

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 vendor'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
- B. 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.
- C. I hereby certify that I am authorized to sign for the company. 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 _____

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 Security (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 (N/A)
36	Entire Contract
37	Assignment

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 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 manager or his designee.

ARTICLE 5. STATEMENT OF WORK

The contractor agrees, in consideration of the price stated in ARTICLE 7, to do the work described in the Agreement in a professional manner according to industry/professional standards. The contractor shall obtain any licenses or permits necessary for performance of the work.

ARTICLE 6. DELIVERABLES

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

ARTICLE 7. PRICE

See Appendix D Price Proposal

ARTICLE 8. PERIOD OF PERFORMANCE

The initial term of contract shall be for 24 months. However, the contract may not begin until one day after approval by the Board of Education of Montgomery County (Board of Education). MCPS reserves the right to extend this contract at existing prices, terms and conditions for up to four additional one-year terms. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued to the successful vendor(s) 90 days prior to the expiration of the current contract. The vendor (s) will have 10 days from the date of 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 this contract or decide to rebid. If the contract is extended by the Board of Education a contract amendment will be issued.

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.

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 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 Protection of Pupil Rights Amendment, 20 U.S.C. § 1232(h) and its implementing regulations, 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*. 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"). 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 disclosure using at least the same degree of care as it uses to protect its own confidential information. The disclosure of Confidential Information to the contractor shall not of itself be construed as a grant of any right or license with respect to the information. 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.

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.

Upon completion of the review, the contractor will return to MCPS all tangible copies of any Confidential Information received from MCPS that are in the contractor's possession or control and will erase from its computer systems all electronic copies thereof.

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: (i) 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, preference shall be given in the following order of precedence: a) these general contract articles, b) the statement of work set forth in the Agreement.

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 SECURITY (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 vendor within five (5) days after awards have been made. The bid security of the successful vendor(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 agreement 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, 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, and business automobile insurance. The contractor agrees to provide certificates of insurance verifying the following coverage:

- (a) Comprehensive General Liability Insurance – Liability Limits of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) aggregate.
- (b) Comprehensive Business Automobile Liability Insurance: Liability limit of Five Hundred Thousand Dollars (\$500,000.00) any one accident.
- (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).

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 loss payee under the respective insurance policies. The certificates of insurance shall provide that MCPS shall be given at least thirty (30) days prior written notice of any cancellation of, intention not to renew, or material change in such coverage. 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.

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 (N/A)

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.

ARTICLE 36. ENTIRE CONTRACT

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.

D. PRICE PROPOSAL

- a. Proposals to furnish rental services for cleaning, pressing and repairing five uniforms for each employee on a weekly basis.
- b. Uniforms for additional employees who are hired after the initial set up.
- c. Cleaning of purchased items per occurrence.
- d. Replacement costs for shirts, pants if lost or damaged by the employee.

MCPS-DOT 110 employees
 MCPS-DMM two employees
 MCPS-DOM five employees.

Initial Set Up Fee: 11 sets per employee (Pants and shirt) \$ _____

Cleaning, repair, replacement for five sets per employee
 (Includes shirts and pants) Per week \$ _____

Unit price for cleaning one vest Per occurrence \$ _____

Unit price for cleaning one jacket Per occurrence \$ _____

Unit price per cleaning one polo shirt Per occurrence \$ _____

Unit price per cleaning one coverall Per occurrence \$ _____

PURCHASE NEW ITEMS

Short sleeve work shirt Brand _____ Product # _____ \$ _____
 As Red Kap SP24

Long sleeve work shirt Brand _____ Product # _____ \$ _____
 As Red Kap SP14

Polo Shirt, short sleeve Brand _____ Product # _____ \$ _____
 As Red Kap SK90

Pants – Cargo Brand _____ Product # _____ \$ _____
 As Red Kap PT2A

Pants – Regular Brand _____ Product # _____ \$ _____
 As Red Kap PT60

Jacket Brand _____ Product # _____ \$ _____
 As Red Kap JT22

Jacket Brand _____ Product # _____ \$ _____
 As Red Kap JT50

Vest
As Red Kap VT22 Brand _____ Product # _____ \$ _____

Coverall
As Red Kap CT10 Brand _____ Product # _____ \$ _____

Women's work shirt
As Red Kap SE33 Brand _____ Product # _____ \$ _____

Women's work shirt
As Red Kap SE43 Brand _____ Product # _____ \$ _____

Pants, working
As Red Kap PT59 Brand _____ Product # _____ \$ _____

Other items:

_____ Product # _____ \$ _____

_____ Product # _____ \$ _____

_____ Product # _____ \$ _____