



MONTGOMERY COUNTY PUBLIC SCHOOLS
MARYLAND
www.montgomeryschoolsmd.org

301-279-3172

May 27, 2015



RFP Number: 4367.1
Prebid Conference: June 10, 2015
Due Date: June 19, 2015
Open Time: 2:00 p.m.

To: Prospective Offerors:

Montgomery County Public Schools (MCPS), Office of Human Resources and Development (OHRD) and the Employee Retiree Services Center (ERSC) request proposals from qualified Contractors to provide independent medical and psychiatric evaluations, as needed, for employees in MCPS.

Proposals must be received on or before 2:00 p.m., on June 19, 2015. Proposals received after this date and time will not be considered. Proposals must be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals must be marked on cover pages of each with **"ORIGINAL"**, **"COPIES"** and **"REDACTED"**. Proposals are to be delivered to Montgomery County Public Schools Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, Maryland 20850.

A prebid conference is scheduled for 11:00 a.m. Wednesday June 10, 2015 at 45 W. Gude Drive, 3rd Floor, Pine Room 3C03, Rockville, MD 20850.

The provider must submit one original, four copies and one redacted copy of their RFP response. **The proposal must be signed by an official having authority to contract with MCPS.** The firm and official's name shall be used. This solicitation does not commit the district to pay any costs incurred in the submission of proposals or guarantee that an award will be made.

In the event of an emergency closing of Montgomery County Public Schools' offices, this RFP will open at the same time on the next scheduled work day.

Sincerely,

Kathleen C. Lazor, Director
Department of Materials Management

KCL:br
Enclosure

Procurement Unit

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

MONTGOMERY COUNTY PUBLIC SCHOOLS
Request For Proposal
No. 4367.1, Professional Services for Office of Human Resources and
Employee Retiree Services Center

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**Department of Materials Management
Procurement Unit
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland**

**Request For Proposal No. 4367.1, Professional Services for Office of Human Resources and
Employee Retiree Services Center**

1.0 INTENT

Montgomery County Public Schools (MCPS), Office of Human Resources and Development (OHRD) and the Employee Retiree Services Center (ERSC) request proposals from qualified Contractors to provide independent medical exams (IME) and psychiatric evaluations, as needed, for employees in MCPS.

2.0 BACKGROUND

MCPS is the 17th largest school system in the United States, and the largest in the state of Maryland. During the 2014–2015 school year, it is projected that MCPS will serve more than 154,000 students from 157 countries speaking 138 languages. With a Fiscal Year (FY) 2015 Operating Budget of approximately \$2.28 billion, MCPS employs more than 22,500 employees.

Independent medical and psychiatric evaluations are recommended for employees who are having difficulties that are impeding their ability to perform their duties. There are times when the employees' personal doctor/psychiatrist and the school district are in disagreement about employees' fitness for duty, thus an independent medical or psychiatric exam is recommended. MCPS Regulation GDA-RB, *Medical Examinations*, sets forth the school district's requirements and procedures for independent medical exams.

Due to the needs of MCPS and the diversity of our workforce, we are seeking to prequalify a pool of medical and psychiatric doctors with various expertise. It is our interest to include in our pool doctors who speak languages in addition to English.

3.0 SCOPE OF WORK

The purpose of this contract is to prequalify independent medical and psychiatric doctors to provide evaluations for MCPS employees. Services will be required in response to a referral from the OHRD and ERSC. Areas of services might include orthopedic injuries, stress and/or anxiety, and cardiology issues. In any given year there are 10 – 30 evaluations requested. A referral is made to the medical doctor or psychiatrist and an evaluation and written report is required within 10 business days, absent extenuating circumstances. Upon request the prequalified independent and/or psychiatric doctor may be called upon to testify in an employee's proceedings.

MCPS reserves the right to add additional Contractors as needs arise during the contract term.

The contractors shall comply with all federal, state, and local laws and ordinances applicable to this work, including 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. To assist the contractors in their work, MCPS may disclose to the contractors, either in writing or orally, records or information which MCPS deems to be proprietary and/or confidential, including personnel records (hereinafter, "Confidential Information"). Confidential Information shall be maintained in confidence during the review 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 contractors shall use the Confidential Information solely for the purposes of the project. The contractors shall protect the Confidential Information from disclosure using at least the same degree of care as it uses to protect its own confidential information. The disclosure of Confidential Information to the contractors shall not of itself be construed as a grant of any right or license with respect to the information. In the event that the contractor is required by law, regulation or judicial or administrative process to disclose any Confidential Information, the contractor will promptly notify MCPS in writing, if permitted by law, prior to making any such disclosure in order to facilitate MCPS' seeking of a protective order or other appropriate remedy from the appropriate body. Upon completion of the work, the contractor will return to MCPS all tangible copies of any Confidential Information received from MCPS that are in the contractor's possession or control and will erase from its computer systems all electronic copies thereof.

4.0 MANDATORY SERVICE / REQUIREMENTS

The following services are considered mandatory:

- 4.1 Medical or Psychiatric Evaluations for employees referred for this independent assessment with an evaluation of the employee's fitness for work. (Attachment I, Return to Work Form).
- 4.2 The Contractor shall provide an evaluation report within 10 business days of evaluating the employee, absent extenuating circumstances.
- 4.3 Ongoing communication with the OHRD and ERSC, if necessary.
- 4.4 Collaboration with the employee's personal medical or psychiatrist, doctor or therapist, if given permission by the employee.
- 4.5 Maintenance of records.
- 4.6 The medical doctor or psychiatrist must be fully licensed in the state of Maryland and Board certified in their area of specialty.
- 4.7 Preferred, but not required, experience working in a Human Resources environment.
- 4.8 Preferred, but not required, additional languages spoken in addition to English.
- 4.9 **MCPS Staff:** No active MCPS full or part-time staff may be employed as an independent medical or psychiatric evaluator.

5.0 PLACE OF PERFORMANCE

Service will be provided at the awarded provider's facility for identified employees as referred by OHRD and ERSC.

6.0 PRICING / INVOICES

This contract shall be a firm fixed hourly rate contract based on 3.0 Scope of Work and 4.0 Mandatory Services/Requirements. Contractors shall itemize all tasks and hourly rates associated to performing their work. Contractors shall use a billing format that will adequately describe the services rendered.

Two invoices shall be provided. One invoice should be sent to the Project Contact (See 11.0) for review and sign off and the second invoice shall be sent to the MCPS Controller's Office, 45 W. Gude Drive, Suite 3200, Rockville, MD 20850.

7.0 SPECIAL CONSIDERATIONS

- 7.1 **Damages:** All claims of damage relating to contractual service will be the total responsibility of the contractor which shall hold harmless MCPS and its officials, agents, and employees, the Maryland State Department of Education (MSDE), and any other governmental agency and their assigns.
- 7.2 **Supplemental Service:** No additional hours beyond the prescribed time will be charged to MCPS.
- 7.3 **Duties:** The medical doctors and psychiatrists will only perform duties related to the employee referral and the completion of an independent medical and psychiatric exam.
- 7.4 **Workday:** The work will be performed in the appropriate amount of hours
- 7.5 **Transportation/Mileage Reimbursement:** The contract award does not include reimbursement for mileage.

8.0 CONTRACT TERM

The initial term of the contract shall be for two (2) years as stipulated in the RFP. MCPS reserves the right to extend this contract at existing prices, terms and conditions for up to three (3) additional one (1) year terms. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued to the successful vendor(s) 90 days prior to the expiration of the original contract. The vendor(s) shall have ten days from the date of notification to return the notice acknowledging its intent to accept or reject the extension. Once all responses are evaluated, MCPS staff may make a recommendation to the Board of Education to extend the contract or decide to rebid. If the contract is extended by the Board of Education a contract amendment will be issued.

9.0 PROVISION FOR PRICE ADJUSTMENT

Price increases on service labor rate will not be considered for the initial 2-year contract. Thereafter, the successful vendor must submit a written request for price relief. Adjustments for price increases on service labor rate will be based upon Consumer Price Index (CPI), specifically, the All Consumers Index, published by the U.S. Department of labor, Bureau of Labor Statistics, for the Washington, D.C., Metropolitan Area. The request shall not exceed 75% of the percentage change of January 1 CPI's, rounded to the nearest tenth of a percentage. Downward adjustments shall be made by MCPS without a request from the successful vendors. MCPS reserves the right to accept or reject the request as may be determined to be in the best interest of MCPS. Any services requested prior to a request for a price increase shall be honored at the original contract price. If the price increase is approved, a contract amendment will be issued authorizing the increase.

10.0 CONTRACT TERMINATION

MCPS reserves the right to cancel the contract in whole or in part at any time in accordance with Article 26, Part B.

11.0 INSURANCE

Respondents shall submit documentation of their malpractice insurance consistent with appropriate industry standards and shall maintain such malpractice insurance throughout the contract term. In addition:

The Contractor shall maintain Comprehensive Business insurance for protection from claims under the Workmen's Compensation Act, claims for damages because of bodily injury, death, or property damage to others, including employees of the Board of Education; and claims for damages arising out of the operation of motor vehicles, which may arise during the performance of the contract whether caused by the contractor or by any subcontractor or anyone directly or indirectly employed by either of them. The contractor shall also maintain product liability insurance. The aforementioned insurance shall cover the duration of the contract period, including all periods of the time and all places where work is performed under an expressed or implied warranty.

Prior to the execution of the contract by MCPS, the proposed awardee must obtain at its own cost and expense insurance with insurance company/companies licensed to do business in the state of Maryland. This needs to be evidenced by a certificate of insurance and/or copies of the insurance policies. The insurance must be kept in force and effect until termination of the contractual relationship with MCPS. Contractor's insurance shall be primary. Expected liabilities include the following:

Commercial General Liability

A minimum limit of liability of two million dollars (\$2,000,000) combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations

Independent Contractors

- Products and Completed Operations

Automobile Liability Coverage

A minimum limit of liability of two million dollars (\$2,000,000) combined single limit, for bodily injury and property damage coverage per occurrence including the following:

- Owned automobiles
- Hired automobiles
- Non-owned automobiles

Worker's Compensation/Employer's Liability

Meeting all requirements of Maryland Law and with the following minimum limits:

- Bodily Injury by Accident - \$500,000 each accident
- Bodily Injury by Disease - \$1,000,000 policy limits
- Bodily Injury by Disease - \$500,000 each employee

Additional Insured

Montgomery County Public Schools must be named as an additional insured on all liability policies.

Policy Cancellation

Forty-five (45) days written notice of cancellation or material change of any of the policies is required.

Certificate Holder:

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

12.0 PROJECT CONTACTS

The MCPS project contacts for this proposed procurement are:

Montgomery County Public Schools
Office of Human Resources (OHRD)
Mr. Robert Grundy, Director
45 Gude Drive, Suite 2100
Rockville, MD 20850
301-279-3270

Montgomery County Public Schools
Employee Retiree Services Center (ERSC)
Ms. Susanne DeGraba, Chief Financial Officer
45 W. Gude Drive, Suite 1200
Rockville, MD 20850

13.0 REFERENCES

Contractors are required to provide three (3) references. The references shall have company name, contact person, address and phone number of three (3) current customers for which a contract for similar services have been provided. If the reference information is not accurate and MCPS cannot contact the person(s) named your proposal may not be considered.

| <u>Company Name & Address</u> | <u>Contact Person</u> | <u>Phone Number</u> | <u>Contract Number</u> |
|-----------------------------------|-----------------------|---------------------|------------------------|
|-----------------------------------|-----------------------|---------------------|------------------------|

1. _____

Email _____

2. _____

Email _____

3. _____

Email _____

In determining the qualifications of an applicant, MCPS will consider the applicant's record and performance of any prior contracts with MCPS, federal departments or agencies, or other public bodies.

MCPS may conduct any necessary investigation to determine the ability of the Applicant to perform the work, and the Applicant shall furnish to MCPS all such information and data requested, such as information about its reputation, past performance, business and financial capability and other factors that demonstrate that the provider is capable of satisfying MCPS' needs and requirements for a specific contract. MCPS reserves the right to reject any proposal if the evidence submitted by the Applicant or investigation of such Applicant fails to satisfy MCPS that such Applicant is properly qualified to carry out the obligations of the contract and to complete all requirements contemplated therein. Consideration will be given to any previous performance with MCPS as to the quality and the acceptability of bidder's services.

All bidders submitting a proposal shall include evidence that they maintain a permanent place of business and copies of any and all appropriate licenses necessary to perform this work with their proposal. Applicants also shall demonstrate that they have adequate staff to perform the required services. Use of subcontractor(s) and/or third party providers, if any, must be specifically identified within the proposal. Subcontractor and/or third party provider roles shall be clearly expressed. MCPS reserves the right to accept or reject use of proposed subcontractor(s) and/or third party provider(s).

14.0 DEVIATIONS

Proposals must clearly identify any variances from or objections to the specifications in this RFP. Lacking any response to the contrary, MCPS will infer that the Applicant agrees to the specifications of this RFP, including the contract provisions set forth below.

15.0 MANDATORY SUBMISSIONS

Failure to include the following required submissions may render the proposal non-responsive as determined by the director of Materials Management.

- 15.1 Describe experience providing services similar to those MCPS is seeking: medical examinations, report preparation, testimony, etc. Please include frequency, scope, duration of services and other relevant descriptions to indicate experience.
- 15.2 The Contractor must describe staff employment procedures and how supervision of staff and quality of service will be monitored.
- 15.3 The Contractor must include complete resumes of qualifications and experience of all staff who will be assigned to this contract.
- 15.4 A list of at least three (3) references for the contracting agency, see 12.0 References
- 15.5 The Contractor shall provide in its response copies of Board certifications and Maryland licensure for medical doctors and psychiatrists
- 15.6 The Contractor shall list any instances where it provided an IME that was considered as part of an agency review of proceedings related to employee discipline or termination, etc.
- 15.7 The Contractor shall list any malpractice or comparable proceedings against it or its employees or agents.

- 15.8** A pricing proposal that includes a firm fixed hourly rate for the scope of services (See 6.0 Pricing / Invoices)
- 15.9** Insurance Requirements (see 11.0 Insurance Requirements)
- 15.10** Audited financial statements. Financial data will be held confidential if so requested.
- 15.11.** Completion of the certifications attached to this RFP, *Equal Opportunities Certification, Certification of Nonsegregated Facilities, Minority Business Enterprises Certification, Non-Debarment Acknowledgement, and Vendor's Certification*. Evaluation of proposals is dependent on satisfactory completion of these forms.

16.0 SCHEDULE

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

| | |
|-------------------------|---------------------------------|
| RFP issued: | May 27, 2015 |
| Questions due: | June 4, 2015 |
| Pre-bid conference: | June 10, 2015, 1:00 – 3:00 p.m. |
| Proposals due: | June 19, 2015, 2:00 p.m. |
| Interviews, if needed | Week of June 29, 2015 |
| Anticipated award date: | July 14, 2015 |

The successful Contractors will be expected to be ready to start immediately upon award of the contract.

17.0 PRE-BID CONFERENCE

A pre-bid conference for prospective offerors will be held on June 10, 2015, 1:00 – 3:00 p.m., Montgomery County Public Schools, 45 W. Gude Drive, 3rd Floor, Pine Room 3C03, Rockville, MD. 20850. Attendance at this conference is encouraged, but is not mandatory. The purpose of the pre-bid conference will be to allow prospective offerors the opportunity to obtain clarification of the RFP and ask questions directly of MCPS staff to assist them in the preparation of Proposals. Questions are due June 4, 2015, close of business and responses will be presented at the prebid conference.

Contractors shall provide the names of the persons who will attend the pre-bid conference. Please send no more than two representatives. Send the names to Barbara Regalia, fax number 301-279-3173 or e-mail, Barbara_Regalia@mcpsmd.org no later than June 8, 2015.

18.0 EVALUATION CRITERIA

The Contractors understanding of the requirements as determined by the:

- 18.1** Completeness of Response
- 18.2** Contractor's ability to provide described mandatory services
- 18.3** Related past experience and qualification
- 18.4** State Licenses and Board Certifications

18.5 References

18.6 Pricing

18.7 Contractor's understanding of the scope of services as demonstrated by Mandatory Submissions

19.0 **SUBMISSION GUIDELINES**

The response shall address each RFP specification. Vendors may request via e-mail to Mrs. Barbara Regalia, team leader, Procurement Unit, at Barbara.Regalia@mcpsmd.org the Microsoft Word document of the RFP to help them in preparing their response.

One (1) original, four (4) copies, and one (1) redacted copy must be sent by mail, courier, or hand-delivery. No faxes of proposals will be accepted.

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

Proposals are to be received no later than 2:00 p.m., on Friday June 19, 2015. Submit responses of the entire RFP proposal to:

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

Please contact MCPS Procurement Unit via e-mail at Barbara.Regalia@mcpsmd.org to receive an electronic MS Word copy of the RFP.

Please note that the Board or 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.

MCPS reserves the right to make an award without further discussion of the proposals received. MCPS also reserves the right to ask clarifying questions about submitted proposals. Should proposals submitted require additional clarification and/or supplementary information, Applicants should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when requested. It is understood that your proposal will become part of MCPS' file on this matter without obligation to MCPS.

20.0 ADDENDA/ERRATA

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

21.0 VENDOR OBLIGATION

Contractors' and sub-contractors' responsibility regarding registered sex offenders:

Maryland law requires that any person who enters a contract with a county board of education or a nonpublic school "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. 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.

Each contractor shall screen its work forces to ensure that a registered sex offender does not perform work at a county public school and also ensure that a subcontractor and independent contractor conducts screening of its personnel who may work at a school. The term "work force" is intended to refer to all of the contractor's direct employees and subcontractors and/or independent contractors it used to perform the work. Violation of this provision may cause MCPS to take action against the contractor up to and including termination of the contract.

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

23.0 eMaryland Marketplace

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

24.0 INQUIRES

Inquiries regarding this solicitation must be submitted in writing, to Barbara Regalia, CPPB, team leader, Montgomery County Public Schools, Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, Maryland 20850, fax number 301-279-3173. The Board of Education will not be responsible for any oral or telephone explanation or interpretation. Vendor contact with any other MCPS employee regarding this solicitation until the contract is awarded by the Board of Education will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration of its RFP response.

The MCPS Procurement website address is

<http://www.montgomeryschoolsmd.org/departments/procurement/>

25.0 UNNECESSARILY ELABORATE BROCHURES

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

26.0 PLACE OF PERFORMANCE

Service will be provided at the awarded provider's facility for identified employees as referred by OHRD and ERSC.

27.0 CERTIFICATION

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

28.0 CONTRACT

MCPS plans to enter a contractual agreement with the firm(s) to whom the award is made and intends to make the attached Articles 1 - 31 a part of the contract. Articles 15, 29 and 30 are not applicable to this RFP.

Equal Opportunity Certification

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

() Yes () No

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

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

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

() Yes () No

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

() Yes () No

5. Are you required to submit an annual compliance report as described in 41 CFR 60-17 (a)?

() Yes () No

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

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

_____ (1)* (2)** (3)***

(Subcontractor's Name)

_____ () Yes () Yes () Yes

(Street)

_____ () No () No () No

(City) (State)

_____ (1)* (2)** (3)***

(Subcontractor's Name)

_____ () Yes () Yes () Yes
(Street)

_____ () No () No () No
(City) (State)

- *(1) Previously held contracts subject to EQ 10925, 11114, and 11246, as amended.
- ***(2) Previously filed certificate of nonsegregated facilities.
- ****(3) Previously filed annual (EEO-1, EEO-4, or EEO-6) compliance report.

Certification of Nonsegregated Facilities

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

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

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

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

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

PLACE OF PERFORMANCE

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

(Name of Facility)

(Address)

Minority Business Enterprise

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

Check the appropriate box below.

- African American Asian American Hispanic Native American
- Female Disabled None

NON-DEBARMENT ACKNOWLEDGEMENT:

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

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

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

By (Signature) _____

Name and Title _____

Witness Name and Title _____

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

- A. The undersigned proposes to furnish and deliver supplies, equipment, or services, in accordance with specifications and stipulations contained herein, and at the prices quoted. This certifies that this bid is made
- B. without any previous understanding, agreement or connection with any person, firm, or corporation making a bid for the same supplies, materials, or equipment, and is in all respects fair and without collusion or fraud.
- C. I hereby certify that I am authorized to sign for the bidder. I/We certify that none of this company's officers, directors, partners, or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of the Montgomery County Public Schools, Administrative or Supervisory Personnel, or other employees of the Board of Education has any interest in the bidding company except as follows:

By (Signature) _____

Name and Title _____

Witness Name and Title _____

NOTICE TO BIDDERS

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

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

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

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

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

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

CONTRACT ARTICLES

| <u>No.</u> | <u>Title</u> |
|------------|-------------------------------------|
| 1 | Description/Specifications |
| 2 | MCPS Project Officer |
| 3 | Personnel |
| 4 | MCPS Contract Administrator |
| 5 | Statement of Work |
| 6 | Deliverables |
| 7 | Price |
| 8 | Period of Performance |
| 9 | Submission of Vouchers |
| 10 | Inspection and Acceptance |
| 11 | Payment |
| 12 | Withholding Contract Payments |
| 13 | Services of Consultants |
| 14 | Publication and Publicity |
| 15 | Data Collection (Not Required) |
| 16 | Documentation and Copyright |
| 17 | Notice of Delays |
| 18 | Excusable Delays |
| 19 | MCPS Property |
| 20 | Covenant Against Contingent Fees |
| 21 | Officials Not to Benefit |
| 22 | Equal Opportunity |
| 23 | Compliance With Local Laws |
| 24 | Changes |
| 25 | Disputes |
| 26 | Termination for Convenience of MCPS |
| 27 | Order of Precedence |
| 28 | Severability |
| 29 | Bid Performance (Not Required) |
| 30 | Performance Bond (Not Required) |
| 31 | Nonappropriation of Funds |

ARTICLE 1. DESCRIPTION/SPECIFICATIONS

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

ARTICLE 2. MCPS PROJECT 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 is also responsible for the review and approval of any and all deliverables including reports, and such other responsibilities as may be specified in the contract.
- b) The project 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 project officer may be changed at any time; but notification of the change, including the name and address of the successor project officer, will be provided to the contractor in writing.

ARTICLE 3. PERSONNEL

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

Name _____

Title _____

Name _____

Title _____

Name _____

Title _____

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

ARTICLE 4. MCPS CONTRACT ADMINISTRATOR

For day-to-day operational problems and for technical questions, the successful vendor may contact the project officer.

ARTICLE 5. STATEMENT OF WORK

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

ARTICLE 6. DELIVERABLES

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

ARTICLE 7. PRICE

This will be a firm fixed hourly rate based on 3.0 Qualifications and 4.0 Scope of Work outlined in the vendor's response. Contractors shall use a billing format that will adequately describe the services rendered.

ARTICLE 8. PERIOD OF PERFORMANCE

The term of contract shall be for two year as stipulated in the RFP. After the initial contract term MCPS reserves the right to extend this contract at existing prices, terms and conditions for up to three (3) additional one (1) year terms.

ARTICLE 9. SUBMISSION OF VOUCHERS

All Contracts

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

ARTICLE 10. INSPECTION AND ACCEPTANCE

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

ARTICLE 11. PAYMENT

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

and director of the Department of Materials Management. A payment schedule will be jointly developed between MCPS and the awarded contractor.

ARTICLE 12. WITHHOLDING OF CONTRACT PAYMENTS

Despite any other payment provisions of this 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 Convenience of MCPS," as applicable. MCPS shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted.

ARTICLE 13. SERVICES OF CONSULTANTS

The contractor is prohibited from using the services of MCPS employees in performing this contract. Former employees may be used, provided that a 12-month period has elapsed since their last employment at MCPS.

ARTICLE 14. PUBLICATION AND PUBLICITY

The contractor shall not publish or otherwise publicize the methods employed or results achieved until the work performed has been accepted by MCPS. Any publication or discussion of services or presentations and other forms of publicity by the contractor requires express written consent from MCPS, subject to the following conditions:

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

The contents of this publication do not necessarily reflect the views or policies of MCPS; and the mention of trade names, commercial products, or organizations does not imply endorsement by MCPS.

- c) Confidentiality of students and their families is maintained at all times.

ARTICLE 15. DATA COLLECTION

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

ARTICLE 16. DOCUMENTATION AND COPYRIGHT

Collected data, analyses, and any analytical processes, programs and files developed as a contractual requirement are the sole property of MCPS. Programs shall be completely documented, including the file layout of tapes, disks, and so on. MCPS may, at its sole discretion, waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any process or program and may license its use by others for a fee or without charge.

ARTICLE 17. NOTICE OF DELAYS

Whenever the contractor has knowledge that any actual or potential situation, including, but not limited to, labor disputes is delaying or threatening to delay the timely performance of the work under this contract, the contractor shall immediately give written notice, including all relevant information, to the director of the 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, and the contract price shall be adjusted to reflect the change pursuant to the stipulations of the "changes" article.

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

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES

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

ARTICLE 21. OFFICIALS NOT TO BENEFIT

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

ARTICLE 22. EQUAL OPPORTUNITY

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

- a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, or national origin. Such action shall include, but not be limited to, employment, grade improvement, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices of the provisions of this Equal Opportunity clause.

- b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- c) The contractor will send to each labor union, or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union or workers' representative of the contractor's commitment under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

ARTICLE 23. COMPLIANCE WITH LOCAL LAWS

The contractor shall comply with all applicable laws, ordinances, and codes of Maryland and Montgomery County.

ARTICLE 24. CHANGES

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

ARTICLE 25. DISPUTES

- a) Any dispute concerning a question of fact arising under this contract shall be disposed of by written agreement between the contractor and the contracting officer. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the contract performance.
- b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in Paragraph a) above, provided that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on 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 a notice specifying the default; or
- (2) Whenever for any reason the Board of Education shall determine that such termination is in the best interest of MCPS.

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

- b) After receipt of a Notice of Termination and except as otherwise directed by the contracting office, the contractor shall:
 - (1) Stop work under the contract on the date and to the extent specified by the Notice of Termination
 - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as it is not terminated
 - (2) 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, 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 may, subject to any review required by MCPS procedures in effect as of the date of execution of this contract, determine, on the basis of information available to them, the amount, if any, due to the contractor by reason of the termination and shall thereupon pay to the contractor the amount so determined.
- d) Subject to the provisions of Paragraph c) and subject to any review required by MCPS procedures in effect as of the date of execution of this contract, the contractor and the superintendent may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the contractor shall be paid the agreed amount.
- e) If the contractor and the superintendent fail to agree in whole or in part, as provided in Paragraph d), as to the amounts with respect to costs and fee or as to the amount of the fee to be paid to the contractor in connection with the termination of work pursuant to this article, the superintendent shall, subject to any review required by MCPS procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the contractor by reason of the termination and shall pay to the contractor the amount determined as follows:
 - (1) If the settlement includes cost and fee:
 - (a) There shall be included all costs and expenses reimbursable in accordance with this contract not previously paid to the contractor for the performance

- (b) of this contract prior to the effective date of the Notice of Termination and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the superintendent, provided, however, that the contractor shall proceed as rapidly as practicable to discontinue such costs.
- (b) There shall be included so far as not included under (a) above the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Paragraph b) (5) above, which are properly chargeable to the terminated portion of the contract.
- (c) There shall be included the reasonable costs of settlement including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory, provided, however, that if the termination is for default of the contract, there shall not be included any amounts for the preparation of the contractor's settlement proposal.
- (d) There shall be included a portion of the fee payable under the contract determined as follows: (i) If this contract is terminated for the convenience of the MCPS and not for the default of the contractor, a percentage of the fee equivalent to the percentage of the completion of the work contemplated by the contract, less fee payments previously made, shall be paid. (ii) If this contract is terminated for the default of the contractor, the total fee payable shall be such a proportionate part of the fee (or, if this contract calls for services of different types, of such part of the fee as is reasonably allowable to the type of service under consideration) as the total amount of service delivered to and accepted by MCPS bears to the total amount of services of a like kind called for by this contract.

If the amount determined under this Subparagraph (1) is less than the total payment made to the contractor, the contractor shall repay the excess amount.

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

- g) If a partial termination is made, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the contractor and the superintendent; and such adjustment shall be shown by an amendment to this contract.

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

ARTICLE 27 ORDER OF PRECEDENCE

If any conflict in the interpretation of the requirements of this contract occurs, preference shall be given in the following order of precedence: a) the contract provisions, b) the statement of work in the request for proposals, and c) the contractor's proposal in response to the request for proposals, excluding any terms in any contract template provided by the contractor that are not expressly incorporated herein.

ARTICLE 28 SEVERABILITY

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

ARTICLE 29 BID PERFORMANCE BOND (not required)

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

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

ARTICLE 30. PERFORMANCE BOND (not required)

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

ARTICLE 31. NONAPPROPRIATION OF FUNDS

- (a) In the event sufficient funds are not appropriated for the payment of all payments required to be paid in the next succeeding renewal term 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 renewal 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.
- (b) MCPS agrees to deliver notice to the contractor of such termination at least thirty (30) days prior to the end of the then current fiscal year.
- (b) If this agreement is terminated under this provision and to the extent lawful, MCPS covenants that it will not, until the date on which the 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. 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 34. ENTIRE CONTRACT

The contract, including the RFP and the Contractor's response to the RFP, which are incorporated herein by reference, 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.

