



## Informal Solicitation # 1154113 Employee Giving Campaign Management Services

DATE March 24, 2023

The Montgomery County, MD Office of Community Partnerships of the Community Engagement Cluster is soliciting proposals to support Montgomery County's Employee Giving Campaigns. **If you are interested in responding to this Informal Solicitation, please submit via email no later than 5:00 pm on April 24, 2023, to:**

Yvette Torres  
Community Engagement Cluster (CEC)  
Office of Community Partnerships (OCP)  
[CEC.Procurement@montgomerycountymd.gov](mailto:CEC.Procurement@montgomerycountymd.gov)

The County will not be responsible for proposals received after the due date.

If an offeror is interested in submitting a proposal, but cannot make the submission deadline, the offeror must email Yvette Torres at [CEC.Procurement@montgomerycountymd.gov](mailto:CEC.Procurement@montgomerycountymd.gov) to see if an extension may be granted. If an offeror is not interested in submitting a proposal at this time, the offeror should sign the Quotation Sheet and write/type "No Offer" on it and return it to the Office of Community Partnerships.

The following pages contain the terms, conditions, and scope of services for this informal solicitation. **For questions about this Informal Solicitation, please contact** Yvette Torres at [CEC.Procurement@montgomerycountymd.gov](mailto:CEC.Procurement@montgomerycountymd.gov).

INFORMAL SOLICITATION # 1154113  
TITLE  
SPECIAL NOTIFICATION FOR ISSUANCE UNDER LSBRP

Solicitation # 1154113 is being advertised under the Local Small Business Reserve Program (LSBRP). Should it be determined there are no viable Local Small Businesses that respond to this solicitation, Montgomery County may exercise an option to extend the informal solicitation advertisement for a minimum of five (5) days as non-LSBRP. Any advertisement extension will be in the form of a solicitation amendment with the reissuance of the informal solicitation.

If you have any questions, please contact Yvette Torres at [CEC.Procurement@montgomerycountymd.gov](mailto:CEC.Procurement@montgomerycountymd.gov).

## SECTION 1 – INSTRUCTIONS, CONDITIONS, AND NOTICES

### **Background/Intent**

Montgomery County’s Office of Community Partnerships of the Community Engagement Cluster (CEC) is seeking an organization to administer an annual web-based County Employee Giving Campaign in 2023 and future years. The County’s goal is to ensure the annual Employee Giving Campaign is run in a professional and efficient manner to ensure giving by County employees to community nonprofits is facilitated and encouraged by being as simple as possible, while providing employees with full information and ensuring accountability to employee donors and recipient organizations that is performed in an easy and streamlined way.

### **Contractor’s Responsibilities:**

1. **Fiscal Services:**

The Contractor must provide employee pledge information and campaign reports summarizing designations to designated federations on behalf of their member charities and to unaffiliated charity organizations.

2. **Distributions:**

a. Contractor will pay contributions to each charity in the amounts designated by the employee/donor, less any employee/donor’s credit card company fee, by making quarterly payments to the charities. Contractor must provide the County and the federation representing each charity with detailed distribution reports on a quarterly basis, including disbursement details for each employee.

b. County Payroll data must reconcile with payment to Contractor within 15 days after each quarter. Any discrepancies may cause a delay in the distribution of funds.

3. **Compensation:**

The Contractor will provide its services to the County for an administrative fee of no greater than 7% of the amount donated by County employees and retirees during each annual Campaign. The Contractor may also recover any fees imposed by the employee/donor’s credit card company. If credit cards are used as a payment method for individual designations, the donor is required by his or her credit card company to provide their billing address. Contractor will deduct any applicable credit card fees against the employee/donor’s contribution. The Contractor may not bill the County for any time, materials, or otherwise for services or goods it provides except for the agreed upon percent of the funds designated to charities by the employees/donors. Invoices must be submitted to the County each year after the employee giving campaign ends and total donations have been calculated. Documentation of the total donations must be submitted with each annual invoice.

4. **Approvals:**

Contractor will coordinate with the County’s campaign contact to follow up with any donors whose pledge forms are illegible or incomplete. Contractor must alert the County’s campaign contact of any charity whose 501(c)(3) status cannot be verified or any charity whose current address cannot be identified. In such instances, the County’s campaign contact will follow up with the donor to clarify the issue, select a different charity or request a refund. In the event that the County’s campaign contact is unable to locate the donor, Contractor will consider the funds undesignated and return it to the employee/donor.

5. The Contractor must conduct an internal audit within 90 days of the final distribution of payroll contributions. At the time of the audit, any remaining receipts from undesignated employee contributions will be returned to the employee/donor.

6. Contractor must continue to hold employee information, provided by the County in conjunction with the Campaign, strictly confidential.

7. Contractor must not in any way contact the County's employees via any email address provided by the County. Unless otherwise directed, Contractor will use the County's employee email addresses solely for use with the Contractor's employee giving software system.
8. Contractor agrees to an audit by the County or its designee for the Campaign.
9. Authorization. When the employee/donor hits the submit button during the pledge process on the Contractor's employee giving software system, the employee/donor is authorizing a deduction from payroll or credit card.

#### County's Responsibilities

1. The County will identify a County employee to serve as the primary Campaign coordinator. That employee will identify a primary point of contact at each participating organization/federation to assist in Campaign event planning and work with the Contractor's event coordinator. The Contractor must work with each participating organization/federation and the County to ensure fairness in event attendance and charity listing in brochure and online system.
2. The County's primary Campaign coordinator will coordinate with the County Departments to distribute Campaign materials and conduct Campaign training and educational meetings.
3. The County must provide the Contractor with employee payroll and similar information so that it can accomplish its responsibilities under this solicitation.

#### Name and Signature Requirements for Proposals and Contracts

The correct and full legal business name of the entity involved must be used on proposals received and on the contract issued as a result of this solicitation. A trade name, i.e., a shortened or different name under which the firm does business, must not be used when the full legal name is different. Corporations must have names that comply with State law, which requires a suffix indicating the corporate status of that business (e.g., Inc., Incorporated, etc.). Trade names may be indicated by individuals or corporations with the individual or corporate name followed by "t/a" (trading as) or "d/b/a" (doing business as), respectively. The signature on the proposal, contract, amendment, or related correspondence must conform to the following: All signatures must be made by an authorized officer, partner, manager, member, or employee. The signing of an offer or a contract is a representation by the person signing is authorized to do so on behalf of the offeror or contractor.

#### Contract Documents

The following documents will be incorporated into the contract resulting from this solicitation:

1. General Conditions of Contract Between County & Contractor (Attachment A).
2. Mandatory Insurance Requirements (Attachment B)
3. Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor and Minority, Female, Disabled Persons Subcontractor Performance Plan (Attachment C)
4. Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor (Attachment D)
5. Non-Disclosure Form (Attachment E)
6. Administrative Procedures 6-7 (Attachment F)

#### Joint Procurement

The following entities within Montgomery County must be able to purchase directly from any contract resulting from this Solicitation:

Maryland-National Capital Park & Planning Commission (M-NCPPC)  
Montgomery College (MC)  
Montgomery County Public Schools (MCPS)  
Montgomery County Revenue Authority  
Montgomery County Housing Opportunities Commission (HOC)  
Washington Suburban Sanitary Commission (WSSC)  
Municipalities & Special Tax Districts in Montgomery County

While this solicitation is prepared on behalf of Montgomery County, it is intended to apply for the benefit of the above-named entities as though they were expressly named throughout the document. Each of these entities may purchase from the successful offeror under the same prices and services of the contract with Montgomery County, in accordance with each entity's respective laws and regulations, or an entity may choose not to procure from the successful offeror at the entity's sole discretion. If one of the above-named entities elects to purchase under the contract, the price shall be determined by using unit costs and other pertinent costs that are provided in the offer. Montgomery County shall not be held liable for any costs, payments, or damages incurred by the above jurisdictions.

**Payment Terms**

The County will pay an administrative fee no greater than 7% of the amount donated by County Employees and Retirees. Invoices must be submitted to the County each year after the employee giving campaign ends and total donations have been calculated. Documentation of the total donations must be submitted with each annual invoice.

**Montgomery County Code and Procurement Regulations**

The Montgomery County Code and Montgomery County Procurement Regulations are applicable to this solicitation and any contract awarded pursuant to this solicitation.

**Qualifications of Offerors**

Offerors may be required to furnish satisfactory evidence that they are qualified and regularly engaged in performing the services for which they are submitting a proposal and maintain a regularly established place of business. An authorized representative of the County may visit any prospective contractor's plant, place of business or place where the services are performed to determine ability, capacity, reliability, financial stability, and other factors necessary to perform the contract. If so requested, an offeror may be required to submit information about its reputation, past performance, business and financial capability and other factors that demonstrate that the offeror is capable of satisfying the County's needs and requirements for a specific contract.

End Section I – Instructions, Conditions, and Notices

## SECTION II – TERMS AND CONDITIONS

### **Contractor’s Qualifications**

The Contractor must meet the following requirements:

1. Experience managing an employee giving campaign similar or identical to the one described herein;
2. Experience working collaboratively with other entities;
3. Experience establishing and maintaining effective working relationships with individuals, groups and other public and private entities; and,
4. Experience in database management.
5. The Contractor will be responsible for entering data provided by employees and retirees by means of paper forms.
6. The Contractor will be responsible for publishing a web-based real-time contribution report tracking donations by departments during the current Campaign year. This real-time report must be updated a minimum of twice weekly during the campaign.

### **Contractor’s Responsibility/Scope of Services**

- A. The Contractor must administer the County’s employee giving campaign with a state-of-the-art employee giving software service and system.
- B. The Contractor must provide customization services for the County’s annual employee giving campaign, including providing employees as well as participating federations and charities with full information ensuring accountability to employee donors and recipient organizations.
- C. The Contractor must provide immediate acknowledgement to donors of all successfully completed pledges via e-mail to the donor.
- D. The Contractor must provide secure access.
- E. The Contractor must keep the payroll and personal information of the clients confidential, including donation history and amounts, not to be shared with employees participating in the campaign.
- F. The Contractor must be capable of accepting pledges to any legally recognized nonprofit charitable organization.
- G. The Contractor must, prior to the disbursement of donations to the charitable organizations, verify the IRC section 501(c)(3) status of the designated charities, and ensure that all charities eligible to receive donations through the County’s employee giving campaign are in compliance concerning Anti-Terrorism Certification.
- H. The Contractor must provide fund disbursement directly to the nonprofit charitable organizations selected by the employee donors.
- I. At the conclusion of the County’s employee giving campaign, the Contractor must transmit a single database containing the information concerning donations made to the County in a format determined by the County.
- J. The Contractor must provide electronic data tracking systems and campaign reports.
- K. The Contractor must provide the County with the ability to create reports reflecting campaign participation, total given by charity and by employee, and the most frequently chosen charities as well as other reports as requested by the County. The Contractor must provide training to County personnel to enable County personnel to access all of the reporting features in the Contractor’s employee giving software system.
- L. The Contractor must not store credit card numbers on its server or individual desktops. The Contractor’s system must use Verisign or similar system to process credit cards in

real time. Verisign or similar system uses the following security measures to secure sensitive credit card information:

- a. Verify that the internet browser is running Secure Sockets Layer 3.0 (SSL) or higher when connecting to the Verisign Site or similar system.
  - b. The Contractor must protect donor credit card information using SSL with an encryption key length of 168 bits (the highest level commercially available) while data is being transmitted
  - c. Verisign or similar system stores personal data on our servers which are heavily guarded, both physically and electronically. To further shield credit card numbers, Verisign or similar system does not directly connect our firewall-protected servers to the internet.
- M. The Contractor must confirm that personnel listed in the Contractor's Proposal will be considered "key personnel" and may be replaced only with persons of equal or better qualifications. The Contractor must notify the County of any proposed replacement of key personnel. The County reserves the right to reject replacement of key personnel.

### **Proposal Submission**

The offeror must submit sufficient information to enable the Office of Community Partnerships to evaluate the offeror's capabilities and experience. Proposals submitted in response to this solicitation must follow the format below and must not exceed a total of 15 double-spaced pages, single-sided. Resumes and letters of reference are not included in this page limitation.

- A. A one-page letter of introduction which includes the following:
  1. Date of proposal submission;
  2. Correct legal business name and address of the organization/offeror;
  3. Contact person, phone number, fax number, and email address; and,
  4. The date on which the offeror is prepared to begin providing services.
- B. A narrative work plan, not to exceed three (3) double spaced, single-sided pages, describing how the Offeror will manage the Employee Giving Campaign;
- C. A statement not to exceed seven (7) double spaced, single-sided pages which describes the following:
  1. Experience running public sector employee giving campaigns;
  2. Experience working with multiple organizations, including nonprofits, faith organizations, and businesses.
  3. Technology and database management skills;
  4. Experience in program management working with a broad network of independent organizations;
  5. Proposed administrative fee.
- D. A sample website demonstrating the user experience of the campaign, including an explanation of the login process, sales check out and non-profit roster search engine.
- D. A description of how the Offeror would coordinate with other federations and how it would carry out the responsibilities of the Employee Giving Campaign.
- E. Contact information for three (3) references that may be contacted to attest to the quality and timeliness of the Agency's work as it pertains to the requirements of this solicitation.
- F. Signed Acknowledgement Page (Page 9)

### **Award Submissions**

The offeror must submit the following items within five (5) calendar days upon notification from the County:

1. Social Security number or federal taxpayer identification number, including a signed W-9.
2. Certificate of Insurance
3. Wage Requirement form (PMMD-177)
4. Minority, Female, Disabled Persons Subcontractor Performance Plan (PMMD-65)

**Compensation**

The County will pay an administrative fee no greater than 7% of the amount donated by County Employees and Retirees. Invoices must be submitted to the County each year after the employee giving campaign ends and total donations have been calculated. Documentation of the total donations must be submitted with each annual invoice.

**Term**

The effective date of this Contract begins upon signature by the Director, Office of Procurement. The period in which Contractor must perform all work under the Contract begins on the Contract’s effective date and upon the County’s issuance of a Notice to Proceed and ends one year later. . Contractor must also perform all work in accordance with time periods stated in the Scope of Work. Before this term for performance ends, the Director at his/her sole option may (but is not required to) renew the term. Contractor’s satisfactory performance does not guarantee a renewal of the term. The Director may exercise this option to renew this Term three (3) times for one year each.

**Method of Award/Evaluation Criteria**

The Office of Community Partnerships will evaluate written proposals based on the below criteria. The Office of Community Partnerships will also review an offeror for responsibility. The Office of Community Partnerships will make its award recommendation of the highest ranked offeror based on the Office’s written proposals scores, and its responsibility determination.

<b>Written Proposal Evaluation Criteria</b>	<b>Points</b>
1) Experience providing services similar or identical to the services described herein	25
2) Experience working with multiple organizations across different sectors. These may include nonprofits, faith organizations, and businesses.	20
3) Experience running public sector employee giving campaigns or similar in size.	20
4) Skill in use of technology and database management.	10
5) Program management experience, specifically working with a broad network of independent organizations.	15
6) Proposed administrative fee.	10
<b>Highest possible total score for written proposal evaluation:</b>	<b>100</b>

The County reserves the right to cancel the solicitation.

**General Conditions and Insurance**

The attached General Conditions of Contract between County and Contractor are incorporated and made part of this Contract as Attachment A. The insurance requirements listed on Attachment B supersede those outlined in Provision 21 of the General Conditions.



**Contract Administrator**

Along with the duties listed under provision 6 of the General Conditions of Contract between County and Contractor, the Contract Administrator shall also be responsible for inspecting all items delivered and authorizing payment upon acceptance. The Contract Administrator for this contract is Diane Vu.

**Delays and Extension of Time**

If the Contractor is delayed at any time in the delivery of Supplies, Material, Equipment and/or Services by any act or neglect of any separate Contractor employed by the County, or by changes ordered in the Supplies, Materials, Equipment and Services, or by strikes, lockouts, fires, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the County, the County shall decide the extent of such delay or the justification of any other delay, then the time of completion shall be extended for such reasonable time as the County may decide.

**Failure to Perform/Deliver**

In the event of a Contractor's failure to comply with the established delivery schedule, the County reserves the right to make an open market purchase of the required materials and/or services, and to charge as damages, the difference between the established price and the actual cost incurred by the County and to collect such charges from the Contractor, from any money due under this contract, or any other contract with the County. Alternatively, the County may assess liquidated damages at the rate of 1% per day of the cost of such item or service for each day of delay beyond the established delivery date.

**Protection of Existing Facilities**

The Contractor shall take all necessary precautions during the period of service to protect existing County facilities from damage by the contractor, contractor's employees, subcontractor or subcontractor's employees and shall repair or replace, at the contractor's own expense, any damaged property caused by the contractor, contractor's employees, subcontractor or subcontractor's employees.

Acknowledgment Page

ACKNOWLEDGMENT

The offeror must include a signed acknowledgment that all the terms and conditions of the offer may, at the County's option, be made applicable in any contract issued as a result of this solicitation. Offers that do not include such an acknowledgment may be rejected. Executing and returning (with the offer) the acknowledgment shown below will satisfy this requirement.

The undersigned agrees that all the terms and conditions of this solicitation and offer may, at the County's option, be made applicable in any contract issued as a result of this solicitation.

**Offer must use its correct legal business name. A trade name (i.e., a shortened or different name under which the firm does business) must not be used when the legal name is different.**

Business Firm's Typed Name: \_\_\_\_\_

Printed Name and Title of  
Person Authorized to Sign Proposal: \_\_\_\_\_

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

Contact person to handle any problems with services, etc.

NAME: \_\_\_\_\_ TELEPHONE NO. \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

## Attachment A

### 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.**

**ATTACHMENT B**  
Mandatory Insurance Requirements

Prior to the execution of the contract by the County, the proposed awardee/contractor and their contractors (if requested by County) must Administer an annual web-based County Employee Giving Campaign in 2023 and future years. Administration to include collection and disbursement of funds

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.

Commercial General Liability

A minimum limit of liability of **one million dollars (\$1,000,000), per occurrence and two million (\$2,000,000) aggregate**, for bodily injury, personal injury and property damage coverage per occurrence including the following coverages:

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

Cyber / Professional Liability Insurance, in an amount of not less than **one million dollars (\$1,000,000)** per occurrence, *covering all acts, errors, omissions, negligence, infringement of intellectual property, network / cyber and privacy risks (including coverage for unauthorized access, failure of security, virus transmission, data damage/destruction/corruption, breach of privacy perils, unintentional or wrongful disclosure of information, as well as notification costs and regulatory defense)* in the performance of services hereby contracted for with Montgomery County, Maryland or on behalf of Montgomery County, Maryland hereunder. Such minimum insurance shall be maintained in force at all times during the term of the agreement and for a period of 3 years thereafter for services completed during the term of the agreement.

Crime Insurance or Fidelity Bond

The minimum limit shall be **one million dollars (\$1,000,000)** each loss. Including employee dishonesty, robbery, fraud, theft, forgery, alteration, mysterious disappearance and destruction.

Worker's Compensation/Employer's Liability

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

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

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees, must be included as an additional insured on an endorsement to Contractor's commercial general, insurance policies 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 of the contractor.

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  
Community Engagement Cluster \ Yvette Torres  
21 Maryland Ave., 3rd Floor  
Rockville, MD 20850

## **ATTACHMENT C**

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

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

For Goals by each purchasing category, please refer to [www.montgomerycountymd.gov/mfd](http://www.montgomerycountymd.gov/mfd)

- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.

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

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

Contractor's  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

CONTRACT NUMBER/PROJECT DESCRIPTION: Contract #1154113

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

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

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

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

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

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: \_\_\_\_\_  
Subcontractor Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

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

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

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

2. Certified by:

Subcontractor Name:

Title:

Address:

City:

State:

Zip:

Phone Number:

Fax Number:

Email:

CONTACT PERSON:

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

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

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

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

3. Certified by:

Subcontractor Name:

Title:

Address:

City:

State:

Zip:

Phone Number:

Fax Number:

Email:

CONTACT PERSON:

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

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

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

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

4. Certified by:

Subcontractor Name:

Title:

Address:

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

Circle MFD Type:

AFRICAN AMERICAN  
FEMALE

ASIAN AMERICAN  
HISPANIC AMERICAN

DISABLED PERSON  
NATIVE AMERICAN

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

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

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

\_\_\_\_\_

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

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

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

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

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

Full Waiver Approved:

Partial Waiver Approved:

\_\_\_\_\_  
MFD Program Officer

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

\_\_\_\_\_  
MFD Program Officer

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

Full Waiver Approved:

Partial Waiver Approved:

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

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

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

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

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

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: \_\_\_\_\_

---

Signature

---

Typed Name

---

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: \_\_\_\_\_

---

Signature

---

Typed Name

---

Date

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

---

Signature

---

Typed Name

---

Title

---

Date

APPROVED:

---

Ash 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.

**ATTACHMENT D**  
Wage Requirements for Services Contract  
Addendum to The General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Wage Requirements Law, found at Section 11B-33A of the Montgomery County Code (“WRL” or “11B-33A”). A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the WRL, subject to the exceptions for particular contractors noted in 11B-33A (b) and for particular employees noted in 11B-33A (f).
- B. Conflicting requirements (11B-33A (g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- C. A nonprofit organization that is exempt from the WRL under 11B-33A (b)(3) must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees. Section 11B-33A (c)(2).
- D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement in 11B-33A.
- E. Each contractor and subcontractor covered under the WRL must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices approved and/or supplied by the County, informing employees of the wage requirements. Section 11B-33A (h).
- F. An employer must comply with the WRL during the initial term of the contract and all subsequent renewal periods, and must pay the adjusted wage rate increase required under 11B-33A (e)(2), if any, which is effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.
- G. An employer must not discharge or otherwise retaliate against an employee for asserting any right, or filing a complaint of a violation, under the WRL.
- H. The sanctions under Section 11B-33 (b), which apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements of the WRL.
- I. The County may assess liquidated damages for any noncompliance by contractor or its subcontractor with the WRL based on the rate of 1% per day of the total contract amount, or the estimated annual contract value of a requirements contract, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. If the County determines, as a result of a WRL audit that the Contractor has violated requirements of the WRL, including but not limited to the wage requirements, the County will assess the Contractor for the cost incurred by the County in conducting the audit. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action against the violating contractor or subcontractor enforce the payment of wages due under the WRL and recover from the Contractor or subcontractor any unpaid wages with interest, a reasonable attorney’s fee, and damages for any retaliation by the Contractor or subcontractor arising from the employee asserting any right, or filing a complaint of violation, under the WRL.
- J. The County has established a program of random audits to assure compliance with the WRL. The Director may conduct an on-site inspection(s) for the purpose of determining compliance. Some of the documents that may be required during an audit are listed on the Wage Requirements Law FAQ web page: <http://www.montgomerycountymd.gov/WRL>
- K. The Contractor is in breach of this contract if the Contractor fails to submit timely documentation demonstrating compliance with the WRL to the satisfaction of the Director, including: the Wage Requirements Law Payroll Report Form (PMMD-183), which is required to be submitted by the end of the month (January, April, July, October) following each quarter; documents requested in conjunction with a random or compliance audit being conducted by the County; or documents otherwise requested by the Director. In the event of a breach of contract under this paragraph, or for any other



violation of the WRL, the County may assess against, or withhold from payment to, Contractor, the liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

For any questions, please contact the Wage Requirements Law Program Manager at 240-777-9918 or [WRL@montgomerycountymd.gov](mailto:WRL@montgomerycountymd.gov).

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**Wage Requirements Law Certification**

(Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number			
E-Mail Address					

Provide, in the spaces below, the contact name and information of the individual designated by your firm to monitor your compliance with the County’s Wage Requirements Law, unless exempt under Section 11B-33A (b) (see Section B. below):

Contact Name		Title	
Phone Number		Fax Number	
E-mail Address			

In the event that you, the “Offeror,” are awarded the contract and become a Contractor, YOU MUST MARK  or  in ALL BOXES BELOW that apply.

A. Wage Requirements Compliance

This Contractor, as a “covered employer”, will comply with the requirements under County Code Section 11B-33A, “Wage Requirements” (“Wage Requirements Law” or WRL”). Contractor and its subcontractors will pay all employees not exempt under the WRL, and who perform direct measurable work for the County, the required wage rate effective at the time the work is performed. The offer price(s) submitted under this solicitation include(s) sufficient funds to meet the requirements of the WRL. A “covered employer” must submit (preferably via email) quarterly (by the end of January, April, July, and October for the quarter ending the preceding month) certified payroll records for each payroll period and for all employees of the contractor or a subcontractor performing services under the County contract governed by the Wage Requirements Law, to the Division of Business Relations and Compliance, Attn: Wage Requirements Law Program Manager. These payroll records must include the following: name; position/title; gender/race (for contracts awarded after October 1, 2015); daily straight-time hours worked; daily overtime hours worked; straight-time hourly pay rate; overtime hourly pay rate; both employer and employee share of health insurance premium; and total gross wages paid for each period. A sample of the Payroll Report Form can be found at the link below.

(<http://www.montgomerycountymd.gov/PRO/DBRC/WRL.html>). In lieu of the quarterly Payroll Report Form, payroll registers generally satisfy the requirement. Late submission or non-submission of this information, or any other violation of the WRL, may result in the County withholding contract payments and additional actions by the County, including but not limited to: assessing liquidated damages, terminating the contract, or otherwise taking action to enforce the contract or the Wage Requirements Law. The Contractor must ensure that NO Social Security number of any person, other than the last four digits, is included on the quarterly report.

**B. Exemption Status (if applicable)**

This Contractor is exempt from Section 11B-33A, "Wage Requirements," because it is:

- 1. Reserved – [Intentionally left blank].
- 2. a contractor who, at the time a contract is signed, has received less than \$50,000 from the County in the most recent 12-month period, and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Section 11B-33A (b)(1);
- 3. a public entity. Section 11B-33A (b)(2).
- 4. a non-profit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Section 11B-33A (b)(3) (**must complete item C below**).
- 5. an employer expressly precluded from complying with the WRL by the terms of any federal or state law, contract, or grant. Section 11B-33A (b)(7) (**must specify the law, or furnish a copy of the contract or grant**).

**C. Nonprofit Wage & Health Information**

This Contractor is a non-profit organization that is exempt from coverage under Section 11B-33A (b)(3). Accordingly, the contractor has completed the 501 (c)(3) Nonprofit Organization’s Employee’s Wage and Health Insurance Form, which is attached. See Section 11B-33A (c)(2).

**D. Nonprofit’s Comparison Price(s) (if desired)**

This Contractor is a non-profit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the blanket-cost quotation sheet on which it is submitting its price(s) in the RFP, and is submitting on this duplicate form its price(s) to the County had it not opted to pay its employees the hourly rate specified in the WRL. For proposal evaluation purposes, this price(s) will be compared to price(s) of another nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the WRL. This revised information on the duplicate cost sheet must be clearly marked as your nonprofit organization comparison price(s). In order for the County to compare your price(s), the revised information on the duplicate cost sheet must be submitted with your offer on or before the offer opening date, must show how the difference between your nonprofit organization price(s) and other organization comparison price(s) was calculated. Section 11B-33A (c)(2).

**E. Sole Proprietorship**

Sole Proprietorships are subject to the WRL. In order to be excused from the posting and reporting requirements of the WRL, the individual who is the sole proprietor must sign the certifications below in order to attest to the fact that the Sole Proprietorship:

- (1) is aware of, and will comply with, the WRL, as applicable;
- (2) has no employees other than the sole proprietor; and
- (3) will inform the Montgomery County Office of Business Relations and Compliance if the sole proprietor employs any workers other than the sole proprietor.

**Contractor Certification**

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or printed name		Date	



