



MONTGOMERY COUNTY PUBLIC SCHOOLS
MARYLAND
www.montgomeryschoolsmd.org

301-279-3097

August 4, 2016



RFP Number: 4382.1
Questions due: Aug. 18, 2016
Due Date: Aug. 30, 2016
Open Time: 2:00 p.m.

To: Prospective Offerors:

The Montgomery County Public Schools (MCPS) is seeking proposals from qualified photographers to provide photography services to Montgomery County Public Schools. The successful firm (herein referred to as the "photographer") will provide a broad range of photography services.

Proposals must be received on or before 2:00 p.m., on August 30, 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

The provider must submit one (1) original, three (3) 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,

Barbara Bzgalia
for Kathleen C. Lazor, Director

KCL:lsc
Enclosure

Procurement Unit

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

MONTGOMERY COUNTY PUBLIC SCHOOLS

Request For Proposal No. 4382.1, Photography Services

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

Request for Proposal No. 4382.1, Photography Services

1.0 INTENT

The Montgomery County Public Schools (MCPS) is seeking proposals to pre-qualify photographers who can provide photography services to the Montgomery County Public Schools (MCPS).

Enclosed are instructions for responding to the request for proposal (RFP). Additional information is included in the body of this document.

2.0 BACKGROUND

The Board of Education of Montgomery County (Board) contracts professional services from various pre-qualified photographers for the creation of photographic images to be potentially published on the MCPS website as well as in printed materials and video productions. This document describes the terms and conditions associated with the contractual arrangement between MCPS and the photographers. All photography submitted or created under this contract is the sole property of MCPS.

Our images may not be reproduced or repurposed without the express written consent of MCPS.

3.0 SCOPE OF WORK

MCPS is seeking proposals from qualified photographers to provide photography services.

3.1 Photographer will travel to MCPS schools, office sites and other locations throughout the county as necessary to create digital images of special events, classroom activities, and portraiture as directed by the MCPS Photo Assignment Editor(s). The photographer will receive a Photo Request Form from the Photo Assignment Editor providing as many event specifics as possible. (Appendix A)

3.2 MCPS is dedicated to building a culturally diverse stable of photographers and encourages applications from women and minorities. Photographer candidates should have at least five years of professional experience. Preferred experience in journalism, specifically news and feature coverage. Photographer should possess impeccable skill with an eye for detail, composure and creativity.

3.3 Photographer will provide all cameras, lenses, lighting and other related equipment needed to achieve the required deliverables.

3.4 Services may be contracted in hourly, half-day and full-day increments. This includes time spent on-site shooting photos and for processing only; travel to and from a site is not included in the contract time frames and is not reimbursable.

- 3.5 Photographer will use personal transportation to and from site locations.
- 3.6 Photographer candidates are asked to provide a resume and work samples via email or by sending a link to a website or other online resource.
- 3.7 The Photographer represents and warrants that it will comply with all applicable state, federal, and county laws and regulations, as well as MCPS policies and regulations in fulfilling the terms of this Agreement, including but not limited to those laws, regulations, and policies: (a) protecting the privacy of information; (b) prohibiting discrimination against any person on the basis of race, color, national origin, religion, age, gender, marital status, socio-economic status, sexual orientation, physical characteristics, or disability; and (c) prohibiting any person who enters a contract with MCPS from knowingly employing an individual to work at a school if the individual is a registered sex offender.
- 3.8 Photographer and any assistants of photographer who may be working with photographer on any MCPS assignment must be fingerprinted by MCPS and undergo a complete criminal background check. (See 16.0 Contractor Obligation)
- 3.9 MCPS reserves the right to add or delete services or photographers during the contract term as needs arise.

4.0 DELIVERABLES

Photographer will deliver no more than 40 high-resolution JPEG image files, as specified by Photo Assignment Editor(s), unless directed otherwise. Photographer will upload them to MCPS' Dropbox account or to an online service used by the individual photographer. All photos are to be in a horizontal format. Edited photos should be uploaded and made available to MCPS within a timeframe set between the Photo Assignment Editor(s) and the photographer at the time the assignment is made. Photographer should have the capability to share a limited number of photos digitally from the assignment location.

5.0 CONTRACT TERM

The term of contract shall be for two (2) years as stipulated in the RFP. However, the contract may not begin until one day after approval by the MCPS Board of Education and will conclude as stated under the contract term. Services will be required within 7-14 days after Photo Assignment Editor(s) have notified photographer to proceed. 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 photographer(s) 90 days prior to the expiration of the original contract. The photographer(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 to extend the contract or decide to rebid. If the contract is extended by the Board, a contract amendment will be issued.

6.0 FEE SCHEDULE

Standard MCPS photography services rates are:

Hourly: \$125

Half-day: \$400 for four hours of work

Full-day: \$700 for eight-nine hours of work

Special rates may be pre-arranged with Photo Assignment Editor(s) for extenuating circumstances.

MCPS does not directly compensate for local travel, parking, tolls, incidental expenses, or provide per diem payments.

7.0 OWNERSHIP

All images produced by photographer when on assignment for MCPS are the sole property of MCPS. Images may not be reproduced or repurposed without the express written consent of MCPS.

8.0 INSURANCE

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 Sub-Contractor 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. The limits of such liability insurance for each occurrence shall be equal to or greater than \$500,000 for Bodily Injury and \$100,000 for Property Damage.

Prior to the execution of the contract by Montgomery County Public Schools (MCPS), the proposed awardee must obtain at its own cost and expense and keep in force and effect until termination of the contractual relationship with MCPS the following insurance with insurance company/companies licensed to do business in the State of Maryland evidence by a certificate of insurance and/or copies of the insurance policies. Contractor's insurance shall be primary.

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
Department of Materials Management
Procurement Unit
45 W. Gude Drive, Suite 3100
Rockville, Maryland 20850

9.0 CONTRACT TERMINATION

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

10.0 PROJECT OFFICER

The MCPS project officer for the proposed procurement is:

Montgomery County Public Schools
Operations Manager, Department of Public Information and Web Services
Attn: Christopher Cram
850 Hungerford Drive, Room 112
Rockville, MD 20850

Prior to Board approval, all prospective respondents are cautioned that information relating to the proposed procurement may be obtained only from Laurie Checco, CPPB, Buyer II, 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.

11.0 REFERENCES

All respondents shall include a list of a minimum of three references **from current clients** who use the firm's photography services who can attest to the firm's quality of work. All respondents shall also include contact information for a minimum of three **former clients (within the last two years)** that used the firm's photography services. Include names of client, contact person, email address and phone number 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.

CURRENT CLIENTS

| <u>Company Name & Address</u> | <u>Contact Person</u> | <u>Phone Number</u> |
|-----------------------------------|-----------------------|---------------------|
| 1. _____ | | |
| Email _____ | | |
| 2. _____ | | |
| Email _____ | | |
| 3. _____ | | |
| Email _____ | | |

FORMER CLIENTS

| |
|-------------|
| 1. _____ |
| Email _____ |

2. _____
 Email _____

3. _____
 Email _____

12.0 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.

Photographer candidates may contact Laurie Checco to receive the RFP document in word format to help them in preparing their response, [Laurie S. Checco@mcpsmd.org](mailto:Laurie.S.Checco@mcpsmd.org). **Responses to this RFP are due on or before 2:00 p.m. on August 30, 2016, at the address below. One (1) original, three (3) 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.

13.0 MANDATORY SUBMISSIONS

RFP response
Contractor Response Form (see Appendix B)
Form W-9
References

14.0 SCHEDULE OF EVENTS

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

| <u>Event</u> | <u>Date Proposed</u> |
|--|---------------------------|
| Release of RFP | Thursday, August 4, 2016 |
| Vendor Questions due | Thursday, August 18, 2016 |
| MCPS Responses to Questions Released (via web and email) | Tuesday, August 22 2016 |
| RFP due | Tuesday, August 30, 2016 |

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

15.0 PRE-BID CONFERENCE

A pre-bid conference will not be held.

16.0 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 § 5-551 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its work-force must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term "work-force" in this and the preceding section refers to all of the contractor's direct employees, subcontractors and their employees, and/or independent contractors and their employees that the contractor uses to perform the work required by the contract.

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

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

Once the contract is awarded, the contractor is responsible for implementing the background check process. An individual in the contractor's work-force may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (a) the background check results for that individual have been received by MCPS; (b) the contractor certifies to MCPS that the individual has received training and/or reviewed informational materials, as appropriate, regarding recognizing, reporting, and preventing child abuse and neglect, consistent with the content provided in training for MCPS employees; and (c) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The contractor will be required to return all badges at the conclusion of the contract.

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

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

17.0 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.

18.0 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.

19.0 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 Laurie Checco, CPPB, Buyer II in the Procurement Unit at 301-279-3097, 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.

20.0 INQUIRIES

Inquiries regarding this solicitation must be submitted in writing, to Laurie Checco, CPPB, Buyer II, Montgomery County Public Schools, 45 West Gude Drive, Suite 3100, Rockville, MD 20850, fax number 301-279-3097. Questions must be received by 4 p.m. eastern standard time, June 29, 2016.

number 301-279-3097. Questions must be received by 4 p.m. eastern standard time, June 29, 2016. 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 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/>.

21.0 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.

22.0 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.**

23.0 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 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.

- B. 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 _____

GENERAL CONTRACT ARTICLES

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

ARTICLE 1. DESCRIPTION/SPECIFICATIONS

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

ARTICLE 2. MCPS PROJECT CONTACT

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

ARTICLE 3. PERSONNEL

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

Name _____

Title _____

Name _____

Title _____

Name _____

Title _____

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

ARTICLE 4. MCPS CONTRACT ADMINISTRATOR

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

ARTICLE 5. STATEMENT OF WORK

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

ARTICLE 6. DELIVERABLES

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

ARTICLE 7. PRICE

See 6.0 Fee Schedule for pricing.

ARTICLE 8. PERIOD OF PERFORMANCE

The initial term of contract shall be for 24 months. However, the contract may not begin until one day after approval by the Board of Education of Montgomery County (Board of Education). After the initial contract term, MCPS reserves the right to extend for one year if agreed to by both parties. If MCPS requests and the contractor agrees to provide additional services not contemplated herein, MCPS agrees to pay the cost of the additional services, as invoiced by the contractor, in accordance with the terms of any future agreement to provide the additional services.

ARTICLE 9. SUBMISSION OF VOUCHERSAll Contracts

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

ARTICLE 10. INSPECTION AND ACCEPTANCE

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

ARTICLE 11. PAYMENT

Within 30 days after receiving of each invoice and accepting the work, MCPS shall, except as provided in this contract, pay for the work performed when approved by the project contact and director of the Department of Materials Management. A payment schedule will be jointly developed between MCPS and the contractor.

ARTICLE 12. WITHHOLDING OF CONTRACT PAYMENTS

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

ARTICLE 13. SERVICES OF CONSULTANTS

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

ARTICLE 14. PUBLICATION AND PUBLICITY

The contractor shall not publish or otherwise publicize the methods employed or results achieved until the work performed has been accepted by MCPS. In addition, the contractor shall not (a) originate any report, publication, publicity, news release, or other

announcement, written or oral, relating to this contract; or (b) use any names, trademarks, or logos of MCPS without consultation and consent by MCPS, except as necessary to perform the services in this contract. To the extent that MCPS agrees to any publication regarding this contract, the contractor agrees to abide by the following terms:

- a) The primary purpose is to disseminate information about the work rather than to promote the contractor's accomplishments or knowledge.
- b) Publication or presentation prominently displays or acknowledges MCPS financial support as follows: (i) the contents of this publication do not necessarily reflect the views or policies of MCPS; and (ii) the mention of trade names, commercial products, or organizations does not imply endorsement by MCPS.
- c) Confidentiality of students and their families is maintained at all times and the contractor abides by all terms and conditions of any data-sharing agreement between the parties.

ARTICLE 15. DATA COLLECTION AND CONFIDENTIAL INFORMATION

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

The contractor shall comply with all federal, state, and local laws and ordinances applicable to this project, including but not limited to the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations, 34 C.F.R. part 99, the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232(h) and its implementing regulations, as well as applicable Board of Education policies and MCPS regulations, including but not limited to MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*, MCPS Regulation JOA-RA, *Student Records*, and MCPS Regulation JFF-RA, *Federal Requirements for Use of Protected Student Information*. To assist the contractor in its work on this project, MCPS may disclose to the contractor, either in writing or orally, records or information which MCPS deems to be proprietary and/or confidential (hereinafter, "Confidential Information"). Confidential Information shall be maintained in confidence during the contract and thereafter, except to the extent that it is required to be either disclosed or protected from disclosure by law, regulation or judicial or administrative process. The contractor shall use the Confidential Information solely for the purposes of the project. The contractor shall protect the Confidential Information from disclosure using at least the same degree of care as it uses to protect its own confidential information. The disclosure of Confidential Information to the contractor shall not of itself be construed as a grant of any right or license with respect to the information. In the event that the contractor is required by law, regulation or judicial or administrative process to disclose any Confidential Information, the contractor will promptly notify MCPS in writing, if permitted by law, prior to making any such disclosure in order to facilitate MCPS' seeking of a protective order or other appropriate remedy from the appropriate body. Should the proprietary or confidential status of any such information be disputed, the parties agree to work in good faith to reach a mutually satisfactory disposition.

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

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

ARTICLE 16. DOCUMENTATION AND COPYRIGHT

The contractor warrants that any materials provided by the contractor to MCPS are the sole and exclusive intellectual property of the contractor or that the contractor is licensed to use, reproduce, and distribute such materials. Notwithstanding the foregoing, collected data, analyses, and any analytical processes, programs, files, reports, and other publications developed as a contractual requirement are the sole property of MCPS. Programs shall be completely documented, including the file layout of tapes, disks, and so on. MCPS may, at its sole discretion, waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any process or program and may license its use by others for a fee or without charge.

ARTICLE 17. NOTICE OF DELAYS

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

ARTICLE 18. EXCUSABLE DELAYS

Except because of failures of subcontractors, the contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is

caused by the failure of a subcontractor to perform and if such failure arises out of causes beyond the control of both the contractor and subcontractor and without the fault or negligence of either of them, the contractor shall not be deemed to have failed in performance of this contract unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources; and (b) the director of the Department of Materials Management shall have ordered the contractor in writing to procure such supplies or services from such other sources, and the contractor shall have failed to comply reasonably with such order. Upon request of the contractor, the director of the Department of Materials Management shall ascertain the facts and extent of such failure; and if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of MCPS to invoke the termination article of this contract. As used in this article, the terms "subcontractor" and "subcontractors" mean subcontractor(s) employed at any level of the work being performed.

ARTICLE 19. MCPS PROPERTY

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

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

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, MCPS

shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 21. OFFICIALS NOT TO BENEFIT

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

ARTICLE 22. EQUAL OPPORTUNITY

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

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

ARTICLE 23. COMPLIANCE WITH LOCAL LAWS

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

ARTICLE 24. CHANGES

The director of the Department of Materials Management may, at any time, by a written order and without notice to the sureties make changes within the general scope of the contract in any one or more of the following: a) specifications or statement of work and b) place of performance or delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made a) in the contract price or time of performance or both and b) in such other provisions of the contract as may be so affected; and the contract shall be modified in writing accordingly. Any claim by the contractor for adjustment under this article must be asserted within 30 days from the date of receipt by the contractor of the notification of change, provided, however, that if the director of the Department of Materials Management decides that the facts justify such action, the director may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this article shall excuse the contractor from proceeding with the contract as changed.

ARTICLE 25. DISPUTES

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

ARTICLE 26. TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF MCPS

- a) The performance of work under the contract may be terminated by MCPS in accordance with this article in whole or, from time to time, in part:
 - (1) Whenever the contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the contractor to make progress in the prosecution of the work that would endanger such performance) and shall fail to cure such default within a period of ten days (or such longer period as the director of the Department of Materials Management may allow) after receipt from the superintendent of schools of a notice specifying the default;
 - (2) Whenever a "Bankruptcy Event" has occurred with respect to the contractor. A Bankruptcy Event means that either:

(a) the contractor has: (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against the contractor in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or

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

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

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

- b) After receipt of a Notice of Termination and except as otherwise directed by the contracting office, the contractor shall:
- (1) Stop work under the contract on the date and to the extent specified by the Notice of Termination
 - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as it is not terminated
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination

- (4) Assign to MCPS in the manner and to the extent directed by the director of the Department of Materials Management all of the rights, title, and interest of the contractor under the orders or subcontracts so terminated, in which case MCPS shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts
- (5) With the approval or ratification of the superintendent of schools, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part in accordance with the provisions of this contract
- (6) Transfer title to MCPS (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the director of the Department of Materials Management (a) the work in process, completed work, supplies, and other materials produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination and (b) the completed or partially completed plans, information, and other property which, if the contract had been completed, would be required to be furnished to MCPS
- (7) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination
- (8) Take such action as may be necessary, or as the director of the Department of Materials Management may direct, for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which MCPS has or may acquire an interest

The contractor shall proceed immediately with the performance of the above obligations despite any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause.

- c) After receipt of a Notice of Termination, the contractor shall submit to the director of the Department of Materials Management their termination claim in the form and with the certification prescribed by the director. The claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the director of the Department of Materials Management. Upon request of the contractor to submit their termination claim within the time allowed, the superintendent of schools may, subject to any review required by MCPS procedures in effect as of the date of execution of this contract, determine, on the basis of information available to them, the amount, if any, due to the contractor by reason of the termination and shall thereupon pay to the contractor the amount so determined.
- d) Subject to the provisions of Paragraph c) and subject to any review required by MCPS procedures in effect as of the date of execution of this contract, the contractor and the superintendent of schools may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the contractor by reason of the total or partial termination of work pursuant to this clause. The

contract shall be amended accordingly, and the contractor shall be paid the agreed amount.

- e) If the contractor and the superintendent of schools fail to agree in whole or in part, as provided in Paragraph d), as to the amounts with respect to costs and fee or as to the amount of the fee to be paid to the contractor in connection with the termination of work pursuant to this article, the superintendent of schools shall, subject to any review required by MCPS procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the contractor by reason of the termination and shall pay to the contractor the amount determined as follows:

(1) If the settlement includes cost and fee:

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

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

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

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

ARTICLE 27 ORDER OF PRECEDENCE

If any conflict in the interpretation of the requirements of this contract occurs, preference shall be given in the following order of precedence: a) these general contract articles, b) the statement of work set forth in the Agreement.

ARTICLE 28 SEVERABILITY

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

ARTICLE 29 BID 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 hereunder, and MCPS has no funds legally available for payments from other sources, then MCPS may terminate this contract at the end of the original term or the then current extension term, as the case may be, without penalty or expense to MCPS of any kind whatsoever, and MCPS shall not be obligated to make payment provided for in the contract beyond the then current term. MCPS agrees to deliver notice to the Contractor of such termination at least thirty (30) days prior to the end of the then current fiscal year.
- (b) If this agreement is terminated under this provision and to the extent lawful, MCPS covenants that it will not, until the date on which the original term or the next succeeding renewal term would have ended, expend, or commit any funds for the purchase or use of services to be used for the same purpose as, or a purpose functionally equivalent to, those under the contract. Notwithstanding anything in this contract to the contrary, the provisions of this subpart shall survive termination of the contract.

ARTICLE 32. INDEPENDENT CONTRACTOR

The Parties agree that the contractor is an independent contractor under this contract and will in no way be considered to be an agent, partner, joint venture or employee of MCPS. Accordingly, the contractor will not be entitled to any benefits, coverage, or other privileges made available to employees of MCPS. As an independent contractor, the contractor shall be solely responsible for any insurance protecting it and its employees.

including but not limited to general comprehensive liability, worker's compensation, and business automobile insurance.

ARTICLE 33. INDEMNIFICATION AND INSURANCE

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

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

- (a) Comprehensive General Liability Insurance – Liability Limits of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) aggregate.
- (b) Comprehensive Business Automobile Liability Insurance: Liability limit of Five Hundred Thousand Dollars (\$500,000.00) any one accident.
- (c) Worker's Compensation Insurance: Statutory coverage, including employer's liability coverage with a limit of at least One Hundred Thousand Dollars (\$100,000.00).

Certificates of Insurance: The Contractor shall provide MCPS with certificates of insurance within ten (10) days of execution of the contract evidencing the coverages required above. The certificates shall confirm that MCPS has been made an additional loss payee under the respective insurance policies. The certificates of insurance shall provide that MCPS shall be given at least thirty (30) days prior written notice of any cancellation of, intention not to renew, or material change in such coverage. The Contractor must provide the certificates of insurance before commencing the work covered by this contract.

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

ARTICLE 34. GOVERNING LAW

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

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

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

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

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

- a. A sexual offense in the third or fourth degree under § 3-307 or § 3-308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3-307 or § 3-308 of the Criminal Law Article if committed in Maryland;
- b. Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or
- c. A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child

abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

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

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

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

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

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

The contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to the sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as warranting

further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the contractor believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the contractor's summary to determine whether to accept the contractor's recommendation, and the contractor will be responsible for any consequences of a material misrepresentation in its written summary.

Once the contract is awarded, the contractor is responsible for implementing the background check process. An individual in the contractor's workforce may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (a) the background check results for that individual have been received by MCPS; (b) the contractor certifies to MCPS that the individual has received training and/or reviewed informational materials, as appropriate, regarding recognizing, reporting, and preventing child abuse and neglect, consistent with the content provided in training for MCPS employees; and (c) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The contractor will be required to return all badges at the conclusion of the contract.

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

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

ARTICLE 36. ENTIRE CONTRACT

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

ARTICLE 37. ASSIGNMENT

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

Photography Request Form

Appendix A

MCPS' photography services are intended for use on our website and in our publications, such as The Bulletin and the Quicknotes newsletter.

Photographers will be assigned as available. MCPS does not have the capacity to fulfill every request for photography. If we are unable to shoot your event, we may ask you or someone on your staff to take some photos and email them to us. If we are able to attend, someone will contact you by phone or email to get more information.

Name *

First Last

Your Email *

Date of the Event *

/ / 

MM DD YYYY

Location of the event *

Time *

: : AM
HH MM SS AM:PM

Contact Name Onsite *

First Last

Contact Phone Number

- -

####

Contact Email *

Please describe the event. Include as many details as you can. Offer specifics on what will be happening, and how students or staff will be involved. *


Additional Comments:

Attach a File: i.e. Event Brochure or Flyer

No file chosen

Important Note:

Please submit requests at least one week in advance.





Response Form for Required Criminal Background Checks

Department of Materials Management, Procurement Unit
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland 20850

MCPS Form 235-40
October 2015
Page 1 of 2

**PLEASE COMPLETE AND RETURN TO THE
PROCUREMENT UNIT WITHIN 10 BUSINESS DAYS:**
45 West Gude Drive, Suite 3100, Rockville, MD 20850 or
Fax to 301-279-3173

Under a Maryland law (Section 6-113 of the Education Article of the Maryland Code) enacted in July, 2015, any contractor or member of the contractor's workforce who will be working in a Montgomery County Public Schools (MCPS) facility where they have direct, unsupervised, and uncontrolled access to students must undergo a criminal background check, including fingerprinting. This new law is in conjunction with the Maryland law stating that contractors may not knowingly employ a registered sex offender to work in a school. Additional information can be found by viewing the Contractor Obligation Packet at <http://www.montgomeryschoolsmd.org/departments/procurement>.

SECTION 1: CONTRACTOR INFORMATION—to be completed for new contracts and current contract extensions.

Company Name: _____
 Print Representative's Name: _____ Date ____/____/____
 E-mail: _____
 Address _____ Phone Number ____ - ____ - ____
 Tax ID# _____ OR Social Security #: ____ - ____ - ____
 Contract/RFP/Bid # and Name: _____

SECTION 2: PLEASE CHECK THE STATEMENT THAT APPLIES AND RESPOND ACCORDINGLY

As an independent contractor, or having individuals in my direct employ, or having subcontracted out part or all of my work for MCPS

A. _____ I/WE will have direct, unsupervised or uncontrolled access to children while performing work for Montgomery County Public Schools (MCPS).

- These individuals will undergo a criminal background check, including fingerprinting, receive required MCPS training, and be issued a MCPS identification badge prior to performing work for MCPS. Please see the MCPS Contractor Obligation Packet for approved methods of obtaining required fingerprinting services.

Name _____ Date of Birth ____/____/____

Name _____ Date of Birth ____/____/____

Name _____ Date of Birth ____/____/____

Name _____ Date of Birth ____/____/____

Name _____ Date of Birth ____/____/____

These individuals have undergone a criminal background check, including fingerprinting, within the last 12 months, but have not been approved for MCPS identification badges. The respective criminal background check report for each individual is attached. The reports will be reviewed and must be approved by MCPS before these individuals are notified to receive required MCPS training and be issued a MCPS identification badge.

Name _____ Date of Birth ____/____/____

Name _____ Date of Birth ____/____/____

Name _____ Date of Birth ____/____/____

Name _____ Date of Birth ____/____/____

Name _____ Date of Birth ____/____/____

I am an existing contractor and we are in compliance with all MCPS contractor requirements. **All of our staff have been approved for MCPS identification badges.** I understand that I must notify MCPS if I am adding additional staff or subcontractor staff or if I am removing staff from my workforce and have attached a separate list of those individuals.

B. _____ Neither myself nor any of the individuals in my direct employ, or who have been subcontracted, will have direct, unsupervised or uncontrolled access to children while performing work for MCPS for the following reason:

SECTION 3: SIGNATURE

This documentation confirms that the company's direct employees, and those of any subcontractors and/or independent contractors assigned by this company to perform work in a MCPS school facility under the contract, meet the criminal background check, including fingerprinting, obligation as specified in Maryland law, Section 6-113 of the Education Article of the Maryland Code.

Signature _____

Printed Name: _____ Date ____/____/____