MONTGOMERY COUNTY BOARD OF EDUCATION Rockville, Maryland

September 16, 2010

MEMORANDUM

To:

Members of the Board of Education

From:

Patricia B. O'Neill, Presidentatura BOMeill

Subject:

Superintendent Search Process and Timeline

By memorandum dated August 24, 2010, Superintendent of Schools Dr. Jerry D. Weast formally notified the Board that he would be retiring when his contract expires on June 30, 2011. Mr. Ikhide Roland Ikheloa, the Board's Chief of Staff-Ombudsman, shortly thereafter provided Board members background information on the process for hiring a new superintendent. On August 26, 2010, the Board, in closed session, appointed Board Members Christopher Barclay, Philip Kauffman, and me as the ad hoc group responsible for working with Mr. Ikheloa to design and recommend a superintendent search process for the Board's consideration. The attached timeline is presented for your review along with a resolution authorizing a Request for Proposals (RFP) to hire a search firm that would assist the Board in a national search for Dr. Weast's replacement.

Section 4-201 of the *Education Article* of the *Annotated Code of Maryland* sets forth the applicable provisions for the appointment of superintendents of schools in Maryland. The term of a superintendent is four years, beginning on July 1. The law also requires that the state superintendent of schools give written approval of any appointment of a local superintendent. The statute and Section 13A.12.04.03 of COMAR spell out only the minimum qualifications for a superintendent, to be augmented as a local Board sees fit when it advertises for the position. The successful candidate must:

- A. Meet the requirements for certification in early childhood education, elementary education, or a secondary education area;
- B. Have a master's degree from an institution of higher education;
- C. Have three years of successful teaching experience and two years of administrative or supervisory experience; and
- D. Have successfully completed a two-year program with graduate courses in administration and supervision in an institution or institutions approved by an accrediting agency recognized by the State Superintendent of Schools. Graduate work under §B may be applied toward the requirements of this section, provided that a minimum of 60 semester hours of graduate work is presented.

Although the state's requirements are minimal, you will note that they, seemingly, would preclude a candidate being drawn from a non-traditional background. However, Section 13A.12.01.14 of COMAR states that the state superintendent has the authority to waive

specific requirements for any supervisory or administrative certificate if, after thorough investigation, he or she finds that the applicant's preparation and/or experience are adequate to justify a waiver. If our search attracts individuals with non-traditional backgrounds and experiences, it would be advisable to engage Dr. Grasmick in a discussion of the parameters in which she likely would exercise her discretion. It also would be necessary to adjust the timeline to accommodate the additional time that may be necessary to obtain a waiver of the stated qualifications.

The ad hoc committee recently met with staff to review the planning materials for the search. The committee is recommending that the Board employ the services of a search firm to assist with the entire process. Among the usual responsibilities of a search firm, working in tandem with the Board and Board staff, are:

- Articulating the criteria and qualifications for selecting a superintendent.
- · Facilitating the process for community input and engagement.
- · Generating interest on the part of potential candidates through a national outreach.
- Coordinating the interview process.
- Assisting the Board in narrowing down a list of finalists.
- Handling the logistics of the search process.
- · Advising the Board on an appropriate compensation package for the Superintendent.

On behalf of the committee, I am presenting the following resolution for adoption:

WHEREAS, On August 24, 2010, Dr. Jerry D. Weast, superintendent of schools, announced his plans to retire effective June 30, 2011; and

WHEREAS, It is necessary for the Board of Education to seek a replacement for Dr. Weast, and the Board requires specialized professional consultant assistance to fulfill its statutory duty to appoint a superintendent of schools; now therefore be it

Resolved, That the Board of Education announces its intention to conduct a national search that will seek the most qualified candidate for Superintendent of the Montgomery County Public Schools using the attached timeline as a guide; and be it further

Resolved, That the Board of Education desires the assistance of a search firm/consultant to find the most qualified candidate for Superintendent; and be it further

Resolved, That in accordance with Board Policy DJA, MCPS Procurement Practices, the Board of Education hereby authorizes competitive bidding through the attached Request for Proposals (RFP) for the unique services of a search firm/consultant to assist the Board with the superintendent selection process.

PBO:kmy

Attachments

DRAFT SUGGESTED Timeline for Superintendent Search Process

(Please note: The Board is not bound by this timeline and will change the dates and processes as necessary.)

Date	Activity			
September 16, 2010	All-day Board meeting:			
3	► Adopt resolutions regarding securing search firm and search process.			
September 20, 2010	Request for Proposals (RFP) issued for selecting a search firm.			
October – November 2010	Preparation of promotional package that markets system and position while providing key facts (posted on web site, available to prospective consultant and prospective candidates).			
October 22, 2010	RFP proposals deadline.			
November - December 2010	Selection of search firms for interviews. Selection of search firm. New Board members installed. One-day Board retreat regarding search process (with search firm).			
December 2010 - January 2011	Advertise position: Publications: Post, NY Times, and Education Week. Web sites: NSBA, AASA, individual states' school board and administrator associations. MCPS communication vehicles: web, press release, Bulletin, QuickNotes, Blog, Facebook, Twitter, etc. Search firm also solicits potential candidates.			
January 2011	Solicit input from community regarding attributes of superintendent. Search firm interviews Board and individual members regarding profile/attributes of desired candidate and needs of school system to be addressed by the superintendent.			
February - March 2011	Search firm's second round of meetings with Board members (as appropriate). Search firm submits recommendation of semi-finalists. Board members review information from search firm, meet with search firm, develop slate of semi-finalists, decide on interview format, and develop interview questions. Interview semi-finalists.			
April 2011	Board meets with search firm regarding interviews with semi-finalists, develops slate of finalists, and any interview questions. Conduct background check of finalists, including visits to school districts of sitting or recent superintendents. Interview finalists.			
May 2011	Meet with search firm, select candidate, and commence negotiations with successful candidate regarding terms of employment.			

September 9, 2010

September 20, 2010

RFP Number:

4305.1

Pre-bid Conference: October 8, 2010

Due Date:

October 22, 2010

Open Time:

2:00 p.m.

To: Prospective Offerors:

Montgomery County Public Schools (MCPS) is seeking proposals from qualified vendors to solicit and engage a professional and knowledgeable firm (agency, company, corporation, consultant, etc.) to conduct a comprehensive, national executive search for the Montgomery County Board of Education for the purpose of identifying and attracting the best qualified candidate for the Superintendent of Schools.

A pre-bid conference will be held on Friday, October 8, 2010 at 10:00 a.m., at the MCPS 850 Hungerford Dr., Room 127, Rockville, MD 20850. Questions regarding the RFP must be submitted by October 1, 2010.

Proposals must be received on or before 2:00 p.m., on October 22, 2010. Proposals received after this date and time will not be considered. Proposals must be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals must be marked on cover pages of each with "ORIGINAL" and "COPIES". Proposals are to be delivered to Montgomery County Public Schools, (MCPS) Division of Procurement, 850 Hungerford Drive, Room 162, Rockville, Maryland 20850

The firms must submit one (1) original, 12 copies and one (1) electronic version on CD with their proposal. The proposal must be signed by an official having authority to contract with MCPS. The firm and official's name shall be used. This solicitation does not commit the district to pay any costs incurred in the submission of proposals or guarantee that an award will be made.

In the event of emergency closing of Board of Education offices, this bid will open at the same time on the next regular working day.

Sincerely,

Philip J. McGaughey, Director Division of Procurement

PJM:br Enclosure

MONTGOMERY COUNTY PUBLIC SCHOOLS RFP #4305.1, Executive Search Firm for Selection of a Superintendent

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PART B

General Instructions and Business Section

Department of Materials Management Division of Procurement MONTGOMERY COUNTY PUBLIC SCHOOLS Rockville, MD 20850-1747

Request For Proposal #4305.1, Executive Search Firm for Selection of a Superintendent

1.0. INTENT

The purpose of this Request For Proposal (RFP) is to solicit and engage a professional and knowledgeable firm (agency, company, corporation, consultant, etc.) to conduct a comprehensive, national executive search for the Montgomery County Board of Education (Board) for the purpose of identifying and attracting the best qualified candidates for the Superintendent of Schools.

The Board intends to engage the selected firm for the period of time necessary to select by early May 2011 and appoint the best qualified candidate for a term to begin on July 1, 2011.

2.0 INTRODUCTION

Montgomery County Public Schools (MCPS) is the 16th largest school system in the country serving over 144,000 students from 164 countries speaking 134 languages. The school district has approximately 22,000 employees with an annual operating budget of \$2.2 billion. The Board oversees the work of the superintendent and the school system. Comprised of eight members, the Board is the policy-making body responsible for the operation and general strategic direction of the school system. The Superintendent of Schools is appointed by the Board and serves as its executive officer and secretary-treasurer. The superintendent is responsible for the overall administration of the school system and recommends appropriate action to the Board. Information about the school system is enclosed and may also be found on the web at www.montgomeryschoolsmd.org.

During the past 11 years at MCPS, outgoing Superintendent of Schools Dr. Jerry D. Weast, working with the Board, has overseen a comprehensive, district-wide school reform strategy guided by the district's strategic plan, *Our Call to Action: Pursuit of Excellence*. The district has also mapped out the pathway to college and career preparation with The Seven Keys to College Readiness. The Seven Keys provide parents with a series of benchmarks—from kindergarten through Grade 12—that indicate a student is on the path to being ready for post-secondary education and the workplace. Guided by these and other strategic efforts, MCPS students have continued to perform at the highest levels, even as Montgomery County has undergone dramatic demographic shifts. The book, *Leading for Equity: The Pursuit of Excellence in Montgomery County*, by Stacey Childress, David Thomas and Denis Doyle, published in 2009 by Harvard Education Press, has captured the breadth of instructional reforms in MCPS. Among the most recent highlights:

✓ MCPS has the highest graduation rate of any large district in the nation, according to Education Week.

✓ The class of 2010 had the highest SAT score in the history of the district and earned more than \$234 million in college scholarships, an all-time record.

- ✓ MCPS students took 28,575 Advanced Placement (AP) exams in 2009, a new record, and 72 percent of those exams received a "college-ready" score. African American and Hispanic graduates at MCPS greatly exceeded the national participation and success rates on AP exams.
- ✓ More than 90 percent of MCPS kindergarten students have met or exceeded reading targets each of the past three years, essentially closing the achievement gap by race, ethnicity, and socioeconomic status at this grade level.
- ✓ In April, MCPS was named one of five finalists for the \$1 million Broad Prize for Urban Education, which honors large school districts that have raised student performance and significantly narrowed racial and socioeconomic achievement gaps. The winner of the Broad Prize—and \$1 million in college scholarships—will be named in October.

3.0 QUALIFICATIONS

The selected firm must have experience in conducting a successful search (selection of a candidate and acceptance of a position, as facilitated by your firm) for a Superintendent of Schools for a K-12 school district with at least 20,000 students. If a firm does not have such experience or does not submit information in the proposal regarding this qualification, the proposal may be deemed non-responsive and may be eliminated from further consideration.

4.0 SCOPE OF SERVICES

The basic scope of services shall include the following:

- a. Conduct all aspects of the recruitment process as directed by the Board.
- b. Work with Board-designated staff and others.
- c. Work with staff and the Board to develop a plan and timeline for the search that includes community involvement while balancing the need for confidentiality of applicants.
- d. Meet with Board and with individual Board members to assess Board priorities, goals, and objectives in order to assist the Board in determining and articulating criteria and qualifications necessary for selecting a Superintendent of Schools.
- e. Develop and implement a plan to provide and facilitate community input and engagement regarding desired superintendent skills, characteristics, and qualifications. Such a plan should include all school system stakeholders, including parents and parent organizations, employees, the business community, and key elected officials.
- f. Prepare and distribute materials as necessary to advertise position.

g. Advise the Board on an appropriate compensation package for the Superintendent that facilitates a successful recruitment effort.

- h. Nationally advertise and recruit qualified candidates.
- i. Screen all applications.
- j. Conduct appropriate background checks and interviews of qualified applicants and include the results as part of the information provided to the Board for those recommended for consideration by Board.
- k. Coordinate and facilitate the interview process.
- 1. Evaluate and rank the qualified applicants in accordance with appropriate criteria.
- m. Maintain strict confidentiality throughout the search process as directed by the Board.
- n. Prepare reports and recommendations to the Board, as requested.
- o. Provide any other assistance to the Board as necessary to facilitate its final selection of a superintendent for a term to begin on July 1, 2011.

5.0 INSTRUCTIONS

Please provide the following information:

- a. A brief history and description of your firm including your relevant experience in providing the aforementioned services in which you are currently or in the past five (5) years have been involved. Specifically address how the firm meets the Qualifications specified in 3.0.
- b. Name, address, phone, fax, and email addresses of principal employees. Provide resumes of the individual(s) who will be working on this project.
- c. Indicate name and contact information of lead consultant who will be assigned to this contract for the duration of the search process, through and including the hiring of a Superintendent.
- d. Provide references of other school districts with which you have worked. (Preferably districts with a student population of at least 20,000). Please include contact information for each.
- e. Services your firm utilizes to assist school districts in identifying qualified candidates. Describe the unique expertise provided by the firm's staff and list firm staff and the qualifications of those working on this project.

f. Address each of the items listed in the Scope of Services. Describe the methodology used by the firm for this search process and the role of the search firm at each step in the process. Describe detailed activities that are to occur, a timeline, significant milestones, and anticipated deliverables.

- g. Describe how the Board, staff, and interested community members, including parents and business leaders, can be involved in developing the criteria for selection of a superintendent.
- h. In the event your firm requires a contract to be signed in order for the Board to utilize your services, please submit a sample copy of the contract. The contract will be governed by Maryland law.
- i. The firm's pricing proposal shall be a firm fixed price to include a schedule and the amount or rate of compensation desired for the services outlined in your proposal. Specifically identify all items included in the compensation schedule.
- j. The firms shall submit their audited financial statement. The company should be profitable for the last three (3) years. Financial data will be held confidential if so requested.
- k. Provide any additional information and comments your firm deems necessary to clearly communicate your firm's qualifications and the process you would use to recruit a Superintendent of Schools for the Board.

6.0 EVALUATION CRITERIA

The determination of those that are qualified, interested, and available and the Board's choice of the best qualified will be based on the following criteria:

- a. The search firm's proposed approach to the work and how it meets the Board's needs.
- b. Qualifications and experience relevant to the scope of work including specific experience recruiting and placing superintendents of school districts of similar size. This includes the personnel that will be assigned to the search.
- c. Past Performance as determined by recent and relevant contracts. Evaluation will be based on information obtained from references provided by the firm as well as other relevant past performance information obtained from other sources known to the Board.
- d. Fee structure

7.0 SELECTION OF THE SEARCH FIRM

The Board reserves the right to ask clarifying questions about submitted proposals. Firms may also ask questions that they may have related to this RFP prior to submitting their responses, see 10. Schedule of Events. Only proposals received by the deadline will be considered. Proposals

will be screened down to a number of finalists. The Board will invite the finalists to make an oral presentation at a time and date to be announced in November 2010. All respondents will receive written notification regarding the final selection.

8.0 SUBMISSION GUIDELINES

Proposals shall be submitted in the same order as the RFP. Proposals must contain all required information to be considered responsive. Vendors may request an electronic copy of the word document for Part A and Part B in order to complete their response.

One (1) original and twelve (12) copies and one (1) electronic version on CD of responses must be sent by mail, courier or hand-delivery and shall be in binders with tabs identifying each section. A table of contents should be included and all pages numbered as referenced in the Table of Contents. No faxes of proposals will be accepted. Proposals are to be received no later than 2:00 p.m., on October 22, 2010. Submit responses of the entire RFP proposal to:

Montgomery County Public Schools Division of Procurement 850 Hungerford Drive, Room 162 Rockville, MD 20850

Please contact MCPS Division of Procurement via e-mail, <u>Barbara_Regalia@mcpsmd.org</u> to receive an electronic word copy of the RFP.

Please note that the Montgomery County Board of Education or the Montgomery County Public Schools shall not be responsible nor be liable for any costs incurred by the vendor in the preparation and submission of their proposals and pricing.

9.0 PROJECT OFFICER

The MCPS project officer for this proposed procurement is:

Montgomery County Public Schools Attn: Ikhide Roland Ikheloa, Chief of Staff-Ombudsman 850 Hungerford Drive, Room 123 Rockville, MD 20850

Phone: 301-279-3617

All prospective firms are cautioned that information relating to the proposed procurement may be obtained only from Ms. Barbara Regalia, CPPB, Senior Buyer, Division of Procurement. Once the contract is awarded Mr. Ikheloa will be your point of contact.

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

10.0 SCHEDULE OF EVENTS

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

RFP issued:

September 20, 2010

Questions due:

September 27, 2010 October 8, 2010, 10:00 a.m.

Prebid conference: Proposals due:

October 22, 2010

Interview of Search firms:

Early-mid November

Anticipated award date:

December 7, 2010

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

11.0 PREBID CONFERENCE

A pre-bid conference for prospective firms will be held on October 8, 2010 at 10:00 a.m. at Montgomery County Public Schools, Carver Educational Services Center, 850 Hungerford Drive, Room 127, Rockville, MD, 20850. Attendance at this conference is encouraged, but is not mandatory. Questions to this RFP are due by the close of business September 27, 2010 so that responses can be prepared for distribution at the pre-bid conference. The purpose of the pre-proposal conference will be to allow prospective firms the opportunity to obtain clarification of the RFP and ask questions directly of MCPS staff to assist them in the preparation of their proposal responses.

Firms may request the call-in number information to participate in the prebid conference. Firms shall provide the names of the persons who will attend the pre-bid conference. Please send no more than two representatives. Send the names to Barbara Regalia, fax number 301-279-3173, or e-mail, Barbara_Regalia@mcpsmd.org no later than October 6, 2010.

12.0 ADDENDA/ERRATA

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the bidder's responsibility to check the MCPS website, under "Event Calendar" or contact the Division of Procurement at 301-279-3172 to verify whether addenda/errata have been issued. Failure to provide the signed acknowledgement of the addenda/errata may result in a bid being deemed non-responsive. MCPS website is http://www.montgomeryschoolsmd.org/departments/procurement/

13.0 eMaryland Marketplace

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

14.0 INQUIRIES

Inquiries regarding this solicitation must be submitted in writing, to Barbara Regalia, Senior Buyer, Montgomery County Public Schools, Division of Procurement, 850 Hungerford Drive, Room 162, Rockville, Maryland 20850, fax number 301-279-3173. Questions are due by close of business September 27, 2010. Responses will be sent out October 1, 2010 and posted on eMaryland Marketplace. The Board of Education will not be responsible for any oral or telephone explanation or interpretation. Vendor contact with any other MCPS employee regarding this solicitation until the contract is awarded by the Board of Education will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration Procurement website address response. The **MCPS** RFP http://www.montgomeryschoolsmd.org/departments/procurement/

RFP No. 4305.1, Executive Search Firm for Selection of a Superintendent

PART B

The Montgomery County Public Schools (MCPS) is requesting proposals from qualified vendors to solicit and engage a professional and knowledgeable firm to conduct a comprehensive, national executive search for the purpose of identifying and attracting the best qualified candidate for the Superintendent of Schools.

The following instructions will establish the acceptable minimum requirements for the format and content of proposals.

Special attention is directed to the requirements for technical and business sections to be submitted in accordance with these instructions.

Type of Contract

The proposed contract is expected to be awarded as a firm fixed price contract to perform the tasks described in the RFP.

Separation of Technical and Business Sections

The proposal shall be in two parts: a "Technical Section" and a "Business Section." Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of, and concurrently with, evaluation of the other.

The "Technical Section" must provide the requested information in Part A to demonstrate the vendor's ability to perform under this contract.

The "Business Section" shall provide the name(s) and telephone number(s) of person(s) authorized to conduct negotiations with MCPS. Articles 15, 29 and 30 are not applicable.

Documents To Be Submitted in Response to This RFP

1. "Technical Section"

One (1) original and 12 copies of the "Technical Section" and one (1) electronic version on CD.

2. "Business Section"

One (1) original and 12 copies of the "Business Section" and one (1) electronic version on CD.

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

The documents required above must be received by the opening time and date set forth in the transmittal letter and addressed to Montgomery County Public Schools, Division of Procurement, Room 162, 850 Hungerford Drive, Rockville, Maryland 20850. The outside packaging shall bear the RFP number, opening date and time.

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

Treatment of Technical Data in Proposals

The proposal submitted in response to this request may contain technical data that the offeror or subcontractor 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 Freedom of Inspection Act, may be so restricted:

<u>Provided</u>, 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."

<u>Provided</u>, 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.

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.

Withdrawal of Proposals

Proposals may be withdrawn by written or telegraphic notice received at any time prior to award. Proposals may be withdrawn in person by an offeror or their authorized representative, provided that their identity is made known and they sign a receipt for the proposal prior to award.

Project Officer

The MCPS project officer after award for the proposed procurement is:

Montgomery County Public Schools Attn: Ikhide Roland Ikheloa, Chief of Staff-Ombudsman 850 Hungerford Drive, Room 123 Rockville, MD 20850

Phone: 301-279-3617

All prospective offerors are cautioned that information relating to the proposed procurement may be obtained <u>only</u> from the MCPS Division of Procurement prior to award. Any attempt to solicit information from other sources within the MCPS system may be cause for rejection of the responsible offeror's proposal.

"TECHNICAL SECTION" INSTRUCTIONS

Evaluation Criteria

MCPS will evaluate the "Technical Section" in accordance with the criteria set forth in this RFP.

The RFP evaluation criteria cannot be modified except by a formal modification to the RFP, and no factors other than those set forth in the RFP will be used in the evaluation of technical sections.

"Technical Section"

The "Technical Section" must include the information and format specified in Part A of this RFP. Any and all information should be included to make a proper evaluation. Vendors shall respond fully to each paragraph.

Proposals, which merely offer to conduct a program in accordance with the requirements of the scope of work will be considered nonresponsive to this request and will not be considered further. The offeror must provide the requested information to illustrate the vendor's ability to provide the requested equipment and perform the scope of work that will be required.

"BUSINESS SECTION" INSTRUCTIONS

Other Administrative Data

The section shall stipulate that it is predicated upon all the terms and conditions of this RFP. In addition, it shall contain a statement to the effect that it is firm for a period of at least 90 days from the date of receipt by MCPS.

The section shall list the names and telephone numbers of persons authorized to conduct negotiations.

Place of Performance

The work shall be performed at the contractor's location or at individual MCPS locations within Montgomery County as required or agreed to by MCPS.

Certification

The two forms attached to this RFP, <u>Equal Opportunities Certification</u> and <u>Certification of Nonsegregated Facilities</u>, must accompany the proposal. Evaluation of proposals is dependent upon satisfactory completion of these forms.

Contract

MCPS plans to enter a contractual agreement with the agency to whom the award is made and intends to make the attached Articles 1 - 31 a part of the contract. Articles 15, 29 and 30 are not applicable to this RFP.

Equal Opportunity Certification

1.	Are you participating in any contractual agreement that 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:
defin	the Rules and Regulations of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, the term Compliance Agency as the agency designated by the Director, of CCP, to conduct compliance 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.

	(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)		
	contracts subject to EQ 10925, 11114, and 11246, as amend certificate of nonsegregated facilities.	ded.

Certification of Nonsegregated Facilities

Data

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:

***(3) Previously filed annual (EE0-1, EEO-4, or EEO-6) compliance report.

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 <u>F.R.</u> 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 that is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period, i.e., quarterly, semiannually, or annually.

NOTE:

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

PLACE OF PERFORMANCE

Following is the name and location of the facility where the service will be perfor	med:
(Name of Facility) (Address)	
Minority Business Enterprise	
The offeror () is () is not a minority business enterprise. A minority business enterpleast 50 percent of which is owned by minority group members or, in case of public percent of the stock is owned by minority group members." For the purpose of members are African Americans, Hispanic Americans, Asian Americans, and Americans	ly owned businesses, at least 51 this definition, minority group
Check the appropriate box below.	
☐ African American ☐ Asian American ☐ Hispanic ☐ Na☐ Female ☐ Disabled ☐ None	tive American
NON-DEBARMENT ACKNOWLEDGEMENT:	
I acknowledge that my firm has NO pending litigation and/or debarment fro of Maryland or any of its subordinate government units and/or federal governmen	m doing business with the State t within the past five (5) years.
I acknowledge that my firm has pending litigation or has been debarred from Maryland or any of its subordinate government units and/or federal government (Attachment)	
As the duly authorized representative of the applicant, I hereby certify that the above will advise Montgomery County Public Schools should there be a change in status	
By (Signature)	
Name and Title	
Witness Name and Title	

<u>VENDOR'S CERTIFICATION:</u> Upon notification of award, this document in its entirety is the awarded vendor's 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. I/We certify that none of this company's officers, directors, partners, or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of the Montgomery County Public Schools, Administrative or Supervisory Personnel, or other employees of the Board of Education has any interest in the bidding company except as follows:

By (Signature)	
Name and Title	
Witness Name and Title	

CONTRACT ARTICLES

No.	<u>Title</u>		
1	Description/Specifications		
2	MCPS Project Officer		
3	Personnel		
4	MCPS Contract Administrator		
5	Statement of Work		
6	Deliverables		
7	Price		
8	Period of Performance		
9	Submission of Vouchers		
10	Inspection and Acceptance		
11	Payment		
12	Withholding Contract Payments		
13	Services of Consultants		
14	Publication and Publicity		
15	Data Collection (Not Applicable)		
16	Documentation and Copyright		
17	Notice of Delays		
18	Excusable Delays		
19	MCPS Property		
20	Covenant Against Contingent Fees		
21	Officials Not to Benefit		
22	Equal Opportunity		
23	Compliance With Local Laws		
24	Changes		
25	Disputes		
26	Termination for Convenience of MCPS		
27	Order of Precedence		
28	Severability		
29	Bid Performance (Not Applicable)		
30	Performance Bond (Not Applicable)		
31	Nonappropriation of Funds		

ARTICLE 1. DESCRIPTION/SPECIFICATIONS

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

ARTICLE 2. MCPS PROJECT OFFICER

a) The MCPS project officer is responsible for the technical aspects of the project and technical liaison with the contractor. The MCPS project officer is also responsible for the review and approval of any and all deliverables including reports, and such other responsibilities as may be specified in the contract.

- b) The project officer is not authorized to make any commitments or otherwise obligate MCPS or authorize any changes that affect the contract price, terms, or conditions. Any contractor requests for changes shall be referred directly to the director of the Division of Procurement or through the project officer. No such changes shall be made without the written authorization of the director of Division of Procurement.
- c) The project officer may be changed at any time; but notification of the change, including the name and address of the successor project officer, will be provided to the contractor in writing.

ARTICLE 3. PERSONNEL

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

Name			
Title		· · · · · · · · · · · · · · · · · · ·	
Name			
Title	- W		
Name			
Title			

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

ARTICLE 4. MCPS CONTRACT ADMINISTRATOR

For day-to-day operational problems and for technical questions, the successful vendor may contact the project officer.

ARTICLE 5. STATEMENT OF WORK

The contractor agrees, in consideration of the price stated in ARTICLE 7, to do the work described in Part A.

ARTICLE 6. DELIVERABLES

All deliverables shall be submitted to the project officer according to the kinds and dates indicated in Part A or as agreed upon after contract has been awarded.

ARTICLE 7. PRICE

The project will be a firm fixed price contract. In no event shall MCPS be obligated to pay more than this sum for the work described in ARTICLE 5. The firm fixed price may be reduced under the terms of ARTICLES 24 and 26. MCPS agrees to pay the contractor according to the schedule in the provisions of ARTICLES 10 and 11.

ARTICLE 8. PERIOD OF PERFORMANCE

The Montgomery County Board of Education intends to engage the selected firm for the period of time necessary to select by early May 2011 and appoint the best qualified candidate for a term to begin on July 1, 2011.

ARTICLE 9. SUBMISSION OF VOUCHERS

All Contracts

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

ARTICLE 10. INSPECTION AND ACCEPTANCE

Firm Fixed Price Contract

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, the contractor shall provide and shall require their employees to provide all reasonable facilities and assistance for the safety and convenience of MCPS representatives in the performance of their duties. All inspections and evaluations shall be performed so that they will not unduly delay the work.

ARTICLE 11. PAYMENT

Payment will not be authorized until delivery has been made and all servicing and adjustments have been accomplished to the complete satisfaction of the project officer.

ARTICLE 12. PROCESSING FEES AND WITHHOLDING OF CONTRACT PAYMENTS

Despite any other payment provisions of this contact, failure of the contractor to submit required training when due; or failure to perform or deliver required equipment, supplies, or services; or failure to deliver acceptable training, supplies, or services will result in withholding payments under this contract unless such failure arises out of causes beyond the control and without the

fault or negligence of the contractor as defined by the clause entitled "Excusable Delays" or "Termination for Convenience of MCPS," as applicable. MCPS shall promptly notify the contractor of its intention to withhold payment of any invoice or voucher submitted.

ARTICLE 13. SERVICES OF CONSULTANTS

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

ARTICLE 14. PUBLICATION AND PUBLICITY

The contractor shall not publish or otherwise publicize the methods employed or results achieved until the work performed has been accepted by MCPS. Publication and discussion of services or presentations and other forms of publicity are encouraged, following acceptance of the work by MCPS, provided that:

- a) The primary purpose is to disseminate information about the work rather than to promote the contractor's accomplishments or knowledge.
- b) Publication or presentation prominently displays or acknowledges MCPS financial support as follows:

The contents of this publication do not necessarily reflect the views or policies of MCPS; and the mention of trade names, commercial products, or organizations does not imply endorsement by MCPS.

c) Confidentiality of students and their families is maintained at all times.

ARTICLE 15. DATA COLLECTION

Questionnaires, survey instruments, or any other form of data collection from more than nine persons must be reviewed by the Department of Educational Accountability and approved by the deputy superintendent of schools prior to use as required by MCPS Regulation EHC-RA: Clearance of Data Acquisition Activities.

ARTICLE 16. DOCUMENTATION AND COPYRIGHT

Collected data, analyses, and any analytical processes, programs and files developed as a contractual requirement are the sole property of MCPS. Programs shall be completely documented, including the file layout of tapes, disks, and so on. MCPS may, at its sole discretion, waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any process or program and may license its use by others for a fee or without charge.

ARTICLE 17. NOTICE OF DELAYS

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

ARTICLE 18. EXCUSABLE DELAYS

Except because of failures of subcontractors, the contractor shall not be considered to have failed in performance of this contract if such failure arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the contractor. If the failure to perform is caused by the failure of a subcontractor to perform and if such failure arises out of causes beyond the control of both the contractor and subcontractor and without the fault or negligence of either of them, the contractor shall not be deemed to have failed in performance of this contract unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources; and (b) the director of the Division of Procurement, Procurement Office shall have ordered the contractor in writing to procure such supplies or services from such other sources, and the contractor shall have failed to comply reasonably with such order. Upon request of the contractor, the director of the Division of Procurement shall ascertain the facts and extent of such failure; and if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of MCPS to invoke the termination article of this contract. As used in this article, the terms "subcontractor" and "subcontractors" mean subcontractor(s) employed at any level of the work being performed.

ARTICLE 19. MCPS PROPERTY

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

- a) The amount of MCPS property to be furnished to the contractor may be increased or decreased by written direction of the superintendent, and the contract price shall be adjusted to reflect the change pursuant to the stipulations of the "changes" article.
- b) The contractor shall insure all MCPS property in their possession or control and shall be liable to MCPS for the fair market value of any damage or loss to MCPS property, aside from that incurred by normal wear and tear. The contractor shall maintain the property in operating condition, with the cost being chargeable to the contract.
- d) 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.

- Unless specifically stated otherwise in writing, MCPS property may be used only for the performance of this contract.
- e) Title to all MCPS property shall remain in the hands of MCPS at all times. Title to the property acquired by the contractor for use under the contract shall vest in MCPS upon delivery to the contractor.
- f) Any dispute concerning interpretation of the provisions of this article shall be subject to the stipulations of the "Disputes" article.

ARTICLE 20. COVENANT AGAINST CONTINGENT FEES

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, MCPS shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 21. OFFICIALS NOT TO BENEFIT

No elected official or employee of Maryland, Montgomery County, or MCPS shall benefit from or receive any money as a result of this contract. Violation of this article will void the contract. The contractor shall pay MCPS any funds received by any official or employee, the contract will be terminated in accordance with ARTICLE 25, and MCPS shall seek appropriate legal remedy. This prohibition does not apply to contracts with an MCPS employee or elected official who contracted in their own name.

ARTICLE 22. EQUAL OPPORTUNITY

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

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

Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

ARTICLE 23. COMPLIANCE WITH LOCAL LAWS

The contractor shall comply with all applicable laws, ordinances, and codes of Maryland and Montgomery County.

ARTICLE 24. CHANGES

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

ARTICLE 25. DISPUTES

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

ARTICLE 26. TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF MCPS

- a) The performance of work under the contract may be terminated by MCPS in accordance with this article in whole or, from time to time, in part:
 - (1) Whenever the contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the contractor to make progress in the prosecution of the work that would endanger such performance) and shall fail to cure such default within a period of ten days (or such longer period as the director of the Division of Procurement may allow) after receipt from the superintendent of a notice specifying the default; or
 - (2) Whenever for any reason the Board of Education shall determine that such termination is in the best interest of MCPS.

Any such termination shall be effected by delivery to the contractor of a Notice of Termination specifying whether termination is for the default of the contractor or for

the convenience of MCPS, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

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

- b) After receipt of a Notice of Termination and except as otherwise directed by the contracting office, the contractor shall:
 - Stop work under the contract on the date and to the extent specified by the Notice of Termination
 - (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as it is not terminated
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination
 - (4) Assign to MCPS in the manner and to the extent directed by the director of the Division of Procurement all of the rights, title, and interest of the contractor under the orders or subcontracts so terminated, in which case MCPS shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts
 - (5) With the approval or ratification of the superintendent, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part in accordance with the provisions of this contract
 - (6) Transfer title to MCPS (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the director of the Division of Procurement (a) the work in process, completed work, supplies, and other materials produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination and (b) the completed or partially completed plans, information, and other property which, if the contract had been completed, would be required to be furnished to MCPS
 - (7) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination

(8) Take such action as may be necessary, or as the director of the Division of Procurement may direct, for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which MCPS has or may acquire an interest

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

- c) After receipt of a Notice of Termination, the contractor shall submit to the director of the Division of Procurement their termination claim in the form and with the certification prescribed by the director. The claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the director of the Division of Procurement. Upon request of the contractor to submit their termination claim within the time allowed, the superintendent may, subject to any review required by MCPS procedures in effect as of the date of execution of this contract, determine, on the basis of information available to them, the amount, if any, due to the contractor by reason of the termination and shall thereupon pay to the contractor the amount so determined.
- d) Subject to the provisions of Paragraph c) and subject to any review required by MCPS procedures in effect as of the date of execution of this contract, the contractor and the superintendent may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the contractor shall be paid the agreed amount.
- e) If the contractor and the superintendent fail to agree in whole or in part, as provided in Paragraph d), as to the amounts with respect to costs and fee or as to the amount of the fee to be paid to the contractor in connection with the termination of work pursuant to this article, the superintendent shall, subject to any review required by MCPS procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the contractor by reason of the termination and shall pay to the contractor the amount determined as follows:
 - (1) If the settlement includes cost and fee:
 - (a) There shall be included all costs and expenses reimbursable in accordance with this contract not previously paid to the contractor for the performance of this contract prior to the effective date of the Notice of Termination and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the superintendent, provided, however, that the contractor shall proceed as rapidly as practicable to discontinue such costs.
 - (b) There shall be included so far as not included under (a) above the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in Paragraph b) (5) above, which are properly chargeable to the terminated portion of the contract.

- (c) There shall be included the reasonable costs of settlement including accounting, legal, clerical, and other expenses reasonably necessary for the
 - preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory, provided, however, that if the termination is for default of the contract, there shall not be included any amounts for the preparation of the contractor's settlement proposal.
- (d) There shall be included a portion of the fee payable under the contract determined as follows: (I) If this contract is terminated for the convenience of the MCPS and not for the default of the contractor, a percentage of the fee equivalent to the percentage of the completion of the work contemplated by the contract, less fee payments previously made, shall be paid. (ii) If this contract is terminated for the default of the contractor, the total fee payable shall be such a proportionate part of the fee (or, if this contract calls for services of different types, of such part of the fee as is reasonably allowable to the type of service under consideration) as the total amount of service delivered to and accepted by MCPS bears to the total amount of services of a like kind called for by this contract.

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

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

MCPS may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the contractor in connection with the terminated portion of the contract whenever the aggregate of such payments shall be within the amount to which the contractor will be entitled. If the total of such payments is in excess of the amount finally determined to be due under this article,

such excess shall be payable by the contractor to MCPS upon demand, together with interest computed yearly at the rate of 9 percent from the date such excess payment is

received by the contractor to the date on which such excess is repaid to MCPS. The provisions of this article relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

ARTICLE 27. ORDER OF PRECEDENCE

If any conflict in the interpretation of the requirements of this contract occurs, preference shall be given in the following order of precedence: a) the contract provisions, b) the statement of work, and c) the contractor's proposal.

ARTICLE 28. SEVERABILITY

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

ARTICLE 29 BID PERFORMANCE BOND

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

The bid bond shall be returned to all except the successful bidder within five (5) days after awards have been made. The bid security of the successful bidder(s) will be returned upon receipt of the performance bond.

ARTICLE 30. PERFORMANCE BOND

No contract shall exist until MCPS receives a duly executed Performance Bond prepared on an approved form in the amount of one hundred percent (100%) of the contract, made payable to MCPS as security for the faithful performance of the contract and having as surety thereon such surety company or companies as are acceptable to MCPS and as are authorized to transact business in the State of Maryland. In the event the Performance Bond is not delivered within ten (10) days of Notice of Award then the offer may be ruled null and void and the award shall be made to the next lowest responsive bidder.

ARTICLE 31. NONAPPROPRIATION OF FUNDS

(a) In the event sufficient funds are not appropriated for the payment of all lease/purchase payments required to be paid in the next succeeding Renewal Term hereunder, and Lessee has no funds legally available for lease/purchase payments from other sources, then Lessee may terminate this lease at the end of the original term or the then current renewal term, as the case may be, without penalty or expense to Lessee of any kind whatsoever, and Lessee shall not be obligated to make payment of the lease/purchase payments provided for in the lease beyond the then current term. Lessee agrees to deliver notice to Lessor of such termination at least thirty (30) days prior to the end of the then current fiscal year.

(b) If this agreement is terminated under this provision, Lessee agrees, peaceably to deliver such items of the equipment to Lessor on the date of such termination.

To the extent lawful, Lessee covenants that it will not, until the date on which the next succeeding renewal term would have ended, expend, or commit any funds for the purchase or use of equipment to be used for the same purpose as, or a purpose functionally equivalent to, the equipment. Notwithstanding anything in this lease to the contrary, the provisions of this subpart shall survive termination of the lease.