

(ATTACHMENT 11) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Purchase Requisition Number: CR016879
Contract Number: C023899
Vendor Number: V0848565

MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT

This Contract is being entered into this 26th day of June 2015, by and between **Renaissance Learning, Inc.** ("Contractor") and Milwaukee Board of School Directors ("MPS"). This Contract results from an open competitive procurement, specifically MPS Request for Proposal ("RFP") 876.

1. SCOPE OF SERVICES

Contractor is a qualified professional firm which provides universal screening assessments in all areas of literacy and mathematics for grades K-12. Contractor also provides progress monitoring tools in grades K-12 that can monitor student progress weekly during interventions in reading comprehension, reading fluency, basic reading (phonemic awareness and Phonics), written expression (Language and physical mechanics of writing), listening comprehension, oral expression, math calculation and math problem solving.

Contractor shall specifically, to be delivered according to the terms of this Contract, the terms of RFP 876 and Contractor's Response thereto, provide its STAR 360 comprehensive computer-adaptive assessment for students in grades Pre-K through 12. STAR 360 assessments include multiple components for measuring student achievement, growth, and instructional needs:

- STAR Reading – Grades 1-12
- STAR Early Literacy – Grades Pre-K-3
- STAR Math – Grades 1-12
- STAR Reading Spanish – Grades 1-12
- STAR Math Spanish – Grades Pre-K – 12
- STAR Early Literacy Spanish – Grades Pre-K-3
- STAR Custom is a fixed-form assessment tool that includes CCSS-aligned item bank and a CBM component

STAR will also provide progress monitoring tools for Response to Intervention (RtI).

Contractor specifically agrees that its STAR 360 assessments meet the detailed requirements outlined in pages 3 – 8 of RFP 876, which are incorporated herein, including provision of a "Kiosk App for Chromebook" and ability to export information to other platforms in use by MPS. The Kiosk App must be supported on managed Chrome devices and on the current stable channel of Chrome OS.

Contractor will also provide professional services to MPS as outlined in, and pursuant to, the "Professional Services Proposal" attached hereto as Exhibit A and incorporated by reference.

The following benchmark dates are agreed to:

- a. All English-language assessments will be available to the District immediately upon commencement of the term of this Contract so that MPS can begin testing in year-round schools on August 17, 2015.
- b. Between July 1, 2015 and July 27, 2015, on a date or dates to be mutually agreed upon, Contractor will provide "train the trainer" training to approximately 20 MPS staff members.
- c. No later than July 27, 2015, Contractor will have completed all necessary steps to achieve technical integration with MPS so that training of additional MPS staff members can take place thereafter. "Technical integration" shall mean the available assessments are "live" and functioning in MPS's system.
- d. No later than September 14, 2015, Contractor will provide access to and use of the "pilot versions" of all Spanish-language assessments to MPS. Pilot versions will contain neither the full item bank nor fully-calibrated items required for reliable scoring. This benchmark date is explicitly made a material term of this Contract and, in the event Contractor fails to provide such assessments by said date, monetary damages will be suffered by MPS and this Contract may be terminated in whole or in part.
- e. Between January and March, 2016, Contractor will provide access to and use of "full versions" of all Spanish-language assessments to MPS which contain full item banks and fully-calibrated items required for reliable scoring. This benchmark date is explicitly made a material term of this Contract and, in the event Contractor fails to provide such assessments by said date, monetary damages will be suffered by MPS and this Contract may be terminated in whole or in part.

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

2. TERM

This Contract will be in effect from July 1, 2015 to June 30, 2016 (the "Initial Term"), with the possibility of two additional one-year extensions upon mutual written consent. Any extension of the Contract beyond the Initial Term must be set forth in writing and signed by the authorized signatories of the parties.

MPS will determine whether such extensions are requested based on the performance metrics identified at pages 11 – 15 of RFP 876, which are incorporated herein. Each criterion will be ranked by MPS on a 1 – 5 scale. A total score of 85% of the points will be considered passing; but does not guarantee extension. A score between 60% and 84% will require specific action plans to be developed and approved by MPS prior to any extension. A score equal to or below 59% is a failure and no extension will be considered.

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.

3. COMPENSATION

Total compensation for the Initial Term of this Contract shall not exceed \$900,000.00. This amount is based on an estimated number of students to be assessed; however, there is no guarantee of the level or quantity of services that will be utilized by MPS under this Contract.

Contractor will bill MPS at a rate of \$11.80 per student per year for each assessment utilized. Contractor will bill MPS a flat rate of \$99,000 in the Initial Term for the professional services outlined in Exhibit A.

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.

For purposes of payment, delivery shall be deemed to be completed as follows:

- (i) For online software products - when login information is transmitted to MPS which allows access to the software.
- (ii) For onsite services – when rendered.
- (iii) For Renaissance U – when login information is transmitted to MPS which allows access to the site content.
- (iv) For strategic planning, monitoring and reporting: 25% at inception of the contract; 25% at September 1, 2015; 25% at December 1, 2015; and 25% at March 1, 2016.

No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools
ATTN: Dr. Melanie Stewart
5225 W. Vliet Street
Milwaukee, WI 53208

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.

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 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.

6. 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.

7. PARAGRAPH INTENTIONALLY OMITTED

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, Professional 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
Professional Liability	\$1,000,000 per occurrence
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

MPS 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 given to MPS. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded 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.

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. If 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' 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. MPS has a Livable Wage policy that requires anyone having a contract with MPS must pay all of their employees a livable wage in accordance with City of Milwaukee Ordinance 310-13. The current livable wage rate can be found at the City of Milwaukee website <http://city.milwaukee.gov/ImageLibrary/Groups/doaPurchasing/forms/livingWageTable.docx>.
- 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 of 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, its Exhibit A, any addenda, RFP 876 and Contractor's Response to RFP 876 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 authorized signatories of 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

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).

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.

Any data collected by Contractor's product as used by MPS is the sole property of MPS at all times, during and/or after the expiration of this Contract. Contractor possesses the legal ownership, right and title to any data, materials or intellectual property, inventions, or discoveries made or conceived by Contractor to or in the course of, or in connection with this Contract, and to use non-personally identifiable data collected by Contractor products: (i) to maintain and improve application performance or functionality, (ii) for general research and, (iii) for other valid purposes.

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's 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 and its Exhibit A; 2) RFP 876; and 4) Contractor's Response to RFP 876.

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. CONTRACT COMPLIANCE REQUIREMENT

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 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.

SIGNATURE BLOCK FOLLOWS ON THE NEXT PAGE

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

CONTRACTOR (Vendor #: V0848565)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: *Detral Schenck*
Authorized Representative

By: *Kristen DeCato*
Kristen D. DeCato, Director
Procurement and Risk Management

Date: 7/8/15
Renaissance Learning, Inc.
P.O. Box 8036, 2911 Peach Street
Wisconsin Rapids, WI 54495-8036
(800) 656-6740

Date: 7/6/15

By: *Darlene B. Driver*
Darlene B. Driver Ed.D., Superintendent of Schools

Date: 7-13-15

SSN / FEIN: [REDACTED]

Budget Code: SYS-0-0-SGV-RH-ETTX

By: *Michael Bonds*
Michael Bonds, Ph.D., President
Milwaukee Board of School Directors

Date: 7-15-15

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 fully executed. Payment will not be made on any contract not on file in the Office of Finance. A minimum of fifteen business days is required for approval.

Reviewed by Risk Management:

By: *[Signature]*

Date: 7.16.15

Reviewed as to form and substance by Office of Finance:

By: *Christine*

Date: 7/8/15