

**Open Solicitation Plan
For
Open Solicitation #1151555 – Pre-Admission Screening and Resident Review**

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

Section 4.1.6.3 Procedure

- (1) Public Notice – Notice for this solicitation will be posted on the Montgomery County, Office of Procurement website. Additionally, DHHS will send a copy of the notice to current providers, whose contracts will be replaced by contracts awarded under this Open Solicitation.
- (2) Application Process – The DHHS Contract Management Team (CMT) will post a copy of the solicitation packet for this Open Solicitation at:
<http://www.montgomerycountymd.gov/HHSprogram/coo/contractmgmt/cmtcursolicits.html>
The solicitation packet includes the following: 1) the Notice to Vendors that summarizes this Open Solicitation; 2) the Instructions and Minimum Qualifications document for this Open Solicitation; 3) the Application; and 4) the Pre-approved Form Contract including the Scope of Services and General Conditions of Contract Between County and Contractor and other attachments.
- (3) Criteria for accepting or rejecting applications – The solicitation packet contains the minimum requirements that applicants must meet. Applications will be reviewed by DHHS staff for acceptance or rejection, based on the solicitation criteria.
- (4) All applicants meeting the minimum qualifications listed in the Instructions and Minimum Qualifications document of the Open Solicitation and are found to be responsible will be eligible to receive a contract to provide the services described in the Open Solicitation. The services will be client-driven in that the clients will select the provider based on geographic location and personal preference.
- (5) Pre-Approved Form Contract – A Pre-Approved Form Contract is included in the solicitation packet. The solicitation packet also contains a description of the requirements identified on the Pre-approved Form Contract (referred to as Scope of Services). Applicants will be required to execute a contract with the County using this Pre-Approved Form Contract, including the General Conditions of Contract Between the County and Contractor (“General Conditions”), without modification.
- (6) Cost – The cost of contracts will not exceed available appropriations. Prior to encumbrance of funds for contracts awarded under this Open Solicitation, the total available appropriation for the contracts will be verified by DHHS. Funds will be encumbered under contracts via a purchase order. The County’s Senior Nutrition Program will monitor expenditures for each executed contract against the purchase order and any subsequent delivery orders that the Office of Procurement authorizes.

- (7) 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 appropriation of funding.

- (8) 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:
 - 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, and Wage Requirements Law Certification (PMMD-177);
and
 - f. Business Associate Agreement.

The updated forms will be applicable to new contracts entered into 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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Notice to Vendors

Open Solicitation #1151555 Pre-Admission Screening and Resident Review

Montgomery County, Maryland, through its Department of Health and Human Services (DHHS), Aging and Disability service area (A&D), is seeking applications from qualified health professionals to conduct Pre-Admission Screening and Resident Review (PASRR) for individuals residing in Montgomery County with mental illness, intellectual disability, or other related mental health conditions. A complete description of the Scope of Services required is listed in this Open Solicitation packet.

PASRR is a federally mandated program that requires all states to develop a comprehensive evaluation process by which to pre-screen individuals known or suspected of having mental illness, intellectual disability, or other related mental health conditions and who are seeking admission to a nursing facility (NF) certified under the Medicaid program.

The evaluation process is a component of PASRR, which was enacted in the Federal Omnibus Budget Reconciliation Act (OBRA) of 1987, subsequently amended by OBRA in 1990, and established under the requirements of section 1919 (e) of the Federal Social Security Act (SSA).

There are a total of two (2) services in the Scope of Services for this Open Solicitation as follows:

1. Maryland licensed Psychologist
2. Maryland licensed Psychiatrist or General Medical Doctor

All applicants must have experience performing comprehensive evaluations. A current copy of the State of Maryland license for all medical professionals must be submitted with your application.

A complete description of the Scope of Services required is listed in the Open Solicitation packet in the Pre-Approved Form Contract. You may obtain a packet by visiting DHHS – Contract Management Team website at:
<http://www.montgomerycountymd.gov/HHSprogram/coo/contractmgmt/cmtcurSolicits.html>.

The County will enter into a contract with all applicants who meet the minimum qualifications as described in the Form Contract 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. Please keep a copy of all these documents for your records. The applicant must sign the County's Form Contract which includes the General Conditions of Contract Between County and Contractor, the County's Business Associate Agreement and other Attachments, as written with no modification.

Only evaluations requested by the County will be compensated. The County will set forth the compensation rates based on a Rate Schedule for this Open Solicitation which will be posted on the DHHS website at <https://www.montgomerycountymd.gov/HHS-Program/COO/ContractMgmt/CMTCurSolicits.html>.

Questions regarding this open solicitation should be emailed to:
HHS.Open.Solicitations@montgomerycountymd.gov

INSTRUCTIONS AND VENDOR INFORMATION

The County will enter into a contract with all applicants who meet the minimum qualifications, are found to be responsible and complete and submit the mandatory submissions described in this document. The County will sign the Contract and return a copy to the applicant. The Pre-Approved Form Contract with all Attachments will constitute the entire Contract. The applicant must sign the County's Form Contract which includes the General Conditions of Contract Between County and Contractor, and other Attachments, as written, ***with no modifications***.

Questions regarding this open solicitation should be emailed to:

HHS.Open.Solicitations@montgomerycountymd.gov

- I. Submission Documents - The following items must be submitted with your application:
 - A. A narrative description of the applicant's qualifications and experience conducting evaluations. In addition, each applicant must submit a Curriculum Vitae or a Résumé highlighting applicable education and experience.
 - B. Pre-Approved Form Contract - must be filled out and submitted following 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. Enter a date only in the signature block.***
 3. Submit all the pages of the Form Contract (not just the signature page).
 - C. The following attachments must be completed and submitted:
 1. General Conditions of Contract Between County & Contractor (Attachment A)
<https://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-45.pdf>;
 2. Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor - informational only.
www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-91.pdf
 3. Minority, Female Disabled (MFD) Person Subcontractor Performance Plan - Please submit your MFD plan or request a waiver.
<https://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf>
 4. Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor
<https://www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf>

5. Application Form (Attachment C) - Please complete the Application Form in its entirety. Applicants must check off profit, non-profit or sole proprietorship designation or the application will be rejected.
 6. Reference Form (Attachment D) - Each applicant must submit contact information for three (3) references who can attest to the applicant's experience in conducting evaluations.
 7. Service Checklist (Attachment E) - Applicants must indicate which service(s) they propose to provide under this Open Solicitation.
 8. *Optional* Minority Business Program & Offeror's Representation
www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-90.pdf
 9. Business Associate Agreement (Attachment B)
<https://www.montgomerycountymd.gov/HHS/DoingBuswDHHS.html>
- D. Certificate(s) of Insurance – that provides evidence of meeting the insurance requirements set forth in Article VII. General Conditions and Insurance of the Pre-Approved Form Contract. Contact your insurance broker to obtain the Certificate.
- E. Licenses – A copy of the current State of Maryland license for all medical professionals.
- F. Proof of legal name - Each applicant, other than an individual or individual proprietorship, must submit: (1) a copy of Articles of Incorporation (including any amendments) or other documents filed with the Maryland State Department of Assessments and Taxation (SDAT) (or other State, as applicable) showing the applicant's full legal name including any trade names or names under which the applicant does business, (2) a completed and signed copy of Internal Revenue Service (IRS) form W9 (Request for Taxpayer Identification Number and Certification); and (3) a document from SDAT showing that the applicant is in good standing. If applicant is a sole proprietorship, a copy of applicant's Social Security card may be substituted for the Articles of Incorporation.
- G. If applicant is a Not-for-Profit entity, a Letter of Determination from the IRS must be submitted.

II. Instructions

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

AERSPASRR@montgomerycountymd.gov

Or

Department of Health & Human Services
Contract Management Team

401 Hungerford Drive, 6th floor
Rockville, Maryland 20850
Attention: Montgomery County AERS Unit

If your application meets the minimum qualifications listed in the Form Contract, the County will execute the Contract and return a copy to you. A copy of the County's General Conditions Between County and Contractor ("General Conditions") is included with the solicitation packet. The County's General Conditions will be included as Attachment A to any contract that results from this Open Solicitation and includes terms and conditions that the County requires of Contractors. The Contract Management Team will forward a copy of the executed Contract along with related materials to you. Once you receive notice from the County that the Contract has been executed and receive an executed Purchase Order from the County, you may provide services to clients.

The County makes no guarantee that any single contractor will receive referrals under a Contract resulting from this Open Solicitation. Montgomery County Assessment Evaluation and Review Services (AERS) will receive referrals for evaluations from the community, hospital and nursing facility social workers. AERS, in coordination with the DHHS Contract Monitor, will assign each evaluation referral to the appropriate Contractor, on a rotating basis by service required and according to diagnosis of Mental Illness or Intellectual Disability, to perform on-site evaluation or client review for PASRR.

Award of a Contract under this Open Solicitation is subject to fiscal appropriations.

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

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Pre-Admission Screening and Resident Review (PASRR)
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I. BACKGROUND/INTENT

- A. The Montgomery County, Maryland, Department of Health and Human Services (DHHS), through its Aging and Disabilities Services Service Area, serves individuals residing in Montgomery County with mental illness, intellectual disability, or other related mental health conditions. The DHHS recognizes a need for Pre-Admission Screening and Resident Review (PASRR) evaluations for these at-risk individuals. Through Open Solicitation #1151555, the County is seeking qualified health professionals to conduct comprehensive evaluations for all individuals who are required to be evaluated under PASRR.
- B. PASRR is a federally mandated program that requires all states to develop a comprehensive evaluation process by which to pre-screen individuals known or suspected of having mental illness, intellectual disability, or other related mental health conditions and who are seeking admission to a nursing facility (NF) certified under the Medicaid program.
- C. The evaluation process is a component of PASRR, which was enacted in the Federal Omnibus Budget Reconciliation Act (OBRA) of 1987, subsequently amended by OBRA in 1990, and established under the requirements of section 1919 (e) of the Federal Social Security Act (SSA).
- D. A PASRR evaluation requires the combined services of qualified health professionals, specifically, a nurse, a social worker, a psychologist and a psychiatrist or general medical doctor. Contracts resulting from this Open Solicitation will engage qualified health professionals to support the provision of PASRR services.
- E. There are a total of two (2) services in the Scope of Services for this Open Solicitation, as follows:
 - 1. Licensed Psychologist
 - 2. Licensed Psychiatrist or General Medical Doctor

All applicants must have experience in performing comprehensive evaluations and must be licensed to practice in the State of Maryland.

- F. Contractors awarded a Contract as a result of Open Solicitation #1151555 are considered independent Contractors and not employees of Montgomery County Government.

II. SCOPE OF SERVICES

Depending on the service the Contractor applied to perform and the Contract awarded to the Contractor in accordance with Open Solicitation #1151555, the Contractor must provide the following services:

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- A. Licensed Psychologist - The Psychologist must:
1. Conduct comprehensive on-site PASRR evaluations in accordance with the PASRR evaluation criteria outlined in 42 Code of Federal Regulations (CFR) 483.128, which can be found on the Maryland Department of Health's website at <https://health.maryland.gov/mmcp/longtermcare/Pages/PASRR.aspx>. Each evaluation must include a recommended treatment plan for the clients. Evaluations must be performed for clients who are eligible per Federal Law and are referred by the DHHS Contract Monitor. A written evaluation must be submitted to the contract monitor within three (3) working days of referral unless an earlier response is needed;
 2. Exercise independent professional judgment and assume professional responsibility for all services provided;
 3. Comply with all federal, State, and local laws, ordinances, rules, and regulations, as well as applicable codes of ethics, pertaining to or regulating the provision of the services, including those now in effect and hereafter adopted. This obligation must include, but not be limited to, responsibility for confidentiality of protected health information and other regulatory requirements of the Health Insurance Portability and Accountability Act of 1966 (HIPAA) and other State, federal, and local laws governing the privacy of medical information;
 4. Ensure confidentiality of all records; and
 5. Be authorized by law and licensed in the State of Maryland to perform the services described in this Contract.
- B. Licensed Psychiatrist or General Medical Doctor - The Psychiatrist or General Medical Doctor must:
1. Provide consultation, if and as needed, with the Assessment Evaluation and Review Services (AERS) nurse for clarification of the recommended mental health/treatment plan and/or needs, in accordance with the PASRR evaluation criteria outlined in 42 Code of Federal Regulations (CFR) 483.128, which can be found on the Maryland Department of Health's website at <https://health.maryland.gov/mmcp/longtermcare/Pages/PASRR.aspx>. A written comprehensive report must be submitted to the AERS program within three (3) business days of the evaluation unless an earlier response is needed and is requested by AERS.

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2. Provide comprehensive reviews of PASRR evaluations conducted on clients diagnosed with mental illness. Results of reviews, including all recommendations, must be documented in the case record;
3. Complete a PASRR Level II report on evaluations reviewed in coordination with the AERS multi-disciplinary team;
4. Exercise independent professional judgment and assume professional responsibility for all services provided;
5. Comply with all federal, State, and local laws, ordinances, rules, and regulations, as well as applicable codes of ethics, pertaining to or regulating the provision of the services, including those now in effect and hereafter adopted. This obligation must include, but not be limited to, responsibility for confidentiality of protected health information and other regulatory requirements of the Health Insurance Portability and Accountability Act of 1966 (HIPAA) and other State, federal, and local laws governing the privacy of medical information;
6. Ensure confidentiality of all records; and
7. Be authorized by law and licensed in the State of Maryland to perform the services described in this Contract.

C. The **minimum qualifications** for providing services under this Contract are as follows:

1. The Contractor must have a current license to practice in the State of Maryland for the service for which they are applying under this Open Solicitation (Licensed Psychologist, Licensed Psychiatrist or Licensed General Medical Doctor).
2. The Contractor must meet the County's mandatory insurance requirements as defined in Article VII. General Conditions and Insurance of this Contract and must provide insurance certificates that meet the mandatory insurance requirements and are acceptable to the County's Division of Risk Management.
3. The Contractor must have experience conducting comprehensive evaluations.

III. RECORDS AND REPORTS

- A. The Psychologist must submit an evaluation for all individuals who are required to be evaluated under PASRR, including all required Maryland Department of Health forms and any other required documents, within three (3) working days of referral, to

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the Contract Monitor and must consult with the AERS and/or the client's private physician and/or nursing home professional staff, if needed, for clarification of the mental health treatment plan. In some instances, a shorter response time may be requested by the Contract Monitor and the Contractor must adhere to that schedule.

- B. The Psychiatrist or General Medical Doctor must complete consultation with AERS, including review of the required Maryland Department of Health forms and any other required documents and complete the review process within the nine (9) business day requirement timeframe.

IV. COMPENSATION

The County will set forth the compensation rate on a Fixed Rate Schedule for Contracts awarded as a result of Open Solicitation #1151555, Attachment F, which will be posted on the DHHS website at <https://www.montgomerycountymd.gov/HHS-Program/COO/ContractMgmt/CMTCurSolicits.html>. The County will compensate the Contractor only up to the amount stated in the purchase order(s) issued to the Contractor. The maximum amount payable under this Contract must not exceed the total amount shown on the purchase order(s) issued to the Contractor for that fiscal year that is based on the rates set forth on the DHHS website.

Price increase request beyond the County's set forth Fixed Rate Schedule, posted on the DHHS website at <https://www.montgomerycountymd.gov/HHS-Program/COO/ContractMgmt/CMTCurSolicits.html>, will not be approved. In the event these rates change, within 30 days of the effective date, the Department of Health and Human Services' Director or her/his designee will promptly notify the Director, Office of Procurement and the Contractor and forward the updated Rate Schedule, indicating the effective date of the new rates.

No services will be performed or compensated under this Contract prior to the execution of a County Purchase Order and the Contractor's receipt of said County Purchase Order containing a maximum compensation amount.

V. INVOICES

The Contractor must submit invoices with all required supporting documentation in a format approved by the County no later than 15 days following the end of each month. Upon receipt, acceptance, and approval of the Contractor's invoice, the County will make payment, net 30 days, at the established current Contract term rate, Attachment F, which can also be found at the DHHS website, <https://www.montgomerycountymd.gov/HHS-Program/COO/ContractMgmt/CMTCurSolicits.html>, for services provided by the Contractor.

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VI. TERM

This Contract is effective on the date indicated on the signature page upon signature by the County's Director, Office of Procurement, and will be for an initial two (2) year term. Before the Contract term ends, and subject to fiscal appropriations, the Director may (but is not required to) renew this Contract, if the Director determines that renewal is in the best interest of the County. The County shall have the option to extend this Contract for two (2) additional terms of up to two (2) years each. Contractor's satisfactory performance does not guarantee renewal of this Contract.

VII. GENERAL CONDITIONS AND INSURANCE

The General Conditions of Contract Between County and Contractor ("General Conditions") are incorporated by reference and made part of this Contract as Attachment A. The insurance requirements set forth below supersede the insurance requirements set forth in Provision 21, Insurance, of the General Conditions.

Prior to the execution of the contract by the County, the proposed awardee/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 proposed awardee/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 proposed awardee/contractor to the County nor shall failure 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. The Contractor's insurance shall be primary. Coverage pursuant to this Section shall not include any provision that would bar, restrict, or preclude coverage for claims by Montgomery County against Contractor, including but not limited to "cross-liability" or "insured vs insured" exclusion provisions.

Commercial General Liability

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

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

Professional Liability (Errors and Omissions Liability)

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The policy shall cover professional errors and omissions, negligent acts, misconduct or lack of ordinary skill during the period of contractual relationship and services rendered with the County with a limit of liability of at least:

Each Claim \$1,000,000

In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning at the time work under this Contract is completed.

Workers' Compensation/Employer's Liability

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

Bodily Injury by Accident - \$100,000 each accident

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

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

Additional Insured

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

Policy Cancellation

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, Maryland
Health and Human Services / CMT
401 Hungerford Drive, 6th floor
Rockville, Maryland 20850

VIII. PRIORITY OF DOCUMENTS

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

1. This Contract Document;
2. The General Conditions of Contract Between County and Contractor (Attachment A);
3. Business Associate Agreement (Attachment B);
4. Application Form (Attachment C);
5. Reference Form (Attachment D); and
6. Service Checklist (Attachment E).

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Signature Page

This Contract, which incorporates the approved Form Contract, General Conditions of Contract Between County and Contractor and all required forms under Priority of Documents, copies of which have been provided to the Contractor, is entered into this ____ day of _____, _____, by and between _____, hereinafter referred to as the "Contractor" and Montgomery County, Maryland, hereinafter referred to as the "County". This Contract will become effective on the date of signature by the Director, Office of Procurement. This Contract and any renewals or extensions of this Contract are subject to the appropriation of funds.

Part A: Contractor's Offer to Provide Services:
(Prospective Contractor Must Complete)

Contracting Corporation, Partnership Limited
Liability Company OR Proprietorship

Agency Name

Signature

Typed

Title

Part B: County Acceptance:

MONTGOMERY COUNTY, MARYLAND

Avinash G. Shetty, Director
Office of Procurement

Date

RECOMMENDATION

James C. Bridgers, Jr., Ph.D., MBA, Acting 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.

Application Form
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Name of Applicant/Vendor: _____

(Legal Name as it appears on Articles of Incorporation or Social Security card)

Federal Taxpayer Identification # (TIN): _____

Address: _____

City and State: _____ Zip Code: _____

Primary Contact Name: _____

E-mail Address (if applicable): _____

Phone #: _____ Fax #: _____

Type of Corporation: (check one): For Profit: Not-For-Profit: Sole Proprietorship:

Acknowledgment:

I have received a copy of the packet for Open Solicitation #1151555, reviewed the documents, and agree to the solicitation's requirements, including the insurance requirements. I have received a copy of the County's General Conditions (Attachment A to the Pre-Approved Form Contract) and accept those terms and conditions.

Signature of Person Completing this Form

Title

Date

REFERENCE FORM

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(Each applicant must submit contact information for three references.)

Applicants must provide three (3) references whom the County may contact. Names for references should be of individuals who directly supervised or had direct knowledge of services provided by the applicant.

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

CONTACT PERSON'S EMAIL ADDRESS: _____

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

CONTACT PERSON'S EMAIL ADDRESS: _____

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

CONTACT PERSON'S EMAIL ADDRESS: _____

SERVICE CHECKLIST
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To indicate which services the Contractor is proposing to provide, the Contractor must check off at least one item, below:

_____ PSYCHOLOGIST

_____ PSYCHIATRIST OR GENERAL MEDICAL DOCTOR (MD)

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

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.

Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor

A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.

B. Contractor must subcontract a percentage goals listed below of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Business Program Manager. The letter must explain why a waiver is appropriate. The Director of the Office of Procurement or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.

For Goals by each purchasing category, please refer to www.montgomerycountymd.gov/mfd

C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.

D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.

E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.

F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.

G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.

If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Office of Procurement must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

MONTGOMERY COUNTY, MARYLAND
MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR
PERFORMANCE PLAN

Contractor's

Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTRACT NUMBER/PROJECT DESCRIPTION: _____

A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

B. This Plan covers the life of the contract from contract execution through the final contract expiration date.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is _____% of the total dollars awarded to Contractor.

D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

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

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

2. Certified by: _____
Subcontractor Name: _____
Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN ASIAN AMERICAN DISABLED PERSON
FEMALE HISPANIC AMERICAN NATIVE AMERICAN

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

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

3. Certified by: _____
Subcontractor Name: _____
Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN ASIAN AMERICAN DISABLED PERSON
FEMALE HISPANIC AMERICAN NATIVE AMERICAN

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

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

4. Certified By: _____
Subcontractor Name: _____
Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

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

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

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Partial Waiver Approved:

_____ Date: _____

_____ Date: _____

MFD Program Officer

MFD Program Officer

Full Waiver Approved:

Partial Waiver Approved:

_____ Date: _____

_____ Date: _____

Avinash Shetty
Director
Office of Procurement

Avinash Shetty
Director
Office of Procurement

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. _____) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

Signature

Typed Name

Title

Date

APPROVED:

Avinash Shetty, Director, Office of Procurement

Date

Section 7.3.3.4(a) of the Procurement Regulations requires:
The Contractor must notify the Director, Office of Procurement of any proposed change to the Subcontractor Performance Plan.

Requirements for Services Contract
Addendum to The General Conditions of Contract Between County and Contractor

_____ -

Wage Requirements Law Certification

NO

also complete item C below).

furnish a copy of the contract or grant

(must

must specify the law, or

(must also complete box B.4. above)

Note: A schedule C from the employer's federal tax return may be required for verification purposes.

NOT

If this box is checked, you must complete the Wage Requirements Law Independent Contractor Certification (PMMD193) in order for your bid/offer to be considered. It can be found at: _____

NOT

Contractor Certification

