

**Open Solicitation Plan  
For  
Emergency Family Shelter Accommodations for Health and Human Services Households**

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

Section 4.1.6.3 Procedures:

- (1) Public Notice – Notice for this Solicitation will be posted on the Montgomery County, Maryland Office of Procurement website.
- (2) The services under this Open Solicitation will be client-driven in that the selected providers will be placed on the list of current contractors for the County’s Services to End and Prevent Homelessness (SEPH) unit, and each client will be placed based on availability of accommodations.
- (3) Application Process – Vendors interested in applying to provide the requested services can obtain a copy of the Open Solicitation packet by visiting DHHS - Contract Management Team website at <http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. The solicitation packet includes the following:
  - 1) the Notice to Vendors;
  - 2) the Instructions to Vendors; and
  - 3) the pre-approved Form Contract including the General Conditions of Contract Between County and Contractor and all other attachments. Applicants will be required to sign the Application Form (Attachment E, to the Pre-Approved Form Contract), stating that they have received the solicitation packet and understand the requirements of this Open Solicitation.
- (4) Criteria for accepting or rejecting applications – The solicitation packet contains the minimum qualifications (set forth in Article II., Minimum Qualifications and Staffing Requirements, of the Pre-Approved Form Contract) for services upon which applicants will be accepted. Applications will be reviewed by DHHS staff for acceptance or rejection, based on the minimum qualifications.
- (5) All responsible applicants meeting the minimum qualifications listed in the Pre-Approved Contract will be eligible to receive a contract to provide the services described in the Open Solicitation. The County makes no guarantee that any single contractor will receive referrals or serve clients under a contract resulting from this Open Solicitation
- (6) Pre-Approved Form Contract – Applicants will be required to execute a contract with the County using the Pre-Approved Form Contract (the Form Contract), including the General Conditions of Contract Between County and Contractor (“General Conditions”), without modification.

## **Open Solicitation #1096256**

- (7) Cost – The cost for services under contracts from this Open Solicitation will be based on a fixed rate established by the County. Payments for services for all contracts from this Solicitation must not exceed the available appropriations for the services requested in this Solicitation. Funds for services will be encumbered in purchase orders issued to each provider awarded a contract from this Solicitation.
- (8) Cancellation – The County reserves the option to cancel this Open Solicitation at any time. Award of a contract under this Open Solicitation is subject to fiscal appropriations.
- (9) Changes to Forms - The County may update the Open Solicitation Form contract with updated versions of the forms listed below without issuing an amendment to the Open Solicitation or to existing contracts:
  - (a) General Conditions of Contract Between County & Contractor (PMMD-45);
  - (b) Minority Business program & Offeror's Representation (PMMD-90);
  - (c) Minority-owned Business Addendum to the General Conditions of Contract between County and Contractor (PMMD-91)
  - (d) Minority, Female, Disabled (MFD) Person Subcontractor Performance Plan. (PMMD -65)
  - (e) Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor (PMMD-177); and
  - (f) Business Associate Agreement.

The updated forms will be applicable to new contracts entered after the date they are added to the open solicitation; forms attached to previously executed contracts will remain in effect for these contracts unless formally amended by contract amendment.

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## Open Solicitation #1096256

### NOTICE TO VENDORS

<b>Emergency Family Shelter Accommodations for Health and Human Services Households</b>
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Montgomery County, Maryland (the "County"), through its Department of Health and Human Services (the "Department"), is seeking applications from experienced and qualified entities to provide emergency shelter rooms to homeless families, families experiencing a housing crisis, and families or individuals fleeing domestic violence, and who already may be receiving other services from the Department.

A complete description of the Scope of Services is listed in the Open Solicitation packet. You may obtain a packet by visiting DHHS website

<http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>

The rates for goods and services under Open Solicitation #1096256, are set by the County and published at <http://www.montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>.

The Rates Sheet will be provided to potential vendors upon request of an Open Solicitation application packet.

The County will enter into a contract with each applicant who meets the minimum qualifications as described in the Form Contract (Article II., Minimum Qualifications & Staff Requirements) and are found to be a responsible organization. The County will sign the contract and return a copy to the applicant. 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 in this Open Solicitation should be directed to Denise Anderson, Contract Monitor, Services to End and Prevent Homelessness, at (240) 777-1055.~~

~~Questions related to the application/contract process and insurance requirements may be directed to Gregory Green, Senior Contract Manager, at (240) 777-1247.~~

Any prospective vendor questions regarding the Open Solicitation process or services to be provided should be emailed to:  
HHS.Open.Solicitations@montgomerycountymd.gov

**OPEN SOLICITATION #1096256**

**Emergency Family Shelter Accommodations for Health and Human Services Households**

**FORM CONTRACT # \_\_\_\_\_**

**INSTRUCTIONS TO VENDORS**

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

- A. Form Contract – Attachments of the Form Contract 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. **PLEASE DO NOT PUT A DATE IN THE PARAGRAPH AT THE TOP OF THE SIGNATURE PAGE of the Form Contract. ENTER A DATE ONLY IN THE SIGNATURE BLOCK.**
  3. Submit all pages of the Form Contract (not just the signature page) including the completed attachments listed below, or the application will be rejected:
    - a. General Conditions of Contract Between County & Contractor (**Attachment A**);
    - b. Business Associate Agreement, (**Attachment B**);
    - c. \*Optional\* (**Attachment C**), “Minority Business Program & Offeror’s Representation” – this Form may be filled out and submitted if applicable to the applicant’s organization;  
([www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-90.pdf](http://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-90.pdf))
    - d. (**Attachment D**), “Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor,” and “Minority, Female, Disabled Person Subcontractor Performance Plan” (“MFD” Plan) – Please submit your MFD plan or request a waiver;  
([www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf](http://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf))
    - e. (**Attachment E**), “Application Form”, Please complete the Application Form in its entirety. Applicant must indicate its organization tax status as either “profit” or “non-profit”; if non-profit, provide IRS Designation Letter;
    - f. (**Attachment F**) “Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor.”  
([www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf](http://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf))
    - g. (**Attachment G**), “References”, Please provide with your proposal, three references of similar contracts you’ve held with other entities. If you have not provided similar services, please narrate what prepares you or your entity to provide the required services under this Open solicitation.

\*Applicants are encouraged to also complete Attachment C “Minority Business Program & Offeror’s Representation.

- B. Narrative – A description of your organization’s layout, amenities, facilities, accommodations, occupancy capacity including number of rooms and maximum occupancy capacity of each room, for use in providing emergency shelter services to homeless families or households fleeing domestic violence. Applicant must describe their qualifications and ability to serve

## Open Solicitation #1096256

vulnerable homeless families with minor children to move them from homelessness to transitioning into and maintaining stable housing.

- C. This information must be provided in no more than eight double-spaced typewritten pages, using Times New Roman 12-point font.
- D. Resume – Please provide a copy of an up-to-date resume for each person who holds a management position and/or will have direct one-to-one contact providing services, to individuals, families and children under this Solicitation.
- E. Certificate(s) of Insurance – This provides evidence of meeting the insurance requirements set forth in Article IX. of the Pre-Approved Form Contract. Contact your insurance broker to obtain the Certificate.
- E. Financial Information – Please provide a copy of your agency’s most recent audited financial statement. In the case of a sole proprietor, an applicant can submit the prior year’s tax return. All applicants must submit additional data as requested by the County to help determine financial responsibility and resolve any questions concerning their financial soundness.
- F. Proof of legal name – Please provide the articles of incorporation and articles of amendment if applicable.
- G. Proof of Good Standing - With the State of Maryland Department of Taxation and Assessment at the following site. If applicable, the certification can be accessed at:  
(<https://dat.maryland.gov/businesses/Pages/Internet-Certificate-of-Status.aspx>).
- H. Proof of tax – Please provide a W-9 Tax form or a Tax I.D. number/copy of Social Security card if an individual or Sole Proprietorship is applying under this Open.
- I. Proof of tax-exempt status – Please provide a determination letter from the IRS, if applicable
- J. Provide proof that your facility or facilities meet the requirements of the federal Americans with Disabilities Act (ADA).

## II. Instructions:

- A. As directed above in Section I., please complete, attach, and send all Submission Documents to CesFam@montgomerycountymd.gov.
- B. If your application meets the Minimum Qualifications stated in the Pre-Approved Form Contract and your organization is found to be responsible, your application will be accepted,

## Open Solicitation #1096256

approved, and the County will execute the contract and return a copy to you. Once you receive notice from the County of an executed contract and purchase order, you may begin to provide goods or services to clients as described in the Form Contract.

- C. A copy of the County's General Conditions of Contract between County and Contractor ("General Conditions") is included with the solicitation packet. The County's General Conditions will be attached as (**Attachment A**) to any contract that results from this Open Solicitation and includes terms and conditions that the County requires of Contractors.
- D. The County makes no guarantee that any single contractor will receive referrals or serve clients under a contract resulting from this Open Solicitation. The services to be provided under a contract resulting from this Open Solicitation will be based on program needs, provider's location, availability, and /or Contractor's ability to provide the goods or services in the given timeframe.
- E. Award of a contract under this Open solicitation is subject to fiscal appropriations.
- F. The County reserves the right to cancel this Open Solicitation at any time.

**Emergency Family Shelter Accommodations for Health and Human Services Households**  
**FORM CONTRACT # \_\_\_\_\_**

**BACKGROUND/INTENT**

- A. Montgomery County, Maryland (the “County”) Department of Health and Human Services (DHHS), with support from community partners, provides a range of services to 130 household families and individuals with minor children who are homeless, or at risk of becoming homeless. The goal of the emergency family shelter program is to facilitate a rapid exit from homelessness into stable housing within thirty (30) days from the date of entry into the emergency shelter.
- B. The County’s intent is to enter into contracts with qualified applicants to provide low-barrier, housing-focused shelter to homeless families who may have a variety of conditions that may include, behavioral health, physical health, lack of employment skills, unemployment, low or no income, and families with domestic violence concerns.
- C. The funding sources for services under the resulting contract(s) include the State of Maryland Department of Housing and Community Development and Montgomery County, Maryland.
- D. The Montgomery County Department of Health and Human Services (DHHS), Services to End and Prevent Homelessness (SEPH) seeks to end and prevent homelessness by developing a coordinated Crisis Response System that focuses on permanent and stable housing. The mission of SEPH is to make homelessness a rare, brief, and non-recurring event. Family in a housing crisis needs a safe and decent place to go. The type of housing assistance considered may be Permanent Supportive Housing (PSH), Rapid Re-housing (RRH), and other interventions based on vulnerability and severity of service needs, to ensure that families who need housing assistance the most receive it in a timely manner.
- E. The Contractor must utilize a low-barrier and housing-focused approach to quickly provide to families who are homeless, housing and services as needed. Families may not be screened out for assistance because of perceived barriers to housing or services, including, but not limited to, lack of employment or income, drug or alcohol use, or having a criminal record. This program must have non-discriminatory policies in place in compliance with the Americans with Disabilities Act (ADA). <http://www.montgomerycountymd.gov/DGS-ADA/Home.html> . This may include ensuring reasonable accommodations for persons with a disability if they meet criteria for program entry.
- F. This program participates in the Coordinated Entry System (CES), providing comprehensive assessment, referral and connection to appropriate housing options to reduce the length of homelessness. The CES services all of Montgomery County through multiple access point for families and individuals seeking homeless services for stable housing options. More information is available at <http://montgomerycountymd.gov/homelessness/corrEntry.html>

~~For purposes of this Open Solicitation, the terms ‘resident’ and ‘client’ are being used interchangeably.~~

*For purposes of this Open Solicitation, the terms ‘resident’, ‘client’, ‘family’, and ‘families with minor children’ are used interchangeably and shall include pregnant women (pre- and postnatal).*

**I. SCOPE OF SERVICES**

**A. Contractor Obligations**

**OPEN SOLICITATION #1096256**

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

1. The Contractor must provide a shelter facility in Montgomery County, Maryland for families with minor children. The shelter program must accept families who lost permanent housing in Montgomery County. The Contractor's facility must meet all required State and Local building, occupancy, fire codes and standards and in compliance with the State of Maryland and Local environmental codes, and Federal codes if applicable.
- 2.. The Contractor must operate the shelter 24 hours per day, 7 days per week, 365 days of the year, with adequate daily staffing to serve the facility's maximum intake number of families. The Contractor must fill all vacant spaces within 72 hours with new families referred by DHHS unless a written request is made to the designated Contract Monitor for this Contract.
3. The intake process must be flexible to access emergency shelter at all hours, independent of the operating hours of the coordinated entry assessment process. The Contractor must provide directly or allow access to three (3) meals per day to all families in the shelter.
4. The Contractor's kitchen in the facility or housing structure must meet all required State of Maryland and local food and facility codes and local health requirements for food preparation and handling.
5. The Contractor must accept in its shelter facility all homeless families referred by DHHS Coordinated Entry System (CES).
6. The Contractor must accept referrals from the County's Continuum of Care (CoC) via a standardized referral form provided by CoC's Coordinated Entry System (CES) from all providers such as outreach case managers, treatment providers, other DHHS agencies and non-profit agencies. The CES serves the entire geographic area of Montgomery County through multiple access points for homeless families in need of emergency shelter, rapid re-housing, transitional and permanent housing options.
7. The Contractor must contact the designated DHHS Contract Monitor and DHHS Case Manager within 24 hours, via telephone or email, if a referred family fails to show up or accept the vacant room.
8. The Contractor must establish written shelter rules within 30 days of the date of execution of this Contract, which must be approved by the County prior to being enforced. Shelter rules must add structure to maintaining a safe, clean, and decent environment for clients and staff, and to assist residents in preparing to live independently.
9. The Contractor must develop and submit for approval to the designated Contract Monitor for this Contract, a client handbook, within 30 days of the execution of this Contract, to the Contract Monitor for approval. The handbook must include the shelter rules, resident's rights, termination policy, grievance procedures, etc. Resident's grievance procedures must be clearly written/typed, easy to read and understand, and must be posted in a conspicuous area of the shelter facility. Each resident must be given a handbook upon admission into the shelter. The resident must acknowledge receipt of the handbook in writing. Contractor must maintain a record of handbooks distributed to residents.



**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

10. The Contractor must develop and submit to the Contract Monitor for approval, implementation procedures, within 30 days of this Contract execution, to refer school-aged children to appropriate schools, and to arrange for transportation to and from school for these children.
11. The Contractor must coordinate and facilitate the provision of off-site child care services while adults engage in daily activities requirements as outlined in their Individual Housing Plan (IHP).
12. At no additional cost to the County or the Client, the Contractor must provide directly or via referral, the following services:
  - a. Case management
  - b. Credit Repair
  - c. Employment Services
  - d. Financial Counseling, and
  - e. Housing Locator Services
13. The Contractor must store and monitor each client's use of prescription medications to ensure safety and compliance with medical instructions, as part of a written plan which must be approved by the County.
14. The Contractor must participate in the CES to include meetings such as Homeless Families Service Providers bi-monthly meetings and/or the Continuum of Care Operations meetings.
15. The Contractor must develop a case record for each client in a format approved by the County. Case records must be kept in a locked and secure location and must be accessible only by the Shelter Director and designated staff.
16. The Contractor must ensure that 100% of shelter families are informed to apply for eligible entitlements benefits such as, Supplemental Nutritional Assistance Program (SNAP), Temporary Cash Assistance, Medical Assistance, and /or Disability Income. Each client's acceptance or denial, or refusal to apply must be documented in the client's record.
17. The Contractor must ensure that all staff that provide direct shelter services under this Contract, be trained in the following areas, or be referred for training:
  - a. Behavioral health issues, i.e. mental health, substance
  - b. Coordinated Entry Training
  - c. Financial literacy;
  - d. Health and safety training
  - e. Harm Reduction
  - f. HMIS (Health Management Information System)
  - g. Landlord tenant issues, i.e. how to read a lease, and Motivational interviewing

**Emergency Family Shelter Accommodations for Health and Human Services Households**  
**FORM CONTRACT # \_\_\_\_\_**

18. The Contractor must maintain records of training sessions for each staff member including the date and content of each training. This information must be submitted to the County's designated Contract Monitor during each annual program evaluation.

***Note: The County anticipates but does not guarantee, that the County or other homeless services providers in the community will make available training sessions in the above-named areas in paragraphs 17 and 18 available for Contractor's staff.***

19. The Contractor must provide multi-language capabilities for clients with limited English proficiency, either through on-site staff or through other means that are approved by the County.
20. The Contractor must ensure that its facility meets all state and local health and safety codes and have its facility inspected annually by the Department of Housing and Community Affairs, if necessary.
21. The Contractor must comply with DHHS Background Clearance policy requirements for staff, subcontractors, and volunteers serving clients (please see link below for policy). The Contractor is responsible for periodically at least every six (6) months for updates to this policy.  
<http://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>.

**B. Administrative Responsibilities**

1. The Contractor must provide an organizational chart which outlines staff and identifies supervisory responsibility along with the staff-to-client ratio. The Staffing schedule must detail how many staff will be on site to monitor the operation of the shelter during the 24/7 hours of operation. The Contractor must maintain a staffing level consistent with the number of clients served and the other services provided.
2. The Contractor must develop and implement written policies and procedures to include the following:
  - a. Admission process;
  - b. Non-discriminatory policies toward anyone based on race, ethnicity, national origin, religion, sexual orientation, gender identity or expression, physical or mental disability, age, or physical appearance;
  - c. A requirement that all new shelter clients be tested or complete Tuberculosis (TB) symptom assessment tool and follow current procedure for TB or other health risks within three days of admission to the shelter program;
  - d. A requirement that parents provide immunization records for all children or assist them in obtaining necessary immunizations;

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

- e. Policies and procedures governing client confidentiality, release of information, client grievances and appeals; and
- f. Emergency Medical and Psychiatric Crisis Procedure: Written procedures to handle emergency medical and psychiatric crises experienced by shelter clients; ensure that all shelter staff are trained in these procedures. The Contractor must also have an approved first aid kit on site in accordance with the standards of the American National Standards Institute. The Contractor must not charge the County or client a fee for emergency shelter placement.
- g. The Contractor must develop and implement a written Termination from Program Policy and the policy must be included in the client handbook. Termination from the program may only occur following a consensus decision between the Shelter Director, Case Manager, and County's Contract Monitor. The termination of a client from the shelter program must be approved by the Contract Monitor prior to it becoming effective. The client must be given a Written Letter of Termination from the shelter program that explains and documents the reason(s) for the action taken. The Contract Monitor must be copied on the Letter of Termination. The client must be given the opportunity to request an appeal of the decision to the Contractor. If the client appeals the termination, a decision to uphold or dismiss the termination must be made within 48 hours by the Contractor's Executive Director. Copies of appeal documents must be sent to the DHHS Contract Monitor within 24 hours of Contractor's receipt. The Contractor is not required to continue providing services to the client pending the appeal if:
  - i. The client poses an immediate threat to the health, well-being and/or safety of staff or other clients at the shelter. When this occurs, the Contractor must on the next business day notify the County Contract Monitor of the client's termination.
  - ii. The Contractor must, for the safety of minor children, notify appropriate County agencies such as Child Welfare or the County Crisis Center immediately.
- h. No drugs or alcohol use is permitted on the property; however, no client can be terminated for being under the influence. No testing for alcohol or drugs should occur at the facility. Client can be referred to DHHS Access to Behavioral Health Services if behavior indicates a need.
- i. The Contractor must establish a savings policy for clients; assist clients to reduce debt, improve credit and savings for housing financial stability, in permanent housing.
- j. All of the Contractor's policies and procedures must be approved by the County prior to implementation and must be posted in a conspicuous area of the shelter.
- k. The Contractor must estimate the length of-stay for each family and develop a plan to exit each family to stable housing within thirty (30) days of admission, the goal of this program. The plan must include how clients will address their barriers to stable housing,

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

and should include financial literacy, employment assistance, and/or addressing behavioral health or physical health conditions.

**C. Case Management**

1. The Contractor must provide case management and support services to include but not be limited to the following:
  - a. Completion of or updating the current version of the Family Vulnerability, Index, and Service Prioritization, Decision Assistance Tool (Family VI-SPDAT) in the Homeless Management Information System (HMIS) within (5) business days of a family's admission to the shelter.
  - b. Complete or update an Acuity Scale in HMIS within fifteen (15) days of the client's admission to the shelter and upon exiting to ensure appropriate level of case management.
  - c. Development of a comprehensive Individual Housing Plan(s) within seven (7) business days of a client's admission into the shelter program. The Housing Plan must specify the goals and interventions required by the family and the case manager to address any barriers to obtaining permanent housing and move the family into stable permanent housing within 30 days of shelter placement.
  - d. The Individual Housing Plan must be signed by the client and case manager, as an agreement, and must indicate that the client participated and provided feedback on the development of the Individual Housing Plan. The Individual Housing Plan must be updated weekly by the Case Manager.
2. The Individual Housing Plan must include the following:
  - a. Tasks that must be performed by the client and Case Manager within a specified time frame; goals that must be reached to obtain permanent housing with 30 days. The goals must focus primarily on the family obtaining or increasing income and addressing barriers to stable housing. For example, the client's obtaining necessary entitlements i.e. Temporary Cash Assistance, Supplemental Nutritional Assistance Program (SNAP), Medical Assistance (MA), or Social Security disability income;
  - b. Client's schedule for employment search and schedule to participate in employment training programs;
  - c. Estimated amount of money the client is to save toward permanent housing;
  - d. Steps to locating affordable housing;
  - e. Any other intervention necessary that client and Case Manager may need to

**Emergency Family Shelter Accommodations for Health and Human Services Households**  
**FORM CONTRACT # \_\_\_\_\_**

complete for a family to obtain permanent housing within 30 days;

- f. The case records must be reviewed weekly by the Shelter Director to monitor the Individual Housing Plan and goals for obtaining housing within thirty (30) days. The family Housing Plan needs to be revised if progress toward the goal to obtain housing within 30 days has not been met.
  - g. The Contractor must establish a process for the family to request an extension beyond thirty (30) days of shelter, if the family is unable to obtain housing within 30 days of admission. The request must in a format approved by the County and must be submitted in writing for the approval of the Shelter Director, Case Manager, and County's designated Contract Monitor. The written request must include: tasks on the family Housing Plan that were achieved and those that were not achieved in the 30-day period, and the reason the task was not achieved. Indicate the plan for achieving the incomplete tasks; the goals to be achieved if an extension is granted to give the family more time to obtain housing.
- 3. Case management services must be client-centered to assist the client in obtaining and maintaining income and housing. Case management includes task that client and case manager will compete to resolve homelessness. This may include applying for entitlement programs, and in dealing with specific issues that have created barriers in obtaining and/or maintaining housing and employment. The Contractor must provide Case Management services to families between the hours of 8 A.M. and 8 P.M., five days a week (Monday thru Friday).
- 4. The Contractor must upon the client's entry into the shelter, within twenty (24) hours, enter client demographic information into the HMIS. The Contractor must arrange with the County for training of its staff that will use the HMIS. The required information that must be entered into HMIS and must conform to the County and to the Housing and Urban Development (HUD) standards. Information on HUD and HMIS requirements and policy and procedures can be found on the County's website (<http://www.montgomerycountymd.gov/hmis>).  
At a minimum, the Case Manager must enter a weekly progress note that includes client's status of obtaining necessary documents, income, and updates on removing the barriers to permanent housing identified in their Family Housing Plan.
- 5. The Case Manager must participate in a case review meeting with the County's contract monitor and all significant persons involved with the client's case, for all families that do not have a housing plan to exit the shelter within 30 days.

**D. Shelter Requirements**

- 1. The Contractor must use a Harm Reduction model to reduce the negative consequences of homelessness. This includes the Contractor's staff must attend collaboration meetings or telephone conferences with client's treatment provider(s) and/or making necessary referrals to county or non-profit services.

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

The Contractor must have and maintain computer(s) with broadband internet service for the HMIS, a fax machine, and a functioning e-mail system. Most of the communications between the County and other service providers will be conducted via e-mail.

2. The Contractor must follow the current DHHS standard operating procedure for communicable disease testing, evaluation, and documentation. If a shelter client contracts a communicable disease, it must be reported to the Healthcare for the Homeless Nurse and Contract Monitor within 24 hours of discovery. Specifics are located at:  
<https://www.montgomerycountymd.gov/mcgresponsive/newsearch.html?q=TB>

**E. Quality Assurance**

1. The Contractor must comply with all Federal, State and Local laws and regulations governing privacy and the protection of health information, including but not limited to, the Health Insurance Portability and Accountability Act (HIPAA) of 1996.
2. The Contractor must have or develop and implement, a Notice of Privacy Practice (NOPP) that must be approved by the County. The purpose of the NOPP is to inform families that their personal information will be entered an electronic record on the HMIS and how their information will be used.
3. The Contractor must establish, implement and maintain reasonable security practices and procedures to include requiring any third-party to whom it discloses personal information originally disclosed to Contractor by the County, to also implement and maintain reasonable security practices and procedures related to protecting the personal information.
4. The 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 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.
5. The Contractor must enter with the County, an HMIS Participation Agreement provided by the County and use the HMIS system as an electronic record developing case plans, progress notes, and service transactions for referrals to appropriate services. The Case Manager must enter weekly progress notes that include client's income, their weekly progress on locating housing. The information entered into the HMIS must be accurate and client and program information must be entered on a daily basis. Specifics are located at:  
<https://montgomerycountymd.gov/homelessness/hims.html>
6. The Contractor must use all Client Authorization forms and/or other HMIS related forms made available by the County to share client information with other providers using the HMIS and to inform clients that their information is being placed into an electronic record in the HMIS.

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

The Contractor, upon execution of a contract resulting from this Open Solicitation, must arrange training with the County for its (the Contractor's) staff that will use the HMIS. The County will determine the information that must be entered into the HMIS by the Contractor. The HMIS is compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Contractor must adhere to the HIPAA requirements that govern the HMIS even though there is no requirement that the Contractor be a HIPAA covered entity.

7. The Contractor must complete, sign and agree to adhere to the provisions stated in the Business Associate Agreement (Attachment B) attached to this Contract.

## **II. MINIMUM QUALIFICATIONS AND STAFFING REQUIREMENTS**

- A. The Contractor must possess at least three years' experience as a provider of homeless services.

- B. Staffing

1. The Contractor must employ a full-time Shelter Director/Manager to supervise the operation of each shelter. The Shelters' Director/Manager must possess the following minimum qualifications:
  - a. Master's Degree in a human services or related field;
  - b. At least two years of experience supervising shelter or direct care staff;  
and
  - c. At least one year of experience providing services to the homeless.
2. The Contractor must ensure that its Case Manager(s) providing services under this Contract, possess the following minimum qualifications:
  - a. Bachelor's Degree in a Social Science or Human Services field; and at least two years of work experience providing clinical or case management services to the homeless population or low-income persons, or to a population with mental health, substance abuse or co-occurring disorders, or to a population needing assistance with employment; or
  - b. A candidate without a bachelor's degree must have personal or lived experience with mental health or homelessness, with four years of experience providing case

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

management as described above, this can be substituted for the bachelor's degree and criteria.;

- c. The Case Manager must be capable to provide assistance with or refer to services for employment skills, housing location, vocational training, and / or financial counseling;

If a candidate possesses a Master's Degree, then only one-year work experience is required with populations noted above.

### **III. COUNTY RESPONSIBILITY**

- A. Refer families to the shelter program(s);
- B. Provide contract monitoring and technical assistance to the Contractor on issues pertinent to the operation of the shelter;
- C. Provide access to the Homeless Management Information System (HMIS) for training, user support, and staff training.

### **IV PROGRAM OUTCOMES AND PERFORMANCE MEASURES**

#### **A. Program Outcomes**

The Contractor must develop and implement a mechanism to assess the quality of services provided and measure the progress of the following Performance Measures:

- 1. To the extent possible, 100% of the clients will apply for eligible entitlements, i.e. SNAP, TCA, MA, or disability income. Staff will document date of approval, ineligibility of or denial of benefits, or client's refusal to apply;
- 2. 75% of the clients will exit to permanent housing, rapid re-housing, permanent supportive, or other permanent housing;
- 3. 65% of clients will increase their income via entitlements or employment;
- 4. 30% of the clients will exit the shelter within 30 days;
- 5. 60% of the clients will exit the shelter in less than ninety (90) days;
- 6. Of those exiting to permanent housing, 80% do not return to homelessness within 12 months;
- 7. Of those exiting to permanent housing, the average length of time of homelessness will reduce by 30% each year the shelter is operating under the resulting contract.



**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

**B. Performance Measures**

The Contractor must conduct a Customer Satisfaction Survey annually or upon exiting the facility. Clients will voluntarily complete the Survey and deposit it in tamper-proof box to be located in a designated and secure area of the shelter/facility:

How would you rate your recent experience with this program or service in each of the following areas:

	Very Satisfied 😊😊	Satisfied 😊	Not satisfied 😞	Very Unsatisfied 😞😞	Don't Know / Not applicable
Courtesy/Respect					
Responsiveness to Needs					
Case Management Services					
Overall Experience					

**V. REPORTS**

**A. Monthly Reports – Homeless Management Information Systems (HMIS)**

The Shelter Director or a designated data manager must perform the duties as the Contractor's HMIS System Administrator and must run and submit monthly HMIS reports to the County Contract Monitor and HMIS Contractor to ensure that HMIS data is accurate and conforms to County and HUD requirements, in a format approved by the County, submitted by the 15<sup>th</sup> day after the end of the month accompanied by the monthly invoice. The report must include at a minimum a summary of the outcomes listed in Article IV Program Outcomes and Performance Measures, above.

**B. Annual Reports**

The Shelter Director or a designated data manager must submit annual outcome measure report by the 15<sup>th</sup> of July following the end of the County's Fiscal Year, which will accompany the year-end invoice. The annual report must include the following written records:

1. The Contractor's written case record for each client in a format that is approved by the County;
  - a. Case records that must be kept in a locked and secure location and accessible only by the Shelter Director and designated staff;
  - b. The Contractor's cost allocation budget and financial audit for each fiscal year of the Contract; and

**OPEN SOLICITATION #1096256**

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

2. A summary of the demographic information of the families served.

**VI. COMPENSATION**

- A. The County will compensate the Contractor for services rendered at pre-determined per night rates listed at <http://montgomerycountymd.gov/HHS-program/coo/contractmgmt/cmtcursolicits.html>. Each rate is inclusive of all administrative costs such as telephone, office supplies, computer usage, etc. The rates apply to all services provided to the County by the Contractor in the course of providing family shelter services.
- B. The County may at its option and as fiscal appropriation allows, adjust the rates under Open Solicitation #1096256, at the beginning of the County's Fiscal Year. The Contractor is responsible for checking the website listed above at the beginning of each fiscal year (beginning July 1) to obtain a copy of the County's current approved rates.
- C. Services must not be performed, under this Contract, prior to the execution of a County Purchase Order and Notice(s) to Proceed (NTP) and the Contractor's receipt of said County Purchase Order containing a maximum compensation amount. Compensation must not exceed funds appropriated by the County and encumbered in the County Purchase Order issued to the Contractor.
- D. No minimum number of rooms is guaranteed to any Contractor under this Contract.
- E. The County will compensate the Contractor at a reduced per night rate for vacant rooms resulting from room turnover, in preparation for new/incoming clients. The reduced per night compensation rate is included on the Rate Sheet of Open Solicitation #1096256 listed at the Link provided in V1. A above.

**VII. INVOICES**

The Contractor must submit monthly invoices and supporting documentation in a format approved by the County no later than the fifteenth day following the end of each month. Upon receipt, acceptance and approval of the Contractor's invoice, the County will make payment, net 30 days, at the rates set forth in Article VI., Compensation, above. 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.

**VIII. TERM**

This Contract shall become effective on the date indicated on the Signature Page, **Page 15**, of this Contract, as executed by the 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 for an additional term, if the Director determines that renewal is in the best interest of the County. The

**Emergency Family Shelter Accommodations for Health and Human Services Households**  
**FORM CONTRACT # \_\_\_\_\_**

Contractor's satisfactory performance does not guarantee renewal of this Contract. The Director may exercise this option to renew two (2) times for up to two (2) years each. Substantial non-compliance or substantial non-satisfactory performance, as determined in the sole discretion of the County, may lead to a work improvement plan or early termination of the Contract.

## IX. GENERAL CONDITIONS AND INSURANCE

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

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

### Commercial General Liability

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

Contractual Liability Broad Form  
 Premises and Operations  
 Independent Contractors & Subcontractors  
 Products and Completed Operations

### Worker's Compensation/Employer's Liability

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

***Bodily Injury by Accident - \$100,000 each accident***  
***Bodily Injury by Disease - \$500,000 policy limits***  
***Bodily Injury by Disease - \$100,000 each employee***

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on Contractor's commercial general, automobile insurance, and contractor's excess/umbrella insurance if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract.

The stipulated limits of coverage above shall not be construed as a limitation of any potential liability to Customer and failure to request evidence of this insurance shall in no way be construed as a waiver of Contractor's obligation to provide the minimum insurance coverage specified.

Policy Cancellation

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

Certificate Holder

Montgomery County, MD  
HHS/Contract Management Team  
401 Hungerford Drive, 6th Floor  
Rockville, MD 20850

**X. PRIORITY OF DOCUMENTS**

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

- A. This Contract Document;
- B. The General Conditions of Contract Between County and Contractor (PMMD-45) (Attachment A);
- C. Business Associate Agreement (Attachment B);
- D. Minority Business Program & Offeror's Representation (PMMD-90) (Attachment C);
- E. Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor and Minority, Female Disabled Person Subcontractor Performance Plan (PMMD-91) (Collectively, Attachment D);
- F. Application Form, (Attachment E)
- G Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor (PMMD-177) (Attachment F);
- H. References (Attachment G), and,
- I. Frequently Asked Questions Background Investigations for DHHS Contract Vendor Workforce Members effective July 1, 2016 (Attachment H).

**OPEN SOLICITATION #1096256**

**Emergency Family Shelter Accommodations for Health and Human Services Households  
FORM CONTRACT # \_\_\_\_\_**

Signature Page

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

**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 Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

*Part B: County Acceptance:*

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_  
Avinash G. Shetty, Director  
Office of Procurement

\_\_\_\_\_  
Date

RECOMMENDATION

\_\_\_\_\_  
James C. Bridgers, Jr., Ph.D., MBA, Director  
Department of Health and Human Services

\_\_\_\_\_  
Date

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

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

GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

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

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

2. AMERICANS WITH DISABILITIES ACT

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

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. Through signature of this contract, the contractor certifies that the contractor has filed an initial statement with the Maryland State Board of Elections in compliance with MD Code Ann., Election Law, §14-104(b)(1), or is not required to file an initial statement as per MD Code Ann., Election Law, §14-104(c)(2).

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 County's prevailing wage law, as found at §11B-33C of the County Code, applies to certain construction and mechanical systems service contracts. To the extent applicable, the County's prevailing wage requirements are enumerated within this solicitation/contract in the "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor." If applicable to this contract, the Addendum will be attached to the contract, and will be incorporated herein by reference, and made a part thereof.

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.

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.

Montgomery County's Earned Sick and Safe Leave Law, found at Sections 27-76 through 27-82 of the County Code, became effective October 1, 2016. An employer doing business in the County, as defined under the statute, must comply with this law. This includes an employer vendor awarded a County contract. A vendor may obtain information regarding this law at <http://www.montgomerycountymd.gov/humanrights/>

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. The contractor must not employ any subcontractor that is a debarred or suspended person under County Code §11B-37. The contractor is fully responsible to the County for the acts and omissions of itself, its subcontractors and any persons either directly or indirectly employed by them. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the County, and nothing in the contract documents is intended to make any subcontractor a beneficiary of the contract between the County and the contractor.

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

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

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

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				



# Open Solicitation 1096256

Accident (each)	100	100	100	See
Disease (policy limits)	500	500	500	Attachment
Disease (each employee)	100	100	100	
Commercial General Liability for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300 Attachment	500	1,000	See
Minimum Automobile Liability (including owned, hired and non owned automobiles)				
Bodily Injury				
each person	100	250	500	See
each occurrence	300	500	1,000	Attachment
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  
27 Courthouse Square, Ste 330  
Rockville, Maryland 20850

\*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>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  
27 Courthouse Square, Ste 330  
Rockville, Maryland 20850

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

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

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

**23. INFORMATION SECURITY**

**A. 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).

**B. Payment Card Industry Compliance:**

In any contract where the Contractor provides a system or service that involves processing credit card payments (a "Payment Solution"), the Payment Solution must be Payment Card Industry Data Security Standard Compliant ("PCI-DSS Compliant"), as determined and verified by the Department of Finance, and must (1) process credit card payments through the use of a Merchant ID ("MID") obtained by the County's Department of Finance by and in the name of the County as merchant of record, or (2) use a MID obtained by and in the name of the Contractor as merchant of record.

**24. 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.

**25. 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.

**26. PAYMENT AUTHORITY**

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees, late fees, or shipping fees that are not provided for in the contract. 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.

**27. P-CARD OR SUA PAYMENT METHODS**

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

**28. 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.

**29. TERMINATION FOR DEFAULT**

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

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

The Director, Office of Procurement, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

**30. TERMINATION FOR CONVENIENCE**

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

**31. TIME**

Time is of the essence.

**32. WORK UNDER THE CONTRACT**

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

**33. WORKPLACE SAFETY**

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

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

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is made by and between Montgomery County, Maryland (hereinafter referred to as “Covered Entity”), and \_\_\_\_\_ (hereinafter referred to as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

### **I. GENERAL**

A. Covered Entity has a business relationship with Business Associate that is memorialized in Montgomery County Contract # \_\_\_\_\_ (the “Underlying Agreement”), pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996, including all pertinent regulations (45 CFR Parts 160 and 164), issued by the U.S. Department of Health and Human Services, including Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as codified in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), and including any and all applicable Privacy, Security, Enforcement, or Notice (Breach Notification) Rules or requirements (collectively, “HIPAA”), as all are amended from time to time; and

B. The performance of the Underlying Agreement may involve the creation, exchange, or maintenance of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

C. For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA; and

D. This Agreement articulates the obligations of the Parties as to use and disclosure of PHI. It does not affect Business Associate’s obligations to comply with the the Maryland Confidentiality of Medical Records Act (Md. Code Ann., Health-General I §§4-301 *et seq.*) (“MCMRA”) or other applicable law with respect to any information the County may disclose to Business Associate as part of Business Associate’s performance of the Underlying Agreement; and

E. This Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof; and

F. The above premises having been considered and incorporated by reference into the sections below, the Parties, intending to be legally bound, agree as follows:

### **II. DEFINITIONS.**

A. The terms used in this Agreement have the same meaning as the definitions of those terms in HIPAA. In the absence of a definition in HIPAA, the terms have their commonly understood meaning.

B. Consistent with HIPAA, and for ease of reference, the Parties expressly note the definitions of the following terms:

1. "Breach" is defined at 45 CFR § 164.402.
2. "Business Associate" is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean \_\_\_\_\_.
3. "Covered Entity" is defined at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean the County.
4. "Designated Record Set" is defined at 45 CFR § 164.501.
5. "Individual" is defined at 45 CFR §§ 160.103, 164.501 and 164.502(g), and includes a person who qualifies as a personal representative.
6. "Protected Health Information" or "PHI" is defined at 45 CFR § 160.103.
7. "Required By Law" is defined at 45 CFR § 164.103.
8. "Secretary" means the Secretary of the U.S. Department of Health and Human Services or designee.
9. "Security Incident" is defined at 45 CFR § 164.304.
10. "Unsecured Protected Health Information" or "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology, as specified by the Secretary in the guidance as noted under the HITECH Act, section 13402(h)(1) and (2) of Public Law 111-5, codified at 42 U.S.C. § 17932(h)(1) and (2), and as specified by the Secretary in 45 CFR 164.402.

### **III. PERMISSIBLE USE AND DISCLOSURE OF PHI**

A. Except as otherwise limited in this Agreement, or by privilege, protection, or confidentiality under HIPAA, MCMRA, or other applicable law, Business Associate may use or disclose (including permitting acquisition or access to) PHI to perform applicable functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement. Moreover, the provisions of HIPAA are expressly incorporated by reference into, and made a part of, this Agreement.

B. Business Associate may use or disclose (including permitting acquisition or access to) PHI only as permitted or required by this Agreement or as Required By Law.

C. Business Associate is directly responsible for full compliance with the relevant requirements of HIPAA.

D. Business Associate must not use or disclose (including permitting acquisition or access to) PHI other than as permitted or required by this Agreement or HIPAA, and must use or disclose PHI only in a manner consistent with HIPAA. As part of this, Business Associate must use appropriate safeguards to prevent use or disclosure of PHI that is not permitted by this Agreement or HIPAA. Furthermore, Business Associate must take reasonable precautions to protect PHI from loss, misuse, and unauthorized access, disclosure, alteration, and destruction.

E. Business Associate must implement and comply with administrative, physical, and technical safeguards governing the PHI, in a manner consistent with HIPAA, that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

F. Business Associate must immediately notify Covered Entity, in a manner consistent with HIPAA, of: (i) any use or disclosure of PHI not provided for by this Agreement, including a Breach of PHI of which it knows or by exercise of reasonable diligence would have known, as required at 45 CFR §164.410; and, (ii) any Security Incident of which it becomes aware as required at 45 CFR §164.314(a)(2)(i)(C). Business Associate's notification to Covered Entity required by HIPAA and this Section III.F must:

1. Be made to Covered Entity without unreasonable delay and in no case later than 14 calendar days after Business Associate: a) knows, or by exercising reasonable diligence would have known, of a Breach, b) becomes aware of a Security Incident, or c) becomes aware of any use or disclosure of PHI not provided for by this Agreement;

2. Include the names and addresses of the Individual(s) whose PHI is the subject of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement. In addition, Business Associate must provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

3. Be in substantially the same form as Exhibit A hereto;

4. Include a brief description of what happened, including the date of the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, if known, and the date of the discovery of the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

5. Include a description of the type(s) of Unsecured PHI that was involved in the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);

6. Identify the nature and extent of the PHI involved, including the type(s) of identifiers and the likelihood of re identification;

7. If known, identify the unauthorized person who used or accessed the PHI or to whom the disclosure was made;

8. Articulate any steps the affected Individual(s) should take to protect him or herself from potential harm resulting from the Breach, Security Incident, or use or disclosure of PHI not permitted by this Agreement;

9. State whether the PHI was actually acquired or viewed;

10. Provide a brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, to mitigate losses, and to protect against any further Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement;

11. Note contact information and procedures for an Individual(s) to ask questions or learn additional information, which must include a toll-free telephone number of Business Associate, along with an e-mail address, Web site, or postal address;

and

12. Include a draft letter for the Covered Entity to utilize, in the event Covered Entity elects, in its sole discretion, to notify the Individual(s) that his or her PHI is the subject of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement that includes the information noted in Section III.F.4 – III.F.11 above.

G. Business Associate must, and is expected to, directly and independently fulfill all notification requirements under HIPAA.

H. In the event of a Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement, Business Associate must mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

I. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to ensure that any agent, subcontractor, or employee to whom it provides PHI (received from, or created or received by, Business Associate on behalf of Covered Entity) agrees to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information.

J. Business Associate must ensure that any contract or other arrangement with a subcontractor meets the requirements of paragraphs 45 CFR §164.314(a)(2)(i) and (a)(2)(ii) required by 45 CFR § 164.308(b)(3) between a Business Associate and a subcontractor, in the same manner as such requirements apply to contracts or other arrangements between a Covered Entity and Business Associate.

K. Pursuant to 45 CFR § 164.502(a)(4)(ii), Business Associate must disclose PHI to the Covered Entity, Individual, or Individual's designee, as necessary to satisfy a Covered



Entity's obligations under § 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of PHI.

L. To the extent applicable, Business Associate must provide access to PHI in a Designated Record Set at reasonable times, at the request of Covered Entity or as directed by Covered Entity, to an Individual specified by Covered Entity in order to meet the requirements under 45 CFR § 164.524.

M. A Business Associate that is a health plan, excluding an issuer of a long-term care policy falling within paragraph (1)(viii) of the definition of health plan, must not use or disclose PHI that is genetic information for underwriting purposes, in accordance with the provisions of 45 CFR 164.502.

N. To the extent applicable, Business Associate must make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to, pursuant to 45 CFR § 164.526, at the request of Covered Entity or an Individual.

O. Business Associate must, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

P. Business Associate must, upon request and with reasonable notice, furnish to Covered Entity security and privacy audit results, risk analyses, security and privacy policies and procedures, details of previous Breaches and Security Incidents, and documentation of controls.

Q. Business Associate must also maintain records indicating who has accessed PHI about an Individual in an electronic designated record set and information related to such access, in accordance with 45 C.F.R. § 164.528. Business Associate must document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Should an Individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. § 164.528, Business Associate must promptly provide Covered Entity with information in a format and manner sufficient to respond to the Individual's request.

R. Business Associate must, upon request and with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI that was provided to it by Covered Entity.

S. Business Associate must make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with HIPAA. Business Associate must make the aforementioned information available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate must comply and cooperate with any request for documents or other information from the Secretary directed to

Covered Entity that seeks documents or other information held or controlled by Business Associate.

T. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. § 164.502(j)(1).

U. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or the Underlying Agreement, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the limited purpose for which it was disclosed to the person, and the person must agree to notify Business Associate of any instance of any Breach, Security Incident, or use or disclosure of PHI not provided for by this Agreement of which it is aware in which the confidentiality of the information has been breached.

V. Business Associate understands that, pursuant to 45 CFR § 160.402, the Business Associate is liable, in accordance with the Federal common law of agency, for a civil money penalty for a violation of the HIPAA rules based on the act or omission of any agent of the Business Associate, including a workforce member or subcontractor, acting within the scope of the agency.

#### **IV. TERM AND TERMINATION.**

A. Term. The Term of this Agreement shall be effective as of the effective date of the Underlying Agreement, and shall terminate: (1) when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity; or, (2) if it is infeasible to return or destroy PHI, in accordance with the termination provisions in this Article IV.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, have the right to terminate this Agreement and to terminate the Underlying Agreement, and shall report the violation to the Secretary;

2. Have the right to immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible, and shall report the violation to the Secretary; or

3. If neither termination nor cure is feasible, report the violation to the Secretary.

4. This Article IV, Term and Termination, Paragraph B, is in addition to the provisions set forth in Paragraph 27, Termination for Default of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement, in which "Business Associate" is "Contractor" and "Covered Entity" is "County" for purposes of this Agreement.

C. Effect of Termination.

1. Except as provided in Section IV.C.2, upon termination or cancellation of this Agreement, for any reason, Business Associate must return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision applies to PHI that is in the possession of a subcontractor(s), employee(s), or agent(s) of Business Associate. Business Associate must not retain any copies of the PHI.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate must provide to Covered Entity written notification of the nature of the PHI and the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate must extend the protections of this Agreement to such PHI and limit further use(s) and disclosure(s) of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement survive termination of this Agreement with regard to such PHI.

3. Should Business Associate violate this Agreement, HIPAA, the Underlying Agreement, the MCMRA, or other applicable law, Covered Entity has the right to immediately terminate any contract then in force between the Parties, including the Underlying Agreement.

**V. CONSIDERATION.** Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be reasonably, justifiably, and detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

**VI. CAUSES OF ACTION IN THE EVENT OF BREACH.** As used in this paragraph, the term "breach" has the meaning normally ascribed to that term under the Maryland law related to contracts, as opposed to the specific definition under HIPAA related to PHI. Business Associate hereby recognizes that irreparable harm will result to Covered Entity in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in this Agreement, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of this Agreement. Furthermore, in the event of breach of this Agreement by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The causes of action

contained in this Article VI are in addition to (and do not supersede) any action for damages and/or any other cause of action Covered Entity may have for breach of any part of this Agreement. Furthermore, these provisions are in addition to the provisions set forth in Paragraph 18, “Indemnification”, of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement in which “Business Associate” is “Contractor” and “Covered Entity” is “County”, for purposes of this Agreement.

**VII. MODIFICATION; AMENDMENT.** This Agreement may be modified or amended only through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement, from time to time, as is necessary for Covered Entity to comply with the requirements of HIPAA, including its Privacy, Security, and Notice Rules.

**VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES.** Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement, along with the Underlying Agreement, shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement, by its title, date, and substance and specifically state that the provisions of the later written agreement shall control over this Agreement and Underlying Agreement. In any event, any agreement between the Parties, including this Agreement and Underlying Agreement, must be in full compliance with HIPAA, and any provision in an agreement that fails to comply with HIPAA will be deemed separable from the document, unenforceable, and of no effect.

**IX. COMPLIANCE WITH STATE LAW.** The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If HIPAA conflicts with another applicable law regarding the degree of protection provided for Protected Health Information, Business Associate must comply with the more restrictive protection requirement.

**X. MISCELLANEOUS.**

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA.

B. Regulatory References. A reference in this Agreement to a section in HIPAA means the section in effect, or as amended.

C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Joy Page, Esq.  
Deputy Privacy Official  
Montgomery County, Maryland  
401 Hungerford Drive, 7<sup>th</sup> Floor  
Rockville, Maryland 20850

(240) 777-3247 (Voice)  
(240) 777- 3099 (Fax)

Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

D. Maryland Law. This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Maryland, without regard to choice of law principles.

E. Incorporation of Future Amendments. Other requirements applicable to Business Associates under HIPAA are incorporated by reference into this Agreement.

F. Penalties for HIPAA Violation. In addition to that stated in this Agreement, Business Associate may be subject to civil and criminal penalties noted under HIPAA, including the same HIPAA civil and criminal penalties applicable to a Covered Entity.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

\_\_\_\_\_  
CONTRACTOR NAME

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: James C. Bridgers, Jr., Ph.D., MBA

Title: Director, Department of Health

and Human Services

Date: \_\_\_\_\_

**EXHIBIT A**

**FORM OF NOTIFICATION**

This notification is made pursuant to Section III.F of the Business Associate Agreement between:

- Montgomery County, Maryland, (the “County”) and
- \_\_\_\_\_ (Business Associate).

Business Associate hereby notifies the County that there has been a Breach, Security Incident, or use or disclosure of PHI not provided for by the Business Associate Agreement (an “Incident”) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the Incident:

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

Date of the Incident: \_\_\_\_\_

Date of discovery of the Incident: \_\_\_\_\_

Does the Incident involve 500 or more individuals? Yes/No

If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the Incident:

\_\_\_\_\_

Names and addresses of individuals affected by the Incident:

(Attach additional pages as  
necessary) \_\_\_\_\_

The types of unsecured PHI that were involved in the Incident (such as full name, Social Security number, date of birth, home address, account number, or disability code):

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

Description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against any further Incidents:

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

---

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

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



**ATTACHMENT E**  
**Open Solicitation #1096256**

**APPLICATION**

Please review and complete the following information. By signing this Form you are acknowledging that you have received a copy of this Open Solicitation and understand the requirements of this Open Solicitation.

---

Legal Name of Firm / Individual's Full Name

---

Contact Name/Authorized Signature

---

Address

---

City, State, Zip Code

---

Phone Number

---

Fax Number

---

Tax Identification Number (TIN)\*

---

Email Address

\*Note: If Applicant does not have a TIN, the County will request the Applicant's Social Security Number at the time of Contract award in order to make payments for services rendered by the Applicant in accordance with the resulting Contract.

Profit or Non-Profit (please check one) Profit ☐ Non-Profit ☐ [Indicate type of non-profit corporation, i.e., 503c(3)]

Please provide the required licensure information for each person and language proficiency, if applicable. Use additional copies of this page if necessary.

**License(s)/Degree(s)**

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**ATTACHMENT G**  
**Open Solicitation #1096256**

**REFERENCES**  
(submit at least three)

You are requested to provide references to the County with your proposal. The three (3) references must be from individuals or firms for whom work of a similar scope has been performed within the last three years. Names for references shall be of individuals who directly supervised or had direct knowledge of the services or goods provided.

NAME OF  
FIRM: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_  
CONTACT  
PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_  
EMAIL: \_\_\_\_\_ CELL PH \_\_\_\_\_

NAME OF  
FIRM: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_  
CONTACT  
PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_  
EMAIL: \_\_\_\_\_ CELL PH \_\_\_\_\_

NAME OF  
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CONTACT  
PERSON: \_\_\_\_\_ PHONE: \_\_\_\_\_  
EMAIL: \_\_\_\_\_ CELL PH \_\_\_\_\_

## Frequently Asked Questions – Background Investigations for DHHS Contract Vendor Workforce Members effective July 1, 2016

### **1. When is the policy effective?**

It is effective **July 1, 2016** for all new procurements regardless of the source selection process whether an RFP, sole source, grant designated, etc.

If your current contract contains the following or similar language below, the policy pertains to the current contract:

- a. Some contracts currently contain language that includes such as “The contractor’s staff must submit to a background and criminal check in accordance with State law, including Code of Maryland Regulations (COMAR) 12.15.02 and all relevant provisions of Title 5, Subtitle 5, Part VI of the Family Law Article, Annotated Code of Maryland (“Criminal Background Investigations for Employees of Facilities and Other Individuals that Care for or Supervise Children”. In this case, the provider must follow the COMAR provisions.
- b. Other contract language maybe inserted in the contract such as “The Contractor must comply with DHHS Background Clearance Policy requirements for Staff. Any and all staff and volunteers having contact with children must be appropriately screened for safety precautions, including background checks and must successfully pass criminal background checks, prior to providing services under the Contract”.

Providers will have until **Jan. 1, 2017** to have a background check policy in place and background checks completed for affected staff. Starting **Jan. 1, 2017**, contract monitors will begin requesting the provider’s background check policy and inspecting records to see if the background checks have been performed.

### **2. Who does the policy affect in the provider’s organization?**

Background checks or investigations are mandatory for each covered staff who is a Workforce Member or applicant that performs work in a Vulnerable Population Program or has a Sensitive or a Special Trust Position. See Sections 3.16 and 3.17 for definitions.

### **3. What are the responsibilities of the contract monitor as it relates to the policy?**

During the routine, provider site visit, the contract monitor should request the provider’s background check policy. Then, randomly, contract monitor should select a sample of Workforce members (employees, volunteers or other types of staff ) and review the staff or volunteer files which contain the background check information to determine if the provider has conducted the proper background and CPS checks if applicable. The

## Frequently Asked Questions – Background Investigations for DHHS Contract Vendor Workforce Members effective July 1, 2016

Covered Staff is a Workforce Member who works with a Vulnerable Population Program or occupies a Sensitive Position or Special Trust Position. See policy for Sensitive Position definition (Section 3.16) and a Special Trust position definitions (Section 3.17).

The contract monitor should only review the summary page that indicates that the background check was conducted by the employer. The background check details should not be viewed by the contract monitor. The contract monitor should note in their monitoring report the employee's name for the background check reviewed and document that required background checks **were or were not** conducted by the provider. If a background check **has not been conducted** on the workforce member by the provider, the contract monitor should observe during the site visit if the staff or volunteer is **supervised by another employee** who possess a background check on file during the time the individual is in contact with a vulnerable population as defined in Section 3.21 of the policy.

As indicated in question#1, some contracts already contain provisions for the required background checks and contract monitors may currently perform the reviews at the provider's site. It is not necessary for the contract monitor to review **the details of the background checks** nor to review all the workforce background checks unless other regulations such as COMAR dictate otherwise.

#### 4. What are the responsibilities of the providers for background checks?

Provider are to establish a background check policy that covers Workforce members, Sensitive Position and Special Trust Position for their organization. Providers are to conduct the background checks at the time of hire. If there are issues with the background checks, the provider or hiring authority must decide if the issues will affect employment or volunteer status, and to have the summary background check information available to the contract monitor at the time of an **announced or unannounced** site visits.

Providers are considered the hiring authority for their staff and volunteers and are responsible for their organization's hiring decisions. If a background check contains some negative information, it is the responsibility of the **provider (hiring authority)** to determine if the information will affect the employment or volunteer status required to perform services for the County contract. The hiring authority should have personnel policies that govern their hiring decision-making process.

#### 5. Does this policy apply to the provider's subcontractors?

## Frequently Asked Questions – Background Investigations for DHHS Contract Vendor Workforce Members effective July 1, 2016

Yes, this policy applies to subcontractors in the same manner as the prime contractor or provider.

- 6. The provider is legally classified as a sole proprietorship and is required to obtain a background check. Background checks are normally only provided to employers or other interested third parties. In a sole proprietorship, the employee and provider are the same. How would the background check process work be handled for such entities since the sole proprietor would be prohibited from receiving the background check information?**

Sole Proprietorships would have the DHHS Policy and Risk Manager receive the background checks from the company performing the review. Sole Proprietor would be required by DHHS to sign a release form authorizing DHHS to receive the form. The DHHS Policy and Risk Manager will notify contract monitor or the DHHS Quality and Selection Committee if the background check is acceptable or unacceptable.

The DHHS Policy and Risk Manager would maintain the confidential background check documents in a location that has restricted access and is secure. DHHS is an HIPAA protected entity and must follow all precautions related to securing client information so there is no departure from regular business practices already in place.

A more defined process will be developed in the next several weeks.

- 7. Does DHHS recommend any companies to conduct background checks?**

DHHS does not recommend any vendors to perform background checks. Non-Profit Montgomery is putting together a list of companies that providers may use to perform their background checks and will distribute the list to its members.

- 8. Can a provider include the cost of background checks in their contract budget?**

**Yes,** a provider may include the cost of the background check for an employee or volunteer in their contract budget. However, the cost should be equivalent to the FTE of their contract. In other words, if the employee works 100% on the DHHS contract, then, 100% of the background check cost can be absorbed by the contract. If the individual

## Frequently Asked Questions – Background Investigations for DHHS Contract Vendor Workforce Members effective July 1, 2016

works 50% on the contract, then, only 50% of the cost of the background check costs can be absorbed by the contract.

### **9. How often must providers conduct background checks?**

Providers must conduct the background checks **every five (5) years** on their workforce member. If there is a break in employment of greater than **120 days**, the entire background check must be performed again by the provider.

### **10. For what period of time must the provider conduct the background checks?**

The provider must go back **seven (7) years** when conducting the background checks.

### **11. Which background check policy does the provider follow if located in a MCPS school?**

Those providers located in MCPS must follow the DHHS Background Check policy for contractors and volunteers. MCPS may request DHHS contractors to perform an on-line training and the DHHS contractors should comply with the training if applicable.

### **12. Where can I find the DHHS background check policy on the internet?**

**See link below.**

<http://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>

### **13. What type of background check should a provider conduct?**

Providers should consult with their attorneys or human resource staff and develop a background check policy that are for Workforce members, Sensitive Positions and Special Trust Positions. See Sections 3.3, 3.16 and 3.17 for definitions for each type of classification.

Below is a sample which illustrates position classification and the type of background checks that a provider may conduct for their workforce members and other types of positions. **See Table I.**

Frequently Asked Questions – Background Investigations for DHHS Contract  
Vendor Workforce Members effective July 1, 2016

Also, in Table II below are Background Check Requirements required by State law or regulation.

**Table I**

<b>Position Category</b>	<b>Type of Background Checks</b>	<b>Position Name</b>
<b>Workforce Member</b>	<ul style="list-style-type: none"> <li>• Criminal History- FBI &amp; CJIS Checks</li> <li>• Validation of licenses if appropriate</li> <li>• SSN Trace</li> <li>• CPS Checks</li> </ul>	<ul style="list-style-type: none"> <li>• Case Mgr.</li> <li>• Executive Director</li> <li>• Driver</li> <li>• Teacher</li> <li>• Assistant Teacher</li> <li>• Volunteer</li> <li>• Accountant</li> <li>• Certified Nursing Assistant</li> <li>• IT Specialist</li> <li>• Contractor</li> </ul>
<b>Sensitive Position</b>	<ul style="list-style-type: none"> <li>• Criminal History FBI &amp; CJIS Checks</li> <li>• Credit Check</li> <li>• SSN Trace</li> <li>• CPS Checks if access to children</li> </ul>	
<b>Special Trust Position</b>	<ul style="list-style-type: none"> <li>• Criminal History FBI &amp; CJIS Checks</li> <li>• Credit Check</li> <li>• SSN Trace</li> </ul>	

## Frequently Asked Questions – Background Investigations for DHHS Contract Vendor Workforce Members effective July 1, 2016

**Table II**

### Background Check Requirements Mandated by State Law or Regulation

Position	Type(s) of Background Check Required	Does law establish any employment “disqualifiers”.	State Law / Regulation
Positions that care for or supervise children	Criminal records	No	<ul style="list-style-type: none"> <li>Family Law Article, 5-6-0-5-568</li> <li>COMAR, 12.15.02</li> </ul>
Noncertified school personnel	Criminal records	Yes	<ul style="list-style-type: none"> <li>Education Article, 6-113</li> </ul>
Certified school personnel	Criminal records	Yes	<ul style="list-style-type: none"> <li>COMAR, 13A.12.01</li> </ul>
School vehicle driver	Criminal record, driving records, drug test	Yes	<ul style="list-style-type: none"> <li>COMAR, 13A.06.07</li> </ul>
School vehicle attendant	Criminal records	Yes	<ul style="list-style-type: none"> <li>COMAR, 13A.06.07</li> </ul>
Positions that care for or supervise dependent adults	Criminal records	No	<ul style="list-style-type: none"> <li>Health-General Article, 19-1901-19-1912</li> <li>COMAR, 12.15.03</li> </ul>
Law enforcement offices	Criminal records, credit history, drug test, military service verifications, reference checks	Yes	<ul style="list-style-type: none"> <li>COMAR, 12.04.01</li> </ul>
Correctional officers	Criminal records, credit history, drug test, military service verifications, reference checks	Yes	<ul style="list-style-type: none"> <li>COMAR, 12.10.01</li> </ul>
Firefighters, Rescue squad members, Paramedics	Criminal records	Yes (for paramedics)	<ul style="list-style-type: none"> <li>Article 38A Fires and Investigations, 7A</li> <li>COMAR, 30.02.04</li> </ul>
Drug and alcohol treatment program employees	Criminal records	Yes	<ul style="list-style-type: none"> <li>COMAR, 10.47.01</li> </ul>