

## (ATTACHMENT 3) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS

Purchase Requisition Number: CR053130

Contract Number: C030211

Vendor Number: V0004186

### MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT FIRST MODIFICATION

On October 1, 2021, the Milwaukee Board of School Directors and Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Madison Wisconsin Center for Education Research (WCER) entered into Professional Services Contract number C030211 (“Contract”), with a term of October 1, 2021 through September 30, 2022.

In accordance with Section 20 of the Contract, the parties modify the below specific terms and conditions and incorporate them into the Contract.

#### **MODIFIED TERMS:**

1. **Section 6** of the Contract is modified and replaced to read as follows: “Notwithstanding any references to the contrary, to the extent allowed by law, including but not limited to, Wis. Stat. Sec. 893.82 and 895.46, 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 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.

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’s negligence for acts, policies, or directives that affect the activities covered by this Contract.”

2. **Section 8** of the Contract is modified and replaced to read as follows: “Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor’s employees and agents, directly attributable to Contractor’s actions shall rest with the Contractor. Contractor shall maintain liability coverage through the State of Wisconsin’s self-funded property and liability program pursuant to Wisconsin Statute § 893.82 which includes comprehensive general, public and professional malpractice. A certificate of coverage will be provided upon request.”
3. **Section 10** of the Contract is modified and replaced to read as follows: “It is mutually agreed the breach of this Contract on Contractor’s part may 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 may entitle MPS to seek relief and money damages insofar as they can be determined under the circumstances.”
4. **Section 12** of the Contract is modified and replaced to read as follows: “If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the Contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days of that notice. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.”

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5. **Section 13** of the Contract is modified and replaced to read as follows: “Both Parties reserve the right to terminate this Contract at any time for any reason by giving the other party written notice by Registered or Certified Mail of such termination. However, the parties will attempt to give the other party 20 days’ written notice, but reserves the right to give immediate written notice, if said reason for termination is due to illegal activities, unethical activities, or against mission or vision of the terminating Party. In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.”
6. **Section 14** of the Contract is modified and replaced to read as follows: “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’s 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 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.”

7. **Section 26** of the Contract is modified and replaced to read as follows: “Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not, unless required by applicable law or court order: (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.

In the event that Contractor seeks to publish or otherwise use information developed during the performance of this Contract, Contractor will provide manuscripts for drafts for review by MPS prior to publication and consider MPS’ suggestions in good faith. Contractor agrees not to publish or otherwise use such information until the earlier of thirty (30) days from submission of same to MPS, or upon receipt of MPS’ written or oral comments, information and ideas. Absent prior written consent,

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Contractor will not identify MPS as the subject of any studies or analyses derived as a result of this Contract. Publication shall not be unreasonably withheld for more than ninety (90) days.”

CONTRACTOR

By:   
Vasanthi Pillai, Managing Officer

Date: 01/04/2022

Board of Regents of the UW System  
on behalf of the University of Wisconsin-Madison  
Wisconsin Center for Education Research (WCER)  
1025 W. Johnson Street, Suite #1152  
Madison, WI 53701

Tax ID: XXXXXXXXXX  
Budget code(s): SDV-H-S-M42-CI-ECTS

Reviewed By: \_\_\_\_\_  
*Risk Management*

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By:   
*Janine Adamczyk, Director  
Procurement & Risk Management*

Date: 2.4.2022

By: \_\_\_\_\_  
**Not Required**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Not Required**  
Date: \_\_\_\_\_

Date: \_\_\_\_\_