

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

**Request for Proposal No. 7173.2  
Vending Services**

**1.0 INTENT**

Montgomery County Public Schools (MCPS) Division of Food and Nutrition Services (DFNS) is soliciting requests for proposals for full service vending of cold drinks and snacks starting with the 2019-2020 school year for schools and facilities.

**2.0 INTRODUCTION**

Montgomery County Public School (MCPS) is the 14th largest school system in the United States, and the largest in the state of Maryland. During the 2017–2018 school year, MCPS served more than 162,000 students in 206 schools from 157 countries speaking 150 languages. With a Fiscal Year (FY) 2018 Operating Budget of approximately \$2.6 billion, MCPS employs more than 23,000 employees. Among the 206 schools that MCPS operates, 39 are National Blue Ribbon schools. Six MCPS high schools rank in the top 200 of *The Washington Post's* 2015 High School Challenge, and all 25 MCPS high schools appear on this list, which only includes the top 11 percent of high schools in the country. MCPS has one of the highest graduation rates among the nation's largest school districts, according to an *Education Week* report. In 2010, MCPS was the recipient of the Malcolm Baldrige National Quality Award, the highest presidential honor given to American organizations for performance excellence. The student demographics of MCPS in 2018 are as follows:

White: 28.3%

Hispanic/Latino: 32.3%

Black or African American: 21.4%

Asian: 14.4%

Two or more races: ≤ 5.0%

American Indian or Alaskan Native: ≤ 5.0%

Native Hawaiian or other Pacific Islander: ≤ 5.0%

Students receiving Free and Reduced-price Meals System (FARMS): 35.1%

Students ever receiving FARMS: 35.1%

English for Speakers of Other Languages (ESOL): 17.5%

Students receiving special education services: 11.7%

**3.0 BACKGROUND**

MCPS will have 134 elementary schools, 40 middle schools, 25 high schools, 5 special schools, 1 career and technology center, alternative programs, and administrative offices in the 2019-2020 school year that may require vending services. The elementary schools have vending available in the staff lounges that are not accessible to students. There are a few elementary schools that have vending machines located near the gymnasiums for weekend



use. Middle schools average seven beverage vending machines and four snack machines. High schools average 19 beverage machines and 6 snack machines. Some schools have ice cream vending machines. Machines selling products that do not meet the approved nutritional standards can only be accessible to students 30 minutes after the instructional day until midnight. Machines located in staff lounges or supporting services facilities are not required to meet the nutritional standards.

MCPS currently has a contract for the operation of beverage and snack machines. Each school administration may use the contract but not all schools will have machines and therefore will not be serviced by this contract. A list of schools and offices will be included and this contract will be the only one in effect for the two year period. Respondents are responsible for determining the exact number of machines at each location.

#### **4.0 SCOPE OF SERVICES**

The director of DFNS, or designee shall supervise all vending operations dispensing food and beverage products to students and staff. This agreement will be the sole agreement for MCPS. It is the intent of MCPS to implement this contract at future and current locations when services are desired. Not all facilities will require the services. However, all facilities will have the opportunity to participate. The successful vendor(s) shall furnish, install, maintain, repair and/or replace the vending machines at each location and supply and maintain stock for each machine. Such machines shall remain the property of the vendor. The vendor shall have in effect, and maintain throughout the contract term, equipment/property insurance for all equipment and product liability insurance for all vended products. Upon expiration/termination/cancellation of the contract the vendor shall remove all machines within 30 calendar days of notification, at their own expense.

Most sites will require more than one machine. See <https://www.montgomeryschoolsmd.org/schools/> for potential locations. Products of interest include but are not limited to water, juice, beverages, sports drinks, carbonated beverages, and various approved snack items. Proposals shall include a commission to MCPS individual locations including DFNS on a monthly basis. Payment of these commissions is to be available as ACH transactions, and checks when an ACH is not available.

The successful vendor(s) shall provide all vehicles, manpower, vending equipment, and stock for vending machines at their own expense for performance under this contract. Machines provided shall be of adequate size and number to provide continuous service.

The successful vendor(s) and their employees who will be performing work under this contract shall be qualified to perform the work described. All items and services provided under this contract shall be according to the applicable county, state, and federal guidelines, regulations, and laws.

MCPS, in a continuing effort to promote and maintain a healthy school environment has established guidelines for the sale of snack and beverage items through vending machines. Respondents shall be required to familiarize themselves with the United States Department of Agriculture (USDA) nutrition requirements and the MCPS nutritional guidelines and serving size requirements prior to submitting a proposal. All items offered shall meet or exceed the requirement and guidelines. It will be assumed that the bidders have read the nutritional requirements upon submission of a proposal.



The successful vendor shall provide, install, and maintain machines and provide vending service in various locations to include student machines, teacher staff lounges, and administration buildings. The vendor shall assume all costs of servicing, maintaining, and repairing the vending machines. Machines shall be maintained in good repair, and service shall be performed within three (3) business days of notification by MCPS. Machines should be monitored as needed to maintain sufficient quantity and variety of products.

## **5.0 EQUIPMENT**

### **5.1 Machine Requirements**

Vendors shall include brochure(s) with their proposal that provide a complete description with detailed specifications of vending machines being offered under this contract. Quality attractiveness and user features of machines proposed shall be considered in the evaluation. The literature shall be clearly marked with the RFP number and company name. Failure to provide machine information as required may result in automatic disqualification.

### **5.2 Machine Specifications**

All vending machines offered shall be new or of a recent model and be of good quality so as to compare in appearance and performance with the best machine available on the market. The vendor shall include in their proposal a list of the machines that will be provided under this contract as well as the age of such machines and provide a signed statement verifying the age of the machine.

Machines must be adaptable for use of a debit/credit card system.

Machines shall be equipped with dollar bill/dollar coin acceptors. In addition all business operations conducted under this contract that involves coins or currency shall be fully capable of accepting \$1 coins.

Machines shall accept any combination of nickels, dimes, quarters, and dollars.

Machines shall be equipped with internal counters to validate unit sales.

REQUIRED: Machines shall be equipped with "lockouts" so that purchases may not be made during certain timeframes to enable the schools to comply with the Board of Education adopted nutritional standards and USDA foods of minimal nutritional value regulations. Any machine found not equipped with lockouts will be identified and the successful vendor shall immediately remove the machine and provide immediate replacement of a machine that meets specification at their own expense.

All vending machines provided shall meet or exceed ALL safety requirements for Federal, State, and local government.



### **5.3 Locations of Equipment**

It is not the intention to install vending machines at all MCPS locations but it is intended to offer services to each of the schools and major locations. MCPS personnel will approve the placement of vending machines (i.e. the DFNS director for machines located in cafeteria and the school administration for other areas in schools.) The successful vendor will confine its vending service to the space(s) allocated by MCPS. The vendor shall assume all costs and liability to relocate a machine that was placed in an undesignated area. The vendor shall obtain permission, in advance, by the director of DFNS to relocate, exchange, or remove vending machines.

The majority of vending machines will be located in the following areas: lobby areas near the gymnasiums, specific vending areas as designated by the schools or facilities, and cafeterias. MCPS reserves the right to add or delete sites and/or areas of location during the contract term.

### **5.4 Security of Equipment**

MCPS will make every attempt to safe guard the vendor's equipment. However, the successful vendor shall be responsible for the security of the machines. No keys will be kept at the MCPS sites. Vending machines placed on MCPS sites under this contract are at the sole risk of the successful vendor. MCPS shall in no way be liable for any destruction, vandalism, or theft of the vending machines or its contents. Damaged machines shall be repaired or replaced within three (3) business days of notification.

### **5.5 Vendor Equipment Responsibilities**

All equipment delivery, relocation, and removal shall be borne by the successful vendor and its employees. MCPS staff shall not be required to assist.

Restocking machines and reporting of sales shall comply with sound accounting principles and standard industry practices. The vendor shall be responsible for keeping their machines loaded with allowable food and beverage products as approved by the director of DFNS.

The vendor or its employees shall be responsible for maintaining a standard of housekeeping and sanitation of and in their machines to the complete satisfaction of MCPS, State and governmental authorities, including the requirements of the Occupational Safety and Health Act and local health regulations.

### **5.6 Insurance of Equipment**

At a minimum, the successful vendor shall be required to have insurance for the equipment/property damage and product liability, which shall remain in effect throughout the contract term. The successful vendor shall be held responsible for repair due to vandalism and/or loss of revenue at no additional costs to MCPS. Previous experience indicates that vandalism is a minimal problem.



Bidders shall provide proof of insurance for the equipment/property damage and product liability with their proposal and will provide updated copies as needed and/or requested by MCPS.

#### **5.7 Equipment Delivery and Set Up**

The successful vendor shall furnish all vending machines with ancillary equipment (including drains, hookups, and drillings.) Any location that will require drilling shall be approved by the director of DFNS prior to commencement of work. The vendor shall be required to provide all labor, supplies materials, supervision, change funds, snacks, and beverages to fill and maintain vending machines on MCPS premises. The vendor and the director of DFNS shall reach a mutual agreement on all vending items and prices. Vendor's prices shall not exceed regular pricing structures of vending operations surveyed in local areas and shall be mutually agreed upon. If a dispute arises under this contract regarding pricing or stocking, the decision of the Director of the Department of Materials Management (DMM) shall prevail.

Machines shall be approved by the director of DFNS prior to installations and insofar as practical; machines that will be in one location shall be of the same color and height.

#### **5.8 Installation**

The successful vendor shall be required to furnish all equipment necessary and install the machines at MCPS locations designated by the director of the DFNS at no expense to MCPS. The vendor shall assume all responsibility for damages to school property caused by the equipment and/or vending personnel. The vendor shall be responsible for the placement of machines without any assistance by MCPS. If additional electrical connections are required, it will be the responsibility of the successful vendor to inform DFNS of such need. The successful vendor shall not add any electrical connections. The successful vendor shall reimburse MCPS for the cost(s) of the required additional electrical installations. The vendor shall agree to ensure that it will eliminate any exposed wiring or piping.

Installation shall be coordinated with the director of DFNS and the vendor to prevent interruption of service to schools. Machines shall be installed within 30 calendar days of request. Machines shall be filled and ready for operation on August 1, 2019. In the event an agreement cannot be satisfied, the decision of the Director of the DMM shall prevail. It will be the sole discretion of MCPS to repair or replace.

Vendor and/or its employees shall take all necessary precautions during the period of service to protect MCPS property from damage. The vendor shall be responsible to repair or replace at their own expense, and any property damaged by work being performed under this contract.

All machines shall be grounded as necessary and at the vendor's expense to comply with local electrical codes and regulations.

The successful vendor shall add additional vending machines, of any type listed and /or types not listed but approved by MCPS should the director of DFNS deem it necessary or desirable during the term of the contract. The same percentage of commission shall



be paid as agreed in the proposal on the same type machines and the percentage of commission on other types of vending machines shall be mutually agree upon at the time such other machines are requested by MCPS. However, the successful vendor shall not install any equipment without prior consultation by a representative of the school location. The successful vendor shall not install any equipment without prior authorization by the director of DFNS. The vendor shall be responsible to remove any equipment at its own expense that was not authorized by the director of DFNS or that is requested to be removed by the director of DFNS. MCPS reserves the right to install any type of vending machine in any location where the vendor will not agree to place a machine. The vendor cannot remove a machine without written request and consequent approval by the DFNS director.

#### **5.9 Servicing of Machines**

The vendor shall be responsible for all routine vending machine maintenance and service at its own expense. Vendors shall submit with their proposal detailed information of their proposed maintenance and service on the machines that will be performed under this contract.

The vendor shall be responsible for cleaning each machine when it is serviced and promptly clean all service areas and vending machines for spills on floors and equipment.

#### **5.10 Repairs**

The successful vendor is responsible for providing emergency repair and/or replacement. All costs shall be borne by the vendor. The successful vendor shall respond to service calls within 24 clock hours and be on-site to make the repair(s) within three (3) business days. The name(s) and telephone numbers are to be affixed to each machine in a visible place. If the successful vendor does not respond to service calls for inoperative machines within 24 hours, and/or the machines are not maintained and kept in working order, and/or a malfunctioning machine is not replace or repaired within the three (3) working days, the Director of DMM may cancel the contract and remove the vendor from the MCPS approved vendor list.

Damage to a building done by a vending machine will be the responsibility of the successful vendor. All repairs will be reviewed by the DFNS and approved by the Department of Facilities Management before repair/replacements work is accepted. All work will be resolved within thirty (30) days of initial report.

#### **5.11 Change of Machine Location**

The successful vendor agrees to change machine locations upon the decision of the director of DFNS at no additional cost to MCPS.

If the director of DFNS determines that removal of a machine is necessary, the vendor shall have 30 calendar days to remove the machine at its own expense.

#### **5.12 Removal of Equipment**



The vendor shall remove machines within 30 calendar days from the time of notification upon expiration/termination/cancellation of the contract. If the equipment is not removed within the required time, MCPS reserves the right to hire an outside source to remove the equipment and assess any and all costs to the vendor. The vendor shall not leave any exposed wiring or piping.

### **5.13 Permits and Licenses**

The successful vendor shall obtain and pay for all necessary licenses, permits, and certificates municipal or otherwise, arising out of ownership and operation of such

vending machines or impose in connection with or because of the performance of the is contract and shall post or display in a prominent place such permits and/or notices as are required by law. The vendor further agrees to pay all Federal, state, and local taxes and other charges arising from the performance of this contract.

### **5.14 Refunds**

The successful vendor shall be responsible for all refunds. The vendor shall provide information on the machines instructing customers how to receive a refund for product not delivered or other instances of loss of money due to machine malfunction. The information shall be affixed in an easily viewed location and shall provide clear instructions which shall include a toll-free or local

## **6.0 VENDOR PRODUCT RESPONSIBILITIES**

The successful vendor shall monitor products to ensure that no out-of-date products remain in machines. Out of date products shall be removed immediately at the expense of the successful vendor. Expiration date should be printed on all products in the machines. The vendor shall be responsible for ensuring the vending machines are restocked regularly to ensure that ample supply of product is maintained in each machine. A service schedule must be included in the response. MCPS reserves the right to witness the filling and removal of all products and money from any and all machines, if so desired.

School districts have "automatic" product protection recourse against suppliers for product safety. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. The successful vendor is expected to take immediate action to correct any situation in which product integrity is violated.

### **6.1 Product Warranty**

The successful vendor warrants that all merchandise dispensed in relation to this contract will be suitable for human consumption and in particular, will conform to federal, state, and local laws, rules, and regulations. The vendor agrees to hold MCPS harmless from damages that may result from its failure to abide by this warranty.

### **6.2 Product Quality and Variety**



The successful vendor shall provide high quality, fresh merchandise, and only stock machines with the approved products by DFNS. The vendor shall remove all products from the vending machines on or before their expiration date.

It is the intention of MCPS to provide a variety of vended goods to offer choices at frequent intervals. MCPS shall determine whether the vendor's food is of satisfactory quantity and whether sufficient variety is being offered. MCPS reserves the right to request specific products to be dispensed in vending machines on its premises and shall have the final right of approval on all types of products.

### **6.3 Pricing for Products**

The vendor shall price vended products at the prices specified in their proposal and provide a detailed product listing and pricing with the RFP submission. Any items found that do not conform to the pricing provided shall be corrected immediately by the vendor. As new products are introduced, the pricing will need to be approved, along with the products, by the director of DFNS.

### **6.4 Revenue from Sales**

Money shall be collected weekly and all change tubes shall be stocked full with change when serviced. Collection records shall be maintained for each separate machine. MCPS reserves the right to observe cash collections at its discretion.

### **6.5 Financial Records and Data**

The vendor shall keep and retain financial books, collection records, and documents regarding the financial performance under this contract. MCPS reserves the right to examine the vendor's records pertaining to work performed under the contract to determine and verify their compliance with all contractual conditions. MCPS shall be granted access to such records at all reasonable times during the contract period and for three years thereafter.

Respondents are required to submit an Annual Report, sales report, or financial statement for the past two consecutive years to DFNS and to the Procurement Unit. Financial data will be held confidential. Failure to submit financial statements as required, may result in disqualification.

### **6.6 Commission Payment and Report of Sales**

Vendors shall provide a monthly sales report in Microsoft excel, referencing machine and location, to DFNS, indicating the following minimum information for each location:

- a) Gross sales by machine with snack items reported separately from drinks
- b) Total gross sales by snacks and by drinks
- c) Commission payable to MCPS based on total gross sales



- d) Total sales tax payable (by vendor)
- e) Lease tax payable (by MCPS)

The successful vendor shall furnish a monthly detailed report in Microsoft Excel to DFNS and the Procurement Unit electronically by the 15<sup>th</sup> of each month. The report shall list sales by vending machine, location, and the number of products sold. This report shall be submitted along with the commission payment and shall clearly indicate the dates covered by the report and the location of each machine. Check payments shall be sent to the Montgomery County Public Schools, Department of Food and Nutrition Services, Attn: Ms. Susan McCarron, 8401 Turkey Thicket Drive, Gaithersburg, MD 20879. ACH transactions go directly to the school bank account.

Offerors shall provide a sample of the reports that will be provided with their proposal.

#### **6.7 Machine Codes**

Upon notification of award, the successful vendor shall provide the machine codes to DFNS. Sales will randomly be checked and compared with monthly sales reports.

#### **6.8 Montgomery County Public School's Responsibility**

MCPS will provide pest control services, mopping, scrubbing, and buffing floors, cleaning windows and walls adjacent to the service area in which the machines are located.

MCPS will furnish electricity to all vending machines with no charge to the successful vendor.

#### **6.9 Vendor Employment Requirements and Responsibility**

The use of subcontractors shall not be permitted. The vendor and its direct employed staff shall be wholly responsible for the performance under this contract.

Respondents shall include in their proposal the names and contact information of their employees that will be performing under this contract. Contact information shall include cellular telephone, office, and fax numbers along with email addresses of the intended staff that will be assigned to perform the work under this contract.

The vendor awarded under this contract shall be required to perform in a proper, workmanlike, and dignified manner. Background checks shall be conducted on any vending staff who will be servicing machines. The successful vendor agrees to take immediate and reasonable steps to maintain its provision of service under this contract in the event of any labor action involving their employees. Vendor or its employees shall be in uniform and shall be identified by and openly displayed company insignia. The successful vendor shall be responsible for the acts of its employees while on MCPS premises. If school is in session, the vendor or its employees shall check in daily at the locations main office.



Use of any form of tobacco products, liquor and /or illegal drugs is not permitted in any MCPS buildings or grounds. Vendors shall be responsible for any fines issued.

The buildings are expected to be occupied while servicing is performed; therefore all work shall be scheduled to the mutual satisfaction of the school administration and the director of DFNS.

The service area shall be kept free from debris while servicing is performed onsite. The vendor shall remove all debris generated by the services being performed.

It shall be the sole responsibility of the vendor and its employees to safeguard their own materials, tools, and equipment. MCPS shall not assume any responsibility for vandalism and or theft of the vendor's materials, tools, and equipment.

The vendor and its employees shall use only those facilities of MCPS that are necessary to perform vending services under this contract and shall have no access to any other facilities of MCPS.

The successful vendor shall ensure that its employees assigned to perform under this contract do not have a criminal record or outstanding traffic violations.

#### **6.10 Equal Employment Compliance Requirement**

By submitting this proposal, the respondent certifies conformance to the applicable Federal Acts, Executive Order, Maryland and Montgomery County Statutes concerning Affirmative Action toward equal employment opportunities. All information and reports required by the Federal or Maryland or Local Governments have responsibilities for the enforcement of such laws shall be supplied to MCPS upon request for purposes of investigation to ascertain compliance with such acts, regulation, and orders.

The respondent agrees that it shall be an equal opportunity employer and shall conform to all Affirmative Action and other applicable requirements. The respondent shall neither discriminate nor permit discrimination in its operations or employment practices against any person or group of persons on the grounds of race, color, religion, national origin, age, or sex in any manner prohibited by law.

#### **6.11 Overtime Procedures**

If the respondent and its employees choose to work overtime for any reason, the vendor shall be responsible for any associated costs, including overtime pay for MCPS Building Service personnel as required. All overtime work shall be preapproved and be requested in writing to the director of DFNS at least 24 hours in advance. The request shall identify the dates and times the vendor proposes to work. MCPS reserves the right to request reimbursement to the Building Service Personnel if the vendor cancels overtime work once scheduled.



## 7.0 VENDOR PERFORMANCE

The awarded vendor shall take under advisement MCPS wishes regarding brand preference design and material specifications of items to be sold. The vendor shall be alert to changing food service trends. The vendor shall be expected to initiate ideas for varied methods of vending serving. Upon mutual agreement, the vendor will implement these variations within the conditions of this contract.

## 8.0 INSURANCE

**Upon award of the contract, the successful vendor shall submit an actual certificate of insurance** made in favor of Montgomery County Board of Education within five workdays after notification of award. The insurance shall be maintained through the term of the contract. The Board of Education shall also be named as an additional insured on all liability policies. The successful vendor shall notify the Procurement Unit, in writing, 60 days prior to material change in any of the policies. Failure to supply this requirement within the specified timeframe allotted shall be considered in default of the contract.

The vendor shall maintain Comprehensive Business insurance for protections from claims under the Workmen's Compensations Act, claims for damages because of bodily injury, death, or property damage to others, including employees of the Board of Education; and claims for the damages arising out of the operation of motor vehicles, which may arise during the performance of the contract whether caused by the 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 and 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 MCPS, the proposed awarded shall obtain at its own expense and keep in force and effect until termination of the contractual relationship with MCPS the following insurance and 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. The primary insurance shall be the contractors.

## 9.0 COVERAGE

### 9.1 Commercial General Liability

A minimum limit of liability of \$2,000,000, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverage's:

- a) Contractual Liability
- b) Premises and Operations
- c) Independent Contractors
- d) Products and Completed Operations



## **9.2 Automobile Liability Coverage**

A minimum limit of liability of \$2,000,000, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverage's;

- a) Owned Automobiles
- b) Hired Automobiles
- c) Non-owned Automobiles

## **9.3 Workers Compensation/Employers 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

## **9.4 Additional Insured**

MCPS shall be named as an additional insured on all liability policies.

## **9.5 Policy Cancellation**

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

### **Certificate Holder**

Montgomery County Public Schools  
Christina Miller, Risk Management Specialist  
45 W Gude Dr.  
Suite 1200  
Rockville, MD 20850

## **9.6 Surrender of Premises and Equipment**

Upon termination or expiration of this contract, the vendor shall, at its own expense, remove all offeror owned equipment and product and vacate all parts of MCPS premises occupied by it; and shall restore to the same condition as when originally made available to the vendor within 30 calendar days of notification by MCPS.

## **10.0 BID AND CONTRACT SECURITY**

(This is not required for the vending contract)

## **10.1 PERFORMANCE BOND**

(This is not required for the vending contract)



## **11.0 INSPECTION OF EQUIPMENT**

Prior to award MCPS reserves the right to inspect the vending machines the respondent is proposing. Respondents shall be prepared to show the vending machines within ten days of notification.

Furthermore, MCPS reserves the right to inspect the vending machines being provided anytime during the contract year.

## **12.0 DISPUTES**

Any dispute concerning a question of fact arising under this contract shall be disposed of by written agreement between the vendor and the contracting officer. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the contract performance.

## **13.0 ASSIGNMENTS**

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the successful vendor(s) except as expressly authorized in writing by MCPS. No contract shall be made by the successful vendor(s) with any other party for furnishing any of the work or services herein contracted for without the written approval of MCPS.

## **14.0 PURVEYOR DEFAULT**

In case of default or failure to deliver product by the time specified, MCPS, after due notice, may procure from other sources and hold the vendor responsible for any excess costs.

## **15.0 AWARDS**

Bidders shall have experience in vending operations to be considered for award. MCPS reserves the right to make the award based on its best judgment as to which vendor will provide vending services that best meet MCPS' needs and expectations.

It is the intention to award to multiple or single vendors submitting the most favorable services, variety, and nutritional value of products and with the greatest source of revenue for MCPS in accordance with the specifications, terms, and conditions stated herein. Recommendation for award shall include the evaluation of data submitted with the proposals. Respondents are advised to provide any and all information requested in the RFP and any additional information, following the required format. Vendors are encouraged to submit detailed information regarding machines, products, and services they have to offer in their response. MCPS reserves the right to award to more than one vendor on a geographic basis if it is deemed to be in the best interest of the Board of Education.

Consideration will also be given to any previous performance for the Board of Education as to the quality of service, acceptable merchandise, and with regard to the bidder's ability to perform should it be awarded the contract. However, the Board of Education reserves the right to make awards according to the best interest of MCPS including the right to consider awarding milk beverage machines separately from the other beverages.



## **16.0 CONTRACT TERM**

The term of the contract shall be for two (2) years starting with the 2019-2020 school year. However, the contract may not begin until one day after the approval by the Board of Education and will conclude as stated under the contract term. MCPS reserves the right to extend this contract at existing prices, terms, and conditions for up to three (3) additional two (2) year terms. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued to the successful vendor prior to the expiration of the original contract. The vendor shall have ten days from the date of notification to return the notice acknowledging its intent to accept or reject the extension. Once the response is evaluated, MCPS staff may make a recommendation to the Board of Education to either extend the contract or rebid. If the contract is extended, a contract amendment will be issued.

## **17.0 CONTRACT TERMINATION**

MCPS reserves the right to cancel the contract in whole or in part at any time in accordance with Article 12 of the MCPS General Contract Articles. MCPS also reserves the right to cancel the contract with a Respondent for failure to comply or failure to fulfill the terms of this contract in accordance with Article 13 of the MCPS General Contract Articles as non-negotiable article numbers.

## **18.0 PROVISION FOR PRICE ADJUSTMENT**

The percentage rate offered to MCPS shall not be reduced for the initial term of the contract. However, the successful vendor shall notify the director of the Procurement Unit of any manufacturer announced price reductions and give immediate benefit to MCPS in a proportionate amount by increasing the percentage rate.

## **19.0 USDA GUIDELINES**

USDA "Smart Snacks" standards are in effect from midnight before until 30 minutes after the end of an instructional day. The "Smart Snacks" nutritional standards for foods available to students outside the reimbursable school meals program must fall into one of the following categories:

- (1) A "whole grain rich" grain product ( $\geq 50\%$  whole grain by weight, or listed as first ingredient);
- (2) A product of which the first ingredient is a fruit, vegetable, dairy product, or protein food; or
- (3) A combination food that contains at least 1 cup of fresh fruit and/or vegetable.

The following also apply:

- 1) Portion size/Calories: An entree item must be  $\leq 350$  calories per serving.



- 2) A snack item must be  $\leq 200$  calories per serving.
  - 3) Total fat: Calories from total fat must be at or below 35% per serving.
  - 4) Trans fat: Trans-fat free (defined by USDA as less than 0.5 grams per serving).
  - 5) Saturated fat: Calories from saturated fat must be less than 10% per serving.
  - 6) Sugar: Total sugar content must be less than or equal to 35% sugar by weight. There can be no added aspartame or acesulfame potassium. Beverages served in elementary schools cannot contain added sweeteners. The only exception is flavored milk.
  - 7) Sodium: An entree item must be  $\leq 480$ mg. per serving. A snack item must be  $\leq 200$  mg. per serving.
  - 8) Soda, candy of any type, and donuts are prohibited from sale to students regardless of their nutritional profile.
- c) Nutritional requirements for beverages available to students outside the reimbursable school meals program are as follows:
- 1) Milk: Only low fat (1%) and fat-free, flavored or unflavored fluid milk; serving size is limited to a maximum of 8 fluid ounces in elementary school, and 12 ounces in middle and high schools; sugar content is limited to 21 grams.
  - 2) that meets this requirement (which is a lower sugar content than the market standard)
  - 3) Fruit and vegetable juices: 100% juice with no sweeteners (nutritive or non-nutritive); serving size is limited to a maximum of 8 fluid ounces in elementary schools, and 12 ounces in middle and high schools.
  - 4) Water: Plain water with or without carbonation; no flavored water is served in elementary schools
  - 5) Soda is not allowed
  - 6) Other flavored and/or carbonated or sparkling beverages are permitted in high schools only.
  - 7) Caffeine is not allowed at any grade level.



d) The criteria developed by the USDA is follows;

In a  $\leq 12$  ounce beverage container, there can be no more than 40 calories per 8 ounces, or no more than 60 calories per 12 ounces

In a  $\leq 20$  ounce beverage container, there can be no more than 5 calories per 8 ounces, or no more than 10 calories per 20 ounces

e) Fund-raisers and marketing

- 1) Food and beverages offered for sale on school property from midnight the night before until 30 minutes after the end of an instructional day must meet the nutritional standards set forth in section III.D.3 above.
- 2) Vending machine fronts, regardless of the hours of operation, will promote activity or consumption of approved beverages.
- 3) Any other advertising, marketing, or promotion of food or beverages on school property must be consistent with MCPS Regulation CNA-RB, *Advertising*. In addition, such advertising, marketing, or promotion of foods and beverages is restricted to those foods and beverages that may be sold on the school campus from midnight the night before the beginning of an instructional day until 30 minutes after the end of an instructional day (i.e., those foods and beverages that meet the requirements set forth in section III.D.3). This restriction does not apply to brand names, separate from references to particular food or beverage items. The marketing restrictions also do not apply to materials used for educational purposes in the classroom, such as teachers' use of advertisements as an educational tool, as well as items of personal expression such as clothing, and the packaging of products brought from home for personal consumption.
- 4) Contracts that do not currently meet the requirements of this regulation must be brought into alignment with this regulation at the first opportunity or when they are up for renewal.
- 5) Foods and beverages sold outside of the instructional day (e.g., more than 30 minutes after the end of an instructional day or off school property), such as school sporting or other events, including fund-raising events, are exempted from these requirements.

## 20.0 NUTRITIONAL REQUIREMENTS

Due to the increasing concern regarding childhood obesity, nutritional guidelines have been established for vending items that are sold during the school day to students. MCPS reserves the right to determine the acceptability of any item offered and to accept or reject it accordingly.



All products submitted for consideration must meet the nutritional requirements of SMART SNACKS in School Standards.

MCPS requires products without the following ingredients;

- Artificial colors and dyes
- Acesulfame-Potassium, Aspartame
- BHA
- Azodicarbonamide
- Potassium Bromate
- Propyl Gallate
- MSG
- Artificial Trans Fats

Respondents are requested to submit a list(s) of SINGLE SERVE ‘snack’ products available for purchase that meet the Smart Snacks in School Standards. Respondents are required to submit the following information at a minimum: Product / Brand/ Pack Size (weight/ounces); Nutritional Information (per item) and Selling Price.

Attach printout from the Alliance for Healthier Generation (AHG) Smart Snacks Product Calculator for products submitted.

<https://foodplanner.healthiergeneration.org/calculator>

## **21.0 PLANOGRAMS WITH NUTRITIONAL INFORMATION**

Detailed and specific Planograms are required prior to or at RFP due date and time. The Planogram shall include a complete blueprint of the proposed layout of items in the machine, proposed end-user pricing for each item and nutritional information for each item to include a complete nutrition label and ingredient listing. This information shall be separate from the response and shall be forwarded to the Attn: Susan McCarron, MCPS Division of Food and Nutrition Services at 8401 Turkey Thicket Drive, Gaithersburg, MD 20879. The outside of the Planogram shall be marked “Planogram” and identified with the RFP name and number affixed to the packaging. Respondents shall also include descriptive literature for each product and flavor proposed on the Planogram.

Each Planogram submitted shall bear the name of the vendor, RFP name and number, and shall be carefully tagged or marked in a substantial manner. If the Planogram is not properly marked, it may not be considered. Failure to deliver Planograms for each type of machine and nutritional information for each product proposed as required, will result in automatic disqualification.

If more than one product flavor is offered, nutritional information shall be provided for each flavor. MCPS reserves the right to request samples of specific flavors.

MCPS reserves the right to request additional Planogram information subsequent to the RFP opening day and time and shall be required within 48 hours of request. Requests will be made by phone, email, or fax.



## 22.0 DEVIATIONS

All proposals meeting the intent of the RFP will be considered for award. Vendors offering and quoting on substitutions or who are deviating from the terms, conditions, and/or specifications shall list such and explain fully on a separate sheet to be submitted with its proposal. The absence of such sheet shall indicate that the vendor has taken no exception and shall be held responsible for performing in accordance with the terms, conditions, and/or specifications as stated herein.

## 23.0 REVENUE PERCENTAGE

Vendors shall indicate in their proposal a detailed percentage rate of the gross revenue for each item they plan to use and pay to MCPS. Vendors shall provide price lists with their proposals for the products that will be sold in the vending machines. The price list submitted with the proposal shall include pricing data adequate to establish the reasonableness of the proposed percentage rate. Vendors shall base the percentage rate offered on the price lists submitted. An estimated yearly profit statement shall also be submitted with the proposal.

If MCPS cannot determine a correlation of proposed percentage rate with the pricing submitted, it may be cause for non-award.

The solicitation shall be valid for acceptance during a period of no less than 90 days from the date of opening. Once the contract is approved, terms and conditions of the solicitation shall prevail throughout the contract period.

## 24.0 REFERENCES

All offerors shall include a list of a three (3) references. The references shall have company name, contact person, address and phone number of three (3) current customers for which a contract for similar services have been provided. If the reference information is not accurate and MCPS cannot contact the person(s) named, your proposal may not be considered. Also, as an attachment, offerors shall include a list of all current school district clients.

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

<u>Company Name &amp; Address</u>	<u>Contact Person</u>	<u>Phone Number</u>
1. _____ E-mail _____		
2. _____ E-mail _____		
3. _____ E-mail _____		



## **25.0 FORMAT OF RESPONSE**

- 10.1** Response to this RFP shall be submitted in the same order as the RFP and provide an individual response to each RFP specification.
- 10.2** Respondents shall include any and all statements and representations made within its proposal in the contract for services with the MCPS. This includes, but is not limited to, the Respondent's point-by-point response to this RFP. If the Respondent responds only "Understand and comply," it is assumed that the Respondent complies with MCPS' understanding of the requirement.
- 10.3** A pricing proposal shall be submitted as a separate document as well as any general contract articles exceptions.

## **26.0 MANDATORY SUBMISSIONS**

Each Offeror must submit a complete proposal including all required information and attachments, please include sample materials at the time of submission. The response shall address each paragraph in the same order as the RFP and provide an individual response to each RFP specification. All proposals must be submitted using the same numbering sequence and order used in this RFP document or as otherwise specified by MCPS. Offerors may request via \_\_\_\_\_ e-mail \_\_\_\_\_ to Tina Marie Booth, Buyer, MCPS Procurement Unit, at [TinaMarie.M.Booth@mcpsmd.org](mailto:TinaMarie.M.Booth@mcpsmd.org) a Microsoft Word version to help them in preparing the response.

One (1) original and three (3) copies, as well as one (1) electronic version on CD or flash drive , and one (1) redacted copy, as well as one (1) electronic version on CD or flash drive of the redacted response must be sent by mail, courier, or hand-delivery to the address below. Responses shall be in binders with tabs identifying each section. A table of contents should be included and all pages numbered as referenced in the table of contents. No faxes or electronic submission of proposals will be accepted. Proposals are to be received no later than 2:00 p.m. on June 3, 2019. Submit responses of the entire RFP proposal to:

Montgomery County Public Schools  
Procurement Unit, Attn: Tina Marie Booth  
45 West Gude Drive, Suite 3100  
Rockville, MD 20850

Submissions will become the property of MCPS.

Failure to include the following required submissions may render the proposal non-responsive as determined by the Procurement Unit Team Leader.

The Offeror must describe staffing levels, warehouse locations, quality control standards and practices, as well as the organization's capacity to fulfill services.

A list of at least three (3) references for the contracting agency including contact persons and telephone numbers must be submitted.



The proposal must be signed by an official having authority to contract with MCPS. The vendor 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 also may negotiate with multiple offerors who submits the best proposal who are in the competitive range. Therefore, it is important that the Offeror's proposal be submitted initially on the most favorable terms from both the technical and cost standpoints. After the submission and closure of proposals, no information will be released until after the award. It is understood that the Offeror's proposal will become a part of the official file on this matter without obligation to MCPS.

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

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

## **27.0 BUY AMERICAN REQUIREMENT**

The National School Lunch Act (NSLA) mandates that school districts use federal funds to purchase only food produced in the United States. Accordingly, the products supplied by the successful respondent must be a domestic food commodity or a domestic food product, as these terms are defined within NSLA regulations. Exceptions for products such as bananas, will be requested from Maryland State Department of Education for an annual term. Other exceptions must be documented on an as needed basis. Documentation for all requests should be on letter head with the details for the exception, such as availability and or cost.

A domestic food commodity is an agricultural commodity (for example, red meat, chicken, fruit, vegetable or grain) that is produced in the United States. A domestic food product as defined by federal regulations is a product processed in the United States "substantially" using domestic agricultural commodities. Substantially means that over 51 percent (51%) of the processed food comes from American-produced products.

## **28.0 FOOD SAFETY AND RECALLS (ATTACHMENT F)**

Ensuring the safety of the food supply is critical to MCPS. Manufacturers and distributors are expected to comply with all federal, state, and local laws and regulations. If manufacturers and distributors do not comply with mandated laws and regulations, they will be held liable. Recalls are an effective method of removing or correcting consumer products that are in violation of laws administered by the Food and Drug Administration. The respondent shall have a process in place to effectively respond to a food recall which should include the following:

- a. Provide accurate and timely communication to MCPS regarding a food recall.
- b. Ensure that unsafe products are removed from school sites in an expedient, effective, and efficient manner.
- c. Streamline the process for reimbursement of recalled product.
- d. Submit a one-page summary of their recall policy and procedures.



## 29.0 PROJECT CONTACT

The MCPS project contact for this proposed procurement is:

Montgomery County Public Schools  
Division of Food and Nutrition Services  
Attn: Ms. Susan McCarron  
8401 Turkey Thicket Dr.  
Gaithersburg, MD 20879  
301-284-4900

## 30.0 TREATMENT OF TECHNICAL DATA IN PROPOSAL

The proposal submitted in response to this request may contain technical data which the offeror does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data, subject to the provisions of the Maryland Public Information Act, may be so restricted:

Provided, that offeror marks the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend: "Technical data contained in pages of this proposal shall not be used or disclosed, except for evaluation purposes."

Provided, that if a contract is awarded to this offeror as a result of or in connection with the submission of this proposal, MCPS shall have the right to use or disclose these technical data to the extent provided in the contract.

This restriction does not limit the right of MCPS to use or disclose technical data obtained from another source without restriction.

MCPS assumes no liability for disclosure or use of unmarked technical data or products and may use or disclose the data for any purpose and may consider that the proposal was not submitted in confidence and therefore is releasable. Price and cost data concerning salaries, overhead, and general and administrative expenses are considered proprietary information and will not be disclosed, if marked in accordance with the instructions in Section 32.

## 31.0 PROPRIETARY AND CONFIDENTIAL INFORMATION

Offerors are notified that MCPS has unlimited data rights regarding proposals submitted in response to this solicitation. Unlimited data rights means that MCPS has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by the Offeror in response to this or any solicitation issued by MCPS. However,

MCPS will exempt information that is confidential, commercial, or financial information of an Offeror, as defined by the MPIA, State Government Article, Section 10-617, from disclosure. It is the responsibility of the Offeror to clearly identify each part of its proposal that is confidential, commercial, or financial information by stamping the **bottom right-hand corner** of each pertinent page with one-inch bold face letters stating the words "**confidential**"



or “proprietary.” The Offeror agrees that any portion of the proposal that is not stamped as proprietary or confidential is not proprietary or confidential. As a condition for MCPS keeping the information confidential, the Offeror must agree to defend and hold MCPS harmless if any information is inadvertently released. Each Offeror must submit a proprietary and confidential redacted copy of its proposal to be used in responding to MPPIA requests.

## **32.0 EVALUATION/AWARD CRITERIA**

MCPS reserves the right to ask clarifying questions about submitted proposals. Offerors also may ask questions that they may have related to this RFP prior to submitting their responses. See Section 34.0, Schedule of Events. Only proposals received by the deadline will be considered. Proposals will be screened down to a number of finalists.

MCPS reserves the right to convene a meeting with the top qualified Offeror(s) prior to awarding a contract. The purpose of the meeting will be to afford both parties an opportunity to discuss any aspects of the requirements and services that will be performed and clarify any issues. Issues raised during the meeting, which cannot be resolved to the satisfaction of MCPS, shall be cause to reject the proposal.

In addition, Respondents shall provide a sample of the products with the RFP submission.

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

Proposals meeting all requisite criteria will be evaluated. Those who do not meet requisite criteria will not be evaluated further.

The Respondents understanding of the requirements as determined by the:

- Completeness of Response
- Conformance to specification
- Ability of vendor to perform
- Related past experience, qualifications and capacity.
- Percentage Rate offered
- Acceptability of product vending machines offered
- Cost of vended product
- Quality of products and machines



- Service/Response time
- References.
- Number of years of operation as a vending service company
- Location of the fully staffed facility that will service MCPS
- Number of service technicians available to service MCPS and their resumes
- Machines – debit card/credit card compatible
- Description of services to be provided on a regular basis and service schedule
- Maximum response time for emergency or non-routine service requests
- Description of respondents refund policy and procedures
- Selling prices
- Percentage of gross revenue (commission) vendor proposes to pay to MCPS.
- Vendors maintenance cleaning schedule of machines
- Vendors replacement schedule of machines provided
- Contractor's ability to provide described supplies and or services.
- Contractor's understanding of the scope of services as demonstrated by the response to the RFP.
- Sample product quality

A selection committee comprised of MCPS staff and potentially outside stakeholders will evaluate proposals based on these criteria.

**MCPS reserves the right to add or delete Offeror's, as needed, should our requirements change during the contract term.**

#### **PRE-PROPOSAL CONFERENCE**

A pre proposal conference for prospective vendor will be held at **1:00pm May 29, 2019 at 45 W. Gude Dr. Suite 3100, Rockville, MD 20850**. Attendance to this conference is strongly encouraged but is not mandatory. The purpose of the pre proposal conference is to allow vendors the opportunity to obtain clarification of the RFP, receive the responses to the written questions and ask questions directly to MCPS staff to assist them in preparation of their proposals. Any questions and responses which change the scope of work or make a substantive change to this RFP will be shared with all vendors. Vendors who plan to attend



the pre proposal conference should email [Tinamarie\\_M\\_Booth@mcpsmd.org](mailto:Tinamarie_M_Booth@mcpsmd.org) with the names of the person(s) who will be attending. Due to limited seating, please send no more than two representatives.

### **33.0 SCHEDULE OF EVENTS**

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

**RFP issued: April 29, 2019**

**Questions Due: May 17, 2019**

**Questions and Answers Posted: May 21, 2019**

**Pre – Proposal Conference: May 29, 2019**

**Proposals Due: June 3, 2019**

**Anticipated award date: July 1, 2019**

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

### **36.0 ADDENDA/ERRATA**

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the offerors responsibility to check the MCPS website under “Open Solicitations” <http://procurement.montgomeryschoolsmd.org/home/Bids> or contact the Procurement Unit at 301-279-3555 to verify whether addenda/errata have been issued.

In the event that MCPS issues addenda/errata, all terms and conditions will remain in effect unless they are specifically and explicitly changed by the addenda/errata. Offerors must acknowledge receipt of such addenda/errata by returning one signed copy of each of the addenda/errata with its proposal. Failure to provide the signed acknowledgement of the addenda/errata may result in a bid being deemed non-responsive.

### **37.0 eMARYLAND MARKETPLACE**

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

### **38.0 MULTIAGENCY 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, nonpublic schools such as charter schools,

special districts, intermediate units, nonprofit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. Use of this solicitation by other agencies may be dependent on special local/state requirements attached to and made a part of the solicitation at the time of contracting. The supplier/contractor agrees to notify the issuing agency of those



entities that wish to use any contract resulting from this bid and also will 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 Awarded Offeror(s) and this contract shall be binding only upon the appropriate approved signature of such an agreement. Invoices shall be submitted "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the Award Offeror. MCPS assumes no authority, liability, or obligation on behalf of any other public or nonpublic entity that may use any contract resulting from this bid. MCPS pricing is based on the specifications provided in this solicitation.

### **39.0 INQUIRIES**

Inquiries regarding this solicitation must be submitted in writing to Ms. Tina Marie Booth, Buyer, MCPS Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, MD 20850, via fax at 301-279-3173 or e-mail to [TinaMarie\\_M\\_Booth@mcpsmd.org](mailto:TinaMarie_M_Booth@mcpsmd.org). **Questions are due 4:00 p.m. on May 17, 2019 in writing to [TinaMarie\\_M\\_Booth@mcpsmd.org](mailto:TinaMarie_M_Booth@mcpsmd.org).** Question and responses will be posted on eMaryland Marketplace and on MCPS' Procurement website on **May 21, 2019**. The Board will not be responsible for any oral or telephone explanation or interpretation by any agent or employee of MCPS. Any binding information given to an Offeror in response to a request will be furnished to all Offerors as addenda/errata, if such information is deemed necessary for the preparation of proposals, or if the lack of such information would be detrimental to the uninformed Offerors. Only such addenda/errata, when issued by MCPS, will be considered binding on MCPS.

**Contact by Offerors with any other MCPS employee regarding this solicitation until the contract is awarded by MCPS will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration of its RFP response.** In addition, MCPS expects all Offerors to review and assure compliance throughout the RFP process with Board Policy BBB, *Ethics*, and MCPS Regulation GCA-RA, *Employee Conflict of Interest*. The MCPS Procurement website address is [www.montgomeryschoolsmd.org/departments/procurement/](http://www.montgomeryschoolsmd.org/departments/procurement/).

### **40.0 UNNECESSARILY ELABORATE BROCHURES**

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

### **41.0 PROTESTS**

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



## 42.0 CONTRACT

MCPS plans to enter a contractual agreement with Respondent(s) to whom the award is made and intends to make MCPS General Contract Articles, attached hereto and incorporated herein as Appendix A, part of the contractual agreement, except and unless modified by MCPS. Proposals must clearly identify any variances from or objections to the specifications in this RFP and the terms and conditions of the MCPS General Contract Articles. Lacking any response to the contrary, MCPS will infer that the Respondent agrees to the specifications of this RFP and each term and condition of the MCPS General Contract Articles. Respondents should note that any variance may provide a basis for MCPS to reject the proposal. **In particular, the provisions set forth in Articles 5, 12-14, 16-18, 21-24, 26, 28, and 29 of the MCPS General Contract Articles are non-negotiable**

As a note of clarification, Article 19 of the MCPS General Contract Articles applies to any products or services that the Respondent develops specifically for MCPS pursuant to this RFP, not to the Respondent's existing off-the-shelf products and services. MCPS understands and acknowledges that the Respondent retains all intellectual property rights to its existing off-the-shelf products and services and that MCPS will be granted licenses to utilize such products and services.

In addition, with regard to Article 8.D. of the MCPS General Contract Articles, MCPS reserves the right to submit payment in the form of credit card, Single Use Account (SUA), or Automated Clearing House (ACH). The Respondent shall not assess MCPS with any additional charge, fee, or price for the use of these electronic payment methods.

## 43.0 NOTICE TO OFFERORS

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

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

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

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

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

- 1. Company Name \_\_\_\_\_
- 2. Address \_\_\_\_\_
- 3. Bid Representative's Name \_\_\_\_\_



4. Phone Number/Extension \_\_\_\_\_
5. Fax Number \_\_\_\_\_
6. Toll Free Number \_\_\_\_\_
7. E-mail Address \_\_\_\_\_
8. Website \_\_\_\_\_

**III. OFFEROR'S CERTIFICATION:** Upon notification of award, this document in its entirety is the awarded Offeror'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 and that all statements, representations, and information provided in this response to the Request for Proposals, including but not limited to the Non-Debarment Acknowledgement, are accurate.

By (Signature) \_\_\_\_\_  
Name and Title \_\_\_\_\_  
Witness Name and Title \_\_\_\_\_







## ATTACHMENT B

### MCPS GENERAL CONTRACT ARTICLES

#### ARTICLE 1. DESCRIPTION AND GENERAL INTENT

For the purposes of these MCPS General Contract Articles, "MCPS" refers to the Board of Education of Montgomery County, which operates a system of public schools commonly known as Montgomery County Public Schools, and "Contractor" refers to the entity awarded a Contract pursuant to authorization by MCPS in accordance with applicable laws, Board of Education policies, and MCPS regulations. Together MCPS and the Contractor are collectively referred to as the "Parties" and each individually as a "Party." The term "Contract" refers to these MCPS General Contract Articles and any other contract documents duly executed by the Parties that expressly incorporate these MCPS General Contract Articles by reference, as well as any request for proposals (RFP) or solicitation by MCPS, the Contractor's proposal or bid in response, if satisfactory to MCPS in its sole discretion, and any Contract award notification issued by MCPS.

#### ARTICLE 2. MCPS PROJECT CONTACT

The MCPS Project Contact is responsible for the technical and programmatic aspects of the Contract and is the technical and programmatic liaison with the Contractor. The MCPS Project Contact is responsible for the review and approval of any and all deliverables, products, and/or services, and such other responsibilities as may be specified in the Contract. The MCPS Project Contact is not authorized to make any commitments, otherwise obligate MCPS, or make any changes which affect the Contract price, terms, or conditions. Any Contractor requests for changes to the Contract price, terms, or conditions shall be referred to the Director of the MCPS Department of Materials Management or designee (DMM Director). No such changes shall be made without the written authorization of the DMM Director. The MCPS Project Contact may be changed at any time, provided that notification of the change, including the name and address of the successor MCPS Project Contact, is provided to the Contractor in writing. Any written notice by the Contractor to MCPS required under the Contract shall be provided to the DMM Director, with a copy to the MCPS Project Contact, using contact information available on the MCPS website.

#### ARTICLE 3. INDEPENDENT CONTRACTOR

The Parties agree that the Contractor is an independent contractor under the Contract and will in no way be considered to be an agent, partner, or employee of, or joint venture with, MCPS. Neither the Contractor nor its employees, agents, affiliates, or subcontractors will be entitled to any benefits, coverage, or other privileges made available to MCPS employees.

#### ARTICLE 4. KEY CONTRACTOR PERSONNEL

Any of the Contractor's key personnel, identified as such in the Contract, are considered to be essential to the work being performed under the Contract. Prior to diverting any such key personnel to other programs, the Contractor shall notify the MCPS Project Contact reasonably well in advance and submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract. No diversion shall be made by the Contractor without the written consent of the MCPS Project Contact. 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 pursuant to Article 13. MCPS reserves the right to require that the Contractor replace any key personnel or any individual charged to the Contract at any point during the Contract term if MCPS determines that this action is in its best interests.

#### ARTICLE 5. CONTRACTOR RESPONSIBILITY

- A. The Contractor shall furnish all personnel, materials, products, tools, services, and facilities necessary to perform the requirements set forth in the Contract. All deliverables, products, and/or services required by the Contract shall be submitted to the MCPS Project Contact according to the kinds and



dates indicated in the Contract. MCPS has relied upon the professional ability and training of the Contractor as a material inducement to enter into the Contract. The Contractor hereby agrees that all of the Contractor's work shall be performed in a professional and workmanlike manner, through only qualified and appropriately trained personnel, and consistent with the highest industry standards in compliance with applicable federal, state, and county laws and regulations—it being understood that acceptance of the Contractor's work by MCPS shall not operate as a waiver or release of the Contractor's obligations.

- B. The Contractor acknowledges and agrees that time is of the essence with respect to its obligations under the Contract and that prompt and timely performance of all such obligations, including conformance with all timetables and other requirements of the Contract, is strictly required.
- C. The Contractor shall obtain any licenses or permits necessary for performance of the work required under the Contract. In the event the work to be performed by the Contractor must by law or regulation be provided by individuals who are licensed and/or certified to provide certain Professional Services, the Contractor shall only assign individuals to perform work under the Contract who are licensed and/or certified in accordance with applicable law, and all such individuals shall maintain their license and/or certification in good standing (not under review or subject to suspension) during the entire term of the Contract. "Professional Services" for the purpose of the Contract shall mean any service provided by a licensed, certified, or otherwise documented professional. Upon request by MCPS, the Contractor shall promptly submit documentation to the MCPS Project Contact that the individuals assigned to provide Professional Services under the Contract are properly licensed and/or certified.
- D. Any performance or bid bond obligations of the Contractor will be as described in the RFP or solicitation.
- E. Whenever the Contractor has knowledge that any actual or potential situation (including, but not limited to, labor disputes) delaying or threatening to delay the timely performance of the work under the Contract or a force majeure event as described in Article 7, the Contractor shall immediately give written notice, including all relevant information, to the DMM Director.
- F. The Contractor shall comply with all applicable federal, state, and county laws and regulations, as well as all applicable safety requirements, Board of Education policies, and MCPS regulations issued by the Superintendent of Schools. Board of Education policies and MCPS regulations are available at this link: [www.montgomeryschoolsmd.org/departments/policy/](http://www.montgomeryschoolsmd.org/departments/policy/). This obligation includes but is not limited to Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency* ("Board Policy ACA"), which prohibits discrimination based on actual or perceived personal characteristics, including race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Consistent with Board Policy ACA and applicable federal, state, and county laws and regulations, the Contractor will not discriminate against any of its employees or applicants for employment because of the actual or perceived personal characteristics listed above. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to these actual or perceived personal characteristics. In addition, the Contractor agrees to provide such accommodations as are required under federal, state, and county laws and regulations, including but not limited to the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973.
- G. The Contractor shall provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and its implementing regulations, Board of Education Policy IGN, *Preventing Alcohol, Tobacco, and other Drug Abuse in Montgomery County Public Schools*, and MCPS Regulation COF-



*RA, Alcohol, Tobacco, and other Drugs on Montgomery County Public Schools Property.*

- H. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

#### **ARTICLE 6. SUBCONTRACTORS**

Work performed under the Contract shall not be subcontracted without advance written approval of the DMM Director; nor shall any substitution of subcontractors be made without such advanced approval in writing. The Contractor shall include provisions in its subcontracts requiring its subcontractors to comply with the Contract, to indemnify, defend, and hold harmless MCPS, and to provide insurance coverage for the benefit of MCPS, in a manner consistent with the Contract. The Contractor also shall cause its employees, agents, affiliates, and subcontractors to comply with the Contract and adopt such review, audit, and inspection procedures as are necessary to assure such compliance.

#### **ARTICLE 7. FORCE MAJEURE**

Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic event. Should there be such an occurrence that impacts the ability of either Party to perform its responsibilities under the Contract, the nonperforming Party shall give immediate written notice to the other Party to explain the cause and probable duration of any such nonperformance. If the DMM Director determines that a 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 Articles 12 and 13.

#### **ARTICLE 8. PAYMENT TERMS AND CONDITIONS**

- A. The Contractor certifies that all information the Contractor has provided or will provide to MCPS is true and correct and can be relied upon by MCPS in awarding, modifying, making payments, or taking any other action with respect to the Contract including resolving disputes. Any false or misleading information is a ground for MCPS to terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. The Contractor certifies that the Contractor's accounting system conforms to generally accepted accounting principles, is sufficient to comply with the Contract's obligations, and produces reliable financial information.
- B. The prices, rates and other compensation for work performed is as described in the Contract.
- C. The Contractor's invoices shall be approved for payment by the MCPS Project Contact only after the MCPS Project Contact is satisfied that the Contractor is performing the work and has prepared the invoice as required by the Contract. Prior to approving any Contractor invoices for payment, 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 any of its subcontractors, the Contractor shall provide and shall require its 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.
- D. Within thirty (30) days after receipt of each invoice and accepting the work, MCPS shall, except as provided in the Contract, pay for the work performed when approved by the MCPS Project Contact. A payment schedule will be jointly developed between MCPS and the Contractor. MCPS reserves the right to submit payment using an electronic payment method, such as credit card, Single Use Account, or Automated Clearing House. The Contractor shall not assess MCPS with any additional charge, fee, or price for the use of these electronic payment methods.



- E. Regardless of any other provisions of the Contract, failure of the Contractor to submit required reports when due or failure to perform or deliver acceptable work, deliverables, products, or services will result in MCPS withholding payments under the Contract unless such failure arises pursuant to Article 7 and without the fault or negligence of the Contractor. MCPS shall promptly notify the Contractor of its intention to withhold payment of any invoice submitted.
- F. MCPS is tax exempt as a governmental entity. The Contractor shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of and compensation for its work. MCPS assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the Contractor, its employees, agents, affiliates, and/or subcontractors by reason of the Contract.
- G. If at any time MCPS determines that a cost for which payment has been made is a disallowed cost, such as overpayment, MCPS shall notify the Contractor in writing of the disallowance or claim for unallowable costs. MCPS shall also state the means of correction, which may be, but shall not be limited to, adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

#### **ARTICLE 9. CHANGES**

The DMM Director may, at any time, make non-material changes that are within the original general scope of the Contract and the RFP or solicitation in any one or more of the following: (i) specifications or statement of work, and (ii) 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 the Contract, whether changed or not changed by any such order, an equitable adjustment shall be made: (i) in the Contract price or time of performance or both; and/or (ii) 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 thirty (30) days from the date of receipt by the Contractor of the notification of change, however, if the DMM Director decides that the facts justify such action, the DMM Director may receive and act upon any such claim asserted at any time prior to final payment under the Contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Article 15.

#### **ARTICLE 10. AUDIT AND DOCUMENT RETENTION**

During the term and for three (3) years thereafter, the Contractor shall: (i) maintain complete and accurate books and records regarding its business operations relevant to the calculation of amounts payable under the Contract and any other information relevant to the Contractor's compliance with the terms and conditions of the Contract; and (ii) upon MCPS' request, make such books and records, as well as any of its employees, agents, affiliates, or subcontractors who might reasonably have information related to such records, available during normal business hours for inspection and audit by MCPS or its authorized representative, provided that MCPS shall: (a) provide the Contractor with reasonable prior notice of any audit; (b) undertake an audit no more than once per calendar year, except for good cause shown; and (c) conduct or cause to be conducted such audit in a manner designed to minimize disruption of the Contractor's normal business operations.

#### **ARTICLE 11. TERM OF CONTRACT**

Unless otherwise specified in the Contract, the term of Contract shall be for one year, provided that the Contract is not terminated pursuant to Article 12, 13, or 14. After the initial term, MCPS, in its sole discretion, reserves the right to extend the Contract if agreed to by both Parties.



## ARTICLE 12. TERMINATION FOR CONVENIENCE

The Contract may be terminated in whole or in part by MCPS whenever the Superintendent of Schools, or an authorized designee, determines that such a termination is in MCPS' best interest. Any such termination shall be effected by delivery of a notice of termination to the Contractor, at least ten (10) business days prior to the termination date. The notice of termination shall specify the extent to which performance shall be terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive just and equitable compensation for any work completed, as determined by MCPS, but no amount shall be allowed for anticipated profit on unperformed work. In the event of such termination, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall become the property of MCPS.

## ARTICLE 13. TERMINATION FOR CAUSE

### A. Termination for Cause by MCPS

1. If, through any cause (other than as set forth in Article 7), the Contractor fails to fulfill in a timely manner its obligations under the Contract, or if the Contractor violates any of the covenants, agreements or stipulations of a Contract (hereinafter a "Default"), MCPS shall have the right to terminate the Contract, in addition to MCPS' remedies in the Contract and all other rights available at law or in equity. Such termination shall be effected by MCPS delivering a written notice of termination to the Contractor, which notice may, in the sole discretion of MCPS, provide for a period of up to thirty (30) days for the Contractor to cure the Default. If MCPS provides for an opportunity to cure the Default and the Default is not remediated within the specified period, as determined by MCPS, MCPS shall issue a final notice of termination specifying the effective date of such termination.
2. A Contractor bankruptcy or bankruptcy event shall be deemed grounds for a termination for cause.
3. In the event of such termination for cause, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall become the property of MCPS.
4. A termination for cause is a termination for convenience if the termination for cause is later found to be without justification.
5. The Contractor shall be entitled to receive just and equitable compensation for any work completed prior to termination, as determined by MCPS, but no amount shall be allowed for anticipated profit on unperformed work.
6. Notwithstanding the foregoing provisions, the Contractor shall not be relieved of liability to MCPS for damages sustained by MCPS by virtue of any breach of Contract by the Contractor for the purposes of set off, until the exact amount of said damages is ascertained.

### B. Termination for Cause by the Contractor

1. If, through any cause (other than as set forth in Article 7), MCPS is in breach of the Contract and has not cured such breach within thirty (30) days of written notice from the Contractor specifying the same, the Contractor shall have the right to immediately terminate the Contract. Such termination shall be effected by delivering a notice of termination to the DMM Director specifying the effective date of such termination.



#### **ARTICLE 14. NON-APPROPRIATION**

If the term of the Contract, or any Contract extension, extends beyond the end of the MCPS fiscal year (July 1 to June 30) in which the Contract was awarded or extended, and the approved MCPS budget for the subsequent fiscal year does not appropriate sufficient funds that may be utilized for the Contract, the Contract shall no longer be in force and effect upon the expiration of the current fiscal year funding. In this event, upon expiration of the current fiscal year funding, MCPS shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under the Contract, and the Contractor shall not be obligated to perform any further work under the Contract. If the approved MCPS budget for the subsequent fiscal year reduces funding available for the Contract, MCPS shall have the option, in its sole discretion, to cancel the Contract with no liability occurring to MCPS, or offer a Contract amendment to the Contractor reflecting the reduced amount, which the Contractor may accept in lieu of termination.

#### **ARTICLE 15. DISPUTES**

The Parties shall collaborate to resolve any disputes arising under the Contract. In the event that the Parties are not able to resolve a dispute concerning a question of fact arising under the Contract, the dispute shall be submitted in writing to the DMM Director for a determination. The Contractor may appeal the decision of the DMM Director in writing to the Superintendent of Schools, whose decision shall be final. This Article does not preclude consideration of questions of law arising under the Contract, provided that nothing in the Contract shall be construed as making final the decision of any MCPS official, representative, or the Board of Education on a question of law. THE PARTIES SPECIFICALLY AGREE THAT NO DISPUTE OR CAUSE OF ACTION ARISING OUT OF THE CONTRACT SHALL BE SUBMITTED TO ARBITRATION OR MEDIATION, AND THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL IN ANY COURT OF COMPETENT JURISDICTION OR ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ONE AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE CONTRACT, OR ANY RELATIONSHIP OF MCPS AND THE CONTRACTOR HEREUNDER.

#### **ARTICLE 16. CONTRACTOR INTEGRITY, ETHICS, AND CONFLICTS OF INTEREST**

- A. The Contractor is prohibited from using the services of MCPS employees or officials (including Board of Education members) in performing the Contract. Former employees or officials may be used, provided that a 12-month period has elapsed since their last employment at MCPS. A former MCPS employee or official, may not assist or represent the Contractor for compensation in any case, controversy, dispute, contract, or other specific matter involving MCPS, if that case, controversy, dispute, contract, or other specific matter is one in which the former employee or official significantly participated as an employee or official.
- B. No official or employee of Maryland, Montgomery County, or MCPS shall benefit from or receive any money as a result of the Contract. This prohibition does not apply to contracts with MCPS employees or officials who contracted in their own name.
- C. The Contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, partners, employees, agents, affiliates, or subcontractors directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, and county laws and regulations.
- D. The Contractor agrees to review and at all times abide by the Board of Education Policy BBB, *Ethics* ("Board Policy BBB"). In addition, the Contractor shall have an affirmative obligation to disclose in writing to the DMM Director any actual or potential conflicts of interest as identified in Board Policy BBB, and neither the Contractor nor any of its officers, directors, partners, employees, agents, affiliates, or subcontractors shall take any action that they know or should have reason to know would result in



any MCPS official or employee violating Board Policy BBB.

- E. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- F. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

#### ARTICLE 17. PUBLICATION AND PUBLICITY

MCPS may, in its sole discretion, make the Contract publically available on the MCPS website or otherwise. The Contractor shall not, without consultation and consent by MCPS, (i) originate any report, publication, presentation, publicity, news release, or other announcement, written or oral, relating to the Contract or any results achieved pursuant to the Contract (hereinafter "Publication"); or (ii) use any names, trademarks, or logos of MCPS, except as necessary to perform the work of the Contract. To the extent that MCPS agrees to any such Publication regarding the Contract, the Contractor shall abide by the following terms:

- A. The primary purpose shall be to disseminate information about the work rather than to promote the Contractor's accomplishments or knowledge.
- B. Such Publication shall prominently display or acknowledge MCPS support and include the following disclaimers: (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. The Contractor shall abide by the provisions of Article 18 and any other data-sharing agreement between the Parties.

#### ARTICLE 18. DATA COLLECTION AND CONFIDENTIAL INFORMATION

- A. The Contractor shall comply with all federal, state, and county laws and regulations applicable to the Contract regarding data collection, privacy, and security, including but not limited to the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99), the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.), the Protection of Pupil Rights Amendment, (PPRA) 20 U.S.C. § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 et seq.), the Maryland Student Privacy Act of 2015, Md. Ed. Code Ann., §4-131, Code of Maryland Regulations (COMAR) 13A.08, as well as applicable Board of Education policies and MCPS regulations, including but not limited to MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*, MCPS Regulation JOA-RA, *Student Records*, and MCPS Regulation JFF-RA, *Federal Requirements for Use of Protected Student Information*.
- B. Questionnaires, survey instruments, or any other form of data collection from MCPS students, staff, parents/guardians or others pursuant to the Contract or otherwise must be reviewed and approved by the MCPS Office of Shared Accountability prior to use as required by MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*.
- C. Access to Confidential Information
  - 1. To assist the Contractor in its work under the Contract, 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"). For purposes of the Contract, Confidential Information



is any information or data labeled or identified as confidential in the Contract or at the time of disclosure. This definition and the obligations of this Article shall not extend to any information that: (i) the Contractor possesses prior to acquiring it from MCPS; (ii) becomes available to the public or trade through no violation by the Contractor; or (iii) is developed by the Contractor independently of and without reliance on confidential or proprietary information provided by MCPS.

2. Confidential Information also includes any and all “Personally Identifiable Information” regarding MCPS students, parents/guardians, employees, or others in any medium, including but not limited to any user-generated content that MCPS students, parents/guardians, employees, or others (“MCPS Users”) input to access or use the Contractor’s deliverables, products, and/or services (e.g., log-in information or responses to assessment questions), as well as “Metadata.” Metadata includes but is not limited to: information about how long a MCPS User took to perform a task; information about how long a MCPS User’s mouse hovered over an item; keystroke data; location data; or other data about the MCPS User’s use of the Contractor’s deliverables, products, and/or services that has not been stripped of all direct and indirect identifiers. With respect to MCPS students, Personally Identifiable Information, as defined under applicable law, includes:
  - a. A student’s name;
  - b. The name of the student’s parent/guardian or other family members;
  - c. The address of the student or student’s family;
  - d. A personal identifier, such as the student’s social security number, student number, or biometric record;
  - e. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
  - f. Other information (including but not limited to Metadata) that, alone or in combination, is linked or linkable to a specific student or family that would allow a reasonable person in the MCPS community, who does not have personal knowledge of the relevant circumstances, to identify the student or family with reasonable certainty; or
  - g. Information requested by a person, who is not an authorized representative of the educational agency and who MCPS and/or the Contractor reasonably believes knows the identity of the student to whom the education record relates.
3. 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 Contract. The Contractor shall protect the Confidential Information from any Data Security Breach (as defined below), loss, theft, or disclosure using a commercially reasonable care commensurate with the sensitivity of the Confidential Information that in no circumstances is less than the degree of care that the Contractor uses to protect its own confidential information. The Contractor agrees to assist MCPS in maintaining the privacy of Confidential Information as may be required by all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
4. The Contractor shall not permit unauthorized access to the Confidential Information to any individual or entity at any time or provide Confidential Information to any person, party, or organization ineligible or prohibited from receiving such information pursuant to any federal, state,



and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.

5. 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.
6. To the extent that Confidential Information includes Personally Identifiable Information regarding MCPS Users, MCPS may require additional data sharing protocols, as agreed in writing by the Parties, prior to its disclosure to the Contractor. The Contractor also agrees to comply with the re-disclosure limitations set forth in FERPA, including in 34 C.F.R. § 99.33, and shall not authorize access to Confidential Information to any of its employees, agents, affiliates, and subcontractors, or to any auditor, unless such employee, agent, affiliate, subcontractor, or auditor (i) requires such access in order to allow the Contractor to provide the deliverables, products, and/or services set forth in the Contract or to fulfill the Contractor's obligations under the Contract; and (ii) has signed a non-disclosure agreement no less restrictive than the terms of the Contract that will (a) prohibit the such individual or entity from using any Confidential Information for any purpose other than providing the contracted service to, or on behalf of the Contractor; (b) prohibit the individual or entity from disclosing any Confidential Information provided by the Contractor to third parties; (c) require the individual or entity to implement and maintain strict security procedures and practices that, at a minimum, comply with industry standards for data security; and (d) require the individual or entity to promptly notify the Contractor if the individual or entity becomes aware of any unlawful access to any Confidential Information stored on its equipment or facilities resulting in loss, disclosure, or alteration of Confidential Information. Such non-disclosure agreements shall be made available for inspection, upon demand, to MCPS. The Contractor agrees to remind (in writing) individuals or entities who cease working with the Contractor of their non-disclosure obligations at the time of departure, and to terminate the network access of such individuals or entities at the time of separation.
7. Notwithstanding any other provision of the Contract, MCPS and/or MCPS Users, as appropriate, retain all right, title, and interest in and to the Confidential Information provided by MCPS and/or MCPS Users. Neither the Contractor, nor any successor or entity to which the Contractor's assets are sold, acquires rights in the Confidential Information, other than the rights MCPS grants to the Contractor to perform the work contemplated in the Contract. If the Contractor becomes subject to dissolution or insolvency, MCPS' and MCPS Users' Confidential Information will not be considered an asset or property of the Contractor. MCPS reserves the right to demand the prompt return of any Confidential Information at any time and for any reason whatsoever. The disclosure of Confidential Information to the Contractor shall not be construed as a grant of any right or license with respect to the information other than for the purposes set forth in the Contract.

#### D. Use of Confidential Information

1. The Contractor shall collect, use, and store only such Confidential Information that is necessary in connection with the Contractor's obligations under the Contract.
2. The Contractor may collect and use aggregated de-identified Confidential Information to provide the deliverables, products, and/or services set forth in the Contract, for the Contractor's lawful quality assurance, and for no other purpose; provided, however, that all direct and indirect personal identifiers are permanently removed and there is no reasonable basis to believe that the remaining information in the records can be used to successfully link the de-identified information to an



identifiable individual or to MCPS. Furthermore, the Contractor agrees not to: (i) attempt to re-identify de-identified Confidential Information; and/or (ii) transfer de-identified Confidential Information to any party unless that party agrees not to attempt to re-identify the de-identified Confidential Information and unless MCPS has provided written express consent of the transfer.

3. Neither the Contractor nor any of its employees, agents, affiliates, and subcontractors shall: (i) engage in targeted advertising to MCPS Users; (ii) engage in targeted advertising when the targeting of the advertising is based on Confidential Information; (iii) use Confidential Information to amass a profile about a MCPS User, except in connection with the Contractor's performance of its obligations under the Contract; (iv) sell Confidential Information; or (v) share with any individual or entity outside MCPS, without prior review and approval from MCPS, any report, data, or research findings that are based on Confidential Information or the use by MCPS or MCPS Users of the Contractor's deliverables, products and/or services and that could be linked to an identifiable MCPS User, stakeholder, school, or the district.
4. To the extent that the Contract requires the Contractor to provide online or mobile services to MCPS that involve the collection, maintaining, or use of Confidential Information that includes Personally Identifiable Information regarding MCPS students, the Contractor warrants that it has signed-on to the *K-12 School Service Provider Pledge to Safeguard Student Privacy* (the "Student Privacy Pledge," available at [www.studentprivacypledge.org](http://www.studentprivacypledge.org)) and agrees to manage such Confidential Information in a manner consistent with the Student Privacy Pledge; provided, however, that if any statement of the Student Privacy Pledge is inconsistent with the requirements set forth herein, these MCPS General Contract Articles shall govern.
5. The Contractor acknowledges that there are no user agreements (whether electronic, click-through, verbal or in writing) in existence or contemplated between the Contractor and any MCPS Users in connection with their access and use of the Contractor's deliverables, products, or services, and this Contract shall supersede any user agreements that may be adopted during the term of the Contract.

#### E. Security of Confidential Information

1. The Contractor shall implement and maintain a comprehensive data-security program in accordance with commercial best practices for the protection of Confidential Information, whether the Confidential Information is stored electronically and/or in hard copy. Such data-security program shall include, but is not limited to, the following:
  - a. Security policies for the Contractor's employees, agents, affiliates, and subcontractors related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
  - b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - c. Secure access controls to Confidential Information, including but not limited to passwords;
  - d. Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
  - e. Encryption of Confidential Information in accordance with industry standard encryption when it is stored or transmitted electronically;
  - f. Protocols for regular backups that include retention of backup copies for such period of time as may be required by MCPS, or by federal, state, and county laws and regulations;



- g. Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
    - h. A process for reviewing policies, procedures, and security measures, as well as training on security policies for employees who have access to Confidential Information, at least annually.
  - 2. The Contractor certifies that it has implemented policies, procedures, and security measures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm to MCPS. In addition, the Contractor shall not maintain or store Confidential Information outside of the United States. To the extent that the Contractor uses cloud computing services, all Confidential Information provided by MCPS or MCPS Users shall be securely stored with a commercially reasonable third-party vendor using physical servers located solely within the United States and subject to network security measures consistent with industry standards. The Contractor will confirm to MCPS that the third-party vendor agrees to the non-disclosure agreement terms described in Article 18.C.6.
  - 3. Access to the Contractor's server(s) hosting Confidential Information shall be limited to the Contractor's operations employees, agents, affiliates, or subcontractors who: (i) have access to Contractor's access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Contractor's deliverables, products and/or services.
  - 4. Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the Contract, is maintained shall have anti-virus, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing. Such computer, server, or databases shall be password protected and securely stored at all times with proper authentication and authorization procedures and with access limited to the Contractor's operations personnel and personnel directly involved in implementing the Contract. The Contractor shall not permit Confidential Information to be maintained or stored on any portable memory device, such as thumb drives or portable hard drives, without the express written consent of MCPS. The Contractor shall not permit Confidential Information to be maintained or stored on mobile computing devices (e.g. laptops or tablets), unless such device is being used in connection with the Contractor's backup and recovery procedures. In the event that such a device is being used in connection with the Contractor's backup and recovery procedures, the Contractor will ensure that such mobile computing devices are encrypted, centrally managed with respect to configuration updates and anti-virus, password protected, and that all such devices will be scanned at the expiration or termination of the Contract to ensure that no Confidential information remains stored on such mobile computing devices.
  - 5. The Contractor will regularly backup or cause to be backed up all Confidential Information under its control and will securely store and retain backups for such period of time as may be required by federal or state law or regulation, or by MCPS. The Contractor will remove Confidential Information from backups in a manner consistent with technology best practices and industry standards for secure data disposal methods. If the Contractor is required to restore any materials from its backups, it will purge all personally identifiable Confidential Information not currently in use in the production systems from the restored backups.
- F. MCPS reserves the right in its sole discretion to perform audits of the Contractor at its sole expense to ensure compliance with this Article. The Contractor shall reasonably cooperate in the performance of such audits. The Contractor also will conduct regular internal monitoring and vulnerability assessments of the computers, computing environment, servers, and physical data centers that the Contractor uses to collect, process, maintain, or store MCPS' Confidential Information that includes Personally



Identifiable Information regarding MCPS Users, and to hire a third party to conduct no less than annual security audits, which includes penetration testing. The Contractor shall review audit findings and will implement recommended security program changes and enhancements where practical and appropriate. The Contractor will provide MCPS, upon request, summary data of the above audits, scans, and tests. The Contractor will take reasonable measures, including maintaining audit trails, to protect Confidential Information against deterioration or degradation of data quality and authenticity.

G. Data Security Breach

1. A "Data Security Breach" is any instance in which the Contractor has actual knowledge or a reasonable basis on which to suspect or conclude that there has been an unauthorized release or access of Confidential Information, regardless of whether the Contractor stores and manages data directly or through a contractor such as a third-party cloud computing vendor. A Data Security Breach may take various forms, including but not limited to: hackers gaining access to data through a malicious attack; lost, stolen, or temporarily misplaced data or equipment (e.g., mobile computing devices or portable memory devices); employee negligence (e.g., leaving a password list in a publicly-accessible location, technical staff misconfiguring a security service or device); or policy and/or system failure.
  2. The Contractor shall notify the MCPS Project Contact immediately of any Data Security Breach or data loss, and inform MCPS (to the extent known) what data has been compromised, but in no event later than twenty-four (24) hours after the Contractor learns of the Data Security Breach or data loss. If the Contractor becomes aware of a Data Security Breach or data 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 Data Security Breach or data loss, and for producing a remediation plan in consultation with MCPS. MCPS and the Contractor agree to work together to determine an appropriate notification plan to any MCPS Users of the Contractor's deliverables, products and/or services regarding any such Data Security Breach or data loss. In addition, to the extent not prohibited, the Contractor agrees to notify MCPS of Data Security Breaches or data losses that affect its customers generally.
  3. In addition to any other remedies available to MCPS, at law or in equity, the Contractor will reimburse MCPS in full for all costs incurred by MCPS in investigating and remediating any Data Security Breach or data loss caused in whole or in part by the Contractor or its employees, agents, affiliates, or subcontractors. The Contractor shall use commercially reasonable efforts to mitigate any negative consequences caused to MCPS, or to a MCPS User, as the result of a Data Security Breach or data loss and to implement procedures to prevent the recurrence of a similar Data Security Breach or data loss.
  4. 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 Confidential Information, failure to follow security requirements, and/or failure to safeguard confidential information of any third party.
- H. Except as specifically set forth by MCPS in writing, or as required by federal, state, and county laws and regulations, the Contractor shall upon the termination or expiration of the Contract, upon cessation or dissolution of the Contractor's business operations, or upon request by MCPS:
1. Erase, destroy, permanently delete, and render unreadable all Confidential Information in its paper files, computers, computing environment, systems, equipment, servers, and physical data centers; or, upon MCPS' request to ensure the integrity of MCPS operations, transfer/migrate such Confidential Information to MCPS or its designated third party;



2. Certify in writing that the actions set forth in this subsection have been completed on or before agreed-upon deadlines;
  3. Ensure that any transfer/migration uses facilities and methods that are compatible with the relevant systems of MCPS or its designated third party; and
  4. To the extent technologically possible, ensure that MCPS will have access to the Confidential Information during any transfer/migration.
- I. Nothing in this Article shall supersede in any manner the Contractor's obligations or the obligations of its employees, agents, affiliates, or subcontractors pursuant to all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above, or the provisions of the Contract concerning the Contractor's obligations to MCPS.
  - J. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. Notwithstanding anything in the Contract to the contrary, the provisions of this Article shall survive the expiration or earlier termination of the Contract.

#### **ARTICLE 19. DOCUMENTATION AND COPYRIGHT**

- A. The Contractor warrants that (i) with respect to all intellectual property provided under the Contract, the Contractor possesses all right, title, and interest therein necessary for the Contractor to grant to MCPS the rights and licenses specified thereunder; and (ii) any deliverables, products, and/or services provided by the Contractor to MCPS through the Contract, as delivered by the Contractor for MCPS' normal use, will not infringe any valid patents, copyrights, or other third-party intellectual property rights, provided however, that this warranty does not extend to any infringement arising out of the use of such deliverables, products, and/or services in combination with other systems, equipment, or platforms not supplied by the Contractor. Notwithstanding the foregoing, collected data, analyses, and any analytical processes, programs, files, reports, and other deliverables developed as a contractual requirement are the sole property of MCPS. MCPS may waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any deliverable or product developed for MCPS purposes under the Contract, which deliverables and work product shall be deemed works made for hire as defined under U.S. Copyright law, and may license its use by others for a fee or without charge.
- B. The Contractor agrees that it shall not assert any ownership rights, property rights, or copyright to MCPS student work product, as defined in Md. Code Ann., Education § 4-130.

#### **ARTICLE 20. MCPS PROPERTY**

The use of MCPS property, including but not limited to equipment and technology, must be approved in advance by the DMM Director. If the DMM Director has agreed to the Contractor's use of MCPS property, the following provisions shall apply:

- A. The Contractor shall insure all MCPS property in its 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.
- B. 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.
- C. Unless stated otherwise in writing, MCPS property may be used only for the performance of the



Contract.

- D. 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. Title to property leased with a purchase option shall pass to MCPS even if the option date is later than the Contract period. Any payments required to acquire title are a Contract cost.

**ARTICLE 21. OBLIGATIONS REGARDING CRIMINAL RECORDS OF INDIVIDUALS ASSIGNED TO WORK IN MCPS FACILITIES**

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

1. 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 (5) years imprisonment and/or a \$5,000 fine.
2. Maryland Law further requires 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.
3. The Contractor is required to submit, following award of the 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 its workforce that the Contractor and/or its subcontractors use to perform the work required by the Contract.

**B. Required criminal background check process for certain individuals in the Contractor's**



**workforce:**

1. Under § 5-551 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its workforce must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term "workforce" in this and the preceding section refers to all of the Contractor's direct employees, subcontractors and their employees, and/or independent contractors and their employees that the Contractor uses to perform the work required by the Contract.
  2. 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 is available at [www.montgomeryschoolsmd.org/departments/procurement](http://www.montgomeryschoolsmd.org/departments/procurement).
  3. The Contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to any 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.
  4. 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: (i) the background check results for that individual have been received by MCPS; (ii) the Contractor certifies to MCPS that the individual has completed the online training regarding recognizing, reporting, and preventing child abuse and neglect, available on the MCPS website at: [www.montgomeryschoolsmd.org/childabuseandneglect/](http://www.montgomeryschoolsmd.org/childabuseandneglect/); and (iii) 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.
  5. The criminal background check and badging process will be at the Contractor's expense.
- C. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

**ARTICLE 22. INDEMNIFICATION AND LIABILITY**

- A. The Contractor is responsible for any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement. For purposes of this Article, the negligence



of employees, agents, affiliates, or subcontractors of the Contractor is deemed to be the negligence of the Contractor. In addition, the Contractor must defend, indemnify, and hold MCPS harmless from and against: (i) any claim (including but not limited to an enforcement action by any federal, state, or local agency) arising from or related to any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including but not limited to attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement; (ii) any claims, costs, and/or losses whatsoever occurring or resulting from: (a) the Contractor's failure to pay any such compensation, wages, benefits, or taxes; and/or (b) the supplying to the Contractor of work, services, materials, or supplies in connection with or in support of the performance of the Contract; and (iii) any claim that the deliverables, products, and/or services delivered or otherwise provided to MCPS under the Contract infringe, violate, dilute, or misappropriate any patent, copyright, trademark, or other intellectual property right.

- B. In the event of any intellectual property infringement, violation, dilution, or misappropriation claim, or if the Contractor becomes aware of the possibility of such a claim, the Contractor shall, in its discretion, within sixty (60) days: (a) furnish MCPS with non-infringing replacement of its deliverables, products, and/or services which are functionally equivalent in all material respects to MCPS' satisfaction; (b) modify the applicable deliverables, products, and/or services so that they become non-infringing but functionally equivalent in all material respects to MCPS' satisfaction; (c) obtain for MCPS the right to use such deliverables, products, and/or services upon commercially reasonable terms, subject to adjusted payment obligations on the part of MCPS if such terms differ from those set forth in the Contract; or (d) if and only if (a) – (c) are commercially impracticable, terminate the Contract in whole or in part and refund to MCPS the fees received for such deliverables, products, and/or services that are the subject of such a claim.
- C. In any action or proceeding brought against MCPS by reason of the foregoing Articles 22.A. or 22.B., 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.
- D. For the purposes of this Article, MCPS includes the Board of Education of Montgomery County, and its officers, officials, agents, and employees. Nothing herein or any other provision of the 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. In addition, nothing herein or any other provision of the Contract shall be construed to require MCPS to defend, hold harmless, indemnify, or pay any expenses (including but not limited to attorney's fees and litigation expenses) to the Contractor. The Contractor expressly understands and agrees that any performance bond or insurance protection required by the Contract, or otherwise provided by the Contractor, shall in no way limit its responsibility under the Contract to defend, indemnify, and hold harmless MCPS.
- E. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, THE CONTRACTOR'S DELIVERABLES, PRODUCTS, SERVICES, AND/OR OTHER ITEMS PROVIDED HEREUNDER; HOWEVER, THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE. NO OTHER DISCLAIMER OR LIMITATION OF LIABILITY SHALL BE APPLICABLE TO THE DELIVERABLES, PRODUCTS, AND/OR SERVICES, OR WORK PROVIDED BY THE CONTRACTOR UNDER THE CONTRACT.
- F. Notwithstanding anything in the Contract to the contrary, this Article shall survive the expiration or earlier termination of the Contract.



## ARTICLE 23. INSURANCE

- A. The Contractor shall be solely responsible for any insurance, including, but not limited to, general comprehensive liability, worker's compensation, professional liability insurance, and business automobile insurance. The Contractor agrees to provide MCPS with certificates of insurance verifying the following minimum coverage:
1. Comprehensive General Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000.00) aggregate. Such insurance shall include contractual liability insurance.
  2. Comprehensive Business Automobile Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of the Contract.
  3. Worker's Compensation Insurance: Statutory coverage as required by federal, state, and county laws and regulations.
  4. Professional Liability, Errors, and Omissions Insurance: Liability limit of not less than One Million Dollars (\$1,000,000.00) in the event the deliverables, products, and/or services delivered pursuant to the Contract, either directly or indirectly, involve or require Professional Services.
- B. The minimum limits of coverage listed above shall not be construed as the maximum as required by the Contract or as a limitation of any potential liability on the part of the Contractor; nor shall failure by MCPS to request evidence of this insurance in any way be construed as a waiver of the Contractor's obligation to provide the insurance coverage specified. The Contractor must keep this insurance in full force and effect during the term of the Contract, including all extensions. If coverage is written on a claims made basis, the policy shall be endorsed to provide at least a three-year extended claims reporting provision.
- C. Insurance is to be placed with insurers licensed/approved to do business in the State of Maryland with a Best's rating of no less than A:VII, or if not rated with Best's, with a minimum surplus the equivalent of Best's surplus size VII, unless otherwise approved by the DMM Director. The Contractor's insurance coverage shall be primary. The Board of Education of Montgomery County and its officers, officials, agents, and employees shall be covered by endorsement, as additional insureds with respect to liability arising out of activities performed or to be performed by or on behalf of the Contractor in connection with the Contract. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or a lawsuit brought. Any insurance and/or self-insured program maintained by the Board of Education of Montgomery County or its officers, officials, agents, and employees shall not contribute to the Contractor's insurance or benefit the Contractor in any way.
- D. The Contractor shall provide MCPS with certificates of insurance within ten (10) days of execution of the Contract evidencing the coverage required above. The certificates shall confirm that the Board of Education of Montgomery County and its officers, officials, agents, and employees have been made additional insureds under the respective insurance policies. The Contractor must provide to MCPS at least thirty (30) days written notice of a cancellation of, or a material change to, an insurance policy. The Contractor must provide the certificates of insurance before commencing the work covered by the Contract.



#### **ARTICLE 24. ORDER OF PRECEDENCE**

Unless expressly agreed in writing by the Superintendent of Schools, these MCPS General Contract Articles shall take precedence over, supersede, and void any other provision of the Contract to the extent such other provision is contrary to or inconsistent with the MCPS General Contract Articles. For avoidance of doubt, to the extent that any provision of the Contract provides MCPS with additional or greater rights than those provided in the MCPS General Contract Articles, or any other provision of the Contract imposes requirements on the Contractor in addition to those set out in the MCPS General Contract Articles, such other provision shall be deemed to be supplemental to, and not contrary to or inconsistent with, the MCPS General Contract Articles.

#### **ARTICLE 25. 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 26. GOVERNING LAW AND JURISDICTION**

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

#### **ARTICLE 27. 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 the Contract. Any changes and additions hereto shall not become binding upon any Party unless they are incorporated into a written contract amendment signed by the Parties. No waiver by either Party of any failure to observe or perform any term or condition of the Contract shall operate as a waiver of such term or condition or of any subsequent failure thereof.

#### **ARTICLE 28. SUCCESSORS AND ASSIGNS**

The Contract and all of its provisions shall apply to and bind the successors and assigns of the Parties. No assignment or transfer of the Contract or any part hereof, rights hereunder, or interest herein by the Contractor shall be valid unless and until it is approved in writing by MCPS and made subject to such reasonable terms and conditions as MCPS may impose. Unless performance is expressly waived in writing by the DMM Director, an assignment does not release the Contractor from responsibility for performance of the Contract.

#### **ARTICLE 29. GUARANTEE**

- A. The Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the RFP or solicitation, all deliverables, products, and/or services, including those used in the course of providing the deliverables, products, and/or services. This includes a guarantee that all such deliverables, products, and/or services carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the RFP or solicitation. The Contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to MCPS and to MCPS' satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated



above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.

- C. All warranties and guarantees must be in effect from the date of acceptance by MCPS of the deliverables, products, and/or services.
- D. Deliverables, products, and/or services provided under the Contract must be of first quality, latest model, and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by MCPS.

#### **ARTICLE 30. NOTICE**

Any notice by a Party under the Contract shall be in writing and either personally delivered, sent via email, a nationally recognized overnight delivery service (such as Federal Express), first class postage prepaid mail, or by fax, addressed to the other Party at the address specified in the Contract, or such other address of which either Party may from time to time notify the other. Notices shall be deemed given when received by the receiving Party. All notices to MCPS shall be sent to the MCPS Project Contact with copy to: Director, Department of Materials Management, 580 North Stonestreet Avenue, Rockville, MD 20850, 301-279-4998 (fax).

Revised March 1, 2019







## Attachment A

Equal Opportunity Certification

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

( ) Yes ( ) No

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

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

---



---



---

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.







## **Attachment B**

### **Certification of Non-segregated Facilities**

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

#### **Notice to Prospective Subcontractors of**

#### **Requirement for Certifications of**

#### **Nonsegregated Facilities**

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

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

**NOTE:** Failure of an Offeror to agree to the Certification of Nonsegregated Facilities shall render its offer nonresponsive.







## Attachment C

### Minority Business Enterprise

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

Check the appropriate box below.

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







Attachment D

**NON-DEBARMENT ACKNOWLEDGEMENT**

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

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

\_\_\_\_\_ I acknowledge none of this company's officers, directors, partners, or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of the Montgomery County Public Schools, Administrative or Supervisory Personnel, or other employees of the Board of Education has any interest in the bidding company except as follows

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

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

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

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







**Mid-Atlantic Purchasing Team  
Rider Clause**

**Attachment E**

**RFP #7173.2, Vending**

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

**Extension to Other Jurisdictions**

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

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

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

**Notification and Reporting**

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

**Contract Agreement**

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



Authorization to Extend Contract: RFP #7173.2, Vending

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



**Attachment F**

**Hold-Recall Contact Form**

**Please complete and return. Notify Montgomery County Public Schools immediately as changes occur to MaryAnn Gabriel, Supervisor, Maryann\_E\_Gabriel@mcpsmd.org, Division of Food and Nutrition Services, 301-284-4943.**

School District \_\_\_\_\_

**PROCESSOR HOLD and RECALL CONTACT INFORMATION**

Name of Processor \_\_\_\_\_

**Primary Contact**

Name \_\_\_\_\_  
Office Number \_\_\_\_\_  
Mobile Number \_\_\_\_\_  
Fax Number \_\_\_\_\_  
Email Address \_\_\_\_\_

**Back-up Contact**

Name \_\_\_\_\_  
Office Number \_\_\_\_\_  
Mobile Number \_\_\_\_\_  
Fax Number \_\_\_\_\_  
Email Address \_\_\_\_\_



