

**ACTION OF REQUEST TO WAIVE ADMINISTRATIVE POLICY 3.09(9)(e) AND ENTER INTO A CONTRACT WITH BAKER TILLY VIRCHOW KRAUSE, LLP FOR FISCAL AUDIT AND STUDENT MEMBERSHIP AUDIT SERVICES - OFFICE OF BOARD GOVERNANCE**

Contract Requestion Number: C029472  
Contract Number: C029472  
Vendor Number: V006288

**MILWAUKEE BOARD OF SCHOOL DIRECTORS  
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this 1st day of April 2020, by and between **Baker Tilly Virchow Krause, LLP** (“Contractor”) and Milwaukee Board of School Directors (“MPS”). This Contract is the result of an open competitive procurement, specifically Request for Proposal (RFP) 1028.

**1. SCOPE OF SERVICES**

Contractor shall specifically perform the following tasks:

Contractor shall provide audit services to audit MPS’s financial statements for the fiscal years 2020, 2021, 2022, with the possibility of two additional one-year options to extend for fiscal years 2023 and 2024. Contractor will conduct an examination of the basic financial statements including both the government-wide and fund financial statements of the school district.

Contractor will express an opinion on the fair presentation of its financial statements in conformity with accounting principles generally accepted in the United States of America for the fiscal years ended June 30, 2020, 2021, 2022, 2023 and 2024.

The financial and compliance audit will involve all the MPS district funds and accounts. Contractor is required to analyze and apply audit procedures to the supplementary information in order to comply with reporting requirements as prescribed by Wisconsin Department of Public Instruction (“DPI”) and the State of Wisconsin Single Audit Guidelines, issued by the Wisconsin Department of Administration.

Contractor will provide a membership audit of the third Friday of September and the second Friday in January Membership Reports, if required by the DPI.

Contractor will provide unlimited consultation during the year as requested.

Services will be in accordance with RFP 1028 and Contractor’s Response to RFP 1028.

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, 2020 through June 30, 2023 (“Initial Term”), with the possibility of two, one-year extensions to run from July 1, 2023 through June 30, 2024 and July 1, 2024 through June 30, 2025 upon mutual consent of the parties and Board approval. MPS will base its renewal decisions on the following performance metrics to be rated by MPS personnel. Contractor must attain a minimum score of 90 points to be eligible for contract renewal; however, 90 points does not guarantee renewal.

<b>Performance Metrics</b>	<b>Points</b>
CAFR (including Basic Financial Statements) issued by December 31st	35
Single Audit and Report to Those Charged With Governance Issued	25
Supplemental Pension Audits issued by December 31st	20
Membership and Parental Consent Audits issued by May 3rd	10
Customer Service	10
<b>Total</b>	<b>100</b>

**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**

Total compensation under this Contract shall not exceed \$949,590.00 in the Initial Term.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools  
ATTN: Paul Geib, Manager  
Department of Audit Services  
5225 W. Vliet Street  
Milwaukee, WI 53208

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. 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. NON APPROPRIATION OF FUNDS**

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

#### **5. 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.

#### **6. INDEMNITY**

Contractor shall indemnify MPS, its agents, officers and employees (each a "Covered Person") against all third party 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 to the extent such third party claim is finally determined to result from the willful misconduct or fraudulent behavior of Contractor. If judgment is recovered against MPS in suits of law or equity for the willful misconduct or fraudulent behavior 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.

Notwithstanding anything to the contrary herein, in accordance with applicable laws and AICPA independence requirements, MPS hereby releases Contractor, its subsidiaries and their present or former partners, principals, employees, officers and agents from, and acknowledges that 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 or omissions, policies, or directives that affect the activities covered by this Contract. Furthermore, because of the importance of the information that MPS provides to Contractor with respect to Contractor's ability to perform the services, MPS hereby releases Contractor and its present and former partners, principals, agents and employees from any liability, damages, fees, expenses and costs, including attorney's fees, relating to the services that arise from or relate to any information, including representations by management, provided by MPS, its personnel or agents, that is not complete, accurate or current.

The liability (including attorney's fees and all other costs) of Contractor and its present or former partners, principals, agents or employees related to any claim for damages relating to the services performed under this Contract shall not exceed 3x the fees paid to Contractor except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Contractor relating to such services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall either party be

liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages delays, interruptions, or viruses arising out of or related to this Contract even if the other party has been advised of the possibility of such damages.

Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Contract are material bargained for bases of this Contract and that they have been taken into account and reflected in determining the consideration to be given by each party under this Contract and in the decision by each party to enter into this Contract. The terms of this Section 6 shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort, or any form of negligence, whether of MPS, Contractor or others), but these terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These terms shall also continue to apply after any termination of this Contract.

Any legal proceedings arising from or in conjunction with the services provided under this Contract must be commenced within six (6) months after the performance of the services for which the action is brought, without consideration as to the time of discovery of any claim.

### **7. BACKGROUND CHECKS**

Contractor will conduct, at Contractor's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students in the performance of this Contract.

An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

Contractor will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at [564@milwaukee.k12.wi.us](mailto:564@milwaukee.k12.wi.us)), all completed background checks. Such records will be reviewed and MPS will notify Contractor of any individual(s) who, based on MPS standards, are unfit and should not have contact with MPS students. All determinations made by MPS with regards to whether an individual is fit to provide services pursuant to this Contract are made in MPS's sole discretion.

The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract by MPS: failure to perform background checks as outlined in this Section 7; failure to submit background checks to MPS as outlined in this Section 7; allowing services to be provided by an individual who has not be subjected to a background check; and allowing services to be performed by an individual who has been determined to be unfit by MPS as outlined in this Section 7.

### **8. 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, including, but not limited to, Workers' Compensation, Employers' Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, 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.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers' Compensation	Statutory Limits
Employers' Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor's and subcontractors' general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be submitted electronically to MPS via its third party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be recorded in the EXIGIS system, which records are incorporated into this

Contract by reference. Contractor shall provide MPS with a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor's insurers providing the coverages required by MPS for the duration of this Contract.

#### **9. SHIPPING /TAXES**

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Directors' Textbook Contract, which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

#### **10. 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.

#### **11. TERMINATION BY CONTRACTOR**

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

#### **12. TERMINATION BY MPS - BREACH BY CONTRACTOR**

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. 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.

#### **13. TERMINATION BY MPS**

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days' notice, but reserves the right to give immediate notice. 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.

#### **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'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 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 MPS Chief Human Capital Officer or his/her designee.
- E. 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. 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, RFP 1028, Contractor's Response to RFP 1028 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.

**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**

MPS will not be liable to pay Contractor for any work that the Contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

## **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.

## **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 confidential or proprietary information, not a matter of public record, that is received by reason of this Contract ("Confidential Information"), 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. This section shall not apply to information which is (A) publicly known, (B) already known to the Contractor, (C) disclosed to Contractor by a third party without restriction, (D) independently developed by Contractor without reference to MPS Confidential Information, or (E) disclosed pursuant to legal requirement or order, or as is required by regulations or professional standards governing the services performed.

All information and any derivatives thereof provided by MPS to 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. Contractor shall retain all right, title and interest in and to all methodologies, processes, techniques, ideas, concepts, trade secrets and know-how embodied in the deliverables or that Contractor may develop or supply in connection with this Contract (the "Contractor Knowledge").

The documentation for this engagement, including the workpapers, is not part of the deliverables, is the property of Contractor and constitutes confidential information. Contractor may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. If Contractor is required by law, regulation or professional standards to make certain documentation available to Regulators, MPS hereby authorizes Contractor to do so.

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. Notwithstanding the foregoing, Contractor (a) will be permitted to retain a copy of MPS Confidential Information, as may be necessary to document its consideration of the potential transaction, for the purpose of establishing compliance with applicable law or regulations (including professional standards) and for defending or maintaining any litigation (including any administrative

proceeding) relating to this Contract or the Confidential Information, provided that all such information shall continue to be kept confidential pursuant to the terms of this Contract; and (b) shall not be required to delete Confidential Information from back-up, archival electronic storage maintained in accordance with the Contractor's data retention policies.

**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's Executive Director of Communications & Outreach.

**28. 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) RFP 1028 (including all exhibits and addenda); and 3) Contractor's Response to RFP 1028.

**29. 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. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

**30. CONTRACT COMPLIANCE REQUIREMENT**

The HUB requirement on this Contract is 25%. The student engagement requirement of this Contract is 300 hours. The Career education requirement for this Contract is 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.

**31. REPORT RETENTION**

All reports must be retained, at the Contractor's expense, for a minimum of five (5) years, unless Contractor is notified in writing by MPS of the need to extend the retention period. The Contractor will be required to make reports available, upon request, to the following parties or their designees:

- a) Milwaukee Public School District
- b) Wisconsin Department of Public Instruction
- c) U.S. Government Accountability Office ("GAO")

Parties designated by the federal or state governments or by the district as part of an audit quality review process audit.

In addition, Contractor shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

For the avoidance of doubt, "reports" as specified above, does not include Contractor's working papers. Such working papers are considered Contractor's confidential information and cannot be disclosed to MPS.

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

CONTRACTOR (Vendor #: V006288)

**MILWAUKEE BOARD OF SCHOOL DIRECTORS**

By: \_\_\_\_\_  
Authorized Representative

By: \_\_\_\_\_  
*Adria D. Maddaleni, J.D.*  
*Director, Procurement and Risk Management*

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

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

Baker Tilly Virchow Krause, LLP  
777 E. Wisconsin Ave, 32<sup>nd</sup> Floor  
Milwaukee, WI 53202  
(414) 777-5423

By: \_\_\_\_\_  
*Keith P. Posley, Ed.D.,*  
*Superintendent of Schools*

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

SSN / FEIN:

Budget Code:  
SCF-0-0-CTG-DW-EAUS-ECTS \$799,590.00  
ADT-0-A-1Ax-OB-EAUS-ECTS \$150,000.00

By: \_\_\_\_\_  
*Larry Miller, President*  
*Milwaukee Board of School Directors*

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

Reviewed by Risk Management:

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

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