

Informal Solicitation
1163648
South County Regional Recreation Aquatic Center Cafe

ISSUE DATE: 06:00 AM, EST November 6, 2023
SUBMISSION DEADLINE: 06:00 PM, EST, November 20, 2023

The Montgomery County Department of General Services is soliciting bids to operate and maintain a Café at the South County Regional Recreation and Aquatic Center. Proposals must be returned no later than the date and time listed above.

The following pages contain the terms, conditions, and scope of services for this Informal Solicitation.

One original of your proposal must be submitted by email to Yemisi Ogbodo, Contract Manager, Division of Central Services, Department of General Services, at yemisi.ogbodo@montgomerycountymd.gov.

Should you have any questions regarding the information, or the scope of services contained in this solicitation, contact **Yemisi Ogbodo** at **yemisi.ogbodo@montgomerycountymd.gov** or **240-777-6183**.

South County Regional Recreation Aquatic Center Cafe

SPECIAL NOTIFICATION FOR ISSUANCE UNDER LSBRP

Solicitation # 1163648 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 please contact Yemisi Ogbodo at yemisi.ogbodo@montgomerycountymd.gov.

Local Small Business Reserve Program (LSBRP) Notice

INFORMAL (SMALL PURCHASE/MINI-CONTRACT) # 1163648

South County Regional Recreation Aquatic Center Cafe

This solicitation is reserved for only **application submitted/certified** status local small businesses timely registered with the County's LSBRP. This solicitation thus comes under County Code, sections 11B-17A; 11B-65; 11B-70 and Executive Regulation 21-05AM. These documents can be accessed through the LSBRP web site at (www.montgomerycountymd.gov/LSBRP).

LSBRP criteria are based on a firm's location, ownership status, number of employees and annual revenue amount, submitting a bid/proposal constitutes willfully stating your firm is an **application submitted/certified** Local Small Business. Therefore, if you wish to submit a bid/proposal for this solicitation adhering to the LSBRP, you must:

1. Submit an application as a LSBRP firm prior to the bid's/proposals due date. If your LSBRP status is not **application submitted/certified** in our database prior to the bids/proposal's due date and time, then your bid will be deemed non-responsive and rejected or your proposal will be deemed unacceptable and removed from consideration. Go to the LSBRP web site (www.montgomerycountymd.gov/LSBRP) and follow the instructions under "Register."
2. After the informal solicitation closes and upon notification by the County, you must provide within three (3) business days the LSBRP documentation of:
 - all of its business location(s) (if more than one),
 - number of employees by location
 - annual gross revenue of the business for the past three fiscal years.

(The preferred documents are copy of a lease, Maryland Unemployment Insurance Contribution Report (summary or quarterly), and Financial Statement/Tax Returns. At the discretion of the LSBRP, an alternative type of documents might be accepted.)

If, after receipt of these documents, the LSBRP finds that your firm does not meet the LSBRP requirements, then your bid will be deemed non-responsive and rejected or your proposal will be deemed unacceptable and removed from further consideration. For questions, contact the LSBRP (240-777-9913).

PMMD-173 Informal 05/16

Montgomery County, Maryland
Acknowledgment Page

1. ACKNOWLEDGMENT

The offeror must include a signed acknowledgment that all the provisions, terms and conditions of this solicitation are agreeable to the offeror and 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 provisions, terms and conditions of this solicitation may, at the County's option, be made applicable in any contract issued as a result of this solicitation.

Business Firm's Legal Name
(printed): _____

Printed Name and Title of
Person Authorized to Sign Proposal: _____

Signature: _____ Date: _____

2. Name and Signature Requirements for Proposals and Contracts

The correct and full legal business name of the offeror must be used in proposals received and on all contracts 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 legal name is different. Corporations must have names that comply with State law, which requires a suffix indicating the corporate status of the 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 offeror's signature on the proposal, contract, amendment(s) 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 this offer or a contract is a representation by the person signing that the person signing is authorized to do so on behalf of the offeror or contractor.

3. Acknowledgment of Solicitation Amendments

The Offeror acknowledges receipt of the following amendment(s) to the solicitation:

Amendment Number	Date

SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES

The following provisions are applicable to this solicitation:

INSTRUCTIONS:

Registered Vendor

The first step in doing business with Montgomery County is to become a registered vendor in the on-line Central Vendor Registration System (CVRS). Go to the following website to register: (www.mcipcc.net)

Acknowledgement

The offeror must include the signed Acknowledgement page indicating agreement with all the provisions, terms and conditions of this solicitation.

Maryland State Department of Assessments & Taxation (MD-SDAT)

Vendors doing business in the State of Maryland are required to be in 'Good Standing' with MD-SDAT; this may not be applicable for individuals, sole proprietorships or partnerships. The County will require, if applicable, a copy of a Certificate of Good Standing from SDAT prior to entering a contract with your firm. The County will verify this status on the MD-SDAT website. If your firm has a 'Forfeit' status from MD-SDAT the County cannot enter into a contract with your firm until this status has been rectified with the MD-SDAT. If this status is not rectified in a timely manner with MD-SDAT, then your firm maybe declared non-responsible, and your proposal will be rejected.

Information can be found at: (<https://dat.maryland.gov/businesses/Pages/default1.aspx>) and (<http://dat.maryland.gov/businesses/Pages/Frequently-Asked-Forfeiture-Questions.aspx>).

CONDITIONS:

Acceptance Time

By submission of a proposal under this solicitation, the offeror agrees that County has 180 days after the due date in order to accept the proposal. The County reserves the right to reject, as unacceptable, any offer that specifies less than 180 days of acceptance time. Upon mutual agreement between the County and the offeror, the acceptance time for the offeror's proposal may be extended.

Contract Documents

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

- General Conditions of Contract between County & Contractor (Section J)
- Minority-owned Business Addendum to the General Conditions of Contract between County & Contractor and its companion document entitled, "Minority, Female, Disabled Person Subcontractor Performance Plan". (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-91.pdf)
- Wage Requirements Law (WRL) for Services Addendum to the General Conditions of Contract between the County and Contractor and its companion documents entitled, "Wage Requirements Certification", and "501(c)(3) Non-profit Organization's Employee's Wage and Health Insurance Form". (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf)
- All representations and certifications listed in this document.
- Mandatory Insurance Requirements.

Determination of Responsibility

The Offeror has the burden of demonstrating, affirmatively, its responsibility in connection with this solicitation. A debarred potential offeror must automatically be considered non-responsible in connection with this solicitation. The County reserves the right to consider an offeror non-responsible who has previously failed to perform properly or to

Revised 11/16

complete contracts, in a timely manner, or if investigation shows the offeror is unable to perform the requirements of the

contract. An offeror may be requested at any time by the Director, Office of Procurement or the Using Department to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure of an offeror to furnish requested information may constitute grounds for a finding of non-responsibility of the prospective offeror.

- The Director may deny the award, renewal, or assignment of a contract to or for any offeror who is in default of payment of any money due the County.
- The factors that may be considered in connection with a determination of responsibility include, but are not limited to:
- The ability, capacity, organization, facilities, and skill of the offeror to perform the contract or provide the goods, services, or construction (“work”) required.
- The ability of the offeror to perform the contract or provide the work within the time specified without delay, interruption or interference.
- The integrity, reputation and experience of the offeror and its key personnel.
- The quality of performance of previous contracts or work for the County or other entities. Past unsatisfactory performance, for any reason, is sufficient to justify a finding of non-responsibility.
- The offeror’s previous and existing compliance with laws and ordinances relating to the contract or work.
- The sufficiency of financial resources of the offeror to perform the contract or provide the work.
- The certification of an appropriate accounting system, if required by the contract type.
- Past debarment or suspension by the County or other governmental entity.

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); and
- 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 for the same work noted in the contract with Montgomery County, in accordance with each entity's respective laws and regulations. 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 or contract. Montgomery County shall not be held liable for any costs, payments, invoices, or damages incurred by the above jurisdictions. Each jurisdiction listed in this section will be solely responsible for and contract directly with the offeror under the jurisdiction’s own procurement laws and regulations. ANY SPECIAL DISCOUNTS UNIQUE TO A PARTICULAR ENTITY (e.g., Montgomery County Public Schools educational discounts) SHOULD BE LISTED IN THE OFFER.

Late Proposals

Proposals in response to this solicitation received after the due date and time specified in the solicitation are considered late and will not, under any circumstances, be considered for any award resulting from the Solicitation.

Minority, Female, Disabled Person Program Compliance

Under County law, this solicitation is subject to the Montgomery County Code (Part II. Chapter 11B. Article XIV) and the Montgomery County Procurement Regulations (COMCOR 11B.00.01.07) regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.

- Information regarding the County’s MFD program can be found on the Office of Procurement website at: www.montgomerycountymd.gov/MFD

- Entitled “Minority-owned Business Addendum to the General Conditions of Contract between County and Contractor”.
- The companion document entitled “Minority, Female, disabled Person Subcontractor Performance Plan” can be found on the Office of Procurement website at:
www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf.

Montgomery County Code and Procurement Regulations

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

Payment Terms

The County’s payment terms are net thirty (30) days.

Qualification of Offerors

Offerors may be required to furnish satisfactory evidence that they are qualified dealers or manufacturers of the items listed or are regularly engaged in performing the services for which they are submitting a proposal, and that they 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 factor(s) necessary to perform the contract. Upon the County’s request, an offeror must submit information about its reputation, past performance, business and financial capability, and other factors to demonstrate that the offeror is capable of satisfying the County’s needs and requirements for this solicitation.

Services Contract (County Code 11B-33A)

Under County law, a solicitation for a contractor to provide services is subject to the Montgomery County Code regarding compliance with certain wage requirements related to wage amounts that contractor must pay its employees. If an offeror fails to submit and complete the required material information on the **Wage Requirements Certification form**, its proposal may be deemed unacceptable and rejected under County law.

Information regarding the County’s Wage Requirements Law (WRL) can be found on the Office of Procurement website at: www.montgomerycountymd.gov/WRL. Contractor must comply with the “Wage Requirements Law (WRL) for Services Contracts Addendum to The General Conditions of Contract between County and Contractor”, which can be found included with the **Wage Requirements Certification form** at the website below.

The companion document entitled “**Wage Requirements Certification**” form can be found on the Office of Procurement website at: www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf.

NOTICES:

Proprietary & Confidential Information

This is to notify prospective offerors that the County has unlimited data rights regarding proposals submitted in response to its solicitations. “Unlimited data rights” means that Montgomery County has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by offerors in response to this or any solicitation issued by the County. However, information that is deemed to be confidential commercial or financial information, as defined by the Maryland Public Information Act (MPIA), Md. Code Ann., Gen. Prov. §§ 4-101 through 4-601, will be exempted from disclosure if the offeror can show that release of such information would cause substantial competitive harm to the offeror.

It is the responsibility of the offeror to clearly identify each part of the offer that it believes is confidential commercial or financial information by stamping the bottom right-hand corner of each pertinent page with large boldface letters stating the words “confidential” or “proprietary.” However, the County, by law, must apply the MPIA’s requirements for public information disclosure deemed proprietary and confidential; therefore, even information marked as such by the Offeror may still require public disclosure.

The offeror agrees, with regard to any portion of the proposal that is not stamped as proprietary or confidential, that it expressly permits the County to deem it not to be proprietary or confidential, and to release the information to the public in accordance with the MPIA.

Verbal Explanations

Verbal explanations or instructions given by a Montgomery County employee to an offeror in regard to this or any other solicitation will not be binding on the County.

**SECTION B - 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 a defect. Copies of the 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, the 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

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22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

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

23. 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.

PMMD-45. REVISED 7//2022

SECTION C – SCOPE OF SERVICE

1) BACKGROUND

Montgomery County Department of General Services, is requesting a proposal for the operation and maintenance of a Café at the South County Regional Recreation and Aquatic Center (SCRRAC), located at 1319 Apple Ave, Silver Spring, MD 20910.

2) PURPOSE AND INTENT

The County intends to award one (1) Contract as a result of this Informal Solicitation to the contractor who is technical proficient to operate and maintain a food service and coffee bar located at identified County facilities. The purpose of this Informal Solicitation is to solicit bids for the aforesaid services as per the terms, conditions, scope of services and Quotation Sheet Contained herein.

The County reserves the right to re-issue this solicitation at a later date for additional services as long as the aggregate amount of the resultant contracts do not exceed the informal solicitation threshold established in the County’s Procurement Regulations.

Department of General Services will be the authorized user of the Contract resulting from this Solicitation (the “Contract”). The Contractor is not to perform any work under the Contract for any other County agency.

3) LOCATIONS

South County Regional Recreation and Aquatic Center
1319 Apple Ave, Silver Spring, MD 20910

4) SCOPE

The Scope of Work contained herein is intended to outline the general contractor requirements under this Informal and any resultant contract that may be executed as a result of this solicitation.

- a. It is the expectation of the County that the Contractor must provide superior customer service and it is the intent of Montgomery County, hereafter referred to as the “County”, to enter into a contract with a qualified entity that will be responsible for the operation and maintenance café providing coffee, other

- b. hot beverages, cold drinks, pastries, sandwiches, and other services to South County Regional Recreation and Aquatic Center. The café will operate out of over 334 sf space, located at 1319 Apple Ave, Silver Spring, MD, 20910.
- c. The site is 0.4 mile from the Metro and directly adjacent to a bus stop. The facility has 0 surface parking spaces and an underground garage of an additional 0 parking spaces. Paid parking is available at the Garage 2-Spring Cameron Garage located at 8700 Cameron St, Silver Spring, MD 20910. There is a loading dock in the facility for loading and unloading.
- d. The Offeror must submit a proposal detailing experience in and the sound management of a café that is approximately 334sf. Café operations will include, but not limited to, providing delivery of quality hot and cold beverages, pastries, and sandwiches in a sanitary environment by a responsive, dependable work force to the Aquatic and Recreation Center customers and staff. with a menu and charges for the products reflecting Montgomery County area prices.
- e. The offeror must operate the café area in compliance with all local, state, and federal laws, regulations and ordinances, obtaining and maintaining all appropriate licenses and permits, and collecting proper sales and food and beverages taxes and reporting to proper state agencies.
- f. Flexibility and variety in both product range and price points are important. Examples of expected products: hot and cold drinks, bakery, snack foods, and confectionary items appealing to all ages. The County reserves the right to require removal of any product deemed, in its sole judgment, to be inappropriate or objectionable.
- g. There are no kitchen facilities available for food preparation. The Contractor is responsible for acquiring all Montgomery County Health Department permits, building permits, and for passing all inspections.
- h. The Contractor must have experience operating and also have experience serving to a diverse customer base.

5. Service Provided to Contractor

- a. The County shall provide the following:
 - Electricity
 - Heating/cooling per policies of the County's Energy Conservation Program.
 - Hot and Cold potable running water.
 - 50 sf of secure storage space for Contractor to store utility service equipment and supplies. See plan room number S122.
- b. The County does not guarantee uninterrupted utility service and will not provide maintenance services to the Contractor's operations or café space, except to ensure that all reasonable efforts will be pursued in restoring any interrupted service. The County shall not be held liable for product or revenue loss which may result from interruptions or failure of utility or other building services.

6. Hours of Service

- a. The Facility will be open seven days a week except for County Government holidays.
Facility hours are currently:

**Monday thru Friday: 6:00 a.m.- 9:00 p.m.,
Saturday and Sunday 10:00 a.m. – 8:00 p.m.,
There may be special events that start earlier or later than the normal operating hours.**

Hours of operation are subject change. The café may open independent of library hours. Change in Operational hours will need approval by the Contract Administrator.

7. Space on Premises Assigned to the Contractor

- a. The café space will be provided to the Contractor rent free as long as a valid contract is in effect. It shall be the Contractor’s responsibility to maintain all space associated with café operations in clean and uncluttered condition throughout the term of the contract.
- b. The County will not be responsible in any manner for loss or damage to the Contractor’s stored supplies, materials or equipment, or to any of the Contractor’s employees’ personal belongings brought onto the premises.
- c. The Contractor will be responsible for procuring, installing, and maintaining all equipment necessary for its full operation. The Contractor will be prohibited from using telephone, copying, computer or general office equipment that is owned, rented, or leased by the County.
- d. The set-up and appearance of the space and any items sold are subject to approval, modification, or requirement for removal by the County if such present any operational or aesthetic problems at the site. All modifications and modification plans must be approved by Contract Administrator.

8. Financial Procedures and Compensation

- a. The County will not subsidize the food service operation. The County will not obtain no part of any profits earned, nor be responsible for any loss incurred pursuant to the café operations.
- b. The Contractor must submit to the County, upon request, a statement of operation, including gross sales for the coffee bar, vending sales, profit and loss statement, and customer counts for the operation. The Contractor must maintain records of all sales and expenses on a daily basis. These records must be available for the County’s inspection during regular business hours within 24 hours-notice.

9. Contractor’s Responsibilities

1. Personnel

- a. The Contractor will be required to employ one full-time Manager/Supervisor to be assigned to the Café. This individual must be acceptable to the County and must have a minimum of two years consecutive employment in a position with comparable experience.

- b. The Contractor will recruit, train, supervise, direct, discipline, and, if necessary, discharge any and all personnel working in the café. All Contractor personnel shall be solely in the employment of the Contractor.
- c. Employees serving customers directly must be able to communicate proficiently in English and are expected to be courteous to customers at all times.
- d. The Contractor shall ensure that a Manager/Supervisor is available during all hours of operation.
- e. The Contractor shall bear financial responsibility for any vandalism or loss due to its employees.
- f. All customer complaints will be resolved by either a correction of the deficiency or a cash refund of the total amount paid within 24 hours of the notification to the Contractor, by the complainant. Each customer must be treated in a courteous manner without discrimination.
- g. Contractor personnel shall be required to adhere to all security provisions in effect at the SCRRAC.

10. Operational

- a. The Contractor at its own expense, shall be responsible to procure food, beverages, and supplies, and provide all equipment necessary for the operation of the café. The equipment will remain the property of the Contractor.
- b. The Contractor must maintain, at all times, the café facility in a clean and sanitary manner in accordance with all federal, state, and municipal laws, codes, and regulations. The Contractor will train all employees to follow a “clean as you go” program. The café facility is subject to inspection by the County’s Department of Health and Human Services, as well as other authorized County staff.
- c. At a minimum the Contractor shall adhere to the following standards and procedures.
 - Damp mopping of spills on tiled floors
 - Waste and recycling receptacles adjacent to and in the vicinity of the café shall be emptied and cleaned. Soiled receptacle liners shall be replaced.
 - All spills on tables, chairs, floors shall be immediately cleaned by the Contractor. The Contractor must have on site, any and all required cleaning supplies and equipment to effectively clean the affected area(s).
- d. The County is committed to provide programs and services that are accessible to people with disabilities. In order to provide access to the food services program, dining surfaces, check out area, food service lines, vending machines, and other self-service equipment intended to be used by employees or visitors using the food service program, whether built in or free standing, must comply with the 2010 Standards for Accessible Design. Contractor proposals will be reviewed by the County to ensure that these requirements are met.
- e. Montgomery County’s Carryout Bag Law: All retail establishments in Montgomery County that sell goods and provide their customers a plastic carryout bag is required to charge 5 cents per bag.

11. Equipment

The Café will be built out by Montgomery County as part of the building construction including the walls millwork, installed equipment, doors, lighting, power, plumbing, sinks, and even a coiling security curtain that can be locked for afterhours security. ***The vendor will be responsible for any countertop equipment such as***

coffee, tea, espresso machines, bakery display case, and anything else that isn't permanently installed, or may purchase/rent a self-contained kiosk, or coffee bar that will fit in the space provided by the County. The Offeror's proposal (Attachment C) shall include a detailed description and specification for the unit(s) to be installed or a plan for the construction of a built-in space.

12. Menu

The Offeror's proposal must be specific and include proposed menu items, pricing and portion sizes, to be offered for sale and must include at a minimum the following:

- A variety of non-alcohol hot and cold beverages.
- Coffee
- Iced Coffee
- Espresso
- Latte
- Hot tea
- Hot chocolate/cocoa
- Bottled water
- Pastries and cookies
- Fresh fruits

The Offeror's proposal may contain other menu items, pricing, and portion sizes, as the vendor deems practical and profitable with the equipment, licensure, and working space likely to be feasible in the facility. Items sold are subject to approval, modification, or removal by the County if they present any operational or aesthetic problems at the site.

13. Portions/Pricing

- a. The item-by-item prices and portion sizes submitted by the offeror in response to this solicitation, and as agreed to by the Contractor and the County shall become the initial Price and Portion Guide of the Contract. The established portion sizes and pricing structure shall be based on established portion sizes and pricing specifications, standard recipes, food cost margins and other relevant factors that are determinants of portion sizes and pricing structures.
- b. Attachment C in this solicitation shall serve as a guideline in assisting the Contractor in developing a proposed price and portion chart which must be included as part of the Offeror's submittal.

14. Cashiering

The Contractor shall be responsible for providing the necessary electronic cash register(s) to include the installation and maintenance thereof. A cash register system shall be selected according to the following specifications.

- The cash register(s) must be electronic.
- The cash register(s) will print out an itemized receipt for every transaction.

15. Inspections

Food/beverage services operated under this Contract with the County may be inspected periodically by representatives of the County Health Department, and other agencies as required by Federal, State, and Municipal government regulations. The café operation will be subject to inspections by the County Fire Department and other agencies relative to safety requirements. Upon completion of each inspection, the Contractor will be advised of deficient conditions for which it is responsible. Deficiencies reported shall be promptly communicated to the Contract Administrator by the Contractor and shall be corrected by the Contractor within 30 days.

16. License and Permits

The Contractor shall, without additional expense to the County, be responsible for obtaining any necessary licenses for compliance with applicable Federal, State and Local laws, codes, and regulations in connection with performance of services specified herein. The Contractor shall furnish all services in accordance with applicable City, County, State, Federal, Social Security and IRS laws, codes, ordinances, and regulations governing food/beverage sales/service operations and must conform to requirements, established by underwriters and insurers of the County. All inspection certificates/permits must be posted in a visible area.

17. Equipment to be supplied by Contractor

- a. All equipment must be fully functional, furnished, and installed at the expense of the Contractor. Title/lease to all equipment will remain with the Contractor. All equipment shall be clearly labeled as to the ownership, contact name and phone number for repairs. The County will not be held liable should damage or loss of any equipment or products contained therein occur while on County premises.
- b. Provide replacement equipment that becomes unserviceable or otherwise fails to comply with any and all specifications set forth in the Contract. Contractor shall make satisfactory repair or replace damaged or defective equipment within one (1) business day of notice from the Contract Administrator.
- c. The Contractor must furnish all necessary supervision, equipment/tools, materials, and labor in performing all work described in this Solicitation.
- d. The Contractor will provide for the maintenance and inspection report for all equipment. The Contractor will adhere an inspection sticker to all units that pass the inspection/service, indicating the inspection date and the next service date.
- e. The Contractor must assign a Representative that will coordinate the work with the County's Contract Administrator or its designee. The Contractor will provide a phone number and email address for contacting its representative.
- f. The Contractor must require its workers to comply with the instructions pertaining to conduct and other regulations called to the Contractor's attention by the County.
- g. Contractor must respond to all service calls within 48 hours of notification.
- h. All service and repairs must be requested by Contract Administrator or designee.

- i.
- j. Contractor must provide an itemized quote on all necessary repairs and parts. Approval must be granted before any repairs are performed by Contractor.
- k. The Contractor must take all necessary precautions during the period of service delivery to protect existing County facilities from damage by Contractor's employees, subcontractors, or subcontractor's employees. The Contractor must repair or replace, at their own expense, any damaged property caused by the Contractor's employees, subcontractor, or subcontractor's employees.

18. CLEANING OF SITE

The Contractor must, at all times, keep the premises free from accumulation of waste materials or rubbish caused by the work performed. Upon completion of the work, waste materials, rubbish, tools, equipment, machinery, and surplus materials must be removed from the job site. All building surfaces and work areas are to be left free of garbage and debris.

19. INDEPENDENT CONTRACTOR/CONTRACTOR CONDUCT

- A. For the purposes of any contract issued as a result of this Informal, the Contractor's personnel and the personnel retained by any approved subcontractor engaged by the Contractor are the employees, consultants, workers and contractors of the Contractor or subcontractor, as applicable. The Contractor's personnel and the personnel of any subcontractor engaged by the Contractor are not employees of Montgomery County. The Contractor's personnel and the personnel of any subcontractor engaged by the Contractor must not represent themselves as an employee of the County in their interaction with the public, other contractors, or County employees. In situations where the Contractor's personnel or the personnel of any subcontractor engaged by the Contractor may be mistaken for a County employee, the Contractor's personnel and the personnel of any subcontractor engaged by the Contractor must disclose that they are working under a County contract and that they are not a County employee. Persons assigned to work for the County under this Contract must not set policies for the County or independently interpret County policies.
- B. The Contractor must provide administrative oversight for, and coordinate the recruitment, hiring/subcontracting, termination and placement of, qualified individuals who will provide the services as stipulated in this Contract. The Contractor must also provide overall supervision, control over, and direction of all personnel who work under this Contract in the provision of the services described in this Contract.
- C. The Contractor and any subcontractor engaged by the Contractor must abide by all federal, state and local labor laws and regulations and all applicable federal, state, and local tax laws and regulations in the hiring and management of all personnel employed or retained to provide services to the County under this Contract. For purposes of this Contract, "personnel" means the employees, consultants, contractors, or other worker retained by the Contractor or any subcontractor engaged by the Contractor to provide the services under this Contract.
- D. The Contractor or any subcontractor engaged by the Contractor, as applicable, must be responsible for all taxes, as well as other obligations or benefits related to its workers, including F.I.C.A., federal, and state withholdings, unemployment, and workers' compensation for persons who work for the Contractor or the subcontractor engaged by the Contractor under this Contract in the provision of the services described in this Contract.
- E. The Contractor's personnel and the personnel of any subcontractor engaged by the Contractor to provide services under this Contract are not entitled to the use of, and must not use, County vehicles.
- F. The Contractor's personnel and the personnel of any subcontractor engaged by the Contractor are not entitled to benefits available to County employees, including but not limited to credit union membership, administrative leave, access to deferred compensation benefits, affirmative action initiatives, personnel services, employee training, and other County employee benefits.
- G. The Contractor or any subcontractor engaged by the Contractor, as applicable, is solely responsible for all costs or expenses related to personnel costs of its personnel, including those related to wages, benefits, training, mileage, travel, parking, fringe benefits and paid leave.
- H. Upon request by the County, the Contractor must provide the County with access to any materials, records

- I. or reports produced by any of the Contractor's or the subcontractor's personnel, including, but not limited to pamphlets, surveys, evaluations, training materials and customized software. Any materials, records, or reports produced by the Contractor's personnel or the personnel of any subcontractor engaged by the Contractor performing work under this Contract are the County's property.
- J. The County will own all work products produced by the Contractor or any subcontractor engaged by the Contractor to provide services under this Contract when those work products are produced: 1) while assigned to the County Contract; 2) during the time and/or in the space used for County contract work; and 3) within the general scope of work assigned under the Contract. The County has the sole right to own, license, sell or use such work products. The Contractor's or subcontractor's personnel, and the personnel of any contractor or subcontractor engaged by the Contractor will have no such rights to work products produced for the County.
- K. All original content and work products developed under this Contract, including, but not limited to, graphics, data, content, information, photos and other products developed as a result of the work performed under the Contract are the sole and exclusive property of Montgomery County, Maryland; are for the exclusive, unlimited use of the County; and must not be used or distributed by the Contractor without prior written permission of the County.
- L. The Contractor must: ensure that any third-party references, graphics, or resource materials used are royalty-free; have licenses for use of such materials when applicable; and properly credit such materials to their source when so required by the source.
- M. The Contractor must not use, publish, or release any information relative to the Contract without the prior written approval of the Contract Administrator, including, but not limited to, mailing lists, brochures, pamphlets, catalogs, data, drawings, photos, reports, video or media clips, descriptions and correspondence. Any such information generated by the Contractor specifically for use in performing the work under the Contract must not be issued, published, or released by the Contractor without prior written consent of the Contract Administrator.

20. CONTRACTOR'S QUALIFICATIONS

Contractors responding to this solicitation must be able to demonstrate experience in the following areas:

- a. Experience of the offeror, proposed menus, price structure, nutritional values and portion size in successfully providing food service to comparable facilities.
- b. Ability of the offeror, to provide the County required elements for a successful operation:
 - A. Sufficient staffing
 - B. Sanitation policy
- c. Demonstrated scheduling flexibility and experience working in a demanding environment.
- d. Demonstrated experience with effective communication, flexible and productive team; with identification and resolution of problems; with working independently to plan and execute assignments; and with organization, prioritization, and accomplishment of assignments on schedule.

SECTION D – TERM

The effective date begins upon signature by the Director, Office of Procurement. The period in which the Contractor must perform all work under the Contract begins on the Contract's effective date and ends after a two-year period. 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 two (3) times for one year each.

SECTION E - METHOD OF AWARD/EVALUATION CRITERIA

Each proposal will be reviewed and evaluated based on the evaluation criteria listed below:

Points

Evaluation will be based on the following criteria:

A. Contractors Experience - (Complete Attachment C)	<u>40</u>
C. Café business and operation plan (Complete Attachment D)	<u>40</u>
D. Product Listing (price proposal – Attachment E)	<u>20</u>
Total	<u>100</u>

SECTION F – SUBMISSIONS

1. PROPOSAL SUBMISSIONS

FAILURE OF AN OFFEROR TO SUBMIT ALL REQUIRED PROPOSAL SUBMISSIONS MAY RENDER YOUR PROPOSAL UNACCEPTABLE AS DETERMINED BY THE DIRECTOR, OFFICE OF PROCUREMENT.

Offerors must submit their proposal in the format below. Written proposals will be evaluated on only what is submitted. The offeror must submit sufficient information to enable the Using Department to evaluate the offeror’s capabilities and experience. Proposals must include the following information:

- A. A cover letter with a brief description of the firm, including the offeror’s name, address, telephone number and email address.
- B. The Acknowledgment of this solicitation must be submitted and signed by a person authorized to bind the offeror to the proposal.
- C. At least three references that may be contacted to attest to the quality and timeliness of the offeror’s work of similar nature and scope to the scope required by the County. (See Attachment A)
- D. This solicitation is subject to the Wage Requirements Law, the offeror must submit the appropriate Wage Requirements Law forms found at: www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf. Failure to submit and complete the required material information on the form(s) may cause the offeror’s proposal to be unacceptable under County law, and the proposal may be rejected.
- E. Mid-Atlantic Purchasing Team Rider Clause – www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-147B.pdf.
- F. Minority, Female, Disabled Persons Subcontractor Performance Plan www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf. **To ensure a contract can move forward as a result of this solicitation, this plan must be submitted with the offeror’s proposal.**
- G. Minority Business Program and Offeror’s Representation – www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-90.pdf (see Sample of MFD Report of Payments Received www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-97.pdf)
- H. Offeror must include with their proposal a description of offeror’s knowledge and working experience in relation to the Scope of Work described in this informal. Offeror must provide details of repair and maintenance of underground and aboveground storage tanks, piping, fuel dispensing equipment and automated tank gauging consoles and associated equipment experience.
- I. Price Proposal (Attachment B).
- J. Offeror must submit the URL for their website portfolio.
- K. Any additional documentation that your firm deems necessary in response to this informal.

SECTION G - COMPENSATION

- a. The County will not subsidize the food service operation. The County will not obtain no part of any profits earned, nor be responsible for any loss incurred pursuant to the café operations.
- b. The Contractor must submit to the County, upon request, a statement of operation, including gross sales for the coffee bar, vending sales, profit and loss statement, and customer counts for the operation. The

- c. Contractor must maintain records of all sales and expenses on a daily basis. These records must be available for the County’s inspection during regular business hours within 24 hours-notice.
- d. Total compensation under the Contract (initial term, plus any optional renewal terms exercised by the County) must not exceed \$99,999.99.

SECTION H - CONTRACT ADMINISTRATOR

- A. AUTHORITY
The Director, Office of Procurement, is the delegated contracting officer. Therefore, the Director, Office of Procurement, must approve amendments, modifications, or changes to the terms, conditions, or minority, female, and disabled subcontractor plans in writing.
- B. USING DEPARTMENT
The contract administrator’s duties are defined in the General Conditions of Contact between County & Contractor, Section J, item #6A.
- C. CONTRACT ADMINISTRATOR
The Contract Administrator for any contract resulting from this solicitation is:
Yemisi Ogbodo, Contract Manager
Department of General Services
Division of Central Services
101 Monroe Street
Rockville, MD 20855
Office - 240.777.6183
Email: yemisi.ogbodo@montgomerycountymd.gov
- D. AUTHORITY
The Director, Office of Procurement, is the delegated contracting officer. Therefore, the Director, Office of Procurement, must approve amendments, modifications, or changes to the terms, conditions, or minority, female, and disabled subcontractor plans in writing.
- E. USING DEPARTMENT
The contract administrator’s duties are defined in the General Conditions of Contact between County & Contractor, Section J, item #6A.

SECTION I - ETHICS

As a result of being awarded a contract resulting from this solicitation, the successful contractor may be ineligible for the award of related contracts. In this regard, Montgomery County Code Sections 11B-52 (b) and (c) state the following:

A contractor providing an analysis or recommendation to the County concerning a particular matter must not, without first obtaining the written consent of the Chief Administrative Officer:

- A. Assist another party in the matter or another person if the person has a direct and substantial interest in the matter; or
- B. Seek or obtain an economic benefit from the matter in addition to payment to the contractor by the County.

Web-links for Documents and Forms:

1. Central Vendor Registration System (www.mcipcc.net)
2. Minority, Female, Disabled Person Subcontractor Performance Plan and Sample MFD Report of Payments Received (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-65.pdf)
(www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-97.pdf)
3. Wage Requirements for Services Contracts Addendum and Wage Requirements Certification Form and 501(c)(3) Nonprofit Organization’s Employee’s Wage and Health Insurance Form (www.montgomerycountymd.gov/PRO/Resources/Files/SolForm/PMMD-177.pdf)

ATTACHMENT A

REFERENCES
(Submit at least three)

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

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

EMAIL: _____ CELL PH _____

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

EMAIL: _____ CELL PH _____

NAME OF FIRM: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

EMAIL: _____ CELL PH _____

ATTACHMENT B

MANDATORY MINIMUM INSURANCE REQUIREMENTS – operation and maintenance of a Café at the South County Regional Recreation and Aquatic Center. Rent free; no build-out.

Prior to the execution of the contract by the County, the proposed awardee/contractor 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 with the County's being non-contributory.

Commercial General Liability

A minimum limit of liability of **one million dollars (\$1,000,000), per occurrence, and three million (\$3,000,000) 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

Business Automobile Liability

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

- Owned automobiles
- Hired automobiles
- Non-owned automobiles

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**

Subcontractor Requirements

Unless otherwise stated below the proposed awardee/contractor shall require all subcontractors to obtain, and maintain, insurance with limits equal to, or greater, than those limits required within the contract.

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, automobile insurance, and contractor's excess/umbrella insurance policies, if used to satisfy the Contractor's minimum insurance requirements under this contract, for liability arising out of contractor's products, goods and services provided under this contract. The stipulated limits of coverage above shall not be construed as a limitation of any potential liability of the contractor. 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.

Also, to be named as an Additional Insured is:

Housing Opportunities Commission of Montgomery County
10400 Detrick Ave.,
Kensington, MD 20895

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
Dept of General Services / Yemisi Ogbodo
101 Monroe St., 9th Floor
Rockville, MD 20850

ATTACHMENT E

Product Listing – The Offeror is required to submit the following listing with its proposal. This information will be included as part of the evaluation.

Product Item	Item Description Brand Name	Portion Size Quantity or Weight	Proposed Selling Price Per Item

ATTACHMENT F

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 (h)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. For an existing County Contract, if an applicable collective bargaining agreement (CBA) that existed prior to May 10, 2016, governs the parties, then that CBA controls. If the term of the CBA mentioned in the preceding sentence ends during the Contract, the WRL will then control.
- C. A nonprofit organization that is exempt from the WRL under 11B-33A (b)(3), must specify, in each bid or proposal, the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance coverage 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. Section 11B-33A (c)(3).
- 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 records necessary to show compliance; and conspicuously post notices approved and/or supplied by the County, informing employees of the requirements in 11B-33A. Section 11B-33A (i).
- 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. Section 11B-33A (e)(2).
- 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. Section 11B-33A (i)(3).
- 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. Section 11B- 33A (i)(4).
- I. In the event of a breach of this contract as a result of a contractor’s or subcontractor’s violation of the WRL, the County may seek its available remedies, which include but are not limited to liquidated damages, withholding of payment, and recoupment of audit costs that are described below. The Contractor is jointly and severally liable for any noncompliance by a subcontractor. 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, including filing a complaint under the WRL. Section 11B-33A

(i)(5).

Furthermore, the contractor expressly acknowledges that the County may assess liquidated damages against the Contractor in the event that it, as a covered employer, fails to pay the required wage, or violates the wage reporting or payroll records reporting requirement found at 11B-33A (g), including providing late or inaccurate payroll records.

(i) Liquidated Damages

The County may assess liquidated damages for any noncompliance by contractor or its subcontractor at 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. These liquidated damages amount in addition to the amount of any unpaid wages, with interest. 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 the WRL are difficult to reasonably ascertain, and that the liquidated damages provided for in this paragraph is a fair and reasonable estimate of damages the County would incur as a result of contractor's or subcontractor's violation of the WRL.

(ii) Withholding of Payment

If the Director determines that a provision of the WRL has been violated, the Director must issue a written decision, including imposing appropriate sanctions and assessing liquidated damages (as outlined above) and audit costs (as outlined below), and may withhold from payment due the contractor, pending a final decision, an amount sufficient to: (a) pay each employee of the contractor or subcontractor the full amount of wages due under the WRL; (b) reimburse the County for audit costs; and (c) satisfy a liability of a contractor or subcontractor for liquidated damages.

(iii) Audit Costs

If the County determines, as a result of a WRL audit, that the Contractor has violated requirements of the WRL, the Contractor must reimburse to the County the cost incurred by the County in conducting the audit. Section 11B-33A (i)(2)(C).

- J. The County must conduct, and the contractor or subcontractor must comply with, random or regular audits to assure compliance with the WRL. Section 11B-33A (i)(2). 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: <https://www.montgomerycountymd.gov/PRO/DBRC/wage-requirements-law.html>
- K. The Contractor is in breach of this Contract if the Contractor fails to submit timely documentation demonstrating compliance with the WRL to the satisfaction of the Director, including: the Wage Requirements Law Payroll Report Form (PMMD-183), which is required to be submitted by the 14th day of the month following the end of each quarter (January, April, July, October); documents requested in conjunction with a random or regular audit by the County; or, documents otherwise requested by the Director. Section 11B-33A (g)(2).

If a contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under the WRL, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records or reports and may postpone processing payments due under the contract or under an agreement to finance the contract.

For any questions, please contact the Wage Requirements Law Program Manager at 240-777-9918 or WRL@montgomerycountymd.gov.

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, please check the box(es) below that apply, and leave all of the other boxes blank.

A. Wage Requirements Compliance

This Contractor, as a “covered employer”, must comply with the requirements under Montgomery County Code Section 11B-33A, “Wage Requirements” (“Wage Requirements Law” or “WRL”). Contractor and its subcontractors must pay all employees not exempt under the WRL, and who perform direct measurable work for the County, the required gross wage rate effective at the time the work is performed. For employees who are not paid an hourly wage, Contractor’s compliance with the WRL must be measured by dividing the amount paid to the employee each pay period by the number of hours worked by that employee during each pay period. A covered employer must not make any deduction for any item necessary for an employee to perform the essential job function unless the deduction is permitted by Executive Regulation. The offer price(s) submitted under this solicitation include(s) sufficient funds to meet the requirements of the WRL. A “covered employer” must submit, within 14 days after the end of each quarter (by the 14th 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 WRL. The payroll records must contain a statement signed by the contractor or subcontractor certifying that the payroll records are correct and the wage rates paid are not less than those required by the WRL. These payroll records must include the following: name, address and telephone number of the contractor or subcontractor; the name and location of the job; and each employee’s name, current home address, daily straight time and overtime hours, total straight time and overtime hours for the payroll period, rate of pay, fringe benefits by type and amount, gross wages, race and gender of the employee, and the employer and the employee share of any health insurance premium provided to the employee. The Contractor must ensure that **NO** Social Security number of any person, other than the last four digits, is included on the quarterly report. A sample, blank Payroll Report Form, for your use and completion, can be found at: <http://www.montgomerycountymd.gov/PRO/DBRC/WRL.html> .

The above must be submitted to the

Division of Business Relations and Compliance, Attn: Wage Requirements Law Program Manager (preferably via email to WRL@montgomerycountymd.gov),

Each Contractor must: keep payroll records covering work performed on a contract covered by the WRL for not less than 5 years after the work is completed; and, subject to reasonable notice, permit the County to inspect the payroll records at any reasonable time and as often as the County deems necessary. If the Contractor or subcontractor fails to submit, or is late in submitting, copies of any payroll record or other report required to be submitted under the WRL, the County may deem invoices unacceptable until the Contractor or subcontractor provides the required records or reports, and may postpone processing payments due under the contract or under an agreement to finance the contract. A violation of the WRL, including the late submission or non-submission of the information noted above, may result in action by the County, including: (a) withholding contract payments, reducing payment amounts, or otherwise assessing damages against Contractor, in an amount sufficient to: (i) pay each employee of the Contractor or subcontractor the full amount of wages due under the WRL; (ii) reimburse the County for audit costs; or (iii) satisfy a liability of a contractor or subcontractor for liquidated damages; (b) terminating the contract; or, (c) otherwise taking action to enforce the contract or the WRL. Violation of the WRL may also result in a finding of non-responsibility for a future contract, or may form the basis for debarment or suspension.

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 also 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). The contractor must provide proof of its 501(c)(3) status (i.e. Letter from the IRS). Accordingly, the contractor has completed the 501(c)(3) Non-profit Organization's Employee's Wage and Health Insurance Form which is attached. See Section 11B-33A(c)(2). **(must also complete box B.4. above)**

D. 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 employee other than the sole proprietor; and
- (3) will inform the Montgomery County Division of Business Relations and Compliance if

(4) the sole proprietor employs any worker other than the sole proprietor.

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

E. Sub-Contractors

It is the prime contractor’s responsibility to ensure all of its subcontractors adhere to the WRL. All subcontractors are required to submit quarterly payroll reports. It is the prime contractor’s responsibility to collect these payroll reports and submit them to wrl@montgomerycountymd.gov on a quarterly basis.

I intend to use Sub-Contractors if I am awarded a contract as a result of this solicitation.

I do **NOT** intend to use Sub-Contractors if I am awarded a contract as a result of this solicitation. If at any time during the course of the contract I use Sub-Contractors, I understand that I am responsible for their quarterly payroll reporting.

F. Independent Contractors

I intend to use Independent Contractors if I am awarded a contract as a result of this solicitation.

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: <https://www.montgomerycountymd.gov/PRO/Resources/Files/PMMD-193.pdf>

I do **NOT** intend to use Independent Contractors if I am awarded a contract as a result of this solicitation. If at any time during the course of the contract I use Independent Contractors, I understand and agree that I must complete the Wage Requirements Law Independent Contractor Certification (PMMD193). See above link.

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, adhere to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or Printed Name		Date	

501(c)(3) Nonprofit Organization’s Employee’s Wage and Health Insurance Form

ATTACHMENT G
MINORITY BUSINESS PROGRAM & OFFEROR'S REPRESENTATION

It is the policy of the County to recruit actively, minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 - "Minority Contracting", Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Office of Procurement, or his/her designee, who may waive this requirement.

A sample of the MFD Report of payment Received is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime Contractor. It is not to be completed by the Prime Contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Office of Procurement, or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the MFD Program Manager, Division of Business Relations and Compliance at (240) 777-9912.

Offerors are encouraged (but not required) to complete the following:

I hereby represent that this is a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

Attach one of the following certification documents from: Maryland Department of Transportation (MDOT); Federal SBA 8(a); MD/DC Minority Supplier Development Council, Women's Business Enterprise National Council; or City of Baltimore.

ATTACHMENT H

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.

**ATTACHMENT I
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
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:

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 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: _____

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.

<p>Full Waiver Approved: _____ Date: _____ MFD Program Officer</p> <p>Full Waiver Approved: _____ Date: _____ Avinash Shetty Director Office of Procurement</p>	<p>Partial Waiver Approved: _____ Date: _____ MFD Program Officer</p> <p>Partial Waiver Approved: _____ Date: _____ Avinash Shetty Director Office of Procurement</p>
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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.