



**MONTGOMERY COUNTY, MARYLAND  
REQUEST FOR ENERGY PROPOSALS  
MICROGRIDS ON COUNTY FACILITIES**

**April 28, 2014**

## SECTION I. NOTICES AND CONTACTS

Event	Date
RFEP Issued	April 28, 2014
Deadline for Questions	June 23, 2014
Proposals Due	June 30, 2014

### Contact:

Eric R. Coffman  
Chief  
Office of Energy and Sustainability  
Department of General Services  
Montgomery County, Maryland 20850  
240-777-5595  
[Eric.coffman@montgomerycountymd.gov](mailto:Eric.coffman@montgomerycountymd.gov)

Email inquiries are strongly preferred and will receive the quickest service.

## SECTION II BACKGROUND AND INTRODUCTION:

Montgomery County Government is committed to creating a more vibrant, healthy, prosperous and sustainable community. The County's 2009 Climate Protection Plan and 2010 Green Economy Plan both identify deployment of clean energy and other high efficiency technologies as a priority of the County's climate and energy goals.

In addition to reducing the environmental footprint of County facilities, the County is also interested in bolstering the reliability of electricity infrastructure in the community and ability to sustain 24/7 operations of many facilities in the event of a prolonged loss of electricity supply due to natural or man-made events. This is critical for facilities which are used as emergency shelters, cooling stations, provide direct and ongoing social services, are sites for board of elections activities, or provide on-site housing (e.g., shelters).

The County is specifically assessing the interest of third parties to install, own, operate and finance microgrids on buildings or properties owned or operated by the Montgomery County Department of General Services (DGS). DGS is custodian of County buildings and sites and is responsible for the ownership, operation, maintenance, management, utilities and leasing of County facilities. Collectively the County owns, operates, and/or maintains over 410 facilities and 9,000,000 square feet of floorspace.

A microgrid, for the purposes of this RFEP, is defined as a system of controls, generators (e.g., gas turbines, fuel cells), storage devices (e.g., batteries), and other technologies that enable a building to operate independently of the electric grid for prolonged periods of time. In most cases, where a microgrid is combined with a generation asset, the County anticipates byproduct to be used locally. Each microgrid is expected to serve only County buildings or campuses, however the County would consider expanding to include installations into neighboring areas if environmental, regulatory and financial issues can be resolved and a reasonable revenue share can be negotiated.

Please note that the County expects prospective Offerors to provide solutions that incorporate multiple distributed generation assets and/or extensive energy storage capacity to enable facilities to be self sufficient for extended periods of time. Offerors should not propose solutions that are ONLY solar power purchase agreements, as that work is being addressed by a separate RFEP.

This RFEP will be used to generate a short list of prospective public private partners which the County may engage in more detailed RFEP and cost proposal or other appropriate method.

### **SECTION III ANTICIPATED SCOPE**

The County's ultimate goal is to identify one or more public-private partners to develop, own and operate turn-key combined heat and power or microgrids on County facilities. The County expects to be the recipient of electricity, heat, or cooling generated.

At a minimum, the County is looking for a partner to:

#### **A. Design the Project:**

- Provide all initial and final engineering drawings and plans to the County's satisfaction,
- Conduct any utility interconnection studies to execute then project,
- Obtain all necessary federal, state and local permits necessary to complete the system,
- Provide updates to the County, and possibly the community on project planning and progress.

#### **B. Construction and Implementation:**

- Prepare the project site including site preparation; ideally including necessary upgrades to switchgear and other utility/energy infrastructure needed to support the project.
- Minimize interruptions in building service, particularly for sensitive facilities (e.g., public safety).
- Build and commission the project.
- Coordinate, where directed, with other project providers on enhancing the efficiency, coordinating renewables, or other building projects. As part of this REOI, the vendor will be able to propose comprehensive packages.

#### **C. Maintenance and Ongoing Operations:**

- Maintain the system for its service life to ensure the continuous availability of electricity,
- Ensure seamless disconnect and reconnect with grid power when desired,
- Accept responsibility for damage or repairs from the operation of the system,
- Provide revenue grade metering to establish the amount of electricity delivered to the County to provide constant data and monitoring of system performance and billing.

#### **E. Electricity Generation and Sales:**

- Provide the County all electricity and heat generated by the system, unless explicitly waived by the County,
- Extend the microgrid to neighboring facilities, adhering to applicable state, local and other regulations. Any generation assets or microgrid distribution infrastructure would need to be approved by the County to limit impacts on County facilities, or the environment.

**F. End of Service Life:**

- Offer the system to the County at its independently assessed value or decommission the system at end of contract term.

**G. Financing:**

The County's preference is to finance the system and necessary support infrastructure through a long term energy procurement contract where the County would be the purchaser of the generated electricity and other energy resources, with the vendor using associated tax credits and incentives to finance the system. An Offerers response should clearly state if they would be interested in financing a microgrid through this energy purchase. The Offeror may outline other financing options as part of a public private partnership. The County is highly interested in a partner who can attract federal, state, local, or foundation funds to offset part of the cost of the projects.

**SECTION IV PROCESS AND EVALUATION**

**1. PROCESS**

**A. Process**

This RFEP will be evaluated in two stages. In the first stage, the County will review Provider qualifications. In the second stage, if the County chooses to proceed, vendors that receive more than 70 points on their written proposal may be invited to participate in the second stage of this RFEP.

The County reserves and may exercise one or more of the following rights and options in its sole discretion with respect to this RFEP to:

- (a) reject any or all proposals;
- (b) supplement, amend or otherwise modify this RFEP;
- (c) cancel this RFEP with or without the substitution of another RFEP;
- (d) issue additional or subsequent RFEPs or issue formal Request for Proposals, task orders etc.
- (e) conduct investigations with respect to the qualifications of any provider;
- (f) Schedule supplemental interviews as needed;
- (g) change any time for performance set forth in this RFEP; and
- (h) waive any non-material deviation from this RFEP.

Offerors that successfully advance past the first stage RFEP may be invited to participate in stage two and provide a more detailed technical and cost proposal on actual County sites. The County is very interested in pursuing this project. However, the County reserves the right to not proceed, at its discretion, based on the responses to stage 1 RFEP.

**B. Selection Committee**

The Selection Committee will consist of representatives selected by the DGS who will evaluate all proposals in accordance with evaluation criteria set forth in this RFEP. During evaluation of the proposals, the Selection Committee may contact providers for written clarification or additional information at the Department's discretion.

**C. Qualified Offerors**

Respondents to this RFEP will be used to develop a short list of prospective public partners who may have the opportunity to respond to a forthcoming request for energy proposal or other partnership opportunity. The County intends, in good faith, to proceed with a stage two request for vendors to provide pricing but reserves the right not to proceed or use alternative instruments if in the best interests of the County and public.

**2. QUALIFICATIONS**

**A. Evaluation Criteria**

The Offerers submission shall be reviewed according to the evaluation criteria in Figure 1.

Figure 1. Evaluation Criteria:

Area	Details	Points
<b>Qualification</b>	<ul style="list-style-type: none"> <li>- Organizations, including its partners, experience with combined heat and power or microgrids.</li> <li>- Experience implementing projects for local governments or other institutional users.</li> <li>- Experience of core project management team with similar efforts.</li> <li>- Experience maintaining systems for prolonged periods of time</li> <li>- Proven ability to negotiate and work with other vendors working on parallel projects onsite (e.g., Energy Service Companies)</li> <li>- Experience obtaining grants, rebates and other funds to reduce the cost of system implementation</li> </ul>	30
<b>Approach</b>	<ul style="list-style-type: none"> <li>- Incorporates technologies that have been demonstrated to meet the needs of similar facilities and organizations</li> <li>- Ability to provide comprehensive services that integrate various energy related functions in a facility</li> <li>- Use of innovative, but reliable, technologies</li> </ul>	40
<b>Innovation</b>	<ul style="list-style-type: none"> <li>- Partnership with local companies. This may include but is not limited to organizations based in Montgomery County, participants in the Montgomery County Local Small Business Reserve, or Montgomery County Green Business Certification Program.</li> <li>- Inclusion of minority female disabled owned companies.</li> <li>- Partnership with recognized non-profit, government, or other partners in project deployment and evaluation (e.g., Universities, National Labs, Regional Energy Related Organizations)</li> <li>- Partnership opportunities with private entities such as equipment manufacturers. May include credible organizations seeking to demonstrate new technologies with a local government.</li> </ul>	30
<b>Total</b>		100

**SECTION VI. PROJECTS AND SITES**

The County has identified four hypothetical facilities representative of a range of County buildings and campuses. The Offeror should describe their approach to installing a microgrid for each site, addressing the questions outlined in Section VIII.

<b>Description:</b>					
County Service Park					
<b>Size/Physical Characteristics</b>					
<b>Gross Floor Area:</b> 408,000 Sq.Ft					
<b>Age:</b> 46 Years					
<b>Stories:</b> 5					
<b>Acreage:</b> Over 10 acres					
<b>Energy Consumption</b>					
<b>Elec (kWh)</b>	10,094,273	<b>Gas (Therms)</b>	291,987	<b>Demand (Max)</b>	1,737.70
<b>OnPeak (KWh)</b>	2,510,051	<b>Intermediate Peak (kWh)</b>	2,423,646	<b>Offpeak (kWh)</b>	5,160,576
<b>Fuel Split (%)</b>					
<b>Heating</b>	31	<b>Cooling</b>	27		
<b>Lighting</b>	12	<b>Plug Loads</b>	30		
<b>Site Considerations</b>					
<ul style="list-style-type: none"> <li>- Requires 24/7 operation of critical loads including but not limited to lighting, space conditioning, data, on-site food preparations and communications.</li> <li>- Adjacent to County warehouse (approximately 50,000 square feet) with space cooling, refrigerated storage and heating needs.</li> <li>- Adjacent to residential community to one side of lot, sound attenuation and aesthetics are considerations.</li> <li>- Switchgear is original to building and may need upgrading, incorporated into three utility rooms with two main taps.</li> </ul>					

<b>Description:</b>					
County Service Center (Large)					
<b>Size/Physical Characteristics</b>					
<b>Gross Floor Area:</b> 94,400 Sq ft.					
<b>Age:</b> 24 yrs					
<b>Stories:</b> 4					
<b>Acreage:</b> 4.5					
<b>Energy Consumption</b>					
<b>Elec (kWh)</b>	1,833,872	<b>Gas (Therms)</b>	49,208	<b>Demand (Max)</b>	416
<b>On Peak (KWh)</b>	Not available	<b>Intermediate Peak (kWh)</b>	Not available	<b>Offpeak (kWh)</b>	Not available
<b>Fuel Split (%)</b>					
<b>Heating</b>	23		<b>Cooling</b>	30	
<b>Lighting</b>	12		<b>Plug Loads</b>	35	
<b>Site Considerations</b>					
<ul style="list-style-type: none"> <li>- Relatively new construction</li> <li>- Adjacent to residential community and performing arts facilities, sound attenuation and aesthetics important.</li> <li>- Adjacent to parking garage facility which may incorporate extensive electric vehicle charging.</li> </ul>					

<b>Description:</b>					
County Service Center (Small)					
<b>Size/Physical Characteristics</b>					
<b>Gross Floor Area:</b> 34,638.00 sq ft.					
<b>Age:</b> 3 Years					
<b>Stories:</b> 1					
<b>Acreage:</b> ½ acre (aprox.)					
<b>Energy Consumption</b>					
<b>Elec (kWh)</b>	576,625	<b>Gas (Therms)</b>	2404	<b>Demand (Max)</b>	87.30
<b>On Peak (KWh)</b>	166,540	<b>Intermediate Peak (kWh)</b>	148,024	<b>Offpeak (kWh)</b>	262,061
<b>Fuel Split (%)</b>					
<b>Heating</b>	35		<b>Cooling</b>	20	
<b>Lighting</b>	20		<b>Plug Loads</b>	25	
<b>Site Considerations</b>					
<ul style="list-style-type: none"> <li>- Adjacent to residential and commercial communities, aesthetics important.</li> <li>- Switchgear original to building.</li> </ul>					

<b>Description:</b>					
Medium Fire Station					
<b>Size/Physical Characteristics</b>					
<b>Gross Floor Area:</b> 21,490 SF					
<b>Age:</b> 48 Years					
<b>Stories:</b> 2					
<b>Acreage:</b> < 1					
<b>Energy Consumption</b>					
<b>Elec (kWh)</b>	398,997	<b>Gas (Therms)</b>	13,717	<b>Demand (Max)</b>	84.80
<b>On Peak (KWh)</b>	97,496	<b>Intermediate Peak (kWh)</b>	94,831	<b>Offpeak (kWh)</b>	206,501
<b>Fuel Split (%)</b>					
<b>Heating</b>	45		<b>Cooling</b>	25	
<b>Lighting</b>	10		<b>Plug Loads</b>	20	
<b>Site Considerations</b>					
<ul style="list-style-type: none"> <li>- Adjacent to residential community and performing arts facilities, sound attenuation and aesthetics important.</li> <li>- Switchgear original to building.</li> </ul>					

**SECTION VII. SUBMITTALS**

In order to reduce paper consumption, the County is accepting only proposals on electronic media. Proposals must be emailed to [DGS.green@montgomerycountymd.gov](mailto:DGS.green@montgomerycountymd.gov) and be less than 5 megabytes in size.

In order to facilitate quick review, accurate scoring and timely award of the project, the Provider must submit their proposal within the following format. The County prefers responses to be merged into a single PDF or Word document.

Section	Maximum Length (double sided)	Details
<b>Cover letter</b>	1 page	Identify your company, responsible parties, and any alternative names (e.g., doing business as or DBA). Clearly include contact information.
<b>Qualifications</b>	3 pages	Provide a brief summary of similar projects completed for private or government clients. Include reference contact information for each project.
<b>Staff Experience</b>	3 pages	Provide brief biographies, no longer than 400 words per individual, including key engineers, principals and project managers.
<b>Approach/Questions</b>	3 pages per project (Total of 12 pages)	<p>For each of the four example projects, explain the following:</p> <ul style="list-style-type: none"> <li>- Summarize your approach to building a microgrid,</li> <li>- Identify key technologies that you and your team of partners would consider for their project. Include a description of key advantages.</li> <li>- Clearly articulate the energy resources provided by the microgrid (e.g., electricity, heat, cooling).</li> <li>- Identify any barriers that would preclude proceeding with a microgrid project.</li> <li>- Describe any operational issues (e.g., site operational interruptions) that would be required.</li> <li>- Explain if it is possible for your organization to coordinate with energy performance contracts and/or power purchase agreements that may be currently underway at a given site.</li> <li>- Explain how renewable energy sources will be incorporated into the microgrid.</li> <li>- Other information that would assist the County in</li> </ul>

		formulating a project.
<b>Financial Approach</b>	2 pages	<p>The County's preference is to finance the installation of a microgrid with a long term electricity purchase to operationalize the costs of premium reliable power (e.g., power purchase agreement).</p> <ul style="list-style-type: none"> <li>- Please explain if this is an approach that your organization can provide.</li> <li>- Explain the types of capital or other improvements the County would need to consider before engaging in a microgrid.</li> <li>- Describe any alternative financing mechanisms such as lease or license agreement that your organization or team offers that may be alternatives to a power purchase agreement approach.</li> <li>- Explain if a redevelopment/development agreement would be an option.</li> </ul> <p>(PRICING IS NOT BEING REQUESTED AT THIS TIME)</p>
<b>Cut sheets</b>	Unlimited	Manufacturer cut sheets for example equipment (e.g., controls, generators, batteries)

## **SECTION VII PROVISIONS**

### **1. DETERMINATION OF RESPONSIBILITY**

Upon request by the County or the Selection Committee, the provider will affirmatively demonstrate its responsibility in connection with this RFEP. The County reserves the right to consider as non-responsible a provider that has previously failed to perform properly or to complete, in a timely manner, contracts of a similar nature, or if investigation shows the provider to be unable or unlikely to perform the requirements of the contract.

At any time, the County may request a provider to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure of a provider to furnish requested information may constitute grounds for a finding of non-responsibility of the provider. The County may deny the award, renewal, or assignment of a contract to or for any provider that is in default of payment of any money due the County.

Factors that may be considered in connection with a determination of responsibility include:

- 1) The ability, capacity, organization, facilities, and skill of the provider to perform the contract or provide the goods or services required;
- 2) The ability of the provider to perform the contract or provide the services within the time specified without delay, interruption or interference;
- 3) The integrity, reputation, and experience of the provider, and its key personnel;
- 4) The quality of performance of previous contracts or services for the County or other entities. Past unsatisfactory performance, for any reason, is sufficient to justify a finding of non-responsibility;
- 5) The sufficiency of financial resources of the provider to perform the contract or provide the services;
- 6) The certification of an appropriate accounting system, if required by the contract type; and
- 7) Past debarment by the County or other entity.

The County may require providers to furnish satisfactory evidence that they are qualified and regularly engaged in performing the services for which they are submitting a proposal and maintain a regularly established place of business. An authorized representative of the County may visit any provider's place of business during normal business hours to determine ability, capacity, reliability, financial stability and other factors necessary to perform the contract. If so requested, a provider must submit information about its reputation, past performance, business and financial capability and other factors that demonstrate that the provider is capable of satisfying the Participants' needs and requirements for a specific contract.

### **2. LATE PROPOSALS**

Responses to each step of this RFEP received after the date and time specified may be considered late and rejected at the County's discretion. Rejected proposals, may not under any circumstances, be considered for any award resulting from this RFEP.

### **3. MONTGOMERY COUNTY CODE AND ELECTRICITY PROCUREMENT REGULATIONS**

The Montgomery County Code and the Montgomery County COMCOR 11B.04.01 Electricity Procurement Regulations apply to this RFEP.

**4. MINORITY – FEMALE – DISABLED OWNED BUSINESS PARTICIPATION**

The prime contractor will be required to set a maximum goal of the total contract value using county registered and certified minority businesses. It is County policy that good faith efforts are to be exercised in identifying minority firms in the purchase of goods/services or subcontracting in support of the contract for any available purchasing opportunities. [.http://www.montgomerycountymd.gov/DGS/OBRC/MFD.html](http://www.montgomerycountymd.gov/DGS/OBRC/MFD.html)

**5. PROPOSAL WITHDRAWAL/MODIFICATION**

A provider may withdraw or modify a Stage 1 proposal upon receipt by the County of a written request received from the provider before the time specified for the due date and time. However, once a proposal price has been given, it must be held until the date specified at 3:00 PM EST.

**6. REGIONAL COORDINATION**

Montgomery County is interested in coordinating with its regional partners to foster collaboration. Offerers should indicate in their proposal whether they are interested in working with the County to foster a regional effort and possible collaborative effort during stage two of this RFEP.

**7. PROPRIETRY & CONFIDENTIAL INFORMATION**

Providers are notified that the County and Participants have unlimited data rights regarding proposals submitted in response to this solicitation. Unlimited data rights means that the County and Participants have 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 providers in response to this or any solicitation issued by the County. However, the County will exempt information that is confidential commercial or financial information of a Provider, as defined by the Maryland Public Information Act, State Government Article, Section 10-617, from disclosure. It is the responsibility of the provider 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 provider agrees that any portion of the proposal that is not stamped as proprietary or confidential is not proprietary or confidential. As a condition for the County keeping the information confidential, the provider must agree to defend and hold the County harmless if any information is not released at the request of the provider.

**8. PUBLIC POSTING**

The County will publicly post any list of Stage 1 Qualified Providers and the announcement of any contract award(s) on the DGS OES Website at <http://www.montgomerycountymd.gov/DGS-OES/Home.html> Physical versions are available with notice from the Department of General Services, 101 Monroe St. 9<sup>th</sup> Floor, Rockville, MD. 20850.

**9. RFEP AMENDMENTS**

In the event that the County issues an amendment to this RFEP (“RFEP Amendment”), all terms and conditions will remain in effect unless they are specifically and explicitly changed by the amendment. Providers must acknowledge receipt of such RFEP Amendments, to the

designated place, and prior to the hour and date specified in this RFEP or RFEP Amendment for receipt of proposals. Providers may acknowledge RFEP Amendments by doing one of the following:

- 1) By returning one signed copy of the RFEP Amendment either with its proposal or separately to Eric Coffman at the address set forth on page 2 of this RFEP.
- 2) By acknowledging receipt of the RFEP Amendment on the Acknowledgment submitted.
- 3) By stating that the RFEP Amendment is acknowledged in a signed letter that refers to the procurement and RFEP Amendment numbers.

#### **10. PROPOSAL PREPARATION EXPENSES**

Except for costs awarded as a result of successful solicitation protests, all costs incurred in the preparation and submission of proposals will be borne by the provider and will not be incurred in anticipation of receiving reimbursement from the Participants. In the case of a successful solicitation protest, only reasonably incurred actual costs may be awarded and the total amount of costs that may be awarded may not exceed \$5,000.

#### **11. VERBAL EXPLANATIONS**

Verbal explanations or instructions given by an agent or employee of Montgomery County to a provider in regard to this proposal will not be binding on the County. Any binding information given to a provider in response to a request will be furnished to all providers as an RFEP Amendment if such information is deemed necessary for the preparation of proposals, or if the lack of such information would be detrimental to the uninformed providers. Only such RFEP Amendments, when issued by the County, will be considered binding on the County.

#### **12. TERMS AND CONDITIONS**

All Contracts awarded as a result of this proposal, and a subsequent cost and price proposal, will contain the RFEP Terms and Conditions of Contract between the Participant & Provider contained in Exhibit C of this RFEP. In addition, Contracts involving deliveries of energy conforming to the requirements described below will contain Provider warranties, representations and covenants with respect to meeting such requirements.

Each provider must acknowledge that it agrees to all Electricity Purchase Terms and Conditions of Contract (see Acknowledgment page).

#### **13. PROTESTS**

##### **A. Stage 1**

Any provider who is aggrieved in connection with a decision regarding Stage 1, and wishes to challenge the decision, must file and deliver a written protest to the Director, Department of General Services, no later than ten (10) days after the list of Stage 1 Qualified Providers is posted by the Director. Protests should be filed as early in the proposal process as possible to enable timely correction of irregularities; however, protests must not be filed and will not be accepted after the expiration of the 10 day deadline. The Director must dismiss any tardy protests.

Each protest must contain the following information:

- 1) An identification of the RFEP;

- 2) The name, address and telephone number of the Provider protesting;
- 3) A statement supporting the standing of the provider to file a protest;
- 4) Specification of all grounds for the protest, including:
  - a. A submission of detailed facts and all relevant documents;
  - b. A citation to relevant language in the RFEP, regulations, or law relied upon; and
  - c. All other matters which the provider contends support the protest; and
  - d. Factual allegations regarding information not appearing on the face of the procurement or offer must be supported by affidavit based on personal knowledge
- 5) If proposal preparation costs are sought, the protesting provider must provide, by affidavit based on personal knowledge, evidence supporting the costs claimed.

Except as provided herein, any protests, including appeals, will be governed by the applicable County Procurement Regulations, including, but not limited to, the County Electricity Procurement Regulations. The burden of production of all relevant evidence, data, and documents and the burden of persuasion to support the protest is on the provider making the protest. In the event a provider protests a Stage 1 decision, its potential remedy in the event of a successful protest shall be limited to inclusion on the list of Stage 1 Qualified Providers, or, if time does not permit the addition of another Qualified Provider to such list, the protesting provider's actually incurred reasonable costs in connection with its preparation of its response to Stage 1. If such an award for costs is made, then said award must not exceed \$5,000.

## **ATTACHMENT A – TERMS AND CONDITIONS**

### **ELECTRICITY PURCHASE TERMS AND 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.

#### **3. APPLICABLE LAWS**

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Electricity 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 Electricity Procurement Regulations, the Electricity 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.

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. (Effective June 28, 2010).

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. (Effective January 1, 2011).

#### **4. ASSIGNMENTS AND SUBCONTRACTS**

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Department of General Services. Unless performance is separately and expressly waived in writing by the Director, Department of General Services, 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, Department of General Services. 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, Department of General Services, 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, Department of General Services, 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, Department of General Services, 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, Department of General Services, 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, Department of General Services;
- (10) issue notices to proceed; and
- (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 Electricity 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, Department of General Services, 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 Electricity 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, Department of General Services, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Department of General Services, for the purpose of dispute resolution. The Department Head or his/her designee, must forward to the Director, Department of General Services, 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, Department of General Services or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Department of General Services, 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, Department of General Services, 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 Title 14 of the Election Law, Annotated Code of Maryland.

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 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. 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.

#### 16. 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.

#### 17. 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.

18. INDEPENDENT CONTRACTOR

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

19. 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).

20. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the 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. 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, Department of General Services, 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. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Department of General Services, may waive the requirements of this section, in whole or in part.

TABLE A. - INSURANCE REQUIREMENTS  
 (See Paragraph #20 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 Attachment
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See Attachment
each occurrence	300	500	1,000	
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

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

\*Professional services contracts only

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TABLE B. - INSURANCE REQUIREMENTS  
 (See Paragraph #20 Under the General Conditions of Contract  
 Between County and Contractor)

	<u>CONTRACT DOLLAR VALUES (IN \$1,000's)</u>			
	<u>Up to 50</u> 300	<u>Up to 100</u> 500	<u>Up to 1,000</u> 1,000	<u>Over 1,000</u> See Attachment
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 <u>Certificate Holder</u> Montgomery County Maryland (Contract #) Office of Procurement Rockville Center 255 Rockville Pike, Suite 180 Rockville, Maryland 20850-4166				

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21. LICENSES AND AUTHORIZATIONS

The Contractor warrants and covenants that (a) it will possess, and will continue to possess for the duration of the Contract term, all required licenses and authorizations mandated by federal, state and local law in order to provide Electricity Supply Service under this Contract, and (b) it will at all times comply with all terms and conditions of such licenses and authorizations. The Contractor warrants and covenants that, for the duration of the Contract term, it will maintain in good standing its license and authorization as a Supplier and/or Marketer, as defined in the applicable jurisdiction's statutes and laws, including, but not limited to, Maryland Annotated Code, Public Utility Companies Article, Section 1-101(o). The Participant may request and the Contractor will promptly furnish evidence that the Contractor meets its warranties and covenants under this paragraph.

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. PAYMENTS

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 Department of General Services 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. TERMINATION FOR DEFAULT

The Director, Department of General Services, may terminate the contract in whole or in part, and from time to time, whenever the Director, Department of General Services, 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, Department of General Services, 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.

#### 27. 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.

#### 28. TIME

Time is of the essence.

#### 29. WORK UNDER THE CONTRACT

Work may not commence 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.

#### 30. 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.

#### 31. TITLE TO ELECTRICITY

The Contractor warrants good and marketable title to all electric energy delivered to the points of delivery under this Contract on behalf of the County, and will indemnify, defend and hold harmless the County and its directors, officers, elected officials and employees from and against all loss, cost, damage and other expenses, including attorney's fees and litigation expenses arising out of (a) Contractor's breach of the above-stated warranty, or (b) Contractor's title to and delivery of electricity, such claims including but not limited to environmental pollution liability. The Contractor's indemnification obligation under this paragraph is in addition to and not in derogation of any or all of the Contractor's indemnification obligations under conditions provided, however, that the Contractor's indemnification under this provision is limited to its liabilities in connection with the supply of electricity and/or performance of its obligations under the Contract.

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