

**Office of Finance  
Division of Procurement  
MONTGOMERY COUNTY PUBLIC SCHOOLS  
45 W Gude Drive, Suite 3100  
Rockville, Maryland 20850**

**Invitation for Bid #9139.4, Refrigerated and Frozen Foods**

**GENERAL CONDITIONS AND SPECIFICATIONS**

**A. Intent**

The specifications contained herein are intended to cover services for processing and delivery of commercial and commodity products. Deliveries are to be made to the Montgomery County Public Schools (MCPS) Division of Food and Nutrition Services (DFNS) Warehouse. Purchases are not guaranteed and are based on allocations of United States Department of Agriculture (USDA) commodity products for processing made by the Maryland State Department of Education (MSDE) for the current year. Vendors submitting proposals must have approved processing agreements with USDA.

**B. Delivery**

Delivery shall be required on an as needed basis. Scheduled deliveries shall be made to the Food and Nutrition Services Warehouse, 8401 Turkey Thicket Drive, Gaithersburg, Maryland 20879. Receiving hours are between 7:00am and 1:30pm, Monday through Friday, except school holidays. Deliveries shall be made by appointment only. Appointments shall be scheduled at least 24 hours in advance, but may be made further in advance to better assure appointment availability. Due to warehouse space availability, appointments cannot be scheduled more than two (2) days prior to the requested delivery date. Successful vendor(s) shall contact the Food and Nutrition Services Warehouse, at 240-740-7435 schedule appointments.

Merchandise delivered by truck shall be on 48" x 40", four-way entry pallets acceptable to the DFNS warehouse. All acceptable pallets will be exchanged evenly or the driver upon delivery must place pallets in an acceptable pattern on MCPS pallets. Any manual product handling required shall be the responsibility of the driver. Frozen products must be delivered at 0°F or lower. Refrigerated product must be delivered between 38°F and 42°F. Any manual product handling required will be the responsibility of the vendor.

All vehicles shall comply with Federal and Maryland sanitation codes.

**Alternate Delivery Proposals**

Any exception to delivery conditions shall be clearly identified as an alternate proposal. Alternate proposals will be considered, but only on an individual item basis, and awarded if in the best interest of the Board of Education. Such quotation may be made in addition to the delivery frequency indicated as part of these conditions.

**C. Buy American Requirement**

The National School Lunch Act mandates that districts use federal funds to purchase only food produced in the United States. Accordingly, the products supplied by bidders must be a domestic food commodity or a domestic food product, as those terms are defined under the National School Lunch Act and its implementing regulations.

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 the Code of Federal Regulations (CFR), is a product processed in the United States “substantially” using domestic agricultural commodities. Substantially means that over 51% of the processed food comes from American-produced products.

**D. Awards**

**Bidders must have approved processing agreements with the United States Department of Agriculture (USDA) for the contract year to be considered for award of commodity products.** Vendors may be required to submit proof of their approval subsequent to the bid opening.

It is the intention to award this contract to the vendor(s) submitting the most favorable unit price/yield comparison with consideration being given to any previous performance for the Board of Education as to acceptability of service, quality of merchandise and with regard to the bidder(s) ability to perform should it be awarded the contract. Awards may be made to one (1) successful vendor submitting the lowest aggregate quotation on items of a similar nature or on an individual item basis. Items needed in quantities **too small for USDA shipment** may be awarded in aggregates with other like items. Further, awards may be made based on carry-over inventory from the previous year or, if a different vendor is awarded, orders for products may be delayed until inventory from the previous year is utilized. However, the Board reserves the right to make awards according to the best interests of the Board of Education of Montgomery County, Maryland.

MCPS reserves the right to delete items or add additional items or additional vendors throughout the contract term should there be a need for items not available from the awarded vendors.

**E. Contract Term**

The term of contract shall be for **two (2) years** as stipulated on the Invitation for Bid. MCPS reserves the right to extend this contract at existing prices, terms and conditions for up to three (3) one-year extensions. Bidders shall submit prices and yield statements that are current for that time period. However, the contract may not begin until one (1) day after approval by the Board of Education and will conclude as stated under the contract term. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued 90 days prior to the expiration of the original contract. Vendors shall have ten (10) days from the date of notification to return the notice, acknowledging its intent to accept or reject the extension. Once the responses are evaluated, MCPS staff may make a recommendation to the Board of Education to extend the contract or decide to rebid. If the contract is extended by the Board of Education, a contract amendment will be issued.

**F. Provision for Price Adjustment**

All increases, including the Fee for Service shall not be considered for the duration of the first year of the contract. Thereafter, if the contract is extended, the successful vendor(s) must submit a written request for price relief. Adjustments will be based upon the Consumer Price Index (CPI), specifically, the All Consumer Index, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Washington D.C., Metropolitan Area and shall not exceed 75% of the percentage change of January 1 CPI's, rounded to the nearest tenth of a percentage. Any orders received prior to a request for a price increase shall be honored at the original contract price. Downward adjustments shall be made by MCPS without a request from the successful vendor.

MCPS reserves the right to accept or reject the request as may be determined to be in the best interest of MCPS. If the price increase is accepted, a contract amendment will be issued. Any services requested prior to a request for a price increase shall be honored at the original contract price.

**G. Samples, Nutritional and Ingredient Information**

**Samples, when requested, shall be delivered within five (5) working days from date of request. Samples shall be provided at no cost to the district. Failure to provide samples may be cause for rejection of the bid.**

**All bidders shall be required to submit with their bid proposal current yield data, nutritional and ingredient information and product formulation sheets for all products offered, even if the product was approved and/or purchased previously.**

Samples submitted shall be forwarded to the Division of Food and Nutrition Services, 8401 Turkey Thicket Drive, Gaithersburg, Maryland 20879, Attn: MaryAnn Gabriel. The outside of the sample package shall be marked "Samples" and identified with the bid number for which the sample applies. Samples shall be provided in normal purchase units to allow thorough testing of the product and to represent actual packaging if the item is approved and purchased. Additional samples may be requested for expanded testing with students. Failure to submit information as required may result in disqualification.

**H. Nutritional Requirements**

MCPS requires products without the following ingredients:

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

**I. Brand Names**

Brands and code numbers listed have been pre-approved. If an item specification shows code number(s) that have changed, the bidder shall so state and indicate the current code number(s).

**J. Deviations**

All bids meeting the requirements and intent of the invitation will be considered for award. Bidders 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 bid. The absence of such a sheet shall be interpreted that the bidder has taken no exception and shall be held responsible for performing in accordance with the terms, conditions, and specifications as stated herein.

**K. Quotations**

**All commodity processed poultry products must be bid as Standard Yield.**

**Vendors must specify any minimum order requirements for each product or combination of products bid with their bid submission.** The bid price shall include processing AND delivery of the specified product.

No bidder will be allowed to offer more than one (1) price on each item even though it may feel that it has two (2) or more types of styles that will meet specifications. Bidders must determine for themselves which to offer. If said bidder should submit more than one (1) price on any item, all prices for that item will be rejected. However, this stipulation does not preclude the offering of new products which do not meet specifications in every respect from being offered as a separate item for consideration for future bids. Such product should be identified as a new product and a brief explanation written as a part of the offer detailing the advantages that can normally be expected of this product over the product specified.

A bidder may restrict its bid to consideration in the aggregate by so stating, but shall name a unit price on each item bid upon. Any bid in which the bidder names a total price for all the articles without quoting a price on each and every separate item may be considered informal. If there is any discrepancy between the unit cost and total cost, the unit cost shall prevail.

**L. Product Protection Guarantee**

School districts have "automatic" product protection recourse against suppliers for product safety. According to the Code of Federal Regulations, the supplier whose name and address appear on the package is the responsible party. Successful supplier(s) shall take immediate action to correct any situation in which product integrity is violated.

**M. Quantities**

Quantities in this request are based upon the previous year's usage and are dependent upon allocations of USDA commodities, current requirements of MCPS and on budgetary limitations. However, MCPS shall not be obligated to purchase any specific quantity. Orders will be placed from time to time throughout the contract term for delivery.

**N. Commodity Processing Modifications**

MCPS reserves the right to add, modify, or delete specific products awarded during the contract term based on the needs of the DFNS and USDA commodity allocation changes. If items are added, the price shall be calculated at the same percentage of yield schedule pricing as other products awarded to the vendor.

**O. Contractors' Obligation Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities**

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

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

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

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

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

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

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

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

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

Fingerprinting for the criminal background check may be performed at any fingerprinting agency approved by the State of Maryland. A list of MCPS approved fingerprinting agencies can be found on the Division of Procurement website at <http://www.montgomeryschoolsmd.org/departments/procurement>.

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

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

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

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

**P. eMaryland Marketplace Advantage**

Maryland law requires local and state agencies to post solicitations on eMaryland Marketplace Advantage. Registration with eMaryland Marketplace is free. It is recommended that any interested supplier register at <https://emma.maryland.gov/>, regardless of the award outcome for this procurement as it is a valuable resource for upcoming bid notifications for municipalities throughout Maryland.

**Q. Award Criteria**

1. Conformance to specifications
2. Ability to perform/ Past performance
3. Price
4. YIELD analysis of statement submitted by the processor as part of the bid response.
5. Prior approval based on product evaluation including taste, appearance, suitability for intended uses, nutritional and ingredient profile and packaging.

**R. Submission of Bids**

One original and one copy of the bid shall be submitted. The cover page of each must be clearly marked original or copy. Bidders may wish to reproduce and retain an additional copy.

**S. Customer References**

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

<u>Company Name &amp; Address</u>	<u>Contact Person</u>	<u>Phone Number</u>	<u>Contract Number</u>
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1. \_\_\_\_\_

Email: \_\_\_\_\_

2. \_\_\_\_\_

Email: \_\_\_\_\_

3. \_\_\_\_\_

Email: \_\_\_\_\_

**T. Addenda/Errata**

Changes to a solicitation may occur prior to the solicitation opening date and time. It is the sole responsibility of the vendor to check the "Event Calendar" on the MCPS website at <https://ww2.montgomeryschoolsmd.org/calendar/mcpsbids.aspx> or contact Sylvia Hardy in the Division of Procurement at 240-740-7539 to verify whether addenda/errata have been issued. Failure to provide the signed acknowledgement of the addenda/errata may result in the bid being deemed non-responsive.

**U. Food Safety and Recalls**

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 potential bidder 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.

(See "Hold-Recall Contact Form" on page 10)

**V. Multi-Agency Participation**

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



public entity that may use any contract resulting from this bid MCPS pricing *is* based on the specifications provided in this solicitation.

**W. USDA Processed Foods**

The Mid-Atlantic Purchasing Team (MAPT) Rider Clause should not be extended to other entities for any items that are processed using USDA commodity foods.

**X. Inquiries**

Contractual questions must be in writing via e-mail to Sylvia Hardy, Buyer, Division of Procurement, Montgomery County Public Schools, at [Sylvia\\_Hardy@mcpsmd.org](mailto:Sylvia_Hardy@mcpsmd.org). Inquiries regarding technical issues may be directed to Ms. Mary Ann Gabriel, Food Services Supervisor, at [Maryann e Gabriel@mcpsmd.org](mailto:Maryann_e_Gabriel@mcpsmd.org), and copy to Sylvia Hardy, Buyer, at [Sylvia\\_Hardy@mcpsmd.org](mailto:Sylvia_Hardy@mcpsmd.org). Questions must be received no later than four (4) business days prior to bid opening in order for the bidder to receive a reply before submitting its bid. The Board of Education will not be responsible for any oral or telephone explanation or interpretation. Vendor contact with any other MCPS employee regarding this solicitation prior to Board award will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration of its bid. The MCPS Procurement website address is [www.montgomeryschoolsmd.org/departments/procurement/](http://www.montgomeryschoolsmd.org/departments/procurement/).

**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 \_\_\_\_\_