

**Open Solicitation Plan  
for  
Open Solicitation #1039332 – Delivery of Meals to Homebound Clients**

As required by Montgomery County Procurement Regulations, Code of Montgomery County Regulations (COMCOR), Section 11B.00.01, et seq., Section 4.1.6.3 (a), the Department of Health and Human Services (DHHS)/Aging and Disability Services is submitting this Open Solicitation Plan for approval by the Director, Office of Procurement, Montgomery County, Maryland.

Section 4.1.6.3 Procedure

- (1) Public Notice – Notice for this solicitation will be posted on the Montgomery County (“County”), Office of Procurement website. Additionally, DHHS will send a copy of the notice to current providers under Open Solicitation #5645140111 whose contracts will be replaced under this Open Solicitation.
- (2) Application Process – The DHHS, Contract Management Team (CMT) will mail out the solicitation packet for this Open Solicitation to all providers who express an interest in applying to provide the service. The solicitation packet includes the following: 1) the Notice to Vendors that summarizes this Open Solicitation; 2) the Instructions and Minimum Qualifications document for this Open Solicitation; 3) the Application with Vendor Information Form (Attachment B); and 4) the Pre-Approved Form Contract including the Scope of Services and General Conditions of Contract Between County and Contractor, and all other attachments. Applicants must sign the Application/Vendor Information Form stating that they have received the solicitation packet and understand the requirements of this Open Solicitation, including submission of all required documents described under the Instruction and Minimum Qualification section of this Open Solicitation.
- (3) Criteria for accepting or rejecting applications – The solicitation packet contains the minimum requirements that applicants must meet. Applications will be reviewed by DHHS staff for acceptance or rejection, based on the solicitation criteria.

All applicants meeting the minimum qualifications listed in the Instructions and Minimum Qualifications documents of the Open Solicitation will be eligible to receive a contract to provide the services described in the Open Solicitation. The County makes no guarantee that any single contractor will receive referrals or serve clients under a contract resulting from this Open Solicitation.

- (4) Pre-Approved Form Contract – Applicants will be required to execute a contract with the County using the Pre-Approved Form Contract, including the General Conditions of Contract Between County and Contractor (“General Conditions”) and other attachments, without modification.
- (5) Cost – The cost of contracts will not exceed available appropriations. Prior to encumbrance of funds for contracts awarded under this Open Solicitation, the total available appropriation for the contracts will be verified by DHHS. Funds will be encumbered under contracts for home-delivered meals to homebound clients via a Purchase Order. The County’s Senior Nutrition Program will monitor expenditures for each executed contract against the Purchase Order and any subsequent delivery orders that the Office of Procurement authorizes.
- (6) Cancellation – The County reserves the option to cancel this Open Solicitation at any time. Award of a contract under this Open Solicitation is subject to fiscal appropriations made by the County Council and the encumbrance of such appropriated funds.

## **NOTICE TO VENDORS**

### **OPEN SOLICITATION #1039332 Delivery of Meals to Homebound Clients**

The Montgomery County Department of Health and Human Services' (DHHS) Aging and Disability Services, Senior Nutrition Program is seeking experienced and qualified applicants to deliver meals to homebound clients of DHHS living in various areas of Montgomery County, Maryland.

A complete description of the Scope of Services is listed in the Open Solicitation packet as part of the Pre-Approved Form Contract. You may obtain a packet by contacting the Contract Management Team at 240-777-1163, requesting Open Solicitation #1039332, and providing your name or a contact name, a complete mailing address or email address and a telephone number. The purpose of an Open Solicitation under Montgomery County's Procurement Regulations is to permit the acceptance of applications on a continuing basis to meet services needs.

Applicants are encouraged to review all of the documents and information provided with the packet before completing and returning the Application/Vendor Information Form and Pre-Approved Form Contract.

The County will enter into a contract with all applicants who meet the minimum qualifications as described in Section II., Instructions and Minimum Qualifications, and are found to be a responsible organization. The County will sign the contract and return a copy to the applicant. The Pre-Approved Form Contract with all attachments will constitute the entire Contract. The applicant must sign the County's Pre-Approved Form Contract Signature Page which includes the General Conditions of Contract Between County and Contractor, and other attachments, as written with no modifications.

Questions related to the technical information in this Open Solicitation should be directed to Carol Craig, Senior Nutrition Program, at 240-777-1064.

Questions related to the application/contract process and insurance requirements may be directed to Lisa M. Colburn, Senior Contract Manager, at 240-777-1163.

## **INSTRUCTIONS AND MINIMUM QUALIFICATIONS**

The County will enter into contracts with all applicants who meet the minimum qualifications and complete and submit the mandatory submissions described below in this document, including copies of required insurance certificates and the Pre-Approved Form Contract properly executed by the applicant. After an applicant submits the required information and documents, the County will review the submissions and determine whether the applicant meets the minimum qualifications. If the County accepts an application, the contract will be executed and a copy of the contract will be sent to the applicant. The completed Application/Vendor Information Form and the entire Open Solicitation packet (consisting of the Notice to Vendors, Pre-Approved Form Contract with the signature page and all attachments, and this document) constitute the entire Contract. Please keep a copy of the entire Open Solicitation packet for your records. Applicants are strongly encouraged to carefully review all of the documents and information provided with this packet before completing and returning the Application/Vendor Information Form and the Pre-Approved Form Contract, etc. **Incomplete applications will not be processed.**

I. **Submission Documents:** The following items must be submitted:

A. **Narrative Document**

Applicant must submit a narrative which describes the applicant's ability to provide the services described in the Pre-Approved Form Contract Scope of Services, and all relevant experience in providing similar services. The information provided in the narrative must demonstrate that the applicant is capable of delivering meals to homebound clients in all geographic areas in Montgomery County, Maryland. Each narrative must also adequately address the applicant's ability to meet all of the requirements of this Open Solicitation and a contract awarded as a result of this Open Solicitation.

B. **Insurance Certificate**

A Certificate(s) of Insurance that provides evidence of meeting the insurance requirements set forth in Article VII of the Pre-Approved Form Contract. Contact your insurance broker to obtain the necessary Certificate(s). A sample Certificate of insurance is included in this packet. (Insurance Certificates that contain renewal of policy information may be faxed by your insurance broker to the attention of the Insurance Manager to (240) 777-4464. However, applicants must provide an original insurance certificate, signed by the broker, to the Contract Management Team.)

C. **Vendor Signed Contract/Signature Page**

If the applicant is a corporation, an officer of the corporation with authority to sign contracts for the corporation must sign the County's Pre-Approved Form Contract. **PLEASE DO NOT PUT A DATE IN THE PARAGRAPH AT THE TOP OF THE PAGE. ONLY ENTER A DATE IN THE SIGNATURE BLOCK.**

D. **Application Form**

Applicant must complete the Application/Vendor Information Form (Attachment B) in full, and sign and date the form.

## INSTRUCTIONS AND MINIMUM QUALIFICATIONS

- E. If applicant is a corporate entity, provide the applicant's Articles of Incorporation along with any amendments.
- F. A completed and signed copy of the applicant's Internal Revenue Service (IRS) **Form W-9**.
- G. If applicant is a Not-for-Profit entity, the applicant's **Letter of Determination from the IRS**.
- H. Minority Business Program & Offeror's Representation (Attachment C of the Pre-Approved Form Contract).
- I. Minority-Female-Disabled Person MFD Plan or Request for Waiver (Attachment E of the Pre-Approved Form Contract).
- J. A completed "Wage Requirements Certification Form provided in the attached Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between and Contract" (Attachment F of the Pre-Approved Form Contract).

Please return all of the above listed, completed submissions to:

Montgomery County, Maryland  
Department of Health and Human Services  
Contract Management Team: Attn: Lisa M. Colburn  
401 Hungerford Drive, 6<sup>th</sup> Floor  
Rockville, MD 20850

- II. The minimum qualifications for this Open Solicitation are as follows:
  - A. All applicants must have the capacity to deliver meals to homebound persons in Montgomery County, Maryland, as described in the enclosed Pre-Approved Form Contract. Contractor must have least three (3) years experience in delivering **home-delivered** meals.
  - B. All applicants must have the capacity to provide the required reports as described in Article III of the Pre-Approved Form Contract.
  - C. Applicant must accept the County reimbursement rate for all services described in this Open Solicitation.

## INSTRUCTIONS AND MINIMUM QUALIFICATIONS

### III. Instructions

Please complete the enclosed Application/Vendor Information Form, attach all of the above listed mandatory submissions, sign the Pre-Approved Form Contract signature page, and return all of these documents, including all pages of the Pre-Approved Form Contract, to:

Department of Health and Human Services  
Contract Management Team  
401 Hungerford Drive, 6<sup>th</sup> Floor  
Rockville, MD 20850  
Attn: Lisa M. Colburn

If your application meets the minimum qualifications listed above, the County will execute the contract and return a copy to you.

A copy of the County's General Conditions of Contract Between County and Contractor ("General Conditions") is included with the solicitation packet. The County's General Conditions will be attached as Attachment A to any contract that results from this Open Solicitation and includes terms and conditions that the County requires of contractors. You must sign the County Pre-Approved Form Contract as written, including the General Conditions, and other attachments and return it to the County for execution by the Office of Procurement. The DHHS Contract Management Team will forward a copy of the executed contract along with related materials to you. Once you receive notice from the County that the contract has been executed and you receive an executed Purchase Order from the County containing a monetary limit for services to be provided, you may begin to provide services to clients.

The County makes no guarantee that any single contractor will receive referrals or serve clients under a contract resulting from this Open Solicitation.

Award of a contract under this Open Solicitation is subject to appropriation of funding.

The County reserves the right to cancel this Open Solicitation at any time.

**Pre-Approved Form Contract**  
**Open Solicitation #1039332**  
**Delivery of Meals to Homebound Clients**

**Contract #** \_\_\_\_\_

**I. BACKGROUND/INTENT**

- A. The Montgomery County, Maryland, Department of Health and Human Services (DHHS) serves the elderly and persons with disabilities through its Aging and Disability Service Area. The DHHS Senior Nutrition Program (SNP) provides various services for adults age 60 and older, a spouse of any age of an adult aged 60 and older, and persons of any age with disabilities. The DHHS SNP recognizes a need for eligible homebound clients to have nutritious meals delivered to them.
- B. The SNP is seeking a contractor to deliver meals to homebound clients of DHHS, as described above, who reside in Montgomery County, Maryland. The Contractor must deliver meals to clients identified by the SNP, on an as-needed basis. In addition, the County will consider multiple factors, such as Contractor's availability and geographic proximity to the client, for delivery assignments. Meals must be immediately delivered to clients so that meals are at a safe-to-eat temperature upon arrival (typically within one (1) hour) of pick-up.
- C. The Contractor was selected under Open Solicitation #1039332, Delivery of Meals to Homebound Clients, to provide services in accordance with the Open Solicitation and this Contract.

**II. SCOPE OF SERVICES**

- A. The Contractor must provide meal delivery services to clients identified by SNP, on an as-needed basis, to any location within the geographic boundaries of Montgomery County, Maryland.
- B. The Contractor must immediately deliver the meals so that meals are at safe-to-eat temperatures when they arrive at the clients' homes, generally within one hour of pick-up.
- C. The Contractor must follow all instructions from the SNP regarding policies for delivering meals, including, but not limited to, a prohibition on leaving meals at homes when clients are not available to receive the meal.
- D. The Contractor must have a cellular phone or other means of communicating with the SNP in the event that problems arise with the delivery of meals. The Contractor is required to immediately call SNP if there is a problem with any meal delivery.
- E. The County reserves the right to perform unannounced, on-site program monitoring visits to evaluate the provision of services under the Contract, and the County reserves the right to access all of Contractor's program files and materials related to the Contract. Contractor must maintain all such files for a minimum of three (3)

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years following the termination of this Contract. These files must be maintained in a manner approved by the County.

- F. Contractor must provide reports as requested by the County, as described in Article III, RECORDS AND REPORTS.
- G. The Contractor must track the spend-down of funds against the maximum award amount set forth in the Purchase Order issued to the Contractor and must notify the Director of the SNP in writing at least 60 days in advance of any projected shortfall or overage. The County will also monitor the spend-down of funds associated with this Contract.
- H. The Contractor must not charge fees to clients served under this Contract and drivers must not accept tips from clients.
- I. The Contractor must own or have access to a vehicle or vehicles registered in the State of Maryland, to use for providing delivery of meals to clients under this Contract. Contractor must keep the vehicles' registration and insurance coverage current throughout the term of this Contract.
- J. All drivers for the Contractor must be at least 21 years of age and must have a valid State of Maryland driver's license appropriate to the type of vehicle being driven.
- K. All drivers must pass a criminal background check conducted by the Contractor. The Contractor must ensure that no driver whose criminal background is not clean or who refuses to participate in a criminal background check provides services to the program participants. Results of background checks must be made available to the County at the request of the SNP.
- L. The Contractors must comply with the County's mandatory insurance requirements as set forth under Article VII of this Contract and must provide an insurance certificate(s) evidencing the required insurance coverage. This insurance must be kept in full force and effect during the term of this Contract, including all extensions. Contractor must obtain insurance and provide the County with updated insurance certificates when any of the mandatory coverages expires.

**III. RECORDS AND REPORTS**

The Contractor must provide monthly reports to the County in a format approved by the County, no later than ten (10) days following the end of each month. These reports must accompany the monthly invoice and must include, at a minimum: delivery dates, client names and client addresses. Contractor must comply with any additional reporting requirements requested by the County.

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IV. COMPENSATION

- A. The County will compensate the Contractor for services provided under this Contract at the rates established by the County. The rates for the services under Open Solicitation #1039332 are set by the County and published at:  
<http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html> .

The County may, at its option, as fiscal appropriation allow, adjust the Approved Rate Sheet for this Solicitation at the beginning of the County's Fiscal Year (i.e., July 1). Adjustment of the Approved Rate Sheet for this Solicitation will be accomplished without having to reissue this Open Solicitation. The County's Fiscal Year runs from July 1 through June 30. The Contractor is responsible for checking the website listed above at the beginning of each Fiscal Year (beginning July 1) to obtain a copy of the County's current Approved Rate Sheet.

- B. No services will be performed or compensated under this Contract prior to the execution of a County Purchase Order and Notice(s) to Proceed and the Contractor's receipt of the County Purchase Order containing a maximum compensation amount.
- C. Compensation must not exceed funds appropriated by the County and encumbered into the County Purchase Order issued to the Contractor.
- D. Contractor is not guaranteed a minimum number of delivery requests under this Contract.
- E. Prices quoted are firm for a period of two years after execution of the Contract. Any request for a price adjustment after this two-year period is subject to approval or rejection by the Director, Office of Procurement or designee, and:
1. must be submitted in writing to the Director, Office of Procurement and accompanied by supporting documentation justifying the Contractor's request. A request for any price adjustment may not be approved unless the Contractor submits to the County sufficient justification to support that the Contractor's request is based on its net increase in costs in delivering the goods/services under the Contract;
  2. must be submitted sixty (60) days prior to Contract expiration date, if the Contract is being amended;
  3. may not be approved if it exceeds the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve-month period immediately prior to the date of the request. The request shall be based upon the CPI for all urban consumers issued by the Washington-Baltimore, DC-MD-VA-Metropolitan area by the United States Department of Labor, Bureau of Labor Statistics for ALL ITEMS;

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4. the County will approve only one price adjustment for each Contract term, if a price adjustment is approved;
5. should be effective sixty (60) days from the date of receipt of the Contractor's request; and
6. will be executed by written Contract amendment.

V. INVOICES

The Contractor must submit invoices within 10 days after the end of each month to the County, in a format approved by the County for services provided under this Contract. Invoices must be submitted to Montgomery County Department of Health and Human Services, Aging and Disability Services, Attn: Carol Craig, 401 Hungerford Drive, 4<sup>th</sup> Floor, Rockville, MD 20850. Invoices may also be sent electronically to [Carol.Craig@montgomerycountymd.gov](mailto:Carol.Craig@montgomerycountymd.gov). Any invoices sent electronically must be acknowledged with the statement "the invoice has not been previously paid – use as original" along with an original vendor signature and date directly on the invoice. The Contractor's invoice must reflect the number of deliveries provided for the time period invoiced and the total amount of funding requested for the time period invoiced and must be based on the rates set forth in pre-determined Rate Sheet, referenced in Article IV, above. The Contractor must submit the report required under Article III., Records and Reports, with each invoice for services provided under this Contract.

VI. TERM

This Contract shall become effective upon signature by the County's Director, Office of Procurement, and shall be for two (2) years. Before the Contract term ends, the Director may, (but is not required to) renew this Contract for an additional term, if the Director determines that renewal is in the best interest of the County. The Contractor's satisfactory performance does not guarantee renewal of this Contract. The Director may exercise this option to renew two (2) times for up to two (2) years each. Substantial non-compliance or substantial non-satisfactory performance, as determined in the sole discretion of the County, may lead to a work improvement plan or early termination of the Contract.

VII. GENERAL CONDITIONS AND INSURANCE

The General Conditions of Contract Between Contractor and County ("General Conditions") are incorporated by reference and made part of this Contract as Attachment A. The following insurance requirements supersede those outlined in Provision 21 of the General Conditions.

Prior to the execution of the Contract by the County, the Contractor must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do 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

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if requested by the County, the Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of *one million dollars (\$1,000,000)*, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

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

**Crime Policy - Broad Form**

A policy for Crime coverage, to include acts of Employee and or Volunteer Dishonesty shall be carried for the benefit of the County and the contractor in the following amounts:

**\$10,000 per employee**

Contractor will be responsible for the deductible.

Automobile Liability Coverage

A minimum limit of liability of *one million dollars (\$1,000,000)*, combined single limit, for bodily injury and property damage coverage per occurrence including the following:

owned automobiles  
hired automobiles  
non-owned automobiles

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 - \$100,000 each accident***

***Bodily Injury by Disease - \$500,000 policy limits***

***Bodily Injury by Disease - \$100,000 each employee***

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

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.

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Certificate Holder

Montgomery County, Maryland  
DHHS/CMT/Lisa M. Colburn  
401 Hungerford Drive, 6<sup>th</sup> floor  
Rockville, Maryland 20850

VIII. PRIORITY OF DOCUMENTS

The following documents are incorporated by reference and made a part of this Contract and are listed in the following order of precedence to be applied in the event of a conflict in their term:

1. This Contract Document;
2. General Conditions of Contract Between County and Contractor (Attachment A);
3. Application/Vendor Information Form (Attachment B)
4. Minority Business Program & Offeror's Representation (Attachment C);
5. Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor (Attachment D)
6. Minority, Female Disabled Person Subcontractor Performance Plan (Attachment E);  
and
7. Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor and Wage Requirements Certification (Attachment F).

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**Form Contract #** \_\_\_\_\_

**SIGNATURE PAGE**

This Contract, which incorporates by reference: the Instructions and Minimum Qualifications, the completed Application Form, the Notice to Vendors, the Approved Form Contract with attached General Conditions of Contract Between County and Contractor, Attachment A and Attachments B, C, D, E, and F copies of which have been provided to the Contractor, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (the "Contractor") and Montgomery County, Maryland (the "County"). This Contract will become effective on the date of signature by the Director, Office of Procurement. This Contract and any renewals or extensions of this Contract are subject to the appropriation of funds.

*Part A: Contractor's Offer to Provide Services:*

(Prospective Contractor Must Complete)

Contracting Corporation, Partnership, Limited Liability Company OR Proprietorship

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

*Part B: County Acceptance:*

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_  
Cherri Branson, Director  
Office of Procurement

\_\_\_\_\_  
Date

RECOMENDATION

\_\_\_\_\_  
Uma S. Ahluwalia, Director  
Department of Health and Human Services

\_\_\_\_\_  
Date

This form has been approved as to form and legality by the Office of the County Attorney.

**\* Must be signed by corporate officer or person legally authorized to bind organization to a contract**

## 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
- (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 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 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, 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. 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, Office of Procurement, may waive the requirements of this section, in whole or in part.

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

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<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 #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 Attachment

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

**(Remainder of Page Intentionally Left Blank)**

**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 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.

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.

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

**27. 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).

**28. 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.

29. 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.

30. TIME

Time is of the essence.

31. 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.

32. 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.

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

**ATTACHMENT B**

**APPLICATION/VENDOR INFORMATION FORM**

\_\_\_\_\_  
Legal Name of Firm/Individual

\_\_\_\_\_  
Contact Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
E-mail Address (if applicable)

Tax

\_\_\_\_\_  
Identification # (TIN)

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number

Profit or Non-Profit (please check one) Profit  Non-Profit

Name of Person or Company that handles the billing and that person's telephone number:

\_\_\_\_\_  
\_\_\_\_\_

Acknowledgement:

I have received a copy of the packet for Open Solicitation 1039332, reviewed the documents, and agree to the solicitation's requirements, including the insurance requirements. I have received a copy of the County's General Conditions (Attachment A to the Pre-Approved Form Contract) and accept those terms and conditions.

\_\_\_\_\_  
Signature of Person Completing this Form

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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 (who is not a certified MFD firm) 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, Office of Business Relations and Compliance at (240) 777-9912.

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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.

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](http://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.

**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: \_\_\_\_\_

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: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

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      ASIAN AMERICAN      DISABLED PERSON  
FEMALE                      HISPANIC AMERICAN      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      ASIAN AMERICAN      DISABLED PERSON  
FEMALE                      HISPANIC AMERICAN      NATIVE AMERICAN

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

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

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.

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/PRO/DBRC/WRL.html>
- 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 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](mailto:WRL@montgomerycountymd.gov) .

[Remainder of Page Intentionally Left Blank]

Contract # \_\_\_\_\_

**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	

