA, CFE, CGFM, CRMA**  
*Director – Internal Auditing*

Audit Team:  
**Brad Mostert, CFE**  
*Senior Auditor*

**Jeanne Pilgrim**  
*Property Audit Specialist*

## Preface

---

The Office of Internal Auditing serves to improve the fiscal accountability and enhance the public's perception of the management and operations of the Escambia County School District. This engagement strives to meet those objectives.

Audits, reviews, and other engagements are determined through a District-wide risk assessment process, and are incorporated into the annual work plan of the Office of Internal Auditing, as approved by the Audit Committee. Other assignments are also undertaken at the request of District management.

This engagement was conducted with the full cooperation of District operational staff. While we encountered minor limitations with receiving documents from one vendor, these restrictions were not material and did not prohibit us from reaching conclusions or offering recommendations.

Any recommendations included in this engagement are designed to improve operations and serve as the basis for informed discussions related to policies and procedures.

This engagement was conducted in accordance with the International Standards for Professional Practice of Internal Auditing, as promulgated by the Institute of Internal Auditors.

We thank the Exceptional Student Services staff for their cooperation and commitment. We look forward to reviewing their progress when we follow-up on our recommendations.



Office of Internal Auditing  
Escambia County School District  
[www.escambia.k12.fl.us/iaudit](http://www.escambia.k12.fl.us/iaudit)  
75 North Pace Blvd. – Suite 403  
Pensacola, Florida 32505

## Executive Summary

---

In May 2016, the Escambia County School District (ECSD) management asked the Office of Internal Auditing to conduct a review to determine the awarded vendors' compliance with the conditions and criteria set forth in Request for Purchase (RFP) #152605 – Interpreting Services for the ECSD and the Santa Rosa County School District (SRCSD). Specifically, our objectives included determining if the vendors paid their employees/subcontractors the agreed upon contract rates in the RFP and if the Districts were billed the proper rates for the appropriate amount of service hours provided.

The RFP required vendors to pay their employees/contractors a pre-determined rate based on the category of their qualifications. Per the RFP, the hourly billing rate for service hours provided was determined by adding an administrative fee to the employee/ subcontractor hourly pay rate.

The RFP was awarded to two vendors. A copy of the Bid Tabulation, which includes the rate schedule for each vendor, can be found in Appendix A.

Our analysis of their compliance with the RFP for the period of July 1, 2015 through May 31, 2106 is as follows:

### Professional Interpreting Services for the Deaf, Inc. (PISD)

We noted a significant number of errors in the employee/subcontractor pay records and the billing records to the Districts. These errors appear to be the result of carelessness, as in both areas the vendor's errors resulted in net losses to the vendor.

### *Payment to Employees/Subcontractors*

It appears the vendor **overpaid** its employees/subcontractors by a net amount of approximately \$1,400 for the period of July 1, 2015 through May 31, 2016. Among the various discrepancies, we noted the following:

- Mathematical errors (both positive and negative)
- Subcontractor double billing
- Payment at rates **greater** than the contract rates

In addition, we noted that the vendor consistently **paid one subcontractor at an amount lower than the contract rate** per the rate schedule, when the subcontractor worked in the SRCSD; however, per PISD, this was at the instruction of SRCSD personnel.

### *Billing to the Districts*

It appears the vendor **under-billed** the ECSD by a net amount of approximately \$1,200 for the period of July 1, 2015 through May 31, 2016. Among the various discrepancies, we noted the following:

- District billed for hours not on subcontractor invoice

**Overall, PISD paid its subcontractors more than the contract rate.**

**PISD paid one subcontractor less than the contract rate per instructions by the SRCSD.**

**PISD under-billed the ECSD by approximately \$1,200.**

- District not billed for hours worked by subcontractor
- Hours billed to the District differ from hours worked by subcontractor
- District billed at higher and lower rates than contract rate per rate schedule
- Name of interpreter providing services missing from invoice to District

We noted no discrepancies in billings to the SRCSD.

Interpreting Associates, LLC (IA)

The vendor’s records were generally well-organized. Based on Payment/Policies Agreements provided by the vendor, we noted **that the vendor entered into agreements with subcontractors to pay them at rates lower than the contract rate per the rate schedule.**

*Payment to Employees/Subcontractors*

It appears **the vendor paid five of its ten subcontractors at rates less than the contract rates. This resulted in a net amount of approximately \$19,000 in underpayments to employee/subcontractors for the period July 1, 2015 through May 31, 2016.**

Despite reducing the “Employee Hourly Rate” portion of the billing formula, the Districts were still billed at the higher rate, as if the correct contract rate had been paid to the subcontractor. Of the approximate \$19,000 in question, \$11,900 was for service hours in the ECSD, and \$7,100 was for service hours in the SRCSD. It is unclear if the difference represents an underpayment to the subcontractors or an over-billing to the Districts.

When questioned, representatives of the vendor indicated that despite completing the rate schedule, and having access to the details of the RFP, including the Questions and Answers Section of the RFP, which addressed employee hourly rates of pay, **the vendor disagreed that the RFP required payment at certain contract rates.** The vendor contended that they were free to pay their subcontractors whatever hourly rate they deemed appropriate based on their view of a subcontractor’s qualifications and vendor-administered skills testing.

*Billing to the Districts*

Absent the billing concerns discussed above, the vendor’s billings were otherwise generally accurate. We noted only one discrepancy, which was the result of a mathematical error. This error resulted in the ECSD being **under-billed** by \$544.

**This report includes recommendations.** The Executive Summary is intended to highlight the various aspects of the report. The full report should be read to understand the basis of our recommendations.

**IA paid 5 of its 10 subcontractors less than the contract rate; a total of \$19,000.**

**IA disagreed that the RFP required its subcontractors to be paid at the contract rate.**

**IA under-billed the ECSD by \$544.**

## Background

---

**The RFP required vendor to pay their subcontractors a rate based on qualifications, by category.**

The ECSD’s Program for Deaf or Hard of Hearing (D/HH) provides a variety of needs-based services to students, including providing educational interpreters to students. The ECSD employs interpreters, as well as procures interpreters from outside service providers.

In May 2015, the Districts issued RFP #152605, titled “Interpreting Services,” to solicit bids to provide interpreting services for both Escambia and Santa Rosa Counties. On June 2, 2015, the bid was awarded to two providers: Professional Interpreting Services for the Deaf, Inc., and Interpreting Associates, LLC.

While the RFP was generally consistent with other District solicitations, it did contain certain conditions and criteria specific to the needs of the Exceptional Student Education (ESE) Department and to educational interpreters. Most notable of these criteria was the requirement that awarded vendors were to pay their interpreters a fixed rate of hourly compensation based on their qualifications. The amount the Districts would be billed per hour would be determined by adding a pre-determined hourly administrative fee to this hourly compensation rate. The rate schedule completed by the participating vendors appeared as follows:

Interpreters	Employee Hourly Rate of Pay	Administrative Fee	Price Per Hour
Interpreters <b>without</b> Credentials /Certifications			
Interpreters with <b>Recognized</b> Credentials/Certifications			
Interpreters with <b>National</b> Credentials/Certifications			

A copy of the Bid Tabulation, which includes the rate schedule for each vendor, can be found in Appendix A.

The ECSD does not traditionally issue solicitations which require its vendors to pay their employees and/or subcontractors a set rate of pay. It is our understanding that this criteria was included in the RFP in an effort to ensure consistency between all vendors and between both Districts.

**The ECSD became aware one vendor was not paying its subcontractors according to the RFP.**

During April 2016, the ECSD became aware that one of the awarded vendors may not have been complying with the terms of the RFP. After significant discussion, District management requested that Internal Auditing staff conduct a compliance review of the RFP. On May 23, 2016, Internal Auditing staff notified both vendors of our intention to invoke the “Right to Audit” Provision of the RFP, and requested certain records necessary to determine compliance.

**The ECSD terminated its contract with Interpreting Associates.**

On July 27, 2016, after fieldwork, but prior to the issuance of this report, the District terminated for convenience its contract with Interpreting Associates, LLC.

## Objective

---

The objective of this review was to determine compliance with the provisions of the RFP. The objective can be further refined into 1) determining if the vendors were paying employees/subcontractors consistent with the rate schedules which they submitted in response to the RFP, and 2) determining if the vendor billed the Districts for the correct number of service hours provided at the correct billing rates, as stated on the rate schedules.

As is customary in all our engagements, we also explored opportunities for strengthening District processes and/or controls in an effort to become more effective and efficient.

## Scope

---

In addition to reviewing numerous policies, rules, processes, and procedures from District sources, the scope of this review includes a wide variety of material from various departments throughout the Districts:

- RFP/bid documents from Purchasing, specifically:
  - RFP #152605 – Interpreting Services
  - Bid awards and rate schedules
- Vendor invoices from July 1, 2015 through May 31, 2016
- District Contracted Sign Language Interpreter Minimum Qualifications Checklists
- Vendor provided employee/subcontractor documents, specifically:
  - Independent Contractor Agreements
  - Payment/Policies Agreement
  - Employee/subcontractor invoices
  - Vendor payment records

To obtain an understanding of the RFP and related processes, we interviewed ESE and Purchasing personnel. In our process of securing information, gaining clarification, and resolving discrepancies, we spoke directly with representatives from both vendors.

## Methodology

---

**We compared actual pay rates to required contract rates per the RFP.**

**We compared actual billings to expected billings per the RFP rates.**

**Interpreting Associates did not provide all requested documents.**

**The minor scope limitation did not affect our conclusions or recommendations.**

We conducted interviews with a wide variety of District personnel from various departments, including Legal, Purchasing, and ESE to gain an understanding of the development, award, and operational aspects of the services provided under the RFP.

We obtained copies of, and reviewed various documents:

- School Board Policies
- RFP Conditions and Criteria
- Vendor invoices and supporting documentation

In an effort to determine compliance with the RFP, we compared subcontractor pay rates/records provided by the vendor to contract rates per the awarded RFP. In addition, we reviewed and analyzed the vendor billings to the Districts to determine that the service hours provided per the subcontractors agreed with the service hours billed to the Districts, and that these hours were billed at the appropriate rates per the awarded RFP.

Professional Interpreters for the Deaf responded to all requests for records and provided responses and additional documentation for all questions.

Despite the provisions in the RFP allowing access to “all documents and records as they pertain to the products and services delivered,” the response from Interpreting Associates to the request for records by Internal Auditing was initially limited by the vendor. On June 23, 2016, the ECSD Superintendent issued a formal public records request for the remaining documents. On July 11, 2016, the vendor provided the requested records through their counsel.

On July 26, 2016, OIA requested additional records from Interpreting Associates; however, prior to a response from the vendor, as previously mentioned, the ECSD Superintendent terminated for convenience its contract with Interpreting Associates. **As of the issuance of this report, the vendor had not provided the requested additional records.**

The majority of the additional requested records pertained to June 2016 activity. As the records were not provided, we reduced the scope of our work to only include activity from July 1, 2015 through May 31, 2016, for both vendors. Not having the balance of the records requested does not materially impact our fieldwork or our conclusions. We feel we have done sufficient work and gathered sufficient evidence/information to reach our conclusions regarding compliance and to provide recommendations.

## Conclusions/Results

Our objectives included determining if the vendors paid their employees/subcontractors the agreed upon contract rates in the RFP and if the Districts were billed the proper rates for the appropriate amount of service hours provided.

### Professional Interpreting Services for the Deaf, Inc.

We noted a significant number of errors in the employee/subcontractor pay records and the billing records to the Districts. These errors appear to be the result of carelessness, as in both areas the vendor's errors resulted in net losses to the vendor.

### *Payment to Employees/Subcontractors*

For the ECSD, it appears the vendor **overpaid** its employees/subcontractors by a net amount of approximately \$1,800 for the period July 1, 2015 through May 31, 2016.

**Overall, PISD paid its subcontractors more than the contract rate for work at the ECSD.**

Interpreter	Expected Pay	Actual Pay		Difference
Jewel Acord	\$ 40,389.75	\$ 40,390.00		\$ 0.25
Amanda Ard	6,401.75	6,401.75		-
Kim Betz	32,644.04	32,577.22		(66.82)
Victor Blocker	310.00	336.00		26.00
Dani Clements	16,703.13	16,702.63		(0.50)
Karisa Clements	15,292.57	15,756.57		464.00
Samantha Clements	36,337.00	36,830.20		493.20
Angela Gilmore	986.00	986.00		-
Sherry Green	3,139.25	3,788.75		649.50
Shameika Hall	6,742.50	6,742.50		-
Stacy Lawrence	1,067.50	1,067.50		-
Maria Lopez	70.00	80.00		10.00
Corey Mason	38,555.50	38,562.00		6.50
Nicole McKenzie	1,093.75	1,123.75		30.00
Terra Redditt	26,860.00	26,860.00		-
Christina Roof	3,314.80	3,463.04		148.24
Jimmy Randolph	1,645.00	1,645.00		-
Cathy Smith	14,649.06	14,615.06		(34.00)
April Stewart	40,716.00	40,716.00		-
Mary Thomas	1,498.00	1,604.40		106.40
Unknown	70.00	70.00		-
<b>Total - Escambia</b>	<b>\$ 288,485.60</b>	<b>\$ 290,318.37</b>		<b>\$ 1,832.77</b>



**We noted various discrepancies in pay records.**

Among the various discrepancies, we noted the following:

- Mathematical errors (both positive and negative)
- Subcontractor double billing
- Payment at rates **greater** than the contract rates

**We noted overpayments due to double invoicing for the same day.**

The overpayments to Karisa Clements (\$464) and Samantha Clements (\$493) are due largely because of double billing. The double billing resulted from one subcontractor indicating that he/she substituted for another subcontractor on a particular day(s); however, both the original subcontractor and substitute invoiced the vendor for the same day/time.

**We noted overpayments due to pay a subcontractor an hourly rate greater than the contract rate.**

The overpayment to Sherry Green (\$650) appears to be the result of the vendor paying the subcontractor at a higher rate (\$35 per hour) instead of the contract rate (\$29 per hour). When questioned, the vendor indicated that the subcontractor performed other work for different clients and was paid \$35 per hour for that work.

The vendor indicated that the subcontractor was supposed to be paid at the contract rate for work for the Districts; however, due to a miscommunication, she was paid at the higher rate used for her other clients. The vendor further explained that the subcontractor no longer provides services to the vendor.

For the SRCSD, it appears the vendor **underpaid** its employees/subcontractors by a net amount of approximately \$468 for the period July 1, 2015 through May 31, 2016.

Interpreter	Expected Pay	Actual Pay		Difference
Shameika Hall	\$ 1,696.50	\$ 1,228.50		\$ (468.00)
<b>Total – Santa Rosa</b>	<b>\$ 1,696.50</b>	<b>\$ 1,228.50</b>		<b>\$ (468.00)</b>

**PISD paid one subcontractor less than the contract rate per instructions by the SRCSD.**

The underpayment was the result of the vendor consistently **paying Shameika Hall at an amount lower than the contract rate** per the rate schedule when she worked in the SRCSD, which resulted in a total underpayment of \$468. When Ms. Hall worked for the ECSD, she was paid at the correct contract rate per the rate schedule. When questioned, the vendor indicated that SRCSD staff determined that the subcontractor’s qualifications placed the subcontractor at a lower contract rate. As such, the vendor paid the subcontractor at the lower rate plus \$1 per hour. The ECSD had not made the same determination.

**PISD under-billed the ECSD by approximately \$1,200.**

*Billing to the Districts*

It appears the vendor **under-billed** the ECSD by a net amount of approximately \$1,200 for the period July 1, 2015 through May 31, 2016.

Interpreter	Total Billed	Expected Billed	Difference
Jewel Acord	\$ 48,921.75	\$ 48,746.25	\$ 175.00
Amanda Ard	7,735.00	7,726.25	8.75
Kim Betz	38,403.75	39,397.98	(994.23)
Victor Blocker	510.00	387.50	122.50
Dani Clements	19,880.00	20,158.95	(278.95)
Karisa Clements	18,462.50	18,456.55	5.95
Samantha Clements	43,671.25	43,855.00	(183.75)
Angela Gilmore	1,172.50	1,190.00	(17.50)
Sherry Green	2,880.00	3,788.75	(908.75)
Shameika Hall	7,606.25	8,137.50	(531.25)
Stacy Lawrence	1,220.00	1,220.00	-
Maria Lopez	80.00	80.00	-
Corey Mason	46,865.00	46,532.50	332.50
Nicole McKenzie	1,250.00	1,250.00	-
Terra Redditt	34,380.00	33,575.00	805.00
Christina Roof	3,976.25	4,143.50	(167.25)
Jimmy Randolph	1,860.00	1,880.00	(20.00)
Cathy Smith	17,543.75	17,679.90	(136.15)
April Stewart	49,542.50	49,140.00	402.50
Mary Thomas	2,035.00	1,872.50	162.50
Unknown	80.00	80.00	-
<b>Total - Escambia</b>	<b>\$ 348,075.00</b>	<b>\$ 349,298.13</b>	<b>\$ (1,223.13)</b>

**We noted various discrepancies in the billing records.**

**PISD failed to bill the ECSD for days services were provided.**

**PISD billed for time in excess of hours worked per subcontractor time invoices.**

**PISD billed a subcontractor at a rate higher than the contract rate.**

Various discrepancies were noted, including:

- District billed for hours not on subcontractor invoice
- District not billed for hours worked by subcontractor
- Hours billed to the District differ from hours worked by subcontractor
- District billed at higher and lower rates than contract rate per the rate schedule
- Name of interpreter providing services missing from invoice to District

The under-billing for Kim Betz (\$944), Sherry Green (\$909), and Shameika Hall (\$531) appears largely due to the failure of the vendor to bill the District for days on which the subcontractors provided services to the District.

The over-billing for Corey Mason (\$333) appears largely due to the vendor billing on several days for time in excess of time reportedly worked by the subcontractor.

The over-billing for Terra Redditt (\$805) appears largely due to the vendor billing on several days at \$35 per service hour instead of the contract rate of \$25 per service hour.

**PISD billed SRCSD appropriately.**

The over-billing for April Stewart (\$403) was largely due to the vendor billing for a day on which the subcontractor indicated she did not provide services to the District.

It appears the SRCSD was billed appropriately for the period July 1, 2015 through May 31, 2016.

Interpreter	Total Billed	Expected Billed		Difference
Shameika Hall	\$ 2,047.50	\$ 2,047.50		\$ -
<b>Total – Santa Rosa</b>	<b>\$ 2,047.50</b>	<b>\$ 2,047.50</b>		<b>\$ -</b>

Interpreting Associates, LLC

The vendor’s records were generally well-organized. Based on Payment/Policies Agreements provided by the vendor, we noted **that the vendor entered into agreements with subcontractors to pay them at rates lower than the contract rate per the rate schedule.**

*Payment to Employees/Subcontractors*

For the ECSD, it appears the vendor **underpaid** its employees/subcontractors by a net amount of approximately \$11,900 for the period July 1, 2015 through May 31, 2016.

**Overall, IA paid its subcontractors \$11,900 less than the contract rate for work at the ECSD.**

Interpreter	Expected Pay	Actual Pay		Difference
Amanda Ard	\$ 33,835.75	\$ 22,168.25		\$ (11,667.50)
Jessica Cruz	637.50	535.50		(102.00)
Ora Dublin	866.25	866.25		-
Paul Dublin	35,850.00	35,850.00		-
Peter Dublin	2,054.25	2,054.25		-
Charity Dublin	400.00	392.00		(8.00)
Kandace Frink	224.75	131.75		(93.00)
Melissa Johnson	-	-		-
Benjamin Smith	-	-		-
Meagan Utsey	58.00	48.00		(10.00)
<b>Total - Escambia</b>	<b>\$ 73,926.50</b>	<b>\$ 62,046.00</b>		<b>\$ (11,880.50)</b>

**One subcontractor was underpaid \$11,668 for work in the ECSD.**

The underpayment to Amanda Ard (\$11,668) appears to be the result of the vendor paying the subcontractor at a lower rate (\$19 per hour) instead of the contract rate (\$29 per hour). The vendor provided a “Payment/Policies Agreement” which appears to contain an agreed upon pay rate of \$19 per hour, and appears to contain the signature of the subcontractor.

After the RFP was awarded, IA entered into pay agreements with subcontractors for pay at rates lower than the contract rate.

Overall, IA paid its subcontractors \$7,100 less than the contract rate for work in the SRCSD.

IA did not provide requested payment information for two subcontractors.

One subcontractor was paid at \$17 per hour instead of the contract rate of \$29 per hour.

As previously mentioned, the RFP was awarded on June 2, 2015, in which the vendor agreed to pay subcontractors at the submitted contract pay rates. The “Payment/Policies Agreement” appears to have been signed on July 30, 2015, after the RFP award. **It is unclear why the vendor would enter an agreement with a subcontractor for a pay rate less than that required by the award of the RFP.**

When questioned, representatives of the vendor indicated that despite completing the rate schedule, and having access to the details of the RFP, including the Questions and Answers Section of the RFP, which addressed employee hourly rates of pay, **the vendor disagreed that the RFP required payment at certain contract rates.** The vendor contended that they were free to pay their subcontractors whatever hourly rate they deemed appropriate based on their view of a subcontractor’s qualifications and vendor-administered skills testing.

For the SRCSD, it appears the vendor **underpaid** its employees/subcontractors by a net amount of approximately \$7,100 for the period July 1, 2015 through May 31, 2016.

Interpreter	Expected Pay	Actual Pay		Difference
Amanda Ard	\$ 116.00	\$ 76.00		\$ (40.00)
Jessica Cruz	2,381.25	2,000.25		(381.00)
Ora Dublin	34,229.25	34,229.25		-
Paul Dublin	100.00	100.00		-
Peter Dublin	22,011.00	22,011.00		-
Charity Dublin	6,562.50	6,300.00		(262.50)
Kandace Frink	4,524.00	2,652.00		(1,062.00)
Melissa Johnson	2,862.75	2,862.75		-
Benjamin Smith	190.57	190.57		-
Meagan Utsey	31,138.75	25,770.00		(5,368.75)
<b>Total – Santa Rosa</b>	<b>\$ 104,116.07</b>	<b>\$ 96,191.82</b>		<b>\$ (7,114.25)</b>

The vendor failed to provide payment information and other supporting documents for Melissa Johnson and Benjamin Smith. Their service hours were minimal. For presentation purposes, we will assume they were paid at the contract rate per the rate schedule. Any discrepancy would not be considered material, or significantly affect our conclusions.

The underpayment to Kandace Frink (\$1,062) appears to be the result of the vendor paying the subcontractor at a lower rate (\$17 per hour) instead of the contract rate (\$29 per hour). The vendor provided a “Payment/Policies Agreement” which appears to contain an agreed upon pay rate of \$17 per hour, and appears to contain the signature of the subcontractor.

As previously mentioned, the RFP was awarded on June 2, 2015, in which the vendor agreed to pay subcontractors at the submitted contract pay rates. The “Payment/Policies Agreement” appears to have been signed on March 28, 2016, after the RFP award. **It is unclear why the vendor would enter an agreement with a subcontractor for a pay rate less than that required by the award of the RFP.**

**One subcontractor was paid at \$24 per hour instead of the contract rate of \$29 per hour.**

The underpayment to Meagan Utsey (\$5,369) appears to be the result of the vendor paying the subcontractor at a lower rate (\$24 per hour) instead of the contract rate (\$29 per hour). The vendor provided a “Payment/Policies Agreement” which appears to contain an agreed upon pay rate of \$24 per hour, and appears to contain the signature of the subcontractor. The “Payment/Policies Agreement” for Ms. Utsey did not include a date on which the agreement was reportedly signed.

**It is unclear if the “underpayments” are considered underpayments or overbillings to the Districts.**

*Billing to the Districts*

Despite reducing the “Employee Hourly Rate” portion of the billing formula, the Districts were still billed at the higher rate, as if the correct contract rate had been paid to the subcontractor. It is unclear if the difference represents an underpayment to the subcontractors or an over-billing to the Districts. Absent the billing concerns related to underpayment of subcontractors, the vendor’s billings were generally accurate.

**IA under-billed the ECSD by \$544.**

It appears the vendor **under-billed** the ECSD by a net amount of approximately \$544 for the period July 1, 2015 through May 31, 2016.

Interpreter	Total Billed	Expected Billed	Difference
Amanda Ard	\$ 36,792.00	\$ 37,336.00	\$ (544.00)
Jessica Cruz	714.00	714.00	-
Ora Dublin	945.00	945.00	-
Paul Dublin	40,152.00	40,152.00	-
Peter Dublin	2,241.00	2,241.00	-
Charity Dublin	448.00	448.00	-
Kandace Frink	248.00	248.00	-
Melissa Johnson	-	-	-
Benjamin Smith	-	-	-
Meagan Utsey	64.00	64.00	-
<b>Total – Escambia</b>	<b>\$ 114,269.00</b>	<b>\$ 114,269.00</b>	<b>\$ (544.00)</b>

The under-billing for Amanda Ard (\$544) was because of a single mathematical error in the District’s favor.

IA billed the SRCSD appropriately.

It appears the SRCSD was billed appropriately for the period July 1, 2015 through May 31, 2016.

Interpreter	Total Billed	Expected Billed	Difference
Amanda Ard	\$ 128.00	\$ 128.00	\$ -
Jessica Cruz	2,667.00	2,667.00	-
Ora Dublin	37,341.00	37,341.00	-
Paul Dublin	112.00	112.00	-
Peter Dublin	24,012.00	24,012.00	-
Charity Dublin	7,350.00	7,350.00	-
Kandace Frink	4,992.00	4,992.00	-
Melissa Johnson	3,123.00	3,123.00	-
Benjamin Smith	184.00	184.00	-
Meagan Utsey	34,360.00	34,360.00	-
<b>Total – Santa Rosa</b>	<b>\$ 114,269.00</b>	<b>\$ 114,269.00</b>	<b>\$ -</b>

## Recommendations

**District management should determine necessary action on pay discrepancies.**

**District staff should ensure interpreter names are on invoices.**

### Pay Rate vs. Contract Rate Differences

During our testing, we noted that Interpreting Associates paid five of its ten subcontractors at an hourly rate different than the contract rate as prescribed in their proposal package in the awarded RFP. The total amount of the discrepancy we noted was approximately \$19,000.

As previously mentioned, it is unclear if the difference represents an underpayment to the subcontractors or an over-billing to the Districts. Given that the ECSD has terminated its contractual relationship with the vendor, it is unclear if any action is necessary on the District's part. If the SRCSD continues its relationship with the vendor, it may wish to pursue recovery if it deems the difference to represent an over-billing to their District. **As such, we recommend both ECSD and SRCSD management determine what, if any, action is necessary regarding the pay discrepancies.**

### Billing Discrepancies

Despite a net under-billing to the ECSD, we noted during our testing several discrepancies related to billing. In at least one instance, we noted a bill which included services hours, but no indication of which interpreter provided the services. Without knowing which interpreter provided the services, it is not possible to determine if the District was billed at the appropriate contract rate. **As such, we recommend District staff review invoices to ensure interpreter names are listed on the invoice.**

**District staff should compare billed time to District records.**

We also noted numerous discrepancies between the days/times billed and days/times actually worked per subcontractor invoices to vendors. We noted at least one instance where a subcontractor did not indicate that he/she worked on a particular day, but the District was billed for that day.

While District staff does not routinely have access to subcontractor invoices to the vendor, it is our understanding that staff does maintain records on times worked by subcontractors. **As such, we recommend District staff compare days/time per billing invoices received to District-maintained supporting documentation. Any discrepancies should be resolved.**

**District staff should monitor billings for changes in billing rates.**

When reviewing vendor invoices, we noted on numerous occasions when the Districts were billed in error at a rate in excess of the contract billing rates per the RFP. In some instances we noted the same contractor was billed at different rates on the same invoice. It is our understanding, a subcontractor billing rate should not change unless additional qualifications are earned, and that any rate change must be approved by District staff. Consequently, billing rates should rarely change. **As such, we recommend District staff maintain a listing of the approved subcontractor billing rates and periodically compare those rates to the rates submitted by the vendor on its invoices. Any changes to billing rates should be researched to determine propriety.**

**General Recommendation**

**Invoicing and billing measurements of time should be standardized.**

During our testing we noted differences between hours invoiced by subcontractor to the vendor, hours paid by the vendor to the subcontractor, and then the hours billed to the Districts by the vendor. We noted numerous instances where these differences were the result of the way in which subcontractors reported their time to the vendor. In many instances, subcontractors would report time in exact hours and minutes, or in decimal form, such as 6.1 hours. The vendor would, in some cases round these numbers up, down, or to the nearest quarter of an hour, but in other cases the vendor would not, which create discrepancies between subcontractor invoices, pay records, and billing records. For consistency purposes, **we recommend District staff work with the vendor to determine an appropriate measure of time, such as per quarter hour. Once decided, this information should be communicated to subcontractors.**

# Appendix A – Bid Tabulation with Rate Schedule



**THE SCHOOL DISTRICT OF ESCAMBIA COUNTY**  
**PURCHASING DEPARTMENT**  
**75 N. PACE BLVD**  
**PENSACOLA FL, 32505**

<b>BID TABULATION</b>
-----------------------

**Date:** 5/26/2015

**RFP #:** 152605

**RFP Title:** Interpreting Services

<b>Awarded firms are highlighted</b>
--------------------------------------

Total Number of Interpreters	
Professional Interpreting Services.	Interpreting Associates, LLC
33	10

Response Time	
Professional Interpreting Services.	Interpreting Associates, LLC
<b>Initial Assignments:</b> Confirm within 24 hours of receiving the list of required interpreters. <b>Substitution Situations:</b> Confirm within 1 hour of a request.	ASAP

During School Hours and After Hours Pay Rates						
	Professional Interpreting Services.			Interpreting Associates, LLC		
	Employee Hourly Pay Rate	Administrative Fees	Price Per hour	Employee Hourly Pay Rate	Administrative Fees	Price Per hour
Interpreters <b>without</b> Credentials/ Certifications	\$20.00/hr	\$5.00/hr	*\$25.00/hr	\$25.00/hr	\$3.00/hr	\$28.00/hr
Interpreters <b>with</b> Recognized Credentials/Certifications	\$29.00/hr	\$6.00/hr	*\$35.00/hr	\$29.00/hr	\$3.00/hr	\$32.00/hr
Interpreters <b>with</b> National Credentials/Certifications	\$35.00/hr	\$5.00/hr	*\$40.00/hr	\$33.00/hr	\$3.00/hr	\$36.00/hr

\*These rates were negotiated so that during school hours and after school hours are billed at the same rate.



# Management and Vendor Responses

---

**The School Board of Escambia County  
75 North Pace Boulevard  
Pensacola, Florida 32505  
Telephone: (850)469-6362 / Facsimile (850)469-6303**

Jeff Bergosh  
District 1

Gerald Boone  
District 2


Linda Moultrie, Vice Chair  
District 3

Patricia Hightower  
District 4

Bill Slayton, Chair  
District 5

Donna Sessions Waters  
General Counsel  
B.C.S. Education Law

## MEMORANDUM

**DATE:** 10/12/16  
**TO:** David Bryant  
**FROM:** Donna Sessions Waters   
**RE:** Interpreting Services RFP

---

As stated in your October 3, 2016 email, District RFP #152605 for interpreting services required interpreters to be paid by the vendor at certain hourly rates based on qualification level (“hourly rate”). An administration fee (“admin fee”) was then to be added to the hourly rate to determine the total amount per hour the District was to be billed (“billing rate”). During the RFP process the vendors completed a Rate Form for the three certification levels. Consequently, all interpreters at a certain level should be paid the same hourly rate. Based on their responses to the RFP, two vendors were awarded a contract to provide interpreting services to the District.

During your audit, you noted that one vendor was paying interpreters on the same qualification level differing hourly rates, which were lower than the hourly rates set forth in the RFP. However, that vendor nevertheless charged the District at the billing rate established by the rate Form submitted with the RFP. For example, for a given qualification level, the vendor may have submitted a Rate Form proposing an hourly rate of \$33 plus an admin fee of \$3, for a total billing rate of \$36. Based on this information, the vendor was awarded the contract. During your audit you found that, instead of the \$33 hourly rate, the vendor may have actually paid the interpreter \$20 an hour, but invoiced the District the established billing rate of \$36. In essence, the vendor arbitrarily increased its admin fee to generate additional profit. In the example given, the vendor would have been unjustly enriched by \$10 per hour. (The billing rate of \$36 minus the actual hourly rate paid of \$20, producing an actual admin fee of \$13 rather than the agreed upon \$3.). The other vendor was found to be paying individual interpreters in compliance with the Rate Form.

## Questions presented

You have asked for my opinion regarding this non-compliance and its legal ramifications:

1. Given the lower hourly rate paid to interpreters, should the vendor have reduced the billing rate to the District, or was the District obligated to pay for the service at the set billing rate in spite of the rate actually paid to interpreters?
2. Does the difference between the established billing rate and the de facto billing rate represent an underpayment to the individual interpreters or an overbilling to the District?
3. Does either conclusion call for further action by the District, particularly in light of the District's termination of the contract?

## Discussion

### A. Breach of Contract

There is clear evidence of non-compliance. The terms of the RFP and Rate Form are, in my opinion, unambiguous. The price per hour is calculated based on the employees hourly pay rate plus administrative fees. The Rate Form and therefore the contract do not provide for any additional fees, costs, or other type of payment to be included in the rate paid by the District. Based on the plain language of the contract, the individual interpreter was to be paid the hourly rate, the vendor was to receive the admin fee, and the District would pay the billing rate.

Given the contract language I do not believe that calling for the vendor to have reduced the billing rate to the District is a strong position. The vendor complied with the contract as to its obligations directly benefitting the District, and the District paid the expected amount for the expected services. While the District recognizes the non-compliance, the District suffered no tangible loss, and the District is therefore entitled to no particular remedy.

It is my opinion that the non-compliance with the terms of the contract resulted in, not an overbilling to the District, but an underpayment to the individual interpreters. Because the interpreters suffered a tangible, quantifiable loss, there is a readily apparent remedy for their losses due to the non-compliance.

Of course, the individual interpreters were not a party to the original contract between the District and the vendor. Under normal circumstances, it is a party which litigates to recover based on breach of contract. However there are two legal theories under which the individual interpreters may seek payment: either their status as a third-party beneficiary of the contract, or the vendor's unjust enrichment to their detriment.

### B. Third-Party Beneficiary

A claim for breach of a third-party beneficiary contract requires the plaintiff to prove four elements: (1) the existence of a contract to which the plaintiff is not a party; (2) the parties' intent, either expressed by the parties or in the provisions of the contract, that the contract primarily and directly benefit

the plaintiff; (3) breach of the contract by one of the parties; and (4) damages to the plaintiff resulting from that breach. *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp 3rd 1379 (SD Florida 2014).

An incidental, unintended benefit to the third party does not support a claim, even where the Contracting parties know that such a benefit will occur. The contracting parties' intent to benefit the third party must be mutual, specific, and clearly expressed in order to endow a third-party beneficiary with a legally enforceable right. *Hawaiian Airlines, Inc. v. AAR Aircraft Servs., Inc.*, No. 1:14-CV-20560-KMM, -F.Supp.3d -, 2016 WL 867116 (S.D.Fla. Mar. 7, 2016). This intent can be shown from the dealings of the parties before and after the contract, and/or from the contract itself.

As noted above the language of the Rate Form and the RFP clearly indicated that the individual interpreters were to receive a specified hourly rate. Further, the Questions and Answers to the RFP ("Q&A") support this understanding. In Question #5, a bidder asked to show only the "Price per Hour" on the Rate Form, leaving the Employee Hourly Pay Rate and Administrative Fee spaces blank. The bidder indicated that breaking the billing rate down as required might "inflate the rates of less skilled interpreters, or ... force the most skilled interpreters working in our area to effectively take pay cuts." The District responded that there was to be a response for all items the Rate Form. Thus, the Q&A put all vendors on notice that the specified hourly rate was to be paid to the interpreters, even where it differed from their normal rate of pay. The other vendor complied with the contract, paying as stated on the Rate Form.

As stated in *Gallichio v. Corporate Group Service, Inc.*, 227 So.2d 519 (3d DCA 1969) and cases cited therein, "[i]t was the purpose and object of the contract to obviate or protect the plaintiff from exactly that which occurred." In my opinion, the contract language as well as the Q&A supports a finding that the individual interpreters were intended to be beneficiaries of the contract.

It should be noted that the individual interpreters did apparently sign contracts with the vendor in which they agreed to the hourly rate actually paid, rather than the hourly rate contemplated by the RFP. There is, to my knowledge, no breach of those individual contracts. However, in the discussion set forth above, the interpreters would not be filing suit based on breach of those contracts, but breach of the contract between the vendor and the District, of which they were the third party beneficiary.

### **C. Unjust Enrichment**

However, should a court find that the interpreters are not intended third-party beneficiaries of the contract, the interpreters could still seek reparation based on the theory of unjust enrichment. Such a claim requires that the plaintiff prove that he/she (1) conferred a benefit on the defendant, who had knowledge thereof (2) the defendant voluntarily accepted and retained the benefit; and (3) under the circumstances, it would be inequitable for the defendant to retain the benefit without paying for it. *Kowalski v. Jackson Nat. Life Ins. Co.* 981 F.Supp.2d 1309 (S.D. Florida, 2013); See *Shands Teaching Hosp. & Clinics, Inc. v. Beech St. Corp.*, 899 So.2d 1222, 1227 (Fla. Dist. Ct. App. 2005). An action for unjust enrichment exists to prevent the wrongful retention of a benefit, money, or property of another in violation of good conscience and fundamental principles of justice or equity. 66 Am. Jur.2d *Restitution and Implied Contracts* § 3 (1964).

A claim of unjust enrichment therefore does not rest upon the existence and breach of a contract. Rather, it provides a way for a party to recover when he/she has been unfairly deprived of payment for services. Here the interpreters' services were valued at a given hourly rate (in the example above, \$30.)

The interpreters clearly gave the vendor the benefit of services with that established value; the vendor had knowledge of that benefit and voluntarily accepted and retained it. Under the circumstances and given the contractual language, it would be inequitable for the defendant to retain the difference between the value of the services and the price actually paid.

### **Conclusion**

As stated above, it is my opinion that there is clear and convincing evidence that the vendor in question breached the contract by failing to pay the interpreters the specified hourly rate. However, because the District received the services it expected and paid the expected price, I do not believe that a court would find that the District should receive a legal remedy for the breach. It is the individual interpreters who suffered a loss from the breach of contract. The contract intended that they be paid at a set hourly rate; they did not receive that payment. Therefore, in my opinion the interpreters have a colorable claim for damages as a third-party beneficiary of the contract between the District and the vendor. However, even if the interpreters cannot prove their status as third party beneficiaries, I believe they would be entitled to recovery on a theory of unjust enrichment.

At this point, the District has terminated the contract with the vendor. Given the lack of quantifiable damages to the District and the availability of a remedies to the interpreters, it is my recommendation that the District not proceed with further litigation on this matter.





"Making A Positive Difference"

## THE SCHOOL DISTRICT OF ESCAMBIA COUNTY

**J.E.HALL EDUCATIONAL SERVICES CENTER  
30 EAST TEXAR DRIVE  
PENSACOLA, FL 32503, PH. 850/432-6121  
MALCOLM THOMAS SUPERINTENDENT**

### MEMORANDUM

ESE # 11-17  
CONTACT PERSON:  
Dr. Lisa Ard  
EXT. (850) 595-0761 x207

TO: Mr. David Bryant, Internal Auditing Director  
FROM: Teri Szafran, ESE Director  
Dr. Lisa Ard, SLI & D/HOH Subject Area Specialist  
DATE: November 28, 2016  
SUBJECT: Response to *Interpreting Services RFP #152605 Compliance Review*

The *Interpreting Services RFP #152605 Compliance Review* report dated August 16, 2016, was received and reviewed by the Exceptional Student Education (ESE) Department administrators overseeing the Interpreting Services contract. Please allow this memo to reflect our complete understanding and agreement with the findings of the report. Given the discrepancies found in billing practices and recommendations provided as a result of the compliance review, our office has taken the following best-practice measures to reduce or eliminate similar findings from being included in any future audits.

- A) ECSD will no longer use the services of Interpreting Associates, LLC. ECSD will be working solely with Professional Interpreting Services for the Deaf (PISD).
- B) Dr. Lisa Ard, ESE SLI/DHH Program Specialist, met with Mr. Billy Lawrence (PISD) on September 15, 2016, to discuss opportunities for increasing the accuracy of ECSD invoices and interpreter payments each month. It was found that interpreters may be mistakenly submitting invoices with errors as they are re-using an electronic Excel template provided by PISD for billing each pay period. If the interpreter does not enter the information into the template on a daily basis, it is possible that there are errors in what the interpreter submits compared to the actual services internal tracking conducted by the ECSD ESE Dept. It was discussed that there was not a process for verifying hours submitted by interpreters to PISD compared to the hours that interpreters were actually on site. It was agreed that a new protocol for verification of interpreter hours by a school based administrator or designee needed to be implemented. Three steps have been taken by PISD and ECSD ESE Dept. to remedy this situation.
  1. Dr. Ard worked with Billy Lawrence to develop a uniform timesheet that will be utilized for documenting services at each school. The timesheet content/format was agreed upon by both the ECSD ESE Dept. and PISD, and was submitted to Purchasing, Internal Auditing and Legal Council for approval. The expectation is that contracted interpreters will no longer use

Affirmative action/equal opportunity employer

an electronic timesheet. Hard copies of the uniform timesheet will be maintained the front office of each school. Interpreters will sign in and out on the timesheets in the front office upon arrival and departure each work day. Each day, interpreters will be required to have an administrator/designee initial the service line for that day to verify the hours to be submitted for billing. At the end of each pay period (1<sup>st</sup> and 15<sup>th</sup> of each month), the timesheets will be signed by an administrator/designee and forwarded ESE department to be reviewed for accuracy with respect to dates, times and validation signatures. The approved timesheets will be forwarded to PISD and will serve as the basis for invoicing to ensure that the invoices submitted by interpreters to PISD reflect true and validated services. The process for submitting T-1 forms for mileage reimbursements for interpreters working at Earnest Ward Middle School will not be modified from last year's process. PISD will complete a mileage form for services provided at Earnest Ward Middle School, or any school to the extreme North end of the District. This form will be submitted with the billing invoice for payment.

- i. Dr. Ard has been working with schools sites that commonly use interpreters to identify and train key staff members who will be responsible for verifying the timesheets. PISD has informed interpreters that this change is coming and is in the process of training interpreters on what is expected as well. Implementation of hard copy timesheets is expected to occur immediately following the winter break to ensure a seamless implementation for both the schools and interpreters.
  - ii. NO time will be approved for an interpreter whose time is not entered and validated at the school as described above. The scanned timesheets coming from the ESE department will be compared to the interpreter's submitted invoices to PISD. PISD has agreed that invoices will be returned to interpreters for proper editing and resubmission if they do not agree 100% with the times that were approved at the school level. This step in the invoicing process should ensure that invoicing between interpreters and PISD and PISD and ECSD are in agreement with what was actually provided.
2. It was agreed that all hours MUST be rounded to the quarter-hour. This should keep the hours/minutes billed consistent and manageable.
3. Upon receipt of the invoice from PISD, the SLI/DHH Program Specialist or Program Secretary will continue to review the invoice by line item to ensure that the invoice matches the timesheets in internal tracking maintained in the ESE Department. Each line will be reviewed for accuracy of date, location of services, name of interpreter, purpose of services, hours provided and hourly rate for the specific interpreter. Any discrepancies will be resolved with direct communication with PISD prior to approval for payment of the invoice.

We believe we have been successful in working with PISD to reduce the possibility of discrepancies in future audits.

Affirmative action/equal opportunity employer



PROFESSIONAL INTERPRETING SERVICES FOR THE DEAF, INC.  
8804 Spider Lily Way, Pensacola, Florida 32526  
O (850) 941-0460 · C (850) 791-0840

September 28, 2016

Mr. David Bryant, Director  
Office of Internal Auditing  
**Escambia County School District**  
75 North Pace Boulevard  
Pensacola, Florida 32505

Subject: Response to *Interpreting Services RFP #152605 Compliance Review*

Dear Mr. Bryant:

We are in receipt of and have reviewed the DRAFT version of the *Interpreting Services RFP #152605 Compliance Review* report dated August 16. We understand that a response letter from our office is required that confirms our understanding of the report's findings, confirms that we take no exception to those findings, and offers up best-practice measures that have been implemented subsequent to the time of the audit that will reduce or eliminate similar findings from being included in any future audits.

- A) We have reviewed the subject report, and understand its contents as it pertains to our company.
- B) We take no exception to the contents of the report, as it pertains to our company's invoicing and interpreter payment practices between July 1, 2015 and May 31, 2016.
- C) Based on the results of the audit, and pursuant to issues we had found on our own with the processes that were in place for the last school year to obtain interpreter invoices then produce a corresponding invoice to the ECSD, we have listed below the action items that have been implemented to-date to correct the issues that were detailed in the subject report:

- 1) Mr. Billy Lawrence (PISD) met with Dr. Lisa Ard (ESE Department, ECSD) on September 15, 2016 to discuss the issues we were both dealing with to produce accurate ECSD invoices and interpreter payments each month. Coming out of that meeting, a new protocol will be implemented beginning October 3, 2016 that will eliminate the single biggest issue that is at the heart of the discrepancies between the ESE Department's (ESE) records denoting who interpreted at each school for each day in question. That issue is the fact that the interpreters currently dictate what days and times that we bill, since they are responsible for tracking their own times and submitting invoices to our office on the 1<sup>st</sup> and 15<sup>th</sup> of each month. We have found that the majority of these interpreters have not been updating their timesheets (using an Excel template we provided them) daily, but have rather been waiting until the night before their invoices are due and relying on memory and their smart phones to get the time entries right. This has conflicted numerous times with the ESE's own internal tracking records, with some of the discrepancies being the fault of the interpreter for writing down the wrong times, and some of them being due to changes in the daily interpreting schedule at the school level without communicating back to the ESE office of the change.





PROFESSIONAL INTERPRETING SERVICES FOR THE DEAF, INC.  
8804 Spider Lily Way, Pensacola, Florida 32526  
O (850) 941-0460 · C (850) 791-0840

- 2) Building on #1, coming out of our meeting last week, effective October 3, 2016 ALL interpreter's timesheets (hard copies, not electronic) will be maintained daily at each school's front office. The arrival and departure times each day will be input by the interpreter, and the times will be validated by an ECSD employee to be designated by Dr. Ard for each applicable school. The timesheets will be validated by each school's representative then scanned and emailed to the ESE office weekly, who will then pass it on to our office after reviewing it for accuracy with respect to dates, times and validation signatures. At that point, those approved times will form the basis of both our invoicing practices and the ESE's review practices. This procedure will serve to create an "apples to apples" approach to generating accurate invoices with a cursory review process. We note that the process for submitting T-1 forms for mileage reimbursements for interpreters working at Earnest Ward Middle School will not be modified from last year's process.
- 3) NO time will be approved for an interpreter who does not enter their time at the school and get that time validated as described above. The scanned timesheets coming from the ESE department will be compared to the interpreter's submitted invoices to our office (the interpreters are 1099 subcontract employees, so they must still submit invoices for our files), and the invoices will be returned for proper editing and resubmission if they do not agree 100% with the times the interpreters would have input themselves and gotten approved at the school level. This step in the invoicing process will ensure that payments to our interpreters will be in agreement with invoicing to the ECSD.
- 4) Before the start of the 2016/2017 school year, we updated our Excel template that was provided to each interpreter that could potentially work in the ECSD at some point during the year. This new template includes line items that allow the interpreter to denote the interpreter they may be substituting for on a given day, and includes a Noted section to denote if they were late to school, or asked to stay past the normal closing time of the school and who made that request, or any other issue that developed that would have impacted an interpreting duration for a day out of the "norm". This enhanced invoicing template, if filled out appropriately, can be used in conjunction with the submitted and validated timesheets noted above to generate footnote explanations on ECSD invoices as deemed necessary. The new invoicing template also CLEARLY states what the hourly rates need to be depending on certification level, and also clearly states that (per the RFP terms) all hours MUST be rounded to the quarter-hour.
- 5) As a final measure, our office is implementing an internal review step that was not in place last year. Check entries in QuickBooks (QB) will now be verified as accurate against interpreter invoices (which by that point would also already have been validated against the timesheets submitted by ESE) after the batch of checks have been input in QB, but before they are printed. This measure will serve to greatly reduce or (hopefully) eliminate any minute (\$0.03 in one case, during the audit) discrepancies between submitted invoices and related payments.

As a final thought, we wish to note that 2015/2016 was the first year operating under a contract system that was never in place before. We firmly believe that the majority of the issues that were found in the audit were the result of "growing pains", and general confusion as both we and the ESE Department strove to come up with a system that would bring a lot of moving parts together. We believe we have accomplished making great strides in eliminating future similar occurrences, with the implementation of the items described above.





PROFESSIONAL INTERPRETING SERVICES FOR THE DEAF, INC.  
8804 Spider Lily Way, Pensacola, Florida 32526  
O (850) 941-0460 · C (850) 791-0840

It has been our sincere pleasure to serve the Deaf students in the ECSD over the past decade, and we look forward to continuing that work with the ESE Department for the duration of this contract's term, and hopefully well beyond!

We trust our responses are sufficient to conclude this audit. If additional information or explanations are required, please do not hesitate to contact us.

Respectfully Submitted,

Stacy Lawrence  
Owner



**Brick Business Law, P.A.**  
Florida Litigation and Counsel

Kevin G. Brick, Esq.\*  
\*Licensed in Florida and Georgia

September 12, 2016



**Main Office**

**Address:**

Brick Business Law, PA  
400 N. Ashley Drive  
Suite 2600  
Tampa, FL 33602

**Website:**

[BrickBusinessLaw.com](http://BrickBusinessLaw.com)

**Phone Number:**

813-816-1816 (o)  
813-200-1032 (f)

**E-mail Address:**

Kevin.Brick  
@BrickBusinessLaw.com

**VIA U.S. MAIL AND E-MAIL TO:**

Ms. Donna Sessions Waters  
General Counsel  
The School Board of Escambia County  
75 North Pace Blvd.  
Pensacola, Florida 32505  
[dwaters@escambia.k12.fl.us](mailto:dwaters@escambia.k12.fl.us)

**RE: Interpreting Associates, LLC Response to The School Board of  
Escambia County's Interpreting Services RFP #152605 Compliance  
Review dated August 2016**

Dear Ms. Waters:

As you know, my firm represents Interpreting Associates, LLC ("IA") and this response letter ("Response") is provided to the School District of Escambia County's ("Escambia") August 2016 draft of its audit entitled "Interpreting Services RFP #152605" (the "Report").

The Scope of this Response pertains solely to the facts, statements and conclusions related to the Office of Internal Auditing's findings and recommendations regarding the "Pay Rate vs. Contract Rate Differences" as applied to IA. IA's decision not to comment on other portions of the Report, including, for instance, any conclusions regarding mathematical calculations, records accuracy or other matters should not be viewed as an admission that IA agrees with or does not contest such points.

IA contests the Report as being inherently flawed due to faulty assumptions with regard to the interpretation of the RFP. The Executive Summary section of the Report provides that "...our objective included determining if the vendors paid their employees/subcontractors the agreed upon contract rates in the RFP and if the Districts were billed the proper rates...The RFP required vendors to pay their employees/contractors a pre-determined rate based on the category of their qualifications. Per the RFP, the hourly billing rate for service hours provided was determined by adding an administrative fee to the employee/subcontractor hourly pay rate." (Page 3). The statements do not cite any contractual language and assume an interpretation, perhaps provided by the Auditor, which is incorrect.

*Our Client-Matter No.: 00088-Interpreting Associates, LLC*



The subject provisions of the RFP include simply a four row and four column rate schedule chart ("Chart") which include a request for bids from vendors based on the following categories of information: "Employee Hourly Rate of Pay", "Administrative Fee" and "Price Per Hour". Each category is further split into different rates for interpreters with differing qualifications, including those "without Credentials/Certifications", those "with **Recognized** Credentials/Certifications" and those "with **National** Credentials/Certifications" (emphasis in original). There is no accompanying language, definition or explanation of these terms and conditions contained within the Chart in the RFP or the RFP itself. Accordingly, there is no language in the RFP which states that "the RFP required vendors to pay their employees/contractors a pre-determined rate" as is claimed by the Auditor.

The Report makes the following similar conclusion about the Chart and RFP: "[m]ost notable of these criteria was the requirement that awarded vendors were to pay their interpreters a fixed rate of hourly compensation based on their qualifications" (Page 5). Nowhere in the RFP does it state that "awarded vendors are to pay their interpreters a fixed rate of hourly compensation based on their qualifications." Instead, the RFP requests, and the vendor is to provide, an hourly rate of pay that the vendor will charge to the school district for interpreters with varying qualifications. Nowhere does the RFP require that the vendor pay the employee that same rate.

In coming to the correct conclusion on interpreting the RFP, one should first look to the plain language of the contract. The RFP is an offer for a vendor to enter into a contract with the district. The ensuing contract would thereby be between the district and the vendor. Absent any language to the contrary, such a contract would inherently be an agreement by and between the vendor and the school district for the vendor to charge a certain price for services to the district and the district to pay certain rates for certain work to the vendor. There is no further limitation or requirement as to the price that the vendor must pay to the subcontractors it secures to perform this work and such a requirement cannot be implied or later read into the RFP by reading the RFP.

For purposes of illustration, the RFP contractual arrangement is similar to a contract between a general contractor and a property owner whereby the contractor agrees to provide certain labor and materials to the property owner for a price. If agreed, that is the price paid by the property owner to the contractor for the subject labor and materials. Oftentimes such contracts also have a profit percentage added to the total, similar to the administrative fee in the RFP. It is clear in this context that such a contract does not require the contractor to compensate any employee or subcontract at 100% of the price he is being paid for the work. If the contractor can secure the work for less, this is a benefit to the contractor. If not, this is a risk undertaken by the contractor in setting the price with the property owner. However, in no case is the contractor violating or breaching his duties to the property owner.



Furthermore, interpreting the RFP as the Report does would lead to absurd conclusions. For instance, assume that the vendor secured the RFP, but was unable to secure an employee or contractor thereafter to work at the RFP rates. The vendor would then be required to pay the interpreters a higher-than-the-RFP rate to secure their work and fulfill the requirements of the RFP; however, under the Report's interpretation of the RFP language, paying the interpreters a different rate than the RFP rate would be a violation of the RFP. Thus, this scenario would cause the vendor to have to choose between violating the RFP by failing to provide the interpreter services or to violate the RFP by paying the rate required by the market to secure interpreters to provide such services. Such an interpretation would cause the vendor to be unable to comply with the provisions of the RFP. It is a clear and long-standing tenant of Florida law that "...if one interpretation [of a contract] would lead to an absurd conclusion, then such interpretation should be abandoned and the one adopted ....[should be the one] which would accord with reason and probability." Tripe E. Development Co. v. Floridagold Citrus Corp. 51 So. 2d 435 (Fla. 1951). As such, it is IA's interpretation, and not the interpretation of the Report, that would comply with Florida tenants of contract interpretation.


Additionally, interpreting the RFP as the Report does would lead to potential violations of the Federal and Florida overtime laws under the Fair Labor Standards Act 29 USC § 201, *et seq.* For instance, if an interpreter worked 45 hours in a week and was thereafter entitled to 1.5 times their regular hourly rate under applicable law, then, under the Report's interpretation of the RFP, the vendor would have to choose between violating the law (by paying the RFP rate) or violating the RFP (by paying the lawful overtime rate). Under Florida law, courts will refuse to enforce, as a matter of public policy, contracts that require illegal or unlawful acts. Interstate Fire & Cas. Co. v. Abernathy 93 So. 3d 352, 358 Fla (1<sup>st</sup> DCA 2012); Armco Drainage and Metal Products, Inc. v. County of Pinellas 137 So. 2d 234, 238 (Fla. 2d DCA 1982); See also Fla. R. Civ. P. 1.110(d). As such, the interpretation of the Contract, as is contained in the Report is unenforceable under Florida law.

Given the fact that the Report's interpretation of the RFP is not supported by the plain language of the RFP, that this interpretation violates long-standing tenants of contract law as espoused by the Florida Supreme Court and that the RFP would be unenforceable as interpreted by the RFP due to requiring unlawful or illegal acts, IA respectfully requests that the ECSD management decline to take any further action with regard to the "discrepancy" regarding the "Pay Rate vs. Contract Rate Differences" as it pertains to Escambia. (With regard to the Santa Rosa County School District management's decision, It is clear that it has and does agree with IA's interpretation of the RFP, as is evidenced by the "Addendum to Contract" signed by IA and Santa Rosa County School District on or about August 12, 2016, a copy of which is enclosed for your records.).

September 12, 2016

Additionally, IA hereby provides notice of its request for a refund of the \$544 that is owed to IA due to the mathematical error in the invoicing, as is referenced in the Report.



Sincerely,  
  
Kevin G. Brick, Esq.

Encl (1)



**ADDENDUM TO CONTRACT**

THE SCHOOL DISTRICT OF SANTA ROSA COUNTY ("Santa Rosa") and INTERPRETING ASSOCIATES, LLC ("Interpreting") hereby enter into and agree to the following Addendum to that Contract, effective retroactively as of August 1, 2016, and state as follows:

**RECITALS**

**WHEREAS**, Santa Rosa, Interpreting and the School District of Escambia County ("Escambia") were parties to that Contract resulting from Request for Proposal Number 152605 with a posting date of May 5, 2015 ("Contract"); and,

**WHEREAS**, on or about July 27, 2016, Escambia notified Interpreting that Escambia has terminated its contract with Interpreting as of August 1, 2016; and,

**WHEREAS**, Section II(P) of the Contract provides that "[t]he Districts may terminate for its convenience at any time, in whole or in part, any subsequent award..."; and,

**WHEREAS**, Santa Rosa desires to continue to receive services from Interpreting pursuant to the Contract; and,

**WHEREAS**, Interpreting desires to continue to provide services to Santa Rosa pursuant to the Contract; and,

**WHEREAS**, Interpreting and Santa Rosa desire to document their understanding in writing and to comply with the terms of the Contract and to eliminate any ambiguity regarding the status of the Contract as it pertains to Interpreting and Santa Rosa; and,

**WHEREAS**, Interpreting and Santa Rosa agree as to the interpretation of the "Rate Form" attached to the RFP and wish to document their understanding of this term as it relates to the Contract;

**IT IS THEREFORE AGREED THAT....**

**AGREEMENT**

1. The above-stated recitals are hereby incorporated into and are made a material part of this Addendum.
2. Santa Rosa and Interpreting shall continue to abide by the terms of the Contract, which shall remain in existence and effective as to each of Santa Rosa and Interpreting, subject to the terms of the Addendum.

Page 1 of 2

*Santa Rosa School District – Interpreting Associates, LLC  
Addendum to Contract*

3. For purposes of this Addendum, Santa Rosa and Interpreting shall treat Escambia's Termination as a "partial" termination of the Contract in that it applies solely to Escambia's agreement with Interpreting and that no part of the Contract is terminated as to Santa Rosa and Interpreting.
4. Interpreting and Santa Rosa agree that no part of the Contract or the attached "Rate Form" requires or shall require Interpreting to pay its interpreters, employees or contractors a specified rate of compensation.
5. This Addendum is material to the continuation of services between Santa Rosa and Interpreting.
6. This Addendum shall supersede any inconsistent provisions in the Contract.
7. The parties signing below are authorized to sign on behalf of each of Santa Rosa and Interpreting, respectively.

**SIGNED AND AGREED TO BY:**

**As to Santa Rosa County School-District:**

Signed: Judson C Crane

Print: Judson C Crane

As: Director of Purchasing and Contract Administration

Dated: August 12, 2016

**As to Interpreting Associates, LLC**

Signed: Dani T'Wanda

Print: DANI T'WANDA

As: OWNER - INTERPRETING ASSOCIATES, LLC

Dated: 12 AUGUST, 2016