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PROFESSIONAL SERVICES CONTRACT

MILWAUKEE BOARD OF SCHOOL DIRECTORS
AND
GABRIEL, ROEDER, SMITH & COMPANY

This Contract is being entered into this 1st day of July, 2011, and between Gabriel, Roeder, Smith & Company ("Contractor") and Milwaukee Board of School Directors ("MPS").

1. SCOPE OF SERVICES

Conduct and perform actuarial consulting services including valuations for compliance with Governmental Accounting Standard Board Statement 45 Other Post Employment Benefits standard for MPS health and life insurance plans and achieve the objectives in accordance with the specification set forth within RFP 719, its proposal dated March 25, 2011, including its May 9, 2011 letter, herein expressly incorporated by reference.

The actuarial services shall be performed in accordance with Actuarial Standards of Practice and in compliance with Government Accounting Standards Board Statements.

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, 2011, through June 30, 2016.

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 \$122,140 for the period covering July 1, 2011 thru June 30, 2016 in accordance with Exhibit A. Contractor shall be compensated for work performed on a fixed fee or hourly basis in accordance with Exhibit A. Annual encumbrances are as follows: FY12 \$37,750; FY13 \$20,250; FY14 \$20,750; FY15 \$21,375; and FY16 \$22,015.

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:

Chris M. Toth
Director of Benefits and Insurance Services
Office of Human Resources
Milwaukee Public Schools
P.O. Box 2181
Milwaukee, WI 53201-2181

MILWAUKEE PUBLIC SCHOOLS
PURCHASING DEPT.
2011 JUL 12 P 12:58

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.

V013308
GABRIEL ROEDER SMITH & CO

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 be 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. BACKGROUND CHECKS

A criminal information background check is required for all persons providing services under this contract, including volunteers, that: (1) provide services in MPS facility(ies) on a regular and ongoing basis or more than five hours per week; and (2) come into contact with or have access to MPS students with or without the presence of an MPS teacher or MPS supervisor.

The purpose of this check is to ensure there is nothing that would render the person(s) unfit to perform services under this contract where there is contact and or access to MPS students. MPS will, in its sole discretion, determine whether there is anything in a background check that would render a person unfit to work in an MPS facility with contact or access to MPS students. MPS shall perform background checks in the state(s) in which the individual resided for at least six months in the last five years, and was 18 years old or older at the time.

Contractor may perform its own criminal background checks through the Wisconsin Department of Justice Crime Information Bureau ("CIB"). Contractor shall provide the completed criminal background checks to MPS at least 10 days prior to any services being performed pursuant to this contract.

MPS will perform the necessary background investigation at the rate of \$10.00 per person. In the event Contractor chooses this option, Contractor may contact the Office of Classified Staffing at 475-8157 to obtain the necessary forms. Please note that all forms must be filled out and submitted at least 30 days prior to the commencement of the services.

All background checks must be completed prior to the commencement of services under this contract. MPS will NOT be responsible for the payment of any services rendered by Contractor before the completion of these criminal information background checks.

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	\$2,000,000 per occurrence / \$2,000,000 aggregate
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 thirty (30) days 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 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 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 within 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 MPS 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 that 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 that may be extended to employees of MPS from time-to-time and further agrees 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 that 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. Contractor shall adhere to the MPS' Livable Wage Policy that requires all contractors to pay their employees a minimum of \$7.70 per hour.
- 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 MPS Chief Human Resources Officer or 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 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.

MPS shall not be bound by any terms and conditions included in of contractor's packaging, service catalog, brochure, technical data sheet, or other document that 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' 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 that 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, which 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 (10) 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' Director of Communication and Public Affairs.

27. ORDER OF PRIORITY

In the event of a conflict of terms among the documents constituting this contract, the order of priority to resolve that contract shall be as follows: (1) this contract; (2) RFP 719; (3) Contractor's Response to RFP 719.

28. PUBLIC RECORDS

Both parties understand that MPS 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 MPS 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 MPS 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. HUB REQUIREMENT

The HUB requirement on this contract is eight percent (8%) with the exception for Ad Hoc consulting when it is performed with no support work required. Failure to achieve this requirement 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
GABRIEL, ROEDER, SMITH & COMPANY**

By: Lance J. Weim

Address: 20 North Clark Street, Suite 2400
Chicago, Illinois 60602-5111

Phone Number: (312) 456-9800

Tax I.D. or SS#: XXXXXXXXXX

**MILWAUKEE BOARD OF
SCHOOL DIRECTORS**

By: Chris M. Toth

CHRIS M. TOTH
Director of Benefits and Insurance Services

By: Gregory E. Thornton

GREGORY E. THORNTON, Ed.D.
Superintendent of Schools

By: Michael Bonds

MICHAEL BONDS, Ph.D.
Board President

Budget Code: DWC-0-0-EMB-DW-EMDI

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 signed by the Department of Finance. Payment will not be made on any contract not on file in the Department of Finance. A minimum of 15 business days is required for approval.

Approved as to form and independent contractor status by Department of Finance.

By: Kim Lien Calloway

Date: 7/13/2011

Reviewed by Benefits and Insurance Services

By: Chris M. Toth

Date: 6-24-2011



May 9, 2011

Ms. Christine Toth
Director of Insurance and Risk Management Service Division
Milwaukee Public Schools
Administration Building
5225 West Vliet Street
P.O. Box 2181
Milwaukee, Wisconsin 53201-2181

Re: **RFP 719 for Actuarial Consulting Services – GASB/OPEB**

Dear Chris,

We are responding to the questions, listed in your email dated May 7, 2011, on RFP 719, relating to Actuarial Consulting Services for GASB/OPEB.

The first full valuation would be measured as of June 30, 2011, and would apply to fiscal year end June 30, 2012. The valuation as of June 30, 2011, would also include a projection of the actuarial valuation (interim valuation) applicable to fiscal year end June 30, 2013.

For the fiscal year that the interim valuation would apply, we can:

1. Review the substantive plan to ensure that no significant changes have occurred. If significant changes have occurred a full valuation may be required.
2. Review the GASB 45 Note and Required Supplementary Information.

The fees to provide support during the interim valuation period are expected to range from \$2,000 to \$4,000, and generally depend on the complexity of changes in benefit, funding or accounting policies.

We can include, at no additional cost, a demographic scatter gram of the covered population in the GASB 45 valuation report.

Thank you for pointing out the difference in the hourly billing rates that we provided in our responses to RFP 718 and RFP 719. We are requesting that the hourly billing rates for both RFP 718 and RFP 719 be adjusted to:

1. Senior Actuary: \$350
2. Junior Actuary: \$275
3. Other Prof.Tech.: \$200

Ms. Christine Toth
Milwaukee Public Schools
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The fee quote for the GASB 45 valuation includes two meetings at MPS. If MPS requires that GRS attend more than two meetings, the cost of attending each additional meeting in person will not exceed \$1,500.

Thank you for accepting our request to lower the professional liability insurance limit on both RFP 718 and RFP 719.

We appreciate the opportunity to respond to your request for proposal to provide actuarial consulting services. Please contact us if you have any questions or comments.

Sincerely,



Alex Rivera, FSA, EA
Senior Consultant