



Office of Purchasing
10910 Clarksville Pike
Ellicott City, Maryland 21042-6198
(410) 313-6600, fax (410) 313-6789

August 30, 2016

To All Interested Providers of Professional Legal Services:

The Howard County Public School System (HCPSS) invites your submittals to provide legal services for the Howard County Public School System as specified in the attached Request for Proposals (RFP) No. 009.17.B1. Submittals shall be accepted at the Howard County Department of Education, Purchasing Office, 10910 Clarksville Pike (MD Route 108), Ellicott City, Maryland 21042, until **2:00 p.m. September 16, 2016**.

Late submittals will not be considered. It is the responsibility of each offeror to ensure that its submittal is delivered to the proper place prior to the scheduled closing date and time.

Copies of the Request for Proposal may be obtained by visiting the HCPSS website at <http://purchasing.hepss.org>. Organizations obtaining the RFP from the website are encouraged to review that website frequently to learn of any changes that may be made in the RFP or by contacting the Purchasing Office at the address above or by calling (410) 313-6644.

The Howard County Public School System reserves the right to reject in whole or in part any or all submittals.

Sincerely,

A handwritten signature in black ink that reads "D Pindell". The signature is written in a cursive, flowing style.

Douglas Pindell
Director of Purchasing

REQUEST FOR PROPOSALS
FOR
PROFESSIONAL LEGAL SERVICES

RFP No. 009.17.B1

Howard County Public School System
10910 Clarksville Pike
Ellicott City, Maryland 21042

August 30, 2016

PART I GENERAL INFORMATION

1.1 Purpose

The Howard County Public School System (HCPSS) issued this Request for Proposals (RFP) to solicit proposals from qualified firms to provide assistance as necessary to the Schools System's staff to serve as general legal counsel (GLC). General Legal Counsel (GLC) services are provided as necessary on legal matters including, but not limited to, personnel and personnel law, policy development and implementation, labor/union negotiations (collective bargaining), contracting and procurement, state law issues such as the Maryland Open Meetings Act and the Maryland Public Information Act, federal and other grants, federal, state and local legislation affecting HCPSS, constitutional law, education law, and issues involving students. The General Counsel will also work with executive staff and other contracted attorneys to review case strategy, review resources applied to cases, and other legal matters including, but not limited to, Special Education, Property Land Use, Real Estate Law, Worker's Compensation Law, construction law, data privacy law, and public school law services as determined by the Superintendent and/or the executive team.

1.2 Background

The School System operates 77 schools with additional office locations in a suburban area. Enrollment is approximately 55,000 students. For more information on the Howard County Public School System, please visit <http://www.hcpss.org/aboutus/>.

1.3 Contact

Questions concerning this RFP must be in writing and addressed to Douglas Pindell, Director of Purchasing, HCPSS. Upon issuance of this RFP, other employees and representatives of HCPSS will not answer questions or otherwise discuss the contents of this RFP with any potential respondents or their representatives. Failure to observe this restriction may result in disqualification of any subsequent submittal. This restriction does not preclude discussions unrelated to this RFP.

1.4 Deadline for Submission of Responses

To be considered, submittals must be received in the issuing office the date and time specified on the invitation notice. HCPSS prefers hand or overnight delivery. Faxed or electronic responses are not acceptable.

1.5 Right to Amend, Modify or Withdraw RFP

HCPSS reserves the right, in their sole discretion, to amend, or modify any provisions of this RFP, or to withdraw this RFP, at any time prior to the award of a Contract, if it is in the best interest of HCPSS to do so. The decision of HCPSS shall be administratively final in this regard.

1.6 Issuing Office

HCPSS is the Issuing Office and the sole point of contact for the RFP. HCPSS is the only office authorized to clarify, modify, amend, alter, or withdraw the specifications, terms, and conditions of this RFP and any contract awarded as a result of this RFP. **All communications concerning this procurement must be in writing and addressed to:**

Douglas Pindell, Director of Purchasing
Howard County Public School System
10910 Clarksville Pike
Ellicott City, Maryland 21042
Phone: 410 313-6722, Fax: 410 313-6789
dpindell@hcpss.org

Please submit any questions as promptly as possible to allow a timely, written response.

1.7 Copies

Firms must submit one (1) signed original and two (2) copies of their submittal. Firms must include copies of firms' cost proposals in their submittal. If necessary, please submit one (1) redacted electronic copy on a flash drive or CD for release under a public information request.

PART II
SUBMITTAL FORMAT

2.1 Introduction

Submittals must be organized as described in Section 2.2 below. Submittals not organized in this manner are subject to disqualification. Conciseness and clarity of content are emphasized and encouraged.

2.2 General Organization of Submittal Contents

Submittals must be organized as follows:

- a. Transmittal Letter
- b. Executive Summary
- c. Table of Contents
- d. Submittal Information
- e. Cost Proposal (See Appendix A)

2.3 Transmittal Letter

Firms must submit with their submittals a transmittal letter that identifies the entity submitting the submittal, all principals, and includes a commitment by that entity to provide the services required by HCPSS. The transmittal letter must state that the submittal is valid for **90 days from the deadline for delivery of submittals. Any submittal containing a term of less than 90 days for acceptance from this deadline will be rejected as non-responsive.**

2.4 Executive Summary

Firms must provide an executive summary of their proposal and represent that the proposal addresses all of the requirements of this RFP. The executive summary must not exceed three pages.

2.5 Firm Identifying Information

Each firm must provide the following identifying information:

- a. A written summary that fairly and briefly depicts its proficiency, experience and capability to serve as General Legal Counsel.
- b. A list by individual, of credentials of all principals and staff attorneys that would service the HCPSS account, showing formal education and certification in specific areas of law.
- c. A list of clients that is comparable to HCPSS in size and complexity, denoting whether they are in an active or inactive status.
- d. A brief biographical sketch for each principal and staff attorney that would be assigned to the HCPSS account.
- e. A list of five (5) references, gleaned from the client list that could provide an accurate representation of the firm's performance history with that client.
- f. A sample letter of engagement.
- g. A list of all active professional memberships, by individual.
- h. A general statement of philosophy regarding the role of a legal counsel in the setting of a Maryland public school district.
- i. A listing of the principals' and staff attorneys' most current professional continuing education activities conducted within the last twenty-four (24) months.
- j. Provide bond counsel experience.

2.6 Subcontractor Information

Firms must provide statements from each of its proposed subcontractors, signed by an individual authorized to legally obligate each subcontractor, attesting to the fact that it will provide the services as represented in the submittal.

2.7 Conflict of Interest

Each firm must disclose any existing or potential conflict of interest relative to the performance under the Contract. Examples of potential conflicts may include an existing business or personal relationship between the firm, its principal, or any affiliate or subcontractor, with HCPSS or any other entity or person involved in any way in the Contract. Similarly, any personal or business relationship between the firm, the principals, or any affiliate or subcontractor, with any employee of HCPSS or its suppliers must be disclosed. Any such relationship that might be perceived or represented as a conflict must be disclosed. Failure to disclose any such relationship or reveal personal relationships with HCPSS employees may be cause for contract termination. HCPSS reserves the right, in its sole discretion, to determine if an actual or perceived conflict should result in submittal disqualification.

Each firm must reveal any past or existing relationship between the firm, its principal, employees, or any affiliate or subcontractor, with any state agency, entity, state employee, or other person in any way involved in the state's procurement and/or contracting processes. HCPSS reserves the right, in its sole discretion, to determine if such relationship constitutes a conflict of interest.

In submitting a submittal, the firm affirms that it has not given, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant or any employee or representative of same, in connection with this procurement.

By submitting a submittal the firm agrees that, if selected, the Firm will be independent and not be unduly influenced by any group or individuals, public or private, to include the HCPSS, Maryland State Department of Education, Maryland State Government, Howard County Government or any of its respective employees, members, or representatives.

2.8 Submittal Requirements

Please refer to Part III, below.

2.9 Cost Proposal

Please refer to Section 4.2 and Appendix A, below.

PART III
SUBMITTAL AND CONTRACT REQUIREMENTS

3.1 Technical Issues

The firm should prepare their response to the Request for Proposal as described below. For rating purposes the submittal will be evaluated for the following distinct parts.

A. Minimum Qualifications

1. Credentialed in the appropriate professions to provide these services.
2. Proven record of success on behalf of school systems in Maryland in the areas identified in section 3.2.
3. Adequate staff to respond timely to the Board of Education's needs for services.
4. It is preferred that firms currently be listed with the Maryland Boards of Education, Legal Services Association (LSA).

B. Submittals

1. A statement of the firm's understanding of the services required by the Request for Proposal and attached specifications. The firm must explain how it would provide these services to the Howard County's Board of Education to fulfill the qualifications.
2. The names of the persons who are authorized to provide representations on behalf of the firm (include their titles, addresses and telephone numbers).
3. Identification of the full-time and part-time staff who may be assigned directly to work with the Board and/or staff.
4. Firms must submit a firm billing proposal by employee, position and hourly rate. Submit any other charges or costs which will be billed to the Board of Education (e.g. fax transmissions, photocopying charges, telephone charges, travel, etc.) and the rate of the charge. The firm shall provide a price for all items in this RFP which will remain valid throughout the stipulated performance period or until delivery is completed, see Appendix A.
5. Confirmation of acceptance of the privacy and sex offender requirements under Appendix C.

C. Cost/Fee Structure

Firms shall submit a fee structure utilizing the Proposal Total Sheet – **Appendix A**. The Board of Education will not consider fees or hourly rates that exceed those charged under the LSA fee structure.

D. Statutory Affidavit and Non-Collusion Certification, Appendix B.

3.2 Statement of Work

Proposals are sought for the following areas of law. A firm may submit proposals for as many areas as the firm desires including those listed under item 1.1 Purpose. The firm's response must clearly indicate which areas it is offering services, and organize its response around those areas. The following areas are representative of the specific experience and/or need of legal services.

- A. Property, Land Use, and Real Estate
Services in this area will include general advice on land use and zoning matters. Preparation of contracts and all related documents relative to real property acquisition, preparation of easements, conducting title searches, negotiation of real property purchases, and advice and representation in regulatory matters including those under the jurisdiction of the Maryland Department of the Environment.
- B. Special Education Law and Section 504 Law
Services in this area will include general advice to staff on special education and Section 504 matters. Services will also include representation of the Board and school system on individual special education and Section 504 matters at team meetings, due process hearings, Office of Administrative Hearings proceedings, and in federal and state court proceedings. Services may also include the development of process documents and providing staff training.
- C. Construction Law
Services in this area will include representing the Board and school system in pending construction disputes with its contractors, whether the Board is a Plaintiff or Defendant. Services will also include general advice on construction law matters including advice regarding contract documents with general contractors, architects, engineers, and related professional services contracts.
- D. Worker's Compensation Law
Services in this area will include representing the Board and school system regarding individual worker's compensation claims filed by employees.
- E. Public School Law
Services in this area will include representing the Board and school system regarding legal issues typical of those encountered by a Board of Education and/or school district located between two major urban cities, Baltimore, MD and Washington, DC. These include matters related to general liability, student attendance, business enterprise, Board operations and support functions, education law, COMAR and the Maryland Annotated Code, FERPA and data privacy laws, HCPSS policies, residency and enrollment, labor law, labor relations and union negotiations, federal and other grants, Maryland Open Meetings Act and the Maryland Public Information Act, federal, state, and local legislation affecting HCPSS, and other legal services as determined by the Board, Superintendent and/or the executive team.

3.3 Contract Period and Renewal

- A. This contract shall begin on upon award by the Board of Education, anticipated to be October, 2016 and terminate one year from the date of award.
- B. Automatic contract renewals are prohibited. Contract renewals must be authorized by and coordinated through the Purchasing Office. The initial term of this contract is for approximately one (1) year period. The Board reserves the right to renew the contract for four (4) additional years, one (1) year at a time.
- C. Any contract awarded pursuant to this Request for Proposal shall be conditioned upon an annual appropriation made by the Board of Education of Howard County of funds, see Sample Standard Contract, attached.

3.4 – 3.6 Sections Deleted

3.7 Insurance

3.7.2.1 The Contractor shall purchase and maintain the following insurance coverages at not less than the limits specified below or required by law, whichever is greater:

2.1.1 Commercial general liability insurance or its equivalent for bodily injury, personal injury and property damage including loss of use, with minimum limits of:

- \$ 1,000,000 each occurrence;
- \$ 1,000,000 personal and advertising injury;
- \$ 2,000,000 general aggregate; and
- \$ 1,000,000 products/completed operations aggregate.

This insurance shall include coverage for all of the following:

- i. Liability arising from premises and operations;
- ii. Liability arising from the actions of independent contractors; and
- iii. Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract.

2.1.2 If the Contractor has any employees, workers compensation insurance or its equivalent with statutory benefits as required by any state or Federal law, including standard "other states" coverage; employers liability insurance or its equivalent with minimum limits of:

- \$ 100,000 each accident for bodily injury by accident;
- \$ 100,000 each employee for bodily injury by disease; and
- \$ 500,000 policy limit for bodily injury by disease.

2.1.3 If the Contractor is a sole proprietor or partnership operating without workers compensation coverage, personal health insurance or its equivalent is recommended.

2.1.4 Professional liability (or errors or omissions liability) insurance or its equivalent with minimum limits of:

\$ 1,000,000 each claim or wrongful act; and

\$ 1,000,000 annual aggregate.

3.7.2.2 The Board of Education of Howard County and its elected and appointed officials, officers, employees and authorized volunteers shall be named as additional insureds on the Contractor's commercial general liability insurance with respect to liability arising out of the services provided under this Contract by Contractor.

Special Note: ISO forms CG 2009 and CG 2010 entitled "Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization" (previously Forms A and B respectively) are ***NOT ACCEPTABLE***. ISO form CG 2026 entitled "Additional Insured - Designated Person or Organization" or a manuscript endorsement with the above wording is required.

3.7.2.3 Insurance or self-insurance provided to the Board and its elected and appointed officials, officers, employees and authorized volunteers under any Contractor's liability insurance or self-insurance required herein shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or self-insurance. (Any cross suits or cross liability exclusion shall be deleted from Contractor's liability insurance policies required herein.)

3.7.2.4 Insurance or self-insurance provided to the Board and its elected and appointed officials, officers, employees and authorized volunteers as specified herein shall be primary, and any other insurance, self-insurance, coverage or indemnity available to the Board and Board's elected and appointed officials, officers, employees and authorized volunteers shall be excess of and non-contributory with insurance or self-insurance provided to the Board and its elected and appointed officials, officers, employees and authorized volunteers as specified herein.

3.7.2.5 If any liability insurance purchased by the Contractor has been issued on a "claims made" basis, the Contractor must comply with the following additional conditions:

2.5.1 The Contractor shall agree to provide certificates of insurance evidencing such claims made coverages for a period of one year after final payment by the Board for Contractor's services under this Contract. Such certificates shall evidence a retroactive date no later than the earlier of the date of this Contract or the commencement of Contractor's services under this Contract; or

2.5.2 The Contractor shall purchase an extended (minimum one year) reporting period endorsement for each such "claims made" policy in force as of the date of final payment by the Board for Contractor's services under this Contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the earlier of the date of this Contract or the commencement of Contractor's services under this Contract.

2.5.3 The Contractor may forward a written request to HCPSS for a waiver in writing of the insurance requirement(s) not met or for approval in writing of alternate insurance coverage, self-insurance, or group self-insurance arrangements.

Indemnification

To the fullest extent permitted by law, Contractor agrees to defend, indemnify, pay on behalf of, and save harmless the Board, its elected and appointed officials, agents, employees, and authorized volunteers against any and all claims, liability, demands, suits or loss, including attorneys' fees and all other costs connected therewith, arising out of or connected to the services provided by Contractor under this Contract.

Waiver of Subrogation

To the fullest extent permitted by law, the Contractor and its invitees, employees, officials, volunteers, agents and representatives waive any right of recovery against the Board of Education of Howard County for any and all claims, liability, loss, damage, costs or expense (including attorneys' fees) arising out of the services provided by Contractor under this Contract. Contractor specifically waives any right of recovery against the Board and its elected and appointed officials, officers, volunteers, Contractors, agents and employees for personal injury (and any resulting loss of income) suffered while working on behalf of the Board as an independent contractor. Such waiver shall apply regardless of the cause of origin of the injury, loss or damage, including the negligence of the Board and its elected and appointed officials, officers, volunteers, Contractors, agents and employees. The Contractor shall advise its insurers of the foregoing.

Acknowledgment of Contractor's Independent Contractor Status and No Coverage for Contractor under Board's Workers Compensation Coverage

Contractor hereby acknowledges its status as an independent contractor while performing services on behalf on the Board and that the Board's workers compensation coverage or self-insurance is not intended to and will not respond to cover any medical or indemnity loss arising out of injury to the Contractor or its employees during the Contractor's performance of services for the Board. To the fullest extent permitted by law, the Contractor specifically waives any right of recovery against the Board and its elected and appointed officials, officers, volunteers, Contractors, agents and employees for personal injury (and any resulting loss of income) suffered during the performance of services as an independent contractor for the Board. Such waiver shall apply regardless of the cause of origin of the injury, loss or damage, including the negligence of the Board and its elected and appointed officials, officers, volunteers, Contractors, agents and employees. The Contractor shall advise its insurers of the foregoing.

Damage to Property of the Contractor and its Invitees

To the fullest extent permitted by law, the Contractor shall be solely responsible for any loss or damage to property of the Contractor or its invitees, employees, officials, volunteers, agents and representatives while such property is on, at or adjacent to the premises of the Board.

PART IV

SUBMITTAL EVALUATION AND SELECTION PROCESS

4.1 Introduction

This Part details the submittal evaluation and selection process and the mandatory format for submission of the cost portion of submittals (“cost proposals”).

4.2 Cost Proposal

The firm must utilize the format provided in Appendix A in submitting a cost proposal in response to this RFP. The cost proposal must be included in each copy of the submittal.

4.3 Submittal Evaluation and Selection

The HCPSS will evaluate submittals on the basis set forth in this section. A contract may be awarded the firm whose submittal best meets HCPSS requirements and needs at the time of the award.

Submittals shall comprehensively address all of the desired services outlined in the Request for Proposal and shall demonstrate the successful performance of similar contracts by the firm making the submittal, and shall offer the most cost effective submittal for the desired services.

The Committee will use the following criteria and weighing in preparing its technical evaluation of each qualifying submittal:

Qualifications of the Firm	15%
Fees	25%
Qualifications of the Individuals Proposed	60%

PART V
PAYMENTS

5.1 Payments

HCPSS will make every effort to pay the firm within thirty (30) days of acceptance of all services associated with each invoice. Notwithstanding any other provision of this RFP, all invoices must be accompanied with documentation that details the number of hours expended, nature of work performed by firm's personnel and any other approved fees or charges.

SAMPLE OF STANDARD CONTRACT
AGREEMENT FOR PROFESSIONAL SERVICES

AGREEMENT # 009.17.B1

THIS AGREEMENT is entered into this _____ Date, effective as of this date, by and between the Board of Education of Howard County (hereinafter referred to as the "Board") and _____ (Firm), (hereinafter referred to as the "Firm").

RECITALS

WHEREAS, the Contractor submitted a proposal to RFP No. 009.17.B1 issued by the Board and has been selected to perform professional services in accordance with the terms and conditions expressed in the RFP;

WHEREAS, the Board desires the Contractor to perform certain work and services, on the terms and conditions herein set forth and the Contractor is ready, willing, and able to perform such work and services; and

WHEREAS, Board desires the Contractor to perform certain work and services, on the terms and conditions herein set forth and the Contractor is ready, willing, and able to perform such work and services; and

WHEREAS, this Agreement shall be administered by the Project Manager or such other persons designated by The Board of Education.

NOW, THEREFORE, in consideration of the promises contained herein and the promises each to the other made, the parties hereby agree as follows:

ARTICLE I - CATEGORY OF WORK AND SERVICES

1. The work and services to be performed by the Contractor shall be in accordance with the following documents:

Request for Proposal, RFP No. 009.17.B1, dated _____, 2016; and
_____ (contractor name) proposal dated _____ date.

ARTICLE II - TERMS AND CONDITIONS

Contractor agrees to perform the work and services required under this Agreement in accordance with RFP #009.17.B1, whose provisions for professional services are incorporated herein by reference.

ARTICLE III - TERM OF AGREEMENT

The term of agreement shall begin on the date above and terminate on _____ . Contract renewals shall be contingent upon adequate fiscal appropriations as per the RFP.

ARTICLE IV - PAYMENTS AND SCHEDULE OF PAYMENTS

- (1) The Contractor shall receive compensation within 30 days of invoice date.
- (2) Payment shall be made in accordance with the provisions set forth in Section V, Payments.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above-written.

BOARD OF EDUCATION OF HOWARD COUNTY

By: _____ (SEAL)
Christine E. O'Connor, Chairman
Board of Education of Howard County

By: _____ (SEAL)
Renee A. Foose, Ed. D., Superintendent
Howard County Public School System

CONTRACTOR

By: _____
Signature

Typed Name Title

Company Name

Address

City State Zip

Telephone Fax

APPENDIX A

A. GENERAL

1. Firm's Name: _____

2. Person Responsible for completing this form:

Name: _____

Title: _____

Address: _____

Telephone: () _____ Fax: () _____

3. The information in this response is binding until _____
(Date)

FORM FOR COST PROPOSAL

Personnel (including Subcontractor/Contractor) Costs:

	<u>Standard Rates</u>	<u>Howard County Proposed Rates</u>	<u>MABE LSA* Rates</u>
Person A (Name and Qualifications)	_____	_____	_____
Person B (Name and Qualifications)	_____	_____	_____
....	_____	_____	_____
....	_____	_____	_____
Person N (Name and Qualifications)	_____	_____	_____

Other Costs:

Please identify any other costs which will be assessed (e.g. fax transmittals, telephone charges, photocopying charges, travel, etc.) and their rate of charge.

*Note: MABE LSA – Maryland Association of Boards of Education Legal Services Association rates, if applicable.

APPENDIX B

AFFIDAVIT

Special Instructions: An authorized representative of the offeror needs to complete the following affidavit and insert an answer to paragraphs 1 and 3.

Statutory Affidavit and Non-Collusion Certification

I, _____, being duly sworn, depose and state:

1. I am the _____ (officer) and duly authorized representative of the firm (the "Firm") _____ whose address is _____ and that I possess the authority to make this affidavit and certification on behalf of myself and the firm for which I am acting.

2. Except as described in paragraph 3 below, neither I, nor to the best of my knowledge, the above Firm, nor any of its officers, directors, or partners, or any of its employees who are directly involved in obtaining or performing contracts with any public bodies has:
 - (a) been convicted of bribery, attempted bribery, or conspiracy to bribe, under the laws of any state or of the federal government;

 - (b) been convicted under the laws of the state, another state, or the United States of: a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

 - (c) been convicted of a criminal violation of an antitrust statute of the State of Maryland, another state, or the United States;

 - (d) been convicted of a violation of the Racketeer Influenced and Corrupt Organization Act, or the Mail Fraud Act, for acts in connection with the submission of bids or proposals for a public or private contract;

 - (e) been convicted of any felony offenses connected with obtaining, holding, or maintaining a minority business enterprise certification, as prohibited by Section 14-308 of the State Finance ~ Procurement Article;

 - (f) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction under any of the laws or statutes described in paragraph (a) through (e) above; or

 - (g) been found civilly liable under an antitrust statute of this State, another state, or the United States for acts or omissions in connection with the submission of bids or proposals for a public or private contract.

3. The only conviction, plea, or admission by any officer, director, partner, or employee of this Firm to involvement in any of the conduct described in paragraph 2 above is as follows:

If none, write "None" below. If involvement, list the date, count, or charge, official or administrative body, the individuals involved, their position with the firm, and the sentence or disposition of the charge.

(You may attach any explanation necessary.)

4. I affirm that this firm will not knowingly enter into a contract with a public body under which a person or business debarred or suspended under Maryland State Finance and Procurement Title 16, subtitle 3, Annotated Code of Maryland, as amended, will provide, directly or indirectly, supplies, services, architectural services, construction-related services, leases of real property, or construction.
5. I affirm that this proposal or bid to the Board of Education of Howard County is genuine and not collusive or a sham; that said offeror has not colluded, conspired, connived and agreed, directly or indirectly, with any bidder or person to put in a sham bid or proposal or to refrain from bidding or making a proposal and is not in any manner, directly or indirectly, sought by agreement of collusion or communication or conference, with any person to fix the prices of the affidavit or any other person, or to fix any overhead, profit or cost element of said price, or that if any person, or to secure an advantage against the Board of Education of Howard County or any other person interested in the proposed contract; and that all statements in the proposal or bid are true. I acknowledge that, if the representations set forth in this affidavit are not true and correct, the Board of Education of Howard County may terminate any contract awarded and take any other appropriate action.
6. I affirm that this firm will not knowingly employ an individual to work at a school if the individual is a Registered Sexual Offender, pursuant to section 11-722 (C) of the Criminal Procedure Article of the Annotate Code of Maryland. A firm or person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

The statements contained in this affidavit shall be incorporated into the awarded contract as material provisions and shall be effective throughout the life of the contract. The firm has a continuing obligation through the life of the contract to submit a revised affidavit should the firm discover information, or events occur, which render the contents of this affidavit erroneous or incomplete or which would result in the firm providing a different response. The firm's failure to submit a revised affidavit within three (3) working days of either its awareness of any error, change of circumstances, incompleteness, etc., or request by the owner shall constitute breach of contract. Upon submission of a revised affidavit, the owner has the right to take such actions as may be necessary, in the judgment of the owner, to maintain and enforce the provisions of the affidavit, including termination of the contract.

Continued next page

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the contents of these affidavits (Statutory and Non-Collusion) are true and correct, that I am executing this Affidavit in compliance with Section 16-311 of the State Finance and Procurement Article, Annotated Code of Maryland, and the Non-Collusion Certification in compliance with requirements of the Howard County Board of Education, and that I am executing and submitting this Form of Proposal on behalf of and as authorized by the bidder named below.

WITNESS:

Title: _____

SUBSCRIBED AND SWORN to before me on this _____ day of _____, 2016.

NOTARY PUBLIC
My Commission Expires: _____

(Legal Name of Company)

(Address)

(City) (State) (Zip)

(Telephone) (Fax)

Contractor's No. _____

(Signature) (Title) (Date)

(Printed)

In the presence of _____
(Witness) (Date)

We are/I am licensed to do business in the State of Maryland as a:
 Corporation Partnership Individual Other

APPENDIX C

HCPSS, as a Government entity, is required when entering into agreements with other parties/entities to follow all applicable laws and regulations, including those related to data privacy and security; accessibility; and records retention. Accordingly, the Terms of Service (TOS) are hereby modified by this Amendment as they pertain to HCPSS's use of the Company's Site and/or Services.

- A. **Definition of "Data"**: Data include all Personally Identifiable Information (PII) and other non-public information. Data include, but are not limited to, student data, metadata, and user content.
- B. **Data Collection and Use**: ENTITY will only collect and use Data only for the purpose of fulfilling its duties and providing services under this Agreement, and for improving services under this Agreement.
- C. **Education Records**: If ENTITY will have access to "education records" as defined under the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99), the ENTITY acknowledges that for the purpose of this Agreement it will be designated as a 'school official' with 'legitimate educational interests' and will use the data only for the purpose of fulfilling its duties under this Agreement. ENTITY agrees to indemnify and hold harmless the Board of Education of Howard County for any damages or costs, including reasonable attorney's fees, associated with any act or omission by ENTITY, its agents and employees concerning its FERPA obligations under this section.
- D. **Obligation of Confidentiality**: In performing services under this Agreement, ENTITY and HCPSS may be exposed to and will be required to use certain "Confidential Information", as defined below. ENTITY and HCPSS along with their employees, agents or representatives will not, use, directly or indirectly, such Confidential Information for purposes other than the purposes outlined in this Agreement.
- E. **Definition of Confidential Information**: "Confidential Information" means information, not generally known, and proprietary to the ENTITY or HCPSS or to a third party for whom the ENTITY or HCPSS is performing work, including, without limitation, information concerning any patents or trade secrets, confidential or secret designs, processes, formulae, source codes, plans, devices or material, research and development, proprietary software, analysis, techniques, materials or designs (whether or not patented or patentable), directly or indirectly useful in any aspect of the business of the ENTITY or HCPSS. Confidential Information includes all information which ENTITY or HCPSS acquires or becomes acquainted with during the period of this Agreement, whether developed by ENTITY, HCPSS or others, which ENTITY or HCPSS has a reasonable basis to believe to be Confidential, such as data that is personally identifiable to an individual student and information within the definition of "Education Record" The parties agree that the following will be treated as "Confidential Information": (i) all database information ("Data") provided by or on behalf of HCPSS to ENTITY; (ii) all information provided by ENTITY to HCPSS pertaining to the Services; (iii) all information which is labeled as such in writing and prominently marked as "Confidential," "Proprietary" or words of similar meaning by either party; or (iv) business information of a party which a reasonable person would understand under the circumstances to be confidential.
- F. **Maintenance of Confidentiality**: Any Confidential Information acquired or received by either party (the "Recipient") in the course of this Agreement will not be disclosed or transferred to any person or entity other than to employees of a party and, as to ENTITY, for the purpose of performing its obligations under this Agreement. Confidential Information received under this Agreement will be treated with the same degree of care and security as each party uses with respect to its own Confidential Information, but not less than a reasonable degree of care. The parties agree to use Confidential Information only for the purpose of performance of this Agreement and to make no copies except as necessary for performance of this Agreement. Any such confidential information and copies thereof made by a party, or any representative of a party, shall be completely and promptly destroyed at the conclusion of contract performance subject to paragraph F.2 below.
 1. Each party acknowledges that unauthorized disclosure or use of the Confidential Information by a party may irreparably damage the other party in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Confidential Information shall give the owner the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Each party hereby waives the posting of a bond with respect to any action for injunctive relief.

2. Upon termination or completion of the Services hereunder, upon request of HCPSS, ENTITY will deliver to HCPSS (in ENTITY format) the HCPSS's Confidential Information as housed in the ENTITY production database(s), provided that ENTITY may maintain archival copies for audit purposes and dispute resolution purposes and ENTITY may retain copies of Confidential Information on back-up media in which such Data is co-resident with other employment and income data. ENTITY shall remain under its contractual obligation of confidentiality and security to HCPSS and such obligations shall survive termination of the Agreement. This Section shall survive the termination of this Agreement.
- G. **Data De-Identification:** ENTITY may use de-identified Data for product development, research, or other purposes. De-identified Data will have all direct and indirect personal identifiers removed. This includes, but is not limited to, name, ID numbers, date of birth, demographic information, location information, and school ID. Furthermore, ENTITY agrees not to attempt to re-identify de-identified Data.
- H. **Data Mining, Marketing and Advertising:** ENTITY is prohibited from mining Data for any purposes other than those agreed to by the parties. **Data mining or scanning of user content for the purpose of advertising or marketing to students or their parents is prohibited. Any and all forms of advertisement, directed towards children, parents, guardians, or District Employees will be strictly prohibited unless allowed with express written consent of the District.**
- I. **Modification of Terms of Service:** ENTITY will not change how Data are collected, used, or shared under the terms of this Agreement in any way without advance notice to and consent from the HCPSS. This Agreement is the entire agreement between the HCPSS (including all District end users) and the ENTITY. All other agreements or understandings, whether electronic, click-through, verbal or in writing, with District Employees or other End Users shall be null and void.
- J. **Data Sharing:** ENTITY will not share data, including de-identified data, with or disclose it to any third party without prior written consent of the HCPSS, except as required by law.
- K. **Data Storage:** HCPSS Data will not be stored outside of the United States without prior, specific and informed written consent from the HCPSS.
- L. **Terms, Data Transfer, Survival and Destruction:** The HCPSS may immediately terminate the Agreement if the HCPSS determines the ENTITY has breached this Agreement. The Agreement will automatically terminate at the expiration date. However, the ENTITY's obligations shall survive termination of this Agreement until ALL HCPSS Data has been returned and/or securely removed or destroyed. ENTITY will ensure that all Data in its possession and in the possession of any subcontractors, or agents to which the ENTITY may have transferred Data, are destroyed or transferred as specified by the HCPSS, except as provided in F.2 above.
- M. **Rights and License in and to Data:** All goods, products, materials, documents, reports, writings, video images, photographs, papers and intellectual property of any nature including software or computer images prepared by the ENTITY (or subcontractors) for the HCPSS or from HCPSS-provided material will not be disclosed to any other person or entity and remains the property of the school system. All student produced work remains the property of that student. The ENTITY has a limited, nonexclusive license to the data described herein solely for the purpose of performing its obligations as outlined in the Agreement. This Agreement does not give ENTITY any rights, implied or otherwise, to Data, content, or intellectual property, except as expressly stated in the Agreement, including any right to sell or trade Data.
- N. **Access:** Except as otherwise expressly prohibited by law, the ENTITY will immediately notify the HCPSS of any subpoenas, warrants, or other legal orders, demands or requests, including Audits, and governmental requests and demands, received by the ENTITY seeking HCPSS Data. If the HCPSS receives a similar request, the ENTITY will promptly supply the HCPSS with copies of records or information required by the HCPSS to respond.
- O. **Security Controls and Risk Management:** ENTITY will store and process Data in accordance with industry best practices. This includes appropriate administrative, physical, and technical safeguards to: 1)

ensure the security and confidentiality of PII and Confidential Information; 2) protect against any anticipated threats or hazards to the security or integrity of Confidential Information; 3) protect against unauthorized access to or use of Confidential Information that could result in substantial harm or inconvenience to any customer or to any HCPSS employee and/or student; and 4) dispose of PII and Confidential Information in a secure manner.

1. To comply with the safeguard obligations generally described above, ENTITY has (a) designated an employee to coordinate its information security program, (b) identified reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of HCPSS Information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, and assessed the sufficiency of any safeguards in place to control these risks, and (c) designed and implemented information safeguards to control the risks identified through the risk assessment, and regularly tests or otherwise monitors the effectiveness of safeguards' key controls, systems and procedures.
 2. ENTITY will conduct periodic risk assessments and remediate any identified security vulnerabilities in a timely manner. ENTITY will also have a written incident response plan, to include prompt notification of HCPSS in the event of a security or privacy incident, as well as best practices for responding to a breach of PII. ENTITY agrees to share its incident response plan upon request.
- P. **Data Breaches:** ENTITY shall notify HCPSS in writing as soon as commercially practicable, however no later than forty-eight (48) hours, after ENTITY has either actual or constructive knowledge of a breach which affects HCPSS's Data (an "Incident") unless it is determined by law enforcement that such notification would impede or delay their investigation. ENTITY shall have actual or constructive knowledge of an Incident if ENTITY actually knows there has been an Incident or if ENTITY has reasonable basis in facts or circumstances, whether acts or omissions, for its belief that an Incident has occurred. The notification required by this section shall be made as soon as commercially practicable after the law enforcement agency determines that notification will not impede or compromise the investigation. ENTITY shall cooperate with law enforcement in accordance with applicable law provided however, that such cooperation shall not result in or cause an undue delay to remediation of the Incident. ENTITY shall promptly take appropriate action to mitigate such risk or potential problem at ENTITY's expense. In the event of an Incident, ENTITY shall, at its sole cost and expense, fully restore the Confidential Information, including, without limitation any and all Data, and institute appropriate measures to prevent any recurrence of the problem as soon as is commercially practicable.
- Q. **Employee and Subcontractor Qualifications:** ENTITY shall ensure that its employees and all subcontractors who have potential access to HCPSS Data have undergone appropriate background screening and possess all needed qualifications to comply with the terms of this Agreement. Further, all employees and subcontractors are subject to the same FERPA compliance in relation to the 'school official' designation, and should receive training that the re-disclosure of PII and/or Confidential Information will violate federal and state laws and may result in criminal and/or civil penalties.
- R. **Sex Offender Requirement:** Maryland law requires certain sex offenders to register with the local law enforcement agency; See Maryland Annotated Code, Criminal Procedure Article, §11-704. One of the purposes of this law, is to inform school systems when a Registered Sex Offender is residing or working in the area. When the sex offender registers, the local police are required to notify the Superintendent of Schools, and the Superintendent, in turn, is required to send a notice to school principals.

As a contractor working for Howard County Public School System (HCPSS), we require that you do not employ Registered Sex Offenders to work on projects for our school system if they, as a result, are required to perform delivery, installation, repair, construction or any other kind of services **on HCPSS property**. Further, Maryland Law that became effective June 22, 2006, 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; See §11-722 Criminal Procedure Article. An employer who violates this requirement is guilty of a misdemeanor and if convicted may be subject to up to five years imprisonment and/or a \$5,000 fine.

Each contractor 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 uses to perform the work. Violations of this provision may cause HCPSS to take action against the contractor up to and including termination of the contract.

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 property 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 sexual offense, child sexual abuse and crimes of violence.

The Contractor shall submit to HCPSS a listing of any employees assigned to perform under this agreement and certify that the necessary criminal history records checks have been conducted and that each employee complies with the requirements.

- S. **Governing Law:** This agreement shall be governed by and construed in accordance with the laws of Maryland, excluding its choice of law rules. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the appropriate Maryland Court. ENTITY will comply with Maryland Education Code ANN. § 4-131, "Operators of School Internet Web sites, Online Services, Online Applications, and Mobile Applications." ENTITY agrees to be bound as an "operator" under the law regardless of the ENTITY's exemptions that may exist in Maryland Education Code ANN. § 4-131(a)(3).
- T. **Compliance:** In addition to complying with FERPA and the Maryland Education Code cited above, the ENTITY shall ensure that its products/services comply with the Federal Protection of Pupil Rights Act (34 CFR Part 98), the Federal Children's Internet Protection Act (47 CFR 54.520), and the Federal Children's Online Privacy and Protection Act (16 CFR Part 312).
- U. **Monitoring:** The ENTITY agrees to allow the HCPSS the ability to audit the ENTITY's use of HCPSS data to ensure compliance with the terms of this agreement.
- V. **Indemnification:** ENTITY agrees to indemnify and hold harmless HCPSS, and its members, trustees, employees, agents, officers, and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages, and expenses of any kind, nature, or character, including costs and attorney fees, arising out of or relating to any and all claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature, or character, in connection with or arising out of the acts or omissions of either Party or its employees, subcontractors, or agents under this Agreement. This provision expressly applies to, but is not limited in application to, matters and circumstances involving or implicating the unauthorized use of any trade secrets, or United States patent or copyright infringement or any liability resulting from the unauthorized disclosure of PII or Confidential Information or a breach of the obligations contained in this Data Sharing Agreement, including those set forth in paragraph R above. The indemnities set forth herein will survive the expiration or termination of this Agreement.

HCPSS agrees to indemnify and hold harmless ENTITY, and its members, trustees, employees, agents, officers, and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages, and expenses of any kind, nature, or character, including costs and attorney fees, arising out of or relating to any and all claims, liens, damages, obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature, or character, arising out of the intentional or malicious acts of HCPSS or its employees, subcontractors, or agents under this Agreement. This provision expressly applies to, but is not limited in application to, matters and circumstances involving or implicating the unauthorized use of any trade secrets, or United States patent or copyright infringement or any liability resulting from the unauthorized disclosure of PII or Confidential Information or a breach of the obligations contained in this Data Sharing Agreement. The indemnities set forth herein will survive the expiration or termination of this Agreement.