

OPEN SOLICITATION #1011356
Outpatient Substance Abuse Treatment Services

NOTICE TO VENDORS

Montgomery County, Maryland (the County), through its Department of Health and Human Services (DHHS), is seeking qualified and licensed entities and individuals to provide community-based, Level I outpatient substance abuse treatment services to adult Montgomery County residents and their families (clients) who might otherwise not have access to services due to limited health benefits, low income or other socio-economic factors. All clients served under contracts resulting from this Open must be residents of Montgomery County.

A complete description of the Scope of Services required is listed in the Open Solicitation packet. You may obtain a packet by contacting the Contract Management Team at 240-777-1562 and requesting Open Solicitation #1011356, providing your name or a contact name, your complete address, and your telephone number.

The County needs providers for outpatient substance abuse treatment services (Level I). Per COMAR 10.47.02.04, a program **must provide**:

1. assessment services
2. individualized treatment plan (updated every 90 days)
3. individual and/or group counseling sessions
4. case management services
5. family services which may include assessment, alcohol and drug education, and family counseling
6. a 24-hour on-call responder for client crisis services
7. ability to provide same-day or next-day appointments

In addition, a program must either **provide or have available through referral**:

8. medical examinations
9. vocational rehabilitation
10. vocational assistance
11. mental health services
12. substance abuse treatment programs (i.e., other levels of care).
13. social services

The County sets the reimbursement rates for services, which are equivalent to those set by Maryland's Department of Health and Mental Hygiene (DHMH). The rates are published at <http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/cmt/rates.asp>, under Open Solicitation #1011356, labeled Basic Compensation Rate Sheet and Performance Compensation Rate Sheet. At this time, the County will not compensate providers directly for Level II.1 services (Intensive Outpatient Services, as described in COMAR 10.47.02.05).

Questions related to the technical information in this Open Solicitation should be directed to Dr. Jennifer Vidas, Supervisory Therapist, Behavioral Health Contract Services at 240-777-3852.

Questions related to the application/contract process and insurance requirements may be directed to Phil Royston, at 240-777-1333.

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INSTRUCTIONS TO VENDORS

The County will enter into a contract with all applicants who meet the minimum qualifications as described in Article II., Scope of Services, Item C, Minimum Qualifications of the Form Contract. The Form Contract with all Attachments will constitute the entire Contract. The applicant must sign the County's Form Contract which includes the General Conditions of Contract Between County and Contractor, and other Attachments, as written with no modification.

Questions related to the technical information required in this Open Solicitation should be directed to Dr. Jennifer Vidas, Supervisory Therapist, Behavioral Health Contract Services at 240-777-3852.

Questions of an administrative nature (e.g. requests for applications, the contract process, or insurance) should be directed to Phil Royston at 240-777-1333.

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

- A. Form Contract-the Form contract, including all Attachments, must be filled out correctly and submitted. Please follow these steps:
 - 1. Sign the Form Contract. If the applicant is a corporation, an officer of the corporation with authority to sign contracts for the corporation must sign the Form Contract.
 - 2. Completion of Attachment B, "Minority Business program & Offeror's Representation", is Optional.
 - 3. The following Attachments must be completed:
 - a. Attachment D, "Minority, Female Disabled (MFD) Person Subcontractor Performance Plan. Please submit your MFD plan or request a waiver. If this is incomplete, the application will be rejected.
 - b. Attachment E, "Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor. If this is incomplete, the application will be rejected.
 - c. Attachment G, "Application Form". Please complete the Application Form in its entirety. Applicants must check off profit or non-profit designation, or the application will be rejected.
 - 4. Submit all the pages of the Form Contract (not just the signature page), and all attachments, completed as outlined above.

- B. Narrative – A description of your organization's area of specialty, knowledge of and experience working with the population proposed to be served under this Open Solicitation. This information must be provided in no more than five double-spaced typewritten pages.

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- C. A Certificate(s) of Insurance that provides evidence of meeting the insurance requirements set forth in Article VII, General Conditions and Insurance of the Pre-Approved Form Contract and forwarded to the Contract Management Team.
- D. Copy of License or certification issued by the State of Maryland to provide a program of outpatient substance abuse treatment (Level I) and intensive outpatient (Level II.I) services in the State of Maryland as required by COMAR §10.47.01.
- E. Financial Information – A copy of your agency’s most recent audited financial statement.
- F. Audit – A copy of your most recent audit by the Office of Health Care Quality (OHCQ), Maryland Department of Health and Mental Hygiene (DHMH), and, if applicable, a copy of your program improvement plan.
- G. Proof of legal name – articles of incorporation, and articles of amendment if applicable.
- H. W-9 form.
- I. Proof of tax-exempt status, if applicable – Determination letter from IRS

II. Instructions:

As directed above in Section I., please complete, attach, and send all Submission Documents to:

Montgomery County, Maryland
Department of Health and Human Services
Contract Management Team
401 Hungerford Drive, Sixth Floor
Rockville, Maryland 20850

If your application meets the Minimum Qualifications listed in the Form Contract, the County will execute the contract and return a copy to you.

A copy of the County’s General Conditions of Contract Between the 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 Form Contract as written, and return it, with all attachments, to the County for execution by the Office of Procurement. The DHHS Contract Management Team will forward a copy of the executed contract to you. Once you receive notice from the

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County that the contract has been executed and receive an executed purchase order from the County, you may begin to provide services to clients.

The County makes no guarantee that any single contractor will serve clients under a contract resulting from this Open Solicitation, the County will refer clients to the program of services, but the client will select the service provider based on the client's needs such as location of provider, services needed, etc. The services to be provided under a contract resulting from this Open Solicitation are client-driven in that clients will choose the provider from which they wish to receive services.

Award of a contract under this Open Solicitation is subject to fiscal appropriations. The County reserves the right to cancel this Open Solicitation at any time.

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I. BACKGROUND/INTENT

- A. The Montgomery County Department of Health and Human Services (DHHS) requires qualified and licensed entities and individuals to provide community-based, Level I outpatient substance abuse treatment services to adult Montgomery County residents and their families (clients) who might otherwise not have access to services due to limited health benefits, low income or other socio-economic factors.
- B. Montgomery County (the County) does not intend for services provided under this Contract to meet the requirements of section 21-902 of the Transportation Article, Annotated Code of Maryland, and Code of Maryland Regulations (COMAR) § 10.47.04, for hours and content of services for persons in need of services due to a driving under the influence or driving while intoxicated violation.
- C. By signing this Form Contract, the Contractor asserts that it meets the minimum qualifications and that the Contractor agrees to provide all items and services required in this Contract.

II. SCOPE OF SERVICES

A. General Requirements

- 1. The Contractor must have and maintain, for the term of this Contract and any subsequent renewal terms, certification to provide Level I substance abuse treatment services as required by the State of Maryland. In addition, the State now requires that providers certified at Level I also become certified to provide Level II.1 (intensive outpatient) substance abuse treatment services. It should be noted, however, that **this contract does not provide County funds for Level II.1 services, nor does the contract require that Level II.1 services be provided to persons referred by the County under this Contract.**
- 2. The Contractor will only receive compensation under this Contract for clients who are referred by the County or County designee, and who meet American Society of Addiction Medicine (ASAM) criteria for Level I services. Upon referral, the Contractor must first determine if the client qualifies for participation under this Contract. The Contractor must determine client qualification by obtaining a signed statement from the client which verifies that the client does or does not have private insurance. Contractor must submit a monthly Insurance Qualification Report per section III. Records and Reports, I. Invoice Report, and sub-paragraph I. 3. Insurance Qualification Report. The County will compensate the Contractor for each Insurance Qualification Report at the rate set by the County per Section IV. Compensation A.
- 3. Clients who have insurance:
The County will not provide any reimbursement to the Contractor for clients who have private insurance, regardless of the client's income level.

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4. Clients who do not have insurance:
The Contractor is responsible for collecting fees from these clients per the State of Maryland Department of Health and Mental Hygiene's (DHMH) current "Ability to Pay Schedule", and per COMAR§10.02.01. All fees collected from the clients will be retained by the Contractor and reported to the County per Section III. Records and Reports, I. 5. The Contractor must keep documentation of ability to pay in the case file for each client. The County will post the "Ability to Pay Schedule" on the County Web site at:

<http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/cmt/rates.asp>

a.) For Clients who are responsible for 100% of costs based on the State of Maryland Department of Health and Mental Hygiene's (DHMH) current "Ability to Pay Schedule":

1) The County will reimburse the Contractor one time only per client for an 'Intake Appointment with psychosocial assessment and finding of medical necessity', at the rate referenced in Section IV. Compensation. The intent of this one time reimbursement is to encourage client participation in the program of services by providing additional funding for Montgomery County clients due to the high cost of living in Montgomery County.

2) After the one time only reimbursement per client listed in 1), above, the County will not provide any reimbursement to the Contractor for clients who are responsible for 100% of costs based on the "Ability to Pay Schedule".

b.) Clients who are responsible for less than 100% of their fee per the "Ability to Pay Schedule":

The County will compensate the Contractor for the difference between the fee collected and the rate posted at:

<http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/cmt/rates.asp>. These rates are published under Open Solicitation #1011356, and labeled 'Basic Compensation Rate Sheet'.

c.) Clients who are eligible for publicly funded (non-County) healthcare:

For all clients who do not have insurance, the Contractor must determine probable eligibility for publicly funded healthcare plans such as, but not limited to, Primary Adult Care (PAC) or Medicaid. For purposes of this Contract, reference to publicly funded healthcare includes only those plans that are not funded by Montgomery County. The Contractor must assist eligible clients with enrollment per COMAR §10.47.01.03.D.1.h. within 45 days of referral to the program of services by the County. The Contractor must submit a report, every month, detailing the eligibility status of all clients. See Section III. Records and Reports I. 4. For clients who are eligible for publicly funded healthcare, but do not yet have coverage at the time of admission, the County will pay the Contractor for services provided during a "grace period" not to exceed 45 days after admission {date per State of Maryland Automated Record Tracking (SMART) enrollment}. After this date

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has passed, the County will no longer reimburse for services provided to clients who are eligible for payment under a publicly funded healthcare plan. Exceptions to the 45-day limit will be considered on a case by case basis and must be approved in writing by the Contract Monitor assigned by the County. The Contractor should wait for the Contract Monitor's decision before invoicing for these services.

5. Per COMAR 10.02.01, the Contractor must have a written protocol for determination and collection of fees from clients and healthcare plans (third-party payors), including an administrative protocol for intervention when non-payment occurs. This protocol must include verification of income and must base ability to pay on the State Department of Health and Mental Hygiene (DHMH) scale. The protocol must also include accounting procedures, mechanism for identifying third party payors and collecting co-payments from clients, and providing written, numbered receipts to clients. The County is not responsible for the Contractor's failure to collect payments from clients or third parties.
6. Compensation for Continuing Care services is only available to those providers who have been authorized to provide these services by Maryland Alcohol and Drug Abuse Administration (ADAA) and for consumers who are enrolled in this service in the SMART system and who were referred to the program of services provided under this Contract.
7. The County's designated entities, including Access to Behavioral Health Services (ABHS), Clinical Assessment and Triage Services (CATS), Substance Abuse Assessors for Temporary Cash Assistance (TCA) recipients, and/or Avery Road Treatment Center (ARTC), will refer clients to the program of services using SMART. The Contractor must accept all referrals to the program of services from the County or its designees.
8. The Contractor must assume clinical responsibility for clients who choose to enroll with the Contractor. The Contractor must be available to provide services to a client within seven (7) calendar days of electronic referral to a specific treatment provider via SMART. Principles of Recovery-Oriented Systems of Care (ROSC) place responsibility for outreach and engagement with service providers. The County expects the Contractor to adopt ROSC principles and develop policies and procedures for assertive outreach and client engagement.
9. The Contractor must provide a 24-hour coverage mechanism, approved by the County, to ensure that each client's primary counselor, or another licensed professional assigned by the Contractor, is available to respond to clients and their families when a client is in crisis, as determined by the client or the client's family. The Contractor must ensure that the on-call responder has access to case records at all times. A telephone answering machine with no assurance of an immediate response is not acceptable. For clients who are in crisis, as determined by the clients or the client's family, the Contractor must offer same-day or next-day appointments and must provide telephone consultation to families or other service providers, as needed.

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10. The Contractor must provide Level I services on a continuous basis. Per COMAR §10.47.02.04, a program **must provide:**
- assessment services (written assessment must be completed within 14 days of the first day of service, and must be available for County review upon request)
 - individualized treatment plan (ITP) (updated every 90 days)
 - individual and/or group counseling sessions
 - case management services
 - family services which may include assessment, alcohol and drug education, and family counseling
 - a 24-hour on-call responder for client crisis services
 - ability to provide same-day or next-day appointments

In addition, a program must either **provide or have available through referral:**

- medical examinations
- vocational rehabilitation
- vocational assistance
- mental health services
- substance abuse treatment programs (i.e., other levels of care).
- social services

The County reserves the right to negotiate the Contractor's operating schedule to ensure evening and weekend availability of intake and treatment services.

11. Within seven (7) business days of completing an assessment, the Contractor, in collaboration with the client, must complete a written ITP that incorporates the identified problem(s), treatment modality, frequency of intervention, supportive or adjunctive services and other strategies deemed necessary or beneficial to achieving sobriety and other defined outcomes. The treatment plan must comply with COMAR §10.47.01.04. Client level of need, as determined by ASAM criteria, response to treatment, and achievement of defined treatment objectives, will determine length of stay in the program. Therefore, there is no predetermined minimum or maximum program length.

The Contractor must provide services according to the following schedule:

- Assume clinical responsibility and provide first day of service within 7 calendar days of contact with the client.
- Complete and maintain a record of the written client assessment within 14 calendar days of first day of service.
- Complete and maintain a record of the written individual treatment plan within 7 business days of the written client assessment.
- Submit to the County a complete record of services provided to each client, updated at least monthly.

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12. The Contractor, the facility, and any employee (or sub-contractor) providing counseling or therapy, must have and maintain state and local licensing and be in compliance with all federal, state and local fire, health, and safety codes.
13. The Contractor must agree to refer all County-designated clients to the Urine Monitoring Program (UMP), located at 255 Rockville Pike, for twice weekly testing for drugs of abuse. The Contractor must review drug testing reports via the SMART software, have an administrative policy to intensify services for repeated positive urine screens, coordinate admission to a higher level of care if the client is unable to achieve abstinence, and conduct random breathalyzer testing to detect alcohol use by clients. The Contractor must document all reports and activities in the client record. Client compliance with urinalysis, payment of fees, and abstinence are indicators of successful participation in Level I substance abuse treatment services.
14. The Contractor, within 30 days of contract execution, must develop and submit to the County for approval a policy and procedure for the transfer and disposition of the Contractor's caseload upon termination of this Contract.

B. Staffing

1. The Contractor must provide a sufficient number and type of staff as required by COMAR §10.47.01.06 for community-based outpatient substance abuse treatment services.
2. The Contractor must provide staff who have, at a minimum, the licensure or certification, training and supervision required by all applicable provisions of COMAR and Maryland Law and by the applicable Health Occupations Board to provide substance abuse treatment.

C. Minimum Qualifications:

The Contractor must have and maintain for the term of this contract, and any subsequent renewal terms, the following Minimum Qualifications:

1. The Contractor must have current license or certification issued by the State of Maryland to provide a program of outpatient substance abuse treatment (Level I) and intensive outpatient (Level II.I) services in the State of Maryland as required by COMAR §10.47.01. The Contractor must submit a copy of its current license or certification upon County request. At a minimum, the Contractor must submit a copy of the current license to the County each year with the January invoice.
2. The Contractor must have status as a participant in the ADAA's SMART data management system or a State approved electronic medical record (EMS). In addition, the Contractor must utilize a web-based application (i.e., SMART) to obtain urinalysis results from the County's Urine Monitoring Program (UMP).

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3. The Contractor must have a minimum of two years of experience with the population proposed to be served under this Contract. The County will not enter into Contract with any Contractor who has less than this required two years of experience.
4. Contractor must have the ability to provide services at a site that is accessible to people with disabilities and is accessible by public transportation.
5. Contractor must have a National Provider Identification number issued by the Federal Centers for Medicare and Medicaid Services.
6. Contractor must offer evening and weekend hours for both assessment (intake) and treatment (group and individual counseling) services, and have the capacity to respond to urgent or crisis calls from clients 24 hours per day, 7 days per week.
7. Contractor must abide by applicable ethical and legal standards (applicable law and regulations) for protection of patient health information under the Health Insurance Portability and Accountability Act (HIPAA), and other laws and regulations governing the privacy of medical records and substance abuse treatment records.

III. RECORDS AND REPORTS

- A. The Contractor must develop, implement, and maintain a system of electronic and written records, approved by the County, which conform to the standards of the State DHMH, OHCQ, and ADAA for substance abuse treatment services, as specified by COMAR §10.47.01.08. The Contractor must make available to the County all client records, including specific medical information contained therein, upon request. The Contractor may only release a client's record to other agencies or individuals in accordance with existing laws, regulations and ethical requirements, including, but not limited to, the Health Insurance Portability and Accountability Act (HIPAA).
- B. Applicants must maintain client records in the State of Maryland Automated Record Treatment (SMART), or an approved electronic medical record (EMR), as determined by the State Alcohol and Drug Abuse Administration (ADAA).
- C. The Contractor must provide an annual certified financial audit report, prepared by a CPA firm, to the County by March 1st of each year this Contract is in effect, for the prior contract year.
- D. The Contractor, upon notification of the death of an individual who was receiving or had received services from the program, must report the death within 24 hours to the County's Program Monitoring Unit, in a format approved by the County, in accordance with Maryland Health General Article §10-714, "Reports of Deaths."
- E. The Contractor must conduct a client satisfaction survey, as developed by the County, for each year this Contract is in effect, and must submit the results of this survey to the County by March 1st of each year this Contract is in effect.

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- F. At the County's request, the Contractor must submit any other written statements, records, and reports which may include a breakdown of administration costs.
- G. The Contractor must provide to the County a copy of any written reports received from the DHMH Office of Health Care Quality, along with any corrective action plan resulting from the findings of such reports.
- H. Proof of Licensing/Certification-Contractor must submit, with the January invoice every year this contract is in effect, proof of current licensing per Section II., Scope of Services, C.1.
- I. Invoice Report:
The Contractor must submit a monthly invoice report, accompanying the monthly invoice, reflecting the following information:
1. Number of clients admitted each month by gender and year-to-date
 2. Number of clients discharged each month by gender and year-to-date
 3. Insurance Qualification Report-for all clients referred during the month, a copy of the client's signed statement verifying that the client does not have insurance. If the referred client does have insurance, a copy of the client's signed statement verifying that the client does have insurance.
 4. Public Healthcare Plan Eligibility report: Eligibility of clients admitted each month. If client is eligible, Contractor must list the public healthcare plan and level of benefits. If client is not eligible for any public healthcare plan, Contractor must document the reason for ineligibility, such as citizenship status, income, or other restrictions.
 5. Total number of clients served (unduplicated) and units of each type of service provided (clinical assessment, individual treatment or group counseling). Types of service provided must be listed by client. Ability to Pay, per the DHMH 'Ability to Pay Schedule', must be listed for each client, along with fee collected from each client.
 6. For clients discharged in the month and cumulative year-to-date –
 - o Reduced criminal activity
 - o Employment status at discharge
 - o Housing status at discharge
 - o Decreased use of alcohol and other drugs
 - o Pregnancy
 - o Average length of stay and units of service received
 - o Number who successfully completed treatment
 - o Number who remained in treatment 90 days or longer
- J. Year end report:
The Contractor must submit to the County, with the year end invoice (services provided through June 30th), an end of year fiscal report that summarizes all revenue and fees collected as well as uncollected debts, and the source of revenue, in a format approved by the County. Also submitted with the year-end report must be a written confirmation from the Contractor in a format approved

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by the County that includes but is not limited to, confirmation that the financial information provided in the fiscal report is valid and accurate.

IV. COMPENSATION

- A. The Contractor will be paid for the services provided under this Contract in accordance with Sections II. Scope of Services and III. Records and Reports, of this Contract, at the rates set by the County at: <http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/cmt/rates.asp> . These rates are published under Open Solicitation #1011356, and labeled 'Basic Compensation Rate Sheet'. The rates are inclusive of eligibility determination, treatment, administrative tasks, and all services as required by Section II. Scope of Services and reporting as required by Section III, Records and Reports.
- B. The County will not pay for Level II.1 services or for more than 90 minutes of group counseling services on a single day.
- C. In addition to the compensation described in A. above, the Contractor may, but is not required to, be paid an additional Performance Compensation for clients who meet the County's criteria for successful completion of treatment services and/or ADA A criteria for retention in treatment as specified in the ADA A Conditions of Award for each fiscal year. The Performance Compensation rates and criteria are published at: <http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/cmt/rates.asp> , under Open Solicitation #1011356, labeled 'Performance Compensation Rate Sheet'. The Performance Compensation will be invoiced and paid quarterly. The Contractor must make electronic information maintained in SMART available to the County for the purpose of verification of services and audit for payment of any Performance Compensation. Availability of Performance Compensation will be determined each fiscal year based on appropriation of funds by the Montgomery County Council and is not guaranteed.
- D. In the County's sole discretion, the Contractor may be paid a one-time administrative support fee of up to \$750.00 per Contract site to purchase written materials or other media to support implementation of evidence-based practices to improve outcomes for all clients. Prior approval from the County is required and any purchase must be linked to a written plan to implement specific evidence-based practice(s).
- E. The Contractor must hold the County harmless for the Contractor's failure to collect any third party payments for services rendered.
- F. No services will be performed or compensated under this Contract prior to the execution of a County Purchase Order and the Contractor's receipt of said County Purchase Order containing a maximum compensation amount.

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- G. Compensation in a single fiscal year must not exceed funds appropriated by the County and encumbered into the County Purchase Order issued to the Contractor. Compensation for Continuing Care services is contingent on the availability of funds from the Alcohol and Drug Abuse Administration of the Maryland Mental Hygiene Administration.

V. INVOICES

- A. The Contractor must submit monthly invoices and supporting documentation, including but not limited to items listed in Section III. Records and Reports, in a format approved by the County no later than 15 days following the end of each month. Upon receipt, acceptance and approval of the Contractor's invoice, the County will make payment, net 30 days, for services described in this Contract. All required reports and other supporting documentation must be provided with the Contractor's monthly invoice. Invoices must be sent to the Program Monitor designated by the County.
- B. The Contractor must notify the Contract Monitor and the following office in writing in advance of any change of address to ensure timely processing of payments: Montgomery County, Maryland, Department of Health and Human Services, Contract Management Team, 401 Hungerford Drive, Sixth Floor, Rockville, Maryland 20850.

VI. TERM

This Contract shall become effective upon signature by the County's Director, Office of Procurement, and shall be for a two-year term. Before the contract term ends, the Director may (but is not required to) renew this Contract, if the Director determines that renewal is in the best interests of the County. Contractor's satisfactory performance does not guarantee renewal of this Contract. The County shall have the option to extend this Contract for two (2) additional two-year terms. Additional two-year terms thereafter must be with the written consent of the Contractor.

VII. GENERAL CONDITIONS AND INSURANCE

The General Conditions of Contract Between County and Contractor ("General Conditions") (Attachment A) are incorporated by reference and made a part of this Contract. The insurance requirements listed below, supersede the insurance requirements set forth in Paragraph 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 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:

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Contractual Liability
Premises and Operations
Independent Contractors
Products and Completed Operations

Professional Liability

Professional liability insurance covering errors and omissions and negligent acts committed during the period of contractual relationship with the County with a limit of liability of at least ***one million dollars (\$1,000,000)*** per claim and aggregate and a maximum deductible of \$25,000. Contractor agrees to provide a one-year discovery period under this policy.

Workers' 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

Written notice of cancellation or material change of any of the policies is required, per the policy provisions.

Certificate Holder

Montgomery County, Maryland
Health and Human Services, CMT
401 Hungerford Drive, Sixth 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 legal precedence in the event of a conflict in their terms:

1. This Contract Document;
2. The General Conditions of Contract Between County and Contractor (Attachment A)
3. Minority Business Program & Offeror's Representation (Attachment B)
4. Minority Owned Business Addendum to General Conditions of Contract Between County and Contractor (Attachment C)

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5. Minority, Female, Disabled Person Subcontractor Performance Plan (Attachment D)
6. Wage Requirements for Services Contract Addendum (Attachment E)
7. Wage Requirements Certification (Attachment F)
8. Application Form (Attachment G)

[SIGNATURE PAGE FOLLOWS]

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SIGNATURE PAGE

Part A: Contractor's Offer to Provide Services:

(Prospective Contractor Must Complete)

Contracting Corporation, Partnership, Limited
Liability Company OR Proprietorship

Agency Name

Signature

Typed Name

Title

Date

Part B: County Acceptance:

MONTGOMERY COUNTY, MARYLAND

Cherri Branson, Director
Office of Procurement

Date

RECOMMENDATION

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.

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

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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.

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.

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

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 .

[Remainder of Page Intentionally Left Blank]

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	

APPLICATION FORM

Name of Applicant/Vendor: _____

Contact Name: _____

Address: _____

City and State: _____ Zip Code: _____

Federal Taxpayer Identification # (TIN): _____

Phone #: _____ Fax #: _____

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

If Non-Profit, please indicate type of corporation, e.g., 501(c)(3), etc.: _____

Licensed Site(s)

1. NAME _____

ADDRESS _____

2. NAME _____

ADDRESS _____

Signature of Person Completing this Form

Title

Date