



MONTGOMERY COUNTY PUBLIC SCHOOLS
www.montgomeryschoolsmd.org
MARYLAND



May 21, 2018

Building Automation Services, Inc
Attn: Bradley Skorepa
7964-B Conell Court
Lorton, VA 22079

RE: RFP 9442.3, Prequalification Notice.


Dear Mr Skorepa:

This is the official notification of award as it relates to the above referenced bid. This is a notice of award only. Delivery of product or service shall not begin until you receive an official order, signed by the director of Department of Materials Management.

The contract shall consist of the solicitation, your complete bid response, and any subsequent correspondence.

Please contact the Procurement Unit if you need additional information. Thank you for your interest in Montgomery County Public Schools.

Sincerely,


Angela McIntosh-Davis, CPPB
Team Leader, Procurement Unit

AMD:lab

cc:
Bid File

Procurement Unit

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



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MARYLAND



(301) 279-3637
Fax: (301) 279-3173

May 21, 2018

Control Sources
Attn: John Beam
8860 Kelso Drive
Baltimore, MD 21221

RE: RFP 9442.3, Prequalification Notice.

Dear Mr. Beam:

This is the official notification of award as it relates to the above referenced bid. This is a notice of award only. Delivery of product or service shall not begin until you receive an official order, signed by the director of Department of Materials Management.

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Bid File

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MARYLAND



May 21, 2018

Engineered Services, Inc.
Attn: Michael Bletzacker
43670 Trade Center Pl – Suite 100
Sterling, VA 20166

RE: RFP 9442.3, Prequalification Notice.

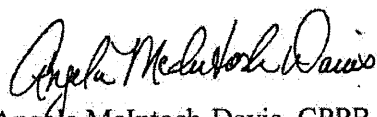
Dear Mr Bletzacker:

This is the official notification of award as it relates to the above referenced bid. This is a notice of award only. Delivery of product or service shall not begin until you receive an official order, signed by the director of Department of Materials Management.

The contract shall consist of the solicitation, your complete bid response, and any subsequent correspondence.

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MARYLAND



(301) 279-3637
Fax: (301) 279-3173

May 21, 2018

Performance Controls, LLC
Attn: Julie Ayres
3801 Queen Mary Dr.
Olney, MD 20832

RE: RFP 9442.3, Prequalification Notice.

Dear Mrs Ayres:

This is the official notification of award as it relates to the above referenced bid. This is a notice of award only. Delivery of product or service shall not begin until you receive an official order, signed by the director of Department of Materials Management.

The contract shall consist of the solicitation, your complete bid response, and any subsequent correspondence.

Please contact the Procurement Unit if you need additional information. Thank you for your interest in Montgomery County Public Schools.

Sincerely,

Angela McIntosh-Davis, CPPB
Team Leader, Procurement Unit

AMD:lab

cc:
Bid File

Procurement Unit

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(301) 279-3637
Fax: (301) 279-3173

May 21, 2018

Pritchett Controls
Attn: Peter Ewart
6980 Muirkirk Meadows Dr
Beltsville, MD 20705

RE: RFP 9442.3, Prequalification Notice.

Dear Mr Ewart:

This is the official notification of award as it relates to the above referenced bid. This is a notice of award only. Delivery of product or service shall not begin until you receive an official order, signed by the director of Department of Materials Management.

The contract shall consist of the solicitation, your complete bid response, and any subsequent correspondence.

Please contact the Procurement Unit if you need additional information. Thank you for your interest in Montgomery County Public Schools.

Sincerely,

Angela McIntosh-Davis, CPPB
Team Leader, Procurement Unit

AMD:lab

cc:
Bid File

Procurement Unit

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Bid/RFP Number: 9442.2

Solicitation Title Energy Management System's Contractors Pre-qualification

Board Approval Date 05/21/2018

Expiration Date 05/30/2019

Buyer E-mail Laly_A_Bowers@mcpsmd.org

Description Energy Management Systems Contractors Pre-qualification. Approved Systems are The EMS shall be manufactured by Schneider Electric (StruxureWare, Andover Controls), HI Solutions, or Reliable Controls Corporation to match the existing systems in place.

Bid/RFP Documents

- [SCAN9442.3.pdf](#) 2018-05-28
- [9442.2 MCPS GENERAL CONTRACT ARTICLES Index.pdf](#) 2018-03-20
- [9442.2 General Contract Articles.pdf](#) 2018-03-20
- [9442.2 Attachments.pdf](#) 2018-03-20
- [9442.2 Cover Letter.pdf](#) 2018-03-20
- [SCAN9442 erratum.pdf](#)
- [May 21 2018.pdf](#) 2018-05-21
- [9442.2 RFP FINAL 3-20.pdf](#) 2018-03-20



CONTACT

MONTGOMERY COUNTY PUBLIC SCHOOLS

Call: 240-740-3000 | Spanish Hotline: 240-740-2845

Maryland's Largest School District

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Office of the Superintendent of Schools
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland

May 21, 2018

APPROVED BY BOARD

MEMORANDUM

To: Members of the Board of Education
From: Jack R. Smith, Superintendent of Schools
Subject: Procurement Contracts of \$25,000 or More



WHEREAS, Funds have been budgeted for the purchase of equipment, supplies, and contractual services; and

WHEREAS, It is recommended that Bid No. 9740.1, Kitchen Servery Replacement, be rejected due to lack of competition; now therefore be it

Resolved, That Bid No. 9740.1, Kitchen Servery Replacement, be rejected due to lack of competition; and be it further

Resolved, That having been duly advertised, the following contracts be awarded to the low bidders meeting specifications as follows:

005-14	Job Order Contracting Services Responsible Office: Division of Maintenance/Planned Life-cycle Asset Replacement (PLAR) <u>Awardee</u> The Matthews Group, Inc., Louisville, Kentucky	\$950,000
100814	Event Seating and Related Accessories Responsible Office: Division of Maintenance/Planned Life-cycle Asset Replacement (PLAR) <u>Awardee</u> Dant Clayton, Louisville, Kentucky	\$600,000

1091.5	Services for Infants and Toddlers with Developmental Delays— Extension Responsible Office: Office of Special Education <u>Awardees</u> (See note on page 6) Associated Professional Rehabilitation Services, Inc.,* Brookeville, Maryland National Speech Language Therapy Center,* Bethesda, Maryland Pennhurst Group, LLC, Baltimore, Maryland Kathleen M. Rodriguez,* Silver Spring, Maryland Total	\$150,000
4083.8	Whiteboards, Tackboards, and Accessories—Extension Responsible Office: Department of Materials Management <u>Awardee</u> Nelson Adams NACO Corporation, Rialto, California	\$ 40,787
4107.4	Fire Alarm Monitoring—Extension Responsible Office: Department of School Safety and Security <u>Awardee</u> ARK Systems, Inc., Columbia, Maryland	\$ 44,000
4260.2	Social Work Services for Students in Alternative Programs— Extension Responsible Office: Alternative Education Programs at the Blair G. Ewing Center <u>Awardee</u> Delta-T Group Maryland, Inc., Columbia, Maryland	\$ 56,362
4277.1	Administrative Costs for Medicaid Programs—Extension Responsible Office: Office of Special Education <u>Awardee</u> State of Maryland, Baltimore, Maryland	\$100,000

4304.1	Hearing and Vision Audio Equipment—Extension Responsible Office: Office of Special Education <u>Awardee</u> Phonak, Inc., Chicago, Illinois	\$170,000
4317.1	Nonviolent Crisis Intervention Program—Extension Responsible Office: Office of Special Education <u>Awardee</u> Crisis Prevention Institute, Milwaukee, Wisconsin	\$125,000
4335.1	Maximo Subscription and Support—Extension Responsible Office: Division of Maintenance <u>Awardee</u> IBM Corporation, Baltimore, Maryland	\$ 44,710
4350.1	Speech and Language Services' Partnership—Extension Responsible Office: Office of Special Education <u>Awardee</u> University of Maryland, College Park, Maryland	\$175,000
4366.1	Back Pack Program—Extension Responsible Office: Partnerships Unit <u>Awardee</u> SchoolKidz.com, LLC, Woodridge, Illinois	\$350,000
4370.1	Music Therapy—Extension Responsible Office: Division of Pre-Kindergarten, Special Programs and Related Services <u>Awardees</u> (See note on page 6) DLE Music Therapy, LLC,* Rockville, Maryland The Selma M. Levine School of Music,* Washington, D.C. Notable Progressions Music Therapy, Frederick, Maryland Total	\$170,000

4403.1	STEM Programs—Extension Responsible Office: Department of Secondary Curriculum and Districtwide Programs <u>Awardees</u> (See note page 6) Lego Brand Retail, Inc., Enfield, Connecticut, (Local Affiliate: Severna Park, Maryland) MOCO KIDSCO, Inc., Bethesda, Maryland Total	\$135,000
4412.1	Professional Development Workshop—Extension Responsible Office: Office of Curriculum and Instructional Programs <u>Awardee</u> Montgomery College, Rockville, Maryland	\$ 49,801
4417.1	Title 1 BELL Summer Academic and Enrichment Program—Extension Responsible Office: Division of Title I and Early Childhood Programs and Services <u>Awardee</u> The BELL Foundation, Inc., Dorchester, Massachusetts (Local Affiliate: Baltimore, Maryland)	\$900,000
9019.9	Roofing Supplies—Extension Responsible Office: Division of Maintenance <u>Awardees</u> American Builders & Contractors Supply Company, Inc., Rockville, Maryland Liberty Lumber & Supply Company, Pikesville, Maryland Total	\$210,300 <u>32,700</u> \$243,000
9113.6	Beverages and Equipment Responsible Office: Division of Food and Nutrition Services <u>Awardee</u> Steve's Frozen Chillers, Inc., Boynton Beach, Florida	\$461,850

9320.6	Library Security System Replacements—Extension Responsible Office: Division of Maintenance/Planned Life-cycle Asset Replacement (PLAR) <u>Awardee</u> Ameritag, Inc., Rockaway Park, New York	\$ 49,000
9345.5	Portable Classroom Re-Roofing at Various Locations—Extension Responsible Office: Division of Maintenance/Planned Life-cycle Asset Replacement (PLAR) <u>Awardee</u> Interstate Corporation,* Gaithersburg, Maryland	\$400,000
9442.3	Energy Management Systems Contractor's Pre-qualification Responsible Office: Division of Maintenance <u>Awardees</u> (See note on page 6) Building Automation Services, Inc., Lorton, Virginia Control Sources, LLC, Baltimore, Maryland Engineered Services, Inc., Sterling, Virginia Performance Controls, LLC,* Rockville, Maryland Pritchett Controls, Inc., Beltsville, Maryland Total	\$950,000
9454.1	Dashboard Graphics Software and Associated Alarm Screens Responsible Office: Division of Maintenance <u>Awardee</u> Control Sources, LLC, Baltimore, Maryland	\$ 91,667
9737.1	New Emergency Electrical Generating System at Various Elementary School Locations Responsible Office: Division of Maintenance/Planned Life-cycle Asset Replacement (PLAR) <u>Awardee</u> Amber Enterprises, Inc.,* College Park, Maryland	\$460,000

9739.1 Locker Replacements at Roberto W. Clemente Middle School
Responsible Office: Division of Maintenance/Planned
Life-cycle Asset Replacement (PLAR)

Awardee

Steel Products, Inc.,* Rockville, Maryland \$543,654

TOTAL PROCUREMENT CONTRACTS \$25,000 OR MORE \$7,259,831

* Denotes Minority-, Female-, or Disabled-owned Business

Note: Contract amounts will be based on individual requirements.

Formal bids and request for proposals (RFPs) were obtained and evaluated by the Procurement Unit, Department of Materials Management, in consultation with the users. The tabulations, cost comparisons, and budget account verifications are available in Procurement Unit files. Summary information about vendors that receive payments of \$25,000 or more during a fiscal year, July 1 through June 30 of the following year, is available in the Funding Accountability and Transparency database on the Montgomery County Public Schools website. The information identifying vendors by names and locations is the information submitted on the Internal Revenue Service Form W-9 with local affiliates noted as applicable.

JRS:AMZ:KCL

Attachment

Bid Activity Report
May 21, 2018

BID No.	BID NAME	No. of Vendors Mailed	No. MFD Vendors Mailed	Total No. of Bids Received	Total No. of MFD Bids Received	Total No. of Bids Awarded	Total No. of MFD Contracts Awarded
005-14	Job Order Contracting Services	N/A Prince George's County Public Schools Contract					
100814	Event Seating and Related Accessories—Extension	N/A National Joint Powers Alliance Contract					
DB1026322	Local Telecommunications Services—Extension	N/A Maryland Department of Information Technology Contract					
1091.5	Services for Infants and Toddlers with Developmental Delays—Extension	19	10	15	4	4	3
4083.8	Whiteboards, Tackboards, and Accessories—Extension	11	4	4	2	1	0
4107.4	Fire Alarm Monitoring—Extension	20	8	3	0	1	0
4260.2	Social Work Services for Students with Alternative Programs—Extension	10	2	5	2	1	0
4277.1	Administrative Costs for Medicaid Programs—Extension	N/A					
4304.1	Hearing and Vision Audio Equipment—Extension	N/A					
4317.1	Nonviolent Crisis Intervention Program—Extension	N/A					
4335.1	Maximo Subscription and Support—Extension	N/A					
4350.1	Speech and Language Services' Partnership—Extension	N/A					
4366.1	Back Pack Program—Extension	6	0	5	0	1	0
4370.1	Music Therapy—Extension	N/A					
4403.1	STEM Programs—Extension	3	0	5	0	2	0
4412.1	Professional Development Workshop—Extension	N/A					
4417.1	Title I BELL Summer Academic and Enrichment Program—Extension	N/A					
9019.9	Roofing Supplies—Extension	11	2	2	0	2	0
9111.6	Pizza, Baked-Frozen—Extension	18	4	8	1	2	0
9113.6	Beverages and Equipment	6	0	2	0	1	0
9320.6	Library Security System Replacements—Extension	8	1	3	0	1	0
9345.5	Portable Classroom Re-Roofing at Various Locations—Extension	12	1	5	1	1	1

Bid Activity Report
May 21, 2018

BID No.	BID NAME	No. of Vendors Mailed	No. MFD Vendors Mailed	Total No. of Bids Received	Total No. of MFD Bids Received	Total No. of Bids Awarded	Total No. of MFD Contracts Awarded
9442.3	Energy Management Systems Contractor's Pre-qualification	5	1	5	1	5	1
9454.1	Dashboard Graphics Software and Associated Alarm Screens	5	1	5	1	1	0
9737.1	New Emergency Electrical Generating System at Various Elementary School Locations	3	3	3	3	1	1



MONTGOMERY COUNTY PUBLIC SCHOOLS
MARYLAND
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April 17, 2018



ERRATUM/ADDENDUM #1

**Request for Proposals # 9442.2/9442.3
Energy Management Contractor's Pre-qualification**

1. The above referenced Request for Proposals is hereby modified to reflect the following changes/additions:

RFP number is corrected to read from 9442.2 to 9442.3, RFP number 9442.3 will be used for any future correspondence.

Remove and Replace Appendix B & C – Parts and hourly rates

Date and time set for receipt of proposals remains the same, April 20, 2018 at 2:00 P.M.

All other terms and conditions of the RFP remain unchanged.

Eulalia Bowers, CPPB, Buyer II
Procurement Unit

:lab

Please indicate your receipt of this notice by signing below and return with your RFP or under separate cover.



MONTGOMERY COUNTY PUBLIC SCHOOLS
MARYLAND
www.montgomeryschoolsmd.org



March 20, 2018

301-279-3555

RFP Number: 9442.2
Questions Due: March 28, 2018
Due Date: April 20, 2018
Due Time: 2:00 p.m.

To: Prospective Offerors:

Montgomery County Public Schools (MCPS) is in the process of pre-qualifying Contractors for a Multi-step process to maintain and repair direct control systems, upgrade existing systems and provide and/or install new energy management systems (EMS) for MCPS as required. The contract is anticipated to begin in May 2018.

Please respond according to the instructions provided in the attached RFP document. Responses must be received on or before 2:00 p.m. on Thursday, April 20, 2018. Proposals received after this date and time will not be considered. Proposals shall be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals shall be sent by mail, courier or hand delivered to: Montgomery County Public Schools Procurement Unit, 45 West Gude Drive, Suite 3100, Rockville, Maryland 20850. No faxes or electronic submission of proposals will be accepted.

The contractor must submit one (1) printed original, two (2) printed copies, and a USB flash drive that includes one (1) electronic copy and (1) electronic redacted copy. The proposal must be signed by an official having authority to contract with MCPS. The firm and official's name shall be used. This solicitation does not commit the district to pay any costs incurred in the submission of proposals or guarantee that an award will be made.

In the event of emergency closing of the MCPS Board of Education offices, this RFP due date will be at the same time on the next regular working day.

Sincerely,

Kathleen C. Lazor, Director
Department of Materials Management

KCL:lab
Enclosure

Procurement Unit

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

MONTGOMERY COUNTY PUBLIC SCHOOLS

Procurement Unit

45 West Guide Drive, Suite 3100

Rockville, Maryland 20850

Request for Proposal No. 9442.2

Energy Management Systems Contractor's Pre-Qualification

1.0 INTENT

The intent of this Request For Proposal (RFP) is to prequalify Contractors for a multi-step process to provide and install new energy management systems (EMS), maintain and repair of direct digital control systems (DDC) for Montgomery County Public Schools (MCPS). ONLY Pre-Qualified Contractors resulting from this solicitation will be considered to submit bids for future energy management systems projects.

Work shall include but is not limited to: system server, system workstation, hardware/software maintenance, database/controller backup, software upgrades, controller and controller network troubleshooting, programming, calibration, pneumatic control systems, workstation server graphical user interface, heating, ventilation and air conditioning services/repairs related to control of the equipment, system alarm or trending setup and customization, training, modification/installation of DDC controls. Contractors shall provide operation and maintenance manuals and as built diagrams related to work provided.

In addition, it is the intent to secure material prices for part purchases and installation by MCPS. As well as labor rates for repair services that may be required and are not covered under warranty or within the scope of individual awarded projects.

2.0 BACKGROUND

MCPS Energy Management Unit provides an energy efficient, climate controlled learning environment for the success of students and staff by way of the installation and maintenance of EMS. The usage of these systems allows for Automated Temperature Control (ATC) and scheduling of building HVAC systems for maximum efficiency.

Varying vintages and types of systems/technology require that the systems are regularly updated. The general configuration of the automation system consists of microprocessor controllers communicating via a BACnet local area network within the school; remote access via MCPS Ethernet; and central server at MCPS Energy Management Unit.

MCPS is continuing its efforts of furnishing and installing a complete, operable energy management automation and direct digital control system capable of performing all functions listed herein. The EMS shall be manufactured by Schneider Electric (StruxureWare, Andover Controls), HI Solutions, or Reliable Controls Corporation to match the existing systems in place.

3.0 CONTRACT TERM

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

Individual projects will be awarded to the low responsive Contractor from the pre-qualified list, and a Purchase Order will be issued. All conditions contained in this RFP as well as the individual project specifications are incorporated by reference into the individual projects.

4.0 SCOPE OF WORK

4.1 The existing automation systems will be upgraded to provide a new computer based stand-alone energy management and direct digital control system with a central server located at the MCPS energy management central office with data transmission being processed via internet and voice grade telephone lines. A new EMS is generally considered to be an upgrade of the existing automation system encompassing new microprocessors and point-by-point replacement of existing and/or expanded application of direct digital controls to the existing Automatic Temperature Control (ATC) system as outlined in the detailed specifications. New programming, graphics, and some new points are to be provided as required for each individual project.

Offerors are required to have, at a minimum, five years of experience in the DDC field. Offerors shall possess a thorough knowledge of the proper design, installation, repair and maintenance of the MCPS approved EMS manufacturers they are servicing.

4.2 Offerors are required to include their response the following which are considered mandatory and will not be categorized as minor informalities.

- a. Offeror's Legal Authorized Signature
- b. List of Safety Violations
- c. Copy of your current State of Maryland Contractor's License
- d. References from five organizations or companies where such services have been performed and the EMS's installed.
- e. Evidence of the Service Technician's Factory certification in the manufacturer's controls. Only trained, qualified technicians who have received training directly from the equipment manufacturer or his agent in the maintenance, service and repair of DDC systems, will be prequalified in the performance of this contract.

- 4.3 MCPS reserves the right to inspect Offeror's physical facility prior to award to satisfy questions regarding the Offeror's capabilities.

5.0 LICENSES/CERTIFICATIONS

- 5.1 The Contractor shall possess a current **Maryland Contractor's License** and it must be submitted as part of your RFP response.
- 5.2 The Contractor shall be a manufacturer's authorized installer/representative for the brand of equipment offered. Written certification must be submitted as part of your RFP response.
- 5.3 The successful Contractor shall be regularly engaged in the installation of systems and equipment similar to those specified herein and have a minimum of five years' experience. Appropriately licensed persons shall perform all work. A copy of these licenses and availability of contracting professional staff must be submitted with your response. **Offeror must provide a letter of information showing the number of years' experience in this line of work to be included in their RFP submission.**
- 5.4 The Contractor shall have a minimum of five qualified OEM trained full time personnel available to service this contract. For each individual listed, provide resume to include level of experience, i.e., technicians and helpers; certification and/or license. The Contractor will be required to maintain the list current throughout the life of the contract, and to supply a copy of the list to MCPS on no less than a quarterly basis.
- 5.5 The Contractor shall provide at least one designated account manager and a technical support personnel for this contract. The Contractor shall provide contact information for normal business hours and after hours support. In addition, the Contractor shall provide backup contacts and their contact information.

6.0 PRICE SCHEDULE

Complete Appendix B and C to detail the components of your Labor and Parts proposal. Prices are to be all inclusive, FOB destination, no additional charges will be accepted for parts. Labor rates are to be used for repair services that may be required and not covered under warranty or are not within the scope of the individual awarded project.

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

7.0 PRE-BID SITE INSPECTION & AS-BUILT DOCUMENTS REVIEW

Prior to submitting a proposal for any upcoming projects, the **prequalified Contractor MUST visit the site(s) to verify and become familiar with existing conditions and the character of operations to be carried out under this contract** and shall have reviewed the existing automation systems "As-Built" drawings which are available to the Contractor by appointment at the offices of

BRINJAC Engineering, Inc., 8618 Westwood Center Drive, Vienna, VA 22182 or at MCPS Energy Management Unit, 8301 Turkey Thicket Drive, Bldg A, 1st Floor, Gaithersburg, MD 20879 telephone 240-740-2530. No subsequent allowance will be made for errors or omissions in conjunction with these reviews. Bidders may visit the facility at any time between 7:00 A.M. and 2:30 P.M., Monday through Friday, by making an appointment with the building service staff.

It is the prequalified Contractor's responsibility to bring any issues or discrepancies to the attention of MCPS prior to submitting a bid for any individual project as per section 26.0 Inquires.

8.0 SCHEDULING

- 8.1 Scheduling of facilities stages of completion during the contract period will be established by MCPS and the awarded Contractor. MCPS expects that the Contractor will be prepared to participate in a Maintenance of Warranty (MoW) walk-through on all facilities within this contract no later than one year after the start of the contract.
- 8.2 Contracts will be awarded to the low responsive prequalified Contractor for individual projects followed by a written MCPS Purchase Order. All conditions contained in this RFP and the individual project specifications are incorporated by reference into the MCPS Purchase Order.
- 8.3 The Contractor shall take into consideration that school activities may be taking place while work for this contract is being performed. No work performed by the Contractor shall disrupt normal school functions. Any traffic blockages, utility or equipment outages, etc., which may be required in the execution of the Contractor's work shall be scheduled with the MCPS project coordinator and will require the Contractor to perform such work at premium labor times. The intent is to have this project performed without closing the building during regular weekday hours. The Contractor shall anticipate these occurrences in their bids, and no changes in contract amount or completion date will be made.

9.0 EMERGENCY PREPAREDNESS PROCEDURES

Key Points for Lockdown-Evacuate Shelter (LES)

- 9.1 In the event of an emergency/crisis incident while working in an MCPS facility, the Contractor and/or their representative(s) shall be required to adhere to the established MCPS procedures and school administrative guidelines during such an occurrence.
- 9.2 Supplied herein under **APPENDIX D** for the Contractor's information are the MCPS Key Points for Lockdown-Evacuate Shelter (LES). It is the Contractor's responsibility to familiarize themselves and their representative(s) regarding MCPS's emergency preparedness policy.
- 9.3 The Contractor shall have at the work site, a reasonable amount of materials that will allow them to quickly secure the work area and/or secure buildings as required for the type of work being performed.

10.0 WARRANTY

- 10.1 All newly installed hardware and software shall be warranted for a period of two years from the initial date of acceptance by MCPS. During this two year period, the Contractor shall be responsible for the proper functioning of system hardware and software in response to notification by MCPS of any operational deficiencies.
- 10.2 Initial acceptance of the software and hardware functions will occur in either the heating or cooling modes of operation. A punch-out of software and hardware functions will then be performed for the subsequent heating or cooling season for MoW. Successful completion of the MoW inspection will be required to confirm the initial date of acceptance.
- 10.3 For more details refer to the warranty section in the 01700 project close out document which will be included with individual projects bid documentation.

11.0 DEVIATIONS

For individual EMS projects, only the prequalified contractors meeting the intent of the invitation will be considered for award. **Bidders who are deviating from the terms, conditions, and/or specifications shall list such and explain fully on a separate sheet to be submitted with their bid.** The absence of such a sheet shall indicate 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.

12.0. APPROVED MANUFACTURERS

The EMS shall be manufactured by Schneider Electric (StruxureWare, Andover Controls), HI Solutions, or Reliable Controls Corporation to match the existing systems in place. **No substitutions will be accepted.** Other systems will be evaluated and tested by MCPS if materials are submitted at no cost to MCPS. Forward information to MCPS Procurement Unit, 45 West Gude Drive, Suite 3100, Rockville, MD 20850. Testing normally requires a minimum of 60 workdays to complete; therefore, your samples/materials for testing may be approved for future RFPs if the evaluation is satisfactory.

13.0 DELIVERY, STORAGE, AND HANDLING

MCPS will not be held responsible for any material stored at job sites. The Contractor must have authorization from the MCPS Project Coordinator to store said materials on MCPS property.

14.0 PRE-QUALIFICATION

- 14.1 Offerors shall submit qualification information in accordance with the requirements identified herein. The MCPS director, Department of Materials Management or his designee may, at his discretion, contact one or more Offerors during the evaluation process

for clarification of any documents submitted in response to this RFP and may request additional information.

- 14.2 The determination to prequalify a Contractor shall be based primarily on the information submitted in response to this RFP. The pre-qualification shall not be construed to constitute a determination that the applicant has met the requirements of the contract RFP proposal. Furthermore, MCPS reserves the right to reevaluate or change pre-qualification decisions based on information received at any time up to the individual final construction award. Previous project experience with MCPS will be considered even if those projects are not submitted for evaluation.
- 14.3 Offeror must provide verification, through references, of the firm's capability to upgrade existing automation systems by providing a new computer based stand-alone energy management and direct digital control system with a central server located at the MCPS central office with data transmission being processed via internet and voice grade telephone lines.

15.0 REFERENCES

All respondents shall include a list of a minimum of three references. Include names of client, contact person, email address and phone number of all references.

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

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

16.0 CONTRACT TERMINATION

MCPS reserves the right to cancel the contract in whole or in part at any time in accordance with General Contract Articles 12 and 13.

17.0 FORMAT OF RESPONSE

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

Offerors may contact Laly_A_Bowers@mcpsmd.org to receive the RFP document in Word format to help in preparing their response. Submissions will become the property of MCPS. **Responses to this RFP are due on or before 2:00 p.m. on April 20, 2018 at the address below. No faxes or electronic submission of proposals will be accepted. One (1) printed original, two (2) printed copies, and a USB flash drive that includes one (1) electronic copy and (1) electronic redacted copy should be sent by mail, courier or hand delivered to:**

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

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

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

MCPS reserves the right to make an award without further discussion of the proposals received. MCPS may also negotiate with the one respondent who submits the best proposal or with two or more respondents who are in the competitive range. Therefore, it is important that your proposal be submitted initially on the most favorable terms from both the technical and cost standpoints. After the submission and closure of proposals, no information will be released until after the award. It is understood that your proposal will become a part of the official file on this matter without obligation to MCPS.

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

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

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

18.0 MANDATORY SUBMISSIONS

Each Offeror must submit a complete proposal including all required information and attachments. The response shall address each paragraph in the same order as the RFP and provide an individual response to each paragraph. All proposals must be presented using the same numbering sequence and order used in this RFP document or as otherwise specified by MCPS.

A table of contents should be included and all pages numbered as referenced in the Table of Contents.

Complete Response must include:

- Point-by-point response to each section of the RFP.
- Notice to Bidders - Completed
- Appendix A, Qualified OEM trained personnel
- Appendix B, EMS & ATC Parts List
- Appendix C, Hourly Rate Schedule
- References, See 15.0
- Equal Opportunities Certification
- Certification of Non-segregated Facilities
- Non-Debarment Acknowledgement
- Mid-Atlantic Purchasing Team Rider Clause
- Current Form W-9
- A list of any variances from or objections to the terms and conditions of the MCPS General Contracting Articles, as well as a justification for any such variances or objections.

19.0 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 11.0.

20.0 PROPRIETARY AND CONFIDENTIAL INFORMATION

Offeror's 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 Maryland Public Information Act, 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.

21.0 EVALUATION CRITERIA

MCPS reserves the right to ask clarifying questions about submitted proposals. Offeror's also may ask questions that they may have related to this RFP prior to submitting their responses. See Section 22.0 Schedule of Events. Only proposals received by the due date and time 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.

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, Offeror's should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when requested.

Proposals meeting all the criteria required in this solicitation will be evaluated. Those who do not meet this criteria will not be evaluated further.

MCPS will evaluate candidates on criteria deemed to be in the best interest of the plan, including but not limited to the Contractor's understanding of the requirements as determined by the:

1. Completeness of Response
2. Contractor's ability to provide described mandatory services, and availability of staff.
3. Related past experience, performance and qualifications.
4. References
5. Contractor's understanding of the scope of services as demonstrated by the response to the RFP.
6. Appropriate licenses and availability of contracting professional staff; see 5.0, Licenses/Certifications.

A selection committee comprised of MCPS will evaluate proposals based on these criteria.

22.0 SCHEDULE OF EVENTS

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

RFP issued:	March 20, 2018
Questions Due:	March 28, 2018
Responses Sent:	April 8, 2018
Proposals Due:	April 20, 2018
Board approval:	May 21, 2018

A Pre-Bid Conference will not be held.

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

23.0 ADDENDA/ERRATA

Changes and addenda to a solicitation may occur prior to the solicitation due date and time. It is the sole responsibility of the Offeror to check the "Event Calendar" on the MCPS website <http://www.montgomeryschoolsmd.org/departments/procurement/> or contact Laly Bowers, buyer in the Procurement Unit at Laly_A_Bowers@mcpsmd.org or procurement@mcpsmd.org , 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.

24.0 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 <https://emaryland.buyspeed.com/bso/> regardless of the award outcome for this procurement as it is a valuable resource for upcoming bid notifications for municipalities throughout Maryland.

25.0 MULTI-AGENCY PARTICIPATION

MCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, 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 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 Offeror(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 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 solicitation.

26.0 INQUIRIES

Inquiries regarding this solicitation must be submitted in writing to Mrs. Laly Bowers, Buyer II, MCPS Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, MD 20850, via fax at 301-279-3173 or email to Laly_A_Bowers@mcpsmd.org. Questions are due by March 28, 2018. Responses will be posted on eMaryland Marketplace and on MCPS' Procurement webpage. 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 Offeror's. Only such addenda/errata, when issued by MCPS Procurement Unit, 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. The MCPS Procurement website address is <http://www.montgomeryschoolsmd.org/departments/procurement/>

27.0 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.

28.0 RFP PROTESTS

Any RFP protest, 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.

29.0 CONTRACT

MCPS plans to enter a contractual agreement with a consulting firm to whom the award is made and intends to make the attached MCPS General Contracting Articles a part of the contract, 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 Contracting Articles. Lacking any response to the contrary, MCPS will infer that the Offeror agrees to the specifications of this RFP and each term and condition of the MCPS General Contracting Articles. In particular, the insurance and indemnification provisions set forth in Section 33 of the MCPS General Contracting Articles are non-negotiable. In addition to and consistent with Article 15 of the MCPS General Contracting Articles, the Contract shall include additional data sharing provisions regarding "Confidential Information" as defined in Article 15, including personally identifiable student information, as required by MCPS policies and regulations and applicable law.

30.0 BIDDER OBLIGATION/SEX OFFENDER (See General Contract Article 21)

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

Each Contractor must screen their work-forces to ensure that a registered sex offender does not perform work at a county public school and also ensure that any Sub-Contractor and independent Contractor conducts screening of its personnel who may work at a school. The term "Work-force" is intended to refer to all of the Contractor's direct employees and any Sub-Contractors and/or independent Contractors it uses to perform the work. Violation of this provision may cause MCPS to take action against the Contractor up to and including termination of the contract.

CONTRACT ADMINISTRATION (Applicable to all individual EMS projects)

1.0 PRE-CONSTRUCTION MEETING

- 1.1 MCPS reserves the right to convene a meeting with the apparent low bidder prior to awarding a project. The purpose of this meeting is to afford all parties an opportunity to discuss any aspects of project and contract execution, which may be of concern for the successful and timely completion of the individual project.
- 1.2 Sample warranty documents and service agreements shall be provided to MCPS at this meeting.

2.0 POST BID SUBMISSIONS

2.1 Sub-Contractors

- a) The successful bidder shall supply a complete list of all Sub-Contractors and the cost of their work for evaluation by MCPS. This list must be submitted within two workdays after MCPS makes the request. **Failure to do so may be grounds for non-consideration of your bid.** The Contractor shall be responsible for assuring that all proposed Sub-Contractors are in good standing with MCPS.
- b) MCPS shall notify the Contractor **in writing** if, after due investigation, there is reasonable objection to any of the proposed Sub-Contractors. Failure of MCPS to make objection to any proposed Sub-Contractor shall constitute notice of no objection. Each Sub-Contractor may be required to furnish to MCPS, proof their financial stability and experience to perform the particular work for which they will be engaged. All contractual agreements between the Contractor and their Sub-Contractor(s) shall be written and unamended on the Standard Form of Agreement between the Contractor and Sub-Contractor, AIA Document A401 (most recent Edition). Upon request, the Contractor shall supply copies of this contract to MCPS **within five workdays.**
- c) MCPS acceptance of Sub-Contractors in no way relieves the Contractor from being responsible for the total and complete performance of the work for the project; i.e., failure of the Sub-Contractors to satisfactorily perform the work in a timely fashion is the Contractor's responsibility and not that of MCPS.
- d) All work must be performed by a bona-fide licensed trade person.

2.2 Minority Business Enterprise in Public Schools

Minority business enterprises are encouraged to respond to this invitation.

2.3 Invoicing

- a) **Bidder shall submit invoices to the MCPS Project Manager for payment approval.** All invoices shall identify pertinent information such as purchase order number and building name/location where work was performed.
- b) MCPS is not obligated to make partial payments for work performed under this contract. However, partial payments may be considered based upon the Contractor's justification of expenditures, satisfactory work and project is 90% complete.
- c) Request for partial payment shall be submitted to the project coordinator. Invoices shall be accompanied by a schedule of values allocated to various portions of the work (similar to AIA Document's G702 & G703). This schedule, unless objected to by MCPS, shall be used as a basis for reviewing the Contractor's application for partial payment.
- d) In all months with outstanding invoice(s), the Contractor is required to submit a monthly statement via e-mail to MCPS at DOMaccounting@mcpsmd.org.

2.4 Permits and Inspections

The Contractor shall obtain all required permits, pay all fees, and certify that all required permits have been obtained prior to commencing work. Upon completion of all work, obtain all certificates of inspections required and deliver them to the MCPS project coordinator. All required permit certificates and related documentation shall be submitted to the MCPS project coordinator for approval prior to final payment.

3.0 **PERFORMANCE**

- 3.1 The Contractor shall have on the job site at least one person fluent in English.
- 3.2 **The Contractor must provide MCPS with cellular telephone number of the project manager to allow for day-to-day direct communications.**
- 3.3 Work to be completed in a timely workmanlike manner; fumes, odors, materials and work procedures will be controlled to protect occupants and property from harm and damage.
- 3.4 MCPS requires the installer to maintain a full-time supervisor/foreman on the job site while the work is in progress who is experienced in installing automation systems similar to the type and scope required for this project. This supervisor/foreman must have completed MCPS's background check, fingerprinting and badging process prior to being on the job site.

CONTRACT ADMINISTRATION

RFP 9442.2

3.5 Contractors and employees:

- a) While performing work inside the building, the Contractor will be required to check in daily at the school's main office. The Contractor's qualified OEM trained full time personnel must have completed MCPS's background check, fingerprinting and badging process prior to being on the job site.
- b) Use of any form of tobacco products, liquor, and/or illegal drugs is not permitted in MCPS buildings and on grounds.
- c) Are not to routinely use facility equipment and buildings, i.e., telephone, lounges, toilet rooms, parking lots, etc. MCPS project coordinator will designate such facilities authorized for Contractor use.

3.6 All work shall be scheduled to the mutual satisfaction of the school administration and the MCPS project coordinator to avoid conflicts with school activities.

3.7 Work area must be left clean and ready for use after the installation. The Contractor must remove all debris generated by the work from the premises daily.

3.8 Installation must be performed in strict compliance with the latest local, state and federal regulations having authority. The OSHA, MOSHA, etc. standards must be followed.

3.9 The Contractor shall provide and maintain temporary barricades as necessary to prevent unauthorized personnel from entering the areas where work is being performed by the Contractor. Such barricades shall be completely removed upon completion of the work.

3.10 Failure to perform in accordance with MCPS specifications and industry standards may result in the Contractor being removed from the bidders list and will not be able to participate in future Invitation For Bid for a period of two years.

4.0 CHANGES IN THE WORK

4.1 Should it be desired to make alterations or changes at any time during the progress of the work or to add to or delete work, MCPS shall have the undisputed right to make such changes, additions, omissions, or alterations by written order. **An MCPS Change Order Form APPENDIX E, must be completed and signed by MCPS, Procurement Unit and Contractor's authorized representative.** All change order forms, Proposals and other supporting documentation relating to additional work must be supplied to the MCPS project coordinator within one week from the time the change order need is identified. No cost changes to contract will be paid without a complete change order form. If work is performed without MCPS authorization and/or written change order, the Contractor will

CONTRACT ADMINISTRATION

RFP 9442.2

be subject to reversing said work, or work and/or materials shall remain at no cost to MCPS. This shall be solely at MCPS' discretion.

- 4.2 The allowable, all inclusive mark-up for combined overhead, bonds, fringe benefits, union fees, equipment, tools and profit for work performed by the prime Contractor will be based on the monetary value of the work not to exceed the following rates:

<u>Value of Work</u>	<u>Combined Overhead & Profit</u>
\$0 - \$1,000	18%
\$1,001 - \$3,000	12%
\$3,001 - \$6,000	8%
\$6,001 - and over	6%

This schedule applies to work done by the prime Contractor or by a Sub-Contractor(s). The prime Contractor shall be allowed not more than 8% of the Sub-Contractor's cost for labor, materials, overhead and profit.

- 4.3 The Contractor shall furnish supporting documentation with all change order requests credits or extras. At a minimum, change order requests shall include a description of the work, detailed material lists, costs of materials (actual Contractor costs, not list prices), man-hours and rates. The same material costs, man-hours, rates, supervision, overhead, and profit shall be applied equally to a credit or an extra.

5.0 QUALITY ASSURANCE

- 5.1 The Contractor shall only offer units and accessories through one source from an MCPS approved manufacturer. The installers shall perform all installations in accordance with manufacturer's procedures and MCPS specifications herein. The successful Contractor shall be regularly engaged in the installation of systems and equipment similar to those specified herein and has a minimum of five years' experience. Appropriately licensed employees shall perform all work. A copy of these licenses must be submitted to with your bid response. Licenses for any additional staff to work on these projects shall be provided to the MCPS Project Coordinator prior to performing any work. **Bidder must provide a letter of information showing the number of years' experience in this line of work to be included in their bid submission.**
- 5.2 The Contractor offering the bid shall be the firm that provides and performs the installation. Any sub-contracting request to MCPS shall only be the bona-fide installers, meeting all the quality assurance requirements above. The bidder must secure approval in writing from MCPS prior to sub-contracting any work and must provide qualification details for the Sub-Contractor such as, but not limited to, licenses, references, and years in business, experience, etc., as may be requested by MCPS.

6.0 LATE CHARGES FOR FAILURE TO COMPLETE ON TIME

- 6.1 MCPS shall retain \$3,000 per each calendar day (includes weekends) of delay beyond the completion date of each stage stipulated on the contract for each facility; completion dates for each stage of the project for each facility shall be established by the mutual agreement between Contractor and MCPS prior to executing the contract. The late charges will be assessed by MCPS as a result of the late completion. This shall apply if the Contractor fails to meet any specified target date as identified herein unless written approval for extension has been granted by MCPS.
- 6.2 Failure to complete the work within the time specified will entitle MCPS to late charges. These charges will be deducted and retained out of any monies due the Contractor under this contract for the sum stated in the above paragraph for each calendar day required to complete the work beyond the agreed upon and documented completion date. This includes Saturdays, Sundays and legal Holidays.
- 6.3 If necessary to reach a proper stopping place in any portion of work or to complete work within contract time limit, the Contractor shall work overtime both their forces and the forces of their Sub-Contractors without additional cost to proposal price. The Contractor shall be responsible for all incidental costs in connection with such overtime work including, but not limited to, MCPS building service staff overtime required.
- 6.4 The MCPS Project Manager will review requests for extension of completion time due to strikes, lack of materials, and/or any other condition, over which the Contractor has no control. Written application for extension shall be made immediately upon occurrence of conditions that, in the opinion of the Contractor requires such an extension, with reason clearly stated and detailed proof for each such delay. The delay of MCPS issuing a purchase order does not automatically alter any completion dates. If in the Contractor's view the delay of the purchase order is having a negative effect on completion of the contract within the dates specified, they must notify MCPS in writing immediately. Using the rationale that a purchase order was issued late, at the conclusion of the work will not be an acceptable reason for requesting a contract extension. No time extension will be allowed except by final written approval of the director of the Procurement Unit. No requests for extension due to weather conditions will be considered unless accompanied by documentary evidence supplied by the Weather Bureau showing, by comparison, that such weather suffered is abnormal to any of the past five years as recorded by the Weather Bureau. No request for extension will be considered by MCPS if received from the Contractor after the previously agreed completion date has passed. Late charges will be automatically deducted.

7.0 MCPS PROJECT MANAGER/PROJECT COORDINATOR

- 7.1 Mr. Dave Grossnickle or his designee will represent MCPS in the execution of this contract as the MCPS Project Manager. No changes in contract conditions or specifications will be made without the Project Manager Approval and authorization by the director, Department of Materials Management or his designee.
- 7.2 After award the MCPS Project Manager will assign a Project Coordinator who will handle day-to-day operation and installation coordination. Scheduling work on site after an award of contract must be made through the MCPS Project Coordinator.
- 7.3 The Project Coordinator is authorized to:
- a) Serve as liaison between MCPS and the Contractor;
 - b) Give direction to the Contractor to ensure satisfactory and complete performance;
 - c) Monitor and inspect the Contractor's performance to ensure acceptable timeliness and quality;
 - d) Serve as records custodian for this contract;
 - e) Accept or reject the Contractor's performance;
 - f) Furnish timely written notice of the Contractor's performance failure to the MCPS Project Manager and copy to the Procurement Unit;
 - g) Prepare required reports;
 - h) Approve or reject invoices for payment and submitted construction schedules;
 - i) Recommend contract modifications or terminations to the MCPS Project Manager and the Procurement Unit;
 - j) Issue notices to the Contractor to proceed with the project after receiving signed change order as required.
- 7.4 **The MCPS Project Manager is not authorized to make any determination that alter, modify, terminate or cancel the contract, affect procurement, interpret ambiguities in the contract language, or waive MCPS contractual rights.**

8.0 PROGRESS MEETINGS

- 8.1 General: Progress meetings shall be scheduled at intervals, days, and times as mutually agreed upon by MCPS, Engineer, and Contractor. Location for these meetings will be determined at a later date.
- 8.2 Attendance: Project Coordinator, Contractor, and Engineer as necessary; Sub-Contractors and material suppliers as appropriate to the agenda. Representatives of consultants, Contractor, Sub-Contractors and suppliers attending the meetings shall be qualified and authorized to act on behalf of the entity each represents.

CONTRACT ADMINISTRATION

RFP 9442.2

8.3 Minutes of Meetings: The Engineer will record/distribute the minutes of each meeting to:

- a. Project Manager
- b. Project Coordinator
- c. Contractor. The Contractor shall further distribute copies of the minutes to other participants and any additional parties affected by decisions made at the meeting.

8.4 Agenda for Meetings:

- a. Review of minutes of previous meeting.
- b. Review of work progress since previous meeting.
- c. Field observations, problems and conflicts.
- d. Review of problems that could impede construction schedule.
- e. Review of off-site fabrication, delivery schedule.
- f. Revisions to progress schedule.
- g. Plan progress during succeeding work period.
- h. Coordination of schedules.
- i. Maintenance of quality standards.
- j. Other business.
- k. Contractor's invoicing.

Monitoring Progress:

MCPS will monitor the progress of the work and will meet and confer with the Contractor to determine whether or not they are on schedule. Progress will be documented in the meeting minutes. If MCPS determines that, the Contractor is not on or ahead of schedule the Contractor will be notified that they have 14 calendar days to expedite their work to get back on schedule. MCPS will not make any further payments until the Contractor is back on schedule.

9.0 PRE-CONSTRUCTION SUBMITTALS

9.1 Contractor shall furnish an equipment parts price list update, published by the equipment manufacturer, if costs have changed from previous information provided to MCPS and for any new control devices for which costs are not on file. An installation cost statement update shall also be submitted if changes have been made from previously approved submissions. It is the Contractor's responsibility to apprise MCPS of any price increases over those currently on file with MCPS; without such notification, the price quotes on file shall be binding. Equipment/parts price lists shall clearly represent the cost to MCPS of the item to be purchased; i.e. should MCPS wish to replace a failed component of an assembly, but the manufacturer only furnishes the assembly as complete package without the option of purchasing components, the price list tendered by the Contractor shall reflect the true cost of the component replacement by listing the cost of the assembly only.

CONTRACT ADMINISTRATION

RFP 9442.2

- 9.2 Submit copies of appropriate shop drawings and control drawings for the EMS. Quantities of shop drawings submitted to the EMS Engineer for his approval shall be sufficient for the Engineer to retain one copy, one copy for the Owner, and the remaining copies will be returned to the Contractor for his use.
- a. Required shop drawings shall include but not necessarily be limited to the following items:
- | | |
|-----------------------|---------------------------|
| Controllers | Software Manuals |
| Sensors | Modems |
| Transmitters | Microprocessors |
| WEB Interface Devices | Local Interface Equipment |
| Current Transducers | Current Switches |
| Thermostats | Valves |
| Dampers | Actuators |
| Switches | Freeze stats |
| Relays | Enclosures |
| Power Monitors | Guards |
- b. Control drawings shall be submitted. Integrate with flow diagrams, show outlines of HVAC equipment with control devices, schematic one line control piping and wiring, and written sequence of operation and operating instructions. Equipment numbers shall correspond to those shown in these documents or as taken from existing As-Built control drawings. Submit points list showing each control input and output, the device being controlled, the location of the device, and the symbol or label of the control point in the software.
- 9.3 Changes: When a submittal must be resubmitted by the Contractor, no changes other than those required as a result of the previous submission shall be made without the Engineer being made aware of the change. If such changes are made without so advising the Engineer, the Contractor must assume full responsibility for the possible consequences.
- 9.4 Requirements: Project work, material, fabrication and installation shall conform to reviewed shop drawings, applicable samples and catalog data.
- 9.5 Deviations: Review of submittals by the Engineer shall not authorize any deviation from the requirements of the Contract Documents nor shall such approval relieve the Contractor from responsibility for errors or omissions therein.

10.0 RECORD DOCUMENTS

- 10.1 General: A set of record documents shall be maintained by the Contractor and kept current with changes in construction as they occur. Record documents shall consist of:
- Shop Drawings
 - Contract Specifications and any addenda thereto.
 - Change Orders
 - Engineer's Supplemental Instructions
 - As-Built Drawings
- 10.2 Labeling: Label each document "Project Record" in 2-inch high printed red letters.
- 10.3 Requirements: Do not use record documents for construction purposes. Maintain documents in a clean, dry, legible condition. Record documents shall be kept current and no work shall be permanently concealed until required information has been recorded.
- 10.4 Shop Drawings: Legibly mark with pen to record actual construction if differing from original contract documents.
- 10.5 Additional items to be recorded are:
- a. Changes made by Change Order or Supplemental Instruction.
 - b. Details not in original contract documents.
- 10.6 Contract Specifications: Legibly mark up each section to record:
- a. Manufacturer, trade name, catalog number, and supplier of each product actually installed.
 - b. Changes made by Change Order or Supplement Instruction.
 - c. Other matters not originally specified.
- 10.7 Submittal: At completion of project deliver record documents to the Owner.

11.0 INSURANCE

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

CONTRACT ADMINISTRATION

RFP 9442.2

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

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

Commercial General Liability

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

Contractual Liability

Premises and Operations

Independent Contractors

Products and Completed Operations

Automobile Liability Coverage

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

Owned automobiles

Hired automobiles

Non-owned automobiles

Worker's Compensation/Employer's Liability

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

Bodily Injury by Accident - \$500,000 each accident

Bodily Injury by Disease - \$1,000,000 policy limits

Bodily Injury by Disease - \$500,000 each employee

Additional Insured

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

Policy Cancellation

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

Certificate Holder

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

12.0 SALES TAX

Section 326 (a) of Chapter 452 of the Laws of Maryland, 1968, provides, among other things, for the taxation of "any sale . . . of tangible personal property to Contractors or builders to be used for the construction, repair, or alteration of real property . . . ". Sales tax, as applicable, shall be included in any bid made to the Board of Education of Montgomery County, Maryland.

13.0 APPLICABLE LAWS AND PERMITS

The Contractor is responsible for obtaining any and all permits required to fulfill this contract and shall comply with all laws, ordinance, rules and regulations of the jurisdictions in which the work may be performed.

14.0 PRE-QUALIFICATION REQUIREMENTS SUMMARY

- 14.1 The following information must be submitted in your response to this solicitation. Failure to include any of the items listed below will disqualify a firm's response. Offerors should describe in detail and provide evidence supporting the qualifications requested below.
- 14.2 MCPS reserves the right to require that the prime trade Contractor/Sub-Contractor demonstrate that it has the skills, competence, responsibility, equipment, and other resources to satisfactorily perform the nature and magnitude of work necessary to complete the project within the proposed contract schedule.
- 14.3 Application forms and supplemental information must be typed or printed. Information presented therein shall be clear, complete, accurate, and concise. The following forms and attachments comprise the technical Offer:
 - A. Offeror shall submit a letter on **company letterhead signed by an authorized person verifying compliance** with the following mandatory requirements:
 - a. A firm must have a minimum of five years' experience for the trade in which they are applying in order for his technical Offer to be considered; this is a mandatory requirement. If the technical Offeror is a joint venture firm, each joint venture party must have five years' contracting experience; if, however, one joint venture party is responsible for 70% or more of the scope of services, that joint venture party must have five years' experience and the other joint venture party(ies) must each have five years' experience.

- b. The firm must disclose whether it or its' principals have done business and/or have been licensed in the State of Maryland to do business under any other name in the last five years. Failure to do so will result in disqualification of their response.
 - c. Firms must be licensed to conduct business as required by the State of Maryland (Business Regulation Article, Annotated Code of Maryland) and shall submit proof of current business and professional trade licensing with their response.
 - d. Firms must provide a "Good Standing Certificate" from the General Accounting Division, Comptroller of Maryland. Information may be obtained at: http://compnet.comp.state.md.us/General_Accounting_Division/default.shtml.
 - e. General Company Background: Brief but informative history of your firm. Include information as to type of work done, number of years in business, number of employees with breakdown between supervisory and non-supervisory and annual dollar volume. Specify a primary contact to include name, title, telephone number and e-mail address.
 - f. Project Specific Background: Provide information on your firm's specific background by submitting a list of the ten largest projects completed during the past 24 months. Include any K-12 educational work completed.
 - g. The Offeror must confirm that the firm has no judgments against it.
 - h. Please note: If the Offeror is a local office of a parent company, the information is to be provided on the **local office only that will be managing this contract**, not the parent organization, unless the parent organization is the Offeror.
- 14.4. **Minority Business Enterprise Appendix D (MBE) Utilization Experience**: Please sign the acknowledgement on **Attachment C**. MBE forms included in these specifications will be required for individual state funded projects.
- 14.5 **Surety Statement**: Applicant's ability to acquire performance, and payment bonds for projects awarded.
- 14.6 MCPS will deny qualification to any Offeror if MCPS finds any of the following:
- a. The Offeror fails to provide a signed Surety Statement that indicates that the Surety knows of no reason at this time that the Surety would not be able to provide performance and payment bonds in connection with the projects to be bid this year for amounts up to \$250,000, if applicable.
 - b. The Offeror does not have the appropriate experience to perform an MCPS project.
 - c. The Offeror or any officer, director or owner thereof has had judgments entered against him/her within the past five years for the breach of contracts for governmental or non-governmental projects.
 - d. The Offeror has been in substantial noncompliance with the terms and conditions

CONTRACT ADMINISTRATION

RFP 9442.2

of prior construction projects.

- e. The Offeror or any owner, officer, director, project manager, procurement manager or chief financial officer thereof has been convicted within the past five years.
- f. The Offeror or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency or another state or agency of the federal government.
- g. The Offeror failed to provide to MCPS within the established time frame, any information requested in this Notice to Prime Trade Contractors/Sub-Contractors relevant to Items A through F above.

MONTGOMERY COUNTY PUBLIC SCHOOLS
Request for Proposal No. 9442.2
Energy Management Systems Contractor's Prequalification
Table of Contents

	Page
1.0 Intent	1
2.0 Background	1
3.0 Contract Term	2
4.0 Scope of Work	2
5.0 License/Certifications	3
6.0 Price Schedule	3
7.0 Pre-Bid Site Inspection & As Built Documents Review	3-4
8.0 Scheduling	4
9.0 Emergency Preparedness Procedures	4
10.0 Warranty	5
11.0 Deviations	5
12.0 Approved Manufacturers	5
13.0 Delivery, Storage, and Handling	5
14.0 Pre-Qualification	5-6
15.0 References	6
16.0 Contract Termination	6
17.0 Format of Response	7-8
18.0 Mandatory Submissions	8
19.0 Treatment of Technical Data in Proposal	8-9
20.0 Proprietary and Confidential Information	9
21.0 Evaluation Criteria	10
22.0 Schedule of Events	10
23.0 Addenda/Errata	10-11
24.0 eMaryland Marketplace	11
25.0 Multi-Agency Participation	11
26.0 Inquiries	11-12
27.0 Unnecessarily Elaborate Brochures	12
28.0 RFP Protests	12
29.0 Contract	12
30.0 Bidder Obligation/Sex Offender	12

Contract Administration	13-25
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Notice to Bidders

Attachment A, Equal Opportunity Certification

Attachment B, Certification of Nonsegregated Facilities

MidAtlantic Purchasing Team Rider Clause

MCPS General Contract Articles

Appendix A: Qualified OEM trained full time personnel

Appendix B: EMS & ATC Parts Price List

Appendix C: Hourly Rate Schedule.

Appendix D: MCPS Emergency Crisis Procedure, Shelter/Lockdown

Appendix E: Change Order Form

Appendix F: Minority Business Enterprise Procedures

NOTICE TO BIDDERS

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

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

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

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

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

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

III. PURCHASE ORDER ADDRESS: Please complete if different from Bidder's Contact Information.

- 1. Purchase Order Address _____
- 2. Representative's Name _____
- 3. Phone Number (s)/Extension(s) _____
- 4. Fax Number _____
- 6. Email Address _____

IV. PROMPT PAYMENT DISCOUNT: MCPS may consider prompt payment discounts as part of the award process; however, the Board reserves the right to make awards according to the best interests of MCPS.

_____ Prompt payment discounts of less than twenty (20) days will not be considered.

V. PURCHASING CARD AND SUA PAYMENT PROGRAM: MCPS is currently utilizing a purchasing card and Single Use Accounts (SUA) payment program through JP Morgan MasterCard. Please check the appropriate box below.

☐ Yes, we accept MasterCard

☐ No, we do not accept MasterCard

Note: Beginning April 1, 2018, MCPS will no longer process check payments. To avoid payment delays after this change is enacted, all bidders that accept MasterCard are strongly encouraged to sign up to receive SUA

payments upon being notified of an award. For bidders that do not accept MasterCard, the ACH payment method is also available. Please e-mail SUA@mcpsmd.org to register for SUA, or e-mail accountspayable@mcpsmd.org to request ACH registration forms.

VI. PURCHASE ORDER PREFERENCE: Montgomery County Public Schools (MCPS) is in the process of issuing orders via Facsimile or US Mail. MCPS prefers facsimile. Please check your preference below.

☐ Facsimile ☐ US Mail ☐ Email ☐ EDI

VII. SLMBE (SMALL, LOCAL AND MINORITY BUSINESS ENTERPRISE): Check the appropriate box below.

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

VIII. NON-DEBARMENT ACKNOWLEDGEMENT

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

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

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

By (Signature) _____

Name and Title _____

Witness Name and Title _____

IX. BIDDER'S CERTIFICATION: Upon notification of award, this document in its entirety is the awarded vendors contract with MCPS. By signing below, the undersigned acknowledges that s/he 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. (Bidders are cautioned to read the material under Section XXVII, signature to Bids, and to comply with its stipulations.) I/We certify that none of this company's officers, directors, partners, or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of the Montgomery County Public Schools, Administrative or Supervisory Personnel, or other employees of the Board of Education has any interest in the bidding company except as follows:

By (Signature) _____

Name and Title _____

Witness Name and Title _____

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

Attachment B

Certification of Nonsegregated Facilities

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

Notice to Prospective Subcontractors of

Requirement for Certifications of

Nonsegregated Facilities

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

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

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

**Mid-Atlantic Purchasing Team
Rider Clause**

RFP # 9442.2, Energy Management Systems Contractor's Prequalification

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 party 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 #9442.2

	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					

MCPS GENERAL CONTRACT ARTICLES

<u>No.</u>	<u>Title</u>
1	Description and General Intent
2	MCPS Project Contact
3	Independent Contractor
4	Key Contractor Personnel
5	Contractor Responsibility
6	Subcontractors
7	Force Majeure
8	Payment Terms and Conditions
9	Changes
10	Audit and Document Retention
11	Term of Contract
12	Termination for Convenience
13	Termination for Cause
14	Non-Appropriation
15	Disputes
16	Contractor Integrity, Ethics and Conflicts of Interest
17	Publication and Publicity
18	Data Collection and Confidential Information
19	Documentation and Copyright
20	MCPS Property
21	Obligations Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities
22	Indemnification and Insurance
23	Insurance
24	Order of Precedence
25	Severability
26	Governing Law and Jurisdiction
27	Entire Contract
28	Successors and Assigns
29	Guarantee

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, 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 and warrants 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/. 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.
- 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.

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

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; 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 that includes Personally Identifiable 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 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) 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.
 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, 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. If the Contractor becomes aware of a Data Security Breach, 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, 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. In addition, to the extent not prohibited, the Contractor agrees to notify MCPS of Data Security Breaches 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 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 and to implement procedures to prevent the recurrence of a similar Data Security Breach.
 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 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 or copyrights existing at the time the deliverables, products, and/or services are made available to MCPS, 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 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.
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/; 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 of infringement or misappropriation of any patent, copyright or other intellectual property right.
- B. In the event of any intellectual property infringement or misappropriation claim, or if the Contractor becomes aware of the possibility of such a claim, the Contractor may, 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, 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.

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.

Revised September 1, 2017

MCPS GENERAL CONTRACT ARTICLES

<u>No.</u>	<u>Title</u>
1	Description and General Intent
2	MCPS Project Contact
3	Independent Contractor
4	Key Contractor Personnel
5	Contractor Responsibility
6	Subcontractors
7	Force Majeure
8	Payment Terms and Conditions
9	Changes
10	Audit and Document Retention
11	Term of Contract
12	Termination for Convenience
13	Termination for Cause
14	Non-Appropriation
15	Disputes
16	Contractor Integrity, Ethics and Conflicts of Interest
17	Publication and Publicity
18	Data Collection and Confidential Information
19	Documentation and Copyright
20	MCPS Property
21	Obligations Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities
22	Indemnification and Insurance
23	Insurance
24	Order of Precedence
25	Severability
26	Governing Law and Jurisdiction
27	Entire Contract
28	Successors and Assigns
29	Guarantee

APPENDIX A**Qualified OEM trained full time personnel:**

The Contractor shall have a minimum of five (5) qualified OEM trained full time personnel available to service this contract. For each individual listed, provide resume to include level of experience, i.e., technicians and helpers; certification and/or license. The Contractor will be required to maintain the list current throughout the life of the contract, and to supply a copy of the list to MCPS on no less than a quarterly basis.

<u>Name</u>	<u>Title/Position</u>	<u>Num. Years Experience</u>
1. _____		
2. _____		
3. _____		
4. _____		
5. _____		

The Contractor shall provide at least one designated account manager and a technical support personnel for this contract. The Contractor shall provide contact information for normal business hours and off hours support. In addition, the Contractor shall provide back up contacts and their contact information.

Designated account manager:

<u>Name</u>	<u>Title/Position</u>	<u>Phone</u>	<u>E-mail</u>
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PRIMARY:

BACKUP:

9442.2 APPENDIX A Cont.

Technical support:

Name

Title/Position

Phone

E-mail

PRIMARY:

BACKUP:

APPENDIX C

HOURLY RATE SCHEDULE

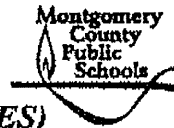
Date: _____		
<p><u>Hourly Rate Schedule</u></p> <p>To be used as stated in 9442 for repair services that may be required and not covered under warranty or within the scope of individual awarded projects.</p>		
Contractor: _____		
Effective Date: _____		Expiration Date: _____
Position	Standard Hourly Rate	Premium / Overtime Hourly Rate
Senior Manager/Director		
Project Manager		
Engineer		
Graphics Designer		
Programmer		
Technician		
Helper/Laborer		
Comments (if any):		

APPENDIX D

MCPS EMERGENCY CRISIS PROCEDURE, SHELTER/LOCKDOWN



Department of School Safety and Security
MONTGOMERY COUNTY PUBLIC SCHOOLS
Rockville, Maryland



Emergency Preparedness Procedures
Key Points for Lockdown-Evacuate-Shelter (LES)

Lockdown

This is a term used to describe an emergency at an MCPS facility. Lockdown alerts staff that imminent danger exists inside or outside the building, and requires moving to an immediate lockdown mode. It requires that all students are under supervision. *The on-site emergency team (OSET) is not activated during a Lockdown.*

Persons authorized to call a Lockdown

School administrators or their designee will notify students, staff and visitors via the PA system and the portable radios when a Lockdown is in effect. Directions should be given to immediately move to a lockdown mode. Staff should make the announcement and notify 911 and Office of School Performance.

Lockdown Alert—Staff Guidance

- When the administrator/designee announces a Lockdown, scan the immediate area outside the classroom or office for any students and staff. Allow them in the classroom/office, and immediately lock or secure the door if possible.
- Make the room look *unoccupied* by turning off the lights, close/cover the windows and blinds, and move away from the line of sight from the doors and windows. Remain silent.
- If staff and students are inside the building but outside a classroom or office when a Lockdown is called, move students to the nearest securable location.
- Staff supervising students outside when a Lockdown alert occurs inside the building should be notified of the Lockdown activation by P.A. or two-way radio. Staff and students should move to a pre-determined safe location identified on the emergency plan away from the building and maintain communication with the command post.
- Ignore the fire alarm system and class change bells.
- Wait for further instructions.

Evacuate

There are two evacuation alerts, *Fire and Directed*.

Fire Evacuation

- Activate Fire Evacuation Alarm
- Students/staff/visitors leave the building by the nearest exit
- Proceed to a point at least 50 feet from the building
- Perform an accountability of the students/staff/visitors

Directed Evacuation

- Will be used during possible High Level Bomb threats, an identified Suspicious Package or an Inside Hazardous Material Release
- Notify 911 and OSP
- Determine plan to direct everyone away from the known danger area
- Announce via PA and portable radio
- Students/staff/visitors must evacuate to a point at least 300 feet from the building

Shelter

This is a term used to alert staff that an emergency exists at or near an MCPS facility. It requires all students to be accounted for and under supervision. Administrators may activate the OSET and set up a command post when appropriate. There are three types of shelters: *Public Safety, Severe Weather and Outside Hazardous Materials Release.*

Persons authorized to call a Shelter alert

Administrators or their designee will notify students/staff/visitors via the PA system and the portable radios when a Shelter alert is activated. It is recommended that an "age-appropriate" announcement of a Shelter alert include a brief description of the nature and location of the incident.

Public Safety Shelter Alert- Staff Guidance

When the administrator announces a Public Safety Shelter alert:

- Bring outside students/staff/visitors into the main building, portable classrooms are secured but not evacuated
- Outside doors are locked and kept secured
- Students should be accounted for in an instructional area.
- Classroom instruction should continue
- Staff must document attendance and report any discrepancies to an administrator/designee.
- During a Public Safety Shelter alert, classroom lockdown is not required.
- *The OSET* may be activated by an administrator during a Public Safety Shelter alert via a PA announcement and over the portable radios.
- Depending on the situation (the nature of the emergency or potential threat), it may not be appropriate to change classes. In these situations, class bells should be turned off and students/staff should remain in their classrooms until directed otherwise by the administrator/designee.
- Do not ignore the fire alarm system.

Severe Weather Shelter – A severe thunderstorm or tornado warning is activated for the area near the school.

- Students/staff/visitors must report to identified weather safe areas inside the building.
- Portable classrooms are to be evacuated to the main building.
- Bring emergency kit/phone with Nextel phone and ensure the NOAA weather radio is continually monitored

Outside Hazardous Material Release Shelter

Alert is a term used to describe a specific shelter alert due to an outside air contamination emergency at or near the building. This could be the result of a suspected chemical, biological, or radiological incident; or a nearby hazardous materials spill.

Outside Hazardous Material Release Alert-Staff Guidance

When activating an Outside Hazardous Material Release Shelter alert, take the following steps immediately:

- Announce a *Outside Hazardous Material Release Shelter Alert*
- Bring students/staff/visitors into the main building from outdoor activities
- Evacuate portable classrooms in consultation if safe to do so
- Secure/lock exterior doors and windows
- Hold students in their current locations inside the building until the best course of action can be determined
- Turn off electrical power to ensure immediate shutdown of HVAC
- Ignore fire alarm system—only in this Outside Hazardous Material Release Shelter alert.

Parent/Child Reunification

All schools have plans in place to reunite students with their parents/guardians in the event of an emergency at a school. This process will ensure the safe and orderly reuniting of students and parents/guardians. Schools will ensure they use a three-step approach.

- Identify parents (using ID)
- Identify student location in the school or PCR location, sign out student
- Unite student and parent/guardian

Firearms

- Avoid attempts to disarm/subdue an armed subject.
- Notify administrator/designee and school-based security of any firearm incidents immediately, and call 911 with details.
- Determine need to implement a Lockdown or Public Safety Shelter alert.
- Abandoned/discarded firearms should be covered by appropriate means and never left unattended.

Bomb Threat Assessment

- Factors to consider:
 - Details/specifies provided by the bomb caller
 - Number of prior threats to the school
 - Current events surrounding the school
 - Demeanor of the bomb caller
- Based on an assessment of the situation and input from the administration of the school, the Department of School Safety and Security and the police, the administrator will make a decision on evacuation. If the parties do not agree, this disagreement will be resolved in favor of evacuation. (Refer to MCPS Regulation EKC-RA.) Use a Directed Evacuation to evacuate the school
- Evacuation is warranted **only** if the threat level is high.
- Evacuation is not warranted if the threat level is low.
- It is recommended that an activation of a Public Safety Shelter alert and the use of sweep/scan teams be used during a low level threat when the building is not evacuated.

Bomb Threats Call Trace

- Use "call trace" procedures on the yellow *Telephone Bomb Threat Checklist* card. Follow instructions exactly.
- After hanging up the phone, press *57 on the same line the call came in on.
- Press *47 if you have 279 or 517 exchanges on your school phone number.
- Do not dial "9" before you dial *57 or *47.
- Notify school administration immediately

- Report the bomb threat to 911 and OSP.
- Inform the 911 operator of "call trace" activation.

Bomb Threat Sweep/Scan

- In certain circumstances, staff volunteers may be asked to sweep/scan the facility or grounds for any suspicious items.
- A sweep/scan should be conducted in teams and only by visual means (eyes and ears only).
- If a suspicious item is discovered during a sweep/scan, evacuate to a 300-foot safe zone and notify administrator immediately.
- If a suspicious item is located, do not use a radio or cell phone in the immediate area within 25 feet in all directions.
- No suspicious item should be handled in any manner by school staff (do not touch it!).

Hazardous Material Spills

These guidelines should be followed in the event of a chemical incident in which there is potential for a significant release of hazardous materials. Spill response procedures will vary depending on whether the spill is **small** (less than 18 inches in diameter), **medium** (exceeds 18 inches, but is less than 6 feet), or **large** (exceeds 6 feet in diameter, and any "running" spill that has not been stopped). If a potential biological agent threat or incident is present, follow MCPS Biological Agent Threats/Incidents guidelines.

General Spill Control Techniques: Once a spill has occurred, the staff at the spill site must decide whether the spill is small enough to handle without outside assistance. Guidance should be obtained from science resource teachers or staff with a chemistry background. (i.e., in science labs, chemistry labs, automotive shop areas). *Only staff who are properly trained under OSHA Regulation 1910.120 should attempt to contain or clean up a small spill.*

Small Spill Evacuation: Evacuate the immediate area and surrounding areas whenever the air is or could become untenable (i.e., experiencing difficulty breathing, watery eyes, upper respiratory congestion or tightness in chest, coughing, runny nose, etc.). Also evacuate the immediate area or building if material is emitting vapors or fumes.

If a medium or large hazardous chemical/material spill occurs inside your school building—

- An administrator/designee should call 911 and OSP immediately with detailed information (obtain the chemical MSDS, if available at time of spill incident).
- Evacuate the building immediately using a **Directed Evacuation** to funnel students/staff away from danger area.
- Notify building security and building services staff.
- Secure the area around the spill area.
- Follow instructions from fire and rescue services personnel.

If a medium or large hazardous chemical/material spills occurs immediately outside your school building—

- An administrator/designee should call 911 and OSP immediately with detailed information.
- Shut windows and doors and turn off ventilation systems.
- Notify building security and building services staff.
- Turn class-change bells off, if appropriate.
- Follow instructions from fire and rescue services personnel.
- Activate the Outside Hazardous Material Release alert, if appropriate.

APPENDIX E

**Montgomery County Public Schools
Division of Maintenance**

CHANGE ORDER FORM

Facility: _____ ☐ New Work ☐ Additional Work

Location of work to be performed: _____

Description of work to be performed: _____

State Date: ____/____/____ Completion Date: ____/____/____

Total Cost for Change Order: _____

(MCPS Representative Approval)

(Date)

(MCPS Consultant Approval)

(Date)

(Contractor Representative Acceptance)

(Date)

(MCPS Contracts Office Supervisor)

(Date)

