

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

**Invitation for Bid #9103.12, Groceries and Staples**

**GENERAL CONDITIONS AND SPECIFICATIONS**

GENERAL CONDITIONS

**A. Intent**

The specifications contained herein are intended to cover the furnishing and delivery of groceries and staples. Deliveries shall be made to the Montgomery County Public Schools' (MCPS) Division of Food and Nutrition Services (DFNS) Warehouse.

**B. Delivery**

Deliveries shall be required on an as needed basis after receipt by the successful vendor(s) of a DFNS order.

Deliveries shall be made to the MCPS Food and Nutrition Services Warehouse, 8401 Turkey Thicket Drive, Gaithersburg, Maryland 20879. Receiving hours are between 7:00 a.m. and 1:30 p.m., Monday through Friday, except school holidays. All deliveries are received by appointment only. The Food and Nutrition Services Warehouse schedules appointments at 240-740-7435. All appointments must be scheduled at least 24 hours in advance, but may be made further in advance to better assure appointment availability. However, due to warehouse space availability, appointments cannot be scheduled more than two (2) days prior to the requested delivery date.

Merchandise delivered by truck shall be on 48" x 40", four-way entry pallets acceptable to the Food and Nutrition Services Warehouse. All acceptable pallets shall be exchanged evenly, or must be placed by the driver in an acceptable pattern on MCPS pallets upon delivery.

Frozen products must be delivered at 0°F or lower. Refrigerated product must be delivered between 38°F – 42°F. Any manual product handling required shall be the responsibility of the driver. All vehicles shall comply with Federal and Maryland sanitation codes.

Alternate Delivery Proposals

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

**C. Buy American Act Requirement**

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

A domestic food commodity is an agricultural commodity (for example: red meat, chicken, fruit, vegetable or grain) that is produced in the United States. A domestic food product, as defined by Federal Regulations, is a product processed in the United States "substantially" using domestic agricultural commodities. Substantially means that over 51% of the processed food comes from American-produced products. The regulation does allow for certain, specific exceptions.

**D. Awards**

It is the intention to award this contract in aggregate by category or group of similar items, with the exception of items that will be awarded as line items. Category 1, which will be awarded as line items. Each category will be awarded to a single bidder. Therefore, as much as possible, vendors are encouraged to bid on all items within the group. Should a single bidder not be able to supply every item in the group, see Categories listed under V. Category Group listing. MCPS shall make awards to the fewest vendors in order to assure each successful vendor that orders will be sufficient to warrant immediate processing and immediate delivery. MCPS shall consider the overall cost of making aggregate awards including the cost of doing business, the economy of larger orders, timeliness of delivery, etc.

Consideration will be given to any previous performance i.e. timeliness and accuracy of deliveries, customer references, product evaluation determined by taste testing, nutritional analysis, packaging and customer preferences that will be determined by sales. Additionally, MCPS reserves the right to award and/add or delete categories, products, and/or vendors, dependent upon specific products offered on the basis of nutritional contribution to school meals. Awards and purchases will be based on availability of USDA commodity products. However, the Board of Education reserves the right to make awards according to the best interest of the Board of Education of Montgomery County, Maryland.

**E. Contract Term**

The term of contract shall be for two (2) years as stipulated on the Invitation For Bid. However, the contract may not begin until one day after approval by the Board of Education and will conclude as stated under the contract term. MCPS reserves the right to extend this contract at existing prices, terms, and conditions for up to two (2) additional two year terms. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued to the successful vendor(s) 90 days prior to the expiration of the original contract. The vendor shall have ten (10) days from 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.

#### **F. Provision For Price Adjustment**

Unit prices quoted herein are subject to price adjustment downward in accordance with decreases in prices announced by the manufacturer of the subject item any time prior to award. Recommendations for awards, however, shall be made based on the original bid submission only.

Subsequent to award, the unit prices quoted herein are subject to price adjustment upward or downward in accordance with increases or decreases as announced by the manufacturer after the contract award. The successful bidder must notify the director(s) of the Division of Food and Nutrition Services or the Procurement Unit of any announced manufacturer's price reductions and give immediate benefit to MCPS in a proportionate amount.

Price increases will not be considered for the first 180 days of the contract. Thereafter, the successful vendor must submit a written request for price relief. The request for a price increase shall include documentation from the manufacturer to verify the basis for such request. MCPS reserves the right to accept or reject the request as may be determined to be in the best interest of MCPS. If a price increase is accepted, a contract amendment shall be issued authorizing the change. Any orders received prior to a request for a price increase shall be honored at the original contract price.

#### **G. Nutritional Requirements**

MCPS requires products without the following ingredients:

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

Updated nutritional and ingredient information is requested prior to or at bid opening time, for all products bid. For products listed as approved, samples are not required in response to this bid. Vendors desiring approval for new products may submit samples at any time during the school year. Products approved will be listed on the next bid thereafter.

#### **H. Samples**

Samples to be submitted must be delivered separately from the bid response and forwarded to the Division of Food and Nutrition Services, Attn: Mary Ann Gabriel; 8401 Turkey Thicket Drive, Gaithersburg, Maryland 20879. The outside of the sample package shall be marked "Samples" and identified with the bid and item number for which the sample applies.

Samples shall be provided in complete packaging, i.e. box/case/bag etc. as will be sold to MCPS in sufficient quantity to allow thorough testing of product if the item is to be considered for approval. Additional samples may be requested for expanded testing with students. If samples are not properly marked, the samples may not be considered. (See Article XXIV of the General Stipulations and instructions To Bidders).

Failure to supply samples as required may result in disqualification for that item.

#### **I. Brand Names**

Except where stated in the item description as only, reference to brand names, code or model numbers is offered as a point of reference in order for bidders to consider style, sizes, weights, and similar characteristics. The use of such brand names should not be interpreted as the exclusive brand desired.

In the brand column state the brand name, code or model number on each item being offered, even if bidding the specified brand. If a brand and code or model number is not shown your bid may not be considered. If an item specification shows code or model numbers that have been discontinued, the bidder shall so state and indicate the current code or model number.

Product descriptions that state "Only" a specified brand will be considered are brands that have been evaluated and tested for inclusion on this bid and are the only brands acceptable at this time. Other brands will be evaluated and tested if materials are submitted at no cost to MCPS. Forward samples to MCPS Division of Food and Nutrition Services, Attention: Mary Ann Gabriel 8401 Turkey Thicket Drive, Gaithersburg, MD 20879. Testing normally requires a minimum of sixty (60) days to complete. Therefore, your samples for testing may be approved for a future bid if the evaluation is satisfactory.

The products listed are specified to meet our minimum requirements. Therefore, vendors are informed that they must provide the items in conformance to quality standards equal to the brand or item specification specified.

#### **J. Deviations**

All bids meeting the intent of the invitation will be considered for award. Bidders offering and quoting on substitutions or who are deviating from the terms, conditions, and/or specifications shall list such and explain fully on a separate sheet to be submitted with its bid. The absence of such a sheet shall 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.

#### **K. Quotations**

Prompt payment discounts of ten (10) days and over will be considered. If MCPS requires a minimum order quantity per each item/or aggregate group, it will be indicated in the individual item specification.

**GENERAL CONDITIONS****BID# 9103.12**

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

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

**L. Product Protection Guarantee**

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

**M. Quantity**

The quantities are accurate to the best of our ability. Quantities indicated in the request are estimates for the bid period based on previous year's usage and are subject to change. Prior usage is dependent upon current requirements of MCPS and on budgetary limitations. However, the quantity stated on an item does not constitute a guarantee to purchase any amount in excess of requirements. MCPS may from time to time add, increase and/or remove items from the bid that are necessary for the efficient implementation of the contract. MCPS shall not be obligated to purchase any specific quantity. Orders will be placed from time to time throughout the contract term for delivery to the Food and Nutrition Services warehouse.

**N. Special Conditions**

1. Audit Provisions- MCPS shall have the right to examine the successful vendor(s) records pertaining to work performed under the contract to determine and verify their compliance with all contractual conditions. MCPS shall be granted access to such records at all reasonable times during the contract period and for three (3) years thereafter.
2. Contingent Fee - The successful vendor(s) hereby represents that they have not retained anyone to solicit or secure this contract from MCPS upon an agreement or understanding for commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial selling agencies maintained by the person so representing for the purpose of securing business, or any attorney rendering professional legal services consistent with applicable canons of ethics.

**GENERAL CONDITIONS**

**BID# 9103.12**

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

4. Disputes - 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.

**O. Customer References**

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

<u>Company Name &amp; Address</u>	<u>Contact Person</u>	<u>Phone Number</u>	<u>Contract Number</u>
1. _____			
Email address: _____			
2. _____			
Email Address: _____			
3. _____			
Email Address: _____			

**P. Award Criteria**

1. Conformance to specifications
2. Ability to perform based on past performance, including timelines and accuracy of deliveries
3. Price
4. Customer references
5. Product evaluation: nutritional profile, ingredient listing, taste/appearance evaluation, and suitability for intended uses, and packaging.

**Q. 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,

**GENERAL CONDITIONS****BID# 9103.12**

or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that required these goods, commodities and/or services. Use of this solicitation by other agencies may be dependent on special local/state requirements attached to and made a part of the solicitation at time of contracting. The supplier/contractor agrees to notify the issuing agency of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested. A copy of the contract pricing and the bid requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own contract with the Award Bidder(s) and this contract shall be binding only upon the principals signing such an agreement. Invoices shall be submitted "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the Award Bidder.

MCPS assumes no authority, liability, or obligation on behalf of any other public or non-public entity that may use any contract resulting from this bid. MCPS pricing is based on the specifications provided in this solicitation. A negative reply will not adversely affect consideration of your bid/proposal.

**R. eMaryland Marketplace**

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

**S. Addenda/ Errata**

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the sole responsibility of the vendor to check the "Event Calendar" on the MCPS website [www.montgomeryschoolsmd.org/departments/procurement/](http://www.montgomeryschoolsmd.org/departments/procurement/) or contact the procurement Unit at [Procurement@mcpsmd.org](mailto: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 bidder being deemed non-responsive.

**T. Submission of Bids**

One original and one copy of the bid are requested. The cover page of each copy must be clearly marked original or duplicate. Bidders may wish to reproduce and retain an additional copy for your files.

**U. Inquiries**

Contractual questions must be in writing via email to Sylvia Hardy, Buyer 1, Montgomery County Public Schools, Procurement at [procurement@mcpsmd.org](mailto:procurement@mcpsmd.org)

Inquiries regarding technical issues may be directed to Ms. Mary Ann Gabriel, Food Services Supervisor at [Maryann\\_E\\_Gabriel@mcpsmd.org](mailto:Maryann_E_Gabriel@mcpsmd.org) copy to Sylvia Hardy, Buyer at [Sylvia\\_Hardy@mcpsmd.org](mailto:Sylvia_Hardy@mcpsmd.org)

Questions shall be received in writing no later than four business days prior to bid opening in order for the bidder to receive a reply before submitting its bid. The Board of Education will not be responsible for any oral or telephone explanation or interpretation. Vendor contact with any other MCPS employee regarding this solicitation before 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 of its bid. The MCPS Procurement website address is [www.montgomeryschoolsmd.org/departments/procurement/](http://www.montgomeryschoolsmd.org/departments/procurement/).

**V. Aggregate Groupings**

- Category 1: Individual Line Item Awards
- Category 2: Coffees & Teas
- Category 3: Portion Control Condiments
- Category 4: Spices & Seasonings
- Category 5: Cereals
- Category 6: Grains
- Category 7: General Groceries
- Category 8: Soup Bases
- Category 9: Miscellaneous

**W. SPECIAL CONDITIONS****Food Safety and Recalls**

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



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

**HOLD-RECALL CONTACT FORM**

**Please complete and return. Notify Montgomery County Public Schools immediately as changes occur to MaryAnn Gabriel, Supervisor, Maryann\_E\_Gabriel@mcpsmd.org, Division of Food and Nutrition Services, 240-740-7401.**

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

**PROCESSOR HOLD and RECALL CONTACT INFORMATION**

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

**Primary Contact**

Name \_\_\_\_\_

Office Number \_\_\_\_\_

Mobile Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Email Address \_\_\_\_\_

**Back-up Contact**

Name \_\_\_\_\_

Office Number \_\_\_\_\_

Mobile Number \_\_\_\_\_

Fax Number \_\_\_\_\_

Email Address \_\_\_\_\_

**V. Contractors' Obligation Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities (Not Required for Deliveries to the DFNS Warehouse Only)**

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

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

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

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

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

**N. Contractors' Obligation Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities (Not Required for Deliveries to the DFNS Warehouse Only)(cont'd)**

commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.

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

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

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

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

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

The contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to the sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as warranting further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the contractor believes that the individual is

**N. Contractors' Obligation Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities (Not Required for Deliveries to the DFNS Warehouse Only)(cont'd)**

qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the contractor's summary to determine whether to accept the contractor's recommendation, and the contractor will be responsible for any consequences of a material misrepresentation in its written summary.

Once the contract is awarded, the contractor is responsible for implementing the background check process. An individual in the contractor's work-force may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and

uncontrolled access to children, until: (a) the background check results for that individual have been received by MCPS; (b) the contractor certifies to MCPS that the individual has received training and/or reviewed informational materials, as appropriate, regarding recognizing, reporting, and preventing child abuse and neglect, consistent with the content provided in training for MCPS employees; and (c) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The contractor will be required to return all badges at the conclusion of the contract.

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

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