

## (ATTACHMENT 2) ACTION ON THE AWARD OF EXCEPTION-TO-BID REQUESTS

Purchase Requisition: CR035930

Contract Number: C027321

Vendor: V004186

### MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT

This Contract is being entered into this 1st day of May, 2018 by and between **Board of Regents of the University of Wisconsin System on behalf of Wisconsin Center for Educational Research (WCER)** ("Contractor") and Milwaukee Board of School Directors ("MPS").

#### 1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

Contractor shall provide a mixed-method evaluation featuring both quantitative and qualitative analyses of the Jacob K. Javits Gifted and Talented Students Education Program Grant. The evaluation will be led by Dr. Annalee Good with assistance from a team of evaluators with specific expertise in evaluating advanced learning initiatives. The team will provide both formative and summative feedback to the programming team, with the ultimate priority of improving the implementation and impact of the initiative. Reporting of evaluation findings will occur throughout the life of the project. The evaluation team will be available for regular phone and in-person communication about data collection and analysis and it will provide in-person and written briefings to MPS educators and administrators on an annual basis to review emerging findings from both qualitative and quantitative inquiries.

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 May 1, 2018 through April 30, 2019, ("Initial Term"), with the possibility of two, one-year extensions to run from May 1, 2019 through April 30, 2020 and May 1, 2020 through April 30, 2021 upon mutual written consent of the Parties.

**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 \$63,000.00 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: Elizabeth Mallegni – Department of Curriculum and Instruction  
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**

To the fullest extent permitted by the laws of the State of Wisconsin, including, but not limited to, Wis. Stat. §§ 893.82 & 895.46, Contractor agrees to indemnify, defend and hold harmless MPS and its elected officials, officers, employees and agents, against any and all liability, losses, judgments, charges, fines, costs, or expenses, including attorneys' fees, to the extent such damages are caused by or result from any wrongful or negligent acts or omissions of the Contractor's officers, employees, agents or representatives acting within the scope of their employment or agency.

To the fullest extent permitted by the laws of the State of Wisconsin, including, but not limited to, Wis. Stat. §§ 893.80 & 895.46, MPS agrees to indemnify, defend and hold harmless Contractor and its elected officials, officers and employees, against any and all liability, losses, judgments, charges, fines, costs, or expenses, including attorneys' fees, to the extent such damages are caused by or result from any wrongful or negligent acts or omissions of MPS's officers or employees acting within the scope of their employment.

#### **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 9; failure to submit background checks to MPS as outlined in this Section 9; 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 9.

#### **8. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY**

The State of Wisconsin, including the board of Regents of the University of Wisconsin System, is self-funded for liability (including general, professional, and automobile) under secs. 895.46, 893.82 and 20.505(2)(k) of the Wisconsin Statutes. This protection provides coverage for UW's officers, employees and agents, while in the course and scope of their duties. The State of Wisconsin Liability Program is funded to pay in excess of \$1 million for negligent acts or omissions of its officers, employees, and agents, in accordance with the statutes. Coverage is continuous under the law.

A certificate of insurance is not available, nor may a sponsor be named as an additional insured.

#### **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 Director Textbook Contract, found on the Milwaukee Public Schools portal (<http://mpsportal.milwaukee.k12.wi.us>) 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 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 shall entitle MPS to seek 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 twenty (20) 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 twenty (20) 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 covenants 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.

#### **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 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.

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' 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 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 reports and tangible deliverables created under this Contract shall also be the property of MPS. All original data and curriculum development materials shall remain the property of the Contractor. At the request of MPS, copies of such materials will be provided to MPS and MPS shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and authorize others to use such materials for educational 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.

In the event that Contractor (UWM) 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, Contractor will not identify MPS as the subject of any studies or analyses derived as a result of this Contract.

## **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. ORDER OF PRIORITY**

Should Contractor and MPS sign Contractor's Contract in addition to this Contract, the terms set forth in this Contract shall govern in the event of a conflict.

## **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 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.

### 30. HUB REQUIREMENT

The HUB requirement on this Contract is 0%. The student engagement requirement of this Contract is 100 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.

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

CONTRACTOR (Vendor #: V004186)

**MILWAUKEE BOARD OF SCHOOL DIRECTORS**

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

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

*Aaron A. Konkol, J.D.*

*Director, Procurement and Risk Management*

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

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

Board of Regents of the UW System on behalf of  
Wisconsin Center for Educational Research (WCER)  
1025 W. Johnson Street  
Madison, WI 53706  
(608) 890-3921

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

*Darienne B. Driver, Ed.D.*

*Superintendent of Schools*

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

SS# or FEIN:

Budget Code: GAT-P-S-2R8-CI-ECTS

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

*Michael A. Sain*

*President, Milwaukee Board of School Directors*

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

Reviewed by Risk Management:

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

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