

(ATTACHMENT 8) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS

Contract Requisition Number: CR053471
Contract Number: C030310
Vendor Number: V031583

MILWAUKEE BOARD OF SCHOOL DIRECTORS BUSING CONTRACT

This Contract is being entered into this 19thst day of November, 2021, by and between **C & S Transportation, Inc.** (“Contractor”) and the Milwaukee Board of School Directors (“MPS”), a school district organized and operating pursuant to Wisconsin Statutes.

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

Contractor shall provide yellow school bus transportation for MPS students on routes to be determined by MPS.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM

This Contract shall be in effect from November 19, 2021 through July 1, 2022 (“Initial Term”), with the possibility of two, one-year extensions (each a “Renewal Term”).

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

3. COMPENSATION

Subject to the escalation clauses set forth herein, Contractor’s pricing for the term of the Contract shall be as follows:

\$200 per day per 65-72 capacity bus for a single tier run

\$375 per day per 65-72 capacity bus for a two tier run

\$500 per day per 65-72 capacity bus for a full package

Total compensation under this Contract shall not exceed \$100,000.00. An initial payment of \$10,000.00 may be made ten (10) days before services begin. This payment constitutes the value of 10% of the Contract amount. This amount will be withheld from the last invoice of the fiscal year.

Contractor shall invoice on a monthly basis according to the pricing set forth herein for the routes. Invoices shall be submitted to:

MPS Transportation Services
5225 W. Vliet Street
Milwaukee, WI 53208

A properly submitted invoice must include: the route number; the school(s) being served; the number of days service was provided; and the cost per route.

As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Unless otherwise specified by the Director of Business of Business and Transportation Services, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. TERMINAL OPERATIONS

The terminal locations for Contractor is as follows:

2828 S 16 St, Milwaukee WI 53215. Contractor shall provide school bus services for Milwaukee Public Schools for the FY22 school year.

5. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by the State of Wisconsin and appropriate MPS officials.

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6. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

7. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS' negligence for acts, policies, or directives that affect the activities covered by this Contract.

8. DEFENSE OF SUITS

In the event any court action or administrative proceeding is brought against MPS or any of its officers, agents, or employees, for Contractor or its subcontractors' acts or failure in whole or in part to perform any acts required by this Contract, MPS shall tender its defense of any claim or action at law or equity to Contractor or Contractor's insurer, and upon such tender it shall be the duty of Contractor and Contractor's insurer to defend such claim or action without cost or expense to MPS, its officers, agents or employees. Contractor shall be solely responsible for the conduct and performance of the services performed under this Contract.

9. BACKGROUND CHECKS

Criminal background checks are required as set forth as follows:

Contractors are to hire bus drivers within specifications as outlined by the State of Wisconsin for school bus drivers.

B. All federal and state laws and statutes pertaining to school bus drivers shall apply, including any and all future revisions.

C. Contractor shall not assign any employee or volunteer to transport or work with MPS pupils until the employee or volunteer has undergone a criminal and driving record background check and the employee or volunteer meets the requirements for driving a school bus as established by the State of Wisconsin.

10. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor's employees and agents, shall rest with Contractor. Contractor and its subcontractors shall effect and maintain the insurance coverage set forth as follows:

All applicable Wisconsin State Statutes shall apply, including any and all future revisions. This includes compliance with, but is not limited to, the following: Wis. Stat. § 121.53 and Wis. Stat. § 632.32.

B. Notwithstanding the auto liability insurance limits specified under Wis. Stat. § 121.53, the minimum limit of auto liability insurance that must be carried and maintained by the Contractor is \$5,000,000 per accident combined single limit irrespective of the passenger capacity of any school bus. In addition, Commercial General Liability insurance must be carried and maintained by the Contractor with minimum limits of \$5,000,000 per occurrence and \$5,000,000 general aggregate. The \$5,000,000 required limits of liability can be satisfied by the combination of primary and umbrella liability policies. All required insurance must be written on an occurrence form. All insurance companies must have a current A.M. Best rating of A- or better.

C. The Milwaukee Board of School Directors must be named as an additional insured under the aforementioned insurance policies. The aforementioned insurance policies shall defend and hold harmless the Milwaukee Board of School Directors, its officers, agents, employees, and other responsible parties of any and all liability for property damage and injuries to pupils, employees of the Milwaukee Board of School Directors and any other individual riding as passengers on any bus under this contract.

D. A "Certificate of Insurance" indicating that insurance has been procured and is in effect, which covers the owner and the operator of the bus and also the Milwaukee Board of School Directors, shall be filed with MPS and the State of Wisconsin, Department of Transportation, as required by Wis. Stat. § 121.53(4).

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E. Evidence of the aforementioned insurance must be filed electronically with the Office of Finance, Department of Procurement and Risk Management's third party vendor, EXIGIS Risk Management, at the time of Contract execution. Contractor must provide ten (10) day written notice to MPS of any cancellation, non-renewal, or known material change in the aforementioned insurance for the duration of the contract.

F. Contractor is responsible for carrying and maintaining for its employees Worker's Compensation and Employers Liability insurance. The Contractor is responsible for carrying adequate limits of employers liability insurance so that it can be scheduled under the contractor's umbrella policies. Evidence of the aforementioned insurance must be filed with the Office of Finance, Department of Procurement and Risk Management's third party vendor, EXIGIS Risk Management, at the time of Contract execution and is to be included on the certificate of insurance. Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of the Milwaukee Board of School Directors, including its agents, officers, and employees.

Indemnification. Each Contractor agrees that it will indemnify and hold and save the Milwaukee Board of School Directors, its agents, officers, and employees harmless, from and against all claims, demands, actions, damages, loss, cost, liabilities, expenses and judgments recovered from or asserted against the Milwaukee Board of School Directors, its agents, officers, and employees on account of any injury or damage to persons or property to the extent that any such damage or injury may be incident to, arise out of, or be caused, either proximately or remotely, wholly or in part, by any act, omission, negligence or misconduct on the part of the Contractor or any of its subcontractors, agents, servants or employees or any firm or corporation directly or indirectly employed by the Contractor upon or in connection with its performance under this contract. Such indemnification of the Milwaukee Board of School Directors, its agents, officers, and employees by Contractor shall be effective unless such damage or injury results from the sole negligence, gross negligence or willful misconduct of the Milwaukee Board of School Directors' agents, officers or employees. Contractor covenants and agrees that in case the Milwaukee Board of School Directors shall be made party to any litigation commenced by or against the Contractor or relating to the operation, maintenance or use of the Contractor's buses used in the service of this contract, then the Contractor shall and will pay all costs and expenses, including reasonable attorney's fees and court costs incurred by or imposed upon the Milwaukee Board of School Directors arising out of such litigation.

The indemnification obligation of the Contractor shall not be reduced or limited in any way by the existence or the nonexistence, limitation, amount or type of damages, compensation or benefits payable under the Workers Compensation laws or other insurance coverage the Contractor is required to carry in accordance with this contract.

11. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor's part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor's part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

12. TERMINATION

For violations of or failure to adequately fulfill a contract, the Board may, within its sole discretion, terminate said Contract as set forth herein. When feasible, MPS must give 30 days' notice of the breach. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation within ten (10) days. In the event of termination, MPS will only be liable for the services rendered through the date of termination and not the uncompleted portion, or for any materials or services Purchased or paid for by Contractor for use in completing the Contract. Nothing in this Contract or any documents incorporated by reference shall prevent MPS from immediately terminating a Contract if the health, safety or welfare of MPS students is in imminent peril.

Additionally, it is understood that strict adherence to the provisions of this Contract, including, but not limited to, starting points, destinations and times of departure and arrival, are necessary to adequately fulfill this Contract. For violations of or failure to adequately fulfill a contract, the Board may, within its sole discretion, terminate this Contract. Failure to terminate shall not constitute a waiver of the Board's right to terminate for subsequent violations of or failure to adequately fulfill the Contract.

MPS further reserves the right to terminate this Contract without liability if it determines to bring transportation services in-house.

In lieu of terminating the entire Contract for a breach of contract, MPS may, in its sole discretion, reassign buses from Contractor to another contractor with available buses.

13. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall comply with any and all applicable federal, state or local laws, rules and regulations, including such policies as may be enacted from time to time by MPS. Such statutes, rules and regulations of the federal government, the State of Wisconsin, and policies of MPS are incorporated herein by reference the same as if set out verbatim. If the statutes, rules and regulations should conflict with these terms, then it is understood that this Contract shall be deemed modified to conform to such statutes, rules and regulations.

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14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS' sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

16. PROHIBITED PRACTICES

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services Contract without the prior written consent of the Director of Human Relations or her designee.

17. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

18. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

20. INTEGRATION / SEVERABILITY

This Contract and its exhibits and addenda, if any, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

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If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

22. TIMING

Time is of the essence in this Contract.

23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

24. FORCE MAJEURE

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- A. MPS will not be obligated to pay the Contractor for days when schools are closed due to fire, flood or other weather conditions, earthquake, school-district related strikes, acts of God, outbreak of contagious disease, riots, war, picketing, civil commotion or other conditions outside its control (including any mechanical, electronic, or communications failure).
- B. The determination as to whether road or weather conditions are such as to make it unsafe to transport pupils shall be made by MPS.
- C. In the event that a Contractor cannot provide services for the reasons listed, MPS will take whatever actions it deems necessary and appropriate to ensure continuous transportation services for its pupils.

25. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

Contractor agrees to maintain the confidentiality of any information regarding student riders which may be obtained from any sources associated with this service, other than information necessary to the performance of service, or the health and safety of the riders.

26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

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27. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS' Director of Communication and Public Affairs.

28. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

29. COMPLIANCE REQUIREMENT

The requirements that follow are required per 12-month contract term. The HUB requirement on this Contract is 0%. The student engagement requirement of this Contract is 0 hours. The Career Education requirement for this Contract is 00 hours. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor #: V031583)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____

By: _____

Janine M. Adamczyk
Director of Procurement and Risk Management

Date: _____

Date: _____

By: _____

Keith P. Posley, Ed.D.,
Superintendent of Schools

FEIN: 85-2008788

Date: _____

By: _____

Robert E. Peterson, President
Milwaukee Board of School Directors

Date: _____

Budget Code:
RTS-0-0-TRS-DW-EPPT (\$100,000.00)

Reviewed by Risk Management:

By: _____

Date: _____