

Resolution No.: 17-1082
Introduced: May 13, 2014
Adopted: May 13, 2014

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY MARYLAND**

By: County Council

SUBJECT: Approval of Executive Regulation 1-14AM, OHR Service Provider Selection Process and Procedure

Background

1. On March 20, 2014 the County Council received Executive Regulation 1-14, OHR Service Provider Selection Process and Procedure. The proposed regulation would establish a selection process and procedure to allow service providers access to County employees to offer and sell supplemental products and services to County employees that are not part of the County's employee benefits plan.
2. On April 30, 2014, the Executive transmitted Executive Regulation 1-14AM, OHR Service Provider Selection Process and Procedure.
3. The Council reviewed the regulation under method (1) of County Code, §2A-15
4. Under method (1), the regulation is not adopted until the Council approves it.

Action

The County Council for Montgomery County Maryland approves the following resolution:

Executive Regulation 1-14AM, OHR Service Provider Selection Process and Procedure is approved.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council



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Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject OHR Service Provider Selection Process and Procedure	Number 1-14 AM
Originating Department Office of Human Resources	Effective Date May 13, 2014

Montgomery County Regulation on

OHR Service Provider Selection Process and Procedure

Office of Human Resources

Issued by: County Executive
Regulation No. 1-14 AM
COMCOR No. 33.05.01

Authority: Montgomery County Code, 2004, §§ 2A-14 and 33-5

Supersedes: none

Council Review: Method 1

Montgomery County Register Volume 31, Issue 2

Comment deadline: March 3, 2014

Effective date: May 13, 2014

Summary: This regulation establishes a selection process and procedure to allow service providers access to County employees to offer and sell supplemental products and services to County employees that are not part of the County's employee benefits plan.

Address for Comments: Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

Boldface
* * *

Heading or defined term.

Existing language unchanged by executive regulation.



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Office of Human Resources Service Provider Selection Process and Procedure

Section 1 - Purpose and Intent

The purpose and intent of this document is to describe the selection process and procedure to allow a service provider access to County employees to offer and sell supplemental products and services to County employees that are not part of the County's employee benefits plan. These supplemental products and services may include, but are not limited to, accident insurance, cancer treatment insurance, short- or long-term care coverage, other specified event policies, educational, recreational, or investment products.

The products and services offered to County employees are not endorsed or recommended by the County and the County will receive no benefit or payment from any service provider that may be selected under this process and procedure other than reimbursement for costs incurred by the County. Products and services offered by these providers are not part of the County employee benefits plan and will be purchased solely by the County employee without any contribution by the County.

This process and procedure is adopted to promote transparency, competition and fairness among potential service providers that submit proposals to the County for access to County employees to sell these supplemental products or services.

Section 2 – Authority

The regulation is authorized by Section 2A-14 and Section 33-5 of the Montgomery County Code which establishes the Montgomery County Merit System and sets forth the intent



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of the legislation and the Merit System principles. Those principles include providing County employees with, among other things, those things that are necessary for the employees to achieve a high level of excellence and competence and that will promote harmonious and efficient operation within various components of county government.

Section 3 – Exemption from County Procurement Requirements

The County Charter, County law, and County regulations require that whenever expenditure of public funds by the County, irrespective of their source, to acquire goods, services, or construction, the County’s contracting and procurement laws apply. Under the circumstances of this process and procedure, there will be no expenditure of County public funds for any of the products or services and therefore the selection of providers will not be subject to the County’s contracting and procurement laws under Section 11B-1, *et seq.* of the Montgomery County Code or the Montgomery County Procurement Regulations.

Section 4 - Applicability

This selection process and procedure must be used to select a service provider for any and all supplemental products and services that the Office of Human Resources (“OHR”) determines will be made available to County employees.

Section 5 – Selection Process

- A. OHR will develop a detailed list of criteria for the products and services that may be made available to County employees under this process and procedure.
- B. OHR will issue a Request for Information and Interest (“RII”). The RII is a formal selection process requesting sealed competitive proposals containing qualifications and other requested information from prospective providers.



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- C. The RII at a minimum should include the following information:
1. instructions to service providers in a form authorized by the Director of OHR;
 2. a notice of the date, time, and place for submission of the proposals and for the proposal opening, and a statement of the number of copies required to be submitted;
 3. the date, time, and place where a pre-proposal conference, if any, will be held;
 4. the identity and telephone number of a contact person within OHR for technical information pertaining to the RII;
 5. a description of the scope of services for the supplemental products and services that are to be supplied with sufficient specificity and detail to permit full and free competition and direct incorporation into a contract document without need for further change or amendment;
 6. a concise explanation of the method of award, the evaluation criteria, or other processes or procedures that will be utilized to make a selection of the provider.
 7. a listing of all required submissions by the service provider, including samples, descriptive literature, and all other submissions which, if missing from the RII response, are grounds for disqualification as being non-responsive;
 8. all mandatory clauses;
 9. insurance requirements, if applicable;
 10. other information pertaining to delivery and performance under the contract.



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Section 6 – Selection Procedure

- A. The RII will be issued and public notice will be given under the direction of the Director of OHR.
- B. Proposals to the RII will be received by the Director of OHR, as specified in the solicitation, time stamped, and publicly opened.
- C. Proposals will be evaluated when deemed responsive by the Director of OHR and be referred to a Review Committee to screen and evaluate each proposal.
- D. OHR must develop guidelines that the Review Committee will follow while evaluating those proposals. The guidelines are confidential until a proposed award is made.
- E. Evaluation criteria may include, but is not limited to, the following:
1. proposed benefit will not duplicate any current County sponsored employee benefits program;
 2. vendor is responsible for collecting payments from seasonal or ten month employees when there is no County issued salary;
 3. vendor will provide a dedicated unit to address any issues brought up by the County and/or employees who signed up for the service or product.
- F. After the Review Committee reviews the proposals and ranks the prospective service providers, the Review Committee must forward its recommended ranking to the Director of OHR. The Director of OHR will make the final determination of the award of the service provider.
- G. The Director of OHR must post public notice of the name of the service provider selected. After the posting of the proposed award, the OHR Director may execute a contract on behalf of the County. If necessary, the OHR Director may issue a Notice to Proceed after the contract is executed by all parties.



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H. OHR may make multiple awards for the same products or services if the Director of OHR determines, after review of the recommendations of the review committee, it would be in the best interest of the County to do so. Any award of multiple providers must be accompanied by a memorandum from the Director of OHR which contains a full explanation and justification for making multiple awards. The Director of OHR will execute a contract with each service provider that is selected.

Section 7 - Contracting

After selection of the provider, OHR will prepare a contract with the provider or multiple contracts in the event multiple awards are made. The contract document must be in a form approved by the Office of County Attorney and subject to review by the Office of County Attorney for form and legality. Each separate provider will have a separate contract for the same products and services. The contract will contain all material, terms, and conditions, including, but not limited to, the names of the parties, the scope of work, including the products and services to be provided, the term of the contract, the County's General Conditions of Contract between County & Contractor, identification of the Contract Monitor, any insurance requirements, a statement under which the contract may be renewed or otherwise modified, a statement that all contract disputes and solicitation protests will be resolved by the dispute resolution procedures provided for in Section 10 of this regulation, and a statement of any other requirements and conditions that must be fulfilled by the provider and/or the County. The authority to approve and sign the contract, including any modifications under this procedure, is delegated by the County's Chief Administrative Officer ("CAO") to the Director of OHR. All contracts must contain the signature of the provider and the Director of OHR. The full and correct legal name of the Contracting entity must be used on the contract and the provider must be authorized to do business in the State of Maryland.



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Section 8 – Reimbursement of Costs to County

The contract will require the service provider to reimburse the County for its costs, including, but not limited to, all costs in connection with the RII and offering, monitoring of the program, and payroll deduction.

Section 9 - Monitoring and Administration of the Contract

The Contract Monitor will be required to monitor and administer the contract and will have the authority and responsibilities as follows:

- A. The Contract Monitor, subject to subsection B below, is the department representative designated by the Director of OHR in writing, and is authorized to:
1. serve as liaison between the County and the provider;
 2. give direction to the provider to ensure satisfactory and complete performance;
 3. monitor and inspect the provider's performance to ensure acceptable timeliness and quality;
 4. serve as records custodian for this contract;
 5. accept or reject the provider's performance;
 6. furnish timely written notice of the provider's performance failures to the Director of OHR and to the County Attorney, as appropriate;
 7. prepare required reports;
 8. approve and issue invoices for payment from the service provider;
 9. review and process statements and reports from the service provider concerning wage deduction requests for County employees.
 10. recommend contract modifications or terminations to the Director of OHR; and



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11. issue notices to proceed.

B. The contract monitor 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.

Section 10 - Termination of the Contract

The County will have the right to terminate the contract, with or without cause, at any time during the term of the contract upon ten (10) days written notice to the provider.

Section 11 - Dispute Resolution Process

A. In this Section, “claim” or “dispute” means a written demand by a provider that seeks an adjustment of time, an adjustment or interpretation of a contract provision, or other relief in any way relating to the contract with the County or the solicitation under this regulation. An “appeal” means a claim or dispute which the provider has filed with the CAO in accordance with this process.

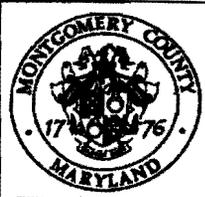
B. A claim or dispute arising under this process must be resolved under the procedures described herein.

C. Prior to filing a dispute, the provider must attempt to resolve the dispute with the Contract Monitor.

D. If the provider is unable to resolve the dispute by agreement with the Contract Monitor, the provider may submit the dispute, in writing, to the Director of OHR. A dispute must be submitted within 30 calendar days of the event which gave rise to the dispute.

E. When first filing a dispute, the provider must:

1. identify the contract, and give the name, address, and telephone number of the provider;



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2. state the relief requested; and
3. specify all the grounds that support the provider's requested relief, including submission of a statement of all detailed facts, all relevant documentation, a citation to relevant language in the contract, regulations or laws relied upon, and all other matters which the provider contends support the claim.

F. Factual allegations by the provider must be supported by affidavit based on personal knowledge.

G. If the dispute is not resolved by agreement, the Director of OHR should issue a written decision to the provider within 45 calendar days of the date on which the provider filed the written dispute, unless the parties agree to extend the time for the decision. Failure by the Director of OHR to provide a written decision within 45 days shall be deemed a denial of the claim.

H. If the provider is unable to resolve the dispute by agreement with the Director of OHR, the provider may file a contract dispute appeal with the CAO. The provider must submit the appeal, in writing, to the CAO within 30 calendar days of the date on which the Director of OHR denies the contractor's claim, or, where there is no written decision, the elapse of 45 calendar days after the written dispute is received by the Director of OHR, whichever is earlier.

I. The provider bears the burden of proof to support the claim, and has the responsibility for producing all relevant evidence or data to support the claim or appeal.

J. Unless the County has terminated the contract, the provider must continue to perform the services or provide the goods specified in the contract during the dispute resolution process.

K. Upon receipt of an appeal, the CAO may hold a conference with all interested parties if the CAO believes that a conference would contribute to the resolution of the dispute.



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L. On appeal, the CAO may consolidate disputes if the disputes have common questions of law or fact.

M. The CAO may order a provider that is not a party to the appeal or the contract under which the appeal has been filed to become a party to the proceeding if the dispute may be based in whole or part on the performance of the other provider.

N. Upon receipt of the contract dispute appeal, the CAO must review the dispute de novo.

1. If the CAO determines, based on the record, that the appeal is without merit (which may include the provider's failure to comply with the dispute resolution procedures), the CAO must deny the appeal, and this denial should occur within 30 days after receiving it. The CAO must state in writing the reasons which support the denial.
2. If the CAO finds, based on the record that the appeal has merit, in whole or in part, the CAO must decide the appeal, and should order an appropriate remedy within 30 days after receiving the appeal. If the CAO based on the record, grants only a portion of the relief requested by the provider, the CAO must issue a written decision stating the reason for granting part and denying part of the provider's requested relief, and should order the appropriate relief within 30 days after receiving the appeal.
3. If the CAO determines that the appeal cannot be decided on the record, the CAO must conduct a hearing. The CAO may also designate a hearing officer to conduct the hearing and make recommended findings of fact and conclusions to the CAO. Hearings will be conducted in accordance with subsection S below. Within 30 days after the CAO hearing, or receipt by the CAO of the hearing officer's report, the CAO should issue a written



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decision on the appeal. The decision of the CAO must be based on the record and must include written findings of fact and conclusions.

O. The final decision of the CAO may be appealed to the Circuit Court under the Maryland Rules governing administrative appeals.

P. The dispute may be resolved at any point by written agreement between the CAO and the provider.

Q. The time limits specified in this Section may be extended by mutual agreement of the parties, or by the CAO for good cause.

R. Hearing Procedure

1. Hearings are to be held at a time and place designated by the CAO in a written notice to the parties to the appeal, which must provide notice of no fewer than 5 working days after its mailing or hand delivery, unless otherwise agreed to by the parties. The hearings are to be recorded and must be open to the public, unless otherwise ordered by the CAO.
2. Upon request by any party at least 48 hours in advance of the hearing, the CAO must arrange for a verbatim recordation and transcript. The CAO must maintain a record of the proceedings which consists of the verbatim transcript (if any), exhibits, and written findings of fact provided to all parties by the CAO after the conclusion of the hearing.
3. Section 19A-15(b) regarding ex parte communication applies to the hearing. The decision of the CAO must be based on the record arising from the de novo hearing.
4. Each party may:
 - (a) be represented by counsel;
 - (b) present evidence, including testimony and documentary exhibits;
 - (c) cross-examine witnesses; and



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- (d) argue in support of their respective positions.
- 5. Subject to the direction of the CAO, proceedings are informal. The following is the usual order for presentation of the appeal:
 - (a) opening statements (appealing provider first, County last);
 - (b) presentation of witnesses and documents (appealing provider first, County last);
 - (c) closing argument (appealing provider first, County last);
- 6. The CAO may admit and give appropriate weight to evidence which possess probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence which appears to be reliable in nature. The CAO must give effect to the rules of privilege recognized by law. The CAO may exclude incompetent, unreliable, irrelevant or unduly repetitious evidence, or admit evidence at his or her own request. The CAO may question witnesses on any point.
- 7. The CAO may:
 - (a) continue or reschedule a hearing;
 - (b) accept stipulations;
 - (c) require the swearing of witnesses;
 - (d) take official notice of commonly cognizable facts;
 - (e) rule on motions;
 - (f) call and examine witnesses;
 - (g) introduce documents into the record;
 - (h) administrator oaths and affirmations;
 - (i) grant or deny requests for production of documents;
 - (j) keep the record open for receipt of additional evidence or submissions by the parties after the close of the hearing;



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- (k) establish requirements with respect to discovery and other pre-hearing submissions and procedures, including sanctions for failing to provide discovery; and
- (l) make any other ruling necessary to promote fairness or efficiency in the hearing process.

- 8. The burden of proof and persuasion with respect to the appeal is on the appealing provider.
- 9. The recommendations of a hearing officer to the CAO must be in writing and based on evidence in the record. The recommendation must contain findings of fact and conclusions with respect to the appeal. A copy of the recommendations must be forwarded to all parties.

Section 12 - Records Retention

OHR will maintain the service provider records in the OHR office. Service provider records will include search-related materials and correspondence files. Records will be retained in accordance with County procedures. After the provider relationship has ended, OHR will archive records in accordance with the County's record retention policy.

Section 13 - Ethics

County ethics laws, as applicable, apply to any service provider engaged under this process and procedure.

Section 14 - Process and Procedure Review

OHR will review and recommend amendments to these regulations as necessary.

Section 15 - Communication from the Provider



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All communications from the County to its employees or the service provider to the County employees concerning supplemental products or services offered by the service provider must contain a clear and concise statement that the County is not offering, sponsoring, recommending, or endorsing the product or service, nor is the County contributing to the cost of the product or service.

Section 16 – Premium Collection by the County

The Director of OHR will determine whether or not the County will collect the cost or premiums paid by the County employee for the supplemental products and services, on behalf of the service provider through a payroll deduction. The County employee's cost for supplemental products or services will not be eligible for payroll deduction on a pre-tax basis. Any and all costs incurred by the County to provide payroll deduction and payment to the service provider will be reimbursed to the County by the service provider.

Section 17 - Indemnification

The service provider will indemnify and save the County harmless from any and all claims, disputes, suits, damages, loss or costs, or other expenses including attorney's fees relating to the service provider negligence or its failure to perform any of its contractual obligations or that are the result of any product or service offered to or sold to a County employee. This indemnification will include the cost of any defense or other litigation that the County is made a party to as a result of the sale of any supplemental products and services to a County employee. The service provider will assume any and all liability in any way related to the product or service sold to a County employee.

Section 18 - Access to County Facilities



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The Director of OHR will determine what access the service provider will have to the County's worksite or facilities for the purpose of offering supplemental products and services to County employees.

Section 19 - Collective Bargaining

Prior to implementation, the OHR Director will notify the County Labor Organizations of its intent to offer such supplemental services and products to County employees as covered by this Regulation, and offer to negotiate over any aspects of the program that are subject to collective bargaining as required by County Code and/or the collective bargaining agreements.

Approved:
Isiah Leggett, County Executive

April 30, 2014
Date

Approved as to form and legality:
 4-28-14
Office of the County Attorney Date