

Informal Solicitation #1069050

Montgomery County Division of Facilities Management

**Small Arms Firing Range Lead Abatement and HVAC Maintenance Services
at the Public Safety Training Academy**

1. BACKGROUND

Montgomery County Government (MCG), requires a contractor to provide lead abatement and HVAC maintenance services at the new Public Safety Training Academy Small Arms Firing Range. This facility has a state-of-the art small arms firing range that has a programmed start of operation in October 2016.

2. PURPOSE AND INTENT

The County requires a Contractor to lead abatement and HVAC maintenance services for the Division of Facilities Management, Department of General Services (DGS).

The County intends to award one Contract as a result of this Informal Solicitation.

DGS will be the authorized user of the Contract resulting from this Solicitation (the "Contract"). The Contractor is not to perform any work under the Contract for any other County agency.

3. GENERAL CONDITIONS

- a. The facility is located at 8751 Snouffer School Road, Gaithersburg MD 20879.
- b. A mandatory site visit will be held on Friday, August 19, 2016 at 9:30am. All bidders need to attend. As the site is still deemed a construction project, all visitors must have a hard hat and appropriate shoes.
- c. Drawings and selected equipment specifications for the Small Arms Fire Range (SAFR) are included as part of this solicitation in Appendix A and B. If required, the County will provide complete O & M manuals to the contract awardee.
- d. The SAFR will operate eight (8) hours per day, five (5) days a week, fifty-two (52) weeks a year.
- e. It is expected that at any given time, both ranges will be used simultaneously with a seventy-five (75) percent occupancy.
- f. Contractor will provide scheduled maintenance service, in Coordination with the Contract Administrator, during regular working hours, Monday through Friday, from 7:00am to 5:00pm. Emergency Services could be required by the Contract Administrator outside the regular working hours.

- g. For purposes of this solicitation, it will be inferred that all debris, residues and waste streams produced in association to the services hereby described are lead-containing.
- h. All services to be provided by the Contractor shall be in accordance and fully compliant with prevailing Federal, State and Local regulations, including but not limited to:
 - i. Occupational Health and Safety Administration
 - 1. 29 CFR 1910, 1910.1025, 1910.134, 1910.1200 and 1910.145
 - ii. Environmental Protection Agency
 - 1. 40 CFR 260, 261, 262, 263 and 265
 - iii. Department of Transportation
 - 1. 49 CFR 172, 173, 178 and 179
- i. The Contractor will be responsible for furnishing all cleaning materials, cleaning equipment, cleaning tools, appliances, personal protective equipment, disposal containers and labor in performing all tasks as stated in this solicitation.
- j. The costs detailed on the Quotation Sheet shall be inclusive of all costs; that is, but not limited to, direct labor, supervision, general and administrative overhead, supplies, taxes, insurance, transportation, profit and the cost of equipment that is normal and customary.
- k. The Contractor shall provide all management, supervision, labor, materials, tools, parts, supplies, equipment, reporting and transportation necessary to perform all services as described herein at all times.
- l. The Contractor shall ensure that its employees are uniformed while providing services under this solicitation.
- m. The County is concerned that County property and personnel on or at which the Contractor and its workers perform work under the Contract are safe and secure. The County may, from time-to-time, provide Contractor with an Access Badge for Contractor's workers who need to enter County property in order to perform work under the Contract ("Access Badge"). A County Access Badge is the property of Montgomery County, Maryland, and the assignment of an Access Badge is person-specific, in accordance with Contractor's instructions to the County to provide a Contractor's worker access to County property in order to perform work under the Contract. The Contractor must supervise and direct its workers that it assigns to work, including those who perform work on County property. Contractor and its workers must comply with all County security requirements, including any and all security requirements related to an Access Badge. Accordingly, Contractor must not issue, distribute, transfer to, or otherwise permit use of, an Access Badge by, any worker other than the worker to whom it has instructed the County to assign the Access Badge. Furthermore, Contractor must return to the County an Access Badge within seventy-two (72) hours after a worker to whom the Contractor instructed the County to assign an Access Badge ceases to be assigned by the Contractor to perform work under the Contract. The County reserves the right to reissue Access Badges as a mechanism to ensure that only authorized Contractor workers have access to County property. The County reserves the right to determine the frequency of Access Badge reissuance. Intentional or negligent misuse of a County Access Badge by the Contractor or its worker(s) will serve as cause for Contract termination by the County. Contractor must issue, distribute, maintain, manage, account for, and return to the County any access badge that the County provides Contractor to allow a Contractor's worker access onto County property to perform work under this Contract. Contractor must assign a

supervisor to direct, control, and supervise its workers. Contractor must instruct the County regarding individual workers to whom to assign an Access Badge; issue, distribute, manage, maintain, and return to the County any Access Badge and all Access Badges. Contractor must return an Access Badge to the County's Contract Administrator when a Contractor's worker no longer is using the Access Badge, and must return all Access Badges to the County at the time of each County Access badge reissuance and at the end of the Contract term

- n. The Contractor shall assign a Representative that will coordinate the work with the Contract Administrator or its designee. The Contractor shall provide its Representative a cell phone to respond to the Contract Administrator or its designee's requests. The Contractor's Representative shall be responsible for the supervision of Contractor's employees. The Contractor's Representative shall be available, as requested, to accompany the Contract Administrator or its designee to perform inspections.
- o. The Contractor shall designate an afterhours contact number that will be available for the County to request emergency services in accordance with this solicitation.
- p. The Contractor shall submit with its invoices time sheet support documentation.
- q. The Contractor shall ensure that all its employees are properly trained under existing federal, state and local regulations to provide the services included in this solicitation. The Contractor shall assume all costs related to employee training.
- r. The Contractor shall not commence any service under the contract until a purchase order has been executed by the Office of Procurement, and a Notice to Proceed has been issued by the Contract Administrator or its designee.
- s. The Contractor will not be required to provide service on Contract Holidays with the exception of Emergency work requests. The Contract Holidays are
 - i. New Year's Day
 - ii. Martin Luther King Day
 - iii. President's Day
 - iv. Memorial Day
 - v. Independence Day
 - vi. Labor Day
 - vii. Veteran's Day
 - viii. Thanksgiving Day
 - ix. Christmas Day
- t. The County reserves the right to request a background investigation, based on the facility being serviced, from the Contractor for any or all of the Contractor's employees or sub-contractors under this Contract, at any time while the contract is in place. Background investigation should be performed by the County only and the standard is a criminal background investigation that bars entry for parties with criminal convictions pertaining violent crimes, felonies, terrorism etc.

- u. The Contractor must require its employees to comply with the instructions pertaining to conduct and other regulations called to the Contractor's attention by the County.
- v. The Contractor will be responsible for providing its employees all the necessary Personal Protection equipment to perform the scope of work under this solicitation.
- w. The Contractor assumes full responsibility and liability for compliance with all applicable Federal, State and Local regulations pertaining to the protection of his employees, visitors to the SAFR and persons occupying areas adjacent to the site. The Contractor shall hold the County harmless for his, his employees and/or his representatives' failure to comply with any applicable safety, health and/or environmental regulations.
- x. The Contractor is responsible for providing medical examinations and maintaining medical records for his personnel providing services under this solicitation, as required by applicable Federal, State and Local regulations.
- y. The Contractor shall assume full responsibility for the knowledge of, and compliance with all applicable Federal, State and Local regulations pertaining to work practices, hauling, disposal and protection of workers, visitors to the site and persons occupying areas adjacent to the site.
- z. Contractor agrees to enforce all applicable Federal, State and Local laws and regulations as applicable to the services provided under this contract for himself, employees, subcontractors and agents.
- aa. The Contractor will be responsible for obtaining all the necessary permits required to perform the services under this solicitation.
- bb. The Contractor will be responsible for the packaging, labeling, transportation, treatment and disposal of all waste streams produced as a result of the services provided under this solicitation. The Contractor must provide final treatment and disposal manifest for all waste (hazardous and non-hazardous). All waste is to be treated and disposed in approved facilities under Federal, State and Local statutory provisions. The County will not issue payment for services that lack evidence of adequate final disposal.
- cc. The Contractor will provide the Contract Administrator a binder with all Material Data Sheets (MDS) for products used under the contract provisions.
- dd. The equipment to be serviced by the Contractor is still under warranty. Any equipment malfunction identified by the Contractor during the provision of the maintenance services must be notified in writing (via email) to the Contract Administrator or its designee within twenty-four hours of the malfunctioning being identified. The Contractor will be responsible for any additional costs in which the County has to incur as a result of the Contractor failing to timely notify the Contract Administrator of an equipment malfunctioning thus precluding the County to exercise its rights under the equipment warranty.
- ee. The Contractor will respond to emergency service request within two (2) hours of notification from the Contract Administrator or its designee.

- ff. Contractor will be provided a limited storage area within the SAFR to store supplies. All supplies must be clearly labeled. Contractor will be responsible for providing storage means for all supplies and equipment that cannot be accommodated within the designated areas.
- gg. Contractor will be responsible for handling waste as it is produce. Waste and debris cannot be let to stand, it will be containerized and labeled based on the cleaning frequencies established under this solicitation. All labels must comply with applicable Federal, State and Local regulations.
- hh. The County and the Contractor to which this solicitation is awarded will hold a site meeting for equipment overview and general components description prior to commencing maintenance services.

4. SCOPE OF SERVICES

- a. The Contractor will provide for the clean-up of the SAFR, chipping and removing of lead from the bullet traps and behind the firing lines, removal and replacement of HVAC filters, maintenance of HVAC system, removing bullets and lead debris from the bullet traps, cleaning range surfaces (to include floors, cleaning tables, instructor booths, etc.), cleaning the gun cleaning room next to the range, cleaning drum storage area and packaging, containerizing, handling, marking, labeling, loading, transporting and disposing of lead waste from the SAFR. All surfaces and equipment located inside the firing ranges are to be considered contaminated by lead. Work must be performed in compliance with the applicable environmental, safety and health Federal, State and Local regulations.
- b. Montgomery County Police Department will gather, store and remove all brass casings. Brass is not considered part of the waste stream to be handled by the Contractor.
- c. Services to be provided:
 - i. Routine Range Cleaning: all areas inside the SAFR plus the gun cleaning room adjacent to the SAFR will be cleaned to meet regulatory lead thresholds. Includes all vertical and horizontal surfaces (i.e. shooting booths, floors, walls, etc.). Wipe sampling should be conducted at least twice per month but never less that required by Federal, State and Local applicable regulations to ensure that all surfaces meet regulatory thresholds. Prior to commencing maintenance services, the Contractor will be required to provide a Sampling Plan. The Contractor will be responsible for drafting the Sampling Plan in such a way that is representative of the SAFR conditions. Sampling point should at minimum include: shooting booths, walls, floors, light fixtures and target system, among others.
 - ii. Waste Characterization: at least once per year the Contractor will perform a waste characterization for every waste stream to be treated and/or disposed. All waste is to be treated and/or disposed in conformity with the results of its characterization results. The Contract shall request authorization from the Contract Administrator to perform an additional waste characterization if at any given point he believes that the waste stream has changed in such a material way that the existing waste characterization is no longer representative. The Contractor must use an EPA-certified analytic laboratory to conduct the waste characterization.

- iii. Waste Treatment and/or Disposal: Contractor will be responsible for labeling, containerizing, transporting, treating and disposing of all waste generated as a result of the services provided under this contract. All waste (hazardous and non-hazardous) must be managed in accordance with applicable Federal, State and Local regulations. The Contractor must ensure that all waste services are EPA and DOT compliant. All waste must be disposed of in a EPA-permitted facility. Contract must ensure that all waste that reasonably capable of being recycled is recycled.
- iv. Air Handling Unit (AHU) Maintenance: Contractor will provide maintenance for all four (4) AHUs as per the manufacturer's suggested maintenance schedule. All maintenance is to be provided in accordance manufacturer's requirements. Maintenance will include at a minimum:
 - 1. Inspection and change of all filters (i.e. pre-filters, Mid filters, HEPA filters)
 - 2. Inspection of all linkages
 - 3. Lubrication of fan bearings
 - 4. Lubrication of motor bearings
 - 5. General cleaning and inspection of fan wheel
 - 6. General inspection and adjustment of electrical connections
 - 7. General inspection and adjustment of belts
 - 8. General inspection of heating coils
 - 9. General inspection of cooling coils
 - 10. check and monitor airflow on the SAFR to ensure it meets NIOSH standards
- v. Controls Maintenance: monitor operation on all bays, ensure controls are functioning as per original design and programming.
- vi. Emergency Services: to be provided on a per-hour basis as required by the Contract Administrator. It refers to the unscheduled provisions of any of the services detailed in this solicitation.

d. Frequency of services:

Service	Frequency
Routine Range Cleaning	Daily
Waste Characterization	Yearly
Waste Handling	Daily (as waste is produced)
Waste Treatment and/or Disposal	Monthly
Air Handling Unit Maintenance	Monthly
Control Maintenance	Monthly

e. Manufacturer's Standard Frequency for Filters Replacement:

- i. Pre-Filters 200 hours
- ii. Mid-Filters 600 hours
- iii. HEPA Filters 2,400 hours
- iv. Supply Filters 600 hours

- f. Existing Filters Quantities:
 - i. Pre-Filters 54 (24x24x2)
 40 (24x12x2)

 - ii. Mid-Filters 54 (24x24x12)
 40 (24x12x12)

 - iii. HEPA Filters 60 (24x24x12)
 10 (12x24x12)

 - iv. Supply Filters 14 (24x24x2)
 70 (24x20x2)
 24 (24x12x2)

5. CONTRACTOR’S QUALIFICATIONS

- a. The Contractor must have at least five (5) years of recent experience (from the date of this solicitation) in providing services of similar scope and nature to the one included in this solicitation.
- b. The Contractor must provide a list of at least three (3) professional references that can validate the Contractor’s experience in providing services of similar scope and nature to the ones included in this solicitation.
- c. The Contractor must include as part of its proposal a company profile specifying at a minimum:
 - i. Description of overall services provided
 - ii. Organization Chart
 - iii. Contact information for routine and emergency services
 - iv. Designated Competent Person
 - v. Qualifications of the designated Competent Person
 - vi. Analytical Testing Laboratory name and contact information
 - vii. Equipment Availability
 - viii. Employee Training Program
 - ix. Employee Certifications
 - x. Hazard Communication Plan
 - xi. Waste Management Plan (hazardous and non-hazardous)
 - xii. Safety Plan
 - xiii. Quality Assurance Plan

6. EVALUATION CRITERIA AND AWARD METHOD

- a. Each proposal will be reviewed and evaluated based on the evaluation criteria listed below.

Criteria	Points
Cost Proposal	50
Demonstrated Contractor’s Experience	20
Demonstrated Contractor’s Organizational Structure to provide services under this solicitation	20
Contractor’s Qualifications (permits, certifications and licenses)	10
Total	100

- b. The Contract will be awarded to the highest ranked offeror, based on the scores of the written proposal evaluation. Interviews will not be conducted.

7. TERM

The effective date of this Contract begins upon signature by the Director, Office of Procurement. Before this term for performance ends, the Director at his/her sole option may (but is not required to) renew the term. Contractor's satisfactory performance does not guarantee a renewal of the term. The Director may exercise this option to renew this term for one (1) additional year.

8. COMPENSATION

Compensation must not exceed funds appropriated by the County and encumbered into a County Purchase Order issued to the Contractor. No services will be performed or compensated under this Contract prior to the execution of a County Purchase Order and the Contractor's receipt of said County Purchase Order. Compensation will be in accordance with the Price Sheet (Attachment A), as approved in the resulting contract.

Total compensation under the Contract (initial term, plus any optional renewal terms exercised by the County) must not exceed \$99,999.99.

9. PRICING

1. Prices are to be quoted on a per service per frequency basis.
2. Prices for emergency services are to be quoted on a per hour basis for regular and overtime work.
3. Prices for waste handling will provide for the monthly collection, labeling and containerizing of waste produced as a result of services providing under this contract.
4. Prices for waste disposition are to be quoted based on container size and waste stream (hazardous/non-hazardous).
5. Prices are fixed for the contract term.
6. Prices are to be inclusive of all associated costs, that is, but not limited to, direct labor, supervision, general and administrative overhead, taxes, insurance, profit, the cost of any associated equipment, etc.

10. INVOICING

General Invoicing requirements:

Invoices must be submitted by the Contractor on a monthly basis and must contain:

- a unique invoice number;
- a remittance address and point of contact
- this Contract number (#**1069050**)
- the dates of delivery or service;
- a short description of each item; and
- the Purchase Order number under which funds were encumbered
- signed and dated by the invoice preparer
- phone number and email address of the invoice preparer

Invoices must be sent to the Contract Administrator designated by the County, and must be in a format acceptable to the County. The County will make payment to the Contractor within thirty (30) calendar days following the County's receipt, acceptance and approval of the Contractor's invoice.

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11. MANDATORY INSURANCE REQUIREMENTS

Remove lead from bullet traps & behind firing lines, remove, replace HVAC filters, maintenance of HVAC system, cleaning range surfaces (include floors, cleaning tables, instructor booths, etc.), clean drum storage area & packaging, containerizing, handling, marking, labeling, loading, transporting and disposing of lead waste from SAFR. All surfaces & equipment located inside the firing ranges are to be considered contaminated by lead. Work must be performed in compliance with the applicable environmental, safety and health Federal, State and Local regulations.

Prior to the execution of the contract by the County, the proposed awardee/contractor and their contractors (if requested by County) must obtain, at their own cost and expense, the following *minimum* (not maximum) insurance coverage with an insurance company/companies licensed to conduct business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/contractor shall provide a copy of the insurance policies and additional insured endorsements. The minimum limits of coverage listed below shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County nor shall failure to request evidence of this insurance in any way be construed as a waiver of proposed awardee / contractor's obligation to provide the insurance coverage specified. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of ***two million dollars (\$ 2,000,000) per occurrence and five million dollars (\$5,000,000) aggregate***, for bodily injury and property damage coverage including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Automobile Liability Coverage

A minimum limit of liability of ***two million dollars (\$ 2,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including MCS 90 Endorsement

And the following:

- owned automobiles
- hired automobiles
- non-owned automobiles

Environmental Impairment Liability / Contractors Pollution Liability

A minimum limit of liability of ***two million dollars (\$2,000,000)***, combined single limit for bodily injury and property damage coverage per occurrence. Such insurance shall cover any gradual, sudden and/or accidental release of toxic or hazardous waste or other hazardous substance requiring monitoring, clean-up or other corrective actions under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA). Contractor/proposer agrees to provide a three-year discovery period under this policy for services rendered during the contract.

Worker's Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

Bodily Injury by Accident - \$1,000,000 each accident

Bodily Injury by Disease - \$1,000,000 policy limits
Bodily Injury by Disease - \$1,000,000 each employee

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on Contractor's commercial general, automobile insurance, and contractor's excess/umbrella insurance if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the minimum insurance coverage specified.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County, MD
Department of General Services / Facilities / Sunil Pandya
101 Monroe St. 9th floor
Rockville, Maryland 20850
Contract #1069050

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12. SUBMISSION REQUIREMENTS

1. Proposals are due no later than **3:00 pm** on **August 30, 2016**. Offeror's **MUST** submit their proposals in Adobe Acrobat (PDF) electronic format via email to gus.montesdeoca@MontgomerycountyMD.gov. The proposals must be clearly marked with the solicitation number, due date, and due time; and should be comprised of only one electronic document in PDF format.
2. Please note that any proposals received after **3:00 pm on August 30, 2016** will not be considered for award under this solicitation.
3. Proposals must include the following:
 - a. Quotation Sheet (Attachment A)
 - b. Include Contractor's profile
 - c. At least three references that may be contacted to attest to the quality and timeliness of the offeror's work of similar nature and scope to the scope required by the County.
 - d. Wage Requirements Certification (see Attachment C).
 - e. MFD Performance Plan (see Attachment D).
 - f. Proof of legal name:
 1. Incorporated Entity:
 - W-9
 - Articles of Incorporation and/or Articles of Amendment (NOTE-the name on the W9 **must** match the names listed in the Articles)
 2. Sole Proprietorship:
 1. W-9
 2. Email or letter from proprietor stating his/her name as shown on his/her social security card

4. Questions regarding the solicitation may be directed to Denise Wade at 240-205-3086 or via email to denise.wade@MontgomeryCountyMD.gov.

ATTACHMENTS

Attachment A – Price Sheet

Attachment B - County's General Terms and Conditions. **Read carefully.** This document will be incorporated into the final Contract.

Attachment C – Wage Requirements Addendum and Certification

Attachment D – MFD Addendum and Performance Plan

**Small Arms Firing Range Lead Abatement and HVAC Maintenance Services
at the Public Safety Training Academy**

ATTACHMENT A

Price Sheet

Prices are to be inclusive of all associated costs, that is, but not limited to, direct labor, supervision, general and administrative overhead, taxes, insurance, profit and the cost of any associated equipment.

Part A.

	\$ per month	X Estimated Months	Extended Amount
Routine Range cleaning	\$ _____	12	\$ _____

Part B.

	\$ per characterization	X Estimated Characterizations	Extended Amount
Waste Characterization	\$ _____	1	\$ _____

Part C.

	\$ per month	X Estimated Months	Extended Amount
Waste Handling (i.e. labeling, containerizing, etc.)	\$ _____	12	\$ _____

Part D.

	\$/unit	X Award Factor	Extended Amount
Waste Disposal			
55-gallon drum (liquid, non-hazardous)	\$ _____	4	\$ _____
55-gallon drum (solid, non-hazardous)	\$ _____	4	\$ _____
55-gallon drum (liquid, hazardous)	\$ _____	4	\$ _____
55-gallon drum (solid, hazardous)	\$ _____	4	\$ _____
55-gallon drum (solid, recyclable)	\$ _____	4	\$ _____
Cubic Yard Box (solid, non-hazardous)	\$ _____	4	\$ _____
Cubic Yard box (solid, hazardous)	\$ _____	4	\$ _____

10-yr roll off (solids, non-hazardous)	\$ _____	1	\$ _____
10-yr roll off (solids, hazardous)	\$ _____	1	\$ _____
Total for Part D			\$ _____

Part E.

	\$ per month	X Estimated Months	Extended Amount
Air Handling Unit Maintenance	\$ _____	12	\$ _____

Part F.

	\$ per month	X Estimated Months	Extended Amount
Controls Maintenance	\$ _____	12	\$ _____

Part G.

	\$ per hour	Award Factor	Extended Amount
Emergency Services Technician (regular time)	\$ _____	10	\$ _____
Technician (overtime)	\$ _____	10	\$ _____
Supervisor (regular time)	\$ _____	10	\$ _____
Supervisor (overtime)	\$ _____	10	\$ _____

Total (extended amounts for part A through F): \$ _____

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ATTACHMENT B

GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq., and 47 U.S.C., ch. 5.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Md. State Finance and Procurement Article, Section 13-101, et. seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action

described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section.

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages.

The contractor agrees to comply with the requirements of the Displaced Service Workers Protection Act, which appears in County Code, Chapter 27, Human Rights and Civil Liberties, Article X, Displaced Service Workers Protection Act, §§ 27-64 through 27-66.

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor must not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Office of Procurement. Unless performance is separately and expressly waived in writing by the Director, Office of Procurement, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Office of Procurement. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

5. CHANGES

The Director, Office of Procurement, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Office of Procurement, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

- A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Office of Procurement, in writing and is authorized to:
- (1) serve as liaison between the County and the contractor;
 - (2) give direction to the contractor to ensure satisfactory and complete performance;
 - (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
 - (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
 - (5) accept or reject the contractor's performance;
 - (6) furnish timely written notice of the contractor's performance failures to the Director, Office of Procurement, and to the County Attorney, as appropriate;
 - (7) prepare required reports;
 - (8) approve or reject invoices for payment;
 - (9) recommend contract modifications or terminations to the Director, Office of Procurement;
 - (10) issue notices to proceed; and

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ATTACHMENT B

(11) monitor and verify compliance with any MFD Performance Plan.

- B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Office of Procurement, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Office of Procurement, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Office of Procurement, for the purpose of dispute resolution. The Department Head, or his/her designee, must forward to the Director, Office of Procurement, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Office of Procurement or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Office of Procurement, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Office of Procurement, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS, AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b).
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code. In addition, the contractor must comply with the political contribution reporting requirements currently codified under the Election Law at Md. Code Ann., Title 14.

13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or

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demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

20. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

21. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the minimum insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. The minimum limits of coverage listed shall not be construed as the maximum as required by contract or as a limitation of any potential liability on the part of the proposed awardee/contractor to the County, nor shall failure by the County to request evidence of this insurance in any way be construed as a waiver of proposed awardee/contractor's obligation to provide the insurance coverage specified. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Office of Procurement, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Contractor must provide to the County at least 30 days written notice of a cancellation of, or a material change to, an insurance policy. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. After consultation with the Department of Finance, Division of Risk Management, the Director, Office of Procurement, may waive the requirements of this section, in whole or in part.

Please disregard TABLE A. and TABLE B., if they are replaced by the insurance requirements as stated in an attachment to these General Conditions of Contract between County and Contractor.

TABLE A. - INSURANCE REQUIREMENTS
(See Paragraph #21 under the General Conditions of Contract between County and Contractor)

	<u>CONTRACT DOLLAR VALUES (IN \$1,000's)</u>			
	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by				
Accident (each)	100	100	100	See
Disease (policy limits)	500	500	500	Attach.
Disease (each employee)	100	100	100	
Commercial General Liability for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attach.
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				

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Bodily Injury				
each person	100	250	500	See
each occurrence	300	500	1,000	Attach.
Property Damage				
each occurrence	300	300	300	
Professional Liability*	250	500	1,000	See
for errors, omissions				Attach.
and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000				

Certificate Holder

Montgomery County Maryland (Contract #)
Office of Procurement
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

*Professional services contracts only

TABLE B. - INSURANCE REQUIREMENTS
(See Paragraph #21 under the General Conditions of Contract
between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attach.

Certificate Holder

Montgomery County Maryland (Contract #)
Office of Procurement
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

**22. INTELLECTUAL PROPERTY APPROVAL AND
INDEMNIFICATION - INFRINGEMENT**

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B 33 and Section 27 19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

25. PAYMENT AUTHORITY

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

26. P-CARD OR SUA PAYMENT METHODS

The County is expressly permitted to pay the vendor for any or all goods, services, or construction under the contract through either a procurement card ("p-card") or a Single Use Account("SUA") method of payment, if the contractor accepts the noted payment method from any other person. In that event, the County reserves the right to pay any or all amounts due under the contract by using either a p-card (except when a purchase order is required) or a SUA method of payment, and the contractor must accept the County's p-card or a SUA method of payment, as applicable. Under this paragraph, contractor is prohibited from charging or requiring the County to pay any fee, charge, price, or other obligation for any reason related to or associated with the County's use of either a p-card or a SUA method of payment.

27. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the

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County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

28. PROTECTION OF PERSONAL INFORMATION BY GOVERNMENT AGENCIES

In any contract under which Contractor is to perform services and the County may disclose to Contractor personal information about an individual, as defined by State law, Contractor must implement and maintain reasonable security procedures and practices that: (a) are appropriate to the nature of the personal information disclosed to the Contractor; and (b) are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction. Contractor's requirement to implement and maintain reasonable security practices and procedures must include requiring any third-party to whom it discloses personal information that was originally disclosed to Contractor by the County to also implement and maintain reasonable security practices and procedures related to protecting the personal information. Contractor must notify the County of a breach of the security of a system if the unauthorized acquisition of an individual's personal information has occurred or is reasonably likely to occur, and also must share with the County all information related to the breach. Contractor must provide the above notification to the County as soon as reasonably practicable after Contractor discovers or is notified of the breach of the security of a system. Md. Code Ann., State Gov't. § 10-1301 through 10-1308 (2013).

29. TERMINATION FOR DEFAULT

The Director, Office of Procurement, may terminate the contract in whole or in part, and from time to time, whenever the Director, Office of Procurement, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or

property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

30. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

31. TIME

Time is of the essence.

32. WORK UNDER THE CONTRACT

Contractor must not commence work under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

33. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

PMMD-45. Revised 03/01/2016

THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.

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Wage Requirements for Services Contract
Addendum to The General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Wage Requirements Law, found at Section 11B-33A of the Montgomery County Code (“WRL” or “11B-33A”). A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the WRL, subject to the exceptions for particular contractors noted in 11B-33A (b) and for particular employees noted in 11B-33A (f).
- B. Conflicting requirements (11B-33A (g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- C. A nonprofit organization that is exempt from the WRL under 11B-33A (b)(3) must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees. Section 11B-33A (c)(2).
- D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement in 11B-33A.
- E. Each contractor and subcontractor covered under the WRL must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices approved and/or supplied by the County, informing employees of the wage requirements. Section 11B-33A (h).
- F. An employer must comply with the WRL during the initial term of the contract and all subsequent renewal periods, and must pay the adjusted wage rate increase required under 11B-33A (e)(2), if any, which is effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.
- G. An employer must not discharge or otherwise retaliate against an employee for asserting any right, or filing a complaint of a violation, under the WRL.
- H. The sanctions under Section 11B-33 (b), which apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements of the WRL.
- I. The County may assess liquidated damages for any noncompliance by contractor or its subcontractor with the WRL based on the rate of 1% per day of the total contract amount, or the estimated annual contract value of a requirements contract, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. If the County determines, as a result of a WRL audit that the Contractor has violated requirements of the WRL, including but not limited to the wage requirements, the County will assess the Contractor for the cost incurred by the County in conducting the audit. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action against the violating contractor or subcontractor enforce the payment of wages due under the WRL and recover from the Contractor or subcontractor any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation by the Contractor or subcontractor arising from the employee asserting any right, or filing a complaint of violation, under the WRL.
- J. The County has established a program of random audits to assure compliance with the WRL. The Director may conduct an on-site inspection(s) for the purpose of determining compliance. Some of the documents that may be required during an audit are listed on the Wage Requirements Law FAQ web page: <http://www.montgomerycountymd.gov/WRL>
- K. The Contractor is in breach of this contract if the Contractor fails to submit timely documentation demonstrating compliance with the WRL to the satisfaction of the Director, including: the Wage Requirements Law Payroll Report Form (PMMD-183), which is required to be submitted by the end of the month (January, April, July, October) following each quarter; documents

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requested in conjunction with a random or compliance audit being conducted by the County; or documents otherwise requested by the Director. In the event of a breach of contract under this paragraph, or for any other violation of the WRL, the County may assess against, or withhold from payment to, Contractor, the liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

L. For any questions, please contact the Wage Requirements Law Program Manager at 240-777-9918 or WRL@montgomerycountymd.gov.

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Wage Requirements Law Certification

(Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number			
E-Mail Address					

Provide, in the spaces below, the contact name and information of the individual designated by your firm to monitor your compliance with the County’s Wage Requirements Law, unless exempt under Section 11B-33A (b) (see Section B. below):

Contact Name		Title	
Phone Number		Fax Number	
E-mail Address			

In the event that you, the “Offeror,” are awarded the contract and become a Contractor, YOU MUST MARK or in ALL BOXES BELOW that apply.

A. Wage Requirements Compliance

This Contractor, as a “covered employer”, will comply with the requirements under County Code Section 11B-33A, “Wage Requirements” (“Wage Requirements Law” or WRL”). Contractor and its subcontractors will pay all employees not exempt under the WRL, and who perform direct measurable work for the County, the required wage rate effective at the time the work is performed. The offer price(s) submitted under this solicitation include(s) sufficient funds to meet the requirements of the WRL. A “covered employer” must submit (preferably via email) quarterly (by the end of January, April, July, and October for the quarter ending the preceding month) certified payroll records for each payroll period and for all employees of the contractor or a subcontractor performing services under the County contract governed by the Wage Requirements Law, to the Division of Business Relations and Compliance, Attn: Wage Requirements Law Program Manager. These payroll records must include the following: name; position/title; gender/race (for contracts awarded after October 1, 2015); daily straight-time hours worked; daily overtime hours worked; straight-time hourly pay rate; overtime hourly pay rate; both employer and employee share of health insurance premium; and total gross wages paid for each period. A sample of the Payroll Report Form can be found at the link below. (<http://www.montgomerycountymd.gov/PRO/DBRC/WRL.html>). In lieu of the quarterly Payroll Report Form, payroll registers generally satisfy the requirement. Late submission or non-submission of this information, or any other violation of the WRL, may result in the County withholding contract payments and additional actions by the County, including but not limited to: assessing liquidated damages, terminating the contract, or otherwise taking action to enforce the contract or the Wage Requirements Law. The Contractor must ensure that NO Social Security number of any person, other than the last four digits, is included on the quarterly report.

B. Exemption Status (if applicable)

This Contractor is exempt from Section 11B-33A, “Wage Requirements,” because it is:

- 1. Reserved – [Intentionally left blank].
- 2. a contractor who, at the time a contract is signed, has received less than \$50,000 from the County in the most recent 12-month period, and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Section 11B-33A (b)(1);
- 3. a public entity. Section 11B-33A (b)(2).
- 4. a non-profit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Section 11B-33A (b)(3) (**must complete item C below**).
- 5. an employer expressly precluded from complying with the WRL by the terms of any federal or state law, contract, or grant. Section 11B-33A (b)(7) (**must specify the law, or furnish a copy of the contract or grant**).

C. Nonprofit Wage & Health Information

This Contractor is a non-profit organization that is exempt from coverage under Section 11B-33A (b)(3). Accordingly, the contractor has completed the 501 (c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form, which is attached. See Section 11B-33A (c)(2).

D. Nonprofit's Comparison Price(s) (if desired)

This Contractor is a non-profit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the blanket-cost quotation sheet on which it is submitting its price(s) in the RFP, and is submitting on this duplicate form its price(s) to the County had it not opted to pay its employees the hourly rate specified in the WRL. For proposal evaluation purposes, this price(s) will be compared to price(s) of another nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the WRL. This revised information on the duplicate cost sheet must be clearly marked as your nonprofit organization comparison price(s). In order for the County to compare your price(s), the revised information on the duplicate cost sheet must be submitted with your offer on or before the offer opening date, must show how the difference between your nonprofit organization price(s) and other organization comparison price(s) was calculated. Section 11B-33A (c)(2).

E. Sole Proprietorship

Sole Proprietorships are subject to the WRL. In order to be excused from the posting and reporting requirements of the WRL, the individual who is the sole proprietor must sign the certifications below in order to attest to the fact that the Sole Proprietorship:

- (1) is aware of, and will comply with, the WRL, as applicable;
- (2) has no employees other than the sole proprietor; and
- (3) will inform the Montgomery County Office of Business Relations and Compliance if the sole proprietor employs any workers other than the sole proprietor.

Contractor Certification

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or printed name		Date	

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ATTACHMENT D

MINORITY BUSINESS PROGRAM & OFFEROR'S REPRESENTATION

It is the policy of the County to recruit actively, minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 - "Minority Contracting", Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Office of Procurement, or his/her designee, who may waive this requirement.

A sample of the MFD Report of payment Received is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Office of Procurement, or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the MFD Program Manager, Division of Business Relations and Compliance at (240) 777-9912.

Offerors are encouraged (but not required) to complete the following:

I hereby represent that this is a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

Attach one of the following certification documents from: Maryland Department of Transportation (MDOT); Virginia Small, Women & Minority-Owned Business; Federal SBA 8(a); MD/DC Minority Supplier Development Council, Women's Business Enterprise National Council; or City of Baltimore.

Montgomery County MFD Report of Payments Received For Office Use
Office of Business Relations and Compliance

SAMPLE ONLY!

NOT TO BE USED BY PRIME



MFD Subcontractor Company Name: _____

Prime Contractor Company Name: _____

Title: _____

Project Location: _____

MFD Subcontract Amount: \$ _____

PLEASE READ CAREFULLY BEFORE SIGNING

This certifies that for the month of _____, my company received \$ _____ for work performed, services rendered and/or materials supplied on the above contract.

TOTAL AMOUNT OF SUBMITTED INVOICES TO DATE: \$ _____

TOTAL PAYMENTS RECEIVED TO DATE: \$ _____

Are you experiencing any contract problems with the prime contractor and/or the project? YES NO

Comments: _____

I certify that the above information is true and accurate to the best of my record documentation and knowledge.

(TYPED/PRINTED COMPANY NAME)

(TYPED/PRINTED NAME OF COMPANY OFFICIAL) (TITLE)

(SIGNATURE OF COMPANY OFFICIAL) (DATE)

() - () -
TELEPHONE FAX E-MAIL

Return by: Email – MFD@montgomerycountymd.gov or FAX – 240-777-9952
For assistance, contact the MFD Office at 240-777-9912

ATTACHMENT D

Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage goals listed below of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Business Program Manager. The letter must explain why a waiver is appropriate. The Director of the Office of Procurement or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.

For Goals by each purchasing category, please refer to www.montgomerycountymd.gov/mfd

- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.

If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Office of Procurement must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

#1069050
MONTGOMERY COUNTY, MARYLAND
MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR
PERFORMANCE PLAN

Contractor's

Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTRACT NUMBER/PROJECT DESCRIPTION: XXXXXX

A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

B. This Plan covers the life of the contract from contract execution through the final contract expiration date.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is _____% of the total dollars awarded to Contractor.

D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTACT PERSON: _____

#1069050

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor :

This subcontractor will provide the following goods and/or services:

2. Certified by:

Subcontractor Name:

Title:

Address:

City:

State:

Zip:

Phone Number:

Fax Number:

Email:

CONTACT PERSON:

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services:

3. Certified by:

Subcontractor Name:

Title:

Address:

City:

State:

Zip:

Phone Number:

Fax Number:

Email:

CONTACT PERSON:

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services:

#1069050

4. Certified By: _____
Subcontractor Name: _____
Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____

This subcontractor will provide the following goods and/or services: _____

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Partial Waiver Approved:

MFD Program Officer Date: _____

MFD Program Officer Date: _____

Full Waiver Approved:

Partial Waiver Approved:

Director
Cherri Branson
Office of Procurement Date: _____

Director
Cherri Branson
Office of Procurement Date: _____

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. _____) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

Signature

Typed Name

Title

Date

APPROVED:

Cherri Branson, Director, Office of Procurement

Date

Section 7.3.3.4(a) of the Procurement Regulations requires:

The Contractor must notify the Director, Office of Procurement, of any proposed change to the Subcontractor Performance Plan.