



**MONTGOMERY COUNTY PUBLIC SCHOOLS**  
MARYLAND

www.montgomeryschoolsmd.org

301-279-3172



October 4, 2016

RFP Number:	1080.4
Pre-bid Conference:	Oct. 19, 2016
Due Date:	Nov. 3, 2016
Open Time:	2:00 p.m.

To: Prospective Offerers:

Montgomery County Public Schools (MCPS) is seeking proposals from qualified vendors for annual auditing services.

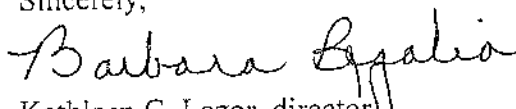
A pre-bid conference will be held on Wednesday October 19, 2016 at 10:00 a.m. at MCPS 45 W. Gude Drive, 3<sup>rd</sup> Floor, Pinewood Conference Room 3C03, Rockville, MD, 20850. Questions regarding the RFP must be submitted by Thursday October 13, 2016.

Proposals must be received on or before 2:00 p.m., on November 3 2016. Proposals received after this date and time will not be considered. Proposals must be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals must be marked on cover pages of each with "ORIGINAL", "COPIES" and "REDACTED". Proposals are to be delivered to Montgomery County Public Schools, (MCPS) Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, Maryland 20850

The provider must submit one (1) original, six (6) copies, one (1) electronic version on a USB flash drive or CD and one (1) redacted copy. **The proposal must be signed by an official having authority to contract with MCPS.** The firm and official's name shall be used. This solicitation does not commit the district to pay any costs incurred in the submission of proposals or guarantee that an award will be made.

In the event of emergency closing of Board of Education offices, this bid will open at the same time on the next regular working day.

Sincerely,

*for*   
Kathleen C. Lazor, director  
Department of Material Management

**Procurement Unit**

BR

Enclosure

45 West Gude Drive, Suite 3100 ♦ Rockville, Maryland 20850-9999



**MONTGOMERY COUNTY PUBLIC SCHOOLS**

**Request For Proposal No. 1080.4, Annual Auditing Services**

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**Equal Opportunity Certification**  
**Certification of Nonsegregated Facilities**  
**Notice to Bidders Bidder's Contact Information**  
**SLMBE (Small Local and Minority Business Enterprise)**  
**Non-Debarment Acknowledgement**

**Mid-Atlantic Purchasing Team Rider Clause**

**MCPS General Contract Articles**



**Department of Materials Management  
Procurement Unit  
MONTGOMERY COUNTY PUBLIC SCHOOLS  
Rockville, MD 20850-1747**

**Request For Proposal #1080.4,  
Annual Auditing Services**

**1.0. INTENT**

The Board of Education of the Montgomery County Public Schools (MCPS) is requesting proposals from qualified contractors to perform annual audits of its financial statements.

The contract will be effective March 2017, for fiscal years 2017 through 2022. The MCPS fiscal year begins July 1 and ends June 30. It is expected that all work associated with the fiscal year 2022 annual audit will be included.

The contract price will be established on a firm fixed-price basis for the initial two-year term and may be renegotiated at two-year intervals thereafter.

Nothing in this Request For Proposals (RFP) should be construed as precluding any qualified contractor from submitting a proposal, including contractors who have performed auditing, accounting systems, or consulting work for MCPS in the past, or are proposing to perform such work in the future. MCPS most recent contract for annual audits covered a period of six (6) years and was performed by CliftonLarsonAllen, LLP. CliftonLarsonAllen, LLP has been invited to bid. The Board of Education, however, reserves the right to award the bid to any successful bidder or to change auditors.

**2.0 INTRODUCTION**

Montgomery County Public Schools is a large public school system in the State of Maryland with more than 159,000 students in 203 schools. The annual operating and capital improvement budgets for fiscal year 2017 are approximately \$2.5 billion and \$305.0 million, respectively.

The Montgomery County Board of Education, acting through the superintendent of schools and the Board Office intends through this request to obtain the services of a nationally recognized certified public accounting firm, hereinafter referred to as the "offeror", to perform annual audits of the financial statements of the Board of Education of Montgomery County, Maryland, doing business as Montgomery County Public Schools, hereinafter referred to as "MCPS". The proposed contract period is six years, beginning with fiscal year 2017 and ending with fiscal year 2022. A fiscal year begins on July 1, and ends the following June 30.

The major components of the annual audit are:

- a) Examination of the financial statements of MCPS and expression of opinion thereon in accordance with AICPA standards.
- b) Examination of Federal programs in accordance with the Compliance Supplement (Supplement) based on the requirements of the Single Audit Act of 1984, the 1996 Amendments, and 2 Code of Federal Regulations (CFR)

part 200, subpart F, including preparation of all reports required by the Supplement and coordination, as necessary, with MCPS cognizant oversight agency (currently the Maryland State Department of Education).

- c) Examination of the financial statements of the MCPS Educational Foundation, Inc., and expression of opinion thereon.

MCPS will provide normal administrative support and assistance to the contractor.

MCPS may require consulting services during the course of the contract period, over and above those normally expected in connection with the annual audits, and will expect the contractor to provide such services at hourly rates consistent with those charged for the above examinations. These services include electronic data processing audits, special internal control studies, comfort or consent letters, and other accounting services. These professional services shall be delivered only upon specific amendment of the contract by the Contract Administrator of this contract. MCPS will establish a separate contingency reserve to allow for the possible need for consulting services.

### 3.0 QUALIFICATIONS

#### Mandatory Minimum Qualifications

In order to be considered the following qualifications must be met:

- a.) The CPA firm and the partner-in-charge must be properly licensed to practice in the State of Maryland.
- b.) The CPA firm and audit team members must be independent in accordance with:
  - a. Government Auditing Standards, issued by the Comptroller General of the United States, and;
  - b. AICPA Standards, including the Code of Professional Conduct, 1.200.001, Independence Rule, and 1.224.020, Entities Included in State and Local Government Financial Statements.
- c.) Auditors engaged in the audit must meet the continuing education requirements of the Government Auditing Standards.
- d.) The Firm's most recent peer review, or quality review report, must be unqualified.

### 4.0 SCOPE OF SERVICES

Audits shall be performed in accordance with the generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants (AICPA), the AICPA Audit and Accounting Guide - State and Local Governments, and all federal and state audit regulations that pertain to MCPS, including but not limited to (1) Maryland State Board of Education Standards and Regulations for Audits of Local Boards of Education, (2) The Maryland Public School Laws, (3) Federal Office of Management and Budget (OMB) Compliance Supplement, and (4) the Government Finance Officers Association (GFOA) "Blue Book," Governmental Accounting, Auditing and Financial Reporting (GAAFR).

Additionally, the report presentation should conform to requirements necessary to obtain the Association of School Business Officials International (ASBO) and Government Finance Officers Association (GFOA) Certificate of Excellence in Financial Reporting.

## 5.0 INSTRUCTIONS

### 5.1 Timing of Audit

All audit work required to express an opinion on MCPS financial statements must be completed by September 25 following the fiscal year end in order that MCPS may deliver its audited financial statements to the Maryland State Department of Education by September 30. This timing is essential in order for MCPS to meet the requirements of Maryland state law.

To meet the foregoing timing requirements, the contractor should plan to perform such interim work as necessary before the fiscal year end. MCPS will make every reasonable effort to complete its year-end closing and to prepare and deliver draft financial statements to the contractor in a timely fashion. The contractor should not plan to perform any extensive audit work in MCPS Division of Controller during the month of July closing process.

### 5.2. Coordination of Audit Work

Proper coordination of audit work and reporting will require an understanding of the roles and responsibilities of the various levels of authority within MCPS. In this connection, the Board of Education is the contracting party and all audit reports and other official communications regarding the audit engagement should be directed by the contractor to the Board.

The Board of Education Office has been designated by the Board and the superintendent of schools as principal coordinator for the annual audits, and all reports and other communications with the Board regarding the audit engagement should be routed through the Board Office.

The Board of Education has a three member fiscal management committee which may, from time to time, wish to meet with the contractor for a briefing on audit plans, results, and findings. The contractor will be expected to accommodate any such requests made by either the Board as a whole or the fiscal management committee. In the past, such requests have been made only once or twice a year.

Primary responsibility for preparation of the financial statements of MCPS is vested with the Chief Financial Officer and the Controller, Division of Controller. Both before and during the time of audit, the contractor will be expected to deal with these officials as necessary for administrative support, including arranging for computer time, preparation of detailed transaction listings, assembly of documentation, etc.

Before commencing the annual audit or during the audit period as appropriate, the contractor should plan to meet with the Board Office to arrange for office space and to reach agreement on such matters as (1) basis for progress payments, (2) any proposed changes in delivery dates for audit results, (3) arrangements for briefings of the Board, fiscal management committee, or other MCPS officials on audit progress and results, and (4) coordination of internal audit and contract audit work.

### 5.3. Delivery of Audit Results

Delivery dates following the end of the fiscal year under audit will be required for the major audit segments as follows:

September 25 - Opinion on the financial statements comprising the Comprehensive Annual Financial Report, Report on Internal Control, and Management Letter

October 15 - Draft reports and opinions required by Federal OMB Compliance Supplement

October 30 - Final reports and opinions required by Federal OMB Compliance Supplement

Deliveries of all documents relating to audit results will be made in Portable Document Format (PDF) for the following items:

#### Item

Opinion on financial statements

Report on Internal Control

Draft reports and opinion per OMB Compliance Supplement

Final reports and opinions. per OMB Compliance Supplement

Management letter

### 5.4. MCPS Accounting Policies

A summary of significant accounting policies of MCPS is presented in the MCPS Comprehensive Annual Financial Report for the fiscal year ended June 30, 2015. These policies are in effect as of the RFP date and are presented on pages 44 through 50 of the Report. This information is available at the web address below:

<http://www.montgomeryschoolsmd.org/departments/accounting/financial-reports.aspx>



### 5.5. MCPS Accounting System

MCPS current Financial Management System (FMS), apart from Independent Activity Funds which will be discussed separately below, is an integrated, web-enabled software for tracking and managing MCPS financial business functions within one centralized system. The major modules (appropriations/general ledger, accounts payable, accounts receivable, cash management, capital projects management, grants management, order management, inventory management, fixed assets, purchasing, and food services accounting) are all developed using Oracle on-line processing software. Each transaction on FMS is date stamped, time stamped, and operator/program stamped. There are a number of on-line retrieval capabilities and reports.

### 5.6. Independent Activity Funds

Each of MCPS 203 individual schools and supplementary centers maintains a web-based accounting software, School Funds Online, for its student-owned Independent Activity Funds (IAF). Internal audit staff have the capability to review any school's IAF accounting transactions remotely in real time. An annual financial report is prepared by each school and is forwarded to the internal audit staff for consolidation and inclusion into the overall MCPS financial report.

### 5.7. MCPS Financial Statements

The financial statements which comprise the Comprehensive Annual Financial Report of MCPS for the fiscal year ended June 30, 2015, are available at the web address <http://www.montgomeryschoolsmd.org/departments/accounting/financial-reports.aspx>. It should be noted that the MCPS CAFR includes extensive statistical information on which the contractor is not required to express an opinion. The contractor will be expected, however, to provide consultative advice and assistance with regard to formatting the complete CAFR report.

### 5.8. Accounts Maintenance and EDP Usage

The Office of Chief Operating Officer consists of the Office of the Chief Operating Officer, the Associate Superintendent for Human Resources and Development, the Chief Financial Officer, the Chief Technology Officer, and six component departments: Financial Services which includes the Division of Controller and the Employee and Retiree Service Center, Strategic Planning and Resource Management, Facilities Management, Materials Management, School Safety and Security, and Transportation. The Chief Operating Officer reports to the superintendent.

MCPS Division of Controller maintains control for over 24,600 accounts, in which over 1 million data transactions are classified annually. Other examples of the annual volume of work include: 23,000 accounts receivable invoices, 16,469 cash receipts, 62,000 vendor payments, and 2,480 bank statement reconciliations.

Accounting-type functions of significant size are also carried out in the MCPS units

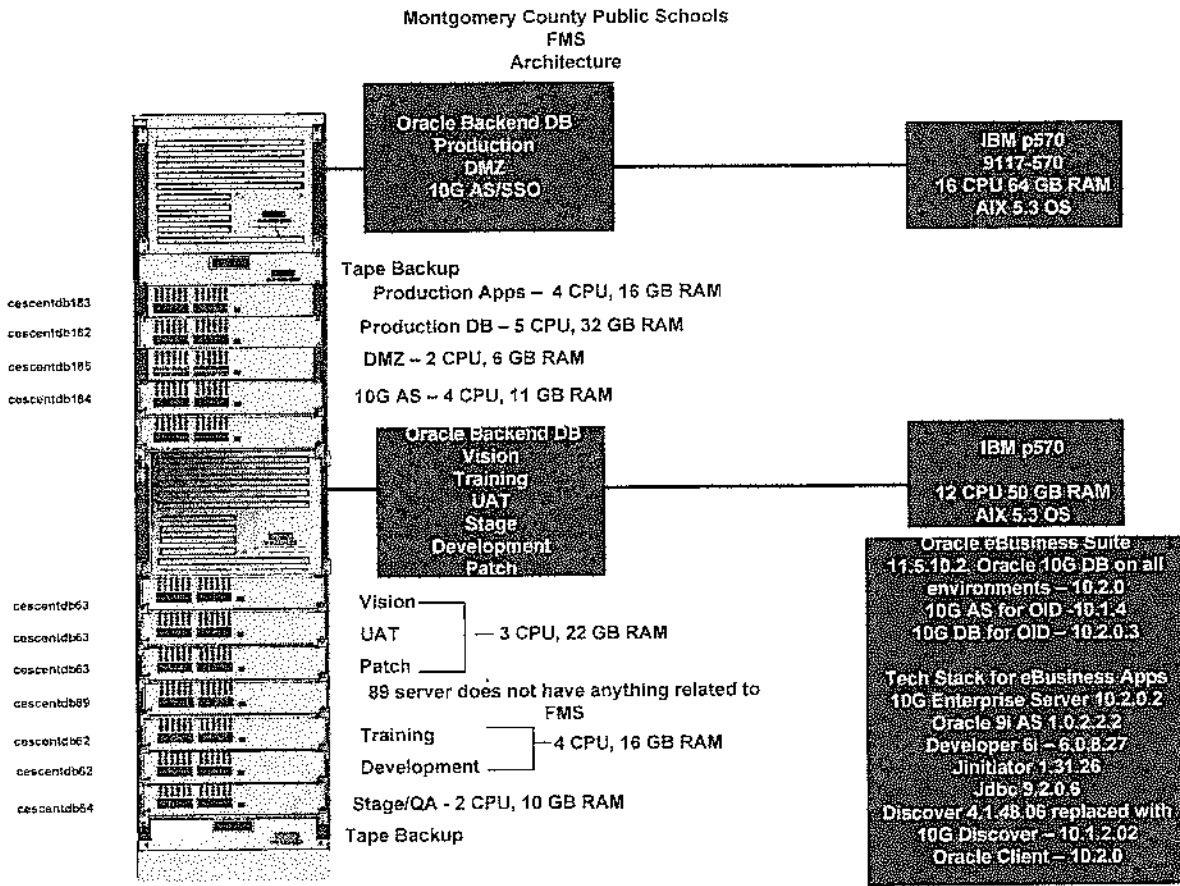
involved with transportation, procurement, supply management, capital programs, food services, maintenance, and the schools for their Independent Activity Funds. Additionally, any unit involved with one or more of the approximately 133 restricted program grants involving \$96 million will have some accounting functions to perform. The Division of Controller must interact with each of these units. Grants expenditures totaled about \$103 million in FY 2015.

The Division of Controller must also interact directly with the Department of Management, Budget and Planning, the Office of the Chief Technology Officer, and the Employee and Retiree Service Center in order to accomplish its accounting mission.

State law mandates that the superintendent of schools serve as treasurer of the Board of Education and the school system. Under the superintendent, line management responsibilities for budgeting and for authorizing and controlling expenditures in the separate MCPS accounts rests with six Primary Account Managers – Chief Academic Officer/Chief Operating Officer/Associate Superintendents, -- and with a larger number of Secondary Account Managers, primarily program and department directors.

State law also mandates that all school system funds must be appropriated by the County Council. Montgomery County policies provide for the distribution of the appropriated funds to the school system on an as-needed basis, with cash flow determined daily. The county government retains the rights to invest all county revenue until required by the separate agencies. MCPS may, however, invest funds for which it serves as the trustee (e.g., the MCPS employee retirement fund and employee benefit trust funds) or which it received directly (e.g., school lunch cafeteria revenue.)

The EDP Configuration is:



**5.9. Contract Term**

The initial term of contract shall be for two (2) years, starting March 8, 2017 through March 7, 2019. However, the contract may not begin until one day after approval by the Board of Education and will conclude as stated under the contract term. MCPS reserves the right to extend this contract at existing prices, terms and conditions for up to two additional 2-year terms. The final extension shall end with the FY 2022 audit which ends approximately September 30, 2022. Written notice indicating MCPS' intention to pursue the extensions of the contract will be issued to the successful vendor 90 days prior to the expiration of the original contract. The vendor shall have ten days from the date of the notification to return the notice acknowledging its intent to accept or reject the extension. Once all responses are evaluated, MCPS staff may make a recommendation to the Board of Education to extend the contract or decide to rebid. If the contract is extended by the Board of Education a contract amendment will be issued.

### 5.10 Determination of Contract Price

The contract price will be renegotiated with the contractor at two-year intervals after the initial two-year contract period. The offeror's price proposal for purposes of this RFP, therefore, should be for the fiscal years 2017 and 2018, only. In the event MCPS and the contractor cannot agree on a contract price for either of the succeeding two-year periods, the contract will be terminated without cost to MCPS and opened to competition.

Agreement on contract price for these succeeding periods must be reached by January 10 of the calendar year following the completion of the second and fourth years' audits in order that MCPS may have sufficient time to select another certified public accounting firm if necessary.

MCPS reserves the right to refuse all offers, or to negotiate with the offeror submitting the best proposal. Renewal of the contract negotiated as a consequence of this RFP will be open to competition, beginning with the fiscal year 2023 audit.

The offeror should indicate clearly and separately in the business section of its proposal any public service discount or other consideration to be accorded MCPS for each component of the audit.

### 5.11 Key Personnel

The offeror shall name the key senior personnel who shall manage and be assigned to perform the field work. At a minimum, a partner shall manage the contract, and a senior level auditor be on site in charge of the field work. Both the partner and senior level auditor must have had experience in (1) auditing a major public school system, (2) carrying out all audit work, coordinating, and preparing all related reports required by Federal OMB Compliance Supplement, (3) performing audits in an EDP environment comparable to MCPS, as described in this RFP, and (4) applying the guidelines stipulated in the various statements of the Government Accounting Standards Board.

The offeror need not commit itself to specific personnel beyond the initial two-year contract period. Continuation of the contract beyond the initial two-year period, however, is conditional on MCPS approval of the partner and key senior personnel who will be required to have experience as indicated above.

Any changes of partner or key personnel during the contract period must be agreed to in advance by MCPS.

### 5.12 Retention of Records and Working Papers

The contractor shall retain the records and working papers prepared to fulfill the terms of any contract awarded for three years following the end of the fiscal year audited. These records and working papers shall be made available for inspection and copying by MCPS personnel, consistent with applicable professional standards, at MCPS expense, during normal working hours at the contractor's office nearest Montgomery County, Maryland.

### 5.13 Contents of the Proposal

Offerors who do not follow the prescribed format may be deemed non-responsive, at the election of MCPS. Adherence to the proposal format by all offerors will ensure an evaluation which can match each response to the needs of MCPS. The letter transmitting the proposal must be signed by an officer authorized to bind the offeror as required by this RFP. The specific instructions for this technical section follow:

#### Chapter 1: Introduction

The introduction should demonstrate the offeror's overall qualifications to fulfill the requirements of this RFP, including experience in auditing a major public school system; auditing in a heavily computerized accounting environment; and experience and familiarity with Federal OMB Compliance Supplement audit and reporting requirements.

#### Chapter 2: Audit Approach

Offerors should describe the methodology to be used to audit MCPS accounts and records so as to be able to render a timely opinion on the financial statements and the Federal funds received by MCPS.

#### Chapter 3: Qualifications of the Organization

This chapter should amplify the general information presented in the introduction to a) establish the credentials and experience of the firm to undertake this type of audit effort, with special reference to audit work performed in connection with OMB Compliance Supplement, b) identify resources which will be available to the assigned personnel to supplement their own knowledge and experience, and c) list any other organizational personnel or consultants who would be available to the audit team. Firms having multiple offices should emphasize the experience of the specific office(s) which will be assigned to the MCPS contract.

#### Chapter 4: Qualifications and Estimated Time of Assigned Personnel

This chapter should provide the professional credentials and experience of the partners and each senior person proposed for this contract during at least the initial two-year period. It is especially important that information be provided which demonstrates experience with conducting similar audits. Although standard personnel resumes may be included as attachments to the proposal, application specific to this RFP is requested in this chapter, and the absence of such contract specific information will be considered as non-responsive.

This chapter should also present the offeror's proposed usage of assigned

personnel for each component of the annual audit in the following format:

- A. Examination of financial statements  
Title of Assigned staff Estimated hours
- B. Examination of Federal programs  
Title of Assigned staff Estimated hours
- C. Other (Specify)  
Title of Assigned staff Estimated hours

Note: Offeror is not requested to provide information under this caption unless there is additional work being proposed that cannot be properly included under the above captions. If this caption is used, a full explanation should be provided of the nature of the work it covers.

#### Chapter 5: References

The offeror should provide at least three references which MCPS may contact regarding similar audit work performed. Names, titles, addresses, email addresses and telephone numbers should be included for each reference. At least one of these references should include an audit on which the key personnel designated in the bid to MCPS for this audit have served. This chapter should also cite any work performed for MCPS or any of its sub-units over the past five years by the offeror's organization, its sub-contractors, and/or the assigned personnel. However, previous MCPS work is not considered a "reference" in place of three requested above.

## 6.0 EVALUATION CRITERIA

Of paramount importance in making a selection among the offerors are a) the experience which the organization's staff possesses regarding auditing major school systems, b) experience in fulfilling the audit requirements of Federal OMB Compliance Supplement, and c) auditing in a heavily computerized accounting environment.

In evaluating the proposals, the following factors will be considered with points awarded up to the 100:

### Factor

- A. Offeror's overall qualification to fulfill the requirements of this RFP as evidenced by the material submitted under Chapter 1

- B. Reasonableness of the Offeror's audit approach as evidenced by material submitted under Chapter 2
- C. Qualifications of the organization (Chapter 3)
- D. Qualifications and time estimates for assigned personnel (Chapter 4)

## 7.0 SELECTION OF VENDOR

The Board reserves the right to ask clarifying questions about submitted proposals. Firms may also ask questions that they may have related to this RFP prior to submitting their responses, see Schedule of Events. Only proposals received by the deadline will be considered. Proposals will be screened down to a number of finalists. The Board will invite the finalists to make an oral presentation at a time and date to be announced in November 2016. All respondents will receive written notification regarding the final selection.

## 8.0 FORMAT OF RESPONSE AND SUBMISSION GUIDELINES

Proposals shall be submitted in the same order as the RFP. Requirements for each section are indicated below, and proposals must contain all required information to be considered responsive. If an answer to a question requires ancillary documents (e.g., examples, reports, etc.), the attachment must reference back to the question in the RFP.

Bidders may contact Barbara Regalia to receive the RFP document in word format to help them in preparing their response, [Barbara\\_Regalia@mcpsmd.org](mailto:Barbara_Regalia@mcpsmd.org). **Responses to this RFP are due on or before 2:00 p.m. on November 3, 2016, at the address below. One (1) original, six (6) separate copies, one (1) electronic version on a USB flash drive or CD and one (1) redacted copy should be sent by mail, courier or hand delivered to:**

Montgomery County Public Schools  
Procurement Unit  
45 W. Gude Drive, Suite 3100  
Rockville, MD 20850

The redacted copy shall specifically identify confidential business information or technical data which the bidder or his subcontractor does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data, subject to the provisions of the Maryland Public Information Act, may be so restricted, provided, that if a contract is awarded to this bidder as a result of or in connection with the submission of this proposal, MCPS shall have the right to use or disclose these technical data to the extent provided in the contract. This restriction does not limit the right of MCPS to use or disclose technical data obtained from another source without restriction. MCPS assumes no liability for disclosure or use of unmarked technical data or products and may use or disclose the data for any purpose and may consider that the proposal was not submitted in confidence and therefore is releasable.

Price and cost data concerning salaries, overhead, and general and administrative expenses are considered proprietary information and will not be disclosed.

The proposal must be signed by an official having authority to contract with MCPS. The firm and the official's name shall be used in the contract process.

MCPS reserves the right to make an award without further discussion of the proposals received. MCPS may also negotiate with the one respondent who submits the best proposal or with two or more respondents who are in the competitive range. Therefore, it is important that your proposal be submitted initially on the most favorable terms from both the technical and cost standpoints. After the submission and closure of proposals, no information will be released until after the award. It is understood that your proposal will become a part of the official file on this matter without obligation to MCPS.

Your response must be complete and comply with all aspects of these specifications. Marketing or promotional verbiage will likely overshadow your qualifications and expertise. We urge you to be specific and brief in your responses.

Respondents must include any and all statements and representations made within its proposal in the contract for services with MCPS unless otherwise agreed upon by MCPS and respondent during negotiations. This includes, but is not limited to, the vendor's point-by-point response to this RFP. If respondent answers only "Understand and comply" it is assumed that the respondent complies with MCPS' understanding of the requirement.

MCPS shall not be responsible nor liable for any costs incurred by the respondent in the preparation and submission of their proposals and pricing.

## **9.0 PROJECT OFFICER**

The MCPS project officer for this proposed procurement is:

Montgomery County Public Schools  
Attn: Roger Pisha, CIA, CGAP, CGFM  
Upcounty Regional Services Center, Suite 3308  
12900 Middlebrook Road  
Germantown, MD 20874  
Phone: 301-444-8650

All prospective firms are cautioned that information relating to the proposed procurement may be obtained only from Mrs. Barbara Regalia, Procurement Unit. Once the contract is awarded Mr. Pisha will be your point of contact.

Any attempt to solicit information from other sources within the MCPS system may be cause for rejection of the firm's proposal.



## 10.0 SCHEDULE OF EVENTS

The anticipated schedule for activities related to this RFP is as follows:

Issue Solicitation	October 4, 2016
Questions due	October 13, 2016
Prebid Conference	October 19, 2016, 10:00 a.m.
RFP due date	November 3, 2016 at 2 p.m.
Interviews, if needed	TBD
Award Recommendation	January 10, 2017
Board Approval	February 14, 2017

All dates are subject to change at the discretion of MCPS.

## 11.0 PREBID CONFERENCE

A pre-bid conference for prospective firms will be held on October, 19, 2016 at 10:00 a.m. at Montgomery County Public Schools, 45 W. Gude Drive, 3<sup>rd</sup> Floor, Pinewood Conference Room 3C03, Rockville, MD, 20850. Attendance at this conference is encouraged, but is not mandatory. Questions to this RFP are due by the close of business Thursday, October 13, 2016 so that responses can be prepared for distribution at the pre-bid conference. The purpose of the pre-proposal conference will be to allow prospective firms the opportunity to obtain clarification of the RFP and ask questions directly of MCPS staff to assist them in the preparation of their proposal responses.

Firms may request the call-in number information to participate in the prebid conference. Firms shall provide the names of the persons who will attend the pre-bid conference. Please send no more than two representatives. Send the names to Barbara Regalia, fax number 301-279-3173, or e-mail, [Barbara.Regalia@mcpsmd.org](mailto:Barbara.Regalia@mcpsmd.org) no later than Monday, October 17, 2016.

## 12.0 ADDENDA/ERRATA

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the bidder's responsibility to check the MCPS website, under "Event Calendar" or contact the Procurement Unit at 301-279-3555 to verify whether addenda/errata have been issued. Failure to provide the signed acknowledgement of the addenda/errata may result in a bid being deemed non-responsive. MCPS website is <http://www.montgomeryschoolsmd.org/departments/procurement/>

## 13.0 eMaryland Marketplace

As of June 1, 2008 Maryland law requires local and state agencies to post solicitations on eMaryland Marketplace. Registration with eMaryland Marketplace is free. It is recommended that any interested supplier register at [www.eMarylandMarketplace.com](http://www.eMarylandMarketplace.com), regardless of the award outcome for this procurement as it is a valuable resource for upcoming bid notifications for municipalities throughout Maryland.

## 14.0 INQUIRIES

Inquiries regarding this solicitation must be submitted in writing, to Barbara Regalia, Team Leader, Montgomery County Public Schools, Procurement Unit, 45 West Gude Drive, Suite 3100, Rockville, Maryland 20850, fax number 301-279-3173. Questions are due by close of business Wednesday, October 13, 2016. Responses will be distributed at the prebid conference on Wednesday October 19, 2016 and posted on eMM and the MCPS Procurement Unit website. The Board of Education will not be responsible for any oral or telephone explanation or interpretation. Vendor contact with any other MCPS employee regarding this solicitation until the contract is awarded by the Board of Education will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration of its RFP response. The MCPS Procurement Unit website address is <http://www.montgomeryschoolsmd.org/departments/procurement/>

## 15.0 CONTRACTOR OBLIGATION

### Contractors' Obligation Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities

Beginning July 1, 2015, all MCPS contracts must include the following provisions:

#### **I. Prohibition against assigning registered sex offenders and individuals convicted of sexual offenses, child sexual abuse, and other crimes of violence to MCPS contracts:**

Maryland Law requires that any person who enters into a contract with a county board of education "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. Under § 11-722 of the Criminal Procedure Article of the Maryland Code, an employer who violates this requirement is guilty of a misdemeanor and, if convicted, may be subject to up to five years imprisonment and/or a \$5000 fine.

Effective July 1, 2015, amendments to § 6-113 of the Education Article of the Maryland Code further require that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:

- a) A sexual offense in the third or fourth degree under § 3-307 or § 3-308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3-307 or § 3-308 of the Criminal Law Article if committed in Maryland;
- b) Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or
- c) A crime of violence as defined in § 14-101 of the Criminal Law Article, or an

offense under the laws of another state that would be a violation of § 14–101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

Each contractor is required to submit, following award of a contract, documentation confirming that its direct employees and those of any subcontractors and/or independent contractors assigned to perform work in a MCPS school facility under the contract meet this obligation. Additionally, the contractor must confirm that it continues to meet this obligation on an annual basis and/or when there are changes in the work-force that the contractor and/or its subcontractors use to perform the work required by the contract.

Violation of this provision is a material breach of contract for which MCPS may take appropriate action up to and including termination of the contract.

## **II. Required criminal background check process for certain individuals in the contractor's workforce:**

Under recent amendments to § 5-551 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its work-force must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term "work-force" in this and the preceding section refers to all of the contractor's direct employees, subcontractors and their employees, and/or independent contractors and their employees that the contractor uses to perform the work required by the contract.

Fingerprinting for the criminal background check may be performed by the MCPS Office of Human Resources and Development, 45 W. Gude Drive, Rockville, MD 20850, or through another service approved by MCPS. Individuals fingerprinted by MCPS will be required to provide written consent, and MCPS will maintain copies of all records for criminal background checks performed by MCPS. If the contractor uses another service approved by MCPS, the results of the criminal background check must be provided to MCPS for record keeping. A list of MCPS approved fingerprinting agencies can be found on the Procurement Unit website at <http://www.montgomeryschoolsmd.org/departments/procurement>.

The contractor must take appropriate steps to promptly follow up on information

identified in the criminal background check related to the sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as warranting further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the contractor believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the contractor's summary to determine whether to accept the contractor's recommendation, and the contractor will be responsible for any consequences of a material misrepresentation in its written summary.

Once the contract is awarded, the contractor is responsible for implementing the background check process. An individual in the contractor's work-force may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (a) the background check results for that individual have been received by MCPS; (b) the contractor certifies to MCPS that the individual has received training and/or reviewed informational materials, as appropriate, regarding recognizing, reporting, and preventing child abuse and neglect, consistent with the content provided in training for MCPS employees; and (c) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The contractor will be required to return all badges at the conclusion of the contract.

The criminal background check and badging process will be at the contractor's expense.

Violation of this provision is a material breach of contract for which MCPS may take appropriate action up to and including termination of the contract.

## **16.0 MULTI-AGENCY PARTICIPATION**

MCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, other non-public schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that required these goods, commodities and/or services. Use of this solicitation by other agencies may be dependent on special local/state requirements attached to and made a part of the solicitation at time of contracting. The supplier/contractor agrees to notify the issuing agency of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested. A copy of the contract pricing and the bid requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own contract with the Award Bidder(s) and this contract shall be binding only upon the principals signing such an

agreement. Invoices shall be submitted "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the Award Bidder. MCPS assumes no authority, liability, or obligation on behalf of any other public or non-public entity that may use any contract resulting from this bid MCPS pricing is based on the specifications provided in this solicitation.

**17.0 UNNECESSARILY ELABORATE BROCHURES**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the bidder's lack of cost consciousness. Elaborate art work and expensive visual and other presentation aids are neither necessary nor wanted.

**18.0 CONTRACT**

MCPS plans to enter a contractual agreement with the firm(s) to whom the award is made and intends to make the attached Articles 1 - 37 a part of the contract. Articles 29 and 30 are not applicable to this RFP.

**19.0 CERTIFICATION**

The two forms below, Equal Opportunities Certification and Certification of Non segregated Facilities, must accompany the proposal. Evaluation of proposals is dependent upon satisfactory completion of these forms.

**Equal Opportunity Certification**

- 1. Are you participating in any contractual agreement which contains the Equal Employment Opportunity Clause prescribed in Executive Order 11246, as amended?

( ) Yes ( ) No

- 2. Name and address of Federal "Compliance Agency," if known:

("The Rules and Regulations of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, define the term Compliance Agency as the agency designated by the Director, of CCP, to conduct compliance reviews and to undertake such other responsibilities assigned.")

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3. Are you required to maintain a written affirmative action plan according to 41 CFR 60-2 and 60-1 (a)(4)?

( ) Yes ( ) No

4. Has the "Compliance Agency" required you to correct deficiencies in your affirmative action plan or your employment policies and practices?

( ) Yes ( ) No

5. Are you required to submit an annual compliance report as described in 41 CFR60-17 (a)?

( ) Yes ( ) No

If the answer to "5" is yes, enclose a copy of your latest compliance Report.

Data on Subcontractors. (Use supplementary sheets where required.)

\_\_\_\_\_ (1)\* (2)\*\* (3)\*\*\*

(Subcontractor's Name)

\_\_\_\_\_ ( ) Yes ( ) Yes ( ) Yes

(Street)

\_\_\_\_\_ ( ) No ( ) No ( ) No

(City) (State)

\_\_\_\_\_ (1)\* (2)\*\* (3)\*\*\*

(Subcontractor's Name)

\_\_\_\_\_ ( ) Yes ( ) Yes ( ) Yes

(Street)

\_\_\_\_\_ ( ) No ( ) No ( ) No

(City) (State)

\*(1) Previously held contracts subject to EQ 10925, 11114, and 11246, as amended.

\*\* (2) Previously filed certificate of non segregated facilities.

\*\*\* (3) Previously filed annual (EE0-1, EEO-4, or EEO-6) compliance report.

**Certification of Non segregated Facilities**

By submission of this offer, the Offeror or subcontractor certifies that there is not maintained or

provided for employees any segregated facilities and that employees will not be permitted to perform their services at any location, under the Offeror's control, where segregated facilities are maintained. The Offeror, or subcontractor, agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "Segregated Facilities" means any rooms, work areas, restrooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The Offeror further agrees that except where there has been obtained identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause that there will be forwarded the following notice to such proposed subcontractors except where the proposed subcontractors have submitted certifications for specific time period:

**Notice to Prospective Subcontractors of  
Requirement for Certifications of  
Nonsegregated Facilities**

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

The certification may be submitted either for each subcontract or for all subcontracts during a period, i.e., quarterly, semiannually, or annually.

**NOTE:** Failure of an Offeror to agree to the Certification of Nonsegregated Facilities shall render his offer nonresponsive to the terms of solicitations involving awards of contracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause.

**NOTICE TO BIDDERS**

The appropriate items below must be completed as part of the RFP. Failure to comply may disqualify your bid. Type or print legibly in ink.

**I. BIDDER INFORMATION:** As appropriate, check and/or complete one of the items below.

- 1. Legal name (as shown on your income tax return) \_\_\_\_\_
- 2. Business Name (if different from above) \_\_\_\_\_
- 3. Tax Identification Number \_\_\_\_\_

A copy of your W-9 must be submitted with this bid response.

**II. BIDDER'S CONTACT INFORMATION:** This will be filed as your permanent contact information.

1. Company Name \_\_\_\_\_
2. Address \_\_\_\_\_
3. Bid Representative's Name \_\_\_\_\_
4. Phone Number/Extension \_\_\_\_\_
5. Fax Number \_\_\_\_\_
6. Toll Free Number \_\_\_\_\_
7. Email Address \_\_\_\_\_
8. Website \_\_\_\_\_

**III. SLMBE, (Small Local and Minority Business Enterprise)**

The offeror ( ) is ( ) is not a minority business enterprise. A minority business enterprise is defined as a "business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock is owned by minority group members." For the purpose of this definition, minority group members are African Americans, Hispanic Americans, Asian Americans, and American Indians.

Check the appropriate box below.

- African American     Asian American     Hispanic     Native American  
 Female     Disabled     None

**IV. NON-DEBARMENT ACKNOWLEDGEMENT:**

\_\_\_\_\_ I acknowledge that my firm has NO pending litigation and/or debarment from doing business with the State of Maryland or any of its subordinate government units and/or federal government within the past five (5) years.

\_\_\_\_\_ I acknowledge that my firm has pending litigation or has been debarred from doing business with the State of Maryland or any of its subordinate government units and/or federal government, within the past five (5) years. (Attachment)

As the duly authorized representative of the applicant, I hereby certify that the above information is correct and that I will advise Montgomery County Public Schools should there be a change in status.



By (Signature) \_\_\_\_\_

Name and Title \_\_\_\_\_

Witness Name and Title \_\_\_\_\_

V. **VENDOR'S CERTIFICATION:** Upon notification of award, this document in its entirety is the awarded bidder's contract with MCPS. By signing below, the undersigned acknowledges that he/she is entering into a contract with MCPS.

A. The undersigned proposes to furnish and deliver supplies, equipment, or services, in accordance with specifications and stipulations contained herein, and at the prices quoted. This certifies that this bid is made without any previous understanding, agreement or connection with any person, firm, or corporation making a bid for the same supplies, materials, or equipment, and is in all respects fair and without collusion or fraud.

B. I hereby certify that I am authorized to sign for the bidder. I/We certify that none of this company's officers, directors, partners, or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of the Montgomery County Public Schools, Administrative or Supervisory Personnel, or other employees of the Board of Education has any interest in the bidding company except as follows:

By (Signature) \_\_\_\_\_

Name and Title \_\_\_\_\_

Witness Name and Title \_\_\_\_\_



**Mid-Atlantic Purchasing Team  
Rider Clause**

RFP No. 1080.4, Annual Auditing Services

USE OF CONTRACT(S) BY MEMBERS COMPRISING Mid-Atlantic Purchasing Team COMMITTEE

**Extension to Other Jurisdictions**

The [issuing jurisdiction] extends the resultant contract (s), including pricing, terms and conditions to the members of the Mid-Atlantic Purchasing Team, as well as all other public entities under the jurisdiction of the United States and its territories.

**Inclusion of Governmental & Nonprofit Participants (Optional Clause)**

This shall include but not be limited to private schools, Parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that required these good, commodities and/or services.

**Notification and Reporting**

The Contractor agrees to notify the issuing jurisdiction of those entities that wish to use any contract resulting from this solicitation and will also provide usage information, which may be requested. The Contractor will provide the copy of the solicitation and resultant contract documents to any requesting jurisdiction or entity.

**Contract Agreement**

Any jurisdiction or entity using the resultant contract (s) may enter into its own contract with the successful Contractor (s). There shall be no obligation on the party of any participating jurisdiction to use the resultant contract (s). Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction. Including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue.

Authorization To Extend Contract: **Bid #**

	Yes	No		Yes	No		Yes	No
Alexandria, Virginia			Gaithersburg, Maryland			Rockville, Maryland		
Alexandria Public Schools			Greenbelt, Maryland			Spotsylvania County		
Alexandria Sanitation Authority			Harford County			Spotsylvania County Gov & Schools		
Annapolis City			Harford County Schools			Stafford County, Virginia		
Anne Arundel County			Howard County			Takoma Park, Maryland		
Anne Arundel Schools			Howard County Schools			Upper Occoquan Service Authority		
Arlington County, Virginia			Herndon, Virginia			Vienna, Virginia		
Arlington County Public Schools			Leesburg, Virginia			Washington Metropolitan Area Transit Authority		
Baltimore City			London County, Virginia			Washington Suburban Sanitary Commission		
Baltimore County Schools			Loudoun County Public Schools			Winchester, Virginia		
Bladensburg, Maryland			Loudoun County Water Authority			Winchester Public Schools		
Bowie, Maryland			Manassas City Public Schools					
Carroll County			Manassas Park, Virginia					
Carroll County Schools			Maryland DGS Purchasing					
Charles County Government			Maryland-National Capital Park & Planning Commission					
City of Fredericksburg			Metropolitan Washington Airport Authority					
College Park, Maryland			Metropolitan Washington Council of Government					
District of Columbia Government			Montgomery College					
District of Columbia Water & Sewer Auth.			Montgomery County, Maryland					
District of Columbia Public Schools			Montgomery County Public School					
Fairfax, Virginia			Northern Virginia Community College					
Fairfax County, Virginia			Prince George's Community College					
Fairfax County Water Authority			Prince George's County, Maryland					
Falls Church, Virginia			Prince George's Public Schools					
Fauquier County Schools & Government			Prince William County, Virginia					
Frederick, Maryland			Prince William County Public Schools					
Frederick County, Maryland			Prince William County Service Author					

## MCPS GENERAL CONTRACT ARTICLES

<u>No.</u>	<u>Title</u>
1	Description/Specifications
2	MCPS Project Contact
3	Personnel
4	MCPS Contract Administrator
5	Statement of Work
6	Deliverables
7	Price
8	Period of Performance
9	Submission of Vouchers
10	Inspection and Acceptance
11	Payment
12	Withholding of Contract Payments
13	Services of Consultants
14	Publication and Publicity
15	Data Collection and Confidential Information
16	Documentation and Copyright
17	Notice of Delays
18	Excusable Delays
19	MCPS Property
20	Covenant against Contingent Fees
21	Officials Not to Benefit
22	Equal Opportunity
23	Compliance with Local Laws
24	Changes
25	Disputes
26	Termination for Default or for Convenience of MCPS
27	Order of Precedence
28	Severability
29	Bid Performance Bond (Not Required)
30	Performance Bond (Not Required)
31	Nonappropriation of Funds
32	Independent Contractor
33	Indemnification and Insurance
34	Governing Law
35	Obligations Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities
36	Entire Contract
37	Assignment
38	Responsibility for Payment of Taxes

**ARTICLE 1. DESCRIPTION/SPECIFICATIONS**

For the purposes of these MCPS General Contracting Articles, MCPS includes Montgomery County Public Schools ("MCPS") doing business on behalf of the Board of Education of Montgomery County, as well as the Board of Education of Montgomery County. In addition, the term "contractor" refers to the entity awarded this contract pursuant to authorization by MCPS in accordance with applicable laws.

The contractor shall, in conformance with the provisions set forth herein, furnish all personnel, materials, services, and facilities necessary to perform the requirements of the statement of work and the contractor's proposal.

**ARTICLE 2. MCPS PROJECT CONTACT**

- a) The MCPS project contact is responsible for the technical aspects of the project and technical liaison with the contractor. The MCPS project contact also is responsible for the review and approval of any and all deliverables including reports, and such other responsibilities as may be specified in the contract.
- b) The MCPS project contact is not authorized to make any commitments or otherwise obligate MCPS or authorize any changes which affect the contract price, terms, or conditions. Any contractor requests for changes shall be referred directly to the director of the Department of Materials Management. No such changes shall be made without the written authorization of the director of the Department of Materials Management.
- c) The MCPS project contact may be changed at any time, but notification of the change, including the name and address of the successor MCPS project contact, will be provided to the contractor in writing.

**ARTICLE 3. PERSONNEL**

The following personnel of the contractor are considered to be essential to the work being performed. Prior to diverting any of the specified individuals to other programs, the contractor shall notify the MCPS project contact reasonably well in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the contractor without the written consent of the MCPS project contact. However, the MCPS project contact may ratify in writing such diversion; and such ratification shall constitute the consent of the MCPS project contact required by this clause. The following listing may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate. Failure to obtain the approval of the MCPS project contact as required or to propose replacement personnel acceptable to

the MCPS project contact may be cause for termination because of default.

Name \_\_\_\_\_

Title \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

MCPS reserves the right to require that the contractor replace any individual charged to the contract at any point during the contract period if it determines that this action is in its best interests. In such case, the written authorization of both the director of the Department of Materials Management and the MCPS project contact is required. In the notification to the contractor, MCPS shall stipulate the last day the person's time can be billed to the contract or how long the person can be involved in contract activities.

**ARTICLE 4. MCPS CONTRACT ADMINISTRATOR**

For day-to-day operational problems and for technical questions, the contractor may contact the MCPS project contact.

**ARTICLE 5. STATEMENT OF WORK**

The contractor agrees, in consideration of the price stated in ARTICLE 7, to do the work described in the contract in a professional manner according to industry/professional standards.

The contractor shall obtain any licenses or permits necessary for performance of the work. In the event the services to be provided by the contractor must by law be provided by individuals who are licensed and/or certified, the contractor shall only assign individuals to provide services under the contract who are licensed and/or certified in accordance with applicable law. Additionally, the contractor shall only assign individuals who have been credentialed by the contractor to provide the specific professional services required by the contract. All such individuals assigned by the contractor to provide services shall maintain their license and/or certification in good standing with current credentials (not under review or subject to suspension) during the entire term of the contract. The contractor shall prior to providing services, submit documentation that the individuals assigned to provide services are properly credentialed and are licensed and/or certified to the MCPS project contact.

**ARTICLE 6. DELIVERABLES**

All deliverables shall be submitted to the MCPS project contact according to the kinds and dates indicated in the contract.

**ARTICLE 7. PRICE**

This will be a firm fixed contract based on the terms and conditions set forth in the contract.

**ARTICLE 8. PERIOD OF PERFORMANCE**

The initial term of contract shall be for two years. However, the contract may not begin until one day after approval by the Board of Education of Montgomery County (Board of Education). After the initial contract term, MCPS reserves the right to extend for up to two additional 2-year terms. The final extension shall end with the FY 2022 audit which ends approximately September 30, 2022. . If MCPS requests and the contractor agrees to provide additional services not contemplated herein, MCPS agrees to pay the cost of the additional services, as invoiced by the contractor, in accordance with the terms of any future agreement to provide the additional services.

**ARTICLE 9. SUBMISSION OF VOUCHERS**

All Contracts

The contractor's vouchers shall be approved for payment by the MCPS project contact only after the inspection or other evaluation has been completed by the MCPS project contact and after the MCPS project contact is satisfied that the contractor is performing the work and has prepared the voucher as required by the contract.

**ARTICLE 10. INSPECTION AND ACCEPTANCE**

MCPS, through any authorized representative, has the right at all reasonable times to inspect, or otherwise evaluate, the work performed or being performed at the premises on which it is being performed. If any inspection or evaluation is made by MCPS on the premises of the contractor or a subcontractor, the contractor shall provide and shall require their subcontractors to provide all reasonable facilities and assistance for the safety and convenience of MCPS representatives in the performance of their duties. All inspections and evaluations shall be performed so that they will not unduly delay the work.

**ARTICLE 11. PAYMENT**

Within 30 days after receiving of each invoice and accepting the work, MCPS shall, except as provided in this contract, pay for the work performed when



approved by the project contact and director of the Department of Materials Management. A payment schedule will be jointly developed between MCPS and the contractor.

#### **ARTICLE 12. WITHHOLDING OF CONTRACT PAYMENTS**

Despite any other payment provisions of this contract, failure of the contractor to submit required reports when due; or failure to perform or deliver required work, supplies, or services; or failure to deliver acceptable work, supplies, or services will result in withholding payments under this contract unless such failure arises out of causes beyond the control and without the fault or negligence of the contractor as defined by the clause entitled "Excusable Delays" or "Termination for Default or for Convenience of MCPS," as applicable. MCPS shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted.

#### **ARTICLE 13. SERVICES OF CONSULTANTS**

The contractor is prohibited from using the services of MCPS employees in performing this contract. Former employees may be used, provided that a 12-month period has elapsed since their last employment at MCPS. In accordance with Board of Education Policy BBB, *Ethics*, a former MCPS employee, official, or Board of Education member may not assist or represent the contractor for compensation in any case, controversy, dispute, contract or other specific matter involving MCPS, if that case, controversy, dispute, contract, or other specific matter is one in which the former employee, official, or Board of Education member significantly participated as an employee, official, or Board of Education member. Failure to adhere or comply with this requirement constitutes a material breach in which MCPS reserves the right to impose sanctions, up to and including suspension of the contract, withholding of payment, rescission, or termination of the contract.

#### **ARTICLE 14. PUBLICATION AND PUBLICITY**

The contractor shall not publish or otherwise publicize the methods employed or results achieved until the work performed has been accepted by MCPS. In addition, the contractor shall not (a) originate any report, publication, publicity, news release, or other announcement, written or oral, relating to this contract; or (b) use any names, trademarks, or logos of MCPS without consultation and consent by MCPS, except as necessary to perform the services in this contract. To the extent that MCPS agrees to any publication regarding this contract, the contractor agrees to abide by the following terms:

- a) The primary purpose is to disseminate information about the work rather than to promote the contractor's accomplishments or knowledge.

- b) Publication or presentation prominently displays or acknowledges MCPS financial support as follows: (i) the contents of this publication do not necessarily reflect the views or policies of MCPS; and (ii) the mention of trade names, commercial products, or organizations does not imply endorsement by MCPS.
- c) Confidentiality of students and their families is maintained at all times and the contractor abides by all terms and conditions of any data-sharing agreement between the parties.

**ARTICLE 15. DATA COLLECTION AND CONFIDENTIAL INFORMATION**

Questionnaires, survey instruments, or any other form of data collection from more than nine persons must be reviewed by the MCPS Office of Shared Accountability and approved by the chief academic officer prior to use as required by MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*.

The contractor shall comply with all federal, state, and local laws, regulations, and ordinances applicable to this project, including but not limited to the requirements of the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99), the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, *et seq.*), the Protection of Pupil Rights Amendment (“PPRA”) 20 U.S.C. § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 *et seq.*), the Maryland Student Privacy Act of 2015, Md. Ed. Code Ann., §4-131, Code of Maryland Regulations (COMAR) 13A.08, as well as applicable Board of Education policies and MCPS regulations, including but not limited to MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*, MCPS Regulation JOA-RA, *Student Records*, and MCPS Regulation JFF-RA, *Federal Requirements for Use of Protected Student Information*.

Access to Confidential Information

To assist the contractor in its work on this project, MCPS may disclose to the contractor, either in writing or orally, records or information which MCPS deems to be proprietary and/or confidential (hereinafter, “Confidential Information”). To the extent that such Confidential Information includes personally identifiable information regarding students, staff, or others, separate data sharing provisions must be agreed to in writing prior to disclosure of any personally identifiable information to the contractor. Confidential Information shall be maintained in confidence during the contract and thereafter, except to the extent that it is required to be either disclosed or protected from disclosure by law, regulation or judicial or administrative process. The contractor shall use the Confidential Information solely for the purposes of the project. The contractor shall protect the Confidential Information from loss, theft, or

disclosure using a commercially reasonable care commensurate with the sensitivity of the Confidential Information that in no circumstances is less than the degree of care that the contractor uses to protect its own confidential information. The contractor agrees to assist MCPS in maintaining the privacy of MCPS' Confidential Information as may be required by all federal, state, and local laws, regulations, and ordinances applicable to the project including but not limited to the requirements listed above.

The contractor shall not authorize access to Confidential Information to any of its agents, affiliates, contractors, and subcontractors, or to any auditor, unless such agent, affiliate, contractor, subcontractor, or auditor has entered into a written confidentiality agreement with the contractor agreeing to protect the confidentiality and security of such Confidential Information. Such written confidentiality agreement shall be made available for inspection, upon demand, to MCPS.

The contractor shall not permit unauthorized access to the Confidential Information to any individual or entity at any time or provide Confidential Information to any person, party, or organization ineligible or prohibited from receiving such information pursuant to any federal, state, and local laws, regulations, and ordinances applicable to the project including but not limited to the requirements listed above.

In the event that the contractor is required by law, regulation or judicial or administrative process to disclose any Confidential Information, the contractor will promptly notify MCPS in writing, if permitted by law, prior to making any such disclosure in order to facilitate MCPS' seeking of a protective order or other appropriate remedy from the appropriate body. Should the proprietary or confidential status of any such information be disputed, the parties agree to work in good faith to reach a mutually satisfactory disposition.

#### Security of Confidential Information

The contractor shall implement and maintain a comprehensive data-security program in accordance with commercial best practices for the protection of Confidential Information, whether the Confidential Information is stored electronically and/or in hard copy. Such data-security program shall include, but not be limited to the following:

- a) Security policies for employees related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
- b) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;

- c) Secure access controls to Confidential Information, including but not limited to passwords;
- d) Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
- e) Encryption of Confidential Information if it is stored on laptops, or is being transmitted electronically;
- f) Protocols for regular backups that include retention of backup copies for such period of time as may be required by MCPS, or by federal or state laws; and
- g) Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data.
- h) A process for reviewing policies and security measures at least annually.

The contractor certifies that it has implemented policies and procedures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm to MCPS. In addition, the contractor shall not, without the express prior written consent of MCPS, maintain or store Confidential Information outside of the United States.

#### Audit

MCPS reserves the right in its sole discretion to perform audits of the contractor at its sole expense to ensure compliance with terms of this Article 15. The contractor shall reasonably cooperate in the performance of such audits.

#### Security Breach

The contractor shall notify the MCPS project contact immediately of any breach or suspected data breach or loss, but in no event later than twenty-four (24) hours after the contractor learns of the suspected breach or loss. If the contractor becomes aware of a data security breach or loss, it shall cooperate with MCPS regarding recovery, remediation, and the necessity to involve law enforcement, if any. The contractor shall be responsible for performing an analysis to determine the cause of the breach or loss, and for producing a remediation plan in consultation with MCPS. The contractor shall provide notice to MCPS within twenty-four (24) hours of notice or service on the contractor, whichever occurs first, of any lawsuits resulting from, or government investigations of, the contractor's handling of the MCPS' Confidential Information, failure to follow security requirements, and/or failure to safeguard any other confidential information. In addition to any other remedies available to MCPS, at law or in equity, the contractor will reimburse MCPS in full for all costs incurred by MCPS in investigating and remediating any security breach caused in whole or

in part by the contractor or the contractor's subcontractors.

The contractor shall use commercially reasonable efforts to mitigate any negative consequences caused to MCPS, or to a student, as the result of a security breach and to implement procedures to prevent the recurrence of a similar security breach.

#### Disposal and Return of Confidential Information

Except as specifically set forth by MCPS in writing, or as required by federal or state laws or regulations, upon the termination or expiration of the contract, or upon cessation or dissolution of the contractor's business operations, the contractor shall:

- a) Return all Confidential Information to MCPS;
- b) Erase, destroy, or render unreadable all Confidential Information in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities;
- c) Certify in writing that the actions set forth in this subsection have been completed on or before the agreed-upon deadlines set forth in any agreement entered into between the contractor and MCPS;
- d) Ensure that any transfer/migration of Confidential Information uses facilities and methods that are compatible with the relevant systems of MCPS or its designated third party; and
- e) To the extent technologically possible, ensure that MCPS will have access to the Confidential Information during any transfer of operations.

Nothing in this Article 15 shall supersede in any manner the contractor's obligations or the obligations of its subcontractors, affiliates, or agents pursuant to all federal, state, and local laws, regulations, and ordinances applicable to the project including but not limited to the requirements listed above., or the provisions of the contract concerning the contractor's obligations as a service provider to MCPS. Notwithstanding anything in the contract to the contrary, the provisions of this Article 15 shall survive the expiration or earlier termination of the contract.

## **ARTICLE 16. DOCUMENTATION AND COPYRIGHT**

The contractor warrants that any materials provided by the contractor to MCPS are the sole and exclusive intellectual property of the contractor or that the contractor is licensed to use, reproduce, and distribute such materials. Notwithstanding the foregoing, collected data, analyses, and any analytical processes, programs, files, reports, and other publications developed as a contractual requirement are the sole property of MCPS. Programs shall be

completely documented, including the file layout of tapes, disks, and so on. MCPS may, at its sole discretion, waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any process or program and may license its use by others for a fee or without charge.

**ARTICLE 17. NOTICE OF DELAYS**

Whenever the contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes is delaying or threatening to delay the timely performance of the work under this contract, the contractor shall immediately give written notice, including all relevant information, to the director of the Department of Materials Management.

**ARTICLE 18. EXCUSABLE DELAYS**

Except because of failures of subcontractors, the contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the failure of a subcontractor to perform and if such failure arises out of causes beyond the control of both the contractor and subcontractor and without the fault or negligence of either of them, the contractor shall not be deemed to have failed in performance of this contract unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources; and (b) the director of the Department of Materials Management shall have ordered the contractor in writing to procure such supplies or services from such other sources, and the contractor shall have failed to comply reasonably with such order. Upon request of the contractor, the director of the Department of Materials Management shall ascertain the facts and extent of such failure; and if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of MCPS to invoke the termination article of this contract. As used in this article, the terms "subcontractor" and "subcontractors" mean subcontractor(s) employed at any level of the work being performed.

**ARTICLE 19. MCPS PROPERTY**

The use of MCPS property must be approved in advance by the director of the Department of Materials Management. Title to property leased with a purchase option shall pass to MCPS even though the option date is later than the contract

period. Any payments required to acquire title are a contract cost. If MCPS has agreed to provide property owned by it, the following special provisions shall apply:

- a) The amount of MCPS property to be furnished to the contractor may be increased or decreased by written direction of the superintendent of schools, and the contract price shall be adjusted to reflect the change pursuant to the stipulations of the "changes" article.
- b) The contractor shall insure all MCPS property in their possession or control and shall be liable to MCPS for the fair market value of any damage or loss to MCPS property, aside from that incurred by normal wear and tear. The contractor shall maintain the property in operating condition, with the cost being chargeable to the contract.
- c) All MCPS property shall be returned promptly upon completion of the contract or otherwise disposed of, as directed in writing by MCPS. All costs of shipment or disposal are a contract cost.
- d) Unless specifically stated otherwise in writing, MCPS property may be used only for the performance of this contract.
- e) Title to all MCPS property shall remain in the hands of MCPS at all times. Title to the property acquired by the contractor for use under the contract shall vest in MCPS upon delivery to the contractor.
- f) Any dispute concerning interpretation of the provisions of this article shall be subject to the stipulations of the "Disputes" article.

#### **ARTICLE 20. COVENANT AGAINST CONTINGENT FEES**

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, MCPS shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **ARTICLE 21. OFFICIALS NOT TO BENEFIT**

No elected official or employee of Maryland, Montgomery County, or MCPS shall benefit from or receive any money as a result of this contract. Violation of this article will void the contract. The contractor shall pay MCPS any funds received by any official or employee, the contract will be terminated in accordance with ARTICLE 26, and MCPS shall seek appropriate legal remedy. This prohibition does not apply to contracts with an MCPS employee or elected official who contracted in their own name.

**ARTICLE 22. EQUAL OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to, employment, grade improvement, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices of the provisions of this Equal Opportunity clause.
- b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- c) The contractor will send to each labor union, or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the contractor's commitment under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

**ARTICLE 23. COMPLIANCE WITH LOCAL LAWS**

The contractor shall comply with all applicable laws, ordinances, and codes of Maryland and Montgomery County, as well as all applicable policies of the Board of Education and MCPS regulations issued by the superintendent of schools. Board of Education policies and MCPS regulations are available at this link: <http://www.montgomeryschoolsmd.org/departments/policy>.

**ARTICLE 24. CHANGES**

The director of the Department of Materials Management may, at any time, by a written order and without notice to the sureties make changes within the general scope of the contract in any one or more of the following: a) specifications or statement of work and b) place of performance or delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made a) in the contract price or time of performance or both and b) in such other provisions of the contract as may be so affected; and the contract shall be modified in writing accordingly. Any claim by the contractor for adjustment under this article must be asserted within 30



days from the date of receipt by the contractor of the notification of change, provided, however, that if the director of the Department of Materials Management decides that the facts justify such action, the director may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this article shall excuse the contractor from proceeding with the contract as changed.

#### **ARTICLE 25. DISPUTES**

- a) Any dispute concerning a question of fact arising under this contract shall be disposed of by written agreement between the contractor and the contracting officer. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the contract performance.
- b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in Paragraph a) above, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

#### **ARTICLE 26. TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF MCPS**

- a) The performance of work under the contract may be terminated by MCPS in accordance with this article in whole or, from time to time, in part:
  - (1) Whenever the contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the contractor to make progress in the prosecution of the work that would endanger such performance) and shall fail to cure such default within a period of ten days (or such longer period as the director of the Department of Materials Management may allow) after receipt from the superintendent of schools of a notice specifying the default;
  - (2) Whenever a "Bankruptcy Event" has occurred with respect to the contractor. A Bankruptcy Event means that either:
    - (a) the contractor has: (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy,

insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against the contractor in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(b) a proceeding or case has been commenced without the application or consent of the contractor in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of the contractor under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days; or

- (3) Whenever for any reason the Board of Education shall determine that such termination is in the best interest of MCPS.

Any such termination shall be effected by delivery to the contractor of a Notice of Termination specifying whether termination is for the default of the contractor or for the convenience of MCPS, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If after notice of termination of this contract for default under (1) above and if it is determined for any reason that the contractor was not in default pursuant to (1) or that the contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above; and the rights and obligations of the parties shall in such event be governed accordingly.

- b) After receipt of a Notice of Termination and except as otherwise directed by the contracting office, the contractor shall:
  - (1) Stop work under the contract on the date and to the extent specified by the Notice of Termination
  - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as it is not terminated
  - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination
  - (4) Assign to MCPS in the manner and to the extent directed by the

director of the Department of Materials Management all of the rights, title, and interest of the contractor under the orders or subcontracts so terminated, in which case MCPS shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts

- (5) With the approval or ratification of the superintendent of schools, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part in accordance with the provisions of this contract
- (6) Transfer title to MCPS (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the director of the Department of Materials Management (a) the work in process, completed work, supplies, and other materials produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination and (b) the completed or partially completed plans, information, and other property which, if the contract had been completed, would be required to be furnished to MCPS
- (7) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination
- (8) Take such action as may be necessary, or as the director of the Department of Materials Management may direct, for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which MCPS has or may acquire an interest

The contractor shall proceed immediately with the performance of the above obligations despite any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause.

- c) After receipt of a Notice of Termination, the contractor shall submit to the director of the Department of Materials Management their termination claim in the form and with the certification prescribed by the director. The claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the director of the Department of Materials Management. Upon request of the contractor to submit their termination claim within the time allowed, the superintendent of schools may, subject to any review required by MCPS procedures in effect as of the date of execution of this contract, determine, on the basis of information available to them, the amount, if any, due to the contractor by reason of the termination and shall thereupon pay to the contractor the amount so determined.
- d) Subject to the provisions of Paragraph c) and subject to any review

required by MCPS procedures in effect as of the date of execution of this contract, the contractor and the superintendent of schools may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the contractor shall be paid the agreed amount.

- e) If the contractor and the superintendent of schools fail to agree in whole or in part, as provided in Paragraph d), as to the amounts with respect to costs and fee or as to the amount of the fee to be paid to the contractor in connection with the termination of work pursuant to this article, the superintendent of schools shall, subject to any review required by MCPS procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the contractor by reason of the termination and shall pay to the contractor the amount determined as follows:

(1) If the settlement includes cost and fee:

- (a) There shall be included all costs and expenses reimbursable in accordance with this contract not previously paid to the contractor for the performance of this contract prior to the effective date of the Notice of Termination and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the superintendent of schools, provided, however, that the contractor shall proceed as rapidly as practicable to discontinue such costs.
- (b) There shall be included so far as not included under (a) above the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Paragraph b) (5) above, which are properly chargeable to the terminated portion of the contract.
- (c) There shall be included the reasonable costs of settlement including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory, provided, however, that if the termination is for default of the contract, there shall not be included any amounts for the preparation of the contractor's settlement proposal.
- (d) There shall be included a portion of the fee payable under the contract determined as follows: (1) If this contract is terminated for the convenience of MCPS and not for the default of the contractor, a percentage of the fee equivalent to

the percentage of the completion of the work contemplated by the contract, less fee payments previously made, shall be paid. (ii) If this contract is terminated for the default of the contractor, the total fee payable shall be such a proportionate part of the fee (or, if this contract calls for services of different types, of such part of the fee as is reasonably allowable to the type of service under consideration) as the total amount of service delivered to and accepted by MCPS bears to the total amount of services of a like kind called for by this contract. If the amount determined under this Subparagraph (1) is less than the total payment made to the contractor, the contractor shall repay the excess amount.

- (2) If the settlement includes only the fee, the amount will be determined in accordance with Subparagraph (1) (d) above.
- f) The contractor shall have the right of appeal, under the article of this contract entitled "Disputes," of any determination made by the superintendent of schools under Paragraphs c) and e) above, except that if the contractor has failed to submit their claim within the time provided in Paragraph c) above and has failed to request extension of such time, they shall have no such right of appeal. In any case where the superintendent of schools has made a determination of the amount due under Paragraph c) or e) above, MCPS shall pay to the contractor (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the superintendent of schools or (2) if an appeal has been taken, the amount finally determined on such appeal.
- g) If a partial termination is made, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the contractor and the superintendent of schools; and such adjustment shall be shown by an amendment to this contract.

MCPS may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the contractor in connection with the terminated portion of the contract whenever the aggregate of such payments shall be within the amount to which the contractor will be entitled. If the total of such payments is in excess of the amount finally determined to be due under this article, such excess shall be payable by the contractor to MCPS upon demand, together with interest computed yearly at the rate of nine percent (9%) from the date such excess payment is received by the contractor to the date on which such excess is repaid to MCPS. The provisions of this article relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

**ARTICLE 27 ORDER OF PRECEDENCE**

If any conflict in the interpretation of the requirements of this contract occurs, these general contracting articles shall govern, unless otherwise stated in the contract and as expressly agreed to by the parties in writing.

**ARTICLE 28 SEVERABILITY**

Should any portion of the contract be found illegal the remainder shall remain in full force and effect and shall be binding on both parties.

**ARTICLE 29 BID PERFORMANCE BOND (not required)**

With the proposal, each bid must be accompanied by an approved bid bond from a surety company acceptable to the Owner, or by a certified or cashier's check executed in favor of the Owner for not less than five percent (5%) of the total amount.

The bid bond shall be returned to all except the successful bidder within five (5) days after awards have been made. The bid security of the successful bidder(s) will be returned upon receipt of the performance bond.

**ARTICLE 30. PERFORMANCE BOND (not required)**

No contract shall exist until MCPS receives a duly executed Performance Bond prepared on an approved form in the amount of one hundred percent (100%) of the contract, made payable to MCPS as security for the faithful performance of the contract and having as surety thereon such surety company or companies as are acceptable to MCPS and as are authorized to transact business in the State of Maryland. In the event the Performance Bond is not delivered within ten (10) days of Notice of Award then the offer may be ruled null and void and the award shall be made to the next lowest responsive Offeror.

**ARTICLE 31. NONAPPROPRIATION OF FUNDS**

- (a) In the event sufficient funds are not appropriated for the payment of all payments required to be paid hereunder, and MCPS has no funds legally available for payments from other sources, then MCPS may terminate this contract at the end of the original term or the then current extension term, as the case may be, without penalty or expense to MCPS of any kind whatsoever, and MCPS shall not be obligated to make payment provided for in the contract beyond the then current term. MCPS agrees to deliver notice to the contractor of such termination at least thirty (30) days prior to the end of the then current fiscal year.

- (b) If this contract is terminated under this provision and to the extent lawful, MCPS covenants that it will not, until the date on which the original term or the next succeeding renewal term would have ended, expend, or commit any funds for the purchase or use of services to be used for the same purpose as, or a purpose functionally equivalent to, those under the contract. Notwithstanding anything in this contract to the contrary, the provisions of this subpart shall survive termination of the contract.

### **ARTICLE 32. INDEPENDENT CONTRACTOR**

The parties agree that the contractor is an independent contractor under this contract and will in no way be considered to be an agent, partner, joint venture or employee of MCPS. Accordingly, the contractor will not be entitled to any benefits, coverage, or other privileges made available to employees of MCPS. As an independent contractor, the contractor shall be solely responsible for any insurance protecting it and its employees, including but not limited to general comprehensive liability, worker's compensation, and business automobile insurance.

### **ARTICLE 33. INDEMNIFICATION AND INSURANCE**

The contractor is responsible for any loss, personal injury, death, and any other damage (including incidental and consequential) that may be done or suffered by reason of, or occasioned wholly or in part by, its negligence, or any act, omission, or failure to perform any obligations under this contract. The contractor must indemnify and hold MCPS harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence, its performance or failure to perform any of its obligations under this contract, or its violation of any applicable legal requirement. In case any action or proceeding is brought against MCPS by reason of the foregoing, the contractor must reimburse MCPS the cost of defending such action or proceedings, or upon MCPS' written demand and at the contractor's sole cost and expense, the contractor must defend such action and proceeding by counsel approved by MCPS. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, MCPS includes MCPS doing business on behalf of the Board of Education, the Board of Education, and its officers, officials, agents, and employees. Nothing herein or any other provision of this contract shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of MCPS pursuant to Maryland law, or otherwise. This provision shall survive termination or expiration of the contract.

The contractor shall be solely responsible for any insurance, including, but not limited to general comprehensive liability, worker's compensation, professional liability insurance, and business automobile insurance. The

contractor agrees to provide certificates of insurance verifying the following coverage:

- (a) Comprehensive General Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000.00) aggregate. Such insurance shall include contractual liability insurance.
- (b) Comprehensive Business Automobile Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of the contract.
- (c) Worker's Compensation Insurance: Statutory coverage, including employer's liability coverage with a limit of at least One Hundred Thousand Dollars (\$100,000.00), as well as any similar coverage required for this work by applicable Federal or "other states" state law.
- (d) Professional Liability, Errors, and Omissions Insurance: Liability limit of not less than One Million Dollars (\$1,000,000.00) in the event the service delivered pursuant to the contract, either directly or indirectly, involves or requires professional services. "Professional Services" for the purpose of the contract shall mean any services provided by a licensed, certified, or otherwise documented professional.

MCPS doing business on behalf of the Board of Education, the Board of Education, and its elected/appointed officials, employees, departments, agencies, and agents shall be covered by endorsement, as additional insureds with respect to liability arising out of activities performed or to be performed by or on behalf of the contractor in connection with the contract.

The contractor's insurance shall apply separately to each insured against whom a claim is made and/or a lawsuit brought.

Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or if not rated with Best's, with a minimum surpluses the equivalent of Bests' surplus size VII and must be licensed/approved to do business in the State of Maryland.

**Certificates of Insurance:** The contractor shall provide MCPS with certificates of insurance within ten (10) days of execution of the contract evidencing the coverages required above. The certificates shall confirm that MCPS has been made an additional insured under the respective insurance policies. The certificates of insurance shall provide that MCPS shall be given



at least forty-five (45) days' prior written notice of any cancellation of, intention not to renew, or material change in such coverage. There will be an exception for non-payment of premium, which is ten (10) days' notice of cancellation. The contractor must provide the certificates of insurance before commencing the work covered by this contract.

Failure to provide and continue in force such insurance as required above shall be deemed a material breach of the contract and shall operate as an immediate termination.

The contractor's insurance coverage shall be primary. Any insurance and/or self-insured program maintained by the Board of Education or MCPS and their respective elected/appointed officials, employees, departments, agencies, and agents shall not contribute with the contractor's insurance or benefit the contractor in any way.

Failure to obtain insurance coverage as required, or failure to furnish certificates of insurance as required, may render the contract null and void; provided, however, that no act of omission of the Board of Education or MCPS shall in any way limit, modify, or affect the obligations of the contractor under any provision of the contract.

#### **ARTICLE 34. GOVERNING LAW**

This contract shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to conflicts of laws provisions. Sole and exclusive jurisdiction for any action or proceedings arising out of or related to this contract shall be in an appropriate state or federal court located in the State of Maryland.

#### **ARTICLE 35. OBLIGATIONS REGARDING CRIMINAL RECORDS OF INDIVIDUALS ASSIGNED TO WORK IN MCPS FACILITIES**

- 1. Prohibition against assigning registered sex offenders and individuals convicted of sexual offenses, child sexual abuse, and other crimes of violence to MCPS contracts:**

Maryland Law requires that any person who enters into a contract with a county board of education "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. Under § 11-722 of the Criminal Procedure Article of the Maryland Code, an employer who violates this requirement is guilty of a misdemeanor and, if convicted, may be subject to up to five years imprisonment and/or a \$5,000 fine.

Effective July 1, 2015, amendments to § 6-113 of the Education Article of the Maryland Code further require that a contractor or subcontractor for a

local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:

- a. A sexual offense in the third or fourth degree under § 3–307 or § 3–308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3–307 or § 3–308 of the Criminal Law Article if committed in Maryland;
- b. Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland: or
- c. A crime of violence as defined in § 14–101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14–101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

Each contractor is required to submit, following award of a contract, documentation confirming that its direct employees and those of any subcontractors and/or independent contractors assigned to perform work in a MCPS school facility under the contract meet this obligation. Additionally, the contractor must confirm that it continues to meet this obligation on an annual basis and/or when there are changes in the workforce that the contractor and/or its subcontractors use to perform the work required by the contract.

Violation of this provision is a material breach of contract for which MCPS may take appropriate action up to and including termination of the contract.

2. **Required criminal background check process for certain individuals in the contractor's workforce:**

Under recent amendments to § 5-551 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its workforce must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term "workforce" in this and the preceding section refers to all of the contractor's direct employees, subcontractors and their employees, and/or independent contractors and their employees that the contractor uses to perform the work required by the contract.

Fingerprinting for the criminal background check may be performed by the MCPS Office of Human Resources and Development, 45 W. Gude Drive, Rockville, MD 20850, or through another service approved by MCPS. Individuals fingerprinted by MCPS will be required to provide written consent, and MCPS will maintain copies of all records for criminal background checks performed by MCPS. If the contractor uses another service approved by MCPS, the results of the criminal background check must be provided to MCPS for record keeping. A list of MCPS approved fingerprinting agencies can be found on the Procurement Unit website at <http://www.montgomeryschoolsmd.org/departments/procurement>.

The contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to the sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as warranting further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the contractor believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the contractor's summary to determine whether to accept the contractor's recommendation, and the contractor will be responsible for any consequences of a material misrepresentation in its written summary.

Once the contract is awarded, the contractor is responsible for implementing the background check process. An individual in the contractor's workforce may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (a) the background check results for that individual have been received by MCPS; (b) the contractor certifies to MCPS that the

individual has received training and/or reviewed informational materials, as appropriate, regarding recognizing, reporting, and preventing child abuse and neglect, consistent with the content provided in training for MCPS employees; and (c) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The contractor will be required to return all badges at the conclusion of the contract.

The criminal background check and badging process will be at the contractor's expense.

Violation of this provision is a material breach of contract for which MCPS may take appropriate action up to and including termination of the contract.

**ARTICLE 36. ENTIRE CONTRACT**

The contract, including any contract documents duly executed by the parties at the commencement of the contract, is binding between the parties and constitutes the entire understanding between the parties regarding the subject matter of the contract and supersedes all prior or contemporaneous statements, understandings and contracts, whether oral or written, between the parties with respect to the subject matter of this contract. Any changes and additions hereto shall not become binding upon any party unless they are incorporated into a written contract amendment signed by both parties.

**ARTICLE 37. ASSIGNMENT**

The contractor shall not voluntarily or by operation of law, assign, or otherwise transfer, convey, or delegate, in whole or in part, its rights or obligations under this contract to any other entity or to any subsidiary of the contractor, without prior written consent from MCPS. Any attempted assignment, transfer, conveyance, or delegation without consent shall be void.

**ARTICLE 38. RESPONSIBILITY FOR PAYMENT OF TAXES**

The contractor shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of and compensation for these services. MCPS assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the contractor, its employees, and/or others by reason of the contract. The contractor shall defend, indemnify, and save harmless MCPS from and against any claims, costs, and/or losses whatsoever occurring or resulting from: (a) the contractor's failure to pay any such compensation, wages, benefits, or taxes; and/or (b) the supplying to the contractor of work, services, materials, or supplies in connection with or in

support of the performance of the contract.

