

(ATTACHMENT 6) ACTION ON REQUEST TO WAIVE ADMINISTRATIVE POLICY 3.09(9)(e) AND EXTEND CONTRACTS FOR TRANSPORTATION SERVICES

Requisition: R241166
Contract Number: C021115
Vendor: V022031

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
BUSING CONTRACT**

This Contract is being entered into this 1st day of July, by and between **Durham School Services, LP**, (“Contractor”) and Milwaukee Board of School Directors (“MPS”) a school district organized and operating under Chapter 119, Stats., 5225 W. Vliet Street, Milwaukee, WI 53208

1. SCOPE OF SERVICES

Contractor shall provide yellow bus transportation services for students based upon Contractor’s formal response to RFP 844. Contractor shall provide safe, reliable and efficient services for regular, suburban and special education transportation services for MPS students.

Through its various busing Contractors, MPS shall provide home-to-school transportation for almost 45,000 students daily. Transportation is provided to each MPS school site, 23 suburban districts as part of the Chapter 220 Inter-district integration program, and to various non-public schools. School bus service conducted hereunder will generally fall in the periods between 6:00 AM until 9:30 AM and 2:00 PM to 5:30 PM, Mondays through Fridays during the months of August through June. Transportation is provided for students in grades K3-12, including students receiving special education services. Services for special education students will be provided in accordance with the students’ Individual Education Plans (“IEP”). This Contract does not require wheelchair accessible equipment.

Contractor shall to provide all necessary equipment, trained staff, and management competency to perform he services set forth herein. Contractor must demonstrate financial capacity to provide quality, responsive and efficient services at all times.

Contractor agrees to perform such services in accordance with the “General Specifications and Operating Procedures, 2014-2015 attached herein expressly incorporated by reference.

A single bus may service one or two routes both in the morning and in the afternoon. Routes or groups of routes may be a combination of pickup and delivery to more than one school site. Where buses have been grouped, it is to provide logical combinations of AM and PM routes. In some cases within a group, there may be more or less buses required for the PM return service than for the AM pickup service or the AM pickup service than for the PM return service. Routes and buses have been developed based on projected 2014-2015 requirements.

A bus combination report specific to a generic terminal address from the MPS Central Services Building (5225 W Vliet Street) can be provided.

Contractor shall provide these services in accordance with the terms and conditions of this Contract and the General Specifications and Operating Procedure 2014-2015 School Year, herein expressly incorporated by reference.

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 July 1, 2014 through June 30, 2015, with two (2) additional one (1) year extensions subject to annual Board approval and contingent on the appropriation of funds as set forth herein.

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:

Type	Base Amount	Cost Per Hour	Cost Per Mile
16-35 passenger	\$147.94	\$20.13	\$.37
36-72 passenger	\$167.15	\$21.01	\$.50

The cost of living increase will be reviewed each April. Any changes will be documented by letter, which letter shall become part of this Contract by amendment hereto.

The amount to be encumbered for this Contract is not to exceed \$4,657,094.00. Total compensation under this Contract shall not exceed \$4,657,094.00.

An initial payment of \$465,709.00 may be made ten (10) days before services begin. This payment constitutes the value of 10% of the Contract amount. That amount will be withheld from the last invoice of the fiscal year.

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

MPS Transportation Services
Attn: Michael Turza, Director
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, 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 location for the Contractor is as follows:

6001 N. 91st St.
Milwaukee, WI 53225

5. NON APPROPRIATION OF FUNDS

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

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 because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. 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 the 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 the Contractor or Contractor's insurer, and upon such tender it shall be the duty of the Contractor and Contractor's insurer to defend such claim or action without cost or expense to MPS, its officers, agents or employees. The Contractor shall be solely responsible for the conduct and performance of the services performed under this Contract.

9. BACKGROUND CHECKS

A criminal information background check is required as set forth in Section G-36 of the General Specifications and Operating Procedures 2014-2015 School Year.

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 the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage set forth in G-40 of the General Specifications and Operating Procedures 2014-2015 School Year. Contractor's indemnification obligation shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers' Compensation laws or other insurance provisions.

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 day's 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.

MPS reserves the right to terminate any contracts awarded pursuant to this RFP without liability if it determines to bring transportation services in house.

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.

In lieu of terminating the entire Contract for a breach of contract, MPS may in its sole discretion reassign buses from the breaching Contractor to the highest performing 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 the Milwaukee Board of School Directors. Such statutes, rules and regulations of the federal government, the State of Wisconsin, and the Board are incorporated herein by reference the same as is set out verbatim, and 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. Additionally, it is understood that strict adherence to the provisions of any and all Contracts the board may award for bus route, including, but not limited to, starting points, destinations and times of departure and arrival, as necessary to adequately fulfill this Contract. For violations of or failure to adequately fulfill a contract, the Board may within its sole discretion, terminate said 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.

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. Contractor shall adhere to the MPS' Livable Wage Policy.
- D. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- E. 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.
- F. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this Contract.

17. 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.

18. 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.

19. 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.

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.

20. 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.

21. TIMING

Time is of the essence in this Contract.

22. 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").

23. FORCE MAJEURE

Force Majeure. CONTRACTOR shall be excused from performance hereunder, and DISTRICT shall not be allowed to levy any damages or penalties, liquidated or otherwise during the time and to the extent that CONTRACTOR is prevented from performing in the customary manner by an act of God, fire, flood, war, riot, civil disturbance, state of emergency, terrorism, epidemic, quarantine, strike, lockout, labor dispute, oil or fuel shortage, freight embargo, rationing or unavailability of materials or products, loss of transportation facilities, commandeering of equipment, materials, products, plants, or facilities by the Government, or any other occurrence which is beyond the control of CONTRACTOR. This section will not apply to any failure to perform due to Contractor's financial condition or negligence.

24. 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.

25. 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.

26. 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.

27. ORDER OF PRIORITY

In the event of a conflict among the documents constituting this Contract, the order of priority to resolve the conflict shall be: 1) this Contract; 2) the General Specifications and Operating Procedures 2014-2015 School Year; and 3) the applicable bid.

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 REQUIREMENTS

The HUB requirement on this Contract is 3.5%. The student engagement requirement of this Contract is 300 hours. The Career Education requirement for this Contract is ten (10) 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 WITNESSES WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor V022031)

By [Signature]

Durham School Services, LP
6001 N. 91st Street
Milwaukee, WI 53225

Date: 7/11/14

Phone Number: 414-760-7480

Tax Id or SS: [Redacted]

Budget Code:	RTS-0-0-TRS-DW-EPPT	\$3,342,500.00
	RWT-0-0-TRS-DW-EPPT	\$925,044.00
	TED-0-0-TRS-DW-EPPT	\$68,850.00
	SM1-0-0-TRS-DW-EPPT	\$235,700.00
	AST-0-0-TRS-DW-EPPT	\$30,000.00
	RTS-0-0-TRS-DW-EVSPFPUB	\$50,000.00
	PMO-0-0-TRS-DW-EPPT	\$5,000.00

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By [Signature]
Deborah S. Noble, Director of Procurement

Date: 7-18-14

By [Signature]
Darlene B. Driver, Ed.D.
Acting Superintendent of Schools

Date: 7/22/14

By [Signature]
Michael Bonds, Ph.D., President
Milwaukee Board of School Directors

Date: 7-22-14

NOTE: BUDGET CODES THAT ARE NOT LOCAL SCHOOL BUDGET CODES, MUST BE APPROVED BY APPROPRIATE DEPARTMENT OR PROGRAM ADMINISTRATOR.

This Contract is not enforceable until signed by the Department of Finance. Payment will not be made on any contract not on file in the Department of Finance. A minimum of fifteen business days is required for approval.

Reviewed by Division of Insurance and Risk Management

By [Signature] ✓✓ Date: 07-31-14

Approved as to form and independent Contractor status by Department of Finance.

By [Signature] on behalf of [Signature] Date: 7/31/2014