

(ATTACHMENT 12) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

MILWAUKEE PUBLIC SCHOOLS
PURCHASING DEPT.

Purchase Requisition Number: CR023837
Contract Number: C025327
Vendor Number: V0756725

2016 AUG -1

MILWAUKEE BOARD OF SCHOOL DIRECTORS PROFESSIONAL SERVICES CONTRACT

This Contract is being entered into this 1st day of July 2016, by and between **A C.H. Coakley & Company, Inc. d/b/a C.H. Coakley & Company** ("Contractor") and Milwaukee Board of School Directors ("MPS"). This Contract is the result of an open competitive procurement, specifically Request for Proposal (RFP) 918.

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

Contractor shall provide moving services as needed at a variety of MPS sites. Items to be moved will consist primarily of computer and other technology equipment that is typically found in a school. While the majority of moving assignments will be between MPS buildings, there may be occasions when off-site pickups within the Milwaukee area may be required. MPS will have both large and small moves throughout the Contract term.

Contractor will be required to adhere to the following General Work Requirements:

- a) Contractor must be available within typical work times. Typical assignments shall start at 7:00 a.m. and must be completed by 3:30 p.m. of the same day, Monday through Friday. However, some assignments may last past 3:30 p.m. Any overtime hours must be approved in advance by the designated MPS representative. Rates for specific dates and times are compensated as provided in ¶ 3.
- b) Contractor must arrive at the move site promptly with all necessary labor and materials to complete the job (e.g. dollies, hand carts, flat beds, etc.) within the time frames set by MPS. Contractor is responsible for safeguarding and protecting its work materials, tools and equipment, and is required to provide necessary safety equipment for its employees.
- c) All trucks used must be weather-tight. Contractor must verify the weight of the property/equipment being moved will not hinder delivery or damage property during transport. Contractor must provide the necessary protection, padding, and equipment without a charge to MPS.
- d) All moving services must include pickup from an inside location and delivery to an inside location. Loading dock facilities are not guaranteed at every location. MPS staff will not assist with loading or unloading trucks.
- e) Contractor's workforce must consist of full-time professional moving personnel that are identifiable by uniforms or visible company ID badges to ensure security within school buildings. Part-time personnel may be used provided they are supervised by a full-time professional and meet the identification requirements. MPS reserves the right to request the replacement of personnel assigned by the Contractor at no additional cost to MPS if, in MPS' sole discretion, it is determined that the personnel does not adequately meet the needs of MPS.
- f) When moving equipment in an area where students are located, Contractor must allow the students to clear the area before beginning moving.
- g) Whenever possible, MPS will pre-palletize the contents to be moved. Nonetheless, Contractor must have the ability to palletize and shrink wrap the property to be moved.
- h) Contractor must have the ability to carry out moving requirements at a site which cannot accommodate a pallet through a door or for which there are no elevators. There are some MPS sites with these limitations.
- i) In all cases Contractor must use extreme care given that it is moving sensitive electronic equipment. Any MPS property for which Contractor is responsible must be delivered to the destination site in good condition. Prior to beginning work and at the completion of work, it is Contractor's responsibility to make MPS aware of any items that are damaged. Any inspections MPS chooses to conduct will take place prior to approval of invoices.
- j) Contractor must identify any existing damage to the building/property prior to commencing work. Contractor will provide property protection that is reasonable and necessary as determined by MPS. If damage ensues due to negligent activity, Contractor must immediately repair the damage in a manner acceptable to MPS, or MPS will have the option, but not the obligation, to repair and charge Contractor for all repair costs (this includes, but is not limited to gouges in the floor that cannot be easily buffed out or excessive scratches/gouges on walls or doors).
- k) During moves, Contractor must monitor open doors to ensure building security and ensure that unauthorized persons are not allowed access into the building.

RFP 918 is incorporated herein by reference. All Minimum Qualifications identified in Section 2.2 of RFP 918 are material terms of this Contract with which Contractor must comply.

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, 2016 through June 30, 2017, the "Initial Term," with the possibility of two, one-year extensions to run from July 1, 2017 through June 30, 2018 and July 1, 2018 through June 30, 2019. 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.

Criteria for Renewal	Points
Efficiency and Accuracy of Moving Assignment Completion	25
Customer Service	25
Responsiveness to Problem Solving	25
Invoicing and Billing Process Followed	25
Total	100

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 during the Initial Term shall not exceed \$20,000.00.

Costs are to be guaranteed years 1 through 3, and shall be all-inclusive including, not limited to, salary costs, employment taxes, travel costs, insurance costs, benefits, administrative costs, overhead costs, required screenings, background checks, training, insurance, gasoline, equipment and supplies necessary to perform the work, etc.:

SERVICES – YEAR 1				
Deliverable	Unit of Cost	Hourly Rate (Monday-Saturday; 6:30 am – 6:30 pm)	Hourly Overtime Rate (Sunday)	Hourly Holiday Rate (Federal)
1. Mover	Hourly Rate per Position	\$ <u>35.00</u> /hour	\$ <u>42.00</u> /hour	\$ <u>52.00</u> /hour
2. Straight Trucks with lift gate (including driver also acting as mover)	Hourly Rate per Position	\$ <u>71.00</u> /hour	\$ <u>78.00</u> /hour	\$ <u>87.00</u> /hour

SERVICES – YEAR 2				
Deliverable	Unit of Cost	Hourly Rate (Monday-Saturday; 6:30 am – 6:30 pm)	Hourly Overtime Rate (Sunday)	Hourly Holiday Rate (Federal)
3. Mover	Hourly Rate per Position	\$ <u>36.00</u> /hour	\$ <u>43.00</u> /hour	\$ <u>50.00</u> /hour
4. Straight Trucks with lift gate (including driver also acting as mover)	Hourly Rate per Position	\$ <u>72.00</u> /hour	\$ <u>79.00</u> /hour	\$ <u>88.00</u> /hour

SERVICES – YEAR 3				
Deliverable	Unit of Cost	Hourly Rate (Monday-Saturday; 6:30 am – 6:30 pm)	Hourly Overtime Rate (Sunday)	Hourly Holiday Rate (Federal)
5. Mover	Hourly Rate per Position	\$ <u>37.00</u> /hour	\$ <u>44.00</u> /hour	\$ <u>50.00</u> /hour
6. Straight Trucks with lift gate (including driver also acting as mover)	Hourly Rate per Position	\$ <u>73.00</u> /hour	\$ <u>80.00</u> /hour	\$ <u>94.00</u> /hour

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: Chad Meyer, Director
 Department of Technology
 PO Box 2181
 Milwaukee, WI 53201-2181

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

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

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), 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 (bodily injury liability and property damage 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 Employers Liability	Statutory Limits
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$100,000 each employee
Bodily Injury by Disease	\$500,000 policy limit
Commercial General Liability	
Bodily Injury/Property Damage	\$1,000,000 per occurrence \$2,000,000 general aggregate
Products-Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000 per occurrence
Fire Damage Limit	\$ 50,000 any one fire
Medical Expense Limit	\$ 5,000 any one person
(The policy deductible shall not be greater than 10% of the limit of the policy)	
Automobile Liability - Owned, Non-owned and Hired Combined Single Limit	\$1,000,000
Umbrella (Excess) Liability	\$2,000,000 each occurrence \$2,000,000 aggregate

Motor Truck Cargo insurance for coverage of property in course of transit at limits equal to the replacement cost of the property in transit with minimum limits of \$500,000 in any one vehicle and \$500,000 each loss.

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 and any subcontractors shall be given to MPS. Contractor shall provide MPS written notice of cancellation, non-renewal or material change by any of Contractor's or its subcontractors' insurance 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. 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, any addenda, RFP 918 and Contractor's Response to RFP 918 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. Unless otherwise provided herein, 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

Neither MPS nor Contractor will be liable to pay the other 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 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.

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 918; and 3) Contractor's Response to RFP 918.

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. CONTRACT COMPLIANCE REQUIREMENT

The HUB requirement on this Contract is 35%. 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.

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

CONTRACTOR (Vendor #: V0475262)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

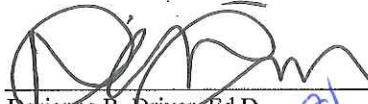
By: 
Authorized Representative

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

Date: July 07, 2016

Date: 7/12/16

A C.H. Coakley & Company, Inc.
d/b/a C.H. Coakley & Company
2151 N Martin Luther King Drive, Suite 200
Milwaukee, WI 53212
(414) 372-7000

By: 
Darionne B. Driver, Ed.D.,
Superintendent of Schools

Date: 7/19/16

SSN / FEIN: 

Budget Code: TSV-0-0-TEC-TC-ECTS

By: 
Mark A. Sain, President
Milwaukee Board of School Directors

Date: 7-26-16

Reviewed by Risk Management:

By: 

Date: 08-16-16