

## **Board of Trustees Agenda Item**

**Board Meeting Date:** August 6, 2012

**Title of Item:** Independent Contractor Agreement extension with Gregory Barattini

### **Background and Analysis:**

The international student enrollment growth over the past seven years is due primarily to our increased international student recruitment efforts and to the intensive development of formal relationships with private educational advising agencies around the world. These agents send students overseas to undertake their college and university study. Over the past four years, we employed the services of this contractor, Gregory Barattini, who helped us to significantly increase the number of relationships we maintain with agents all over China, Indonesia, the rest of Southeast Asia and Europe. This expansion was a strong factor in the past few years in the District being able to increase international student enrollment despite the very challenging economic environment. In addition, the contractor helped reduce the District's travel expenses by representing us at many international study abroad fairs and exhibitions.

This contract would extend the services of Gregory Barattini for a one-year period starting July 1<sup>st</sup>. Mr. Barattini is a recognized professional expert and is the only individual known to me who provides this kind of international student recruitment representation to colleges and universities. For years, he worked as the senior vice president for marketing at several large international language school chains, recently represented Santa Monica College in a similar capacity over a four-year period, and has done an excellent job for FHDA over the past four years. He fully understands what the District has to offer and how to market us abroad, and is on a first-name basis with a very large number of advising agents around the world. In addition, he is physically located in Indonesia, which allows him to travel inexpensively throughout the region and saves us considerable expenses.

The contractor will provide year-round recruitment representation in Southeast and South Asia, in Turkey and in Scandinavia. Specifically, he will:

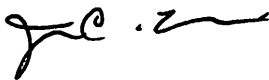
- Develop relationships for FHDA with additional new educational advising agents;
- Strengthen relationships with existing agents;
- Provide representation at large study abroad fairs and agent seminars; and
- Provide ongoing recruitment and international marketing advice.

The contractor will provide these services to FHDA and to one or two other institutions, which will equally share in travel and related expenses. He will not represent any other community college.

The contractor will be paid \$3,500.00 per month and will invoice us for the District's share of his travel expenses, which will not exceed \$50,000.00 for the academic year.

### **Recommendation:** (specify if information only)

Recommend approval of contract for Gregory Barattini.



Submitted by:	George Beers x7077
Additional contact names:	Judy Miner x7200
Is backup provided?	Yes

Foothill - De Anza Community College District

INDEPENDENT CONTRACTOR AGREEMENT

De Anza College ☐ Foothill College ☒ District Office ☐ District PO No: \_\_\_\_\_

This Agreement entered into this 4th day of June, 2012 is made between the Foothill-De Anza Community College District, hereinafter referred to as the "DISTRICT", and the following named independent contractor; hereinafter referred to as the "CONTRACTOR", based upon Board Policies BP 3140, BP3143, AP 3140, and AP3143 and the following legal citations:

- A. Government Code Section 53060 authorizes the engagement of persons to perform special services as independent contractors; and
- B. Public Contract Code 20651 requires advertised sealed bids for public projects of \$15,000 or more and most other services of \$76,700 or more. If sealed bids are required, this form of agreement cannot be used;
- C. Government Code Section 8546.7 provides that the contracting parties for any contract involving expenditure of public funds in excess of \$10,000 shall be subject to examination and audit by the State Auditor for a period of three (3) years after final payment under the contract.
- D. The public interest, convenience, necessity and general welfare will be served by this Agreement.

If this agreement has a total cost that exceeds \$20,000, it is not valid and services shall not commence unless and until the Board of Trustees grants approval. Do not use this form for public project contracts of \$15,000 or more.

1. CONTRACTOR INFORMATION:

Contractor's Name Gregory Barattini

Address [REDACTED] City [REDACTED] Zip [REDACTED]

Business Phone +62-812-389-4451 Fax No \_\_\_\_\_ Home \_\_\_\_\_

Social Security Number \_\_\_\_\_ \*Fed. Tax I.D. Number \_\_\_\_\_

\*CONTRACTOR MUST PROVIDE W-9

Business License Number \_\_\_\_\_

Are you a current or former employee of the DISTRICT? Yes ☐ No ☒

If yes, date last worked \_\_\_\_\_

If yes, specify last work location  
\_\_\_\_\_

Work Assignment  
\_\_\_\_\_

Are you related to any employee(s) in the DISTRICT? Yes ☐ No ☒

If yes, please identify the individual(s) \_\_\_\_\_

2. CONTRACTOR SELECTION PROCESS:

Describe how you selected this contractor and why this contractor is the best source for these services. Board Policy 3140 requires at least three written competitive quotations for public projects greater than \$1000 and other purchases greater than \$10,000. If you did not obtain competitive quotes, provide justification. Advertised competitive bidding by District Purchasing Services is legally mandated for most services in excess of the bid threshold (currently \$76,700) and for all public projects of \$15,000 or more pursuant to Public Contract Code 20651.

FOLAP: 114000-411007 - 5209-663000

The contractor is a professional expert and is the only individual known to me who provides this kind of international student recruitment representation to colleges and universities. For years, he worked as the senior vice president for marketing at several large international language school chains. Before working for us, he represented Santa Monica College over a four-year period in a similar capacity, and has done an excellent job representing FHDA for the past four years. He fully understands what the District has to offer and how to market us abroad.

3. CONTRACTOR SERVICES, FEE, AND CONTRACT STARTING AND ENDING DATES:

A. Description of services and deliverables to be provided by contractor (refer to and attach contractor's signed proposal or quotation if possible):

The contractor will provide year-round recruitment representation in Southeast and South Asia, Turkey, and in all of Europe. Specifically, he will:

- develop relationships for FHDA with additional new educational advising agents,
- strengthen relationships with existing agents,
- provide representation at large study abroad fairs and agent seminars, and
- provide ongoing recruitment and international marketing advice.

The contractor will provide these services for FHDA and to one or two other institutions that will share equally in related expenses. He will not represent any other community colleges. The amount included in this contract for expenses is only to cover FHDA's share of the total amount.

None of the work or services will be performed in the USA.

B. Contractor Fee for Services: \$ 3,500.00 per month or \$42,000.00 for the year

(Indicate a fixed fee to be paid for all of the described services or indicate hourly or other periodic billing rate(s) plus a maximum total dollar cost, i.e. the "not to exceed" amount, to be paid to the contractor. If travel or other expenses will be reimbursed they should conform to Board Policy AP3152.)

Will contractor also be reimbursed for expenses? YES ☒ or NO ☐ If yes, state maximum reimbursement amount to be paid in addition to contract fee shown above:  
\$50,000.00

TOTAL COST OF THIS INDEPENDENT CONTRACT WILL NOT EXCEED \$ 92,000.00  
INCLUDING CONTRACTOR TRAVEL OR OTHER EXPENSE REIMBURSEMENTS. [Total cannot exceed \$14,999 for public projects. Board approval required prior to commencement of other services if the total cost exceeds \$20,000.]

C. Contract Starting Date July 1, 2012 Contract Ending Date June 30, 2013

Note: It is not permissible to split the contracted services into two or more contracts within one fiscal year for the purpose of avoiding the requirement for Board of Trustees approval.

4. DISTRICT OBLIGATIONS OTHER THAN PAYMENT, IF ANY:  
none

5. PAYMENT TERMS: Unless other payment terms are specified in this section, payment terms are Net 30 days computed either from the date of delivery and acceptance of the contract services or from the date of receipt of correct and proper invoices prepared in accordance with the terms of the contract, whichever date is later.

The contractor will be paid \$3,500.00 USD per month on the 15th of each month.  
Monthly invoices will not be necessary.

6. STANDARD TERMS AND CONDITIONS:

A. CONTRACTOR is solely responsible for the content and sequence of the work. DISTRICT will not provide any training or instruction to CONTRACTOR or its employees.

B. Confidentiality: In performing its duties hereunder the Contractor may from time to time gain incidental access to confidential information and records including student record information as defined by 20 USC section 1232g. The parties agree that such incidental access is not a provision or conveyance or disclosure to contractor of student record information in violation of section 1232g or of any similar state law. Contractor agrees that if in the performance of its duties it does obtain such access it shall refrain from any removal, use or disclosure to any third person of such information and records and shall take any and all necessary affirmative steps to maintain the confidentiality, and avoid such removal, use or disclosure, whether intentional or inadvertent, of such records and information.

C. CONTRACTOR shall indemnify, defend and hold the DISTRICT, its Board of Trustees, officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including reasonable attorney's fees and costs, incurred in connection with or in any manner arising out of CONTRACTOR'S performance of the work contemplated by this Agreement. Acceptance of this Agreement constitutes that the CONTRACTOR is not covered under the DISTRICT'S general liability insurance, employee benefits or worker's compensation. It further establishes that the CONTRACTOR shall be fully responsible for such coverage. Contractor shall maintain in force, throughout the term of this Agreement, insurance as follows:

1. Workers' Compensation (statutory limits) and Employers' Liability insurance with limits not less than \$1,000,000 each accident, \$1,000,000 employee and \$1,000,000 each disease, provided that contractor has employees as defined by the California Labor Code;
2. Commercial General Liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for contractual liability, personal injury, broadform property damage, independent contractors, products and completed operations;
3. Commercial Automobile Liability insurance, with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired vehicles, as applicable;
4. Professional Liability insurance when applicable, with limits not less than \$1,000,000 each claim/annual aggregate, with respect to coverage for errors and omissions arising from professional services rendered under this Agreement, and with any deductible not to exceed \$25,000 each claim.

If any of the required insurance is written on a claims-made coverage form, such insurance shall be maintained for a period of three years following termination of this agreement. General and Automobile liability policies shall include as Additional Insureds, the District, its officers, agents, employees and servants, shall be primary to any other insurance or self-insurance available to the Additional Insureds and shall apply separately to each, except the inclusion of Additional Insureds shall not operate to increase the required limits of such insurance. Contractor shall not commence work under this Agreement until required insurance has been obtained.

D. The CONTRACTOR shall assume all expenses incurred in connection with the performance of this contract and the DISTRICT shall not be responsible for payment of any other expenses. The payment terms specified in Paragraph 3 above, unless otherwise indicated and agreed to in writing by the CONTRACTOR and the DISTRICT, shall be the only obligation of the DISTRICT. While engaged in carrying out and complying with any of the terms and conditions of this Agreement, CONTRACTOR is not entitled to any right or privilege applicable to an officer or employee of the DISTRICT or of the State of California.

E Any system or documents developed, produced or provided under this contract, including any intellectual property discovered or developed by contractor in the course of performing or otherwise as a result of its work, shall become the sole property of the District unless explicitly stated otherwise in this contract

F. Payments to the CONTRACTOR pursuant to this Agreement will be reported to Federal and State taxing authorities as required. DISTRICT will not withhold any sums from compensation payable to CONTRACTOR. CONTRACTOR is independently responsible for the payment of all applicable taxes. An IRS form 1099 will be provided to the CONTRACTOR at the end of the calendar year.

G. Payment Of Prevailing Wages: Except for projects of \$1000 or less, if CONTRACTOR provides public project services such as carpet laying or building construction, alteration, demolition or repair CONTRACTOR shall pay all workers on the District project the prevailing wage pursuant to the California Labor Code, Sections 1770 through 1777.7. A copy of the prevailing wage rate determination available online at [www.dir.ca.gov/dlsr/statistics\\_research.html](http://www.dir.ca.gov/dlsr/statistics_research.html). The determination is issued by the California Department of Industrial Relations.

H. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. Modification or termination of this contract requires mutual agreement by both parties.

I. Upon mutual agreement in writing or the parties hereto, this Agreement may be terminated at any time for any reason.

J. The parties to the Agreement, under penalty of perjury, hereby certify that all of the above items and attachments are to the best of their knowledge true and correct statements.

AGREEMENT OF CONTRACTOR: I agree to perform the services described above for the payment indicated. I understand that while performing contract services I am not an employee of the Foothill-De Anza Community College District because I follow an independent trade or profession, and will not be subject to control and direction as to the details and means for accomplishing the anticipated result of my service.

Gregory A. Smith  
Contractor

June 11, 2012  
Date

APPROVED:

This document certifies that I and my assigns have reviewed the appropriate legal and procedural guidelines pertinent to determination of independent contractor status, including IRS Revenue Ruling 87-41, have analyzed their application to the position described on the accompanying documents, and have concluded that the hiring of the subject individual to perform the functions described does indeed constitute correct and legal independent contractor status.

George Ben  
Authorized College/District Requestor/Budgeter

July 12, 2012  
Date

Streanor  
College/District Employee with Authority to Sign Contract

7/9/12  
Date

Date Approved by Board of Trustees.

[Required prior to commencement of services if the total cost exceeds \$20,000.]