



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

MARYLAND

301-279-3172

February 11, 2016



RFP Number: 4378.1  
Questions due: February 19, 2016  
Prebid Conference: February 25, 2016  
Due Date: March 11, 2016  
Open Time: 2:00 p.m.

To: Prospective Offerors:

Montgomery County Public Schools (MCPS) is seeking proposals from qualified investment consulting firms to provide investment consulting services to the MCPS Defined Contribution Investment Committee (the "DCIC") and MCPS staff (the "Staff") for its voluntary 403(b) & 457(b) plans (the "Plans"). These services will not commence earlier than July 1, 2016.

A pre-bid conference will be held from 10:00 a.m. - noon on Thursday February 25, 2016, at the MCPS, 45 W. Gude Drive, 1<sup>st</sup> Floor, Aspen Conference Room 1C19, Rockville, MD 20850. Questions regarding the RFP must be submitted by the close of business on February 19, 2016 along with the Minimum Qualifications Checklist.

Proposals must be received on or before 2:00 p.m., on March 11, 2016. Proposals received after this date and time will not be considered. Proposals must be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals must be marked on cover pages of each with "**ORIGINAL**", "**COPIES**" and "**REDACTED**". Proposals are to be delivered to Montgomery County Public Schools Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, Maryland 20850

One (1) original, five (5) separate copies, one (1) electronic version on a USB flash drive or CD and one (1) redacted copy of their 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 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

**Procurement Unit**

KCL:br  
Enclosure

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



**MONTGOMERY COUNTY PUBLIC SCHOOLS**

**Request For Proposal No. 4378.1, Defined Contribution Investment Consultant**

**Table of Contents**

	<b>Page</b>
<b>PART A</b>	
1.0 Intent .....	1
2.0 Background .....	1
3.0 General Terms and Conditions .....	1-2
4.0 Scope of Work.....	2-3
5.0 Contract Term.....	3
6.0 Fee Schedule .....	3
7.0 Project Officer .....	4
8.0 Contract Termination .....	4
9.0 References .....	4-5
10.0 Format of Response and Submission Guidelines .....	5-6
11.0 Mandatory Submissions .....	6
12.0 Schedule of Events.....	6
13.0 Prebid Conference.....	6-7
14.0 Contractor Obligation .....	7-9
15.0 Multi-Agency Participation.....	9
16.0 eMaryland Marketplace .....	9
17.0 Addenda/Errata.....	9-10
18.0 Inquiries .....	10
19.0 Unnecessarily Elaborate Brochures .....	10
20.0 Contract .....	10
21.0 Certification .....	10

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



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

**Request for Proposal No. 4378.1, Defined Contribution Investment Consultant**

**1.0 INTENT**

Montgomery County Public Schools (MCPS) is seeking proposals from qualified investment consulting firms to provide investment consulting services to the MCPS Defined Contribution Investment Committee (the "DCIC") and MCPS staff (the "Staff") for its voluntary 403(b) & 457(b) plans (the "Plans"). These services will not commence earlier than July 1, 2016.

Enclosed are instructions for responding to the RFP, the minimum qualifications checklist (Appendix A), the detailed questionnaire (Appendix B), the cost proposal (Appendix C), and the MCPS Investment Lineup (Appendix D). Additional information is included in the body of the RFP.

**2.0 BACKGROUND**

Since 1965, MCPS has offered its employees the opportunity to participate in a defined contribution program, as permitted under Section 403(b) of the Internal Revenue Code. In January 2003, MCPS added the deferred compensation plan (457(b)). MCPS has approximately 29,000 employees who are eligible to participate in the Plans.

On January 1, 2016 MCPS consolidated from nine vendors to a single administrative services provider, Fidelity Investments. In conjunction with this change, the Defined Contribution Investment Committee ("DCIC") was formed to create, monitor and modify when necessary a menu of investment options. With the assistance of an investment consultant, the DCIC created the menu listed in Appendix D.

<b>Sponsor:</b>	<b>Montgomery County Public Schools</b>
Retirement Program Structure:	Voluntary §403(b) and §457(b) programs of a governmental organization; not subject to ERISA
Administrative Services Provider	Fidelity Investments
Number of employees eligible to participate as of November 2015:	~29,000
Total Current Program Assets:	\$1.2 Billion
Investment Options:	See Appendix D

**3.0 GENERAL TERMS AND CONDITIONS**

**A. Pre-selection Criteria**

To be eligible to respond to this RFP, a respondent must meet all of the requirements within the "Minimum Qualifications Checklist" (Appendix A). The Minimum Qualifications Checklist

must be completed and returned via email to [Barbara\\_Regalia@mcpsmd.org](mailto:Barbara_Regalia@mcpsmd.org) by February 19, 2016.

**B. Form**

All proposals must include a completed Appendix B (RFP Questionnaire) and Appendix C (Cost Proposal). All proposals must be returned to MCPS, see 10.0 Format of Response and Submission Guidelines.

Each question must be independently completed on the questionnaire response document. Marketing literature and other materials may be attached as supporting evidence if so desired, but responses indicating “see attached materials” will be viewed negatively.

**C. Evaluation Criteria**

MCPS will evaluate candidates on criteria deemed to be in the best interest of the plans, including but not limited to:

- Responsiveness and thoroughness of the proposal.
- Experience with similar engagements
- References
- Approach to the assignment
- Levels of experience of personnel who will provide services
- Pricing – Cost Proposal

**D. Term of Eligibility**

Agreements resulting from this RFP shall remain in force based on the Contract Term, see 5.0 Contract Term. MCPS can terminate the contract with 60 days written notice. In accordance with the MCPS Board of Education (the “Board”) procedures, MCPS will periodically review the list of qualified vendors.

**4.0 SCOPE OF WORK**

MCPS seeks proposals from qualified firms to offer investment consulting services to the defined contribution program. The objectives of MCPS for the firm ultimately selected are as follows:

Overall

1. Support participant investment outcomes by offering investment options that allow for proper diversification, appropriate quality and reasonable fees.
2. Retain fiduciary responsibility for the Investment Menu and serve as a fiduciary to the Montgomery County Public Schools 403(b) and 457(b) plans.
3. Attend regularly scheduled DCIC meetings to present information on and to answer questions regarding performance, research, analysis and recommendations.
4. Provide the DCIC and staff with educational sessions on pertinent investment, regulatory, and governance topics, as needed.
5. Provide advice on appropriate governance structure and oversight.

6. Provide periodic benchmarking studies on administrative services provided, plan fee structure, and make recommendations for enhancements.

#### Investment Menu

1. Provide ongoing oversight including but not limited to monitoring of current investment offerings and related fees charged to participants, and assisting with replacement of investment offerings when appropriate.
2. Generate quarterly performance reports and present separate and independent analysis of performance of the investment options to the Committee on a quarterly basis.
3. Monitor all investment managers in the investment menu lineup through periodic interviews and written evaluations. Provide advice with respect to manager selection and change decisions.
4. Participate in conference calls and ad hoc meetings with DCIC members and staff. There is a minimum of one onsite meeting per year.
5. Provide the DCIC with educational sessions on pertinent investment topics as well as fiduciary and plan governance best practices. The purpose of these sessions is to educate the DCIC regarding current investment topics, trends in the capital markets and fiduciary matters.
6. Provide research / white papers on current investment topics and fiduciary standards.
7. Provide independent written reviews of market and asset class performance on a regular basis.
8. Conduct such services under the contract as may be reasonably asked of a general investment consultant by a public defined contribution plan.

### 5.0 CONTRACT TERM

MCPS plans to enter into an agreement with the selected respondent for an initial period of 36 months. MCPS would like the respondent to guarantee contract period rates and/or fees through June 30, 2019 as outlined in Appendix C.

The contract will not begin until at least July 1, 2016 after approval by the Montgomery County Public Schools Board of Education (the "Board"). After the initial contract term of 36 months rates/fees may be renewed annually on the contract anniversary date, July 1<sup>st</sup>, if agreed to by both parties. MCPS reserves the right to terminate any contract for cause during the contract term subject to the terms of signed contracts and agreements.

### 6.0 FEE SCHEDULE

Please complete Appendix C "Cost Proposal" to detail the components of your fee proposal and the total annual price. The fee proposal will be reviewed by MCPS and will be a factor in its selection of finalists. The selection of a firm to act as investment consultant will not be based on which firm submits the lowest fee proposal, as the fee proposal is only one of the selection criteria.

MCPS reserves the right to add or delete services during the contract terms as needs arise.

**7.0 PROJECT OFFICER**

The MCPS project officer for the proposed procurement is:

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

Prior to Board approval all prospective respondents are cautioned that information relating to the proposed procurement may be obtained only from Barbara Regalia, CPPB, Team Leader, as indicated in 18.0 Inquiries.

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

**8.0 CONTRACT TERMINATION**

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

**9.0 REFERENCES**

All respondents shall include a list of a minimum of three references **from current clients** who utilize the firm’s defined contribution services and who can attest to the firm’s quality of work. All respondents shall also include contact information for a minimum of three **former clients** that utilized the firm’s defined contribution services. Include names of client, contact persons, email addresses and phone numbers of all references.

References may or may not be reviewed or contacted at the discretion of MCPS. Typically, only references of the top ranked short listed respondents are contacted. MCPS reserves the right to contact references other than, and/or in addition to, those furnished by a respondent including MCPS staff members working with vendors.

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



4. \_\_\_\_\_

Email \_\_\_\_\_

5. \_\_\_\_\_

Email \_\_\_\_\_

6. \_\_\_\_\_

Email \_\_\_\_\_

**10.0 FORMAT OF RESPONSE AND SUBMISSION GUIDELINES**

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

Vendors may contact Barbara Regalia to receive the word document to help them in preparing their response, [Barbara\\_Regalia@mcpsmd.org](mailto:Barbara_Regalia@mcpsmd.org). **Responses to this RFP are due on or before 2:00 p.m. on March 11, 2016, at the address below. No electronic responses will be accepted. One (1) original, five (5) separate copies, one (1) electronic version on a USB flash drive or CD and one (1) redacted copy should be sent by mail, courier or hand delivered to:**

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

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

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

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

respondents who are in the competitive range. Therefore, it is important that your proposal be submitted initially on the most favorable terms from both the technical and cost standpoints. After the submission and closure of proposals, no information will be released until after the award. It is understood that your proposal will become a part of the official file on this matter without obligation to MCPS.

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

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

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

## 11.0 MANDATORY SUBMISSIONS

RFP response  
 Appendix A Minimum Qualifications (due February 19, 2016)  
 Appendix B Questionnaire  
 Appendix C Cost Proposal  
 References

## 12.0 SCHEDULE OF EVENTS

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

Release of RFP	February 11, 2016
Vendor Questions & Minimum Qualifications Checklist Due	February 19, 2016
MCPS Response to Questions/Pre-bid Conference	February 25, 2016, 10:00 a.m. - noon
MCPS Responses from Pre-bid Conference	February 29, 2016
RFP Due	March 11, 2016, 2:00 p.m.
First Round Interviews	Week of April 11, 2016
Finalist Interviews	Week of April 25, 2016
Vendor Selection, subject to Board approval	May 10, 2016
Services Commencement Date	July 1, 2016

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

## 13.0 PRE-BID CONFERENCE

A pre-bid conference for prospective firms will be held on Thursday February 25, 2016 from 10:00 a.m. to noon at the MCPS, 45 W. Gude Drive, 1<sup>st</sup> Floor, Aspen Conference Room 1C19, Rockville, MD 20850. Attendance at this conference is encouraged, but is not mandatory. Questions

to this RFP are due by the close of business Friday February 19, 2016, so that responses may be prepared for distribution at the pre-bid conference. The purpose of the pre-bid conference will be to allow prospective firms the opportunity to obtain clarification of the RFP and ask questions directly of MCPS staff to assist them in the preparation of their proposal responses.

Firms may request the call-in number information to participate in the pre-bid conference. Firms shall provide the names of the persons who will attend the pre-bid conference. Please send no more than two representatives. Send the names of the representatives to Mrs. Regalia, via fax at 301-279-3173, or via e-mail at [Barbara\\_Regalia@mcpsmd.org](mailto:Barbara_Regalia@mcpsmd.org) no later than Monday February 22, 2016.

## 14.0 CONTRACTOR OBLIGATION

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

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

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

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

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

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

commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

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

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

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

Under recent amendments to § 5-561 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its work-force must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term "work-force" in this and the preceding section refers to all of the contractor's direct employees, subcontractors and their employees, and/or independent contractors and their employees that the contractor uses to perform the work required by the contract.

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

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

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

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

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

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

## **15.0 MULTI-AGENCY PARTICIPATION**

MCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, other non-public schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that required these goods, commodities and/or services. Use of this solicitation by other agencies may be dependent on special local/state requirements attached to and made a part of the solicitation at time of contracting. The supplier/contractor agrees to notify the issuing agency of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested. A copy of the contract pricing and the bid requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own contract with the Award Bidder(s) and this contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the Award Bidder. MCPS assumes no authority, liability, or obligation on behalf of any other public or non-public entity that may use any contract resulting from this bid MCPS pricing is based on the specifications provided in this solicitation.

## **16.0 eMaryland Marketplace**

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

## **17.0 ADDENDA/ERRATA**

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the sole responsibility of the vendor to check the "Event Calendar" on the MCPS website available at <http://www.montgomeryschoolsmd.org/departments/procurement/> or to contact Barbara Regalia, CPPB, Team Leader in the Procurement Unit at 301-279-3172, to verify whether addenda/errata have

been issued. Failure to provide the signed acknowledgement of the addenda/errata may result in the bid being deemed non-responsive.

## 18.0 INQUIRIES

Inquiries regarding this solicitation must be submitted in writing, to Barbara Regalia, CPPB, Team Leader, Montgomery County Public Schools, 45 West Gude Drive, Suite 3100, Rockville, MD 20850, fax number 301-279-3173. Questions must be received by 4 p.m. eastern standard time, February 19, 2016 in order for the Questions and Answers to be given out at the prebid conference meeting. The MCPS 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 response. The MCPS Procurement website address is <http://montgomeryschoolsmd.org/departments/procurement/>.

## 19.0 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.

## 20.0 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.**

## 21.0 CERTIFICATION

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

### Equal Opportunity Certification

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

( ) Yes ( ) No

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

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

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 (EE0-1, EEO-4, or EEO-6) compliance report.

### **Certification of Nonsegregated Facilities**

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

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

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

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

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

### **NOTICE TO BIDDERS**

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

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

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

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



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

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

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

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

Check the appropriate box below.

- African American     Asian American     Hispanic     Native American  
 Female             Disabled             None

**IV. NON-DEBARMENT ACKNOWLEDGEMENT:**

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

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

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

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

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

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

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

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

**CONTRACT ARTICLES**

<u>No.</u>	<u>Title</u>
1	Description/Specifications
2	MCPS Project Coordinator
3	Personnel
4	MCPS Contract Administrator
5	Statement of Work
6	Deliverables
7	Price
8	Period of Performance
9	Submission of Invoices
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 Security (Not Required)
30	Performance Bond (Not Required)
31	Non-appropriation of Funds
32	Independent Contractor
33	Governing Law
34	Entire Contract

**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 COORDINATOR**

- a) The MCPS project coordinator is responsible for the technical aspects of the project and technical liaison with the contractor. The MCPS project coordinator 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 coordinator 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 coordinator may be changed at any time; but notification of the change, including the name and address of the successor, 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 \_\_\_\_\_

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 coordinator.

**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**

The proposed contract is expected to be awarded as a firm fixed contract based on the services and performances of the tasks described in 4.0 Scope of Work and 11.0 Mandatory Submissions. See Appendix C Cost Proposal.

**ARTICLE 8. PERIOD OF PERFORMANCE**

The initial contract term shall be for 36 months starting July 1, 2016. MCPS is requesting that respondents guarantee contract period rates and/or fees through June 30, 2019. After the initial contract term rates/fees may be renewed annually on the contract anniversary date of July 1<sup>st</sup>, if agreed by both parties. See 5.0 Contract Term.

**ARTICLE 9. SUBMISSION OF INVOICES**All Contracts

The contractor's invoices shall be approved for payment by the project coordinator only after the inspection or other evaluation has been completed and after the project coordinator is satisfied that the equipment meets all the specifications and requirements as detailed in 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 coordinator and director of the Department of Materials Management. A payment schedule will be jointly developed between MCPS and the awarded contractor.

**ARTICLE 12. WITHHOLDING 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 (Not Required)**

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 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.

- (e) 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 SECURITY (not required)**

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

The bid bond shall be returned to all except the successful 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. NON-APPROPRIATION 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.
- (c) 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 law's 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.





**MINIMUM QUALIFICATIONS**

1. The respondent must agree in writing to serve as a fiduciary to the Montgomery County Public Schools 403b and 457b plans.
2. The respondent must have a sizable client base of \$10 billion in assets under advisement.
3. The respondent's lead consultant assigned to this account must have a minimum of ten years relevant investment experience in defined contribution plans. Relevant experience includes serving as an investment consultant for institutional clients, serving as chief investment officer of a large institutional fund, and similar significant experience. A person with investment or portfolio management experience is preferred.
4. Respondents must have no ownership of, or association with, brokerage firms, investment management companies, or investment banking companies.
5. The respondent may be required to meet with and explain its work and recommendations to the DCIC. It is important that the respondent can demonstrate the ability to communicate clearly and concisely on complex topics and establish credibility with a group of diverse professional backgrounds.



## Questionnaire

### General Information

1. Please provide the following information with respect to your firm:
  - A brief history of your firm, including its year of organization
  - The location of the firm's headquarters and the address of the office that would service this account
  - Ownership structure of the firm, including any parent, affiliated companies, or joint ventures
  - Any significant, recent developments with regard to the firm and/or its principals
2. Is your firm, its parent or affiliate, a registered investment advisor with the SEC under the Investment Advisers Act of 1940? If not, what is its fiduciary classification? Please state whether the firm is or is not a fiduciary as defined by the Employee Retirement Income Security Act of 1974 (ERISA).
3. Please provide a copy of your firm's most recent audited financial report and quarterly financial statement, and SEC Form ADV Part I and II, if registered as an investment advisor with the SEC.
4. Describe all financial relationships with placement agents.
5. Describe any circumstance where the firm, parent company or an affiliate will receive revenues, noncash, or in-kind benefits from an investment management company (e.g. for affiliated investment managers, for inclusion in database, for conference participation, for strategic advice, etc.)? Describe the policies the firm has in place to manage potential conflicts of interest. Does the firm receive any revenues, noncash or in-kind benefits from the firms that manage the funds on the MCPS Investment Menu (Appendix D)? Does the firm or any employee of the firm invest their own capital in investment opportunities that they also recommend for clients? If so, please describe. Provide a copy of your conflict of interest policy.
6. Does the firm have any business relationship with any trustee, employee, or service provider of the Plan? If so, describe the relationship.
7. Does the firm allow for firms where family members of principals, officers, or investment professionals of the firm are employed to be on the recommended/buy list of investment managers? If yes, please describe the firm's policy to manage potential conflicts of interest?
8. Does your firm carry professional liability or errors and omissions insurance that would cover your services to the plans? If so, what is the limit of coverage? Who is the insurer?
9. Has your firm had any judgments against it with respect to a client engagement over the past 5 years? Are there any outstanding litigation claims against your firm? Please provide

information regarding any regulatory censure or litigation involving business related to the scope of requested services within the past five years.

10. Provide the number of clients by asset size in each of the following categories:

Size (in millions)	Corporate Funds		Public Pensions		Endowment/ Foundations	
	DB	DC	DB	DC	DB	DC
\$0-\$50						
\$51-\$500						
\$501-\$1,000						
\$1,001-\$5,000						
Over \$5,000						

11. Indicate the number of defined contribution plans you perform investment consulting services in each of the following plan participant count ranges:

Number of participants	Number of Current DC Plans	Number Added Past Two Years
< 499		
500-999		
1,000-4,999		
5,000-9,999		
>10,000		
<b>Total</b>		

12. How many years has your firm been providing consulting services to tax-exempt defined contribution clients? Please include the scope of services provided.

13. What are your organization's main strengths relative to other investment consulting firms?

14. List your top five clients and the percentage of firm revenue and percentage of assets under advisement that those clients represent.

15. Identify the principals and the “key man” individuals of the firm.
16. Provide at least three references of tax-exempt clients with assets in excess of \$500 million and less than \$3 billion who have utilized defined contribution consulting services for more than three years. Please include contact names and telephone numbers, ideally these references should be clients assigned to the consultant(s) proposed in question 23.
17. Indicate the number of client relationships gained and lost in the last five years and indicate the reasons for terminations and non-renewal.
18. If your firm provides portfolio management or brokerage services, describe how conflicts of interest between research and portfolio management and/or brokerage functions are prevented.
19. Please complete the below chart.

<b>Professional Staff</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>
Lead Consultants			
Consultants			
Provide further breakdown of operational vs investment			
Research Analysts – Equity			
Research Analysts – Fixed Income			
Research Analyst – Alternatives			
<b>Total Employees</b>			

20. Describe the turnover of professional staff (senior management and key professionals, including consultants) over the past five years. Include name, position of responsibility, and reason for departure.

**Investment Consultant(s)**

21. Provide the resumes of all principals, other professionals, and support personnel expected to be assigned to this account. Include their length and type of experience in defined contribution consulting/advising services, length of employment with current firm, and any specialty expertise they possess. Does the individual have portfolio management or asset allocation experience? If so, please provide details and performance measurements or track record if available.
22. Describe the client load for the assigned consultant(s). Estimate the proportion of available time that the assigned consultant(s) will spend on this account and the number of other clients for whom they are/will primary. Describe the size and type of the other clients.
23. What is the average and range of number of clients per consultant? How many consultants are dedicated to defined contribution plans vs defined benefit plans? Please provide an organization chart for the firm.
24. Describe the firm's compensation arrangement for the assigned consultant(s).
25. Has the assigned consultant(s) lost any client relationships in the last 2 years? If so, describe the nature of the separation.
26. Describe the job content of each assigned consultant. Please list their responsibilities – research, management, sales, etc. and the amount of time devoted to each. What other responsibilities does he/she have?

**Governance and Investment Program**

27. How would your firm assist a client with designing an investment menu? Please include your firm's thoughts on participant engagement, stable value, white-label funds, Roth options and target date funds.
28. Outline your process for maintaining and providing a continuous review of your clients' investment policy, investment strategy, and investment menu. Describe your process for recommending manager additions/terminations.
29. Describe your firm's overall philosophy on governance structure, and responsibilities of the plan sponsor. Describe what you believe to be the attributes and oversights of a well-governed defined contribution plan.
30. Describe the firm's approach to assisting clients with developing defined contribution investment policy statements.

**Research**

31. What is the structure of your research group? Do you have dedicated defined contribution vs defined benefit research groups?
32. What is the role of your research group in investment manager searches? Please provide biographical data on individuals responsible for manager research.
33. How is information disseminated between research and consultants? If so, how many in each group and how is information shared?
34. Describe the discovery process and procedures of an opinion change on an investment manager.
35. Describe your internal research capability and services offered, including but not limited to emerging issues, investment trends, alternative investments, derivatives, fiduciary responsibility, minority participation programs, proxy voting, etc.
36. How are research and other publications shared with clients?

**Investment Manager Database**

37. Describe the firm's manager database and how the firm gathers, verifies, updates, maintains and analyzes the data collected on managers for the database including administrative changes. Include the number of people involved in this effort. How frequently is manager information updated? Is the database corrected for statistical biases? Describe how your clients are informed of new information and whether clients have access to the database to monitor current and prospective managers.
38. List all manager styles tracked by your firm. How are managers categorized by style? How many managers are in each style? Is the database maintained or purchased? If purchased, from whom? What percentage of data is purchased, if any?
39. How many additions and deletions of managers to the database have occurred in the last year? How does that compare to 2 years ago vs 3 years ago?

**Investment Manager Selection**

40. Describe your process in conducting manager searches and the number of searches conducted in each of the last three years for defined contribution plan clients.
41. Describe your view on active management versus indexing.
42. Describe the firm's process for the evaluation and selection of managers for a given client.
43. Please provide quantitative information demonstrating the value added by your firm's investment manager recommendations. If you have a buy list, please provide that list's performance comparable to its peer universe in the past 1, 3, 5, and 10, year periods.

44. Does your firm have any arrangements with investment managers to deliver minimum assets under management for a discount or break in fees/terms on behalf of clients? How many managers do you have this type of arrangement? How often does this occur? What percentage of assets does your relationship represent of those managers?
45. How does total assets under management within an investment firm factor into your evaluation process? How does this vary by investment strategy? How does tenure of the portfolio manager or investment team factor into your evaluation? How does this vary by strategy?
46. Does your firm have an opinion/rating for each of the investment managers currently listed on the Investment Menu (Appendix D). Please provide the most recent research/analysis available for each firm/product currently being utilized. If your firm does not have an opinion on the investment managers in Investment Menu, please provide sample reports prepared for one long-only equity manager and one long-only fixed income manager.
47. Does the firm offer investment products that it also recommends to clients when acting as a consultant? If so, please provide details.

#### **Performance Measurement & Benchmarking Studies**

48. Describe your performance attribution process and how factors such as timing, security selection, sector weighting, risk factors and style are analyzed for their contribution to return.
49. Describe the type of analysis included in a typical performance evaluation report. Please provide a sample report.
50. Describe your experience in completing a benchmarking study of a defined contribution plan. How often do you complete these types of studies, if at all? What is your process?

#### **Education**

51. Identify any educational opportunities made available to clients of your firm and the related cost.
52. Does your firm provide education for new committee members and/or continuing education programs?

#### **Technology & Security**

53. Do you have a technology platform that is accessible by clients? Please include a description of the analytics that is available through the client-facing tool.
54. If a client-facing platform exists, is it a proprietary product or an outsourced solution from a third party vendor? Please provide details.
55. If a client-facing platform exists, is it available to each client? Can you provide a link to a demonstration site?



56. Have you had data breaches in the past 3 years? How did you address those breaches and how was it communicated to clients?
57. Describe how you protect client information and data integrity? What is your plan for data breaches?



**COST PROPOSAL**

A cost proposal must be prepared and submitted with your firm’s service proposal. Your cost proposal must include total projected fees charge to the Plan, based on the projected services you have proposed. The proposal should be detailed and complete in all respects.

If the Plan decides to make significant changes to the level of service from those proposed, the cost proposal should provide sufficient itemized breakdown, so that the Plan can determine the effect on the total proposed cost. Once the investment consultant is selected, the fees may be further negotiated but in no case would be higher than the cost contained in this proposal for the Scope of Services defined in Part A. Compensation of the investment consultant will be paid quarterly in arrears. Any fees for additional services must be by mutual written agreement.

**FEES**

Please refer to 4.0, Scope of Work, of this RFP for a complete description of services required of the successful consultant:

- Performance Measurement & Reporting (quarterly) \$ \_\_\_\_\_
- Manager Search & Selection (maximum #/year) \$ \_\_\_\_\_
- Investment Menu Oversight \$ \_\_\_\_\_
- Recordkeeper Benchmarking Study \$ \_\_\_\_\_
- Investment Committee Education \$ \_\_\_\_\_

Include any one-time start-up costs your firm will incur to transition responsibilities from current investment consultant and to begin your servicing of the Plan.



## INVESTMENT MENU

<u>Fund Name</u>	<u>Ticker</u>
<b>TIER 1</b>	
Vanguard Target Retirement Series	Various
<b>TIER 2</b>	
Vanguard Total Bond Market Index	VBPIX
Vanguard Total Stock Market Index	VITSI
Vanguard Institutional Index	VINIX
Vanguard Extended Market Index	VIEIX
Vanguard Total International Stock Index	VTSNX
<b>TIER 3</b>	
Vanguard Prime Money Market	VMRXX
Baird Intermediate Bond	BIMIX
Loomis Sayles Core Plus Bond Fund	NERNX
Parnassus Core Equity	PRILX
Prudential Jennison Small Company	PJSQX
Artisan International	APHIX
<b>TIER 4</b>	
Fidelity BrokerageLink	

