

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

HET MCPS, LLC  
200 Cummings Center, Suite 273D  
Beverly, Massachusetts, 01915

-and-

HEF-P BALTIMORE CITY, LLC  
200 Cummings Center, Suite 273D  
Beverly, Massachusetts, 01915

-and-

HEF-P MANASSAS, LLC  
200 Cummings Center, Suite 273D  
Beverly, Massachusetts, 01915

*Plaintiffs*

v.

AUTOFLEX, INC.  
405 Oak Forest Avenue  
Baltimore, Maryland, 21228  
Baltimore County, Maryland

-and-

LUIS MACDONALD  
405 Oak Forest Avenue  
Baltimore, Maryland, 21228  
Baltimore County, Maryland

*Defendants.*

No. 1:24-cv-3366

Jury Trial Demanded

**COMPLAINT**

1. Plaintiffs HET MCPS, LLC (“HET”), HEF-P Baltimore City, LLC (“Highland Baltimore”), and HEF-P Manassas, LLC (“Highland Manassas”) (collectively, “Highland,” except

as otherwise specified) respectfully submit this complaint against Defendants AutoFlex, Inc., d/b/a AutoFlex Fleet (“AutoFlex”), and Luis MacDonald, stating as follows:

### **NATURE OF THE ACTION**

2. Highland brings this action to end AutoFlex and MacDonald’s pattern of unfair competition, including their repeated and unlawful interference with Highland’s contracts and customer relationships, and vindicate Highland’s contractual rights to electrify school-bus fleets.

3. Founded in 2019, Highland Electric Fleets, Inc. (“Highland Electric Fleets,” the parent to the Highland subsidiaries) is a national leader in electrifying student transportation. Through its subsidiaries, Highland Electric Fleets works with school districts to transform their legacy diesel school-bus fleets into more efficient electric school buses, which offer reduced environmental impact, enhanced student satisfaction, and, over time, reduced operational expenditures. Highland Electric Fleets’ customer-focused approach helps communities obtain tomorrow’s fleet on today’s budget.

4. In 2020, HET and three other providers bid for a contract to electrify the school-bus fleet for Montgomery County Public Schools (“MCPS”) under Request for Proposal Number 9462.1 (the “RFP”). HET’s proposal was ranked highest of the four bids. MCPS awarded HET the contract, which was valued at about \$168 million. HET soon began delivering on the contract, even while facing significant headwinds as the historic Covid-19 pandemic ravaged the world economy and disrupted global supply chains. Still, HET persevered. By the 2024–2025 school year, HET had helped MCPS put 236 electric buses in circulation, making MCPS the operator of the nation’s largest single-district fleet of electric buses. The current operating MCPS electric bus fleet is more than three times larger than the next largest operating electric school bus fleet in the country. Ultimately, MCPS will operate 326 electric buses under the contract. This is a significant

milestone, as MCPS did not have any electric buses just four years ago, and fewer than three percent of all school buses in the United States are electric.

5. When MCPS sought bids in 2020 under the RFP, AutoFlex also submitted a proposal for the MCPS contract. But AutoFlex's proposal finished in last place—fourth out of the four submissions—and was rejected. AutoFlex and its president and owner, MacDonald, never got over this last-place finish. For years, AutoFlex has pursued a baseless legal challenge to the procurement process. Relying on little more than innuendo and unfounded aspersions, AutoFlex has sought to take advantage of two MCPS employees' misconduct (unrelated to HET) to imply that the 2020 bidding process was tainted, hoping somehow to secure a do-over of AutoFlex's last place bid.

6. But AutoFlex and MacDonald have not limited themselves to this legal challenge. They also have sought to reopen and amend the 2020 RFP by unfairly competing with Highland and unlawfully interfering with Highland's customer relationships. AutoFlex and MacDonald have done so in many different ways. For instance, AutoFlex and MacDonald have urged MCPS to violate competition laws and breach HET's contract by converting it from a single-award RFP and contract to a multi-award RFP and multi-award contract—i.e., a contract that would enable AutoFlex to participate in it—even though the RFP's bidding process has been closed for years, the contract prohibits unilateral material changes, and there is no legal basis for reopening the 2020 bidding process or amending the RFP.

7. AutoFlex and MacDonald have not merely spread negative publicity about Highland and MCPS; they have manufactured it. For instance, AutoFlex and MacDonald circulated a letter, purportedly from a nonprofit coalition group, to MCPS that urges MCPS to breach its contract with HET to allow for an AutoFlex sole-source, non-competitive second

contract under HET's award so it can participate in the provision of electric buses to the school system. This letter was purportedly signed by the coalition's executive director. When Highland Electric Fleets, a member of the coalition, discussed the letter with the purported signatory, however, he disclaimed any knowledge of it. AutoFlex's MacDonald is the treasurer and a board member of the coalition. On information and belief, MacDonald prepared the letter without proper authorization and forged the signature of the coalition's executive director.

8. On more than one occasion, MacDonald abused his position of trust within the coalition by attempting to use the nonprofit coalition as a cloak of legitimacy in his campaign to disparage Highland, to promote the AutoFlex protest, and to amend the contract. Trading on the goodwill of the coalition in conflict with his duties as its treasurer and board member, AutoFlex's MacDonald circulated the forged letter to other Highland customers and copied the coalition's executive director in misinformation-spreading messages to advocates and consultants within the clean-school-bus space to promote AutoFlex to the detriment of other coalition members and the public mission advanced by the coalition.

9. In 2024, the Office of Inspector General ("OIG") for Montgomery County released a four-page memorandum that criticized MCPS and HET, including MCPS's management of this first-of-its-kind initiative. The OIG memorandum addressed supposed delivery delays and operational deficiencies (without acknowledging that the electrification efforts contended with a disrupted global economy or identifying whether other school districts faced similar delays and operational challenges) and falsely concluded that MCPS should have exercised certain rights under its contract with HET. Contrary to best practices for inspector general investigations, the OIG did not contact HET before releasing its memorandum. After its issuance, the OIG refused HET's repeated requests to discuss the memorandum. Unsurprisingly, given the OIG's failure to

speak to one of the two parties to the contract, the memorandum contained many inaccuracies, including misinterpretations of contract terms. Equally predictable, the memorandum was incomplete and decontextualized. For instance, it did not acknowledge the multiple changes to school-system leadership that impacted effective management of the Agreement or HET's many good-faith efforts to address economic headwinds and performance challenges, such as implementing its own parts-inventory-management system (not required by the Agreement) and absorbing millions of dollars of cost overruns (even when the overruns were caused by factors outside of HET's control, such as manufacturer delays, inflation, and supply-chain disruptions) instead of passing them on to MCPS.

10. The OIG memorandum was prompted by anonymous reports that, on information and belief, AutoFlex and MacDonald were involved in submitting. And, in all events, consistent with their other contract-interfering actions, AutoFlex and MacDonald have weaponized the OIG memorandum, shopping it around to potential AutoFlex customers and attempting to leverage the negative publicity from the OIG memorandum to undermine Highland.

11. To put an end to AutoFlex and MacDonald's unfair competition and unlawful interference, Highland brings this action, asserting claims under state and federal law, including the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

### **PARTIES**

12. Plaintiff HET is a citizen of Massachusetts and Delaware. It is a limited liability company organized under the laws of Maryland. The sole member of the company is Highland Electric Fleets, which is a Delaware corporation with its principal place of business in Beverly, Massachusetts. HET's address is 200 Cummings Center, Suite 273D, Beverly, Massachusetts, 01915, with an additional address at 12505 Park Potomac Avenue, Potomac, Maryland, 20854.

13. Plaintiff Highland Baltimore is a citizen of Massachusetts and Delaware. It is a

limited liability company organized under the laws of Delaware. The sole member of the company is Highland Electric Fleets. Highland Baltimore's address is 200 Cummings Center, Suite 273D, Beverly, Massachusetts, 01915.

14. Plaintiff Highland Manassas is a citizen of Massachusetts and Delaware. It is a limited liability company organized under the laws of Delaware. The sole member of the company is Highland Electric Fleets. Highland Manassas's address is 200 Cummings Center, Suite 273D, Beverly, Massachusetts, 01915.

15. Defendant AutoFlex is a citizen of Maryland. It is a Maryland corporation with its principal place of business in or about Baltimore, Maryland. According to its registration with the Maryland Secretary of State, its address is 405 Oak Forest Avenue, Baltimore, Maryland, 21228. It is located in Baltimore County, Maryland.

16. Defendant MacDonald is a citizen of, and domiciled in, Maryland. MacDonald's address is 405 Oak Forest Avenue, Baltimore, Maryland, 21228. He is located in Baltimore County, Maryland.

#### **JURISDICTION AND VENUE**

17. This Court has subject-matter jurisdiction over this action, based on diversity, because Highland, on the one hand, and AutoFlex and MacDonald, on the other hand, are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332.

18. This Court has personal jurisdiction over AutoFlex because it is a Maryland citizen.

19. This Court has personal jurisdiction over MacDonald because he is a Maryland citizen.

20. Venue is proper in this district because AutoFlex resides in this district. 28 U.S.C. § 1391(b)(1). Venue also is proper in this district because a substantial part of the events or omissions giving rise to this claim occurred within this district. 28 U.S.C. § 1391(b)(2).

### FACTUAL ALLEGATIONS

**I. In 2021, HET outbid its competitors, including AutoFlex, with a superior and best value competitive proposal, to obtain a \$168 million contract to provide electric school buses for MCPS.**

**A. After a competitive bidding process, MCPS awarded HET the contract, rejecting proposals from AutoFlex and others.**

21. Founded in 2019, Highland Electric Fleets operates the largest electric school-bus fleet in the United States, with more than 425 electric vehicles in operation and nearly 1,000 electric vehicles supported under contracts in 20 states. Highland Electric Fleets specializes in helping school districts electrify their bus fleets. Throughout the electrification process, Highland Electric Fleets collaborates with school districts and municipalities, including by helping them secure federal grants and rebates, installing chargers, training drivers, managing charging services, and offering other assistance.

22. Highland Electric Fleets' electrification work serves many ends. It helps both to reduce the environmental impact of busing (e.g., by reducing emissions) and improve the health of students and bus users (e.g., by reducing asthma-related illnesses). Highland Electric Fleets has helped low-income districts, urban and rural districts, and indigenous tribes electrify their school-bus fleets.

23. Maryland decision-makers have recognized the importance of making school-bus fleets more environmentally friendly. In 2022, Maryland legislators passed the Climate Solutions Now Act, which aims to reduce greenhouse-gas emissions, including by increasing the number of electric vehicles in the state. Under the law, school buses purchased in fiscal year 2025 must run

exclusively on electric power, subject to certain waivers. MCPS similarly has recognized the importance of sustainability.

24. On or about May 7, 2020, the Montgomery County Board of Education, which operates MCPS, issued a request for information, soliciting information from experienced companies about providing “a turnkey bus electrification program and all associated operational infrastructure and requirements, at or near budget neutral to [MCPS] Department of Transportation.”

25. On or about September 1, 2020, MCPS issued the RFP, seeking “responses from responsible companies who have the experience[,] capability[,] and resources necessary to provide a turnkey budget neutral school bus electrification program for ... [MCPS’s] diesel school bus fleet.” The requested program would encompass “all planning, implementation, financing, training, management, and services necessary to convert MCPS’s entire existing diesel school bus fleet to electric.” MCPS requested responses by October 6, 2020.

26. HET prepared and submitted a response.

27. By October 6, 2020, four companies had submitted proposals: HET, AutoFlex, AlphaStruxure, and First Student.

28. An MCPS review committee of four individuals met and evaluated the proposals, ranking them according to a point system.

29. On or about December 9, 2020, MCPS issued a pre-award notice, announcing that it intended to award the contract under the RFP to HET.

30. MCPS ranked AutoFlex’s proposal last out of the four bidders.

31. HET’s proposal, on the other hand, received the highest score among the four bidders.



32. On or about December 14, 2020, MCPS officials met with AutoFlex, identifying deficiencies in its proposal, including that it lacked: (1) details regarding bus parking at schools; (2) an infrastructure plan and bus layout for depots; (3) an implementation timeline; (4) sufficient information to determine how its pricing proposal would be budget neutral; (5) discussion of alternate methods of charging; and (6) regulatory compliance, as AutoFlex's proposal included a bus with non-steel components that were not then authorized in Maryland.

33. After the December 2020 meeting, AutoFlex filed a written protest of MCPS's decision to award the contract to HET. MCPS denied that protest and AutoFlex's subsequent internal agency appeal.

34. On or about February 23, 2021, the MCPS superintendent formally recommended to the Montgomery County Board of Education that the board award the contract to HET.

**B. After winning the bid, HET contracted with MCPS and helped MCPS electrify its school-bus fleet, even as the pandemic disrupted the global economy and imposed severe challenges.**

35. In March 2021, HET entered into a Transportation Equipment Services Agreement (the "Agreement") with the Montgomery County Board of Education, which operates MCPS.

36. Under the Agreement, HET would help launch a bus-charging system for the electric school buses with five base locations in Maryland: Shady Grove, Bethesda, Clarksburg, Randolph, and West Farm.

37. The Agreement did not depend on MCPS receiving grants from the state or federal government.

38. The Agreement included a vehicle-delivery date and anticipated operational date of August 1 and August 15, respectively, for each deployment year. But the Agreement also included extension provisions. These extension provisions recognized that HET would be providing a nascent technology (electric school buses) in the midst of a historical pandemic that had disrupted

the global economy and supply chains.

39. The Agreement has a value of \$168,684,990.

**II. In 2024, the Montgomery County OIG issued misleading and inaccurate findings regarding the Agreement, leading to negative press reports on HET and MCPS.**

**A. The Montgomery County OIG investigated the Agreement in a rushed and incomplete manner and misleadingly and inaccurately addressed HET's performance under it.**

40. After receiving anonymous reports (including, on information and belief, from AutoFlex and/or MacDonald), the OIG for Montgomery County, Maryland investigated the Agreement and the parties' performance under the Agreement, albeit without communicating about it in any way with HET.

41. In a July 29, 2024 press release accompanying a memorandum of investigation (the "Memorandum"), the OIG stated that it had evaluated MCPS's "management of a contract valued at over \$160 million to procure 326 electric school buses." The press release summarized the Memorandum, concluding that some buses were delivered late and MCPS should have exercised some of its alleged rights under the Agreement:

The OIG substantiated that the selected contractor failed to comply with contract terms related to the delivery of electric school buses and that MCPS failed to exercise contract provisions to force the contractor into compliance or terminate the contract. As a result, MCPS accepted late delivery of most of the school buses and absorbed delays related to mechanical failures which rendered some buses inoperable for extended periods. The OIG estimated that in addition to other possible actions, MCPS should have assessed the contractor approximately \$372,000 for failing to provide serviceable buses between FYs 2022 and 2024. MCPS is spending over \$14 million to acquire additional diesel buses to compensate for not receiving electric school buses in time to meet transportation demands.

42. The press release also disclosed that "[t]he investigation was predicated on complaints received through the OIG's hotline."

43. The Memorandum ran only four pages. The investigation into the Agreement and

performance of it was inadequate in that, among other things, the OIG never contacted HET, despite referring to it (as the “Contractor”) about 19 times in the Memorandum. Consequently, the OIG Memorandum contained many inaccurate or misleading comments and conclusions, including the following statements.

44. **Incorrect / Misleading Statement #1:** “The investigation substantiated that all of the buses received during fiscal years (FYs) 2022-2024 were delivered beyond the contractually required delivery date.” This statement is incorrect. The Agreement provided that, if there is “a delay caused by the vendor of the Bus or other major component of the System,” then the time to commence installation or operation of the busing system “will be extended on a day-for-day basis, without liability of either Party to the other Party.” Those extensions could total up to three months from August 15 of each deployment year. This extension provision was included to account for the industry-wide impacts of the Covid-19 pandemic and attendant supply-chain disruptions, as well as supply-chain risks that can be controlled or mitigated only by a product manufacturer. The first-year delivery was due just five months after the execution of the Agreement. As it turns out, pandemic-related disruptions did delay some of the buses from becoming operational by the anticipated operational date. Regardless, considering the Agreement’s extension provision, HET delivered most buses by the required date. The OIG ignored this provision in wrongly concluding “that all of the buses ... were delivered beyond the contractually required delivery date.”

45. **Incorrect / Misleading Statement #2:** “Our analysis shows that for the first 3 years of the agreement, the anticipated allotment of buses was not received until the third quarter (January 1 to March 31) of each fiscal year rather than the first quarter as required by the agreement.” This statement is incorrect. In fact, as identified in the Memorandum itself, HET delivered most buses before Q3. For example, in fiscal year 2023, HET delivered 60 out of 61

contracted buses before Q3.

46. **Incorrect / Misleading Statement #3:** “We note that the contractor has notified MCPS that they will not be able to deliver the full complement of buses expected in FY2025.” This statement is misleading and omits crucial context. The Agreement recognized that the manufacturer, Thomas Built Buses, Inc. (“Thomas”), was still developing the electrified version of one of the types of buses that MCPS had contracted HET to provide (a so-called “short Type C” or special-education bus) to specifications in line with the diesel equivalent of such buses. The Agreement also recognized that there was a risk that its development could be delayed meaningfully into the contract performance period. For fiscal year 2025, Thomas had not completed its development of that particular type of bus (i.e., short Type C). HET presented MCPS with other options for delivery of 120 electric buses in fiscal year 2025, including electric short Type C buses from other manufacturers. MCPS, however, would consider only options offered by Thomas. MCPS then ordered 90 diesel short Type C buses from Thomas, leaving only 30 remaining fiscal year 2025 bus slots for HET to fill with regular-length Type C electric buses. Given these developments, HET could deliver, at most, 30 buses for fiscal year 2025. The Memorandum omits these intervening developments in stating that HET did not deliver “the full complement of buses expected in FY2025.” In fact, MCPS addressed this and many other inaccuracies in its September 2024 letter response to the audit committee of the County Council of Montgomery County, Maryland.

47. **Incorrect / Misleading Statement #4.** “[T]he contractor has notified MCPS that they will not be able to meet the delivery goal for the 2024-2025 school year.” This statement is incorrect. HET did meet the delivery goal for 2024–2025. MCPS, however, informed HET that it would not accept more than 30 electric buses in fiscal year 2025. As explained above, this 30-bus

limit resulted from MCPS's decision to purchase *diesel* short Type C buses from Thomas rather than receive from HET *electric* short Type C buses from a manufacturer other than Thomas.

48. **Incorrect / Misleading Statement #5.** “The base service fee includes vehicle inspection, maintenance, and repair costs.” This statement is misleading. The Memorandum implicitly compares HET to a school-bus dealer (e.g., which would provide a vehicle, tags, warranty, and other dealer services). This is not an apposite comparison. HET is neither a dealer nor manufacturer of buses. A dealer selling a customer a bus is not the same as a provider (such as HET) fulfilling an electrification-as-a-service contract. Bus dealers do not have the physical, technological, and human-resources capabilities to provide these services. Among other things, these additional services include: (a) designing, procuring, and installing the charging system required to charge the buses; (b) creating a remote-charge-management system; and (c) assisting with ongoing operation and maintenance of the charging system. Simply put, the Memorandum equates HET to an ordinary bus dealer but ignores that HET provides many services that dealers do not provide—which is one of the reasons why dealers and customers alike partner with Highland Electric Fleets.

49. **Incorrect / Misleading Statement #6:** “The agreement was structured to allow the contractor to retain ownership of the buses and simply provide their use as a service to MCPS.” This statement is misleading. The RFP sought this ownership model, stating: “Provider shall own all equipment (e.g. vehicles and charging stations) and contract / lease to MCPS for its use in pupil transportation activities.” The Agreement reflected that RFP requirement. The Memorandum also wrongly suggests that MCPS was disadvantaged by not owning the buses. To the contrary, the third-party-ownership model allows owners with tax burdens to take advantage of certain tax benefits (e.g., accelerated depreciation and tax credits, which reduce the cost to the customer), to

take risk on residual value at the end of the term, and to absorb uncertain operational costs of maintenance and electricity.

50. **Incorrect / Misleading Statement #7.** “Due to the contractor not delivering the required electric school buses per the contracted timeframe, MCPS submitted a request to the [Board of Education] to purchase 90 diesel school buses at a cost of \$14,749,919. The [Board of Education] approved the request on October 12, 2023, in light of the anticipated electric bus shortfall.” This statement is misleading. Before it decided to order 90 diesel short Type C buses for fiscal year 2025, MCPS received a letter from the CEO of Thomas stating that the (originally contemplated) electric short Type C buses could be delivered before the (later requested) comparable diesel buses. Nonetheless, given the prior delays of Thomas with this prototype short Type C bus, and a desire to test it, MCPS ordered the diesel short Type C buses from Thomas. Ultimately, all the fiscal year 2025 electric regular-length Type C buses were delivered before the diesel buses, which are expected to arrive in fiscal Q3 2025. MCPS addressed this and many other inaccuracies in its September 2024 letter response to the audit committee of the County Council of Montgomery County, Maryland.

51. **Incorrect / Misleading Statement #8.** “During the OIG’s interviews with members of MCPS management, none of them could explain why [a fee relating to mechanical issues] was not assessed. Furthermore, the OIG learned that newly negotiated terms will likely eliminate the fee altogether in a future contract amendment.” This statement is misleading. HET and MCPS engaged in an ongoing process of amending the Agreement. As part of the process, the parties sought to create more objectively verifiable performance requirements and associated fees. The purpose of this proposed amendment is to create a simplified performance standard that should be easier for both parties to track and enforce. Here, as before, MCPS addressed many of these

inaccuracies in its September 2024 letter response to the audit committee for Montgomery County, Maryland.

52. **Incorrect / Misleading Statement #9.** “Unlike MCPS’ agreements to purchase diesel buses, the agreement between MCPS and the electric bus contractor does not include a provision that would allow MCPS to assess fees for late delivery of electric buses. If MCPS had followed the diesel bus agreement model, they could have assessed fees of more than \$1.8 million to offset incurred expenses related to late deliveries.” This statement is misleading. It wrongly equates diesel vehicles with electric vehicles, erroneously assuming that a party purchasing electric buses (a nascent technology then facing a pandemic-disrupted economy) could obtain the same historic contract terms as it could in purchasing diesel buses (a longstanding technology supported by ample manufacturers and well-established supply chains). But electrifying a bus fleet during a pandemic is a challenging endeavor, and it is difficult to imagine that any provider would agree to guaranteed delivery dates for electric vehicles backstopped by liquidated damages. Tellingly, the Memorandum does not point to any example of any contract with any school district or municipality for electric buses that includes such a provision.

53. In short, the OIG investigation and public Memorandum were based on fundamental misunderstandings of the Agreement, HET, and the wider electric-bus industry. Many of these issues could have been brought to the OIG’s attention, had it interviewed HET representatives before issuing its Memorandum. But the OIG did not bother to do so.

54. The OIG’s investigation led to negative press coverage of HET and MCPS, including news articles published in *The Washington Post* and regional media outlets, including the local WJLA ABC 7 News “I Team” and the Montgomery Perspective blog ([montgomeryperspective.com](http://montgomeryperspective.com)).

55. MacDonald has been interviewed by press outlets, including the WJLA ABC 7 News “I Team,” commenting on his efforts to undo the RFP process and impermissibly transform the Agreement into a multi-award contract.

56. Following one article, WJLA ABC 7 News “I Team” posted an editor’s note correcting an inaccurate headline and apologizing for the error.

57. The October 21 article and related video, included other factual inaccuracies propagated by AutoFlex and MacDonald, including conflating the Agreement and unrelated contracts to purchase diesel school buses,

58. Addressing this editor’s note, the Montgomery Perspective described it as incomplete. According to the blog, the article remained inaccurate, so “WJLA-TV still has some cleaning to do.” The Montgomery Perspective added, “[w]e expect accurate information from MCPS” and “[t]hose who report and comment on MCPS should adhere to the same standard.”

59. The WJLA ABC 7 News “I Team” article referenced a letter dated October 10, 2024 that MacDonald sent to MCPS. In that letter, which again conflates completely unrelated contracts, MacDonald: (1) encourages the OIG to review a purchase of 70 diesel buses for 2025 deployment; and (2) reiterates that the Agreement and the RFP should be modified to “change the award into a Multiple-Award contract.”

**B. Seeking to correct the record, HET contacted the OIG to explain why the Memorandum was inaccurate and misleading, but the OIG refused to meet with HET or address its concerns.**

60. Shortly after the Memorandum was issued, HET contacted the OIG, explaining that it was interested in submitting comments and clarifications to the record, as HET had not been interviewed about the contract or performance thereunder prior to the Memorandum’s issuance.

61. In response, an unidentified individual with the OIG stated that HET was “free to



submit [its] comments and clarifications to this email address and, perhaps better still, provide them to MCPS for consideration as they work to develop corrective actions to address noted deficiencies.”

62. From there, HET requested an opportunity to meet with the OIG to explain its concerns with the inaccuracies in the Memorandum.

63. Nearly a week later, and not having received a response from the OIG, HET again followed up with the OIG, reiterating that HET “would like to address certain items in the [Memorandum] that [it] view[ed] as inaccurate or missing critical context.” HET added that the OIG had failed to consider any evidence from HET, so HET would “like to share that evidence with [the OIG] and work with [the OIG] on correcting the record so that Montgomery County taxpayers and other interested stakeholders are receiving accurate information.” This meeting was important, as HET “was not invited to review or discuss” the Memorandum before its release. HET also discussed the harm from the OIG’s misguided Memorandum. Since the Memorandum’s issuance, HET had “been on the receiving end of negative press.”

64. HET also noted that the Memorandum’s “incorrect and noncontextualized information ... may result in economic harm to HET well beyond [its] contract with MCPS.” And the Memorandum “may also unduly hinder MCPS’s efforts to transition more of its bus fleet to electric buses.” Ultimately, HET sought a meeting with the OIG so that it “may consider corrections to the record.”

65. In response, the OIG (again through an unidentified correspondent) stated that its “legal counsel is away from the office this week and the beginning of next week,” but it pledged to respond “after discussing it with them upon their return.”

66. The OIG later declined HET’s request for a meeting, stating that HET could submit

“comments and clarifications” to the OIG’s general email address.

**C. Following the Memorandum, HET and MCPS continued to negotiate issues under the Agreement, including amendment.**

67. Under pressure from the OIG’s flawed findings that MCPS ought to have enforced rights under the Agreement that MCPS did not have, MCPS wrote to HET in a letter dated August 14, 2024, requesting more than \$350,000 in fees for buses that allegedly remained out of service for more than five days and citing the same inapplicable provision—which provided for a fee of \$100 per day—that the OIG referenced in the Memorandum. MCPS also requested that the base-service-fee be reduced, on a pro rata basis, to account for any operational delays, seeking more than \$1.5 million.

68. HET and MCPS negotiated issues relating to MCPS’s request.

69. HET has negotiated making certain pro rata payments to MCPS and a good-faith payment related to delayed buses, even if not required under the Agreement.

**III. After submitting a losing bid for the MCPS contract, AutoFlex repeatedly sought to undermine HET, pursuing baseless legal challenges and interfering with the Agreement.**

**A. For years following MCPS’s 2020 award to HET, AutoFlex continued to pursue unfounded legal challenges to the award.**

70. In the years after its last-place finish in the bidding process, AutoFlex has pursued a spate of challenges to the procurement process.

71. Both the Montgomery County Board of Education and the Maryland State Board of Education affirmed the decision to award the school-bus electrification contract to HET.

72. In August 2021, AutoFlex petitioned for judicial review in the Circuit Court for Montgomery County. *In the Matter of AutoFlex Fleet Inc.*, No. 486843V (Cir. Ct. Montgomery Cnty.). In that proceeding, AutoFlex baselessly alleged that MCPS showed favoritism toward HET in the procurement process and wrongly selected HET from among the four responding proposals.

As part of its challenge, AutoFlex asked the circuit court to take judicial notice of news reports that two MCPS employees had been suspended for alleged financial improprieties relating to a MCPS vendor when AutoFlex itself proposed to use the same vendor.

73. The circuit court denied AutoFlex's challenge. It affirmed the MCPS's decision to award the contract to HET. In reaching that decision, the circuit court denied AutoFlex's request for judicial notice of the announced suspensions.

74. AutoFlex appealed that decision. The appellate court vacated the circuit court's decision and remanded for further proceedings. *Matter of AutoFlex Fleet, Inc.*, 314 A.3d 711 (Md. App. 2024), *reconsideration denied* (June 3, 2024).

75. In its decision, the appellate court focused on the judicial-notice issues. The appellate court noted that the two suspended MCPS employees—Director Todd Watkins and Assistant Director Charles Ewald—had since pleaded guilty to misconduct, and the court took judicial notice of those guilty pleas.

76. The appellate court decision noted that MCPS's review committee for the RFP consisted of four MCPS officials, including Watkins and Ewald.

77. The appellate court decision did not state or suggest that the other two members of the review committee (i.e., personnel other than Ewald or Watkins) engaged in any alleged misconduct.

78. The appellate court decision did not state or suggest that the MCPS superintendent, in recommending that the Montgomery County Board of Education award the MCPS contract to HET, engaged in any alleged misconduct.

79. The appellate court decision did not state or suggest that HET was aware of any of the alleged misconduct.

80. The appellate court decision did not hold that MCPS wrongly awarded the Agreement to HET.

81. The appellate court decision referenced MCPS's "existing diesel bus vendor, American Truck & Bus ('ATB')." The court noted AutoFlex's argument that Ewald "exploited his relationship with ATB and its president to misdirect payments from that account to himself." In reciting AutoFlex's argument, the court also noted that AutoFlex described HET, incorrectly, as "an apparent affiliate of the exploited bus vendor," ATB.

82. AutoFlex's characterization of HET as an ATB affiliate, as reflected in the appellate decision, is factually and legally incorrect. AutoFlex must have known that this characterization was incorrect because if ATB had been an affiliate of HET (as opposed to a proposed supplier), it is unlikely that ATB also would have supported AutoFlex's bid as its proposed supplier—but it did, as the procurement record shows.

83. An "affiliate" is an entity that controls, is controlled by, or is under common control with another entity.

84. For instance, the current version of *Black's Law Dictionary* defines an "affiliate" as "[a] corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation."

85. HET is not an "affiliate" of either ATB or Thomas.

86. HET does not hold (and has never held) any equity shares, voting interest, or other ownership in either ATB or Thomas.

87. ATB does not hold (and has never held) any equity shares, voting interest, or other ownership in HET.

88. Thomas does not hold (and has never held) any equity shares, voting interest, or

other ownership in HET.

89. There is no interlocking management, identity of interests among family members, or shared use of employees as between HET and either ATB or Thomas.

90. Aside from contracts related to the purchasing of electric school buses and the storage of spare parts for HET's electric school buses, HET does not have (and has never had) any contractual arrangements (whether formal or informal, executed or unexecuted, oral or written), including joint ventures and partnerships, with ATB.

91. Under the Agreement, ATB continued to be the dealer that sold the buses used by MCPS for pupil transportation, as it had been before the Agreement. After the Agreement took effect, however, ATB sold its electric buses to HET as prime vender under the Agreement and continued to sell diesel buses directly to MCPS.

92. In its July 2024 article reporting on the Memorandum, *The Washington Post* referenced MCPS's "practices within its transportation department," including the misconduct involving Watkins and Ewald, as involving "issues unrelated to the electric bus fleet."

**B. AutoFlex has inappropriately exploited its leadership position in a coalition group to pressure MCPS to abandon HET and partner with AutoFlex.**

93. The Greater Washington Region Clean Cities Coalition (the "Coalition") is a public-private partnership in the Washington, D.C. metropolitan area. Its website states that the Coalition "fosters economic, environmental, and energy security by working locally to advance affordable, domestic transportation fuels, energy efficient mobility systems, and other fuel-saving technologies and practices."

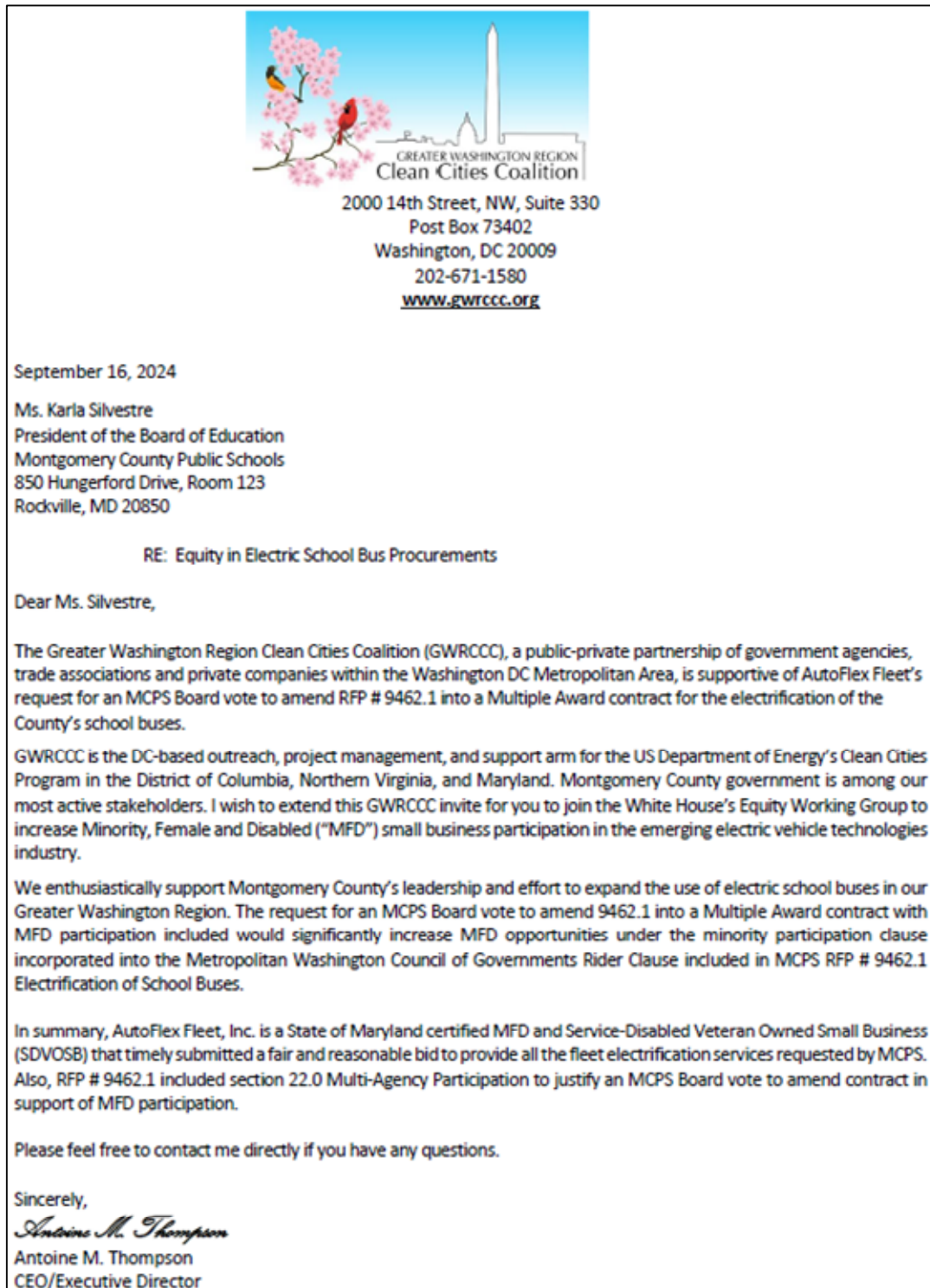
94. AutoFlex's MacDonald is the treasurer of the Coalition.

95. AutoFlex is a member of the Coalition.

96. A letter dated September 16, 2024 was sent to the MCPS President of the Board of

Education (the “Letter”). The Letter appeared on Coalition letterhead and bore a typewritten signature for Antoine M. Thompson, the CEO/Executive Director of the Coalition.

**Figure 1**



97. The Letter stated that the Coalition was “supportive of AutoFlex Fleet’s request for an MCPS Board vote to amend RFP # 9462.1 into a Multiple Award contract for the electrification of the County’s school buses.”

98. The Letter touted AutoFlex, describing it as having “timely submitted a fair and reasonable bid to provide all the fleet electrification services requested by MCPS.”

99. After learning of the Letter, HET contacted the Coalition. On or about October 18, 2024, a Highland representative spoke by telephone with Executive Director Thompson about the Letter. Highland noted that AutoFlex was contacting customers of Highland Electric Fleets, and its related subsidiaries, and circulating the Letter, which purported to be a letter of support signed by Executive Director Thompson.

100. AutoFlex and/or MacDonald did, in fact, circulate the Letter to customers of Highland Electric Fleets.

101. In response, Executive Director Thompson stated that he had no knowledge of the letter.

102. On information and belief, AutoFlex and/or MacDonald were involved in preparing the Letter.

103. On information and belief, AutoFlex and/or MacDonald added Executive Director Thompson’s signature to the Letter without his prior authorization.

104. MacDonald has inappropriately exploited his leadership role in the Coalition in other ways as well.

105. For instance, on October 17, 2024, the Coalition held an annual conference in Greenbelt, Maryland. The conference included remarks and panel discussions from various speakers. Several speakers and panelists made negative remarks, including in their opening

remarks, regarding HET and the Memorandum.

106. On information and belief, AutoFlex and/or MacDonald communicated with the speakers and panelists at the Coalition’s conference about HET and/or the OIG investigation and Memorandum.

**C. AutoFlex and MacDonald have interfered with Highland’s other customer relationships, seeking to undermine Highland.**

107. AutoFlex and MacDonald have interfered with several of Highland’s client relationships.

108. On or about February 17, 2023, MacDonald emailed (among others) a panelist at the 2023 Energy Independence Summit. The panelist was a consultant with AKB Strategies LLC (“AKB”). MacDonald’s email forwarded “public testimony of the Parents Coalition of Montgomery County” that was critical of HET. MacDonald also referenced an “attached news article” covering MCPS. He added, “please note there is current litigation of the awarded EV bus contract in Maryland Courts, and a related on-going criminal investigation.”

109. MacDonald falsely and knowingly referred to the “criminal investigation”—i.e., pertaining to Watkins and Ewald—as “related” to the Agreement. MacDonald in bad faith sought to tie the Agreement to the “criminal investigation” through AutoFlex’s groundless claim that ATB and HET were affiliates, even though AutoFlex and MacDonald knew that there was no affiliate relationship, and that AutoFlex’s own bid included ATB, and the referenced investigation did not relate to the Agreement.

110. MacDonald’s email copied Executive Director Thompson of the Coalition and employees from the World Resources Institute (“WRI”), a global research nonprofit.

111. MacDonald’s email wrongly implied that WRI was engaging a consultancy (i.e., AKB) for a case study and suggested that this supposed case study should address “lessons



learned” from the Agreement, including that it was supposedly not budget neutral.

112. The email was forwarded from WRI to HET. WRI confirmed that it “did not promise a case study on this topic.”

113. The July 31, 2024 article in *The Washington Post* expressly described the alleged misconduct involving Watkins and Ewald as involving “issues unrelated to the electric bus fleet.”

114. AutoFlex and MacDonald have spread misinformation about Highland to various media outlets, including an ABC news affiliate in Maryland and the Montgomery Perspective.

115. AutoFlex and MacDonald’s efforts to spread disinformation about Highland to Baltimore County, Maryland are illustrative.

116. Since October 2023, a Highland Electric Fleets subsidiary has had an agreement with the Board of Education of Baltimore County, Maryland (“Baltimore County”).

117. In an October 3, 2024 email, MacDonald wrote to Baltimore County Public Schools, stating that AutoFlex understood that Baltimore County was “in the process of transitioning to fleet electrification” and was “in [the] early stage of procurements.”

118. MacDonald’s email then described AutoFlex’s efforts to be made a party to the Agreement between HET and MCPS. MacDonald’s email also included a link to a negative news article reporting on MCPS and HET (including the OIG investigation and Memorandum) and forwarded the Letter, ostensibly from the Coalition.

Figure 2

AutoFlex Fleet is in current communications with MCPS in regard to being added under a Multiple Award Contract Modification to the current MCPS Electric School Bus contract.

The MCPS has the contract clause that allowed BCPS to order your current Electric School Buses and there is now an opportunity to add other EV School Bus and EVSE Charging manufacturers soon to be available for BCPS orders.

The current MCPS contract and vendor have been in the media lately as a result of MCPS consultant recommendations and OIG investigations such as the below WTOP News report:

<https://wtop.com/montgomery-county/2024/10/latest-revelation-over-electric-bus-contract-at-montgomery-co-schools-provides-a-jolt-at-hearing/>



[Latest revelation over electric bus contract at Montgomery Co. schools provides a jolt at hearing - WTOP News](https://wtop.com/montgomery-county/2024/10/latest-revelation-over-electric-bus-contract-at-montgomery-co-schools-provides-a-jolt-at-hearing/)

Montgomery County school officials were in the hot seat over an electric school bus contract when they shocked members of a county audit committee at a hearing.

[wtop.com](https://wtop.com)

**Also, Attached is a letter of support to MCPS from Clean Cities Coalition for Washington DC and Baltimore in support of AutoFlex Fleet being added to the MCPS Electric School Bus contract.**

If you or your BCPS Procurement Office have any questions, please give us a call to schedule a meeting at your convenience.

All the best,

Luis

119. The email was forwarded to HET, with the writer stating: “Your friends are emailing everyone....”

120. MacDonald’s email and related attachments are revealing. They show that AutoFlex and MacDonald: (1) knowingly contacted a party with an existing contractual agreement with a subsidiary of Highland Electric Fleets; (2) encouraged MCPS to violate applicable procurement laws by reopening a closed RFP; (3) encouraged MCPS to breach the Agreement, by transforming the Agreement into a multi-award contract to add AutoFlex as a party; (4) encouraged the existing customer of Highland Electric Fleets to contract with AutoFlex, citing “an opportunity to add other EV School Bus and EVSE Charging manufacturers soon to be available for BCPS orders”; and (5) spread negative news coverage of Highland (including references to the OIG Memorandum); and (6) disseminated the falsified Letter.

121. On information and belief, AutoFlex and MacDonald have engaged in similar tactics with other Highland customers, including school authorities in: (1) Baltimore City, Maryland; and (2) Manassas, Virginia.

**1. Baltimore City, Maryland**

122. Since early 2023, Highland Baltimore has had an agreement with the Baltimore City Board of School Commissioners (“Baltimore City”), which operates the public school system for Baltimore, Maryland. The contract provides that Highland Baltimore will supply 25 buses and related infrastructure, among other things, to Baltimore City.

123. In performing under this contract, Highland Baltimore had to overcome significant global economic headwinds, including supply-chain disruptions.

124. Baltimore City has delayed payment under its contract. Among other things, it has failed to return an operational certificate, which triggers payment obligations. Baltimore City

delayed the operational certificate (and thus payment) as HET was negotiating with MCPS.

125. The full price for the first year of the contract between Baltimore City and Highland Baltimore is approximately \$300,000.

126. On or about November 11, 2024, Baltimore City proposed an operational date that was several months after the actual operational date of the vehicles. Baltimore City has not paid Highland Baltimore the contract price when owed and the adjusted operational date will result in the delay of payment to Highland Baltimore (extending Highland Baltimore's carrying cost related to the installation and procurement of equipment), although the delayed operational date does not reduce the contract term or the overall contract price.

127. On information and belief, AutoFlex and MacDonald have communicated with Baltimore City, including about HET or MCPS, to encourage Baltimore City not to perform under its agreement with Highland Baltimore.

128. On information and belief, AutoFlex and MacDonald's wrongful conduct has led Baltimore City to delay paying Highland Baltimore in breach of their agreement.

## **2. Manassas, Virginia**

129. Since September 2022, Highland Manassas has had an agreement with the Manassas City School Board ("Manassas City"), a school division of the Commonwealth of Virginia.

130. Buses for the Manassas City 2024 deployment were delivered late due to delays of Thomas (and its dealer, Sonny Merryman, Inc.) in manufacturing and delivering the buses. The first-year payment for these buses has been adjusted utilizing the contractual pro-rata adjustment provision that reduces the amount of the first fiscal year payment for the period between the anticipated and the actual operational date of the buses, but that does not reduce the contract term

or the overall contract price.

131. Manassas City also has demanded that Highland Manassas pay, and Highland Manassas will pay, in excess of \$20,000 as a non-contractual, good-faith payment to reimburse Manassas City for certain maintenance and overhead costs associated with retaining diesel buses while the electric buses were delivered late by Thomas. In seeking this non-contractual payment, Manassas City has cited MCPS's agreement with HET, the Memorandum, and the ongoing media coverage that has negatively impacted Manassas City and has resulted in the community questioning its contract with Highland Manassas.

132. That negative press coverage includes an article published by WTOP News on or about August 17, 2024.

133. On information and belief, AutoFlex and MacDonald have communicated with Manassas City, including about HET or MCPS, to encourage Manassas City not to perform under its agreement with Highland Manassas.

134. AutoFlex and MacDonald's wrongful conduct has led Manassas City to demand non-contractual payments from Highland Manassas.

**D. AutoFlex and MacDonald have unlawfully attempted to reopen and modify the 2020 RFP, which is precluded by the Agreement and the relevant law.**

135. AutoFlex and MacDonald have encouraged MCPS to reopen and modify a long-closed RFP to add new requirements and convert it, after the competition, to a multiple award RFP solely for AutoFlex and—also unilaterally—to modify the Agreement into a multiple-award contract to add AutoFlex. This is unlawful.

136. The Agreement was awarded to HET following the evaluation of competitive sealed proposals from four offerors pursuant to an RFP that expressly provided for a single award to one bidder. As the RFP stated: "MCPS plans to enter a contractual agreement with *one*

*respondent* to whom the award is made.” RFP, § 29 (emphasis added).

137. HET was one of the respondents to the RFP.

138. AutoFlex was one of the respondents to the RFP.

139. Montgomery County competition laws and regulations govern the permissible procurement process and mandate that County requirements be competed under solicitation either through sealed bids, or sealed proposals and competitive negotiations, absent a formal determination that there is only one source available, as provided by Montgomery County Code Section 11B-14. Montgomery County Code Section 11B-9(a) states: “Contracts must be awarded by competitive sealed bidding except as otherwise authorized in this Chapter or regulations.” For complex services, Montgomery County Code Section 11B-10(a) states: “Generally a contract for professional services should be awarded by competitive sealed proposals,” which are distinct from competitive sealed bids.

140. AutoFlex’s proposal for MCPS to add it to the closed RFP violates these provisions. Were it to adopt AutoFlex’s proposal, MCPS would be awarding an unjustified sole-source contract outside of the required competitive procurement process. There already was a relevant competitive procurement process. It concluded in 2020. AutoFlex finished in last place and was in fact ineligible for the award as it submitted a technically unacceptable proposal.

141. The Agreement similarly prohibits AutoFlex and MacDonald’s request to add AutoFlex as a party. Under the Agreement’s provisions, MCPS may not unilaterally rewrite the Agreement to transform it from a single-award contract into a multiple-award contract.

142. Specifically, under its “Changes” section, the Agreement provides: “Material changes to the contract may only be made by negotiations between MCPS and the Contractor and an executed bilateral modification to the Contract.”

143. As this provision makes clear, MCPS may not unilaterally make a material change to the Agreement. Transforming the Agreement from a single-award contract to a multiple-award contract would qualify as a material change.

144. On information and belief, AutoFlex and MacDonald's meddling in HET's relationship with MCPS and interference has caused MCPS to delay amending the Agreement.

### **CLAIMS FOR RELIEF**

#### **Count One: Tortious Interference With Contractual Relations (Brought by HET against AutoFlex and MacDonald)**

145. HET realleges and incorporates paragraphs 1 through 144 of its complaint as if fully set forth and restated herein.

146. AutoFlex and MacDonald have tortiously interfered with HET's contractual relations.

147. A contract (i.e., the Agreement) exists between HET and MCPS.

148. AutoFlex and MacDonald are aware of, and have knowledge of, the Agreement.

149. AutoFlex and MacDonald have maliciously and intentionally interfered with the Agreement, including by: (a) seeking to modify it into a multi-award contract, even though the Agreement precludes unilateral material modifications; (b) seeking to become a party to the Agreement, contrary to laws and regulations controlling the competitive procurement process; (c) inappropriately using the nonprofit Coalition, including by sending a Letter under false pretenses, to encourage MCPS to add AutoFlex to the Agreement and to undermine HET; (d) representing or suggesting that the nonprofit WRI requested a case study concerning the Agreement in order to undermine HET and promote AutoFlex's ongoing baseless protest of the award; (e) on information and belief, by inappropriately encouraging, directly or indirectly through their nonprofit proxies, the OIG's investigation, and providing false and misleading information

to the OIG, leading to the erroneous and rushed Memorandum and attendant negative press coverage of HET and MCPS and HET's significant non-contractual payments; and (f) on information and belief, by inappropriately providing, directly or indirectly through their nonprofit proxies, false and misleading information to regional news outlets, including to the local WJLA ABC 7 News "I Team" and the Montgomery Perspective, which have repeated such false and misleading information in their reporting to the detriment of HET.

150. AutoFlex and MacDonald's interference has been a hindrance to the performance of the Agreement. Among other things, AutoFlex and MacDonald's actions have caused MCPS to demand significant non-contractual concessions (including monetary concessions and new contractual obligations) from HET and have delayed a long-awaited amendment by about 20 months. MCPS has sought payments from HET without complying with contractual requirements for notice and payment. AutoFlex and MacDonald also have invited MCPS to breach the Agreement by unilaterally transforming the Agreement into a multiple-award contract.

151. HET also has been forced to bear risks that it did not bargain for in the Agreement. Consistent with the Agreement, HET ordered charging equipment for 326 buses. HET seeks to complete installation of that equipment and receive payment. But the lack of amendment has caused uncertainty around arrangements for installation and payment, damaging HET. Without an amendment, HET is procuring goods and services entirely at risk, but it continues to do so to preserve its relationship with MCPS. The delayed amendment has also created a negative and incorrect public perception of the relationship between HET and MCPS under the Agreement, including from the OIG, prospective customers, financing parties, insurers, and others.

152. AutoFlex and MacDonald's interference has damaged HET. Among other things, AutoFlex's interference has caused HET to make significant non-contractual good-faith monetary



payments of more than \$350,000 and pro rata payments of more than \$1.5 million.

**Count Two: Tortious Interference With Prospective Economic Advantage  
(Brought by HET against AutoFlex and MacDonald)**

153. HET realleges and incorporates paragraphs 1 through 152 of its complaint as if fully set forth and restated herein.

154. AutoFlex and MacDonald have engaged in malicious, intentional, and willful acts, including by: (a) seeking to modify the Agreement into a multi-award contract, even though the Agreement precludes unilateral material modifications; (b) seeking to become a party to the Agreement, contrary to laws and regulations controlling the competitive procurement process; (c) on information and belief, inappropriately using the nonprofit Coalition, including by sending a Letter under false pretenses, to encourage MCPS to add AutoFlex to the Agreement and to undermine HET; and (d) on information and belief, by inappropriately encouraging the OIG's investigation, leading to the erroneous and rushed Memorandum and attendant and repeated negative press coverage of HET and MCPS and HET's significant non-contractual payments.

155. AutoFlex and MacDonald's acts were calculated to cause damage to HET in its lawful business, including by disrupting HET's relationship with MCPS.

156. AutoFlex and MacDonald's acts were done with an unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of AutoFlex and MacDonald, which constitutes malice.

157. HET has suffered actual damage and loss. Among other things, it has been deprived of an amended contractual agreement with MCPS. On information and belief, AutoFlex and MacDonald's meddling in HET's relationship with MCPS and interference with the Agreement has caused MCPS to delay amending the Agreement.

**Count Three: Tortious Interference With Contractual Relations  
(Brought by Highland Baltimore against AutoFlex and MacDonald)**

158. Highland Baltimore realleges and incorporates paragraphs 1 through 157 of its complaint as if fully set forth and restated herein.

159. A contract exists between Highland Baltimore and Baltimore City.

160. AutoFlex and MacDonald are aware of, and have knowledge of, Highland Baltimore's contract with Baltimore City.

161. AutoFlex and MacDonald have maliciously and intentionally interfered with the contract, including by encouraging Baltimore City to delay or withhold contractual payments that it owes Highland Baltimore under the contract.

162. AutoFlex and MacDonald's interference has been a hindrance to the performance of the contract. Among other things, AutoFlex's actions have caused Baltimore City to delay or withhold contractual payments that it owes Highland Baltimore under the contract, in breach of the contract.

163. AutoFlex and MacDonald's interference has damaged Highland Baltimore. Among other things, AutoFlex's interference has deprived Highland Baltimore of monetary payments from Baltimore City of more than \$100,000, excluding interest.

**Count Four: Tortious Interference With Contractual Relations  
(Brought by Highland Manassas against AutoFlex and MacDonald)**

164. Highland Manassas realleges and incorporates paragraphs 1 through 163 of its complaint as if fully set forth and restated herein.

165. A contract exists between Highland Manassas and Manassas City.

166. AutoFlex and MacDonald are aware of, and have knowledge of, Highland Manassas's contract with Manassas City.

167. AutoFlex and MacDonald have intentionally interfered with the contract, including by encouraging Manassas City to delay or withhold contractual payments that it owes Highland Manassas under the contract.

168. AutoFlex and MacDonald's interference has been a hindrance to the performance of the contract. Among other things, AutoFlex and MacDonald's actions have caused Manassas City to delay or withhold contractual payments that it owes Highland Manassas under the contract, in breach of the contract.

169. AutoFlex and MacDonald's interference has damaged Highland Manassas. Among other things, AutoFlex's interference has deprived Highland Manassas of monetary payments from Manassas City of more than \$14,250, excluding interest.

**Count Five: Unfair Competition  
(Brought by Highland against AutoFlex and MacDonald)**

170. Highland realleges and incorporates paragraphs 1 through 169 of its complaint as if fully set forth and restated herein.

171. AutoFlex and MacDonald have engaged in unfair competition, including by interfering with the contractual agreements previously addressed (i.e., HET's Agreement with MCPS, Highland Baltimore's contract with Baltimore City, and Highland Manassas's contract with Manassas City).

172. AutoFlex and MacDonald's actions maliciously and substantially interfered with Highland's business in an unethical and illegal manner. Among other things, AutoFlex and MacDonald have: (a) unlawfully attempted to modify the Agreement, contrary to the Agreement's provisions; (b) unlawfully attempted to add AutoFlex as a party to the Agreement, contrary to laws and regulations controlling the competitive procurement process; (c) on information and belief, inappropriately used MacDonald's leadership position with the Coalition and unlawfully forged

the Letter, preparing and disseminating it without prior authorization; and (d) inappropriately and unethically encouraged and disseminated negative news coverage of HET and MCPS.

173. AutoFlex and MacDonald's actions were dishonest and unfair, and tainted by fraud and/or deception.

**Count Six: Injurious Falsehood  
(Brought by HET against AutoFlex and MacDonald)**

174. HET realleges and incorporates paragraphs 1 through 173 of the complaint as if fully set forth and restated herein.

175. AutoFlex and MacDonald published, to third parties, falsehoods that tended to disparage HET's business, including by: (a) falsely claiming that there was a "a related on-going criminal investigation" pertaining to the Agreement and HET; and (b) providing false and inaccurate information to news outlets, including the WJLA ABC 7 News "I Team," which disparaged HET's performance under the Agreement.

176. In publishing these falsehoods, AutoFlex and MacDonald acted with actual malice or with reckless disregard for the truth. AutoFlex and MacDonald's falsehoods were derogatory to HET's business and reputation, and were calculated to prevent others from dealing with HET or otherwise to interfere with HET's relations with others to HET's disadvantage.

177. AutoFlex and MacDonald's falsehoods were not privileged.

178. AutoFlex and MacDonald's falsehoods have played a material and substantial part in inducing others not to deal with HET. Among other things, AutoFlex and MacDonald's actions have caused MCPS to demand significant concessions (including monetary concessions) from HET and have delayed a long-awaited amendment by about 20 months.

179. AutoFlex and MacDonald's falsehoods were per se defamatory, including MacDonald's false statement that there was a "a related on-going criminal investigation"

pertaining to the Agreement and HET.

180. In the alternative, HET has suffered special damages. Among other things, AutoFlex and MacDonald's falsehoods regarding the Agreement have caused a diminution of HET's business with MCPS, including by causing MCPS to delay amending the Agreement and to demand non-contractual monetary concessions from HET.

**Count Seven: Declaratory Relief Under 28 U.S.C. §§ 2201, 2202  
(Brought by HET against AutoFlex and MacDonald)**

181. HET realleges and incorporates paragraphs 1 through 180 of its complaint as if fully set forth and restated herein.

182. The Declaratory Judgment Act provides: "In a case of actual controversy within its jurisdiction, ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201.

183. This Court has jurisdiction over this matter.

184. This case presents an actual case and controversy that is immediate and justiciable. The dispute between the parties is real, substantial, definite, and concrete, implicating the legal relations of parties with adverse legal interests.

185. The requested declaratory judgment will serve a useful purpose in clarifying and settling the legal relations between the parties.

186. The declaratory judgment will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to this proceeding.

187. No other proceeding involving these issues and parties exists.

188. The RFP stated: "MCPS plans to enter a contractual agreement with *one respondent* to whom the award is made." RFP, § 29 (emphasis added).

189. HET was a respondent within the meaning of the RFP.

190. HET entered the Agreement pursuant to the RFP.

191. Montgomery County competition laws mandate that County requirements be competed under a solicitation either through sealed bids, or sealed proposals and competitive negotiations, absent a formal determination that there is only one source available (Montgomery County Code Section 11B-14).

192. Montgomery County Code Section 11B-9(a) states: “Contracts must be awarded by competitive sealed bidding except as otherwise authorized in this Chapter or regulations.”

193. For complex services, Montgomery County Code Section 11B-10(a) states: “Generally a contract for professional services should be awarded by competitive sealed proposals,” as distinct from competitive sealed bids.

194. The process for submitting proposals responsive to the RFP is closed.

195. AutoFlex and MacDonald are seeking to participate in efforts to electrify MCPS’s school-bus fleet, despite that bidding process having been closed since 2020.

196. HET seeks a declaration that: (a) the competitive process for proposals responsive to the RFP is closed (i.e., MCPS is not soliciting proposals pursuant to the RFP); (b) the RFP upon which offerors based their proposals and was the basis for competition provided that it was for a “contractual agreement with one respondent”; (c) one respondent, HET, entered into the Agreement pursuant to the RFP; (d) Montgomery County Code Section 11B-9(a) requires a contract to “be awarded by competitive sealed bidding except as otherwise authorized in this Chapter or regulations” and Montgomery County Code Section 11B-10(a) authorizes competitive sealed proposals as the only applicable competitive procurement alternative: “Generally a contract for professional services should be awarded by competitive sealed proposals [as distinct from

competitive sealed bids]”; and (e) neither the “Chapter” nor the “regulations” referenced in Montgomery County Code Sections 11B-9(a), 11B-10(a), or 11B-14 (stating the limited exceptions to a competitive procurement where, e.g., there is a single source) permit a non-competitive award to AutoFlex pursuant to the RFP.

#### **DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, Highland hereby demands a jury trial on all issues so triable.

#### **REQUEST FOR RELIEF**

For the foregoing reasons, HET, Highland Baltimore, and Highland Manassas respectfully request that the Court enter judgment in their favor and award the following relief:

Award them damages;

Enter an order providing for the requested declaratory relief;

Award them their reasonable costs and attorneys’ fees;

Grant their request for a trial by jury on all jury-triable issues; and

Grant any other relief as this Court deems necessary, just, and proper.

November 21, 2024

Respectfully submitted,

*s/ Patrick A. Harvey*

---

Charles L. Solomont (application forthcoming)

carl.solomont@morganlewis.com

Andrew M. Buttaro (application forthcoming)

andrew.buttaro@morganlewis.com

**MORGAN, LEWIS & BOCKIUS LLP**

One Federal Street

Boston, Massachusetts 02110-1726

Tel.: (617) 341-7700

Fax: (617) 341-7701

Patrick A. Harvey (Bar No. 18758)

patrick.harvey@morganlewis.com

**MORGAN, LEWIS & BOCKIUS LLP**

1111 Pennsylvania Avenue, NW

Washington, DC 20004-2541

Tel.: (202) 739-3000

Fax: (202) 739-3001

*Counsel for Plaintiffs HET MCPS, LLC; HEF-P  
Baltimore City, LLC; and HEF-P Manassas,  
LLC*



# Exhibit 1

**Department of Materials Management  
Procurement Unit  
MONTGOMERY COUNTY PUBLIC SCHOOLS  
Rockville, Maryland**

**Request for Proposal #9462.1**

**Electrification of School Buses**

**1.0 Intent**

The purpose of the Request for Proposals (RFP) is to obtain responses from responsible companies who have the experience, capability, equipment and services necessary to provide a turnkey budget neutral school bus electrification program for Montgomery County Public Schools (MCPS) diesel school bus fleet. This program will include providing the vehicles, charging infrastructure, operations management and all other necessary services to Montgomery County Public Schools (MCPS) Department of Transportation (DOT) in accordance with Terms, Conditions and Specifications stated herein. MCPS seeks proposals that will support the acceleration of this electrification effort using a bundle of financing and services.

**2.0 Introduction**

In addition to being the 14<sup>th</sup> largest school system in the United States, MCPS has the 7<sup>th</sup> largest school bus fleet in the United States, with more than 1,300 buses, served by five facilities at transportation depots strategically located throughout the county. Our around-the-clock maintenance ensures safe and dependable transportation for more than 160,000 students. MCPS fleet maintenance is a full-service repair unit that includes authorized warranty repair, body repair, and fuel distribution.

MCPS has been considering the transition of its existing and primarily diesel school bus fleet to all electric and zero emission vehicles for many years. However more recently, this transition is now possible as manufacturers roll out new all-electric products for pupil transportation with scale. Unlike other improvements MCPS DOT has made over the years, a complete conversion to electrification is a complex task and requires outside help. MCPS expects this transition will take place over many years, likely within the typical retirement and replacement cycles of the current bus fleet and utilize almost all of its existing staff.

The current replacement run rate is around 115 vehicles per year, which includes replacement of the fleet's full size and special education school buses. Total fleet is currently 1,378 school buses all together. These vehicles are spread among 5 bus depots across Montgomery County. Each depot has a full-service maintenance facility and fuel site. The average useful life of the vehicles is about 12 years. There are over 1,700 drivers and bus staff, 103 full time mechanics, and administrative staff.

### 3.0 Scope of Services

MCPS requests providers to deliver a budget neutral, fully Turn-key Electric School Bus Program, with possible multi-year contracts. The program shall include all planning, implementation, financing, training, management, and services necessary to convert MCPS's entire existing diesel school bus fleet, and associated five depots to electric. MCPS understands that an electric version of their current conventional Type C bus, used primarily for special education, is not yet available in the electric market. MCPS expects the buses mentioned above to be included in this project when a suitable platform becomes available. The provider will be required to select, implement, and operate charging stations; pay all project related upfront costs including but not limited to the vehicles and electric vehicle supply equipment (EVSE), all infrastructure required for the EVSE, and all other project costs; and deliver a robust vehicle charging and maintenance strategy that ensures vehicle uptime and guaranteed operating cost. Through this program, MCPS will continue to manage all aspects of dispatching, driving, and administration in-house, with additional collaboration on fleet maintenance and infrastructure operations with their comprehensive and experienced staff.

- a. **Equipment.** Provider shall own all equipment (e.g. vehicles and charging stations) and contract/ lease to MCPS for its use in pupil transportation activities.
- b. **Charging.** MCPS expects the Provider to offer multiple charging solutions and vehicle to grid (V2G) technology, i.e., solar, microgrid, traditional charging, etc. Provider shall design, engineer, install, commission, monitor, operate and maintain the Electric Vehicle Service Equipment (EVSE), in each case ethically and skillfully, in accordance with prudent industry practices in the state in which the Premises are located, and in compliance with all applicable rules, regulation and local building codes. For the avoidance of doubt, Provider shall manage all aspects of installation, interconnection, and commissioning of all EVSE equipment at the designated MCPS bus depots (see section F), schools, or other parking/charging locations. Provider shall pursue new and dedicated utility services with the electric utility companies. Provider shall manage, in partnership with MCPS, the charging of each vehicle on a daily basis, ensuring the charge is sufficient for each duty cycle. MCPS will give Provider reasonable access to each depot, school, or other parking/charging location for planning, construction, and operations.
- c. **Maintenance.** The Provider will be responsible for all significant maintenance costs associated with the equipment, although the existing MCPS maintenance staff can support certain vehicle maintenance. For the avoidance of doubt, the cost of all spare parts and labor shall be borne by the Provider, and included in the proposed scope of turn-key services. Provider shall also deliver a manufacturer's warranty covering all major vehicle components for a minimum of 10 years, or the equivalent mileage.
- d. **Training.** Provider shall be responsible for training essential MCPS operations, fleet maintenance, and leadership staff on various aspects of the program, which will be defined collaboratively between MCPS and the Provider at a later date. Also, the Provider shall be responsible for an annual onsite familiarization training for MCPS DOT's leadership team at the electric powertrain manufacturing facility, bus manufacturing facility, and the Provider's headquarters. All expenses are the responsibility of the Provider.

e. **Vehicle specifications.** See Attachment

f. **Bus depot specifications.**

**Shady Grove**

16651 Crabbs Branch Way  
Rockville, Maryland 20855  
Number of buses: 438

**Bethesda**

0901 Westlake Drive  
Rockville 20852  
Number of buses: 194

**Clarksburg**

13100 Shawnee Lane  
Clarksburg 20871  
Number of buses: 226

**Randolph**

1800 Randolph Road  
Silver Spring 20902  
Number of Buses: 228

**West Farm**

11920 Bournfield Way  
Silver Spring 20904  
Number of buses: 292

g. **Data/ Electrification Operations Management.** MCPS requires the provider to include a robust fleet charge management system and telematics software dashboard, preferably cloud-based, that can be collaboratively used by MCPS and the provider. MCPS shall have access to all data sources associated with this project. Also, MCPS strongly encourages building a system management structure that empowers MCPS essential staff to solve operational issues related to this project.

#### 4.0 **Contract Term**

At this time, MCPS does not have a defined contract term for this project. That being said, MCPS understands the likely hood of awarding a multi-year contract to the awarded provider.

Once approved, the contract providing turn-key services described above, are expected to deliver vehicles to MCPS in July of 2021 capable of full and necessary operation by August 15, 2021. Each fleet of vehicles shall be provided in accordance with the scope of services outlined herein for a term of twelve years, beginning in the first year for each of the 3 fleets as stipulated in the RFP. For avoidance of doubt, for the vehicles delivered in July of 2021, the Offeror shall provide the scope of services for a 12-year term beginning in August 2021.

MCPS also requests that provider propose a framework for contract extensions beyond the initial 12-year term. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued to the successful provider 365 days prior to the expiration of the original contract. The provider will have 60 days from the date of notification to return the notice acknowledging its intent to accept or reject the extension. Once the response is 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.

## **5.0 Award**

Awards shall be made to one successful vendor. MCPS understands that the bundled solution may be subcontracted to various separate entities but retains the right to evaluate provider's overall experience, school systems, state and local governments, and business model as a means of delivering an effective, efficient, and streamlined solution for MCPS. Notwithstanding, MCPS reserves the right to make awards, or no award, according to the best interests of MCPS.

## **6.0 Contract Termination**

MCPS reserves the right to cancel the contract in whole or in part at any time in accordance with Article 12 of the MCPS General Contract Articles. MCPS also reserves the right to cancel the contract with a Respondent for failure to comply or failure to fulfill the terms of this contract in accordance with Article 13 of the MCPS General Contract Articles

## **7.0 Pricing**

MCPS fully intends the provider of this contract and its various services to bundle the services as it has been described, line item by line item. The offeror's pricing proposal shall be a firm-fixed-price contract for the bundle of services outlined in the scope and provided to MCPS by one entity. Provider shall disclose financial assumptions as part of the overall project pricing proposal, i.e., credits, tax incentives, VW settlement funding, MCPS budgetary funding, etc. Providers shall describe in detail how the pricing and assumptions will work together to make this plan budget neutral, or as close as possible, over the lifetime of the electric vehicles. Proposals shall detail pricing for depot-only parking/charging and combined depot, school, other parking/charging locations plans. Schools or other parking/charging locations should be assumed to have a capacity of no more than 10 school buses. For estimated pricing purposes, use Gaithersburg High School (101 Education Blvd, Gaithersburg, MD 20877) as the sample school. Please provide a price for each batch of 10 buses that is moved from a depot facility to a school, including all charging infrastructure build out, etc.

## **8.0 Project Contact**

The MCPS project contact is:

Montgomery County Public Schools  
Department of Transportation

Attn: Charles Ewald  
 16651 Crabbs Branch Way  
 Derwood, Maryland 20855  
 Phone: 240-671-8063  
 Email: Charles\_d\_ewald@mcpsmd.org

All prospective offerors are cautioned that information relating to the proposed procurement may be obtained only from Laly Bowers, CPPB, Buyer II, Procurement Unit, Department of Materials Management by email [Laly A Bowers@mcpsmd.org](mailto:Laly_A_Bowers@mcpsmd.org). Any attempt to solicit information from other sources within the MCPS system may be cause for rejection of offeror's proposal.

## 9.0 References

All Contractors shall include a list of a minimum of three references who use the Contractor's services who can attest to their quality of work and, if possible, shall include school districts of comparable size to MCPS that have utilized the Respondents' services. Include names of client, contact person, email address and phone number of all references. Also, as an attachment, Contracts shall include a list of all current school district clients.

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

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

## 10.0 Format of Response

- 10.1 Response to this RFP shall be submitted in the same order as the RFP and provide an individual response to each RFP specification.
- 10.2 Contractors shall include any and all statements and representations made within its proposal in the contract for services with MCPS. This includes, but is not limited to, the vendors' point-by-point response to this RFP. If the vendor responds only "Understand and comply," it is assumed that the vendor complies with MCPS' understanding of the requirement.

- 10.3 MCPS shall not be responsible nor be liable for any costs incurred by the vendor in the preparation and submission of their proposals and pricing.
- 10.4 A pricing proposal shall be submitted as a separate document outlining content, timeline for implementation, training, professional development, etc.

### **11.0 Mandatory Submissions**

Each Contractor must submit a complete proposal including all required information and attachments. The response shall address each paragraph in the same order as the RFP and provide an individual response to each RFP specification. All proposals must be presented using the same numbering sequence and order used in this RFP document or as otherwise specified by MCPS. Contractors may request via e-mail to Laly\_A\_Bowers@mcpsmd.org a Microsoft Word version to help them in preparing the response.

One original and three copies, and one (1) redacted copy, must be sent by mail, courier, or hand-delivery to the address below. Responses shall be in binders with tabs identifying each section. A table of contents should be included and all pages numbered as referenced in the Table of Contents. No faxes or electronic submission of proposals will be accepted. Proposals are to be received no later than 2:00 p.m. on October 6, 2020. Submit responses of the entire RFP proposal to:

Montgomery County Public Schools  
Procurement Unit  
Attn: Laly Bowers, Buyer II  
45 West Gude Drive, Suite 3100  
Rockville, MD 20850

Submissions will become the property of MCPS.

The proposal must be signed by an official having authority to contract with MCPS. The firm and the official's name shall be used in the contract process. MCPS reserves the right to make an award without further discussion of the proposals received. MCPS also may negotiate with the one Contractor who submits the best proposal or with two or more Contractors who are in the competitive range. Therefore, it is important that the Contractor's proposal be submitted initially on the most favorable terms from both the technical and cost standpoints. After the submission and closure of proposals, no information will be released until after the award. It is understood that the Contractor's proposal will become a part of the official file on this matter without obligation to MCPS.

The proposal must be complete and comply with all aspects of these specifications. Marketing or promotional verbiage will likely overshadow the Contractor's qualifications and expertise. MCPS urges the Contractor to be specific and brief in their responses.

MCPS shall not be responsible or liable for any costs incurred by the contractor in the preparation and submission of their proposals and pricing.

## 12.0 Complete Response must include:

Failure to include the following required submissions may render the proposal non-responsive as determined by the director of the Department of Materials Management.

- Point-by-point Response to each section of the RFP.
- A list of at least three (3) references for the contracting agency including contact persons and telephone numbers must be submitted, See 9.0 References.
- Respondent's annual fiscal report in order to demonstrate the Respondent's financial stability and ability to perform all the contractual obligations. If appropriate, the Respondent may instead include a letter of financial support from an entity with verifiable financial wherewithal to complete the services required under this solicitation and a reasonable ability to guarantee the long-term performances under the contract.
- Equal Opportunities Certification (Attachment A)
- Certification of Non-segregated Facilities (Attachment B)
- Minority Business Enterprise
- Non-Debarment Acknowledgement
- Mid-Atlantic Purchasing Team Rider Clause
- Current Form W-9
- A redacted copy of the Respondent's proposal as specified in Sections 12.0 and 13.0.

In determining the qualifications of a contractor, MCPS will consider the contractor's record and performance of any prior contracts with MCPS, federal departments or agencies, or other public bodies, including but not limited to the contractor's record providing such detailed programs/services as described in Section 3.0 to MCPS or other schools or school districts. MCPS expressly reserves the right to reject the proposal of any contractor if the investigation discloses that the contractor, in the opinion of MCPS, has not properly performed such prior contracts or has habitually and without just cause neglected the payment of bills or has otherwise disregarded its obligations to subcontractors or employees.

MCPS may conduct any necessary investigation to determine the ability of the contractor to perform the work, and the contractor shall furnish to MCPS all such information and data requested, such as information about its reputation, past performance, business and financial capability and other factors that demonstrate that the provider is capable of satisfying MCPS' needs and requirements for a specific contract. MCPS reserves the right to reject any proposal if the evidence submitted by the contractor or investigation of such contractor fails to satisfy MCPS that such contractor is properly qualified to carry out the obligations of the contract and to complete all requirements contemplated therein. Consideration will be given to any previous performance with MCPS as to the quality and the acceptability of bidder's services.

All Contractor's submitting a proposal shall include evidence that they maintain a permanent place of business. Copies of any appropriate licenses necessary to perform this work shall be submitted with each proposal. Contractors also shall demonstrate that they have adequate staff to perform the required services. Use of subcontractor(s) and/or third



party providers, if any, must be specifically identified within the proposal. Subcontractor and/or third party provider roles shall be clearly expressed. MCPS reserves the right to accept or reject use of proposed subcontractor(s) and/or third party provider(s).

### 13.0 Treatment of Technical Data in Proposal

The proposal submitted in response to this request may contain technical data which the contractor does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data, subject to the provisions of the Maryland Public Information Act, may be so restricted:

Provided, that contractor marks the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend: “Technical data contained in pages \_\_\_ of this proposal shall not be used or disclosed, except for evaluation purposes.”

Provided, that if a contract is awarded to this contractor as a result of or in connection with the submission of this proposal, MCPS shall have the right to use or disclose these technical data to the extent provided in the contract.

This restriction does not limit the right of MCPS to use or disclose technical data obtained from another source without restriction.

MCPS assumes no liability for disclosure or use of unmarked technical data or products and may use or disclose the data for any purpose and may consider that the proposal was not submitted in confidence and therefore is releasable. Price and cost data concerning salaries, overhead, and general and administrative expenses are considered proprietary information and will not be disclosed, if marked in accordance with the instructions.

### 14.0 Proprietary and Confidential Information

Contractors are notified that MCPS has unlimited data rights regarding proposals submitted in response to this solicitation. Unlimited data rights means that MCPS has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by the contractor in response to this or any solicitation issued by MCPS. However, MCPS will exempt information that is confidential commercial or financial information of a contractor, as defined by the Maryland Public Information Act, State Government Article, Section 10-617, from disclosure. It is the responsibility of the contractor to clearly identify each part of its proposal that is confidential commercial or financial information by stamping the **bottom right-hand corner** of each pertinent page with one-inch bold face letters stating the words “**confidential**” or “**proprietary**.” The contractor agrees that any portion of the proposal that is not stamped as proprietary or confidential is not proprietary or confidential. As a condition for MCPS keeping the information confidential, the contractor must agree to defend and hold MCPS harmless if any information is inadvertently released. Each contractor must submit a proprietary and confidential redacted copy of its proposal to be used in responding to MPIA requests.

**15.0 Sub-contracts**

The Contractor shall be responsible for executing all subcontracts. Any sub-contract will be entered into by the vendor as an independent Contractor and not as a representative of MCPS. Contractor must obtain MCPS's written approval before subcontracting any services and MCPS reserves the right to reject Sub-Contractors' participation under any contract awarded.

**16.0 Invoice/Payments**

The Contractor shall be paid within 30 days after the submittal of an accurate invoice. Invoices shall be in duplicate. One copy shall be submitted to the Division of Comptroller, [Accountspayable@mcpsmd.org](mailto:Accountspayable@mcpsmd.org).

MCPS is currently utilizing a purchasing card and Single Use Accounts (SUA) payment program through JP Morgan MasterCard.

MCPS will no longer process check payments. To avoid payment delays all bidders that accept MasterCard are strongly encouraged to sign up to receive SUA payments upon being notified of an award. For bidders that do not accept MasterCard, the ACH payment method is also available. Please e-mail [SUA@mcpsmd.org](mailto:SUA@mcpsmd.org) to register for SUA, or e-mail [accountspayable@mcpsmd.org](mailto:accountspayable@mcpsmd.org) to request ACH registration forms.

**17.0 Applicable Laws and Permits**

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

**18.0 Supplier Requirements**

The following requirements are part of the evaluation criteria and will be used to make a recommendation for award by the evaluation committee. In all cases, vendors should provide sufficient information for staff to make a sound judgment and recommendation.

The vendor's proposal shall explain in detail how they propose to complete each of the tasks outlined in the solicitation requirements. The response to the proposal shall be in the same order as the RFP and each task shall be addressed.

Vendor's proposals shall provide sufficient data to allow MCPS staff to make a professional judgment that the offeror response meets the criteria described in the solicitation.

Financial and operational ability to perform all obligations and guarantee long term performances under the contract.

Contractors must provide company's full name, address, and telephone number, type of organization (i.e. sole proprietorship, partnership, and corporation). Include name of subsidiary and/or parent organization, if applicable. Current company W9 shall be submitted with the response.

The proposal shall include a brief narrative history of the business and business its operations.

### **19.0 Pre-Proposal Visits**

A pre-proposal conference will not be held and prospective offerors are permitted to request a visit to review the school bus depots identified to receive the electric school buses. Since the offeror will be asked to complete the electrification of each bus depot, and possibly some schools or other parking/charging locations, as well as the installation and interconnection of each charging station, depot and sample school visits will be available upon request, if required. Prospective offerors are encouraged to submit all other questions in writing to obtain clarification of the RFP in the preparation of Proposals. Questions are due on August 31, 2020, close of business 4:00 P.M. and responses to questions will be made by close of business on September 7, 2020. MCPS retains the right to make all Q&A responses public content for other bidders, however provided each bidders identity is kept anonymous.

### **20.0 eMARYLAND MARKETPLACE ADVANTAGE (EMMA)**

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://procurement.maryland.gov> regardless of the award outcome for this procurement as it is a valuable resource for upcoming bid notifications for municipalities throughout Maryland.

### **21.0 Submission Guidelines**

The response shall address each RFP specification. Vendors may request a word version of the solicitation via e-mail to Mrs. Laly Bowers, Buyer II in the Procurement Unit at [Laly A Bowers@mcpsmd.org](mailto:Laly_A_Bowers@mcpsmd.org) or [Procurement@mcpsmd.org](mailto:Procurement@mcpsmd.org) to use in preparing their response.

One (1) original, three (2) copies, and one (1) redacted copy must be sent by mail, courier, or hand-delivery. No faxes of proposals will be accepted.

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

Proposals are to be received no later than 2:00 P.M., on October 6, 2020. Submit responses of the entire RFP proposal to:

Montgomery County Public Schools  
Procurement Unit  
Attn: Laly Bowers, Buyer II  
45 W. Gude Drive, Suite 3100  
Rockville, MD 20850

MCPS reserves the right to make an award without further discussion of the proposals received. MCPS also reserves the right to ask clarifying questions about submitted proposals. Should proposals submitted require additional clarification and/or supplementary information, Applicants should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when requested. It is understood that your proposal will become part of MCPS' file on this matter without obligation to MCPS.

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

**21.2** The offeror's pricing proposal shall be a firm fixed price.

**21.3** Exceptions or exclusions from the requirements or specifications listed in this procurement must be conspicuously list in one section of the response.

## **22.0 Multi-Agency Participation**

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

## **23.0 Evaluation Criteria**

MCPS reserves the right to ask clarifying questions about submitted proposals. Contractors also may ask questions that they may have related to this RFP prior to submitting their responses. See Schedule of Events. Only proposals received by the deadline will be considered.

MCPS reserves the right to convene a meeting with the top qualified Contractor(s) prior to awarding a contract. The purpose of the meeting will be to afford both parties an opportunity to discuss any aspects of the requirements and services that will be performed and clarify any issues. Issues raised during the meeting, which cannot be resolved to the satisfaction of MCPS, shall be cause to reject the proposal.

All Contractors are advised that in the event of receipt of an adequate number of proposals, which, in the opinion of MCPS require no clarification and/or supplementary information, such proposals may be evaluated without further discussions. Therefore, proposals should be submitted initially on the most complete and favorable terms and conditions. Should proposals submitted require additional clarification and/or supplementary information, Contractors should be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when requested.

Proposals meeting all requisite criteria will be evaluated. Those who do not meet requisite criteria will not be evaluated further.

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

23.1.1. Completeness of Response

23.1.2. Related past experience and qualifications

23.1.3. References

23.1.4. Contractor's understanding of the scope of services as demonstrated by the response to meet MCPS requirements.

23.1.5 Reasonableness and feasibility of the Contractor's proposed detailed work plan and implementation schedule

23.1.6. Availability of contractor's professional staff to meet timeline for contract execution.

23.1.7 Cost

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

## **24.0 Schedule of Events**

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

RFP issued:	August 31, 2020
Questions due:	September 11, 2020
Responses to questions:	September 18, 2020
Proposals Due:	October 6, 2020
Anticipated award date:	December 3, 2020

Questions to this RFP shall be emailed to [Laly\\_A\\_Bowers@mcpsmd.org](mailto:Laly_A_Bowers@mcpsmd.org) responses will be given to all participants.

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

## **25.0 Addenda/Errata**

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the vendor's responsibility to check eMarylandmarketplace.com, the MCPS website <http://www.montgomeryschoolsmd.org/departments/procurement/> under "Event Calendar" or contact the Procurement Unit at 301-279-3637, to verify whether addenda/errata have been issued. Failure to provide the signed acknowledgement of the addenda/errata may result in a response being deemed non-responsive.

In the event that MCPS issues addenda/errata, all terms and conditions will remain in effect unless they are specifically and explicitly changed by the addenda/errata. Contractors must acknowledge receipt of such addenda/errata by returning one signed copy of each of the addenda/errata with its proposal. Failure to provide the signed acknowledgement of the addenda/errata may result in a bid being deemed non-responsive.

## **26.0 Inquiries**

Inquiries regarding this solicitation must be e-mailed to Mrs. Laly Bowers CPPB, Buyer II, at [Laly\\_A\\_Bowers@mcpsmd.org](mailto:Laly_A_Bowers@mcpsmd.org) four days prior to the due date for receipt of RFP responses, in order to receive a reply prior to submitting their response. 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 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/>

## **27.0 Unnecessarily Elaborate Brochures**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the bidder's lack of cost consciousness. Elaborate art work and expensive visual and other presentation aids are neither necessary nor wanted.

**28.0 Protests Procedures**

Any bid protests, including appeals, will be governed by the applicable MCPS Procurement Unit Regulations, as stated in the MCPS Procurement Manual. The burden of production of all relevant evidence, data and documents and the burden of persuasion to support the protest is on the Contractor making the protest.

**29.0 Contract**

MCPS plans to enter a contractual agreement with one respondent to whom the award is made and intends to make MCPS General Contract Articles (Appendix A), attached hereto and incorporated herein as Appendix A, part of the contractual agreement, except and unless modified by MCPS. Proposals must clearly identify any variances from or objections to the specifications in this RFP and the terms and conditions of the MCPS General Contract Articles. Lacking any response to the contrary, MCPS will infer that the Respondent agrees to the specifications of this RFP and each term and condition of the MCPS General Contract Articles. Respondents should note that any variance may provide a basis for MCPS to reject the proposal. **In particular, the provisions set forth in Articles 5-6, 12-18, 21-22, and 26 of the MCPS General Contract Articles are non-negotiable.**

**NOTICE TO BIDDERS**

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

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

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

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

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

1. Company Name \_\_\_\_\_
2. Address \_\_\_\_\_
3. Bid Representative's Name \_\_\_\_\_
4. Phone Number/Extension \_\_\_\_\_
5. Fax Number \_\_\_\_\_
6. Toll Free Number \_\_\_\_\_
7. Email Address \_\_\_\_\_
8. Website \_\_\_\_\_

**III. SLMBE, (Small Local and Minority Business Enterprise)**

The offeror ( ) is ( ) is not a minority business enterprise. A minority business enterprise is defined as a "business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock is owned by minority group members." For the purpose of this definition, minority group members are African Americans, Hispanic Americans, Asian Americans, and American Indians.

Check the appropriate box below.

- African American     Asian American     Hispanic     Native American  
 Female     Disabled     None



**IV. NON-DEBARMENT ACKNOWLEDGEMENT:**

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

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

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

By (Signature) \_\_\_\_\_

Name and Title \_\_\_\_\_

Witness Name and Title \_\_\_\_\_

**V. VENDOR'S CERTIFICATION: Upon notification of award, this document in its entirety is the awarded vendor's contract with MCPS. By signing below, the undersigned acknowledges that he/she is entering into a contract with MCPS.**

- A. The undersigned proposes to furnish and deliver supplies, equipment, or services, in accordance with specifications and stipulations contained herein, and at the prices quoted. This certifies that this bid is made
- B. Without any previous understanding, agreement or connection with any person, firm, or corporation making a bid for the same supplies, materials, or equipment, and is in all respects fair and without collusion or fraud.
- C. I hereby certify that I am authorized to sign for the bidder. I/We certify that none of this company's officers, directors, partners, or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of the Montgomery County Public Schools, Administrative or Supervisory Personnel, or other employees of the Board of Education has any interest in the bidding company except as follows:

By (Signature) \_\_\_\_\_

Name and Title \_\_\_\_\_

Witness Name and Title \_\_\_\_\_

Maryland's Largest School District

## **MONTGOMERY COUNTY PUBLIC SCHOOLS**

*Expanding Opportunity and Unleashing Potential*

**PROCUREMENT UNIT**

September 22, 2020

Erratum/Addendum #1

Request For Proposal #9462.1

### **Electrification of School Buses**

1. The following clause is hereby incorporated and made a part of this solicitation:

**D. Late Charges**

1. All buses delivered shall be in 100% operating order. If any mechanical or charging/infrastructure related problems are detected by MCPS after delivery, that would keep the bus from running a route, the contractor will have five working days to complete the repairs. If the repairs are not completed within five days, an additional \$100.00 per day shall be assessed from date of delivery until the repairs are completed.
  2. The late charges shall be assessed by MCPS as a result of late delivery or incomplete and/or inoperable charging infrastructure. Montgomery County Public Schools (MCPS) shall retain moneys for each calendar day of delay beyond the specified delivery dates stated for both initial orders and any additional orders. This includes Saturdays, Sundays, and legal Holidays. Late charges shall be the sum equal to \$100.00 per bus per calendar day for any unit delivered past the delivery time requirements.
  3. Late charges may be deducted and retained out of any moneys due to the successful contractor under this contract for the sum stated in Paragraph 1. MCPS may also request late charges to be paid by the contractor with a Certified or Treasurer's Check made payable to Montgomery County Board of Education. Method of payment will be determined by MCPS. A letter shall be sent from the director of the Department of Materials Management or his designee to the successful contractor indicating the total late charges and method of payment.
2. Responses due date October 6, 2020 at 2:00 P.M. remain unchanged.

Maryland's Largest School District

**MONTGOMERY COUNTY PUBLIC SCHOOLS**

*Expanding Opportunity and Unleashing Potential*

**PROCUREMENT UNIT**

3. All other terms and conditions remain the same.



Angela McIntosh-Davis, CPPB, Team Leader  
Procurement Unit

AMD:lab

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

Accepted: \_\_\_\_\_  
Name and Title

Name of Company: \_\_\_\_\_

# Exhibit 2



## OFFICE OF THE INSPECTOR GENERAL

Megan Davey Limarzi, Esq.  
*Inspector General*

### NEWS RELEASE

---

For Immediate Release

July 29, 2024

### **OIG Finds Wasteful Spending Tied to Electric School Bus Contract**

Rockville, Maryland – Montgomery County Maryland Inspector General Megan Davey Limarzi announced today the release of a new Office of the Inspector General (OIG) Memorandum of Investigation, *Investigation of MCPS' Management of the Electric Bus Contract*, OIG Publication # OIG-25-01, detailing the results of an OIG Investigation into the Montgomery County Public Schools' (MCPS) management of a contract valued at over \$160 million to procure 326 electric school buses. The investigation was predicated on complaints received through the OIG's [hotline](#).

The OIG substantiated that the selected contractor failed to comply with contract terms related to the delivery of electric school buses and that MCPS failed to exercise contract provisions to force the contractor into compliance or terminate the contract. As a result, MCPS accepted late delivery of most of the school buses and absorbed delays related to mechanical failures which rendered some buses inoperable for extended periods. The OIG estimated that in addition to other possible actions, MCPS should have assessed the contractor approximately \$372,000 for failing to provide serviceable buses between FYs 2022 and 2024. MCPS is spending over \$14 million to acquire additional diesel buses to compensate for not receiving electric school buses in time to meet transportation demands.

The full report can be found

at: <https://montgomerycountymd.gov/OIG/Resources/Files/PDF/IGActivity/FY2025/MOI-FY25%20MCPS%20Electric%20Bus%20Fleet.pdf>

Please direct all inquiries to: **Email:** [ig@montgomerycountymd.gov](mailto:ig@montgomerycountymd.gov)

**Phone:** 240-777-8240



## OFFICE OF THE INSPECTOR GENERAL

Montgomery County, Maryland

**MEMORANDUM OF INVESTIGATION**

**TO:** Dr. Thomas W. Taylor  
Superintendent of Schools

**FROM:** Megan Davey Limarzi, Esq.  
Inspector General

**DATE:** July 25, 2024

**SUBJECT:** Investigation of MCPS' Management of the Electric Bus Contract

The Office of the Inspector General (OIG) recently concluded an investigation into Montgomery County Public Schools' (MCPS) management of a contract valued at over \$160 million to acquire and operate 326 electric school buses. The investigation substantiated that all of the buses received during fiscal years (FYs) 2022-2024 were delivered beyond the contractually required delivery date. We note that the contractor has notified MCPS that they will not be able to deliver the full complement of buses expected in FY2025. We also found that mechanical failures with many electric buses rendered them inoperable for extended periods and that MCPS did not exercise contract provisions to force the contractor into compliance or penalize them for noncompliance. We estimate that, in addition to other possible actions, MCPS should have assessed the contractor approximately \$372,000 for failing to provide serviceable buses between FYs 2022 and 2024. Furthermore, MCPS is spending over \$14 million to acquire diesel buses to compensate for not receiving the anticipated electric school buses.

**Background**

On February 23, 2021, as part of its commitment to sustainability, MCPS announced it was replacing 326 diesel school buses with electric school buses. The Montgomery County Board of Education (BOE) approved the acquisition including all associated charging infrastructure, charge management, electric, and related maintenance expenses totaling \$168,684,990.

On March 1, 2021, MCPS entered into a transportation services agreement (Agreement) with a contractor to deploy the 326 electric school buses, 108 of which were to be electric special education buses, over a four-year period and continue to provide maintenance support over a twelve-year period. The contract required buses to be delivered by August 1<sup>st</sup> of each contracted fiscal year. Table 1 details the deployment schedule:

Table 1: Delivery Schedule Per Contract with Electric Bus Contractor

Deliverable	FY2022	FY2023	FY2024	FY2025	TOTAL
# Buses Due Under Agreement	25	61 <sup>1</sup>	120 <sup>2</sup>	120	326

<sup>1</sup> Includes 54 electric special education buses.

<sup>2</sup> Includes an additional batch of 54 electric special education buses.

The agreement was structured to allow the contractor to retain ownership of the buses and simply provide their use as a service to MCPS. The agreement did not convey ownership of the buses or related equipment to MCPS. The base service fee for the use of the contractor's services is \$38,500 per electric school bus per year, plus a 2% increase for each subsequent year. The base service fee includes vehicle inspection, maintenance, and repair costs. The agreement includes provisions allowing MCPS to seek billing credits for expenses related to the repair of buses and assess fees for "downtime damages" for buses or charging systems being unavailable due to extended maintenance, repair, and charging system readiness issues. The agreement also includes a termination clause that permits MCPS to terminate the agreement if the contractor fails to fulfill its obligations.

In April of 2022, the State of Maryland passed the Climate Solutions Now Act of 2022, which aimed to reduce greenhouse gas emissions by 60%, expand the State's electric vehicle fleet, and help the Maryland economy reach net-zero emissions by 2045. The Act also requires that school buses purchased starting in FY2025 run exclusively on electric power, but the State has made waivers of the requirement available through an application process.

At a ribbon cutting ceremony in October of 2022, the then superintendent of schools claimed that when all 326 electric buses were procured, "we are going to be saving upwards of 6,500 gallons of diesel fuel per day, and immediately, this is going to cut costs by 50%." MCPS's webpage further states that the "school district is on track to have 326 electric school buses by 2025 and an entirely electric school bus fleet in 10 years. Replacing the diesel bus fleet with electric buses brings MCPS one step closer to our pledge of cutting greenhouse gas emissions by 80% by 2027 and 100% by 2035."

Due to the contractor not delivering the required electric school buses per the contracted timeframe, MCPS submitted a request to the BOE to purchase 90 diesel school buses at a cost of \$14,749,919. The BOE approved the request on October 12, 2023, in light of the anticipated electric bus shortfall. During the associated BOE hearing, MCPS' then chief operating officer stated that MCPS remains committed to the electrification of school buses but acknowledged a need to maintain a blended fleet of both diesel and electric vehicles going forward.

### **Applicable Law, Regulation, and Policy**

1. MCPS Financial Manual
2. MCPS General Contract Articles
3. Transportation Equipment Services Agreement

### **Inquiry and Findings**

#### Delivery of Buses

The contractor did not deliver any of the buses expected in FY2022 through FY2024 by August 1<sup>st</sup> as required by the agreement's delivery schedule (See Table 2). Our analysis shows that for the first 3 years of the agreement, the anticipated allotment of buses was not received until the third quarter (January 1 to March 31) of each fiscal year rather than the first quarter as required by the agreement.

July 25, 2024

Page 3

Additionally, the contractor has notified MCPS that they will not be able to meet the delivery goal for the 2024-2025 school year. MCPS is negotiating with the contractor over the number and expected delivery of the remainder of the contracted buses. As of the writing of this report MCPS received 16 electric buses from the contractor in FY2025.

Table 2: Actual Number of Buses Received

Deployment Schedule	FY2022	FY2023	FY2024	FY2025
Total Buses Due	25	61	120	120 <sup>3</sup>
Received by August 1 <sup>st</sup>	0	0	0	16
Received September 30 <sup>th</sup> (Q1)	0	50	37	0
Received by December 31 <sup>st</sup> (Q2)	14	10	69	0
Received by March 31 <sup>st</sup> (Q3)	11	1	14	0
Total Buses Received	25	61	120	16

Despite the contractor failing to meet its obligations regarding the delivery of electric school buses within the specific period, MCPS opted not to exercise contract provisions to terminate the contract for the vendor’s failure to deliver the buses as required. MCPS has instead been working to amend the agreement to potentially extend delivery of the remaining 120 school buses into FY2027.

Unlike MCPS’ agreements to purchase diesel buses, the agreement between MCPS and the electric bus contractor does not include a provision that would allow MCPS to assess fees for late delivery of electric buses. If MCPS had followed the diesel bus agreement model, they could have assessed fees of more than \$1.8 million to offset incurred expenses related to late deliveries.

To make up for the shortfall of electric buses, MCPS is submitting extension requests to the Maryland State Department of Education (MSDE) to extend the lifespan of MCPS’ existing diesel buses<sup>4</sup> and acquiring 90 diesel buses at a cost of \$14,749,919.

MCPS’ Financial Manual defines waste as “the extravagant, careless, or needless expenditure of MCPS funds, or the consumption of MCPS resources that results from deficient practices, systems, controls, or decisions.” MCPS’s failure to hold the contractor accountable to the terms of the contract and their decision not to include provisions to offset incurred expenses has led to millions of dollars in wasteful spending.

Maintenance of Buses

MCPS also did not assess the required fees per the agreement for mechanical failures. Mechanical and/or charging infrastructure issues resulted in buses not being able to run routes on more than 280 instances from February 10, 2022, through March 31, 2024. In more than 180 of those instances, repairs were not completed within the five working days (averaging 13 days per bus) allowed by the agreement before a fee equal to \$100 per bus per day would be assessed. The OIG confirmed that MCPS has never assessed the contractor any fees related to the

<sup>3</sup> The agreement with the contractor stipulates that 120 buses are due in FY2025, but MCPS anticipates receiving 30 electric buses.

<sup>4</sup> Under Maryland law, school bus vehicles may only be operated for 12 years unless certain requirements are met.



Dr. Thomas W. Taylor

July 25, 2024

Page 4

unavailability of electric buses due to mechanical or charging infrastructure issues. The OIG calculated that MCPS should have assessed the contractor \$372,100 in related fees.

During the OIG's interviews with members of MCPS management, none of them could explain why this fee was not assessed. Furthermore, the OIG learned that newly negotiated terms will likely eliminate the fee altogether in a future contract amendment.

## **Conclusion**

We substantiated that MCPS did not receive 206 electric buses for which they contracted within the timeframe specified by the agreement. MCPS is actively negotiating with the contractor to determine the number and expected delivery of the remainder of the contracted buses; they have received only 16 buses thus far for FY2025. We also substantiated that MCPS did not assess more than \$372,000 in fees, as required by the agreement, related to buses not being available for five days or more from February 10, 2022 through March 31, 2024. Finally, we substantiated that MCPS' reluctance to enforce the terms of the agreement and failure to include penalties to offset incurred expenses has led to millions of dollars in wasteful spending and drastically hindered MCPS's ability to meet its environmental goals.

Please contact me with any questions, or a member of your staff can contact Deputy Frank da Rosa, [Francisco.darosa@montgomerycountymd.gov](mailto:Francisco.darosa@montgomerycountymd.gov), with any questions.

cc: Dr. Henry Johnson, MCPS Acting Chief of Staff

# Exhibit 3



2000 14th Street, NW, Suite 330  
Post Box 73402  
Washington, DC 20009  
202-671-1580  
[www.gwrccc.org](http://www.gwrccc.org)

September 16, 2024

Ms. Karla Silvestre  
President of the Board of Education  
Montgomery County Public Schools  
850 Hungerford Drive, Room 123  
Rockville, MD 20850

RE: Equity in Electric School Bus Procurements

Dear Ms. Silvestre,

The Greater Washington Region Clean Cities Coalition (GWRCCC), a public-private partnership of government agencies, trade associations and private companies within the Washington DC Metropolitan Area, is supportive of AutoFlex Fleet's request for an MCPS Board vote to amend RFP # 9462.1 into a Multiple Award contract for the electrification of the County's school buses.

GWRCCC is the DC-based outreach, project management, and support arm for the US Department of Energy's Clean Cities Program in the District of Columbia, Northern Virginia, and Maryland. Montgomery County government is among our most active stakeholders. I wish to extend this GWRCCC invite for you to join the White House's Equity Working Group to increase Minority, Female and Disabled ("MFD") small business participation in the emerging electric vehicle technologies industry.

We enthusiastically support Montgomery County's leadership and effort to expand the use of electric school buses in our Greater Washington Region. The request for an MCPS Board vote to amend 9462.1 into a Multiple Award contract with MFD participation included would significantly increase MFD opportunities under the minority participation clause incorporated into the Metropolitan Washington Council of Governments Rider Clause included in MCPS RFP # 9462.1 Electrification of School Buses.

In summary, AutoFlex Fleet, Inc. is a State of Maryland certified MFD and Service-Disabled Veteran Owned Small Business (SDVOSB) that timely submitted a fair and reasonable bid to provide all the fleet electrification services requested by MCPS. Also, RFP # 9462.1 included section 22.0 Multi-Agency Participation to justify an MCPS Board vote to amend contract in support of MFD participation.

Please feel free to contact me directly if you have any questions.

Sincerely,

*Antoine M. Thompson*

Antoine M. Thompson  
CEO/Executive Director

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

HET MCPS, LLC; HEF-P Baltimore City, LLC; HEF-P Manassas, LLC

(b) County of Residence of First Listed Plaintiff Essex County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Patrick A. Harvey, Morgan Lewis & Bockius LLP, 1111 Pennsylvania Ave., NW, Washington, DC 20004-2541, (202) 739-3000

DEFENDANTS

AutoFlex, Inc., d/b/a AutoFlex Fleet; Luis MacDonald

County of Residence of First Listed Defendant Baltimore County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332; 28 U.S.C. §§ 2201, 2202

Brief description of cause: Action asserting tort claims and seeking a declaration.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Declaratory relief, etc. CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Nov 21, 2024 SIGNATURE OF ATTORNEY OF RECORD s/ Patrick A. Harvey

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

HET MCPS, LLC; HEF-P BALTIMORE CITY, LLC;
HEF-P MANASSAS, LLC,

Plaintiff(s)

v.

AUTOFLEX, INC.; LUIS MACDONALD,

Defendant(s)

Civil Action No. 1:24-cv-3366

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AutoFlex, Inc., d/b/a AutoFlex Fleet
405 Oak Forest Avenue
Baltimore, Maryland 21228
C/O Registered Agent Luis MacDonald

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patrick A. Harvey
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/21/2024

Signature of Clerk or Deputy Clerk

Civil Action No. 1:24-cv-3366

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Maryland

HET MCPS, LLC; HEF-P BALTIMORE CITY, LLC;
HEF-P MANASSAS, LLC,

Plaintiff(s)

v.

AUTOFLEX, INC.; LUIS MACDONALD,

Defendant(s)

Civil Action No. 1:24-cv-3366

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Luis MacDonald
405 Oak Forest Avenue
Baltimore, Maryland 21228

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patrick A. Harvey
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004-2541

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/21/2024

Signature of Clerk or Deputy Clerk

Civil Action No. 1:24-cv-3366

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: