



**MONTGOMERY COUNTY PUBLIC SCHOOLS**  
MARYLAND  
www.montgomeryschoolsmd.org

301-279-3555

July 14, 2017



RFP Number: 4361.2  
Prebid Conference: July 26, 2017  
Due Date: Aug. 4, 2017  
Open Time: 2:00 p.m.

To: Prospective Offerers:

The purpose of this Request For Proposal (RFP) is to solicit a contractor to provide cost-effective PV electric generating systems at Montgomery County Public Schools (MCPS) sites.

A pre-bid conference will be held from 10:00 a.m. - noon on July 26, 2017 at the MCPS Division of Construction, 46 W. Gude Drive, Magnolia Conference Room, 4<sup>th</sup> Floor, Rockville, Maryland 20850. Questions regarding the RFP must be submitted by the close of business, 4:00 p.m., on July 21, 2017.

Please respond according to the instructions provided in the attached. Proposals must be received on or before 2:00 p.m., on August 4, 2017. Proposals received after this date and time will not be considered. Proposals shall be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals shall be delivered to MCPS Procurement Unit, 45 West Gude Drive, Suite 3100, Rockville, Maryland 20850.

The offeror must submit one (1) original, one (1) redacted copy, one (1) electronic version on CD or flash drive and three (3) separate copies of the proposal. The proposal must be signed by an official having authority to contract with MCPS. The firm and official's name shall be used. This solicitation does not commit MCPS to pay any costs incurred in the submission of proposals or guarantee that an award will be made.

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

Sincerely,

*Barbara Begalis*  
for Kathleen Lazor, Director

KCL:lsc  
Enclosure

Procurement Unit

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

# **MONTGOMERY COUNTY PUBLIC SCHOOLS**

## **Request for Proposal #4361.2 Power Purchase Agreement for Electricity from Solar Photovoltaic Systems**

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**Department of Materials Management**  
**MONTGOMERY COUNTY PUBLIC SCHOOLS**  
**Procurement Unit, Suite 3100**  
**45 West Gude Drive**  
**Rockville, Maryland 20850**

**Request for Proposal #4361.2 Power Purchase Agreement for Electricity**  
**from Solar Photovoltaic Systems**

**1.0 INTENT**

The Board of Education of Montgomery County, hereinafter referred to as the BOE, seeks a Solar PV Developer to provide cost-effective PV electric generating systems at BOE owned sites. Six facilities, list provided within this Request for Proposal (RFP) in Section 3.6, have been identified as potential sites for solar PV arrays because the listed facilities either have new roofs, or have been re-roofed recently. The sites are divided into two groups. Group 1 consists of three of the four rooftop projects which were sites for solar PV systems under a previously awarded contract which has since been terminated. Group 2 consists of three rooftop projects on recently installed roofs.

With the assistance of the chosen Solar PV Developer, the primary goals of this RFP are to identify the most cost effective and high quality plan to:

- Develop approximately 1 MW or more of PV capacity at MCPS sites through the turn-key PV projects, within limitations of characteristics and quantities of PV modules available on the market, and with completion of installation by August 20, 2018 (Section 3.6, Group 1, terminated projects).
- Develop approximately an additional 1 MW of PV capacity through turn-key PV projects at MCPS sites with completion of the installation by December 31, 2018 (Section 3.6, Group 2, new projects).

The Secondary goals of this RFP are to obtain alternative pricing ("Alternates") to:

- Develop an off-site ground-mounted, solar PV installation that supplies MCPS facilities with the electric output in the most economical fashion using net metering/aggregate metering if possible.
- Develop and install a solar PV parking lot canopy mounted system as a pilot demonstration that can be replicated at additional locations based on a unit price contract extension.
- Provide alternative pricing for solar renewable energy credits (SRECs) from the PPA projects – these SRECs will be used by MCPS as part of its compliance with the State Renewable Energy Portfolio Standards (RPS) requirements.
- Develop and provide a system of parking lot lighting pole mounted solar PV collectors either using the existing poles where appropriate or installing new light poles and fixtures.

The secondary goals are further described in Section 3.5, and should be expressed as Alternates to the unit pricing and PV project description submitted in the offeror's proposal. A proposal may be based partially or completely on the use of Alternates to achieve the objectives of this RFP.

Through the scope of services, as provided in Section 3.0, the Solar PV Developer will design, obtain permits, construct in coordination with schools that are in operation, commission, own, operate, and maintain the solar PV systems. Proposals submitted in response to this RFP should assume that the solar PV systems installed will be owned and maintained by the Solar PV Developer.

It is the intent of the BOE that the process of identifying additional buildings and installing PV systems be completed in as few years as possible.

## **2.0 INTRODUCTION**

MCPS is the 15th largest school system in the United States, and the largest in the state of Maryland. During the 2016–2017 school year, it is projected that MCPS will serve more than 160, 000 students from 157 countries speaking 138 languages. With a Fiscal Year (FY) 2017 Operating Budget of approximately \$2.46 billion, MCPS employs more than 22,500 employees. Among the 204 schools that MCPS operates, 37 are National Blue Ribbon schools. Six MCPS high schools rank in the top 200 of *The Washington Post's* 2015 High School Challenge, and all 25 MCPS high schools appear on this list, which only includes the top 11 percent of high schools in the country. MCPS has one of the highest graduation rates among the nation's largest school districts, according to an *Education Week* report. In 2010, MCPS was the recipient of the Malcolm Baldrige National Quality Award, the highest presidential honor given to American organizations for performance excellence. The student demographics of MCPS in 2016 are as follows:

White: 29.3%  
Hispanic/Latino: 30.1%  
Black or African American: 21.3%  
Asian: 14.3%  
Two or more races: ≤ 5.0%  
American Indian or Alaskan Native: ≤ 5.0%  
Native Hawaiian or other Pacific Islander: ≤ 5.0%  
Students receiving free & reduced-price meals (FARMS): 34.6%  
Students ever receiving FARMS: 43.3%  
English for speakers of other languages (ESOL): 14.6%  
Students receiving special education services: 11.7%

## **3.0 SCOPE OF SERVICES**

**3.1** MCPS is committed to being a leader in environmental sustainability. MCPS published its first comprehensive Environmental Sustainability Management Plan in 2014. MCPS is launching an effort to install additional solar photovoltaic (PV) systems in and around MCPS facilities and to investigate purchasing power from net-metered and off-site PV solar arrays. In 2009, MCPS contracted to purchase electricity through power purchase agreements (PPAs) from PV arrays that it hosted at eight schools. In 2015, the Board awarded a contract for eight additional rooftop PV arrays and one ground-mount off-site net aggregate metered PV arrays. In 2016, four of the eight

rooftop PV arrays were completed. However, the contractor was unable to initiate the construction phase of the remaining four projects. As a result of the inability to proceed, the contractor terminated the contracts and MCPS has accepted the termination. The contracted prices for the terminated contracts were:

- rooftops - \$0.063 per kWh
- ground mount - \$0.052 per kWh

MCPS is specifically seeking a Solar PV Developer to install, own, operate and finance solar projects hosted on MCPS facilities. The MCPS Department of Facilities Management (DFM) is custodian of MCPS buildings and sites. DFM is responsible for the ownership, operation, maintenance, management, utilities, and leasing of MCPS facilities. Collectively, the DFM's portfolio includes 235 owned facilities encompassing over 24,500,000 square feet (SF) of gross floor area (GFA).

Offerors, in their response to this RFP should submit a proposal to provide complete turn-key PV projects including financing and selling the electricity generated to MCPS. The "turn-key" project is intended to include, but not be limited to, securing all permits and approvals from governmental agencies and all labor, taxes, services, and equipment necessary to produce fully operational solar PV systems at the agreed upon MCPS facilities. MCPS respects economies of scale and has an interest in bundling as many projects into large awards, but also may consider multiple awards if determined to be in MCPS' best interests.

**3.2** For this RFP and any resulting contracts, the following General Definitions apply:

**Clean Energy:** The "clean renewable energy" to be provided under this RFP is intended to be in the form of Renewable Energy Certificates (REC), and is separate from any other contract for power supply.

**Clean Energy Resources:** Electricity generation resources meeting the definition of a Tier 1 Resource under the Maryland Renewable Portfolio Standard, and meeting the standards of Green Power as defined by the U.S. Environmental Agency's Green Power Partnership. For purposes of this solicitation this means zero-emissions renewable energy resources.

**Environmental Attributes:** The environmental characteristics intrinsic to the generation of one megawatt hour of electricity, including emissions resulting from generation, any credits or allowances that are assigned or allocated to the source of generation by any federal or state body (such as carbon credits and/or allowances of nitrogen oxides or other criteria pollutants provided under a set-aside by a state within a Cap & Trade region).

**Facility:** Any building, parking lot, or property specified by MCPS.

**Generation Attributes:** The characteristics associated with the generation of one megawatt hour (MWh) of electricity including fuel type, location, and date of electricity generation. For purposes of this RFP the geographic criteria for eligible RECs will be those associated with electricity generated within the United States. As part of the reporting requirements, the Solar PV Developer must verify the eGRID sub-region within which generation occurred.

**Premium Item or Alternate Item:** An energy product or service offered as an alternate for PV energy system and installed or provided in conjunction with a solar PV system or in addition to the primary items in this RFP.

**PJM:** The regional electric grid operator.

**Renewable Energy Certificate (REC):** The renewable attributes of one megawatt hour (MWh) of electricity generated using clean renewable energy resources. Attributes include generation attributes and environmental attributes. For purposes of this RFP, RECs shall come from zero-emissions resources.

**REC Delivery:** The delivery of the renewable energy certificate to the participants, including the provision of all necessary documentation verifying the creation and retirement of the REC. This will include (to the satisfaction of the BOE) evidence of registry of the REC, generation and environmental attributes, and retirement within a regional tracking system. Specific delivery requirements are described in this Scope of Services.

**REC Vintage:** The year during which the electricity associated with the REC was generated (including a period up to six month prior to the calendar year and up to three months after the calendar year) as meets the annual purchasing requirements of the US Environmental Protection Agency's (EPA) *Green Power Partnership*. For example, for purposes of this procurement, a 2004 "vintage" REC may be associated with power generated any time between July 1, 2003 and March 31, 2014.

**Solar Photovoltaic (PV) System:** A system of solar panels and ancillary equipment that converts sunlight to usable electricity. For the purposes of this procurement, electricity is to be delivered to BOE facilities to support operations. The output at the BOE's building(s) is alternating current (AC), and is fed into the building's electrical system unless otherwise specified.

**Solar PV Developer:** A private or public organization that installs, owns, operates and finances a solar PV system on a BOE owned facility while selling the electricity to the BOE or the BOE's delegate.

### 3.3 Solar PV Developer Responsibilities

The Solar PV Developer must design, install, maintain and finance a turn-key photovoltaic solar project on MCPS facilities, including but not limited to:

#### Pre-project:

- Provide all initial and final engineering drawings and plans to MCPS' satisfaction.
- Conduct any PJM interconnection studies necessary to execute the project.
- Obtain interconnection agreements with the applicable utilities or PJM.
- Obtain all necessary federal, state, local, and other permits necessary to complete the system, it will be the Solar PV Developer's responsibility to pay all permit fees.
- Obtain all necessary zoning approvals.

- Provide monthly updates on planning to MCPS, more frequent updates maybe required by MCPS as needed.

Construction and Implementation:

- Project site preparation including all necessary repairs, site preparations necessary to install the photovoltaic system.
- Schedule work so as to not interfere with normal operations of the school. Coordinate construction activities with the MCPS project manager and the school administration.
- Ensure the integrity of the roof membrane or surface, including negotiating with roof warranty providers where applicable to maintain the term of the existing roof warranties. This includes limiting roof penetrations, unless otherwise specified by MCPS.
- Install the photovoltaic system in a professional manner to the reasonable satisfaction of MCPS, including all photovoltaic equipment, inverters, wiring, and ancillary equipment necessary for system operations.
- Coordinate with existing MCPS contractors where sites involve multiple facility projects.
- No work done on this project shall void an existing roof warranty or designer stipulated roof loading limitation. The Solar PV Developer shall contact the roofing firm holding the existing warranty to discuss the project to maintain validity of warranty. The firm that performed the original structural calculations will be sufficiently involved in the project to approve the additional structural load analysis and any necessary permit application.
- Any temporary interruption of electric power in buildings, either partially or for the entire service shall, if at all possible, be performed outside of regular school hours (6:30 a.m. to 5:00 p.m. on weekdays), and coordinated with MCPS staff.
- For the finished installation, special attention shall be paid to minimizing the risk of exposed fasteners, sharp edges, and potential future damage to the modules or support structure. Corrosion resistance and durability of the mechanical hardware shall be provided by the use of stainless steel fasteners and an aluminum support structure. The use of non-stainless steel ferrous metals, wood, or plastic components is not allowed. Galvanic corrosion shall be avoided.
- Should the solar PV installation cause a power factor imbalance such that the local distribution company assesses additional charges due to the power factor imbalance, install power factor correcting equipment that corrects the power factor to bring facility power factor under the threshold for the assessment of a power factor charge.
- Commission and activate the system.

Maintenance and Ongoing Operations:

- Maintain the system for its service life, including any washing, upgrades, and repairs necessary to ensure the continuous delivery of electricity.
- Accept responsibility for repairs, moisture, infiltration, and damage caused by the photovoltaic system and any ancillary equipment.
- Provide revenue grade metering to establish the amount of electricity delivered to MCPS and billing.
- Provide ongoing monitoring and a data output via the Internet for display on MCPS websites and LCD monitors in the building.
- Supply all necessary internet connections for monitoring of the system, unless waived by MCPS.

- Relocating the system, at the Solar PV Developer's expense, for facilities where the roof life is projected to be less than the specified service life of the solar photovoltaic equipment.

#### Financing:

- Arrange and execute financing for the life of the project.
- Provide a letter of commitment, within 90 days of a signed contract with MCPS, from any financial party who will underwrite the project.
- Aggregate all federal, state, local and utility incentives and incorporate these into the cost per kWh of power delivered and provide MCPS a report at least quarterly.
- Aggregate and market all environmental attributes and renewable energy certificates (RECs) generated by the system to reduce the price per kWh realized by MCPS. MCPS may request that the Solar PV Developer provide alternative RECs from less expensive national sources to maintain the integrity of carbon reduction claims from the project. The Solar PV Developer must provide a price premium for this service in the pricing sheet.

#### Electricity Generation and Sales:

- Provide MCPS all electricity generated by the system, unless explicitly waived by MCPS.
- In the case a system is designed to exceed MCPS facility's annual demand, the Solar PV Developer must provide MCPS first right of refusal to apply the generation to another MCPS facility via Maryland's net metering law (COMAR §20.50.10) and, if appropriate such as in the case of large ground-mount systems, meter aggregation (COMAR §20.50.10.07).
- If electricity is exported through the wholesale electricity market, the Solar PV Developer shall be responsible, at MCPS' request without additional cost, for negotiating with MCPS' electricity supplier/consultants to apply it to other accounts. Currently, MCPS procures its electricity through a wholesale PJM portfolio account. If meter aggregation is possible for the supply of excess electric production, then this formal aggregation according to COMAR §20.50.10.07 is required.
- For off-site ground mounted PV systems, make all necessary arrangements to use net metering and/or aggregate metering opportunities if possible to have the power output offset the power at specific facilities identified by MCPS. All power output in excess of net and aggregate metering arrangements is to be assigned to the MCPS portfolio account.

#### End of Contract Term – System Decommissioning:

The Solar PV Developer must execute the following at MCPS' discretion at the end of the contract term:

- Decommission and remove the system from the building. MCPS may offer an opportunity to repower the system. Upon decommissioning, the Solar PV Developer must restore any areas of the facility modified to accommodate the photovoltaic system to its pre-project condition.
- Transfer ownership of the PV system and all associated equipment to MCPS.

### **3.4 MCPS Requirements**

MCPS will be responsible for the following:

- Allow the Solar PV Developer necessary space to host the system, as identified in design documents approved by MCPS.



- Provide access to the site for all agreed upon installation and maintenance. However, this access must be coordinated so as to not interfere with the normal operation of the school.
- Provide notice to proceed in a timely manner.
- Purchase the electricity for the term and value identified in the contract and pricing model. Note this term may vary depending on the facility.
- In the case of termination for convenience, the Solar PV Developer will be assigned an alternative facility where the system can be relocated at MCPS' expense. Alternatively, MCPS will purchase the system at the buy-out price to be specified in the PPA based on an amortization schedule not to exceed 20 years.

### 3.5 Premium Items Included as Alternates

To reduce future capital and operating costs, MCPS may be interested in incorporating "premium" items through this procurement. These will be improvements directly related, or ancillary, to the installed photovoltaic system or the RECs market. The costs of premium items, where applicable, may be amortized across the contract term for PPA projects. Premium items, if offered, should be priced by the Solar PV Developer on the RFP price sheet. The ground-mounted solar PV system and parking lot canopy solar PV system should be priced as separate PPAs. The RECs and parking lot lighting pole-mounted PV panels should be priced as separate unit price items.

Additional information, such as project specifics, or technical information, can be provided in the Solar PV Developer's proposal. MCPS reserves the right to award separate contract(s) to separate contractors or providers for these premium items.

MCPS is interested in the following premium items.

- An off-site ground-mounted, solar PV installation that the electric output will supply MCPS facilities in the most economical fashion using virtual net metering if possible. This off-site development must be at a location that complies with the Maryland net aggregate metering requirements (within the electric service territory of the accounts that it supplies) on property that the vendor secures for the term of the contract. Alternative pricing is also requested for a ground-mounted site on MCPS property if a suitable site can be identified from the MCPS inventory of real estate. See Section 3.6 of this RFP for the link to the MCPS listing of real estate inventory. MCPS is interested in output from ground-mounted projects between 3 to 8 MW capacity. Many sites are encumbered with environmental easements. Also, many future schools sites are reserved for future development and may be needed for development in ten to fifteen years or less.
- A solar PV parking lot canopy mounted solar PV system as a pilot demonstration that can be replicated at additional locations based on a unit price contract extension. This parking lot canopy system is to minimize the number of structural supports so as to allow for the easiest snow plowing and parking lot maintenance activities. This system may be in conjunction with a roof mounted PV array system at the same site.
- A system of parking lot lighting pole mounted solar PV collectors using the existing poles where appropriate. This premium item should be included in the base PPA at MCPS sites

that receive roof mounted PV arrays.

- A system of parking lot lighting pole mounted solar PV collectors with new parking lot light poles installed. This premium item should be included in the base PPA at MCPS sites that receive roof mounted PV arrays.
- REC's that qualify as solar REC's under the Maryland Renewable Portfolio Standards (RPS). MCPS is specifically interested in purchasing the PPA SRECs at the time of contract award.

### 3.6 Projects and Sites

MCPS has identified six facilities that offerors can provide specific pricing for as part of this RFP. Offerors do not need to propose for each project, however projects that are bid by one offeror and not another may be bundled based on provided pricing. For each rooftop project site, the successful offeror shall enter into a license agreement with MCPS for each site consistent with the form attached hereto and incorporated herein as Attachment I.

#### Group 1 Rooftop Projects: (Terminated projects)

Facility Name	Address	Roof installation	Building Square Footage	Electric LCD	KW <sub>DC</sub>	1st YR est. production kwh
Roberto Clemente MS	18808 Waring Station Rd Germantown, MD 20874	2015	148,246	Pepco	326	404,900
Hallie Wells MS (Clarksburg/Damascus MS)	11701 Little Seneca Parkway Clarksburg, MD 20871	2016	152,000	Potomac Edison	260	321,800
Walt Whitman HS	7100 Whittier Blvd., Bethesda, MD 20817	Partial 2016	261,295	Pepco	300	400,600

#### Group 2 Rooftop Projects: (New projects)

Facility Name	Address	Roof installation	Building Square Footage	Electric LCD	KW <sub>DC</sub>	1st YR est. production kwh
Albert Einstein HS	11135 Newport Mill Road, Kensington, MD 20895	½ roof in 2016, ½ in 2017	276,462	Pepco		
Rosa Parks MS	19200 Olney Mill Rd, Olney, MD 20832	New roof 2017	137,469	Pepco		
Silver Creek MS (BCC MS 2)	3701 Saul Road, Kensington, MD 20895	New construction Fall 2017	174,743	Pepco		

### 3.7 Subsequent Projects

In addition to the projects listed in Groups 1 and 2, MCPS anticipates that the selected offeror(s) will be able to evaluate and propose projects on additional facilities in MCPS' portfolio. MCPS will work with the successful offeror to screen appropriate facilities. MCPS anticipates the identification of additional projects will occur simultaneously with the implementation of Group 1 or 2 projects, but may add or adjust as needed.

The MCPS Real Estate Inventory Report is available at the MCPS Real Estate Management website under the Reports section:

<http://www.montgomeryschoolsmd.org/uploadedFiles/departments/facilities/rem/FY2016%20REAL%20PROPERTY%20INVENTORY%20REPORT.pdf>

Many future school sites may not be suitable for long term ground-mount PV system use because of the potential need for the site to be developed into a school.

## 4.0 CONTRACT TERM

The BOE intends to enter into a PPA for a term of up to twenty years with a Solar PV Developer to achieve the goals set forth in this RFP. The Solar PV Developer may also be subsequently asked to assist the BOE with identifying and implementing solar PV projects at other sites depending upon the success of the initial program as an extension of a resulting contract.

The initial term of the proposed PV development relationship is anticipated to be four years. However, all projects developed pursuant to this RFP will be under contract for the term of the PPA for such projects. The contract may not begin until one day after approval by the BOE and will conclude as stated under the contract term.

MCPS staff may make a recommendation to the BOE to extend the contract or decide to rebid. In such instance, MCPS reserves the right to extend this contract at existing prices, terms and conditions for up to four additional terms for one (1) year each. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued to the vendor 90 days prior to the expiration of the original contract. The vendor shall have ten (10) days from the date of notification to return the notice acknowledging its intent to accept or reject the extension. If the contract is extended by the BOE, a contract amendment will be issued.

## 5.0 CONTRACT TERMINATION

MCPS reserves the right to cancel the contract in whole or in part at any time in accordance with Article 26. MCPS General Contract Articles. MCPS also reserves the right to cancel the contract with a specific offeror for failure to comply or failure to fulfill the terms of this contract.

## 6.0 REFERENCES

All offerors shall include a list of a minimum of five references who can attest to the offeror's quality of work and, if possible, shall include school districts of comparable size to MCPS that have utilized the offeror's services. Include names of client, contact person, email address and phone number of all references. Also, as an attachment, offerors shall include a list of all current school district clients.

References may or may not be reviewed or contacted at the discretion of MCPS. Typically, only references of the top ranked short listed offerors are contacted. MCPS reserves the right to contact references other than, and/or in addition to, those furnished by an offeror.

<u>Company Name &amp; Address</u>	<u>Contact Person</u>	<u>Phone Number</u>
1. _____ _____		
Email _____		
2. _____ _____		
Email _____		
3. _____ _____		
Email _____		
4. _____ _____		
Email _____		
5. _____ _____		
Email _____		

## 7.0 FORMAT OF RESPONSE

- 7.1 Response to this RFP shall be submitted in the same order as the RFP and provide an individual response to each RFP specification.
- 7.2 Contractors shall include any and all statements and representations made within its proposal in the contract for services with the MCPS. This includes, but is not limited to, the vendors's point-by-point response to this RFP. If the vendor responds only "Understand and comply," it is assumed that the vendor complies with MCPS' understanding of the requirement.
- 7.3 MCPS shall not be responsible nor be liable for any costs incurred by the vendor in the preparation and submission of their proposals and pricing.
- 7.4 Pricing proposal shall be submitted as a separate documents (Attachments E, F, and G).

## 8.0 MANDATORY SUBMISSIONS

Each offeror must submit a complete proposal including all required information and attachments. The response shall address each paragraph in the same order as the RFP and provide an individual response to each RFP specification. All proposals must be presented using the same numbering sequence and order used in this RFP document or as otherwise specified by MCPS. Offerors may request via e-mail to Laurie Checco, CPPB, Buyer II, MCPS Procurement Unit at [Laurie\\_S\\_Checco@mcpsmd.org](mailto:Laurie_S_Checco@mcpsmd.org), a Microsoft Word version to help in preparing the response. One (1) original and three (3) copies as well as one (1) electronic version on CD or flash drive and one (1) redacted copy of responses must be sent by mail, courier or hand-delivery and shall be in binders with tabs identifying each section. A table of contents should be included and all pages numbered as referenced in the Table of Contents. No faxes or electronic submission of proposals will be accepted. Proposals are to be received no later than 2:00 p.m. on August 4, 2017. Submit responses of the entire RFP proposal to:

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

Submissions will become the property of MCPS.

The proposal must be signed by an official having authority to contract with MCPS. The firm and the official's name shall be used in the contract process. MCPS reserves the right to make an award without further discussion of the proposals received. MCPS may also negotiate with the one offeror who submits the best proposal or with two or more offerors who are in the competitive range. Therefore, it is important that the offeror's 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 the offeror's proposal will become a part of the official file on this matter without obligation to MCPS.

The proposal must be complete and comply with all aspects of these specifications. Marketing or promotional verbiage will likely overshadow the offeror's qualifications and expertise. MCPS urges the offeror to be specific and brief in their responses.

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

MCPS shall not be responsible or liable for any costs incurred by the offeror in the preparation and submission of their proposals and pricing.

**Complete Response must include:**

- Cover letter identifying company, responsible parties and any alternative names (e.g. doing business or DBA). Clearly indicate contact information.
- Point-by-Point Response to each section of the RFP.
- Project Narrative (no more than 4 pages) describing your organization's vision of the project and why your organization is the best partner.
- Qualifications (no more than 3 pages). Provide a brief summary of similar projects completed for private or government clients. Include reference contact information for each project.
- Staff (no more than 3 pages). Provide brief biographies, no longer than 400 words per individual, including key engineers, principals and project managers.
- Pricing Proposal (use Microsoft Excel). Provide a completed pricing sheet (Attachment E) and completed project description (Attachment F) for each project you are proposing. Also, provide a breakdown of the aggregate prices list in the Pricing Sheet (Group 1 and Group 2 projects), by listing the information called for in Attachment G.
- Cut Sheets. Provide Manufacturer cut sheets for anticipated photovoltaic solar panels, inverters, and any premium equipment where specified.
- Offeror's proposed PPA.
- References, See 6.0 References.
- Vendor's annual fiscal report in order to demonstrate the vendor's financial stability (If desired, the vendor may also include any other financial documents that vendor wishes to include regarding vendor's financial condition. This documentation is not mandatory.)
- Equal Opportunities Certification (Attachment A)
- Certification of Non-segregated Facilities (Attachment B)
- Minority Business Enterprise (Attachment C)
- Non-Debarment Acknowledgement (Attachment D)
- Mid-Atlantic Purchasing Team Rider Clause
- Current Form W-9
- A list of any variances from or objections to the terms and conditions of the MCPS General Contract Articles, as well as a justification for any such variances or objections.
- A redacted copy of offeror's proposal as specified in Sections 9.0 and 10.0.

## 9.0 TREATMENT OF TECHNICAL DATA IN PROPOSAL

The proposal submitted in response to this request may contain technical data which the 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, if marked in accordance with the instructions in Section 11.0.

## 10.0 PROPRIETARY AND CONFIDENTIAL INFORMATION

Offerors are notified that MCPS has unlimited data rights regarding proposals submitted in response to this solicitation. Unlimited data rights means that MCPS has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by the offeror in response to this or any solicitation issued by MCPS. However, MCPS will exempt information that is confidential commercial or financial information of an offeror, as defined by the Maryland Public Information Act, State Government Article, Section 10-617, from disclosure. It is the responsibility of the offeror to clearly identify each part of its proposal that is confidential commercial or financial information by stamping the **bottom right-hand corner** of each pertinent page with one-inch bold face letters stating the words "**confidential**" or "**proprietary**." The offeror agrees that any portion of the proposal that is not stamped as proprietary or confidential is not proprietary or confidential. As a condition for MCPS keeping the information confidential, the offeror must agree to defend and hold MCPS harmless if any information is inadvertently released. Each offeror must submit a proprietary and confidential redacted copy of its proposal to be used in responding to MPIA requests.

## 11.0 EVALUATION CRITERIA

MCPS reserves the right to ask clarifying questions about submitted proposals. Offerors also may ask questions that they may have related to this RFP prior to submitting their responses. See Section 12.0,

Schedule of Events. Only proposals received by the deadline will be considered. Proposals will be screened down to a number of finalists.

MCPS reserves the right to convene a meeting with the top qualified offerors prior to awarding a contract. The purpose of the meeting will be to afford both parties an opportunity to discuss any aspects of the requirements and services that will be performed and clarify any issues. Issues raised during the meeting, which cannot be resolved to the satisfaction of MCPS, shall be cause to reject the proposal. In addition, vendors shall be prepared to provide a product and services demonstration, providing an overview of the proposed product and services at no cost to MCPS.

All offerors are advised that in the event of receipt of an adequate number of proposals, which, in the opinion of MCPS require no clarification and/or supplementary information, such proposals may be evaluated without further discussions. Therefore, proposals should be submitted initially on the most complete and favorable terms and conditions. Should proposals submitted require additional clarification and/or supplementary information, offerors should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when requested.

Proposals meeting all requisite criteria will be evaluated. Those who do not meet requisite criteria will not be evaluated further. Selection will be made on the basis of the criteria listed below.

1. Completeness of Response
2. Ability to perform (based on the criteria set forth in this RFP, including but not limited to Section 3.0, Scope of Services)
3. References
4. Pricing Proposal

## **12.0 SCHEDULE OF EVENTS**

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

<b>RFP issued:</b>	<b>July 14, 2017</b>
<b>Questions Due:</b>	<b>July 21, 2017 by 4:00 p.m.</b>
<b>Prebid Conference</b>	<b>July 26, 2017 at 10:00 a.m. - noon</b>
<b>Proposals Due:</b>	<b>August 4, 2017 by 2:00 p.m.</b>
<b>Anticipated award date:</b>	<b>September 12, 2017</b>

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

## **13.0 PRE-BID CONFERENCE**

A Pre-Proposal Conference for prospective offers will be held on July 26, 2017, at 10:00 a.m., 45 W. Gude Drive, Magnolia Conference Room, 4<sup>th</sup> Floor, Rockville, Maryland 20850. Attendance at this conference is encouraged, but is not mandatory. Questions to this RFP are due by 4:00 p.m. on July 21, 2017 so that responses can be prepared for distribution at the pre-bid conference. The purpose of the pre-proposal conference will be to allow prospective firms the opportunity to obtain clarification of the RFP and ask questions directly of MCPS staff to assist them in the preparation of their proposal responses.



Firms shall provide the names of the persons who will attend the pre-bid conference. Please send no more than two representatives. Send the names to Laurie Checco, CPPB Buyer II, fax number 301-279-3173, or e-mail [Laurie\\_S\\_Checco@mcpsmd.org](mailto:Laurie_S_Checco@mcpsmd.org) no later than July 24, 2017.

The following information is provided for vendors who wish to call into the pre-bid conference:

**1. You must use a touch-tone phone to participate in an Instant Meeting conference.**

**2. Dial the appropriate access number.**

**Participants: Enter your numeric participant passcode followed by a # sign.**

<b>Toll Free :</b>	<b>USA 877-973-0884</b>
<b>Participant Passcode:</b>	<b>6489354</b>

#### **14.0 ADDENDA/ERRATA**

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the offeror's responsibility to check the MCPS website under "Event Calendar" <http://coldfusion.mcps.k12.md.us/cfms/webteam/calendar/calendar.cfm?calendarID=mcpsbids> or contact the Procurement Unit at 301-279-3555 to verify whether addenda/errata have been issued. In the event that MCPS issues addenda/errata, all terms and conditions will remain in effect unless they are specifically and explicitly changed by the addenda/errata. Offerors must acknowledge receipt of such addenda/errata by returning one signed copy of each of the addenda/errata with its proposal. Failure to provide the signed acknowledgement of the addenda/errata may result in a bid being deemed non-responsive.

#### **15.0 eMARYLAND MARKETPLACE**

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

#### **16.0 MULTI-AGENCY PARTICIPATION**

MCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. Use of this solicitation by other agencies may be dependent on special local/state

requirements attached to and made a part of the solicitation at the time of contracting. The supplier/contractor agrees to notify the issuing agency of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested. A copy of the contract pricing and the bid requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own contract with the Award offeror(s) and this contract shall be binding only upon the **principal's signing** such an agreement. Invoices shall be submitted "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the Award offeror. MCPS assumes no authority, liability, or obligation on behalf of any other public or non-public entity that may use any contract resulting from this bid. MCPS pricing is based on the specifications provided in this solicitation.

## **17.0 INQUIRIES**

Inquiries regarding this solicitation must be submitted in writing to Laurie Checco, CPPB, Buyer II, MCPS Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, MD 20850, via fax at 301-279-3173 or email to [Laurie.S.Checco@mcpsmd.org](mailto:Laurie.S.Checco@mcpsmd.org). Questions are due 4:00 p.m. on July 21, 2017. Responses will be posted on eMaryland Marketplace and on MCPS' Procurement website on July 26, 2017 and distributed out at the prebid conference. The MCPS BOE will not be responsible for any oral or telephone explanation or interpretation by any agent or employee of MCPS. Any binding information given to an offeror in response to a request will be furnished to all offerors as addenda/errata, if such information is deemed necessary for the preparation of proposals, or if the lack of such information would be detrimental to the uninformed offerors. Only such addenda/errata, when issued by MCPS, will be considered binding on MCPS.

**Contact by offerors with any other MCPS employee regarding this solicitation until the contract is awarded by MCPS will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration of its RFP response. The MCPS Procurement website address is [www.montgomeryschoolsmd.org/departments/procurement/](http://www.montgomeryschoolsmd.org/departments/procurement/).**

## **18.0 UNNECESSARILY ELABORATE BROCHURES**

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

## **19.0 BID PROTESTS**

Any bid protests, including appeals, will be governed by the applicable MCPS Procurement Unit Regulations. The burden of production of all relevant evidence, data and documents and the burden of persuasion to support the protest is on the offeror making the protest.

## 20.0 CONTRACT

MCPS plans to enter a contractual agreement with the service provider(s) to whom the award is made and intends to make the attached MCPS General Contract Articles a part of the contract, except and unless modified by MCPS. Proposals must clearly identify any variances from or objections to the specifications in this RFP and the terms and conditions of the MCPS General Contract Articles. Lacking any response to the contrary, MCPS will infer that the offeror agrees to the specifications of this RFP and each term and condition of the MCPS General Contract Articles. **In particular, the insurance and indemnification provisions set forth in Article 33 and the termination provisions set forth in Article 26 of the MCPS General Contract Articles are non-negotiable.**

In addition, the contract shall include the following provisions regarding security and insurance as follows:

- As security for the vendor's faithful performance and to ensure the removal of any of the vendor's equipment left by the vendor and any necessary repairs or maintenance following the termination of the PPA in order to restore the property to its pre-installation condition, the vendor shall provide a separate surety bond or irrevocable letter of credit in the amount of One Hundred Thousand Dollars (\$100,000.00) within ten (10) calendar days of the award of the contract and execution of the PPA. This security shall be in favor of the BOE, and any bond shall be executed by a surety company authorized to do business in the State of Maryland. Should the vendor fulfill the terms of the PPA as to removal of its equipment and necessary repairs and maintenance following termination of the PPA, then the letter of credit or surety bond shall be returned to the vendor.
- The vendor shall provide a Builder's All Risk Policy including fire and extended coverage to protect the interest of MCPS, the Solar PV Developer and sub-Solar PV Developers against loss caused by the perils insured in the amount of 100% of the insurable valued of the project. The coverage must be written on a completed value form. The policy shall also endorse a demolition and clearing clause, extra expense and loss of use coverages with a sub-limit of \$500,000 per occurrence.

## 21.0 OFFEROR INFORMATION

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. **OFFEROR 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. OFFEROR'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. OFFEROR'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.

1. The undersigned proposes to furnish and deliver supplies, equipment, or services, in accordance with specifications and stipulations contained herein, and at the prices quoted. This certifies that this bid is made without any previous understanding, agreement or connection with any person, firm, or corporation making a bid for the same supplies, materials, or equipment, and is in all respects fair and without collusion or fraud.
2. The undersigned acknowledges that the Agreement for Professional Services and Electricity (Attachment H) for this RFP will be applicable to each contract that is expected to result from a subsequent award. Proposals that do not include this acknowledgment page may be rejected. The requirement may be satisfied by executing and returning (with the proposal) the acknowledgment shown below.
3. The correct legal business name of the offeror must be used in all contracts. A trade name (i.e., a shortened or different name under which the firm does business) should not be used when the legal name is different. Corporations must have names that comply with the laws of the states and/or federal jurisdictions in which they conduct business. The offeror's signature must conform to the following:

Where the offeror is a corporation, a corporate officer must sign.

Where the offeror is a partnership, at least one general partner must sign.

Where the offeror is a limited liability company, an authorized Representative must sign

Where the offeror is a sole proprietor, the proprietor must sign.

4. I hereby certify that I am authorized to sign for the offeror and that all statements, representations, and information provided in this response to this RFP, including but not limited to the Non-Debarment Acknowledgement, are accurate.

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

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

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

**Mid-Atlantic Purchasing Team  
Rider Clause**

**RFP #4361.2 Power Purchase Agreement for Electricity from Solar Photovoltaic Systems**

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

**Extension to Other Jurisdictions**

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

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

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

**Notification and Reporting**

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

**Contract Agreement**

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

RFP #4361.2 Power Purchase Agreement for Electricity from Solar Photovoltaic Systems

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

## MCPS GENERAL CONTRACT ARTICLES

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



**ARTICLE 1. DESCRIPTION/SPECIFICATIONS**

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

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

**ARTICLE 2. MCPS PROJECT CONTACT**

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

**ARTICLE 3. PERSONNEL**

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

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

Name\_\_\_\_\_

Title\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

Name\_\_\_\_\_

Title\_\_\_\_\_

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

**ARTICLE 4. MCPS CONTRACT ADMINISTRATOR**

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

**ARTICLE 5. STATEMENT OF WORK**

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

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

**ARTICLE 6. DELIVERABLES**

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

**ARTICLE 7. PRICE**

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

**ARTICLE 8. PERIOD OF PERFORMANCE**

The initial term of contract shall be for one year. However, the contract may not begin until one day after approval by the Board of Education of Montgomery County (Board of Education). After the initial contract term, MCPS reserves the right to extend up to three additional one (1) year terms if agreed to by both parties. If MCPS requests and the contractor agrees to provide additional services not contemplated herein, MCPS agrees to pay the cost of the additional services, as invoiced by the contractor, in accordance with the terms of any future agreement to provide the additional services.

**ARTICLE 9. SUBMISSION OF VOUCHERS**

All Contracts

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

**ARTICLE 10. INSPECTION AND ACCEPTANCE**

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

**ARTICLE 11. PAYMENT**

Within 30 days after receiving of each invoice and accepting the work, MCPS shall, except as provided in this contract, pay for the work performed when approved by the project contact and director of the Department of Materials

Management. A payment schedule will be jointly developed between MCPS and the contractor.

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

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

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

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

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

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

- a) The primary purpose is to disseminate information about the work rather than to promote the contractor's accomplishments or knowledge.
- b) Publication or presentation prominently displays or acknowledges MCPS

financial support as follows: (i) the contents of this publication do not necessarily reflect the views or policies of MCPS; and (ii) the mention of trade names, commercial products, or organizations does not imply endorsement by MCPS.

- c) Confidentiality of students and their families is maintained at all times and the contractor abides by all terms and conditions of any data-sharing agreement between the parties.

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

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

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

### Access to Confidential Information

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

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

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

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

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

#### Security of Confidential Information

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

- a) Security policies for employees related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
- b) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
- c) Secure access controls to Confidential Information, including but not

limited to passwords;

- d) Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
- e) Encryption of Confidential Information if it is stored on laptops, or is being transmitted electronically;
- f) Protocols for regular backups that include retention of backup copies for such period of time as may be required by MCPS, or by federal or state laws; and
- g) Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data.
- h) A process for reviewing policies and security measures at least annually.

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

#### Audit

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

#### Security Breach

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

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

Disposal and Return of Confidential Information

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

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

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

**ARTICLE 16. DOCUMENTATION AND COPYRIGHT**

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



MCPS may, at its sole discretion, waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any process or program and may license its use by others for a fee or without charge.

**ARTICLE 17. NOTICE OF DELAYS**

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

**ARTICLE 18. EXCUSABLE DELAYS**

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

**ARTICLE 19. MCPS PROPERTY**

The use of MCPS property must be approved in advance by the director of the Department of Materials Management. Title to property leased with a purchase option shall pass to MCPS even though the option date is later than the contract period. Any payments required to acquire title are a contract cost. If MCPS has

agreed to provide property owned by it, the following special provisions shall apply:

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

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

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

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

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

#### **ARTICLE 22. EQUAL OPPORTUNITY**

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

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

#### **ARTICLE 23. COMPLIANCE WITH LOCAL LAWS**

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

#### **ARTICLE 24. CHANGES**

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

and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this article shall excuse the contractor from proceeding with the contract as changed.

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

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

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

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

against the contractor in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

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

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

Any such termination shall be effected by delivery to the contractor of a Notice of Termination specifying whether termination is for the default of the contractor or for the convenience of MCPS, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If after notice of termination of this contract for default under (1) above and if it is determined for any reason that the contractor was not in default pursuant to (1) or that the contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (3) 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, these general contracting articles shall govern, unless otherwise stated in the contract and as expressly agreed to by the parties in writing.

**ARTICLE 28 SEVERABILITY**

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

**ARTICLE 29 BID PERFORMANCE BOND**

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**

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

**ARTICLE 31. NONAPPROPRIATION OF FUNDS**

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

(b) If this contract is terminated under this provision and to the extent lawful,

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

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

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

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

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

The contractor shall be solely responsible for any insurance, including, but not limited to general comprehensive liability, worker's compensation, professional liability insurance, and business automobile insurance. The contractor agrees to provide certificates of insurance verifying the following

coverage:

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

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

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

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

**Certificates of Insurance:** The contractor shall provide MCPS with certificates of insurance within ten (10) days of execution of the contract evidencing the coverages required above. The certificates shall confirm that MCPS has been made an additional insured under the respective insurance policies. The certificates of insurance shall provide that MCPS shall be given at least forty-five (45) days' prior written notice of any cancellation of, intention

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

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

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

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

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

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

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

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

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

Effective July 1, 2015, amendments to § 6-113 of the Education Article of the Maryland Code further require that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on

school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:

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

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

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

**2. Required criminal background check process for certain individuals in**

**the contractor's workforce:**

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

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

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

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

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

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

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

**ARTICLE 36. ENTIRE CONTRACT**

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

**ARTICLE 37. ASSIGNMENT**

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

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

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

## Attachment A

Equal Opportunity Certification

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

( ) Yes ( ) No

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

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

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

( ) Yes ( ) No

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

( ) Yes ( ) No

5. Are you required to submit an annual compliance report as described in 41 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 nonsegregated facilities.  
 \*\*\* (3) Previously filed annual (EEO-1, EEO-4, or EEO-6) compliance report.



**Attachment B**  
**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 its offer nonresponsive.

## Attachment C

### **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.

- |   |   |                                   |  |
|---|---|-----------------------------------|--|
| <input type="checkbox"/> African American | <input type="checkbox"/> Asian American | <input type="checkbox"/> Hispanic | <input type="checkbox"/> Native American |
| <input type="checkbox"/> Female           | <input type="checkbox"/> Disabled       | <input type="checkbox"/> None     |  |

Attachment D

**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. If so, please provide an attachment describing the pending litigation or debarment.

\_\_\_\_\_ I acknowledge 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

As the duly authorized representative of the Offeror, 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 \_\_\_\_\_

## Pricing Sheet for MCPS RFP PPA for Solar PV Systems

RFP Reference	Category	Unit Price	Unit	Annual Escalation - in percent (no more than 1 percent) **	Proposed Capacity (KW) measured in AC capacity	Estimated Annual Production	Completion Date	Comments	Proposer Notes
§ 3.6	Group 1 - Rooftop PV PPA (in aggregate)*		\$/KW/h				08/31/18		
§ 3.6	Group 2 - Rooftop PV PPA (in aggregate)*		\$/KW/h				12/31/18		
* Group 1 and 2 unit price of the aggregate list of facilities is used to determine selection. Separate individual facility breakdown pricing and installed capacity is to be provided in Attachment G for information purposes. ** Annual escalation of the unit price is not to exceed one percent.									
RFP Reference	ALTERNATES	Unit Price	Unit	Annual Escalation - in percent (equal or less than 1 percent) **	Proposed Capacity (KW) measured in AC capacity	Estimated Annual Production	Completion Date	Comments	Proposer Notes
§ 3.5	Off-site ground mounted PV output - on non-MCPS site		\$/KW/h					Specify location to be secured by the Solar Provider	
§ 3.5	Off-site ground mounted PV output - on MCPS property		\$/KW/h					Specific location to be agreed upon on a suitable MCPS	
§ 3.5	PV Parking Lot Canopy		\$/KW/h					Specify MCPS location	
§ 3.5	Parking lot - existing light pole mounted PV panels		Price/pole						
§ 3.5	Parking lot - new light pole mounted PV panels		Price/pole						
§ 3.5	Tier I RECs		\$/MWh	n/a					
§ 3.5	National RECs		\$/MWh	n/a					

## ATTACHMENT F

### PROJECT DESCRIPTION FORM

Provide one form for each project/building address

<b>Building Name:</b>	Use name of building as provided in MCPS Section V or in the MCPS Real Estate Inventory Report
<b>Address:</b>	Use MCPS assigned address
<b>Proposed System Size (kW/DC)</b>	Size in kW DC
<b>Proposed System Size (kW/AC)</b>	Size in kW AC
<b>Area Used (sq. ft)</b>	Square foot of Roof, Ground or Parking Lot used
<b>Photovoltaic Manufacturer</b>	Proposed equipment manufacturer (include cut sheet)
<b>Inverter Manufacturer</b>	Proposed Inverter Manufacturer (include cut sheet)
<b>System Design Life (Years)</b>	Life of system, must not exceed any limitations established by MCPS in Section III
<b>Description of Mounting System:</b> Describe the mounting system, how it attached to the roof, if there are any roof penetrations expected etc.	
<b>Description of System:</b> Provide a brief description of the system, its design, and any unique characteristics.	
<b>Rendering:</b> Provide a simple rendering of the system showing at a minimum: 1. Orientation relative to the building and site, 2. Amount of roof area used and where relative to any visible obstructions,	
<b>Premium Items:</b> Describe any premium items provided (As requested in Section III) including details on the technology, the provider, any site restrictions, or site limitations.	

Offeror shall submit pricing for the Group 1 and 2 PV PPAs as aggregated prices for each group using Attachment E. Offeror will also provide individual project details using Attachment F as a template for each project. Attachment G should be used to provide a breakdown of project that provides the individual project pricing for information purposes. However, the evaluation will be based on the aggregate unit prices for each group as submitted on the Pricing Sheet, Attachment G. The submission shall be reviewed according to the evaluation criteria in 11.0 Evaluation Criteria.

On the Attachment G Pricing Sheet, Offeror can include an annual escalator. This escalator will increase the unit cost of the electricity by the percentage stated after one full year of electricity production. This escalator will increase the electric unit price thereafter on an annual basis. This escalator is not to exceed one percent. The Price category of the evaluation criteria will be evaluated based on the life cycle unit price based on a 20 year life cycle of the combination of unit price adjusted for the annual escalation. Offerors who have a zero escalator will receive the benefit as accounted through life cycle determination of the relative cost.

# ATTACHMENT G

## Breakdown of Group 1 and 2 Schools Priced in the Pricing Sheet

### Terminated projects

Group 1 Facility Name	Unit Price	Unit	Annual Escalation in percent (no more than 1 percent)	Proposed Capacity (KW <sub>AC</sub> )	Completion Date
Roberto Clemente MS					
Hallie Wells MS					
Walt Whitman HS					

### These schools were not considered in 2015 RFP

Group 2 Facility Name	Unit Price	Unit	Annual Escalation in percent (no more than 1 percent)	Proposed Capacity (KW <sub>AC</sub> )	Completion Date
Albert Einstein IIS					
Rosa Parks MS					
Silver Creek MS (BCC MS 2)					

### Solar Ground Mount

#### Terminated project

Unit Price	Unit	Annual Escalation in percent (no more than 1 percent)	Proposed Capacity (KW <sub>AC</sub> )	Completion Date
2600 kw				

## ATTACHMENT H - AGREEMENT FOR PROFESSIONAL SERVICES AND ELECTRICITY

RFP # \_\_\_\_\_

THIS AGREEMENT FOR PROFESSIONAL SERVICES AND ELECTRICITY (this "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, effective as of this date, by and between the Board of Education of Montgomery County, which operates a system of public schools commonly known as Montgomery County Public Schools (hereinafter referred to as the "Board") and **[Contractor Name]**, **[Contractor Address]**, (hereinafter referred to as the "Contractor").

### RECITALS

WHEREAS, the Contractor submitted a proposal to RFP No. \_\_\_\_\_ (the "RFP") to construct and maintain Solar PV systems issued by the Board and has been selected to provide electrical services in accordance with the terms and conditions expressed in the RFP;

WHEREAS, the Board desires the Contractor to install certain Solar PV systems to provide electricity, on the terms and conditions herein set forth and the Contractor is ready, willing, and able to perform such work and services; and

WHEREAS, this Agreement shall be administered by the Project Manager or such other persons designated by The Board of Education.

NOW, THEREFORE, in consideration of the promises contained herein and the promises each to the other made, the parties hereby agree as follows:

#### ARTICLE I - CATEGORY OF WORK AND SERVICES

The work and services to be performed by the Contractor shall be performed in accordance with the following documents in the order of precedence listed:

1. Request for Proposal for Power Purchase Agreement for Electricity from Solar Photovoltaic Systems, RFP No. \_\_\_\_\_, dated \_\_\_\_\_;
2. Contractor's proposal dated \_\_\_\_\_ and as modified by a Best and Final Offer dated \_\_\_\_\_.
3. The Power Purchase Agreement, attached.

#### ARTICLE II - TERMS AND CONDITIONS

The Contractor agrees to perform the work and services required under this Agreement in accordance with RFP No. \_\_\_\_\_, whose provisions for services are incorporated herein by reference.

#### ARTICLE III - TERM OF AGREEMENT

The term of agreement shall begin upon contract award by the Board of Education and continue for a period of two years. Contract renewals shall be contingent upon adequate fiscal appropriations as per the RFP.

#### ARTICLE IV - PAYMENTS AND SCHEDULE OF PAYMENTS

Payment shall be made in accordance with the provisions set forth in the Power Purchase Agreement.

#### ARTICLE V - INSURANCE

The Contractor agrees to and has complied with the insurance requirements set forth in the RFP.

[SIGNATURE PAGE FOLLOWS]

Telephone \_\_\_\_\_ Fax \_\_\_\_\_



## ATTACHMENT I – SAMPLE

### LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the Board of Education of Montgomery County, operating a system of public schools commonly known as Montgomery County Public Schools hereinafter referred to as the “MCPS”), located at 850 Hungerford Drive, Rockville, Maryland 20850, and *[Contractor Name]* with its principal office located at \_\_\_\_\_ (hereafter referred to as “LICENSEE”), (the LICENSEE and MCPS, together the “Parties”).

#### WITNESSETH

In consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCPS and the Contractor agree as follows:

#### 1. USE OF LICENSED PREMISES:

- (a) MCPS hereby grants to LICENSEE a non-exclusive license to occupy and use, subject to all of the terms and conditions herein, space for solar PV arrays and associated equipment listed in Exhibit A (“Equipment”) to be installed on the existing structure located at \_\_\_\_\_, in Montgomery County, State of Maryland and more particularly described on Exhibit B attached hereto and made part hereof (“Property”). The location of installation for LICENSEE’S Equipment on the structure is generally described on Exhibit C attached hereto and made a part hereof as the licensed premises (“Licensed Premises”). No variation will be permitted without the prior written consent of MCPS. No functional space will be used for or eliminated as a result of LICENSEE’S installation of or operation of the Equipment.
- (b) LICENSEE shall have the right of reasonable ingress and egress, to install and maintain utility wires, cables, conduits, circuit boxes, switches, amplifiers, antennas or other accessories and appurtenances for use of its Equipment, subject to the restrictions in this paragraph. LICENSEE, its employees, agents, independent contractors and subcontractors shall be entitled to access the Equipment and the Licensed Premises during normal MCPS operating hours, on Monday through Friday with the exception of MCPS official holidays. LICENSEE shall check-in at the main office of the facility upon its arrival and departure, provided that in the event of an emergency, the LICENSEE shall contact MCPS Security by calling (301) 279-3232, prior to accessing the Property to the extent reasonably feasible.
- (c) LICENSEE shall use the Licensed Premises for the purpose of electric generation through solar PV panels and systems pursuant to that certain Power Purchase Agreement (PPA) by and between the Parties dated as of [insert execution date of Power Purchase Agreement]. In connection therewith, the LICENSEE may complete all work necessary to prepare the Licensed Premises for operation of the Equipment, including but not limited to installation of solar PV panels and associated equipment. With minimal disruption to MCPS and no

interference to the normal operation of the school during the school day, all work on the Licensed Premises and improvements thereto, including the plans and specifications for such work, shall be at LICENSEE'S sole cost and expense, and shall be subject to prior review and written approval of MCPS. During the initial plan review, MCPS and LICENSEE shall agree upon the final location for the installation of LICENSEE'S PV solar arrays and equipment. The LICENSEE shall maintain the Licensed Premises in good condition. LICENSEE shall repair any damage to MCPS property caused by LICENSEE'S installation, maintenance, repair and/or removal of its PV solar arrays and associated equipment.

- (d) It is understood and agreed that the LICENSEE'S ability to use the Licensed Premises is contingent upon its obtaining after the execution date of this Agreement and maintaining throughout the term of this Agreement all of the certificates, permits, and any other approvals ("Approvals") required by any federal, state, and local authorities. In the event that any such application should be finally rejected or any Approval is canceled, expires, lapses or is otherwise withdrawn or terminated by government authority, or; if the LICENSEE in its sole discretion determines that it will be unable to use the Licensed Premises for its intended purposes due to technological reasons, the LICENSEE shall have the right to terminate this Agreement. Notice of the LICENSEE'S exercise of its right to terminate, shall be given to MCPS in writing by certified mail, return receipt requested, at least thirty (30) days prior to the termination date.
- (e) LICENSEE REPRESENTS AND WARRANTS THAT ALL INFORMATION FURNISHED TO MCPS AND REQUIRED HEREIN INCLUDING ALL DATA CONTAINED IN SPECIFICATION SHEETS SHALL BE OF SUFFICIENT DETAIL TO AFFORD ANY TENANT, FUTURE TENANT, OR FUTURE LICENSEE ADEQUATE INFORMATION TO ENSURE THAT ANY TENANT, FUTURE TENANT OR FUTURE LICENSEE AVOIDS INTERFERENCE WITH LICENSEE'S EQUIPMENT. MCPS RESERVES THE RIGHT TO REQUIRE THE LICENSEE TO MAKE NECESSARY ADJUSTMENTS TO ITS EQUIPMENT IN THE EVENT LICENSEE'S EQUIPMENT CREATES A MATERIAL RESTRICTION IN MCPS' ABILITY TO ENTER INTO AGREEMENTS WITH TENANTS, FUTURE TENANTS OR FUTURE LICENSEES. LICENSEE'S FAILURE TO COMPLY WITH MCPS' REQUIREMENT FOR LICENSEE TO MAKE NECESSARY ADJUSTMENTS TO ITS EQUIPMENT SHALL CONSTITUTE AN EVENT OF DEFAULT.
- (f) Notwithstanding affixation to the Licensed Premises, title to the Equipment and all accessories and appurtenances associated therewith installed by LICENSEE shall remain property of the LICENSEE. The LICENSEE may remove all or part of the Equipment at its sole expense on or before the expiration or earlier termination of this Agreement and shall make any necessary repairs to the Licensed Premises, normal wear and tear excepted.
- (g) At LICENSEE'S sole cost and expense, and after approval of all plans by MCPS, LICENSEE'S electrical service shall be tied into MCPS service on the Property.

- (h) LICENSEE shall provide an as-built engineer's drawing showing the location of its Equipment on the Licensed Premises and Property within ninety (90) days of full execution of this Agreement.

2. TERM:

- (a) This License shall be for a term of \_\_\_\_\_ years ("Initial Term") commencing on \_\_\_\_\_, and expiring on \_\_\_\_\_.
- (b) This License may be renewed by the mutual written agreement of MCPS and the LICENSEE for \_\_\_\_\_ year terms ("Renewal Terms"), provided that the Parties hereto reach an agreement no later than six (6) calendar months prior to the end of the Initial Term or the then current Renewal Term on the License Fee of this Agreement for the next \_\_\_\_\_ year term, subject to a determination by MCPS that it can grant such an extension. MCPS and LICENSEE shall execute a letter of agreement stating the commencement date of the then applicable Renewal Term.
- (c) The termination date ("Termination Date") of the Agreement shall be the last day of the Initial Term, or the then current Renewal Term or the earlier date on which this Agreement is terminated in accordance with the provisions hereof.

3. LICENSEE FEE:

LICENSEE shall pay an annual amount of \$\_\_\_\_\_, and any financial benefit to MCPS should be expressed as part of price per kWh generated by the solar photovoltaic system.

4. LICENSEE INDEMNIFICATION:

The indemnification requirements of Article 33 of the MCPS General Contract Articles contained in RFP 4361.2 are incorporated herein.

5. LICENSEE INSURANCE:

Commencing on the date upon which MCPS delivers the Licensed Premises to LICENSEE and at all times thereafter, LICENSEE shall cause to be carried and maintained, at no cost to MCPS, the insurance coverages as required in Article 33 of the MCPS General Contract Articles and Section 20.0 of RFP 4361.2. MCPS may change the types of required coverages from time to time as circumstances and changes in use of the Licensed Premises warrant. Licensee shall provide the Performance Bond required as security in Section 20.0 of RFP 4361.2.

6. RIGHT OF ENTRY:

Emergency Access: In cases of emergency involving imminent risk of injury or death to persons or damage to property, MCPS, its agents or employees, without prior notice to LICENSEE, may enter the Licensed Premises, however, MCPS will attempt, but is not required, to notify LICENSEE of any such entry as soon as is practicable under the circumstances.

7. SURRENDER OF POSSESSION:

This Agreement shall terminate on the Termination Date without the necessity of notice from either MCPS or LICENSEE. Upon the Termination Date or earlier termination of this Agreement, LICENSEE shall (i) quit and surrender to MCPS the Licensed Premises, restoring the Licensed Premises to its original condition, ordinary wear and tear excepted, with utilities capped off; (ii) and remove LICENSEE'S Equipment and facilities. If LICENSEE'S Equipment and facilities are not removed from the Licensed Premises within 72 hours after the Termination Date, the Equipment remaining will be deemed abandoned and will become the property of MCPS, and MCPS may have it removed and disposed of at LICENSEE'S expense, with no liability of MCPS to return such Equipment to Licensee. At the time of termination of this Agreement and at the request of MCPS or LICENSEE, the Parties must participate in a walk-through to inspect the Licensed Premises.

8. ENTIRE AGREEMENT:

This Agreement supports MCPS RFP 4361.2 and the PPA. All obligations and requirements of MCPS RFP 4361.2 and the PPA are incorporated into this Agreement by reference. This Agreement contains all other agreements, promises, and understandings between MCPS and LICENSEE, and any addition, variation, or modification to this Agreement shall be void and ineffective unless made in writing and signed by the Parties.

9. COMPLIANCE WITH LAWS:

LICENSEE shall comply with all current, as amended and future enacted statutes, laws, rules, orders, regulations and ordinances (collectively "Laws") affecting the use or operation of the Licensed Premises. In no event shall LICENSEE use the Licensed Premises for purposes which are prohibited by zoning or similar laws or regulations. LICENSEE acknowledges and agrees it is solely responsible for determining if its use of the Licensed Premises complies with the applicable zoning regulations, and that MCPS makes no representation (explicit or implied) concerning such zoning regulations. LICENSEE shall not use the Licensed Premises in any manner that causes a violation of any environmental laws or regulations or that could create environmental liabilities under Federal, State or local environmental protection laws.

10. CHOICE OF LAW:

This Agreement and the performances thereof shall be governed, interpreted, construed and regulated by the laws of the State of Maryland.

11. CHOICE OF FORUM:

Any action involving a dispute relating in any manner to this Agreement, the use or occupancy of the Leased Premises, and/or any claim of injury or damage shall be filed and adjudicated solely in Montgomery County, Maryland.

12. ASSIGNMENT AND OTHER TRANSFER:

- (a) Under Common Control: LICENSEE may assign, without consent, its interest to its parent company, any subsidiary or affiliate of it or its parent company or to any successor-in-interest or entity acquiring fifty-one percent (51%) or more of its stock or assets. Assignee shall assume all of LICENSEE'S obligations herein. LICENSEE shall immediately provide written notification to MCPS of any assignment as defined in this Article 12(a).
- (b) Assignment Requiring Consent: Licensee shall not assign this Agreement without the prior written consent of MCPS to an assignee not meeting the criteria of Article 12(a), which consent shall not be unreasonably conditioned, withheld or delayed. Any assignment consented to by MCPS shall not relieve the Licensee from any of its obligations under this Agreement, and such consent by MCPS shall not be effective unless and until (i) Licensee gives written notice thereof to MCPS, which notice shall state the name and address of the proposed assignee, and identify the nature and character of the proposed use of the Licensed Premises by assignee, (ii) such assignee shall deliver to MCPS a written agreement in form and substance satisfactory to MCPS pursuant to which such assignee assumes all of the obligations and liabilities of the Licensee hereunder, and (iii) Licensee shall deliver to MCPS a copy of the proposed assignment agreement. Licensee shall also provide any additional information MCPS reasonably requests regarding such proposed assignment. Any assignment without MCPS' written consent may be declared null and void by MCPS and, at MCPS' election, constitute an Event of Default hereunder.
- (c) Other Transfer: This Agreement may not be sold or transferred and the LICENSEE shall not sublet or permit any other party to use the Licensed Premises or Property or any of the LICENSEE'S Equipment on the Property, except as permitted hereunder.

13. NOTICE:

All notices hereunder must be in writing and shall be deemed validly given if hand delivered to the other party or if sent by certified mail, return receipt requested, addressed as follows (or such other address as the party to be notified has designated to the sender by like notice):

LICENSEE:

Name:  
Company:  
Address:  
Contact:  
Contact Phone:  
Emergency Phone:  
Email

MONTGOMERY COUNTY PUBLIC SCHOOLS:

Name:  
Company:

Address:  
Contact  
Contact Phone:  
Emergency Phone:  
Email:

14. RELATIONSHIP OF THE PARTIES:

It is expressly understood that MCPS shall not be construed or held to be a partner, co-venturer, agent or associate of the LICENSEE; it being expressly understood that the relationship between the Parties hereto is and shall remain at all time that of MCPS and LICENSEE.

15. INTERFERENCE:

The LICENSEE shall operate and maintain its Equipment at all times in a manner that will not interfere with MCPS operations of normal school functions of any existing tenant or licensee of the Property. If any such interference occurs, in the reasonable assessment of MCPS, and is not corrected by the LICENSEE within forty-eight (48) hours after written notification, MCPS shall have the right to require the LICENSEE to shut down and repair the LICENSEE'S Equipment, except for brief tests (not to exceed 5-10 minutes every hour) to eliminate such interference. If MCPS believes the LICENSEE'S Equipment is causing interference, LICENSEE at LICENSEE'S sole cost, shall arrange for interference testing to be conducted in coordination with MCPS staff present. MCPS shall not be held responsible for any interference to the LICENSEE'S Equipment or operations, provided MCPS exercises due care and otherwise complies with this Agreement. Similarly, MCPS agrees that after execution of this Agreement, any tenants or licensees of the Property will be permitted to install such radio equipment that is of the type and frequency that will not cause interference to the LICENSEE. In the event future equipment of any tenants or licensees of the Property causes interference to the LICENSEE and is not corrected by the interfering party within forty-eight (48) hours of notification, MCPS shall require the interfering party to immediately shut down the interfering equipment until the interference is corrected, except for intermittent testing.

16. HAZARDOUS MATERIALS:

LICENSEE warrants and represents that it will be solely liable for the clean-up and removal of hazardous substances that LICENSEE, its agents, employees, or subcontractors generate, or cause to be placed on the Property and Licensed Premises as required by law. MCPS represents that to its knowledge, the Property and Licensed Premises are free from any unlawful environmental contamination as of the date of execution of this Agreement.

17. NON DISCRIMINATION:

LICENSEE agrees to comply with the non-discrimination in employment policies in MCPS contracts as required by federal, state and local laws, and MCPS rules and regulations regarding employment discrimination. By signing this Agreement, LICENSEE assures MCPS that in accordance with applicable law, it does not, and agrees that it shall not engage in any employment discrimination in violation of any federal, state or local laws, rules and regulations.

18. OBLIGATIONS REGARDING CRIMINAL RECORDS OF INDIVIDUALS ASSIGNED TO WORK IN MCPS FACILITIES:

The requirements of Article 35 of the MCPS General Contract Articles contained in RFP 4361.2 are incorporated herein.

19. ETHICS REQUIREMENT:

LICENSEE understands and agrees that it is unlawful for any person or entity transacting business with MCPS to employ a public employee contemporaneous with his or her public employment.

20. CONTRACT SOLICITATION:

LICENSEE represents that it has not retained anyone to solicit or secure this Agreement from MCPS upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees of bona fide established, licensed, commercial selling or leasing agencies (the "Broker") maintained by the LICENSEE for the purpose of securing business or an attorney rendering professional legal services consistent with the canons of ethics of the profession. LICENSEE is responsible for paying any Broker's fees or commissions for any Broker with whom LICENSEE has any contract or agreement and for paying all of LICENSEE'S attorneys' fees in connection with the negotiation of this Agreement.

21. RESIDENT AGENT:

The resident agent for the LICENSEE, a *[insert corporate entity type]*, in the State of \_\_\_\_\_ is: \_\_\_\_\_. LICENSEE shall notify MCPS, in writing, within thirty (30) days of any change in Resident Agent.

22. TERMINATION:

The termination of this Agreement shall be governed by the terms and conditions of RFP 4361.2 as agreed to by the Parties.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

WITNESS:

LICENSEE:

*[CONTRACTOR NAME]*

By: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

WITNESS:

BOARD OF EDUCATION OF MONTGOMERY  
COUNTY

By: \_\_\_\_\_

By: \_\_\_\_\_  
Michael A. Durso  
President

WITNESS:

Approved:

By: \_\_\_\_\_

By: \_\_\_\_\_  
Jack R. Smith, Ph.D.  
Superintendent of Schools