

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

Invitation for Bid #9140.4, Miscellaneous Foods

GENERAL CONDITIONS

A. Intent

The specifications contained herein are intended to cover the furnishing and delivery of food and/or supplies to Montgomery County Public Schools' (MCPS), Division of Food and Nutrition Services Warehouse, hereafter referred to as DFNS located at 8401 Turkey Thicket Drive, Gaithersburg, MD 20879.

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 may be awarded if in the best interest of the Board of Education. Such quotation may be made in addition to the delivery frequency indicated as part of these conditions.

C. Buy American Requirement

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

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

D. Awards

Awards will be made on a line item basis. Awards for items also purchased through processing agreements may be based on providing product consistency for the school year. Consideration shall also be given to any previous performance for the Board of Education as to quality of service, acceptable merchandise and with regard to the bidder(s) ability to perform should it be awarded the contract. However, the Board reserves the right to make awards according to the best interests of the Board of Education of Montgomery County, Maryland.

MCPS reserves the right to award and add or delete products within categories, dependent upon specific products offered, to provide variety throughout the school year. An authorized list of items to be sold in schools shall be established and mutually agreed upon by DFNS and the successful vendor(s). MCPS reserves the right to modify the list during the contract period with the approval of the Director of Division of Procurement.

E. Contract Term

The term of contract shall be for one year 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 three (3) additional 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(s) shall have ten (10) days from the date of notification to return the notice acknowledging its intent to accept or reject the extension. Once all responses are evaluated, MCPS staff may make a recommendation to the Board of Education to extend the contract or decide to rebid. If the contract is extended by the Board of Education a contract amendment will be issued. MCPS reserves the right to add or delete items throughout the term of the contract as needed.

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 anytime 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 announced by the manufacturer after the contract award. The successful bidder must notify the director of the Department of Materials Management or his/her designee 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 90 days of the contract. Thereafter if the contract is extended the successful bidder must submit a written request for price relief. The request for price increases 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. Any orders received prior to a request for price increase shall be honored at the original contract price.

G. Samples and Nutritional/Ingredient Information

Samples and nutritional information are required prior to or at bid opening for all products offered if not bidding a specified brand and model/code indicated on the Item Specification. Samples and nutritional information shall be separate from the bid response and shall be forwarded to the Division of Food and Nutrition Services, Attention: Mary Ann Gabriel, 8401 Turkey Thicket Drive, Gaithersburg, MD 20879. The outside packaging of samples shall be clearly marked "Samples" with the bid number affixed to packaging. The sample package shall be marked "Samples" and identified with the bid number for which the sample applies.

H. Product Speciation**1. Nutritional Requirements**

MCPS requires products without the following ingredients:

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

I. Brand Names

The brand name listed on the Item Specification is the preferred brand, however, consideration will be given to other brands provided samples and literature are submitted for review and testing.

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.

J. Interpretation of Specifications

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

K. 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.

L. Quotations

No bidder will be allowed to offer more than one price on each item even though it may feel that it has two or more types of styles that will meet specifications. Bidders must determine for themselves which to offer. If said bidder should submit more than one price on any item, all prices for that item will be rejected. However, this stipulation does not preclude the offering of new products which do not meet specifications in every respect from being offered as a separate item for consideration for future bids. Such product shall be offered under separate cover, 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.

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

M. Product Protection Guarantees

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

N. Quantities

Quantities in this request are subject to change and purchases are dependent upon the requirements of MCPS and on budgetary limitations. MCPS shall NOT be obligated to purchase any specific quantity. Montgomery County Public Schools reserves the right to add/delete products during the contract term with approval by the director of the Division of Food and Nutrition Services.

O. Vendor Obligation**Contractors’ and sub-contractors’ responsibility regarding registered sex offenders:**

Maryland Law requires that any person who enters a contract with a county board of education or a non-public school “may not knowingly employ an individual to work at a school” if the individual is a registered sex offender. An employer who violates this requirement is guilty of a misdemeanor and if convicted may be subject to up to five years imprisonment and/or a \$5000 fine.

Each contractor shall screen their work-forces to ensure that a registered sex offender does not perform work at a county public school and also ensure that a subcontractor and independent contractor conducts screening of its personnel who may work at a school. The term “work-force” is intended to refer to all of the contractor’s direct employees and subcontractors and/or independent contractors it used to perform the work. Violation of this provision may cause MCPS to take action against the contractor up to and including termination of the contract.

P. Special Conditions

1. Audit Provisions - MCPS shall have the right to examine the successful bidder(s) records pertaining to work performed under the contract to determine and verify their compliance with all contractual conditions. MCPS shall be granted access to such records at all reasonable times during the contract period and for three years thereafter.

2. Contingent Fee - The successful bidder(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.

- 3. Assignments - Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the successful bidder(s) except as expressly authorized in writing by MCPS and no contract shall be made by the successful bidder(s) with any other party for furnishing any of the work or services herein contracted for without MCPS written approval.
- 4. Disputes - Any dispute concerning a question of fact arising under this contract shall be disposed of by written agreement between the bidder and the Procurement Buyer. Pending final decision of a dispute hereunder, the bidder shall proceed diligently with the contract performance.

Q. 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 have been provided. If the reference information is not accurate and MCPS cannot contact the person(s) named then your bid may not be considered.

The references shall have company name, contact person, email address and phone number of MCPS may request additional references.

1. _____

Email: _____

2. _____

Email: _____

3. _____

Email: _____

R. Award Criteria

- 1. Conformance to specifications
- 2. Ability to perform
- 3. Price
- 4. Past performance, including timeliness and accuracy of deliveries
- 5. Product evaluation: nutritional profile, ingredient listing, taste/appearance evaluation, and suitability for intended uses, packaging
- 6. Merchandising equipment/supplies available

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 bidder to check the “Event Calendar” on the MCPS website <http://www.montgomeryschoolsmd.org/departments/procurement/> or the Division of Procurement at procurement@mcpsmd.org, to verify whether addenda/errata have been issued. Failure to provide the signed acknowledgement of the addenda/errata may result in the bid being deemed non-responsive.

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. eMaryland Marketplace Registration

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

V. Multi-Agency Participation

MCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that required these goods, commodities and/or services. Use of this solicitation by other agencies may be dependent on special local/state requirements attached to and made a part of the solicitation at time of contracting. The supplier/bidder 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 awarded 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.

W. 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;

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

X. Inquiries

Contractual questions regarding this solicitation must be submitted in writing to Sylvia Hardy, Buyer, Division of Procurement at Sylvia_Hardy@mcpsmd.org. Technical questions must be submitted in writing to Ms. MaryAnn Gabriel, Food Services Supervisor at Maryann_E_Gabriel@mcpsmd.org. copy to Sylvia Hardy. Questions shall be received no later than four business days prior to bid opening in order for the bidder to receive a reply before submitting their bid. The Board of Education will not be responsible for any oral or telephone explanation or interpretation. Bidder 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 <http://www.montgomeryschoolsmd.org/departments/procurement/>

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

All MCPS contracts must include the following provisions:

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

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

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

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

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

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

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

Under recent amendments to § 5-551 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 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.

Hold-Call 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 _____

