

SECTION 1 - GENERAL TERMS AND CONDITIONS

1. **Definitions**

The following definitions are applicable to this contract:

- (a) "Montgomery County" or "County" means Montgomery County, Pennsylvania.
- (b) "Contract" means the contract entered into between the County and the Contractor. It includes the contract form, the Certifications and Representations, these contract clauses, and the scope of work. It includes all formal changes to any of those documents by addendum, Change Order, or other modification.
- (c) "Contractor" means the person or other entity entering into the contract with the Authority to perform all of the work required under the contract.
- (d) "Day" means calendar days, unless otherwise stated.

2. **Minimum Acceptance Period**

- (a) "Acceptance period," as used in this provision, means the number of calendar days available to the County for awarding a contract from the date specified in this solicitation for receipt of proposals.
- (b) The County requires a minimum acceptance period of 90 calendar days
- (c) A proposal allowing less than the County's minimum acceptance period will be rejected.

3. **Billing and Payment**

- (a) The Contractor shall submit invoices to the County as provided pursuant to the terms of this contract. Invoices must show the type of service performed, the amount charged to the contract during the billing period, and the Purchase Order number. Invoices shall be mailed to the attention of the appropriate County department. The County's billing address is:

County of Montgomery
[Department]
P.O. Box 311
Norristown, PA 19404-0311

- (b) The County shall pay the Contractor within thirty (30) days of receipt of an accurate/uncontested invoice, given fulfillment of deliverable(s), and if Contractor is in compliance with all contract terms and conditions. The County reserves the right to withhold payment for performance deficiencies.
- (c) No interest shall be payable to the contractor from the County for delayed progress or final payment.

4. Notices

- (a) Any notice to or demand upon the Contractor shall be considered given if delivered at the office of the Contractor as stated on the signature page of the contract or at such place or other address as he may designate, in writing, to the County.
- (b) All papers required to be delivered to the County, unless otherwise specified in writing to the Contractor, shall be sent to:

County of Montgomery
Purchasing Department, Suite 702
P.O. Box 311
Norristown, PA 19404-0311

- (c) All Contractor notices, demands, requests, instructions, approvals, claims, etc., must be made in writing to the County. No oral communications will be considered binding under the terms of this contract.

5. Changes

- (a) The County may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the services to be performed or supplies to be delivered.
- (b) If any such change causes an increase or decrease in the hourly rate, the not-to-exceed amount of the contract, or the time required for performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects the conditions of this contract, the County shall make an equitable adjustment in the not-to-exceed amount, the hourly rate, the delivery schedule, or other affected terms, and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an equitable adjustment under this clause within 30 days from the date of receipt of the written order. However, if the County decides that the facts justify it, it may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under clause Disputes, herein. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written consent of the County.

6. Disputes

- (a) All disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

- (b) All claims by the Contractor shall be made in writing and submitted to the County. A claim by the County against the Contractor shall be subject to a written decision by the County.
- (c) The County shall, with reasonable promptness, but in no event in no more than 60 days, render a decision concerning any claim hereunder. Unless the Contractor, within 30 days after receipt of the County's decision, shall notify the County in writing that it takes exception to such decision, the decision shall be final and conclusive.
- (d) Provided the Contractor has (i) given the notice within the time stated in paragraph (c) above, and (ii) excepted its claim relating to such decision from the final release, and (iii) brought suit against the County not later than one year after receipt of final payment, or if final payment has not been made, not later than one year after the Contractor has had a reasonable time to respond to a written request by the County that it submit a final voucher and release, whichever is earlier, then the County's decision shall not be final or conclusive, but the dispute shall be determined on the merits by a court of competent jurisdiction.
- (e) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the County.

7. Inspection and Acceptance

- (a) The County has the right to review, require correction, if necessary, and accept the work products produced by the Contractor. Any product of work shall be deemed accepted as submitted if the County does not issue written comments and/or required corrections within 30 days from the date of receipt of such product from the Contractor.
- (b) The Contractor shall make any required corrections promptly at no additional charge and return a revised copy of the product to the County within 7 days of notification or a later date if extended by the County.
- (c) Failure by the Contractor to proceed with reasonable promptness to make necessary corrections shall be a default. If the Contractor's submission of corrected work remains unacceptable, the County may terminate this contract (or the task order involved) or reduce the contract price or cost to reflect the reduced value of services received.

8. Contract Modifications

- (a) Only the Chief Procurement Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.
- (b) The County may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause; or (2) for administrative matters which do not change the rights or responsibilities of the parties. All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Chief Procurement Officer.

9. Suspension of Work

- (a) The Chief Procurement Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Chief Procurement Officer determines appropriate for the convenience of the County.
- (b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Chief Procurement Officer in the administration of this contract, or (2) by the Chief Procurement Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.
- (c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Chief Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

10. Default

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Chief Procurement Officer may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. In this event, the County may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the County resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the County in completing the work.

11. Contractor Claims

In the event of a controversy or claim arising from the Contract, the Contractor must, within six months after the cause of action accrues, file a written claim with the Chief Procurement Officer for a determination. The claim shall state all grounds upon which the Contractor asserts a controversy exists. If the Contractor fails to file a claim or files an untimely claim, the Contractor is deemed to have waived its right to assert a claim in any forum. The Chief Procurement Officer shall review timely-filed claims and issue a determination in accordance with the "Disputes" clause in Terms and Conditions, Section I, Article 6.

12. Exercise of Option Years

The County may exercise option years of this contract, if any, by written notice to the Contractor; provided, that the County gives the Contractor a preliminary written notice of its intent to exercise an option at least thirty (30) days before the contract expires. The preliminary notice does not commit the County to an extension.

13. Certificate and Release

Prior to final payment under this contract, or prior to settlement upon termination of this contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the County a certificate and release, in a form acceptable to the County, of all claims against the County by the Contractor under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Contractor in stated amounts set forth therein.

14. Subcontracts

- (a) There shall be no subcontracting without the prior written consent of the Chief Procurement Officer.
- (b) The County may, without claim for extra cost by the Contractor, disapprove any subcontractor for cause on the basis of its own determination or because the proposed subcontractor is suspended or debarred by the County, the Commonwealth of Pennsylvania or the U.S. Government.
- (c) The Contractor shall cause provisions to be inserted in all subcontracts to bind subcontractors to the terms of this contract insofar as they are applicable to the work of the subcontractor.
- (d) Nothing contained in the contract shall create any contractual relation between any subcontractor and the County.

15. Termination for Convenience and Default

A breach of these Contract clauses may be grounds for termination of the Contract and denial of participation in future County procurements.

- (a) The County may terminate this contract in whole, or from time to time in part, for the County's convenience or the failure of the Contractor to fulfill the contract obligations (default). The County shall terminate by delivering to the Contractor a written Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall: (i) immediately discontinue all services affected (unless the notice directs otherwise); and (ii) deliver to the County all information, reports, papers, and other materials accumulated or generated in performing this contract, whether completed or in process.
- (b) If the termination is for the convenience of the County, the County shall be liable only for payment for services rendered before the effective date of the termination.
- (c) If the termination is due to the failure of the Contractor to fulfill its obligations under the contract (default), the County may (i) require the Contractor to deliver to it, in the manner and to the extent directed by the County, any work as described in subparagraph (a)(ii) above, and compensation be determined in accordance with the Changes clause, paragraph 2, above; (ii) take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable for any additional cost incurred by the County; (iii) withhold any payments to the Contractor, for the purpose of off-set or partial payment, as the case may be, of amounts owed to the County by the Contractor.

- (d) If, after termination for failure to fulfill contract obligations (default), it is determined that the Contractor had not failed, the termination shall be deemed to have been effected for the convenience of the County, and the Contractor shall be titled to payment as described in paragraph (b) above.
- (e) Any disputes with regard to this clause are expressly made subject to the terms of clause titled Disputes herein.
- (f) If the contract is terminated for the convenience of the County, the records of the Contractor shall be subject to audit by a Certified Public Accounting firm designated by the County.

16. Examination and Retention of Contractor's Records

- (a) The County, or any of its duly authorized representatives shall, until 3 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above.
- (c) The periods of access and examination in paragraphs (a) and (b) above for records relating to: (i) appeals under the clause titled Disputes; (ii) litigation or settlement of claims arising from the performance of this contract; or, (iii) costs and expenses of this contract to which the County or any of its duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

17. Interest of County Officers and Employees

No person, consultant, firm or corporation contracting with the County for purposes of rendering personal or professional services to the county shall share with any County officer or employee, and no County officer or employee shall accept, any portion of the compensation or fees paid by the county for the contracted services provided to the County.

18. Organizational Conflict of Interest

- (a) The Contractor warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest which is defined as a situation in which the nature of work under this contract and a contractor's organizational, financial, contractual or other interests are such that:
 - (i) Award of the contract may result in an unfair competitive advantage; or
 - (ii) The Contractor's objectivity in performing the contract work may be impaired.
- (b) The Contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract or any task/delivery order under the contract, he or she shall make an immediate and full disclosure in writing to the Chief Procurement Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict. The County may, however, terminate the contract or task/delivery order for the convenience of the County if it would be in the best interest of the County.
- (c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Chief Procurement Officer, the County may terminate the contract for default.

- (d) The terms of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime Contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

19. Contractor Integrity

(a) Definitions

- (i) Confidential Information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the County.
 - (ii) Consent means written permission signed by a duly authorized officer or employee of the County, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the County shall be deemed to have consented by virtue of execution of this agreement.
 - (iii) Contractor means the individual or entity that has entered into this agreement with the County, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest.
 - (iv) Financial Interest means: (1) ownership of more than a five percent interest in any business; or (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - (v) Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- (b) The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of federal, state or local laws, regulations, or other requirements that govern contracting with the County.
- (c) The contractor shall not disclose to others any confidential information gained by virtue of this agreement.
- (d) The contractor shall not, in connection with this or any other agreement with the County, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the County.
- (e) The contractor shall not, in connection with this or any other agreement with the County, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the County.
- (f) Except with the consent of the County, neither the contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
- (g) Except with the consent of the County, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- (h) The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the County in writing.

- (i) The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
- (j) The contractor, upon the inquiry or request of the County, or any agents or representatives of the County, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the County to the contractor's integrity or responsibility, as those terms are defined by federal and state statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.
- (k) For violation of any of the above provisions, the County may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the County. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the County may have under law, statute, regulation, or otherwise.

20. Equal Employment Opportunity

During the performance of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or sexual orientation. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or sexual orientation. In the event of a determination that the Contractor is not in compliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order so that these terms and conditions will be binding upon each subcontractor or vendor.

21. Nondiscrimination/Sexual Harassment

- (a) In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Contractor, subcontractor or any person acting on behalf of the Contractor or subcontractor shall not by reason of gender, race, creed, color, or sexual orientation discriminate against any person who is qualified and available to perform the work to which the employment relates.
- (b) Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed, color, or sexual orientation.
- (c) The Contractor and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

- (d) The Contractor shall not discriminate by reason of gender, race, creed, color, or sexual orientation against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- (e) The Contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Chief Procurement Officer for purposes of investigation to ascertain compliance with this clause.
- (f) The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment clause in every subcontract so that such provisions will be binding upon each subcontractor.
- (g) The County may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this clause. In addition, the County may proceed with debarment or suspension of the Contractor.

22. Subcontracting with Local, Small, and Disadvantaged Businesses

The Contractor shall take the following steps to assure that, whenever possible, subcontracts are awarded to local, small, and disadvantaged firms by:

- (a) Placing qualified local, small, and disadvantaged businesses on solicitation lists;
- (b) Assuring that s local, small, and disadvantaged businesses are solicited whenever possible;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by local, small, and disadvantaged businesses;
- (d) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by local, small and disadvantaged businesses; and
- (e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and state and local governmental small business agencies.

23. Dissemination or Disclosure of Information

No information or material shall be disseminated or disclosed to the general public, the news media, or any person or organization without prior express written approval by the County.

24. Contractor's Status

It is understood that the Contractor is an independent contractor and is not to be considered an employee of the County, or assume any right, privilege or duties of an employee, and shall save harmless the County and its employees from claims suits, actions and costs of every description resulting from the Contractor's activities on behalf of the County in connection with this Agreement.

25. Contractor Conflicts

The Contractor, its employees, agents and subcontractors shall not, during the term of this contract, undertake any employment or engagement or, except as required by law, perform any act or allow any omission, which may result in a conflict with any of their respective obligations under this contract. A conflict includes, but is not limited to engagement by a third party to review, comment or critique County work in the same or similar areas as reflected in this contract's scope of work. In the event Contractor, its agents, or subcontractors are called upon under a purported requirement of law to do or omit anything, which may be in violation of the foregoing, the Contractor shall give the Chief Procurement Officer sufficient advance written notice thereof to allow the matter to be contested by the County.

26. Other Contractors

The County may undertake or award other contracts for additional work at or near the site(s) of the work under this contract. The contractor shall fully cooperate with the other contractors and with the County and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Chief Procurement Officer. The contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or County employee.

27. Liens

The Contractor is prohibited from placing a lien on the County's property. This prohibition shall apply to all subcontractors.

28. Permits and Licenses

If any permits, licenses or other approvals are necessary for the performance of this contract, then the Contractor shall obtain all such permits, licenses or approvals, including use of patents, trademarks or copyrights, at no extra charge to the County.

29. Rights In Data And Copyrights

- (a) Except as provided elsewhere in this clause, the County shall have unlimited rights in works first produced in the performance of this contract, or data derived from information provided by the County; or as copyright otherwise vests in any work made for hire
- (b) The contractor shall have the right to: use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the contractor in the performance of this contract, unless provided otherwise in this clause; protect from unauthorized disclosure and use those data which are limited rights data of restricted computer software to the extent provided in this clause; substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action in accordance with this clause; and establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided below.
- (c) For data first produced in the performance of this contract, the contractor may establish, without prior approval of the Chief Procurement Officer, claim to copyright subsisting in scientific or technical articles based on or containing data first produced in the performance of this contract. The contractor grants the County and others acting on its behalf a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform or display publicly by or on behalf of the County.
- (d) The contractor shall not, without the prior written permission of the Chief Procurement Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains copyright notice, unless the contractor identifies such data and grants the County a license of the same scope as identified in the preceding paragraph.
- (e) The County agrees not to remove any copyright notices placed on data and to include such notices in all reproductions of the data. If any data delivered under this contract are improperly marked, the Chief Procurement Officer may either return the data to the contractor, or cancel or ignore the markings.
- (f) The contractor is responsible for obtaining from its subcontractors all data and rights necessary to fulfill the contractor's obligations under this contract.

(g) Notwithstanding any provisions to the contrary contained in any contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this contract, and irrespective of whether any such agreement has been proposed prior to the award of this contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, the contractor agrees that the County shall have the rights set forth below to use, duplicate, or disclose any restricted computer software delivered under this contract. The terms and conditions of this contract, including any commercial lease of licensing agreement, shall be subject to the following procedures.

- (i) The restricted computer software delivered under this contract may not be used, reproduced, or disclosed by the County except as provided below or as expressly stated otherwise in this contract.
- (ii) The restricted computer software may be: used or copied for use in or with the computer(s) for which it was acquired, including use at any County location to which such computer(s) may be transferred; used or copied for use in or with backup computer if any computer for which it was acquired is inoperative; reproduced for safekeeping (archives); or backup purposes; modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restrictions set forth in this contract; and used or copies for use in or transferred to a replacement computer.

30. Royalties and Patents

The Contractor shall pay all royalties and license fees. It shall defend all suits or claims for infringement of any patent rights and shall save the County harmless from loss on account thereof; except that the County shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement. If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent, the Contractor shall promptly notify the Chief Procurement Officer. Failure to give such notice shall make the Contractor responsible for resultant loss.

31. Warranty & Product Documents

- (a) The Contractor shall submit product data and manufacturer's specifications as required by the County. Manufacturer's written product and procedures requirements, when approved by the County, become part of the contract. The County reserves the right to reject items not in compliance with the manufacturer's specifications.
- (b) The Contractor shall submit warranty and guaranty papers along with the manufacturer's data for each product. These adequacy of the documentation is subject to approval by the County. The Contractor shall be a fully authorized and qualified seller, user or installer of the materials specified and/or approved. The Contractor shall submit proof of certification indicating he is acceptable to the manufacturer.

32. On-Site Delivery

If the County requires contractor to deliver goods to a County site, then the Contractor's representative shall sign in at the County office on-site prior to commencing delivery.

33. Insurance

- a. Vendor shall maintain adequate public liability, property damage, malpractice and workers' compensation insurances, insuring as they may appear in the interest of all parties to said contract. Certification of said insurance coverage shall be submitted to the County at the time of the execution of the contract by vendor. Binders are not acceptable as adequate insurance coverage.
- b. County shall be named as an additional insured on certificate of insurance provided. If the additional insured requirement must be endorsed then the endorsement must accompany the insurance certificate.
- c. All insurance shall be carried with companies which are financially responsible, with a Best rating of no less than A:VII, and admitted to do business in the Commonwealth of Pennsylvania. If any such insurance is due to expire during the contract period, the Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to the Chief Procurement Officer.
- d. Vendor shall annually provide the County with a certificate of insurance as noted below in paragraph 7, with the Contract Number or Solicitation (Specification or RFP) Number clearly noted on said certificate of insurance.
- e. Each policy and Certificate of Insurance shall provide at least 30 calendar days prior written notice be given to the County in the event coverage is canceled, non-renewed, or coverages reduced. Such notice must be sent by Certified Mail, Return Receipt Requested, to the Chief Procurement Officer's attention.
- f. If Vendor desires to self insure any or all of the coverages listed in this section, except where prohibited by law, it shall provide to the County documentation that such self insurance has received all the approvals required by law or regulations, as well as the most recent audited financial statement of the Vendor's insurance. Any coverage, which is self-insured, shall provide the same coverage limits and benefits as the coverages listed in this section. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, or the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expense.
- g. Coverage provided under the applicable Contractor's policies will include coverage for those liabilities incurred through the actions, omissions and activities of all subcontractors. Contractor will cause any subcontractors to carry insurance coverage identical to that of the Contractor as regards perils insured against, scope of coverage, and limits of liability.
- h. If Vendor fails to provide such required insurance coverage and/or adequate proof of current coverage in amounts required, the County shall have the right to treat such failure as a material breach of the contract and to exercise all appropriate rights and remedies.
- i. The County reserves the right to review categories and levels of insurance coverage held by the Vendor in an ongoing program of risk management. The Vendor will be notified, in writing, of coverage requirements as determined by this review and Vendor agrees to secure such requested coverage.

j. Insurance requirements are as detailed below:

Commercial General Liability –

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal/Advertising Injury

(Any restrictive endorsements must be included)

Each policy and Certificate of Insurance shall contain an endorsement naming the County of Montgomery as an additional insured party.

This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability under (3) below. If the Contractor has a “claims-made” policy, then the following additional requirements apply: the policy must provide a “retroactive date” which must be on or before the execution date of the Contract; and should the policy be canceled on non-renewed, the extended reporting coverage will be purchased to extend coverage to an indefinite period of time, limited only by the exhaustion of the policy limits.

Workers Compensation

PA Statutory Coverage
Employers Liability - Basic Limits

Business Automobile Policy (if contract involves transportation of goods or persons)

Automobile Liability coverage on owned, non-owned, and hired auto coverage for motor vehicles used on the site(s) or in connection therewith and with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence.

Professional Errors and Omissions Liability (if the entity responding to this Request for Proposal will provide architectural, engineering, consulting, construction management, counseling, medical, legal, accounting or performance of any other recognized professional services)

The Contractor shall maintain Professional Liability Insurance for negligent acts, errors and omissions and/or the performance or failure to perform medical services. The minimum limit of liability will be \$1,000,000.00 per claim, \$3,000,000.00 annual aggregate on an occurrence basis. If suitable coverage cannot be obtained on an occurrence basis, then the Contractor may purchase suitable coverage on a claims-made basis. Should such insurance be cancelled, or not renewed, the Contractor agrees to purchase reporting coverage which extends the discovery period indefinitely from the date of cancellation. The Contractor also agrees to continue the above coverage for a period of at least five (5) years from the date of completion of the contract. This coverage shall not have a deductible maximum greater than \$10,000.00 per loss.

Medical Malpractice Insurance (if contract involves performance of a member of the medical profession. Those in the medical professions must also provide evidence of participation in the MCARE in the amounts noted below)

\$1,000,000.00 Each Occurrence

\$3,000,000.00 Each Aggregate

34. Compliance with Law

The Contractor shall comply with all applicable federal and state laws and regulations and local ordinances in performing its obligations under the Contract. The Contractor shall comply with, as applicable, the provisions of: (1) The act of August 15, 1961 (P.L. 987, No. 442), known as the “Pennsylvania Prevailing Wage Act”; (2) The act of December 20, 1967 (P.L. 869, No. 385), known as the “Public Works Contractors' Bond Law of 1967”; (3) The act of January 23, 1974 (P.L. 9, No. 4), referred to as the “Public Contract Bid Withdrawal Law”; (4) The act of March 3, 1978 (P.L. 6, No. 3), known as the “Steel Products Procurement Act”; (5) The act of February 17, 1994 (P.L. 73, No. 7), known as the “Contractor and Subcontractor Payment Act”; and (6) 62 Pa.C.S. Chs. 37 Subch. B (relating to motor vehicles), 39 (relating to contracts for public works) and 45 (relating to antibid-rigging).

35. Applicable Law

The Contract shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to any conflict of laws provisions) and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it, and consents to service of process in any manner authorized by Pennsylvania law.

36. Environmental Provisions

In performing its obligations under this Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

37. Political Contributions

If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by Section 1641 of the Pennsylvania Election Code) file a report of political contributions with the Secretary of the Commonwealth and the County Board of Elections on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:

1. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
2. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

38. Right To Know Law

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. All proposals submitted in response to this solicitation shall become the property of the County.
- b. If the County needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the County.
- c. Upon written notification from the County that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
 1. Provide the County, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the County reasonably believes is Requested Information and may be a public record under the RTKL; and
 2. Provide such other assistance as the County may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the County and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The County will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the County determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the County’s determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Contractor’s failure, including any statutory damages assessed against the County.
- g. The County will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any County decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the County for any legal expenses incurred by the County as a result of such a challenge and shall hold the County harmless for any damages, penalties, costs, detriment or harm that the County may incur as a result of the Contractor’s failure, including any statutory damages assessed against the County, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that

may be available to it as a result of the County's disclosure of Requested Information pursuant to the RTKL.

- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

39. Hold Harmless

The Contractor shall hold the County harmless from and indemnify the County against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents pursuant to the Contract and shall, at the request of the County, defend any and all actions brought against the County based upon any such claims or demands.

40. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract without prior written approval of the County; except that claims for monies due or to become due from the County under the contract may be assigned to a bank, trust company, or other financial institution.

41. Order of Precedence

Conflicts in the contract documents shall be resolved in accordance with the following order of precedence: (1) Contract, (2) Terms and Conditions Section II (if included with solicitation), (3) Terms and Conditions Section I, (4) Solicitation, including any Scope of Work, (5) Submitted Proposal.