**Request for Proposal # 1143.5, Montgomery County Public Schools**
**Voluntary Defined Contribution Programs**

**PART B**

The Montgomery County Public Schools (MCPS) requests submission of a proposal to perform the work described in therein. MCPS shall incur no liability to any Offeror should an award not be made pursuant to this Request for Proposal (RFP).

The following instructions will establish the acceptable minimum requirements for the format and content of proposals.

Type of Contract

The proposed contract is expected to be awarded as a task order contract to perform the task described in the RFP.

**Documents to Be Submitted in Response to This RFP**

An electronic copy, one (1) original, and five (5) separate copies should be sent by mail, courier or hand delivered to:

Barbara Regalia
Division of Procurement
Montgomery County Public Schools
45 West Gude Drive, Suite 3100
Rockville, MD 20850
E-mail: Barbara_Regalia@mcpsmd.org

In addition, an electronic copy and one (1) paper copy of the proposal should be sent by mail, courier or hand delivered to:

Steve Lauko
Hewitt EnnisKnupp, Inc.
8182 Maryland Avenue, Suite 1500
St. Louis, MO 63105
E-mail: Stephen.Lauko@aonhewitt.com

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

The documents required above must be received by the closing time and date set forth in the transmittal letter and addressed to Montgomery County Public Schools, Division of Procurement, 45 West Gude Drive, Suite 3100, Rockville, Maryland 20850; Attention Barbara Regalia.

MCPS reserves the right to make an award without further discussion of the proposals received. MCPS may also negotiate with the one Offeror who submits the best proposal or with two or more Offerors 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.

## Treatment of Technical Data in Proposal

The proposal submitted in response to this request may contain technical data which the Offeror or Subcontractor Offeror 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 Offeror marks the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend: "Technical data contained in pages __ of this proposal shall not be used or disclosed, except for evaluation purposes."
>
> Provided, that if a contract is awarded to this Offeror 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.

### 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 Offeror's lack of cost consciousness. Elaborate art work and expensive visual and other presentation aids are neither necessary nor wanted.

## Officer

The MCPS project officer for the proposed procurement is:

Marisa Grant
Acting Chief Investment Officer
Montgomery County Public Schools
45 West Gude Drive, Suite 1200
Rockville, MD 20850

All prospective Offerors are cautioned that information relating to the proposed procurement may be obtained only from the Barbara Regalia, CPPB, Team Leader, MCPS Division of Procurement. Any attempt to solicit information from other sources within the MCPS system may be cause for rejection of the responsible Offeror's proposal.

## Evaluation Criteria

MCPS will evaluate the proposals in accordance with the criteria set forth in Part A.

## Place of Performance

The work shall be performed at the Contractor's office or at MCPS, 45 West Gude Drive Drive, Rockville, Maryland 20850, or at such other locations within Montgomery County as required or agreed to by MCPS.

## Certification

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

## Contract

MCPS plans to enter a contractual agreement with the agency to whom the award is made and intends to make the attached Articles 1 - 31 a part of the contract. **Articles 29 and 30 are not applicable to this RFP.**

## 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.")

_____

_____

_____

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 CFR 60-17 (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 Nonsegregated 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.

**PLACE OF PERFORMANCE**

Following is the name and location of the facility where the service will be performed:

(Name of Facility) (Address)

**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 Blacks, Hispanic Americans, American Orientals, American Indians, American Eskimos, and American Aleuts.

## CONTRACT ARTICLES

| No. | Title |
|---|---|
| 1 | Description/Specifications |
| 2 | MCPS Project Officer |
| 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 Contract Payments |
| 13 | Services of Consultants |
| 14 | Publication and Publicity |
| 15 | Data Collection |
| 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 Convenience of MCPS |
| 27 | Order of Precedence |
| 28 | Severability |
| 29 | Bid Performance (Not Required) |
| 30 | Performance Bond (Not Required) |
| 31 | Nonappropriation of Funds |


## ARTICLE 1. DESCRIPTION/SPECIFICATIONS

The Contractor shall, in conformance with the MCPS provisions, 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 OFFICER

a) The MCPS project officer is responsible for the technical aspects of the project and technical liaison with the Contractor. The MCPS project officer is also 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 project officer 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 Division of Procurement. No such changes shall be made without the written authorization of the director of the Division of Procurement.

c) The project officer may be changed at any time; but notification of the change, including the name and address of the successor project officer, will be provided to the Contractor in writing.

## ARTICLE 3. PERSONNEL

The following personnel 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 project officer 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 project officer. However, the project officer may ratify in writing such diversion; and such ratification shall constitute the consent of the project officer 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 project officer as required or to propose replacement personnel acceptable to the project officer 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 procurement and the project officer 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 successful vendor may contact the project officer.

## ARTICLE 5. STATEMENT OF WORK

The Contractor agrees, in consideration of the price stated in Article 7, to do the work described in Part A.

## ARTICLE 6. DELIVERABLES

All deliverables shall be submitted to the project officer according to the kinds and dates indicated in Part A or as agreed upon after contract has been awarded.

## ARTICLE 7. PRICE

This is a task order contract to perform the tasks described in the Part A of this RFP.

## ARTICLE 8. PERIOD OF PERFORMANCE

The term of contract shall be for three (3) years and thereafter shall be renewed annually on contract anniversary date upon agreed terms by MCPS and vendor. However, the contract will not begin until at least January 1, 2016 after approval by the Board of Education and will conclude as stated under the contract term. MCPS reserves the right to terminate any contract, for cause (i.e. insolvent, SEC investigation, etc.) during the three year contract term subject to the terms of signed contracts and agreements.

## ARTICLE 9. SUBMISSION OF VOUCHERS

All Contracts

The Contractor's vouchers shall be approved for payment by the project officer only after the inspection or other evaluation has been completed by the project officer and after the project officer 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 officer and director of the Division of Procurement. A payment schedule will be jointly developed between MCPS and the awarded Contractor.

## ARTICLE 12. WITHHOLDING OF CONTRACT PAYMENTS

Despite any other payment provisions of this contact, 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 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 24-month period has elapsed since their last employment at MCPS.

## 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. Publication and discussion of services or presentations and other forms of publicity are encouraged, following acceptance of the work by MCPS, provided that:

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:

> The contents of this publication do not necessarily reflect the views or policies of MCPS; and 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.

## ARTICLE 15. DATA COLLECTION

Questionnaires, survey instruments, or any other form of data collection from more than nine persons must be reviewed by the Department of Educational Accountability and approved by the deputy superintendent of schools prior to use as required by MCPS Regulation EHC-RA: Clearance of Data Acquisition Activities.

## ARTICLE 16. DOCUMENTATION AND COPYRIGHT

Collected data, analyses, and any analytical processes, programs and files 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 Division of Procurement.

## 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 Division of Procurement 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 Division of Procurement 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 Division of Procurement. 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, 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.

## ARTICLE 24. CHANGES

The team leader of the Division of Procurement 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 the director of the Division of Procurement if he decides that the facts justify such action, 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 <u>a question of law</u>.

## 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 Division of Procurement may allow) after receipt from the superintendent of a notice specifying the default; or

(2) 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 Division of Procurement 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, 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 Division of Procurement (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 Division of Procurement 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 Division of Procurement 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 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 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 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 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, 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: (I) If this contract is terminated for the convenience of the 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 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 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 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; 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 9 percent 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, preference shall be given in the following order of precedence:

a) the contract provisions, b) the statement of work, and c) the Contractor's proposal.

## 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 bidder.

## ARTICLE 31. NONAPPROPRIATION OF FUNDS

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

(b) If this agreement is terminated under this provision, Lessee agrees, peaceably to deliver such items of the equipment to Lessor on the date of such termination.

To the extent lawful, Lessee covenants that it will not, until the date on which the next succeeding renewal term would have ended, expend, or commit any funds for the purchase or use of equipment to be used for the same purpose as, or a purpose functionally equivalent to, the equipment. Notwithstanding anything in this lease to the contrary, the provisions of this subpart shall survive termination of the lease.