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BY ELECTRONIC MAIL

September 17, 2024

Ms. Yanira Raíces Vega
Secretary
Department of Education

Re: Instituto Modelo de Enseñanza Individualizada, Inc. (IMEI) (Amendment C)

Dear Ms. Raíces Vega,

In accordance with the Contract Review Policy (the “Policy”) of the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), established pursuant to Section 204(b)(2) of PROMESA, we have reviewed the proposed amendment to the contract between the Department of Education (the “PRDE”) and Instituto Modelo de Enseñanza Individualizada, Inc. (the “Proposed Amendment”).

After reviewing the Proposed Amendment, the Oversight Board concludes “Approved with Observations.” Observations related to the Proposed Amendment are set forth in Appendix A attached hereto.

Our review is solely limited to compliance of the Proposed Amendment with Section 204(b)(2) of PROMESA, which seeks to ensure proposed contracts promote market competition and are not inconsistent with approved Fiscal Plans. For the avoidance of doubt, the review performed by the Oversight Board does not constitute a legal review of the contractual documentation or the contracting process, including without limitation: (i) compliance with contracting requirements under applicable laws, rules, and regulations, both federal and local; and (ii) compliance with applicable laws, rules, and regulations governing procurement activities, both federal and local.

In addition, the Oversight Board has not engaged in any due diligence or background check with respect to the contracting parties nor whether the contracting parties comply with the requirements under the applicable contract. Any material changes to the Proposed Amendment or the original contract must be submitted to the Oversight Board for review and approval **prior to execution**.

Date: 9/17/2024

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Recipient: Ms. Raíces Vega

This letter is delivered as of the date hereof and we reserve the right to provide additional observations and modify this letter based on information the Oversight Board was not directed to when the review was conducted. In addition, during the course of our review, we may receive information that we may refer to the relevant authorities.

This letter is issued only to the PRDE and solely with respect to the Proposed Amendment.

Sincerely,



Jaime A. El Koury
General Counsel

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DEPARTMENT OF EDUCATION –
INSTITUTO MODELO DE ENSEÑANZA INDIVIDUALIZADA, INC.

Fiscal Plan Alignment

This review covers the Proposed Amendment to the contract between the PRDE and Instituto Modelo de Enseñanza Individualizada, Inc. (“IMEI”) for the provision of evaluation, intervention, and therapy services for the PRDE’s special needs population under the Special Education Program.

The original contract (2024-EE0113) stems from competitive procurement process no. 2022-23 issued on April 8, 2022. It has a maximum payable amount of \$6,015,000 and a term from October 1, 2023 to June 30, 2024. It has been amended twice to increase the maximum payable amount to \$9,726,000 and extend the term until **September 30, 2024**.

The Proposed Amendment, which constitutes the third amendment to the contract, increases the maximum payable amount by \$2,886,000 to **\$12,612,000**, without altering the term, to ensure continuity of services throughout the remainder of the term.

The PRDE has certified that the Proposed Amendment shall be covered entirely with Federal Funds stemming from the Elementary and Secondary School Emergency Relief (ESSER III), which are allocated in **Account No. E1290-272-01116000-06F-2021-S425U210029; E1290-272-0810000-081-2021-S425U210029 (PRIFAS)**. As such, the Oversight Board’s review indicates that the PRDE has sufficient funds in Fiscal Year 2025 to cover the cost of the Proposed Amendment as of the date of this letter.

This determination does not consider the extent to which total available funds will be subsequently encumbered by the PRDE throughout the applicable term. Consequently, we rely on the PRDE’s budget certification for purposes of this review.

Further, we note that the PRDE used projections from March through September 2024 instead of actuals-to-date to determine the cost of the Proposed Amendment. As such, the PRDE **must ensure that disbursements to IMEI are equal to services rendered and that no funds beyond the strictly necessary for the Proposed Amendment are encumbered, as this could result in the loss of excess funds, which could be used in other initiatives before the applicable encumbrance deadline.**

The PRDE is expected to inform the Oversight Board of any budgetary differences other than those specified in Appendix A to the Policy (Contract Submission Questionnaire) and to request a re-review of the Proposed Amendment should any changes occur.

Finally, the following observations are based on 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” and other relevant federal funding requirements:

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Observation	Suggested Action
Proposed Amendment	
<p>1. It appears that the total value of the original contract and the first and second amendments amounts to \$9,726,000. However, from information provided by PRDE in connection with the Proposed Amendment, it appears that IMEI has provided services in excess of \$9,726,000 and, therefore, additional funding needs to be allocated through the Proposed Amendment.</p>	<p>The PRDE should provide sufficient contract oversight to IMEI so that services in excess of contracted amounts are not provided without appropriate approvals, including contract amendments. The PRDE should maintain any approvals provided to IMEI in connection with services rendered beyond the amounts approved in the original contract and subsequent amendments in the procurement file along with any associated justification memos/documents.</p>
<p>2. The analysis provided by the PRDE in connection with the amount increase for the Proposed Amendment consists of taking a monthly average of costs incurred for several months and using that as an estimate for the period to be covered through the Proposed Amendment. No additional details regarding actual costs incurred from March 2024 onwards have been provided, including the number of students associated with the services provided. Additionally, no documentation or analyses have been provided demonstrating cost reasonableness.</p>	<p>The PRDE should ensure that costs associated with the Proposed Amendment are determined to be reasonable. The PRDE should maintain the cost reasonableness analysis along with detailed documentation/analysis explaining the amount increase for the Proposed Amendment in the procurement file. The PRDE should ensure that the services provided were authorized and billed at the contractual rates prior to authorizing any payments under the Proposed Amendment.</p> <p>For any contracts and amendments anticipated to be funded through federal funding programs, the PRDE should ensure that cost reasonableness has been established and documented prior to entering into any contracts or amendments. Additionally, the PRDE should ensure that no work is completed by vendors in excess of contract amounts prior to entering into formal agreements.</p>
<p>3. It does not appear that any justification has been provided regarding the provision of services beyond the original contract's initial 9-month term.</p>	<p>The PRDE should maintain the relevant justification in the procurement file.</p>
First and Second Amendments	
<p>4. No documentation has been provided clearly demonstrating how the amounts for first and second amendments were determined. Furthermore, no information has been provided demonstrating that the costs are reasonable for these amendments.</p>	<p>The PRDE should ensure that costs associated with the amendments were determined to be reasonable. The PRDE should maintain the cost reasonableness analysis along with documentation/analysis explaining the prior amendments amounts in the procurement file.</p>

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Observation	Suggested Action
5. The second amendment added federal contract provisions and other requirements in Annexes 4-6. However, these were not provided.	The PRDE should confirm that all applicable contract annexes are included in the procurement file.
Original Contract	
6. Annexes 1-3 to the original contract were not provided.	The PRDE should confirm that all applicable contract annexes are included in the procurement file.
7. IMEI questions and answers related to this procurement were not provided.	The PRDE should confirm that all applicable documents, including questions and answers, are included in the procurement file.
8. Best and Final Offers (BAFO) requested from the bidders, and the relevant responses were not provided.	The PRDE should maintain all BAFO requests and relevant responses in the procurement file.
9. A detailed rationale for award was not provided.	The PRDE should issue rationales for awards to all bidders and maintain copies in the procurement file.
10. An active SAM.gov debarment check was not provided for IMEI.	The PRDE should conduct regular debarment checks on all contractors and subcontractors and/or include supporting documentation and maintain the documentation in the procurement file.
11. The cost reasonableness analysis provided for the original contract does not align with the price proposal submitted by IMEI.	The PRDE should ensure that the relevant cost analysis files reconcile to the bidders' proposed prices and maintain a copy in the procurement file.
12. The original contract amount is less than the price proposal submitted in IMEI's proposal.	The PRDE should include justification as to how the contract award amounts were calculated and maintain this documentation in the procurement file.

Finally, we emphasize that the Proposed Amendment was submitted to the Oversight Board for review and approval on August 29, 2024 **with incomplete documentation**. After multiple Requests for Information from the Oversight Board, the PRDE submitted all required information and documentation on **September 12, 2024, with the expectation that the Oversight Board issue its final determination by September 13, 2024**. We remind the PRDE that the Policy clearly states that “[i]n the case of proposed amendments to existing contracts, the Commonwealth or covered instrumentality, as applicable, **must submit the required documentation within a minimum of 30 calendar days** prior to the proposed execution date of such amendment.” The PRDE’s continuous lack of compliance with the timeframes and requirements set forth in the

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Policy is very concerning to the Oversight Board, especially when it concerns contracts such as the Proposed Amendment that involve crucial services to such an important part of the population.

This review was conducted on the basis of information submitted by the PRDE. The Oversight Board has not independently verified the information included in the submission. Should the Oversight Board become aware of any inaccuracies or misrepresentations – whether intentional or not – it would re-evaluate its assessment.