

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM



ADDENDUM #3

Issued: December 5, 2024

PURPOSE OF ADDENDUM:

- To clarify order of proposal submittal. Vendor proposal shall be submitted in the following order:
 - Transmittal letter
 - Statement of Qualifications
 - Audited or Reviewed Financial Statements
 - Demonstrated Experience
 - Administrative Process
 - Quality Controls
 - Safety Controls
 - Reference Form (Attachment A)
 - Subcontractor Listing (If applicable)
 - Conflict of Interest Form (Attachment B)
 - Non-Debarment Acknowledgement (Attachment C)
 - Contractor Information Form (Attachment D)
 - Acknowledgement of Receipt of Addenda (if applicable)
 - Copy of Maryland Business Registration Form/Certificate
 - Copy of Maryland General Contractor Business License

All other specifications, terms and conditions remain unchanged.

A handwritten signature in black ink, appearing to read 'Patrick Johnson', written over a horizontal line.

Patrick Johnson, MBA
Director of Procurement

Please **sign** below to acknowledge receipt of this Addendum and return with the proposal. If proposal has already been submitted, send signed acknowledgement under separate email. Failure to return this Acknowledgement of Addendum may deem a proposal nonresponsive.

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ADDENDUM #3

Issued: December 5, 2024

NOTE: All proposals MUST BE RECEIVED electronically by 3:00pm Eastern Time on **December 13, 2024**.

Electronic proposal and addendum or addenda shall be sent to the following email address prior to the submittal deadline date and time at vendor.proposals@montgomerycollege.edu. **No responses will be accepted after this date and time.**

Company Name

Authorized Signature

Date

Printed/Typed Signature

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ADDENDUM #2

Issued: December 5, 2024

PURPOSE OF ADDENDUM:

- Change section 5.2.10 (Acknowledgement of Receipt of Addenda) to read:

5.2.11 Acknowledgement of Receipt of Addenda (if applicable)

- Add the following section:

5.2.12 Demonstrated Experience

Offeror should provide a detailed narrative, outlining its demonstrated experience as a general contractor. Offeror should provide at least 3 projects that demonstrates experience with higher education projects, scope of services listed in section 2.2, range of project sizes up to \$3 million, and experience with working in Baltimore-Washington DC region, especially in local jurisdictions of Montgomery County, City of Takoma Park and City of Rockville experience, if applicable.

Note: The submittal of this information shall follow the order outlined in section 5.2.2.

- Provide answers to vendor questions received by the December 4, 2024, 3:00pm question submittal deadline.

All other specifications, terms and conditions remain unchanged.

A handwritten signature in black ink, appearing to read 'Patrick Johnson', written over a horizontal line.

Patrick Johnson, MBA
Director of Procurement

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ADDENDUM #2

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QUESTIONS AND ANSWERS

Vendor Question	Montgomery College Answer
Can a company bid on the HVAC and Plumbing only, or do you have to bid on the entire package?	Bidding firms must bid on all trades in Request for Pricing package
Please advise if Offeror should list subcontractors based on the List of Trades provided under section 2.2.	Yes
Please advise if Offeror can list more than 1 Subcontractor per Trade.	Yes
Please advise if "Security" is related to Access Control Security or Video Surveillance Systems.	Security is related to both.
On page 13 of the RFP (14 in the PDF) under the bold subheading 5.2 Required Proposal Submittals, the instructions state that a submittal consists of a Technical Proposal and the Price Proposal. However, no pricing documents or instructions appear elsewhere in the RFP. Can the owner either clarify what the instructions for the Price Proposal are or provide bidders with the proper forms for this portion of the submittal?	A Price Proposal is <u>NOT</u> required in response to this Request for Proposal, at this time.
On page 14 of the RFP (15 in the PDF), the instructions under the bold subheading 5.2.8 Safety Controls direct bidders to submit a safety plan. Our company's safety plan is quite extensive and makes for rather large file to send through email. Our safety plan is also available on our company website. Is it permissible for our 5.2.8 narrative response to direct the proposal evaluators to our online safety plan in lieu of attaching all 36 sections that make up the manual via email?	Safety plan should be attached to proposal.
Is there a maximum file size for emailed submissions?	No. See associated response below.
If a proposal exceeds the maximum file size, is it permissible for bidders to submit more than one email?	If file size is too large to be sent in a single email, multiple emails can be sent. College must be notified, if multiple emails will be sent.
In response to the request for a safety plan under the 5.2.8 Safety Controls instruction, which of the following would the owner prefer: instructions on how to locate the online version of the manual in its entirety, an advance submittal, an excerpted/abbreviated version of the manual?	An abbreviated version is acceptable.
Can the owner clarify whether Attachment J – Standard Performance Bond is to be included at the time of the proposal submittal or upon award?	Upon award

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Can the owner confirm that Attachment G – Mid Atlantic Purchasing Team Rider Clause is not due at this juncture with the proposal submittal?	Attachment G is NOT required at time of proposal submittal.
We currently hold an on-call general contracting contract with University of Maryland College Park. We reviewed this solicitation and found there is a requirement of 10 years of experience. We currently have 7 years. Can this 10-year requirement be waived or reduced to 5 years?	No, requirement cannot be waived. To clarify, RFP is asking for 10 years of GENERAL CONTRACTING experience. It is not a requirement to hold an on-call general contracting contract for 10 years.
Who were the incumbents under the previous similar contract?	We have not awarded a contract in the past for on-call general contractor services.
What is the annual estimated contract spend?	Estimated annual contract spend is not available at this time.
In section 5.2.3 (Transmittal Letter) it asks us to “demonstrate the offerors ability to provide the requested services”, and again in section 5.2.4 it asks for our qualifications. Does the owner want this described in both sections?	Section 5.2.3 refers to a summary of your ability to provide requested services, while 5.2.4 requires a detailed response.
Has Montgomery College had a previous “on-call” program? If so, can you provide the names of the previous participants, & the duration of contract.	No previous on-call general contractor contracts.
In order to provide the best information for our technical, would the college consider postponing the due date for an additional two weeks?	Due to the time-sensitive nature of this contract, the proposal submittal deadline date of December 13, 2024 cannot be extended.
Technical proposal, Section 5.2.5 – please confirm that reviewed financial statements will be acceptable in lieu of audited statements if the offeror does not have audited statements available.	Reviewed financial statements will be accepted.
Technical proposal – please define the page limits, margin requirements, font, and other formatting requirements.	None.
On page 13 of the RFP (14 of the PDF) as well as in Addendum 1, a Copy of Maryland Business Registration form/certificate is requested upon submittal. Please confirm whether submitting a Certificate of Good Standing from the Maryland Department of Assessments and Taxation (Maryland.gov) would satisfy this requirement. If a Certificate of Good Standing would not satisfy the requirement, then could the College please clarify what documentation should be submitted in its stead?	A certificate of good standing will satisfy this requirement.

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<p>We have a question regarding the Technical Proposal for RFP# E925-003. The original RFP and the addendum reference "Demonstrated Experience" in the list of items to be included in our response and are listed in Section 5.2.2. All the other items in that list flow sequentially from Section 5.2.2 going forward and those other items are spoken to specifically. However, Demonstrated Experience is not. It is not one of the items from 5.2.2 to 5.2.11.</p>	<p>Refer to page 1/cover of addendum #2 for update.</p>
<p>On page 12 of the original RFP, Section 3 titled Qualifications and Experience Requirements you speak to Experience Requirements in 3.2. Is this "Demonstrated Experience"? If so, how many projects do we need to list for each bullet point in 3.2 and what format would you like us to use? Is there supposed to be a Demonstrated Experience section in the 5.2.2 to 5.2.11 listing?</p>	<p>Refer to page 1/cover of addendum #2 for update.</p>

*******END OF QUESTIONS AND ANSWERS*******

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ADDENDUM #1

Issued: December 2, 2024

PURPOSE OF ADDENDUM:

- Replace original section 5.2.2 (Technical Proposal), with the following:

- Transmittal Letter
- Statement of Qualifications
- Provide most recent last 2 years of financial statements
- Demonstrated Experience
- Administrative Process
- Quality Controls
- Safety Controls
- Reference Form (Attachment **A**)
- Subcontractor Listing (If applicable)
- Conflict of Interest Statement (Attachment **B**)
- Non-Debarment Acknowledgement (Attachment **C**)
- Completed Contractor Information Form (Attachment **D**)
- Acknowledgement of Receipt of Addenda (if applicable)
- Copy of Maryland Business Registration form/certificate
- Copy of Maryland General Contractor Business License

- Replace original section 1.3 (Contract Information), with the following:

“Request for information or technical questions related to this solicitation should be directed to Patrick Johnson, at Patrick.johnson@montgomerycollege.edu. The Bidder may not initiate contact with any other College representative about this bid. All inquiries and questions must be submitted in writing via email and received by **3:00pm on December 4, 2024**. All questions received by the noted deadline will be answered and sent to all proposing firms via issuance of an addendum. No questions will be accepted after this date.”

- Change third paragraph of section 1.2 (Electronic Proposal Submittal Due Date) to read:

“The **electronic** proposal submission requirements supersede the delivery of bids, and bid signature requirements language in Attachment F: General Conditions and Instructions. A submittal consisting of the Technical Proposal and any applicable Addendum or Addenda, are required when responding to this Request for Proposal.”

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ADDENDUM #1

Issued: December 2, 2024

- Change section 5.2 (Required Proposal Submittals) to read:

“A submittal consisting of the Technical Proposal only, is required when responding to the Request for Proposal.”

- **NOTE:** Addendum #2, which include answers to all vendor questions received by the December 4, 2024 question submittal deadline, will be issued.

All other specifications, terms and conditions remain unchanged.



Patrick Johnson, MBA
Director of Procurement

Please **sign** below to acknowledge receipt of this Addendum and return with the proposal. If proposal has already been submitted, send signed acknowledgement under separate email. Failure to return this Acknowledgement of Addendum may deem a proposal nonresponsive.

NOTE: All proposals MUST BE RECEIVED **electronically** by 3:00pm Eastern Time on **December 13, 2024**. Electronic proposal and addendum or addenda shall be sent to the following email address prior to the submittal deadline date and time at vendor.proposals@montgomerycollege.edu. **No responses will be accepted after this date and time.**

Company Name

Authorized Signature

Date

Printed/Typed Signature

Office of Business Services
9221 Corporate Blvd
Rockville, MD 20850

REQUEST FOR PROPOSAL (RFP)

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RFP TITLE: ON-CALL GENERAL CONTRACTOR SERVICES

All proposals MUST BE RECEIVED electronically, by 3:00pm Eastern Standard Time on December 13, 2024.

Prices must remain firm for: **NA**

Proposal Bond Requirements: **NONE**

Performance, Labor and
Material Bond requirements: **NONE**

Pre-proposal Conference: **NONE**

MINORITY VENDORS ARE ENCOURAGED TO RESPOND TO THIS SOLICITATION

Important: Your proposal will be jeopardized if any portion of this inquiry is not complete. No proposal will be accepted after the date and time stated above.



Patrick Johnson, MBA
Director of Procurement

NOTE: Prospective Offeror's that have received this document from a source other than the Procurement Office should immediately contact the Procurement Office and provide their name and e-mail address so that any amendments to the Bid/RFP or other communications can be sent to them. Failure to contact the Procurement Office may result in non-receipt of important information.

REGISTRATION OF CORPORATIONS NOT REGISTERED IN THE STATE OF MARYLAND Pursuant to 7-202 et. Seq. of the Corporation and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201 before doing any interstate or foreign business in this State. **Corporations must be registered, and in good standing no later than proposal submittal deadline date.** A copy of the registration or application for registration may be requested by the College.

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TABLE OF CONTENTS

TITLE	PAGE
SECTION 1 – PROPOSAL AND CONTRACT INFORMATION	2-9
SECTION 2 – BACKGROUND AND SCOPE OF SERVICES	10
SECTION 3 – QUALIFICATIONS AND EXPERIENCE REQUIREMENTS	11
SECTION 4 – PROPOSAL EVALUATION AND AWARD	12
SECTION 5 – PROPOSAL SUBMISSION	13-15
ATTACHMENT A: REFERENCE FORM	16
ATTACHMENT B: CONFLICT OF INTEREST STATEMENT	17
ATTACHMENT C: NON-DEBARMENT ACKNOWLEDGEMENT	18
ATTACHMENT D: CONTRACTOR INFORMATION FORM	19
ATTACHMENT E: NO PROPOSAL RESPONSE	20
ATTACHMENT F: GENERAL CONDITIONS AND INSTRUCTIONS	21-27
ATTACHMENT G: MID-ATLANTIC PURCHASING TEAM RIDER CLAUSE	28-32
ATTACHMENT H: GENERAL CONDITIONS OF THE CONTRACT	33-85
ATTACHMENT I: MONTGOMERY COLLEGE STANDARD FORM OF CONTRACT	86-94
ATTACHMENT J: STANDARD PERFORMANCE BOND	95-97

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SECTION 1: PROPOSAL AND CONTRACT INFORMATION

1.1 Intent

It is the intent of this Request for Proposal to provide Montgomery College with on-call general contractor services in accordance with the terms, conditions, and specifications described herein. In the event that a special condition is contradictory to a general condition, the special condition shall prevail.

Montgomery College will hereinafter be referred to as the “College” and “MC.” Respondents to the RFP will be referred to as “Offerors” and “Proposers.” The Offeror to whom the contract is awarded will be referred to as the “Contractor.”

1.2 Electronic Proposal Submittal Due Date

All responses to this Request for Proposal must be submitted electronically in the same editable format provided. Technical Proposal shall be submitted in a single email. See **Section 5 Proposal Submission** for complete submission instructions.

Electronic proposal and addendum or addenda, if applicable, shall be sent to the following email address by the submittal deadline date and time: vendor.proposals@montgomerycollege.edu. All responses to this Request for Proposal are due by **3:00 p.m.** Eastern Standard Time (EST), on **December 13, 2024**. **No responses will be accepted after this date and time.** In the event that the College is closed on the RFP closing date, due to an unforeseen circumstance, the RFP will close at the stated time on the next open business day, unless the Offeror is notified otherwise.

The above **electronic** proposal submission requirements supersede the delivery of bids, and bid signature requirements language in Attachment F: General Conditions and Instructions. A submittal consisting of the Proposal, Addendum or Addenda, if applicable and the Price Proposal are required when responding to this Request for Proposal.

1.3 Contact Information

Request for information or technical questions related to this solicitation should be directed to **Patrick Johnson**, at Patrick.johnson@montgomerycollege.edu. The Bidder may not initiate contact with any other College representative about this bid. All inquiries and questions must be submitted in writing via email and received **December 4, 2024**. All questions received by the noted deadline will be answered and sent to all proposing firms via issuance of an addendum. No questions will be accepted after this date.

1.4 Addenda

The College will issue an addendum or addenda to all prospective Offerors known to have received the document, if it becomes necessary to issue any. Only answers provided via an addendum issued by the Procurement Office will be binding. However, Offeror’s bear sole responsibility for downloading all addenda, if any, for this RFP from the College Procurement website at <http://www.montgomerycollege.edu/procure/> and it is the responsibility of the Offeror to check this site for any addenda before submitting a proposal. Acknowledgement of the receipt of all addenda must accompany the Offeror’s proposal, and all addenda shall become part of the RFP documents. Failure to acknowledge receipt does not relieve the Offeror from complying with all terms of any such addenda.

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SECTION 1: PROPOSAL AND CONTRACT INFORMATION -continued

1.5 General Conditions and Instructions

Offerors shall refer to, understand, and agree to Attachment F, General Conditions and Instructions, of this proposal. The College reserves the right to reject as non-responsive any offer that objects to any of the terms, conditions, or specifications of this RFP.

1.6 Subcontractors

The College seeks proposals from Contractors performing all requested services and will enter into an agreement only with the selected Offeror. The primary Contractor shall remain fully liable for the work performed by the subcontractor(s) and shall assure compliance with all requirements of the contract if approved by the College. The College reserves the right to reject any proposed subcontractor in its own best interest.

1.7 Proposal Evaluation

Proposals submitted in response to this solicitation will include evaluation as follows:

- 1.7.1 Offeror is **responsible** – Offeror demonstrates ability to provide products and/or services that can meet or exceed requirements. The following criteria will be used to determine responsibility:
 - 1.7.1.1 Offeror has the equipment, ability, and experience to perform the work as stated in the specifications listed in this RFP.
 - 1.7.1.2 Offeror is financially stable.

- 1.7.2 Offeror is **responsive** – Offeror follows RFP submission instructions and provides all requested materials. The following criteria will be used to determine responsiveness:
 - 1.7.2.1 Offeror has favorable references that can confirm its ability to provide the products and/or services as stated in the specifications listed in this RFP.
 - 1.7.2.2 Offeror has provided all documentation and samples requested in the Scope of Work/Specifications.

1.8 Proposal Rejection

The College reserves the right to reject any or all offers received as a result of this Request for Proposal. Offers may be rejected for any of the following reasons:

- 1.8.1 Failure to meet the mandatory specifications and requirements.
- 1.8.2 Failure to respond in a timely manner to a request for additional information, data, etc.
- 1.8.3 Failure to supply appropriate and favorable client references.
- 1.8.4 Failure to sign the proposal.
- 1.8.5 Failure to return any addenda acknowledgements
- 1.8.6 Submittal of conditional, alternate or multiple proposals.
- 1.8.7 Failure to demonstrate that it is qualified to carry out the obligations of the contract and to implement and support the work specified herein.
- 1.8.8 Failure to provide samples and/or demonstration materials that are representative of the quality level sought by the College.

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SECTION 1: PROPOSAL AND CONTRACT INFORMATION -continued

1.9 Required Submittals

Refer to section 5 (Proposal Submission).

1.10 Failure to Submit

Failure to provide any of the items noted in Section 5 may deem a proposal non-responsive.

1.11 Contract Award

An award of contract will be made in the best interest of the College to the FIVE (5) highest ranked responsible, responsive and qualified Offerors who can best meet or exceed the terms, conditions, specifications, and requirements of this solicitation. Evaluation of Offerors will be based on Offeror qualifications, experience, and references. The College may cancel this Request for Proposal or reject any or all proposals in whole or in part.

1.12 Contract Term

The initial term of this contract will be for one (1) year from date of award. Beyond the initial term, at the sole option of the College, the contract may be renewed for four additional one-year terms, subject to funding availability and need, provided that the Contractor has been in compliance with the terms and conditions of the contract, its service has been satisfactory, and financial statement reflects that all awarded contractors are financially sound. Prior to renewal of a contract term, updated financial statements must be provided by all awarded contractors. The College reserves the right to amend its requirements during the life of the contract to meet the needs of the College.

1.13 Request for Project Pricing

At time of project, a request for pricing will be sent to all awarded contractors. Contractor pricing shall include all costs associated with the project, and must be returned to the College by deadline date outlined in the request for pricing. Any awarded contractor will not be considered for project, if it fails to submit pricing by the established deadline date. Contractor reserves the right to decline request for pricing. If request is declined, Contractor shall provide reasoning as to why request was declined. A contract will be awarded to the most responsive-responsible contractor, with consideration given to submitted pricing.

1.14 Contract Documents

The Request for Proposal in its entirety including any Addenda, the Offeror's proposal, the Request for Project Pricing in its entirety, the Contractor's Response to the Request for Project Pricing, the Performance Bond, the Labor and Materials Payment bond, and Standard Form of Construction Contract will form the contract. A sample form of contract is provided in Attachment I. Sample Performance Bond is provided in Attachment J. Contractor shall use AIA Document A312-2010, Payment Bond as the standard form for Labor and Materials Payment Bond.

Offerors requiring their signed contract or terms and conditions separate and apart from the foregoing must submit such a contract, terms, and conditions with their response. The contract will be examined and evaluated along with the Offeror's proposal. The College reserves the right to reject the Offeror's contract form and terms and conditions.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
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SECTION 1: PROPOSAL AND CONTRACT INFORMATION -continued

1.15 Notification of Change in Personnel Assigned to Contract

Awarded contractor must notify Montgomery College of any changes in personnel assigned to contract, that may impact level of services provided by contractor. Notification must be provided throughout life of contract and within (7) seven business days of a change in personnel assigned to contract. Failure to notify Montgomery College may result in termination of contract.

1.16 Notification of Change in Financial Condition

Awarded contractor must notify Montgomery College of any change in company's financial condition that could negatively impact the level of services or products provided by contractor. Notification must be provided throughout life of contract, and within (7) seven business days of change in company's financial condition. Failure to notify Montgomery College may result in termination of contract. Updated financial statement must be submitted to the College, prior to start of each contract renewal term.

1.17 Contract Modification and Amendment

The College retains the unilateral right to require changes in the Scope of Services outlined in section 2.2, as long as the changes are related to the general scope of services to be performed hereunder. The College, without invalidating the contract documents, may submit a written request to order extra work or to make changes to the agreement by altering, adding to, or deducting from the work and the contract sum shall reflect such changes. Price adjustments must be accepted, in writing, by Montgomery College before the Contractor performs additional work on the project. Refer to section 6 of Montgomery College's General Condition of the Contract (Attachment H) for additional information.

The Contractor cannot accept purchase orders/requests for services or products that are not covered in this contract or make changes to the scope of work unless a price for those services or products has been negotiated with the College and the Contractor has received a signed contract amendment from the College.

1.18 Non-performance of Work

Determinations of non-performance will be made following a joint inspection by the College and contractor representatives. The Work will be considered incomplete or unsatisfactory when any one of the following conditions exists:

- a. The Work was not performed in strict accordance with the scope of services.
- b. The Work not performed within the time period specified.
- c. The Work as required by the RFPs scope of services were not entirely completed.

The above list is not exhaustive of all conditions that determine non-performance of work. Determination of non-performance of work may be grounds for the contractor's termination from this contract. Failure on the part of the contractor to fulfill contractual obligations shall be considered just cause for termination of the contract. If the contract is terminated for unsatisfactory performance, payment shall be immediately due and payable to the College at the discretion of the College.

Additionally, refer to section 10 of Montgomery College's General Condition of the Contract (Attachment H) for additional information.

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SECTION 1: PROPOSAL AND CONTRACT INFORMATION -continued

1.19 Retainage

The contractor agrees that the College will retain five percent (5%) of each partial progress payment to assure faithful performance of the contract by the contractor. The College will release all retainage upon final payment for the task order.

1.20 New Material

The Contractor represents that the supplies and components to be provided under this contract are new (not used, reconditioned or deteriorated). If at any time during the performance of this contract, the successful Contractor believes that the furnishing of supplies or components, which are not new, is necessary or desirable, they shall notify the College immediately, in writing, including the reasons therefore; and proposing any consideration which will flow to the College if authorization to use such supplies are granted.

1.21 Damages

The successful Contractors must take any available precaution to prevent possible damage to Montgomery College property and facilities. The successful Contractor will be responsible for the repair or replacement of any item or area damaged. Any repair or replacement must be performed to the complete satisfaction of the College.

1.22 Liquidated Damages

Liquidated damages in the amount of \$1,000.00 per calendar day for delays, non-performance and failure to complete the work within the required times will be incorporated in the contract.

1.23 Insurance Requirements

The Contractor shall maintain such insurance as will indemnify and hold harmless the College from Workmen's Compensation and Public Liability claims for property damage and personal injury, including death, which may arise from the Contractor's operations under this contract, or by anyone else directly or indirectly employed by him/her.

The Contractor shall maintain insurance in force at all times during the term of this agreement, with an insurance carrier approved or licensed to do business in the State of Maryland acceptable to the College and with the following minimum insurance coverage.

Refer to Article 9 of General Conditions of the Contract (Attachment I) for coverage limits.

If Project site is turned over to Contractor, said Contractor must provide Builders' Risk Insurance.

These coverages and limits are to be considered minimum requirements under this Agreement and shall in no way limit the liability or obligations of the Contractor. The insurance shall provide that policy coverage will not be cancelled, altered or materially changed without sixty (60)-calendar days' notice to the College by registered or certified mail. The insurance shall not be limited to claims made only while the policy is in effect.

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SECTION 1: PROPOSAL AND CONTRACT INFORMATION -continued

The Contractor shall furnish the College with a Certificate of Insurance as evidence of the required coverage. The Contractor shall provide liability insurance coverage for material and/or equipment stored for the College for which the Contractor has received payment in an amount of that equaling its replacement value. Such insurance shall specifically identify the materials and/or equipment and shall name the College as an additional insured. The Contractor shall provide the College with evidence of such insurance. In the event the Contractor's insurance is terminated, the Contractor shall immediately obtain other coverage. Lack of insurance during life of contract shall be grounds for immediate termination of contract.

1.24 Certificate of Liability Insurance

The Contractor shall furnish the College with a Certificate of Liability Insurance as evidence of the required coverage within seven (7) days of award of the contract. Such insurance shall name the College as an Additional Insured. Policy and Certificates of Insurance shall reference Montgomery College Contract No. E925-003. Certificates of Insurance must be provided to the College prior to the start of each contract renewal term.

1.25 Termination of Insurance

In the event that the Contractor's insurance is terminated, the Contractor shall immediately obtain other coverage. Lack of insurance shall be grounds for immediate termination of the contract.

1.26 Contract Assignment

The Contractor may not assign, transfer, convey, sublet or otherwise dispose of the contract or its rights, title or interest therein or its power to execute such agreement to any other person, company or corporation without the previous consent and approval, in writing, by the College and consent to such assignment shall not be unreasonably withheld or delayed. Unless otherwise agreed to in writing by the College, the assignee shall bear all costs incurred by the College, directly or indirectly, in connection with or as a result of such an assignment.

1.27 Contract Deadlines and Failure to Deliver

The Contractor is contractually obligated to meet all agreed upon deadlines. Failure of the Contractor to meet any deadline is grounds for termination by default. Additionally, if the Contractor fails to comply with established delivery requirements, the College reserves the right to make an open market purchase of required services and items and to assess, as liquidated damages, the difference between the contract price and the actual cost incurred by the College and to invoice charges to the Contractor.

1.28 Public Record and Proprietary Information

As a public entity, the College is subject to the disclosure requirements in the Maryland Public Information Act ("MPIA"), Title 4 of the General Provisions Article of the Annotated Code of Maryland. Information that is deemed to be confidential, commercial or financial information, as defined by the MPIA, may be exempted from disclosure. Offerors must clearly identify each part of the Offer that it believes contains confidential commercial or financial information by stamping the top right-hand corner of each pertinent page with large red bold letters stating the words "confidential" or "proprietary". It is not sufficient to preface your proposal with a proprietary statement, or to use a page header or footer that arbitrarily marks some or all pages as confidential. General claims of confidentiality or similar blanket designations shall not be effective. Each Offeror must submit a proprietary and confidential redacted copy of its proposal to be used in responding to MPIA requests.

SECTION 1: PROPOSAL AND CONTRACT INFORMATION -continued

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

Offeror agrees that upon request from the College, it will provide justification as to why any material, in whole or in part, should be considered confidential, proprietary information or trade secrets and provide any justification of why such materials should not be disclosed pursuant to a request under the MPIA. The College, by law, must apply the MPIA requirements for public information disclosure deemed proprietary and/or confidential; therefore, even the information marked as such by the Offeror may still require public disclosure. Offeror agrees that any portion of the proposal that is not stamped as proprietary or confidential is not proprietary or confidential and shall be disclosed upon request under the MPIA.

1.29 Confidentiality

The Contractor agrees to maintain in strict confidence Montgomery College's confidential information as listed herein. The Contractor may use the College's confidential information solely to perform the services required, as listed herein and may not disclose such information to any person or entity without the expressed written consent of Montgomery College.

The information contained in proposals submitted for the College's consideration will be held in confidence until all evaluations are concluded and an award has been made. Pricing and other information that is an integral part of the offer cannot be considered confidential after an award has been made. Offeror's must clearly mark any information considered proprietary and confidential. The College will honor requests for confidentiality for information of a proprietary nature. Pricing may not be deemed confidential.

1.30 Family Educational Rights and Privacy Act (If Applicable)

The Family Educational Rights and Privacy Act (**FERPA**) (20 U.S.C. § 1232g; 34 CFR Part 99) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. The successful Contractor will be responsible for the protection of student information as it relates to this law. In the event the Contractor is unable to continue operation of the services required, for whatever reason, the College requires that the Contractor provide on appropriate media all data and information proprietary to Montgomery College. This information must not be made available to any third parties without the expressed written consent of Montgomery College.

1.31 Tobacco and E-Cigarette Policy

Montgomery College is a tobacco-free institution. The use of tobacco and e-cigarette products is prohibited in all indoor and outdoor College-owned property and facilities, including all buildings and building entrances; walkways; recreational and athletic areas; parking lots; bus stops/shelters; College owned or leased vehicles; and facilities leased and controlled by the College as well as at meetings or conferences sponsored by the College, regardless of the location. This use prohibition extends to the Contractor's employees, agents, subcontractors, and Contractors.

1.32 Advertising

The Contractor shall not publish or use any information about the contract in any format or media for advertising or publicity without prior written consent from the College. No indication of purchase or use of goods or services by Montgomery College shall be used in Contractor's product literature or advertising without the prior written consent of the College.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

1.33 Debarment

Upon proposal submission, the Contractor **confirms** that neither Contractor nor its Principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from doing business with a public body in State of Maryland or with any federal government agency. Contractor will provide immediate written notification to the College, if, at any time prior to award, Contractor learns that this certification was erroneous when submitted or has become erroneous because of changed circumstances.

1.34 Verification of Registration and Tax Payment

Each Offeror is encouraged to ensure that it is appropriately registered to do business in the State of Maryland, and its business is in good standing before the RFP closing date. Failure to complete the registration with the State of Department of Assessments and Taxation will disqualify an otherwise successful Offeror from recommendation for contract award.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

SECTION 2: BACKGROUND AND SCOPE OF SERVICES

2.1 Background

Montgomery College, a public, fully accredited, open admission higher ed institution, is Maryland's second oldest community college. The College serves roughly 47,000 students each year, through credit and noncredit programs, at nonresidential campuses located in Germantown, Rockville, and Takoma Park/Silver Spring and at off-campus sites throughout Montgomery County.

2.2 Scope of Services

Montgomery College hereby request proposals from qualified and experienced contractors to establish a source of contractors to provide construction and renovation-related services including but not limited to the following:

- Carpentry
- Framing
- Drywall
- Finish trades (flooring, ceiling, painting, etc.)
- Masonry
- Structural steel
- Concrete
- Millwork
- Roof repair
- Paving Repair
- Mechanical
- Electrical
- Fire suppression
- Low voltage (Telecommunications and Security)

Budgets related to projects completed under the resultant contract will range between \$25,000 - \$3,000,000.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

SECTION 3: QUALIFICATIONS AND EXPERIENCE REQUIREMENTS

3.1 Mandatory Requirements

- In business for a minimum of ten (10) years.
- Registered to do business in Maryland, and in good standing, at time of proposal submittal.
- Licensed General Contractor in the State of Maryland.

3.2 Experience Requirements

- Demonstrated experience with renovation projects on an occupied and active campus.
- Demonstrated experience with higher education projects.
- Demonstrated experience with projects ranging from \$25,000 - \$3,000,000 in size.

3.3 Preferred Experience

- Experience with local jurisdictions: Montgomery County, Takoma Park City and City of Rockville.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

SECTION 4: PROPOSAL EVALUATION AND AWARD

4.1 Proposal Evaluation

4.1.1 Evaluation Process

All proposals submitted will first be examined for responsiveness and completeness by the College evaluation team. Those proposals which do not clearly respond to the proposal submission requirements may be rejected at the discretion of the College. Those proposals not rejected will be evaluated to determine which offer best meets the requirements in the RFP and is in the best interest of the College.

4.1.2 Evaluation Criteria

Offerors will be evaluated on the following criteria categories:

Criteria Area	Maximum Available Points
Qualifications	10
Experience	53
Administrative Process	25
Quality Controls	6
Safety Controls	6
Total Possible Score:	100

The maximum available proposal score is 100 points. REMINDER: Awards of contract will be made in the best interest of the College, to the five (5) highest evaluated and most responsible, responsive Offerors that can meet or exceed the requirements, terms and conditions of this solicitation.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

SECTION 5: PROPOSAL SUBMISSION

5.1 Proposal Organization

The proposal shall be organized using the following outline; responses to each requirement will be in order and clearly marked with the section number to which they respond. All responses must comply with the sequence and items as presented in Paragraph 5.2, RFP Outline, which lists the minimum requirements and packaging for the preparation and presentation of a response. Failure to comply may result in rejection of the response. The proposal should be specific and complete in every detail, prepared in a simple and straightforward manner, and provide sufficient detail to allow College evaluators a comprehensive and clear understanding of the Offeror's capabilities. Offerors are expected to examine the entire Request for Proposal, including all specifications and instructions, failure to do so will be at the Offeror's risk. Each Proposer must furnish the information as required by the RFP.

5.2 Required Proposal Submittals

A submittal consisting of the Technical Proposal and the Price Proposal is required when responding to this Request for Proposal.

5.2.1 Technical Proposal

This section must contain a detailed description of the services offered by the Offeror in response to this RFP. The information submitted by the Offeror must provide sufficient detail to allow College evaluators to gain a comprehensive and clear understanding of the Offeror's capabilities.

5.2.2 Include in Technical Proposal, the following:

- Transmittal Letter
- Statement of Qualifications
- Provide most recent last 2 years of financial statements
- Demonstrated Experience
- Administrative Process
- Quality Controls
- Safety Controls
- Reference Form (Attachment D)
- Subcontractor Listing (If applicable)
- Conflict of Interest Statement (Attachment E)
- Non-Debarment Acknowledgement (Attachment F)
- Completed Contractor Information Form (Attachment G)
- Acknowledgement of Receipt of Addenda (if applicable)
- Copy of Maryland Business Registration form/certificate
- Copy of Maryland General Contractor Business License

Offeror's Proposal shall be organized in the following manner:

5.2.3 Transmittal Letter

The transmittal letter must be prepared on the Offeror's business stationery. The letter must introduce the company and give a brief history of the organization and the contact person responsible for the project. The letter should summarize the key points of the proposal; must indicate the Offeror's understanding of the College's requirements; and demonstrate the Offeror's ability to provide the requested services.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

SECTION 5: PROPOSAL SUBMISSION-continued

5.2.4 Statement of Qualifications & Experience

This contract requires specialized services. Offeror's statement of qualifications must address the following:

- Professional qualifications and technical competence of the firm, subcontractors, and staff proposed for the performance of the required services.
- Offeror's corporation/organization size, web presence, length of time the organization has been providing the required services listed herein, and key business relationships.

5.2.5 Audited Financial Statements

The Offeror must submit two most recent audited financial statements.

5.2.6 Administrative Process

The Offeror submit a detailed narrative, outlining its standard administrative process. In addition, Offeror shall provide detailed list of responsibilities of the each of the key roles: project executive, project manager, assistant project manager, superintendent, and quality control manager.

Indicate preferred mechanics for the following:

- Preparing schedules and schedule updates.
- Managing and monitoring submittals.
- Managing and monitoring requests for information
- Maintaining accurate records on-site
- Documenting change events
- Preparation of applications for payments and change orders
- Punch list preparation and monitoring punch list completion
- Compilation and submission of closeout materials

Describe your experience using a web-based management system on projects similar in size and scope to those outlined herein.

Describe your experience managing projects with finite schedule requirements.

5.2.7 Quality Controls

Offeror shall explain how its site housekeeping and maintenance procedures, management of temporary conditions and/or constraints and sequencing of trades, affect quality control outcomes.

5.2.8 Safety Controls

Offeror shall explain how the safety of Montgomery College's students, faculty and staff, as well as, construction crew members will be ensured during construction. Offeror shall also submit its safety plan.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

SECTION 5: PROPOSAL SUBMISSION-continued

5.2.9 References

The Offeror must submit three (3) references from current or former customers within the past three (3) years that are capable of confirming the Offeror's experience in providing the same or similar level of services. Offeror's submitted references must include at least (1) one higher education institution (university or college) that has utilized company's services in the past 3 years.

Cited references must be able to confirm, without reservation, the Offeror's ability to provide these services in accordance with the requirements in this RFP. The College reserves the right to reject a proposal based on an unsatisfactory reference; to request additional references or contact any site using the Offeror's services and to require a site visit to one or more of the Offeror's referenced locations.

5.2.10 Subcontractor Listing

Each Offeror must list the subcontractors to be used in the performance of this contract. Provide sub-contractor name, address, phone number and point of contact. The College reserves the right to approve or disapprove any subcontractor who will be performing work related to this project.

5.2.10 Acknowledgement of Receipt of Addenda (if applicable)

Refer to section 1.4

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT A: REFERENCES

REFERENCE 1	
Company Name	
Street Address	
City, State, Zip Code	
Contact Person/E-mail	
Title	
Telephone Number	
Service Dates	

REFERENCE 2	
Company Name	
Street Address	
City, State, Zip Code	
Contact Person/E-mail	
Title	
Telephone Number	
Service Dates	

REFERENCE 3	
Company Name	
Street Address	
City, State, Zip Code	
Contact Person/E-mail	
Title	
Telephone Number	
Service Dates	

Please note: References listed must be able to confirm the Offeror’s ability to provide the services requested in this RFP.

References submitted by: _____
Company Name

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT B: CONFLICT OF INTEREST STATEMENT

The undersigned hereby affirms and attests that to the best of its knowledge, no Montgomery College trustee or employee, or spouse, parent, child, brother, sister of the trustee or employee, own assets in this business, and of this date, are NOT employed by Montgomery College. Conflict of Interest Statement must also be submitted within seven (7) days prior to the start of each contract renewal term.

Company Name:	
Printed Name:	
Title:	
Signature:	
Date:	

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT C: NON-DEBARMENT ACKNOWLEDGEMENT

NON-DEBARMENT ACKNOWLEDGEMENT

_____ I acknowledge that my firm has NO pending litigation and/or debarment from doing business with the State of Maryland or any of its subordinate government units and/or federal government within the past five (5) years.

_____ I acknowledge that my firm has pending litigation or has been debarred from doing business with the State of Maryland or any of its subordinate government units and/or federal government, within the past five (5) years. If so, please provide an attachment describing the pending litigation or debarment.

_____ I acknowledge none of this company's officers, directors, partners, or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Montgomery College Board of Trustees or any employees of the College has any interest in the bidding company except as follows:

As the duly authorized representative of the Offeror, I hereby certify that the above information is correct and that I will advise Montgomery College should there be a change in status.

By (Signature) _____

Name and Title _____

Witness Name and Title _____

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT D: CONTRACTOR INFORMATION FORM

C.1 I/We offer the terms, delivery and pricing for the requested products/services, and certify that I am a bona fide agent, authorized to make offers on behalf of the firm.

C.2 Minority Contractor: Yes No
 If yes, please specify minority classification

C.3 Price adjustment (is is not) necessary for other public agencies as listed.

C.4 Please list any exceptions taken to any terms and conditions listed in the RFP. Please note any exceptions taken may affect the award of a contract or purchase order.

C.5 I/We certify that our firm is not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this solicitation by any County, State, or Federal agency. I/We agree to notify Montgomery College should a change in this status occur.
 Yes No

C.6 Please provide the following information:

Print clearly

Company Name		Years in Business	
Federal Tax Number		Dun & Bradstreet Number	
Street Address		City, State, Zip Code	
Telephone Number		Fax Number	
Contact Person		Title	
Cell Number		E-Mail Address	

Company Name Name

Title Authorized Signature and Date

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT E: NO PROPOSAL RESPONSE FORM

Please be advised that our company does not wish to submit a proposal in response to the above-captioned RFP for the following reason(s):

- Too busy at this time
- Not engaged in this type of work
- Project is too large or small
- Cannot meet mandatory specifications (Please specify below)
- Other (Please specify)

Company Name

Name

Street Address

Authorized Signature and Date

City, State, Zip Code

Title

Please return to:	Montgomery College Office of Business Services 9221 Corporate Blvd Rockville, Maryland 20850
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MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT F: GENERAL CONDITIONS AND INSTRUCTIONS

ACCEPTANCE TRIAL PERIOD OF PERFORMANCE The selected Contractor(s) must agree to an acceptance trial period of performance not to exceed ninety (90) consecutive calendar days. During the 90-day acceptance period, the Contractor's performance must be consistent with the specifications contained herein and the Contractor's bid. Failure to satisfy the "acceptance trial period of performance" may result in cancellation of the contract. In the event that the Contractor fails to meet all requirements, the College shall declare the Contractor's services unacceptable and the Contractor in default, and terminate all agreements, written or verbal, without penalty or obligation to the College. Further, should there be any dispute/discrepancy on acceptability of said service, decisions made by the College will prevail and be final.

ADDENDA The College reserves the right to amend or add to this bid at any time prior to the bid due date. If it becomes necessary to change or add to any part of this bid, the Procurement Officer will furnish an addendum to all prospective Offerors listed as having received a copy of this bid. All addenda will be identified as such and will be sent by mail, email, or fax transmittal.

ADDITIONAL ORDERS Unless it is specifically stated to the contrary in the bid response, the College reserves the option to place additional orders against a contract awarded as a result of this solicitation at the same terms and conditions, if it is mutually agreeable.

ASSURANCE OF NON-CONVICTION OF BRIBERY The Offeror hereby declares and affirms that, to its best knowledge, none of its officers, directors or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the Federal government.

AUDIT Offeror shall permit audit and fiscal and programmatic monitoring of the work performed under any contract issued from this solicitation. The College shall have access to and the right to examine and/or audit any records, books, documents and papers of Offeror and any subcontractor involving transactions related to this agreement during the term of this agreement and for a period of three (3) years after final payment under this agreement.

AWARD CONSIDERATIONS Awards of this bid will be made to the lowest responsible Offeror conforming to specifications with consideration being given to quantities involved, time required for delivery, purpose for which required, responsibility of Offeror and its ability to perform satisfactorily with consideration to any previous performance for Montgomery College. A bid may be awarded at the sole discretion of the College in the best interest of the College. Prompt payment discounts will not be considered in bid evaluation. All discounts other than prompt payment are to be included in bid price.

BEHAVIOR OF CONTRACTOR EMPLOYEES The College is committed to providing a work and study environment that is free from discrimination and harassment on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, handicap, pregnancy, or status as a disabled veteran or veteran of the Vietnam era. Behavior contrary to this philosophy, which has the purpose or effect of creating an intimidating, hostile, or offensive environment, will not be tolerated by the College, and it is the Contractor's responsibility to ensure that such behavior by its employees, agents, and subcontractors does not occur. The policy extends to maintaining an environment free from sexual harassment. Therefore, sexual advances or sexual remarks, requests for sexual favors, and other verbal or physical conduct of a sexual nature must not be condoned or permitted by the Contractor. This prohibition extends to such harassment within the employment context as well as harassment of students, staff, and visitors to the College. It should be assumed that all sexual behavior by the Contractor's employees, agents, and subcontractors on any campus or facility of the College, whether owned, operated, maintained or leased by the College, is improper and unwelcome.

BID AND PERFORMANCE SECURITY If bid security is required, a bid bond or cashier's check in the amount indicated on the bid cover must accompany each bid and be made payable to Montgomery College. Corporate or certified checks are not acceptable. Bonds must be in a form satisfactory to the College and underwritten by a company licensed to issue bonds in the State of Maryland. If bid security fails to accompany the bid, it shall be deemed unresponsive, unless the Director of Procurement deems the failure to be non-substantial. Such bid bonds or checks will be returned to all except the three (3) lowest Offeror's within five (5) days after the opening of bids, and the remaining checks or bid bonds will be returned to all but successful Offeror(s) within forty-eight (48) hours after award of contract. If a performance bond is required, the successful Offeror must submit an acceptable performance bond in the designated amount of the bid award, prior to award of contract. All bid bonds will be returned to the successful Offeror(s) within forty-eight (48) hours after receipt of the performance bond.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT F: GENERAL CONDITIONS AND INSTRUCTIONS - continued

BIDDING INSTRUMENTS Bidding instruments include the bid, addenda, general terms and conditions, contract terms, and specifications. Bids should be prepared simply and economically, and should provide a straightforward, concise description of the Offeror's capabilities to satisfy the requirements of the bid. Emphasis should be on completeness and clarity of content. The Offeror will bear any and all costs incurred in the preparation and submission of bids.

BRAND NAMES Brand name materials used in these specifications are known and acceptable. Bids including proposals to use alternate brands are invited as long as they are of equal type and equal or better quality. The burden of proof that alternate brands are in fact equal or better falls on the Offeror, and proof must be to the College's satisfaction.

CARE OF PREMISES Precautions taken for safety and protection shall be in accordance with the mandatory requirements of the safety codes prevailing within the jurisdiction in which the work is to be performed. During the performance of the contract, the Contractor shall take the necessary precautions to protect all areas upon which or adjacent to which work is performed as a part of this contract. Any damage caused as a result of Contractor's neglect, directly or indirectly, shall be repaired to the College's satisfaction at the Contractor's expense.

CANCELLATION Montgomery College reserves the right to cancel this bid solicitation or to reject all bids received, if the College's Director of Procurement, in accordance with procedures approved by the College's President, determines that it is fiscally advantageous or in the best interest of the College to cancel the bid.

COMPLIANCE WITH LAWS Offeror agrees to comply, at no additional expense, with all applicable Executive orders, Federal, State, bi-county, regional and local laws, ordinances, rules and regulations in effect as of the date of this agreement and as they may be amended from time to time, including but not limited to the equal employment opportunity clause set forth in 41 CFR 60-250.4.

CONFLICT OF INTEREST No employee of the College or of the State of Maryland, or any department, commission, agency or branch thereof whose duties as employees include matters relating to or affecting the subject matter of this bid shall, while an employee, become or be an employee of the party or parties contracting with the College, the State of Maryland, or any department, commission, agency or branch thereof.

CONTINGENT FEES Offeror hereby declares and affirms that neither it nor any of its representatives has employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Offeror, to solicit or secure a contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of a contract as a result of this solicitation.

CONTRACT AMENDMENTS The College, without invalidating the contract documents, may submit a written request to order extra work or to make changes to the agreement by altering, adding to, or deducting from the work, and the contract sum shall reflect such changes. Price adjustments must be accepted, in writing, by Montgomery College before the supplier performs additional work on the project. The Contractor cannot accept purchase requests for products or services that are not covered in this contract or make changes to the scope of work unless a price for those products or services has been negotiated with the College, and the Contractor has received a signed contract amendment from the Procurement Office.

CONTRACT DEADLINES The Contractor is contractually obligated to meet all agreed upon deadlines. Failure of the Contractor to meet any deadline is grounds for termination by default. If the Contractor defaults, the College reserves the right to assess liquidated damages and/or make an open market purchase.

CONTRACT DOCUMENTS Unless otherwise noted, the general terms of this Request for Proposal, the Contractor's bid, and the signed Purchase Order form the contract. Contractors requiring a signed contract form separate and apart from the foregoing are to submit the contract with their bid. The Contractor's contract form will be examined and evaluated along with the Contractor's bid and, at the College's option, may be utilized as the contract.

CONTRACTOR IDENTIFICATION Contractor's employees are required to wear identification badges and/or carry picture identification when they are on college grounds.

CONTRACT TERMINATION The contract may be terminated for any of the following reasons:

- Failure of the Contractor to meet the mandatory requirements as described in this bid.
- Failure of the Contractor to meet required deadlines.
- Failure of the Contractor to resolve problems in a timely manner.
- Lack of College funding.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT F: GENERAL CONDITIONS AND INSTRUCTIONS - continued

CONTRACTORS This bid invitation is extended to individuals or firms as primary Contractors, and the Contractor will execute the work specified with bona fide employees. The Contractor is responsible for ensuring that the supervisor, lead worker, and subcontractors can communicate in English. Subcontractors cannot assume the primary award of this contract on behalf of the primary Contractor nor can the awarded Contractor be relieved of its obligation or responsibility to this contract. The College reserves the right to reject any subcontractor.

DELIVERY AND PACKING All prices quoted must include delivery. All goods delivered under this contract shall be packed in accordance with accepted trade practices. No charges may be made over and above the bid price for packaging, or for deposits or containers unless specified in the bid. No charge will be allowed for cartage unless by prior written agreement. Complete deliveries must be made by the successful Offeror to the designated location as indicated on the Montgomery College purchase order. A packing slip shall be included in each shipment. All deliveries must be prepaid and must be delivered to each location designated on purchase order at no additional cost. DELIVERIES MUST BE MADE TO THE SPECIFIED LOCATION. NO COLLECT SHIPMENTS OR SIDEWALK DELIVERIES WILL BE ACCEPTED.

DELIVERY OF BIDS Sealed bids must be received in the Procurement Office by the date and time specified in the bid in order to be considered. NO LATE BIDS OR PROPOSALS WILL BE ACCEPTED. Late bids will be returned to the Offeror unopened. Bids submitted by mail must be addressed to the Procurement Office, Montgomery College, 9221 Corporate Blvd, Rockville, Maryland 20850, and clearly marked to indicate the bid number, title and opening/closing date. Hand delivered bids will be accepted only at the Procurement Office, Montgomery College, 9221 Corporate Blvd, Rockville, Maryland 20850.

ERRORS IN BIDS Offerors are assumed to be informed regarding conditions, requirements, and specifications prior to submitting bids. Failure to do so will be at the Offeror's risk. Bids already submitted may be withdrawn without penalty prior to bid opening. Errors discovered after bid opening may not be corrected. In the case of an error in price extension, the unit price will govern. The intention of the Offeror must be evident on the face of the bid.

FAILURE TO DELIVER If the Contractor fails to comply with any established delivery requirements, the College reserves the right to make an open market purchase of required items and to assess, as liquidated damages, the difference between the contract price and the actual cost incurred by the College and to invoice charges to the Contractor.

INDEMNIFICATION The Contractor shall be responsible for any loss, personal injury, expense, death and/or any other damage which may occur by reason of Contractor's acts, negligence, willfulness or failure to perform any of its obligations under this agreement. Any acts, negligence, willfulness or failure to perform any of the Contractor's obligations under this agreement, on the part of any agent, director, partner, servant or employee of Contractor are deemed to be the Contractor's acts. Contractor agrees to indemnify and hold harmless the College and its trustees, employees, agents and students from any claim, damage, liability, injury, expense, and/or loss, including defense costs and attorney's fees, arising directly or indirectly out of Contractor's performance under this agreement.

Accordingly, the College shall notify Contractor promptly in writing of any claim or action brought against the College in connection with this agreement. Upon such notification, Contractor shall promptly take over and defend any such claim or action. The College shall have the right and option to be represented in any such claim or action at its own expense. This indemnification provision shall survive the termination and/or completion of this agreement.

HAZARDOUS AND TOXIC SUBSTANCES Offeror must comply with all applicable Federal, State, County and bi-county laws, ordinances and regulations relating to hazardous and toxic substances, including such laws, ordinances and regulations pertaining to access to information about hazardous and toxic substances, and as amended from time to time. Offeror shall provide the College with a "Safety Data Sheet" or in the case of a controlled hazardous waste substance, a hazardous waste manifest for all hazardous chemicals listed or subsequently added to the Chemical Information List in compliance with applicable laws, ordinances and regulations.

INSPECTION OF PREMISES If a site visit is recommended or required, each Offeror is responsible for visiting the site(s) prior to submitting a bid in order to observe the existing conditions affecting the work, and to obtain precise dimensions of the area(s) involved. No allowance will be made to the successful Offeror at a later date for additional work required because of his or her failure to visit the site and/or to obtain the exact dimensions. Discrepancies, if any, must be reported to the College.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT F: GENERAL CONDITIONS AND INSTRUCTIONS - continued

INSURANCE If a contract results from this bid, the Contractor shall maintain such insurance as will indemnify and hold harmless the College from Workmen's Compensation and Public Liability claims for property damage and personal injury, including death, which may arise from the Contractor's operations under this contract, or by anyone directly or indirectly employed by contractor.

MARYLAND PUBLIC INFORMATION ACT Offeror recognizes that the College is subject to the Maryland Public Information Act, Title 4 of the General Provisions Article of the Annotated Code of Maryland. Offeror agrees that it will provide any justification as to why any material, in whole or in part, is deemed to be confidential, proprietary information or trade secrets and provide any justification of why such materials should not be disclosed pursuant to the Maryland Public Information Act.

MINORITY PARTICIPATION Pursuant to Section 16-311(f) of the Education Article and Board Resolution #87-83, adopted on July 20, 1987, it is the policy of Montgomery College to encourage the participation of responsible certified minority business enterprises to provide goods and services for the performance of College projects. "Minority business enterprise" has the meaning stated in Section 14-301 of the State Finance and Procurement Article and means a legal entity, except a joint venture, that is: (1) organized to engage in commercial transactions; (2) at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged; and (3) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it. A "socially and economically disadvantage individual" means a citizen or lawfully admitted permanent resident of the United States who is in any of the following minority groups: African American, American Indian/Native American, Asian, Hispanic, physically or mentally disabled, women, or a group (e.g., LGBTQIA+) otherwise found by the certification agency to be a socially and economically disadvantaged individual.

NON-ASSIGNMENT AND SUBCONTRACTING Offeror shall not assign any contract or any rights or obligations hereunder without obtaining prior written consent of the College. No contract shall be made by Offeror with any other party for furnishing the services to be performed under a contract issued from this solicitation without the written approval of the College. These provisions will not be taken as requiring the approval of the contract of employment between Offeror and its personnel.

NON-COLLUSION Offeror certifies that it has neither agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the bid or offer being submitted herewith; Offeror also certifies that it has not in any manner, directly or indirectly, entered into any agreement, participated in any collusion to fix the bid price or price proposal of the Offeror herein or any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the bid or offer is submitted.

NON-DISCRIMINATION Offeror assures the College that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of sex, race, age, color, creed, national origin, religious belief, handicap, marital status, or status as a disabled veteran or veteran of the Vietnam era. Offeror further agrees to post in conspicuous places notices setting forth the provisions of the nondiscrimination clause and to take affirmative action to implement the provisions of this section. Offeror further assures the College that, in accordance with the Immigration Reform and Control Act of 1986, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.

NON-DISCRIMINATION POLICY The College is committed to providing a work and study environment that is free from discrimination and harassment on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, handicap, pregnancy or status as a disabled veteran or veteran of the Vietnam era. Behavior contrary to this philosophy, which has the purpose or effect of creating an intimidating, hostile, or offensive environment, will not be tolerated by the College, and it is the Contractor's responsibility to ensure that behavior by its employees, agents, and subcontractors does not occur. This policy extends to maintaining an environment free from sexual harassment. Therefore, sexual advances or sexual remarks, requests for sexual favors, and other verbal or physical conduct of a sexual nature must not be condoned or permitted by the Contractor. This prohibition extends to harassment within the employment context as well as harassment of students, staff and visitors to the College. It should be assumed that all sexual behavior by the Contractor's employees, agents and subcontractors on any campus or facility of the College, whether owned, operated, maintained or leased by the College, is improper and unwelcome. Contractor will also ensure that all technicians who work with College users exhibit a high degree of professionalism in their dealings with those users.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT F: GENERAL CONDITIONS AND INSTRUCTIONS - continued

NON-VISUAL ACCESS The Offeror or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The Offeror or offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 5 percent. For purposes of the regulation, the phrase “equivalent access” means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.”

NOTICE TO CURE The College reserves the right to cancel the contract if the Contractor’s performance is unsatisfactory to the College. It is understood, however, that if at any time during the term of the contract, performance is deemed to be unsatisfactory, the College shall so notify the Contractor in writing, and the Contractor shall correct such unsatisfactory conditions within thirty (30) calendar days from receipt of such notification. If such corrections are not made within the specified period, the College may terminate the contract.

PATENTS Offeror guarantees that the sale and/or use of the goods offered will not infringe upon any U.S. or foreign patent. Offeror will at his/her own expense, indemnify, protect and save harmless the College, its trustees, employees, agents and students with respect to any claim, action, cost or judgment for patent infringement, arising out of the purchase or use of these goods.

PREPARATION OF BID Bids submitted must be hand signed by an authorized agent of the company submitting the bid. Notification of award will be made by “Notice of Intent to Award” and/or purchase order. An Offeror may attach a letter of explanation to the bid for clarification. Offerors will be required, if requested by Montgomery College, to furnish satisfactory evidence that they are, in fact, bona fide manufacturers of or dealers in the items listed, and have a regularly established place of business. The College reserves the right to inspect any Offeror’s place of business prior to award of contract to determine Offeror’s responsibility.

PRODUCT TESTING DURING TERM OF CONTRACT Goods delivered under any contract resulting from this Request for Bid may be tested for compliance with specifications stipulated herein. Any shipment failing to meet or comply fully with the specification requirements will be rejected. The cost of testing a representative sample of an order or shipment for acceptance shall be borne by the College unless the order is rejected for failure to meet specifications or purchase description. In such cases of rejection, the cost of testing will be charged back to the Contractor.

RECORD RETENTION If awarded a contract, Contractor shall maintain books and records relating to the subject matter of this agreement, including but not limited to all charges to the College, for a period of three (3) years from the date of final payment under this agreement.

REFERENCES Offeror must provide at least three references from former or current clients who can confirm the Offeror’s experience with projects that are similar in size or scope. All reference information must include the company’s name and address and the contact’s name and telephone number. The references provided must be able to confirm, without reservation, the Offeror’s ability to provide the level of services requested in this solicitation. References from other higher education institutions or government agencies are preferred but not required.

REGISTRATION OF CORPORATIONS NOT REGISTERED IN THE STATE OF MARYLAND Pursuant to 7-202 et seq. of the Corporation and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201 before doing any interstate or foreign business in this State. A copy of the registration or application for registration may be requested by the College.

REJECTIONS AND CANCELLATIONS Montgomery College reserves the right to accept or reject any or all bids in whole or in part for any reason. The College reserves the right to waive any informality and to make awards in the best interest of the College. The College also reserves the right to reject the bid of any Offeror who has previously failed to perform adequately on a prior award for furnishing goods and/or services similar in nature to those requested in this bid. The College may cancel this solicitation in whole or in part, at its sole discretion.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT F: GENERAL CONDITIONS AND INSTRUCTIONS - continued

RIDER PROVISION FOR MONTGOMERY COUNTY PUBLIC SCHOOLS AND MONTGOMERY COUNTY The Offeror agrees when submitting the bid that it will make available to every office and department of the Montgomery County Public Schools and the Montgomery County Government the same bid prices, terms and conditions offered during the term of contract. Orders will be placed directly by these agencies.

RIGHT TO STOP WORK If the College determines, either directly or indirectly, that the Contractor's performance is not within the specifications, terms or conditions of this bid and/or that the quality of the job is unacceptable, the College has the right to stop the work. The stoppage of work shall continue until the default has been corrected and/or corrective steps have been taken to the satisfaction of the College. The College also reserves the right to re-bid this contract if it is decided that performance is not within the specifications as set out.

SAMPLES AND CATALOG CUTS If samples are required, Offeror shall be responsible for delivery of samples to location indicated. All sample packages shall be marked "Sample for Procurement Office, RFP No. e423-006" and each sample shall be tagged or marked. Failure of the Offeror to clearly identify samples as indicated may result in rejection of bid. The College reserves the right to test any materials, equipment or supplies delivered to determine if the specifications have been met. Samples will not be returned.

SIGNATURE Each bid must show the full business address and telephone number of the Offeror and be signed by the person or persons legally authorized to sign such contracts. All correspondence concerning the bid and contract, including the bid summary, copy of contract, and purchase order, will be mailed or delivered to the address shown on the bid. **NO BID WILL BE ACCEPTED WITHOUT ORIGINAL SIGNATURE.**

SPECIFICATIONS AND SCOPE OF WORK The specifications listed herein may or may not specify all technical requirements which are needed to achieve the end result. When accepting the award, the Contractor assumes the responsibility of accomplishing the task requested in this document. Any omission of parts, products, processes, etc. in the specifications are the responsibility of the Contractor and the College will not bear the responsibility of their omission. If omissions in the specifications are discovered and these omissions will impact the contract price then it is the responsibility of the Offeror to note these omissions, in writing, prior to accepting the award. If these omissions are not noted prior to award then the Contractor's silence is deemed as full and complete acceptance, and any additional costs will be borne by the Contractor.

TAXES The College is exempt from Federal and Maryland taxes. Exemption Certificates are available upon request. Offeror shall be responsible for the payment of any and all applicable taxes resulting from any award and/or any activities hereunder, including but not limited to any applicable amusement and/or sales taxes.

TERMINATION BASED ON LACK OF FUNDING Any contract awarded as a result of this solicitation will be subject to funding and continued appropriation of sufficient funds for the contract. For purposes of this solicitation, the College's appropriating authority is deemed to be the Board of Trustees of Montgomery College. Insufficient funds shall be grounds for immediate termination of solicitation.

TERMINATION FOR DEFAULT If an award results from this solicitation, and the Contractor has not performed or has unsatisfactorily performed the contract, payment shall be withheld at the discretion of the College. Failure on the part of the contractor to fulfill contractual obligations shall be considered just cause for termination of the contract and the Contractor is not entitled to recover any costs incurred by the Contractor up to the date of termination.

TERMINATION FOR THE CONVENIENCE OF THE COLLEGE The performance of the work or services under a contract as a result of this solicitation may be terminated in whole or in part, whenever the President of Montgomery College shall deem that termination is in the best interest of the College. Such determination shall be at the sole discretion of the President. In such event, the College shall be liable only for payment in accordance with the payment provisions of the contract for work or services performed or furnished prior to the effective date of termination. Termination hereunder shall become effective by delivery to contractor of written notice of termination upon which date the termination shall become effective.

USE OF CONTRACT BY OTHER EDUCATIONAL INSTITUTIONS While this solicitation is prepared on behalf of Montgomery College, it is intended to apply to other Maryland educational institutions and public agencies in Montgomery County, Maryland and State of Maryland, as listed below:

- Montgomery County Public Schools
- Montgomery County Government
- Montgomery County Housing Opportunities Commission
- Maryland-National Capital Park & Planning Commission

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT F: GENERAL CONDITIONS AND INSTRUCTIONS - continued

- Washington Suburban Sanitary Commission
- Maryland State Colleges and Universities

Unless the Offeror takes an exception, the resulting awarded items will be available to all agencies listed. Should a price adjustment be necessary to include any other public agency, the Offeror must so note on the Contractor Information Form. Exception for Montgomery County Public Schools will not be accepted. Purchase requests and funding from other agencies will be the responsibility of those agencies.

WARRANTY Offeror expressly warrants that all articles, material and work offered shall conform to each and every specification, drawing, sample or other description which is furnished to or adopted by the College and that they will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship, and free from defect. Such warranty shall survive a contract and shall not be deemed waived either by the College's acceptance of said materials or goods, in whole or in part, or by payment for them, in whole or in part. The Offeror further warrants all articles, material and work performed for a period of one year, unless otherwise stated, from date of acceptance of the items delivered and installed, or work completed. All repairs, replacements or adjustments during the warranty period shall be at Offeror's sole expense.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT G: MID ATLANTIC PURCHASING TEAM RIDER CLAUSE



Cooperative Rider Clause

The Mid-Atlantic Purchasing Team (MAPT) is the agreement between the Metropolitan Washington Council of Governments (“MWCOCG”) and the Baltimore Metropolitan Council (“BMC”) to aggregate the public entity and non-profit purchasing volumes in the Maryland, Virginia and Washington, D.C. region (“region”).

I. Format

A lead agency format is used to accomplish this work. This Participating Agency, serving as Lead Agency for this procurement, has included this MAPT Cooperative Rider Clause. This allows other public entities to participate pursuant to the following Cooperative Rider Clause Terms and Conditions:

A. Terms

1. Any public entity participating in this procurement (“Participating Agency”), through their use of this Cooperative Rider Clause, agree to the terms and conditions of the resulting contract to the extent that they can be reasonably applied to the Participating Agency.
2. A Participating Agency may also negotiate additional terms and conditions specific to their local requirements upon mutual agreement between the parties.

B. Other Conditions - Contract and Reporting

1. The resulting contract shall be governed by and "construed" in accordance with the laws of the State/jurisdiction in which the Participating Agency is officially located;
2. To provide to MAPT contract usage reporting information, including but not limited to quantity, unit pricing and total volume of sales by entity, as well as reporting any Participating Agency added on the contract, on demand and without further approval of Participating Agency;
3. Contract obligations rest solely with the Participating Agency only; and
4. Significant changes in total contract value may result in further negotiations of contract pricing with the Lead Agency and any Participating Agency.

In pricing and other conditions, contractors are urged to consider the broad reach and appeal of MAPT with public and non-profit entities in this Region.

In order to ride an awarded contract, a COG Rider Clause Approval Form (below) must be completed and approved by the Lead Agency.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT G: MID ATLANTIC PURCHASING TEAM RIDER CLAUSE - continued

II. Participating Members

COG MEMBER GOVERNMENTS

District of Columbia

Maryland

- Town of Bladensburg
- City of Bowie
- City of College Park
- Charles County
- City of Frederick
- Frederick County
- City of Gaithersburg
- City of Greenbelt
- City of Hyattsville
- City of Laurel
- Montgomery County
- Prince George's County
- City of Rockville
- City of Takoma Park

Virginia

- City of Alexandria
- Arlington County
- City of Fairfax
- Fairfax County
- City of Falls Church
- Loudoun County
- City of Manassas
- City of Manassas Park
- Prince William County

Other Local Governments

- Town of Herndon
- Spotsylvania County
- Stafford County
- Town of Vienna

Public Authorities/Agencies

- Alexandria Renew Enterprises
- District of Columbia Water and Sewer Authority
- Metropolitan Washington Airports Authority
- Metropolitan Washington Council of Governments
- Montgomery County Housing Opportunities Commission
- Upper Occoquan Service Authority
- Washington Metropolitan Area Transit Authority
- Washington Suburban Sanitary Commission

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT G: MID ATLANTIC PURCHASING TEAM RIDER CLAUSE - continued

School Systems

- Alexandria Public Schools
- Arlington County Public Schools
- Charles County Public Schools
- District of Columbia Public Schools
- Frederick County Public Schools
- Loudoun County Public Schools
- City of Manassas Public Schools
- Montgomery College
- Montgomery County Public Schools
- Prince George's County Public Schools
- Prince William County Public Schools
- Spotsylvania County Schools
- Winchester Public Schools

BALTIMORE METROPOLITAN COUNCIL AGENCIES

- City of Annapolis
- Anne Arundel County
- Anne Arundel County Public Schools
- Anne Arundel Community College
- City of Baltimore
- Baltimore City Public Schools
- Baltimore County
- Baltimore County Public Schools
- Community College of Baltimore County
- Carroll County
- Harford County
- Harford County Public Schools
- Harford Community College
- Howard County
- Howard County Public Schools System
- Howard Community College
- Queen Anne's County
- Queen Anne's County Public Schools

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT G: MID ATLANTIC PURCHASING TEAM RIDER CLAUSE - continued

**MWCOG Rider Clause Approval
Form**

This form must be executed for any Participating Agency, both within and outside of the Mid- Atlantic Purchasing Team (MAPT) region, to use the MAPT Cooperative Rider Clause to ride solicitations and contracts.

NOTE: Effective January 1, 2019, MWCOG does not authorize the use of the MAPT/COG Cooperative Rider Clause without this form being completed and approved.

Participating Agency Name _____

Contact Person _____

Phone _____ Email Address _____

Solicitation/Contract Information:

Name Solicitation/Contract _____ Lead

Agency/Contract Holder _____

Contact Person _____

Solicitation/Contract Number _____ Other Reference _____

Vendor Information:

Contractor Name _____ Address _____

City/State/Zip _____ Contact

Person _____ Phone

_____ Email Address _____

See questions on next page.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT G: MID ATLANTIC PURCHASING TEAM RIDER CLAUSE - continued

<u>Questions</u>	<u>YES</u>	<u>NO</u>
1. Is the Contract active and currently in force?	_____	_____
2. Is the Participating Agency’s specifications/scope of work the same or very similar to that in the Contract?	_____	_____
3. Is riding this Contract within the rules and regulations of the Participating Agency and approved by the Participating Agency’s Purchasing Department?	_____	_____

Participating Agency

Mid-Atlantic Purchasing Team

Name: _____

Name: _____

Title: _____

Title: _____

Signature: _____

Signature: _____

Any Participating Agency (MAPT/COG) member that wishes to piggyback a MAPT/COG contract, must complete form and return to COG, via email: purchasing@mwkog.org

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT H: GENERAL CONDITIONS OF THE CONTRACT

- 1. GENERAL PROVISIONS**
 - 1.1. DEFINITIONS
 - 1.2. CONTRACT DOCUMENTS
 - 1.2.1. Correlation and Intent of Contract Documents
 - 1.2.2. Specifications Format
 - 1.2.3. Standard Specifications
 - 1.2.4. Ownership

- 2. COLLEGE AND COLLEGE'S AGENTS**
 - 2.1. AUTHORITY OF THE COLLEGE'S PROJECT MANAGER
 - 2.2. RESPONSIBILITY OF THE COLLEGE'S PROJECT MANAGER
 - 2.3. RESPONSIBILITY OF THE COLLEGE DEPARTMENT OF ENVIRONMENTAL SAFETY
 - 2.4. RESPONSIBILITIES OF THE ARCHITECT/ENGINEER
 - 2.5. COLLEGE'S RIGHT TO STOP OR SUSPEND WORK
 - 2.3.1. Stopping of the Work
 - 2.3.2. Suspension of the Work

- 3. CONTRACTOR**
 - 3.1. RESPONSIBILITIES OF THE CONTRACTOR
 - 3.2. CONTRACTOR'S ADMINISTRATION AND SUPERVISION OF THE WORK
 - 3.2.1. Staff
 - 3.2.2. Supervision
 - 3.2.3. Subcontracts
 - 3.2.4. Behavior of Contractor's Employees, Agents and Subcontractors
 - 3.3. MATERIALS, LABOR, EQUIPMENT AND PROCESSES
 - 3.3.1. Proposals
 - 3.3.2. Labor, Materials and Equipment
 - 3.3.3. Use of Named Materials
 - 3.3.4. Use of Equivalent Materials
 - 3.3.5. Substitutions
 - 3.3.6. Required List of Materials and Equipment
 - 3.3.7. Tariffs
 - 3.4. WARRANTY/GUARANTEES
 - 3.5. TAXES
 - 3.6. PERMITS AND LICENSES
 - 3.7. PROSECUTION AND PROGRESS OF THE WORK
 - 3.7.1. Notice to Proceed
 - 3.7.2. Hours of Work
 - 3.7.3. Construction Schedule
 - 3.7.4. Progress Meetings
 - 3.8. REFERENCE DOCUMENTS FOR THE WORK
 - 3.8.1. Conformance Documents
 - 3.8.2. Progress Documents
 - 3.8.3. Record Documents
 - 3.9. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

- 3.10 SITE INFORMATION, ACCESS, USE AND RESTRICTIONS
 - 3.10.1. Site Information
 - 3.10.2. Campus Coordination Requirements
 - 3.10.3. Coordination where Work is in or adjacent to an Occupied Existing Building
 - 3.10.4. Temporary Facilities
 - 3.10.5. Existing Utilities
 - 3.10.6. Erosion Control
 - 3.10.7. Tree and Plant Protection
 - 3.10.8. Snow and Ice Removal
 - 3.10.9. Trash Removal, Salvage and Recycling
 - 3.10.10. Project Signage
- 3.11 HAZARDOUS AND TOXIC SUBSTANCES
 - 3.11.1. Hazardous and Toxic Substances
 - 3.11.2. Asbestos-Containing Materials
 - 3.11.3. Environmental Litigation
- 3.12 CUTTING AND PATCHING
- 3.13 CLEANING
 - 3.13.1. Progress Cleaning
 - 3.13.2. Final Cleaning
- 3.14 ROYALTIES AND PATENTS
- 3.15 INDEMNIFICATION

- 4. ADMINISTRATION OF THE CONTRACT**
 - 4.1 CLARIFYING INSTRUCTIONS
 - 4.2 REQUESTS FOR INFORMATION
 - 4.3 SITE VISITS AND OBSERVATIONS
 - 4.4 CLAIMS AND DISPUTES
 - 4.5 DELAYS AND DAMAGES

- 5. CONSTRUCTION BY COLLEGE OR BY SEPARATE CONTRACTORS**

- 6. CHANGES IN THE WORK**
 - 6.1 CHANGES IN THE WORK
 - 6.1.1 Changes
 - 6.1.2 Disputed Work
 - 6.1.3 Modification of Contract Sum
 - 6.1.4 Minor Changes in the Work

- 7. PAYMENTS AND COMPLETION**
 - 7.1 SCHEDULE OF VALUES
 - 7.2 PROGRESS PAYMENTS
 - 7.3 ACCEPTANCE OF THE WORK AND FINAL PAYMENT
 - 7.3.1. Partial Acceptance
 - 7.3.2 Substantial Completion and Final Inspection
 - 7.3.3. Application for Final Payment
 - 7.4 ASSIGNMENT OF CONTRACT MONIES
 - 7.5 AUDIT

- 8. PROTECTION OF PERSONS AND PROPERTY**
 - 8.1 SAFETY PRECAUTIONS AND PROGRAMS
 - 8.2 PROTECTION OF PERSONS AND PROPERTY
 - 8.3 FIRE PROTECTION
 - 8.4 EMERGENCIES
 - 8.5 ACCIDENTS

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

9. INSURANCE AND BONDS

9.1. INSURANCE

9.2. PERFORMANCE, LABOR AND MATERIAL BONDS AND MAINTENANCE BOND

10. CORRECTION OF WORK

10.1 CORRECTION OF WORK

10.1.1 Correction of Work before Final Payment

10.1.2 Correction of Work after Substantial Completion of Work

10.2 ACCEPTANCE OF NON-CONFORMING WORK

11. MISCELLANEOUS PROVISIONS

11.1 LEGAL OBLIGATIONS, RELATIONS AND RESPONSIBILITIES

11.1.1 Laws to be Observed

11.1.2 Regulations

11.2 INDEPENDENT CONTRACTOR

11.3 EQUAL OPPORTUNITY

11.4 COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

11.5 ASSURANCE OF NONCONVICTION OF BRIBERY

11.6 CONFLICT OF INTEREST

11.7 ASSIGNMENT AND SUBCONTRACTING

11.8 CONTINGENT FEES

11.9 MARYLAND PUBLIC INFORMATION ACT

11.10 TESTING AND INSPECTION

11.11 NO WAIVER OF RIGHTS – COLLEGE’S REMEDIES CUMULATIVE – COLLEGE’S DAMAGES

11.12 REGISTRATION OF CORPORATIONS NOT INCORPORATED IN THE STATE OF MARYLAND

12. TERMINATION OF THE CONTRACT

12.1. TERMINATION FOR DEFAULT

12.2. TERMINATION FOR CONVENIENCE

ARTICLE 1 – GENERAL PROVISIONS

1.1. DEFINITIONS

1.1.1. The "Agreement" is the written contract between the College and the Contractor.

1.1.2. The "College" is Montgomery Community College or Montgomery College Foundation, Inc.

1.1.3. The "Contractor" is the person or organization having a direct contractual relationship with the College for the execution of the Work under the Contract Documents.

1.1.4. The "Contract Documents" are the Agreement, the Request for Bid or Request for Proposal, Instructions to Bidders/Offerors, Supplementary Instructions, the General Conditions, Supplementary Conditions, Preliminary Project Schedule, Drawings, Specifications, Addenda issued prior to execution of the Contract, Modifications issued after execution of the Contract, the Performance Bond, the Labor and Material Payment Bond, accepted Contractor's Bid or Proposal Form(s) and all attachments thereto received from the Contractor. The term "Contract" when used in the Specifications or Drawings shall be considered as synonymous with the term "Contract Documents".

1.1.5. The "Specifications" are the portion of the Contract Documents included in the Project Manual consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

1.1.6. The "Drawings" are those enumerated in the Specifications and those incorporated in the Contract Documents as the Work progresses.

1.1.7. The "Project Manual" is the volume that includes the Specifications as well as Bidding or Proposal Requirements, Contract Form, General Conditions and Supplementary Conditions.

1.1.8. The term "Work" means all of the obligations undertaken by the Contractor pursuant to the Contract Documents. Work includes, unless specifically excepted, the furnishing of all material, labor, equipment, supplies, plant, tools, scaffolding, transportation, supervision, insurance, taxes and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. "Work" also means that which is produced, constructed, or built pursuant to the Contract Documents.

1.1.9. The term "Project" is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the College or by separate contractors.

1.1.10. The term "Subcontractor" means any individual, partnership, firm, corporation or business entity other than an employee of the Contractor, who has a contract with the Contractor to furnish labor, or labor and materials for the Work. The term also includes Subcontractors of a Subcontractor. The term does not include vendors who furnish materials not worked to a special design according to the Drawings and Specifications.

1.1.11. The term "Site" or "Premises" means the area or areas indicated and such additional areas or locations upon which or in which Work under this Contract is being performed together with such areas adjacent thereto, as may be designated for the Contractor's use for a specified, limited period of time by the College.

1.1.12. The "Architect/Engineer" is the person commissioned by the College to design the Work and/or provide construction-phase architectural or engineering services. If the design was performed by the College, "Architect/Engineer" shall refer to the College.

1.1.13. The term "Contract Time" or "Time" and "Completion Date" is the number of calendar days (including weekends and holidays) shown in the Contract Documents as the time allowed for completion of the Work. If a calendar date of completion is shown in the Contract Documents in lieu of the number of calendar days, the Work shall be completed on or before that date.

1.1.14. The term "Contract Sum" refers to the total sum, including authorized adjustments, allotted in the Contract Documents for the services performed by the Contractor for satisfactory completion of all of the Work required by the Contract Documents.

1.1.15. "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.1.16. "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor or a Subcontractor, manufacturer, supplier or distributor to illustrate materials or equipment for some portion of the Work.

1.1.17. "Samples" are natural materials, fabricated items, equipment, devices, appliances or parts thereof as called for in the Specifications, and any other samples as may be required by the College to determine whether the kind, quality, construction, workmanship, finish, color and other characteristics of the materials, etc., proposed by the Contractor conform to the requirements of the Contract Documents. Samples shall establish the kind, quality and other required characteristics of the various parts of the Work, and all Work shall be in accordance with the accepted samples.

1.1.18. The term "Request for Information" refers to a written instrument submitted by the Contractor requesting that a clarification with respect to the Contract Documents be provided by the Architect/Engineer.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

1.1.19. The term "Change Order" refers to a written instrument signed by the College which describes a directive by the College which is a change in the Work.

1.1.20. The "College's Representative" is the Vice President of Facilities & Public Safety or their designee.

1.1.21. The "College's Project Manager" is(are) the person(s) or entity(ies) employed or retained by the College to provide project and construction management services, including administration of the Contract as described in Article 2. The College may exercise any power or authority of the College's Project Manager under the Contract.

1.1.22. "Day" means a calendar day unless otherwise designated.

1.1.23. "Notice to Proceed" means a written notice to the Contractor of the date on which it shall begin the prosecution of the Work. The Contract Time shall begin to run from the starting date established in the Notice to Proceed. Notice to Proceed will be timely provided upon receipt of Contractor materials required before the start of work, including but not limited to performance, payment, labor and material bonds and insurance certificates.

1.1.24. "Written Notice" means giving of notice under the Contract by one party to the other. Unless otherwise indicated in the Contract Documents, Written Notice shall be deemed to have been duly served on the Contractor if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is directed, or if delivered by regular or certified mail to the last business address known to the College. Written Notice shall be deemed to have been given to the College upon actual receipt of Written Notice by the College.

1.2. CONTRACT DOCUMENTS

1.2.1. Correlation and Intent of Contract Documents

1.2.1.1. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Their intent is to include in the scope of the Contract, at no additional cost to the College, all Work necessary for proper completion of the Work ready for continual efficient operation that is reasonably inferable from the Documents.

1.2.1.2. Prior to submitting its price, the Contractor shall obtain from the College, clarification of all questions which may have arisen as to the intent of the Contract Documents, or any conflict between two or more items in the Contract Documents. Should the Contractor fail to obtain clarification, then the College may direct that the Work proceed by any method indicated, specified or required by the Contract Documents, in the judgment of the College. The direction by the College shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that it had the opportunity to request clarification prior to submitting its price to the College and that it is not entitled to claim extra costs as a result of failure to request such clarification.

1.2.1.3. The College's Project Manager shall make recommendations regarding the amount, quality, acceptability and fitness of the several kinds of Work and materials which are to be paid for under this Contract and shall make recommendations regarding all questions which may arise in relation to the Work and the construction thereof. The College's decision, based on the College's Project Manager's recommendation, shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties relative to the Contract Documents, the determination or decision of the College shall be a condition precedent to the right of the Contractor to receive payment for the Work under the Contract related to such questions.

1.2.1.4. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the more restrictive condition in consideration of following priorities:

- (1) The Request for Bid or Request for Proposal
- (2) Any modifications to the Contract Documents executed after the date of the Contract, with the Modifications having the latest date having the greatest authority.
- (3) The Contract.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

- (4) Supplementary Conditions.
- (5) General Conditions.
- (5) Drawings and Specifications.
- (6) The Contractor's Proposal accepted by the College.

In the event of a conflict or discrepancy within the Specifications or the Drawings, or between the Drawings and the Specifications, the better quality or greater quantity of Work shall be provided in accordance with the College's interpretation.

1.2.1.5. The College's Project Manager and Architect/Engineer shall make recommendations to the College to clarify the meaning and intent of the Specifications and the Drawings where the same may be found unclear or be in dispute.

1.2.1.6. The Contractor is responsible for coordinating and completing the various parts of the Work. No part of the Work shall be left in an unfinished or incomplete condition because of a disagreement between the Contractor and Subcontractors, or between Subcontractors and the Contractor as to where the Work of one begins and ends in relation to the Work of the other. Any adjustments due to differences or conflicts which may arise between the Work of the Contractor under this Contract and the work of other contractors performing work for the College shall be determined by the College and the College's Project Manager.

1.2.1.7. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities and methods of installation of the various materials and equipment required for the Work. The Specifications are not intended to mention every item of Work which can be adequately shown on the Drawings. The Drawings are not intended to show all items of Work described or required by the Specifications even if they are of such nature that they could have been shown thereon. All materials or labor for Work which are shown on the Drawings, or are reasonably inferable there from as being necessary to produce a finished Work, shall be provided by the Contractor whether or not the Work is also expressly covered in the Specifications.

1.2.2. Specification Format

1.2.2.1. The Specifications are separated into titled sections for convenience only and not to identify the trade or craft responsible to perform the Work. The titled section shall not operate to make the College an arbitrator for the division of responsibility between Contractor and its Subcontractors, and between its Subcontractors, nor shall such sections relieve the Contractor from the responsibility for the satisfactory completion of the entire Work regardless of the division.

1.2.2.2. The General Conditions are a part of each and every section of the Specifications.

1.2.2.3. The Specifications may be abbreviated and include incomplete sentences. Omissions of words or phrases such as "the Contractor shall", "shall be", etc., are intentional; nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner, as they are when a "note" occurs on the Drawings.

1.2.2.4. Words in the singular shall include the plural whenever applicable, or the context so indicates.

1.2.2.5. Where "as shown", "as indicated", "as detailed" or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where "as directed", "as required", "as permitted", "as authorized", "as approved", "as accepted", "as selected", or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance or selection by the College is intended unless otherwise stated. As used herein, "provide" means "provided complete in place", that is, furnished and installed and ready for operation and/or use.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

1.2.3. Standard Specifications

1.2.3.1. Any reference to standard specifications of any society, institute, association or governmental authority is a reference to the standard specifications of such organization and to their methods of installation of the various materials and equipment required for the Work which are in effect at the time prices are due. It is not intended to mention every item of work described or required by the standard specifications even if they are of such nature that they could have been shown thereon. All materials or labor for work which are inferable there from, as the Contractor shall provide being necessary to produce a finished job at the date of the Contractor's price. If such specifications are revised prior to completion of any part of the work to which such revision would pertain, the Contractor may, if acceptable to the College, perform such work in accordance with the revised specifications.

1.2.3.2. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications.

1.2.4. Ownership

1.2.4.1. The Drawings, Specifications and other documents prepared by the Architect/Engineer, are owned by the College. Copies thereof furnished to the Contractor, are for use solely with respect to this Project.

ARTICLE 2 – COLLEGE AND COLLEGE’S AGENTS

2.1. AUTHORITY OF COLLEGE’S PROJECT MANAGER

2.1.1. The College's Project Manager has the authority to perform all of the College's functions pertaining to the conduct and administration of the Work, except as indicated in 2.1.2.

2.1.2. Unless otherwise indicated in the Contract Documents, the College's Project Manager is NOT authorized to make determinations (as opposed to recommendations) that:

- 2.1.2.1. Alter or modify the Contract Documents;
- 2.1.2.2. Alter the Contract schedule;
- 2.1.2.3. Approve Contract change orders;
- 2.1.2.4. Terminate or cancel the Contracts.

2.1.3. Unless otherwise indicated in the Contract Documents, recommendations made by the College's Project Manager, pertaining to determinations listed in 2.1.2, are changes in the work that require review, approval and further authorizing action from the College as indicated in Article 6.

2.2. RESPONSIBILITIES OF THE COLLEGE’S PROJECT MANAGER

2.2.1. The College's Project Manager shall be an agent of the College to the extent set forth in the Contract Documents. Any non-College employee in such role shall not be deemed to be the employee of the College for any purpose in connection therewith. Subject to subsection 2.1.2, the College's Project Manager shall have full authority to act, or to cause others to act, on behalf of the College to assure that the Work is carried out in full compliance with the requirements of the Contract, and to otherwise generally protect the College's interests.

2.2.2. The College's Project Manager will determine in general that the Work of the Contractor is being performed in accordance with the Contract Documents, and will use his best efforts to guard the College against defects and deficiencies in the Work of the Contractor.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

2.2.3. The College's Project Manager shall provide administrative management and related services as required to coordinate the Work of the Contractor and separate contractors with each other and with the activities of the Architect/Engineer to complete the Project in accordance with the College's objectives for cost, time and quality.

2.3. **RESPONSIBILITIES OF THE COLLEGE DEPARTMENT OF ENVIRONMENTAL SAFETY**

2.3.1. The Montgomery College Office of Facilities and Public Safety Department of Environmental Safety is responsible for promoting a safe and healthful work environment for the Project and for verifying the Contractor's compliance with Federal and State environmental protection regulations and College safety and health practices. To carry out these responsibilities, the Department of Environmental Safety is authorized to inspect the Project, all work done and being done, and all material to be furnished and being furnished. In the event that the Department learns of an unsafe condition, the Environmental Safety Manager is authorized to suspend work (after notice to the College Project Manager and the Office of Facilities Management) until the unsafe condition is cured by the Contractor. "Unsafe condition" means any practice that represents a significant risk of injury or health hazard to College employees, a significant adverse environmental impact, or a physical hazard which could result in damage to College property and/or the public. The authority of Department of Environmental Safety is in addition to any other rights of the College set forth herein.

2.4. **RESPONSIBILITIES OF THE ARCHITECT/ENGINEER**

2.4.1. **Architect/Engineer's Status**

2.4.1.1. The College may maintain staff personnel from the Office of Facilities and Public Safety, or as separate architectural and/or engineering services retained by the College, at the site of the Work for field observation and day-to-day monitoring of the Work.

2.4.1.2. The Architect/Engineer shall assist the College during the construction period and with the College's Project Manager shall observe the Work in process on behalf of the College. The Architect/Engineer will not be responsible for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work. The Architect/Engineer shall have authority to act on behalf of the College only to the extent expressly provided in the Contract Documents or otherwise in writing.

2.4.1.3. With the College's Project Manager, the Architect/Engineer may advise the College with respect to claims of the College or the Contractor, on matters relating to the execution and progress of the Work and on the interpretation of the Contract Documents.

2.4.1.4. Together with the College's Project Manager the Architect/Engineer shall certify applications for progress payments and final payment that the Contractor has complied with the requirements of the Contract Documents.

2.4.1.5. Together with the College's Project Manager the Architect/Engineer shall determine Contractor's achievement of Substantial Completion and Final Completion milestones, and issue relevant certificates, in accordance with the requirements of the Contract Documents.

2.5. **COLLEGE'S RIGHT TO STOP OR SUSPEND WORK**

2.5.1. **Stopping of the Work**

2.5.1.1. Subject to concurrence by the College, the College's Project Manager may stop all or part of the Contractor's Work, if in the opinion of the College's Project Manager the Contractor has performed Work not in conformance with the Contract Documents. The Work may be stopped until such time that the defective conditions have been corrected. All costs related to the stoppage of the Work shall be borne by the Contractor.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

2.5.2. Suspension of the Work

2.5.2.1. The College unilaterally may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for a period of time as it may determine to be appropriate.

2.5.2.2. If the performance of all or any part of the Work is for an unreasonable period of time suspended, delayed or interrupted by an act or omission of the College in the administration of the Contract, an adjustment shall be made for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by an unreasonable suspension, delay or interruption and the Contract modified in writing accordingly. No adjustment shall be made under this subsection for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (2) for which an equitable adjustment is provided for or excluded under any other provision in this Contract.

ARTICLE 3 – CONTRACTOR

3.1. RESPONSIBILITIES OF THE CONTRACTOR

3.1.1. The Contractor shall furnish all labor, materials, equipment, tools, construction equipment, machinery, plant, supplies, utilities, telephone, transportation, supervision, temporary construction, permits, insurance, taxes, bonds, contributions and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, as described in the Contract Documents.

3.1.2. Montgomery County or City of Rockville Complex Structures processes may apply to the Project. When applicable, Contractor shall fulfill any necessary obligations related to that process.

3.2. CONTRACTOR'S ADMINISTRATION AND SUPERVISION OF THE WORK

3.2.1. Staff

3.2.1.1. The Contractor shall furnish a competent, qualified and adequate staff as necessary to administer coordinate, supervise and superintend the Work; to organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and to keep an adequate force of skilled workers on the job to complete the Work in accordance with all requirements of the Contract Documents and to the entire satisfaction of the College's Project Manager. Key members of the staff shall not be changed without the consent of the College's Project Manager.

3.2.1.2. Prior to commencement of the Work, the Contractor shall select a project representative who will have full responsibility for the prosecution of the Work, with full authority to act in all matters as necessary for the proper coordination, direction and technical administration of the Work and who shall attend meetings at such place or places as determined by the College's Project Manager in order to render reports on the progress of the Work.

3.2.2. Supervision

3.2.2.1. The Contractor shall efficiently supervise the Work, using its best skill and attention. It shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the College's Project Manager any error or omission which it may discover, and shall subsequently proceed with the Work in accordance with instructions from the College's Project Manager concerning such error or omission.

3.2.2.2. The Contractor shall assign to the Project throughout its duration a well-qualified, competent superintendent and any necessary assistants, all of whom must be satisfactory to the College's Project Manager. The superintendent shall represent the Contractor in its absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.2.2.3. The College's Project Manager shall not supervise the Work. The means, methods, techniques, sequences, procedures and safety measures utilized in the performance of the Work are the sole responsibility of the Contractor, subject to overall coordination of the College's Project Manager. Any means, method, techniques, sequences or procedures set forth in the Contract Documents are solely to specify the desired end product; and if the means, methods, techniques, sequences or procedures will not result in the desired end product or is unsafe or illegal because of some inherent defect in the Specifications or the particular conditions under which the Work is being performed, it is the Contractor's responsibility to select a correct means, method, technique, sequence or procedure. Nothing in the College's Project Manager's review of the general quality and progress of the Work, including acceptance of submittals and Work, shall be construed as the assumption of authority or supervision over the performance of the Work, or relieves the Contractor from its obligation to comply with the requirements of the Contract Documents.

3.2.3 Subcontracts

3.2.3.1. The Contractor shall, prior to the execution of the Contract, notify the College in writing of the names of Subcontractors, if any, proposed for the principal parts of the Work and for such other parts of the Work as the College's Project Manager may direct. The Contractor shall not employ any Subcontractor that the College may, within a reasonable time, object to for any reason.

3.2.3.2. The Contractor is as fully responsible to the College for the performance, management, acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the performance, management, acts and omissions of persons directly employed by it.

3.2.3.3. Nothing contained in the Contract Documents shall create any contractual obligation between any Subcontractor and the College.

3.2.3.4. The Contractor agrees to bind every Subcontractor, and every Subcontractor agrees to be bound by the terms of the Contract, the Drawings and the Specifications as far as applicable to its Work, including the following provisions, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the College.

3.2.3.5. The Subcontractor agrees:

- (1) To be bound to the Contractor by the terms of the Contract, the Drawings and the Specifications, and to assume toward the Contractor all the obligations and responsibilities that it, by those documents, assumes toward the College.
- (2) To submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment.

3.2.3.6. The Contractor agrees to place in its subcontracts with Subcontractors:

- (1) To be bound to the Subcontractor by all the obligations that the College assumes to the Contractor under the Contract, the Drawings and the Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the College.
- (2) To pay the Subcontractor, upon the payment of certificates, if listed in the Schedule of Values the amount allowed to the Contractor on account of the Subcontractor's Work to the extent of the Subcontractor's interest therein.
- (3) To make no demand for liquidated damages for delay in any sum in excess of such amount as may be specifically named in the subcontract.
- (4) That no claims for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor during the first ten days of the calendar month following that in which the claim originated.
- (5) To give to the Subcontractor an opportunity to be present and to submit evidence in any decision involving its rights.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.2.4. Behavior of Contractor's Employees, Agents and Subcontractors

3.2.4.1. The College is committed to providing a work and study environment that is free from discrimination and harassment on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, handicap, pregnancy or status as a disabled veteran or veteran of the Vietnam Era. Behavior contrary to this philosophy, which has the purpose or effect of creating an intimidating, hostile, or offensive environment, will not be tolerated by the College, and it is the Contractor's responsibility to ensure that such behavior by its employees, agents and Subcontractors does not occur.

3.2.4.2. This policy extends to maintaining an environment free from sexual harassment. Therefore, sexual advances, sexual remarks, requests for sexual favors, and other verbal or physical conduct of a sexual nature must not be condoned or permitted by the Contractor. This prohibition extends to such harassment within the employment context as well as harassment of students, staff and visitors of the

College. It should be assumed that all sexual behaviors by the Contractor's employees, agents or subcontractors on any campus or facility of the College, whether owned, operated, maintained or leased by the College, is improper and unwelcome.

3.2.4.3. Montgomery College is a tobacco free institution. Use of tobacco products is prohibited in all indoor and outdoor College-owned facilities and facilities leased and controlled by the College as well as at meetings or conferences sponsored by the College. This use prohibition extends to Contractors' employees, agents, subcontractors and vendors.

3.3. MATERIALS, LABOR, EQUIPMENT AND PROCESSES

3.3.1. Proposals

3.3.1.1. Proposals shall be based upon the materials, equipment or processes specifically named, implied in or reasonably inferable from the Contract Documents.

3.3.1.2. In cases where Work is to be performed in an existing building, proposals shall be based on Contractor's review of existing conditions by means including but not limited to: site inspection and review of existing College documentation, if any, including data from the Environmental Safety Office. Failure or omission of the Contractor to inspect the site and examine available documents shall in no way relieve the Contractor from obligations with respect to its price, nor constitute grounds for a subsequent claim.

3.3.1.3. Certain Project proposals shall be based on Prevailing Wage Rate schedule provided by and the reporting requirements of the State of Maryland's Department of Labor, Licensing and Regulation (DLLR). If guidance regarding applicability of Prevailing Wage Rates is not otherwise included in the Contract Documents, Contractor shall request a determination of applicability from the College prior to submitting a proposal.

3.3.2. Labor, Materials and Equipment

3.3.2.1. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract.

3.3.2.2. The Contractor shall furnish sufficient forces to ensure the prosecution of the Work within the time stated in the Contract.

3.3.2.3. The Contractor shall comply with the provisions of Sections 17208 entitled Prevailing Wage Rates, when applicable, and 17301 through and including 17306 of the State Finance and Procurement Article of the Annotated Code of Maryland (as amended from time to time) entitled "Steel Procurement for Public Works."

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.3.2.4. Unless otherwise specified, all materials and equipment to be permanently installed in the Work shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents. The Contractor shall, if required, furnish satisfactory evidence as to kind and quality of all materials and equipment.

3.3.2.5. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. All labor shall be performed by workers skilled in their respective trades, and Work produced shall be of good quality so that first class Work in accordance with the standards of construction set forth in the Contract Documents will result.

3.3.3. Use of Named Materials

3.3.3.1. Where materials are specified by a name, or several names are specified, without the words 'or equal' following such name(s) the Contractor shall use and/or supply the named material that meets all the requirements of the Specifications.

3.3.4. Use of Equivalent Materials

3.3.4.1. Where the words 'or equal' are included, at the Contractor's sole risk, the Contractor may submit a material it considers to be equal in quality, capacity, size, or other determining criteria. The burden of submitting adequate information to the College to prove equality of materials shall be the responsibility of the Contractor. A direct comparison of features and fit with the specified item must be included. Whether an equal or specified product is proposed, all of the units of a given type required for and used in the Work must be the same in material and manufacture. The decision of the College with regard to quality of materials shall be final. The College may reject a proposed equal without cause and the Contractor shall not be entitled to additional compensation.

3.3.5. Substitutions

3.3.5.1. Substitutions requests will be considered only under the following circumstances:

- (1) When the specified product is not available; or
- (2) When, if a certain product or process is specified and a guarantee of performance is required and, in the judgment of the Contractor, the specified product or process will not produce the desired results; or
- (3) When a substitution, in the opinion of the College is in its best interest.

3.3.5.2. Requests for substitutions of products, materials or processes other than those specified shall be submitted in writing to the College's Project Manager and be accompanied by evidence that the proposed substitution: (1) is equal in quality and service-ability to the specified item; (2) will not entail changes in details and construction of related work; and (3) will be acceptable in consideration of the required design and artistic effect. The Contractor will furnish with its request such drawings, specifications, samples, performance data and other information as may be required of it to assist the College in determining whether the proposed substitution is acceptable. A direct comparison of features and fit with the specified item must be included. The substitution request shall state the credit or extra, if any, involved with the use of such material. The burden of proof shall be upon the Contractor.

3.3.5.3. Regardless of the evidence submitted or any review or independent investigation by the College, a request for a substitution of products, materials or processes is a warranty by the Contractor to the College that (1) the requested substitution is equal in quality and serviceability to the specific item; (2) will not entail changes in details and construction of related work; (3) will be acceptable in consideration of the required design and artistic effect; (4) will not involve any additional cost to the College other than that specified in an accompanying request for a change order; and (5) the Contractor will provide the same or better warranty for the substitution that the Contractor would for that specified.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.3.5.4. The College's acceptance of a substitution does not relieve the Contractor of responsibility for any unforeseen consequences and/or costs associated with the substitution.

3.3.5.5. The College may reject a proposed substitution without cause.

3.3.6. Required List of Materials and Equipment

3.3.6.1. Unless otherwise indicated in the Contract Documents, the Contractor shall submit to the College's Project Manager a comprehensive list of the manufacturer's products proposed for this Work as soon as practicable and within thirty (30) calendar days after receipt of notice to proceed. The list shall include information on materials, equipment and fixtures as may be required for the College's Project Manager's preliminary review; partial lists will not be considered. Acceptance of this list of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data and samples which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the College's final review.

3.3.7. Tariffs

The Contractor's Contract Sum shall be presumed to include all tariffs levied on materials, supplies, equipment or other property incorporated into or used on the Project, whether the tariff is imposed before or after the Contract is signed.

3.4. WARRANTY/GUARANTEES

3.4.1. Except to the extent that the Contract Documents impose greater warranty obligations on the Contractor for all or any part of the Work, the Contractor warrants:

3.4.1.1. That the materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents;

3.4.1.2. That the Work contains no faulty or imperfect material or equipment or any imperfect, careless or unskilled workmanship;

3.4.1.3. That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended and shall operate with ordinary care and attention in a satisfactory and efficient manner; and

3.4.1.4. That the entire Work shall be watertight and leak proof in every particular.

3.4.1.5. Unless otherwise indicated in the Contract Documents, for a period of one year commencing on the date of Substantial Completion or such other date agreed upon, the Contractor shall schedule, manage and monitor all warranty call-backs requested by the College and re-execute, correct, repair, or remove and replace with proper Work, without cost to the College, any Work found not to be as guaranteed by this section or otherwise not in conformity with the Contract and that it will make good all damages or cost to other Work or materials in the process of complying with this section in accordance with Article 10, Correction of Work. The Contractor shall pay for tests and inspections made necessary by faulty Work. The correction period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive Final Completion of the Work under the Contract and the Contract Close Out.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.4.2. Nothing contained in Subsection 3.4.1.5 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of time period of one year as described in Subsection 3.4.1.5 relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

3.4.3. The Contractor shall cause to be assigned to the College all warranties/guarantees furnished by manufacturers and suppliers of equipment and supplies for the Work. The assignment shall not affect Contractor's warranty obligations to the College.

3.5. TAXES

3.5.1. The College is not exempt from payment of Maryland State Sales Tax and Municipal Occupation (Sales) and/or Use Taxes on materials purchased for this Work.

3.5.2. The Contractor and Subcontractors shall pay sales, consumer, use, unemployment, old age pension and/or other taxes imposed by local, state and/or the Federal government, except taxes and assessments on the real property comprising the Work site. The Contractor is to include such expenses in its proposal.

3.6. PERMITS AND LICENSES

3.6.1. The College will file for the building permit, if one is necessary, with the local authority. The Contractor shall obtain and pay for any and all permits (other than the building permit), and for all licenses and certificates of inspection necessary for the execution and completion of the Work as called for in the Contract Documents. The Contractor will be required to pay all necessary fees to local authorities for permits and inspections and it shall include the cost of the fees in its base price. The College shall not be responsible for the actions or interpretations of county, municipal or other local agencies or officials with respect to the application of Federal, State or local laws, rules, ordinances, regulations, codes or policies to the Work.

3.6.2. The Contractor must be licensed as required by Title XVII, Subtitle VI or Title VIII of the Business Regulation Article, Annotated Code of Maryland.

3.7. PROSECUTION AND PROGRESS OF THE WORK

3.7.1. Notice to Proceed

3.7.1.1. After the Contract has been executed, the College's Project Manager will issue to the Contractor a "Notice to Proceed" and this notice will stipulate the date on or before which the Contractor is expected to begin Work. The specified Contract time shall begin on the starting date stated in the "Notice to Proceed." Any Work started or materials ordered before the starting date stated in the "Notice to Proceed" shall be at the risk of the Contractor.

3.7.1.2. Notice to Proceed will not be issued until the College receives from the Contractor performance, labor and material payment bonds, insurance certificates and other documents which are required by the Contract. The Contractor is prohibited from performing any Work on the site until proof of the insurance required by the Contract is provided to the College.

3.7.2. Hours of Work

3.7.2.1. The Work shall be performed during regular working hours except in the event of emergency, or when required to complete the Work within the time stated in the Contract. What constitutes regular working hours will be agreed upon at the preconstruction conference.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.7.2.2. The Work shall be suspended on the College's Commencement Day (typically the third Friday in May) unless otherwise agreed to by the College.

3.7.2.3. The Work may be performed on night shifts, overtime, Sundays and holidays when permission to do so has been obtained from the College, at no additional cost to the College, and provided that Contractor complies with any additional regulations regarding off-hours work mandated by regulatory authorities.

3.7.3. Construction Schedule

3.7.3.1. Time

- (1) All time limits in the Contract Documents are of the essence of the Contract. Contractor and the College agree that the time stated in the Contract for the completion of the Work is a reasonable time, considering the usual climatic range and the usual business conditions prevailing in the locality of the Project. The Contract time shall be the full time allowed or required for completion of every task involved in completion of the Work, including lead-time for ordering and fabrication of equipment and materials.
- (2) The College is not obligated (a) to accept an early completion schedule from the Contractor, or (b) to accept the Project prior to the completion date stated in the Contract. The College will not be liable for any claims based on the Contractor's assertion of an intention to finish early.

3.7.3.2. Preliminary Schedule

- (1) The Contractor shall agree to comply with the Preliminary Project Schedule prepared by the College and included in the Contract Documents or with the Contractor's Proposed Project Schedule, if one was required as part of the Contractor's proposal submission. Agreement by the Contractor to comply with the Preliminary Project Schedule or Contractor's Proposed Project Schedule also means agreement by the Contractor to comply with subsequent reasonable updates prepared or requested by the College.
- (2) Within 14 days of the execution of the Contract, Contractor must submit for approval, Preliminary Schedule information outlining all activities for the Contractor's work as may be reasonably requested by the College's Project Manager. Coordinate schedule information with milestones indicated in the Preliminary Project Schedule. This preliminary information must be approved prior to the first Application for Payment being processed. Include each significant construction activity, coordinate each activity with other activities and schedule each construction activity in proper sequence. The College's Project Manager may decline to issue a Notice to Proceed until Contractor has submitted the required schedule information and it is approved by the College's Project Manager. Nothing in this section shall be construed to require the College's Project Manager to issue a Notice to Proceed when the required schedule information has been submitted and approved.
- (3) With submission of the preliminary schedule information, include a listing by date of submission of all submittals required. Identify those required to maintain orderly progress of the Work, and those required early because of long lead time for manufacture or fabrication.

3.7.3.3. Completion Schedule

- (1) Within 30 days after Contract execution and at such other times as required by subsections 3.7.3.4 and 3.7.3.8, the Contractor shall submit for approval, updated schedule information indicating the time allocated by the Contractor for the performance of each portion of the Work and the submittal information required by subsection 3.7.3.2 (3), properly and reasonably sequenced for achieving each task shown on the schedule. Coordinate schedule with milestones indicated in the Preliminary Project Schedule.
- (2) The Contractor's construction schedule shall begin with the date of issuance of Notice to Proceed and conclude with the required date of final completion of the project as stated in the Contract Documents. Float or slack time available in the schedule at any time shall not be for the exclusive use or benefit of either the Contractor or the College, but is jointly owned.
- (3) The Contractor's schedule information shall include a complete itemized breakdown of the

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

Work, listed by activity or event number, including items related to the General Conditions, all necessary dates for submittal, review and response, and re-submittal (if necessary), and for each activity shall show at a minimum: (1) a sequence of operations; (2) the dates of commencement and completion of each item of the Work; and (3) delivery for material and equipment. Unless otherwise indicated in the Contract Documents or agreed upon by the College's Project Manager the duration of each activity shall be twenty-one calendar days or less.

- (4) Contractor shall submit with each Application for Payment revised schedule information accurately updated to reflect all: (1) revisions to the schedule (2) changes made or planned in the construction sequence; (3) actual construction activities to date including (i) commencement and completion dates for activities started or completed during the reporting period; and (ii) current progress of activities started in prior reporting periods including completion dates for activities completed during the reporting period; (4) delays and their effects on the critical path; (5) extensions of time granted by the College and (6) the Contractor's planned schedule or recovery schedule for completing remaining activities. This required schedule information update shall be furnished monthly whether or not Contractor submits an application for payment in that month.
- (5) In the event that there are change orders, they shall be reflected as new activities, or as changes in logic and/or time framing of existing activities. They shall be introduced at the next updating after receipt of a change order, and shall be subject to the approval of the College's Project Manager. Change order logic shall affect only those intermediate activities and performance dates directly concerned. Adjustments required in completion dates for those intermediate dates, or for the Contract as a whole, will be considered only to the extent that there is not sufficient remaining float to absorb the additional time which may be authorized for completion of individual activities.
- (6) Whenever the Project shall be behind schedule or alleged by either party to be behind schedule, the College may require the Contractor to furnish, at no additional cost to the College revised schedule information (hereinafter called a "recovery schedule") showing how the Contractor will finish their work by the Contract completion date.
- (7) All of Contractor's schedule information, including monthly schedule information updates and any recovery schedule information required shall be subject to review and approval by the College's Project Manager.
- (8) The Contractor shall cooperate with the College's Project Manager in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other contractors or the construction or operation of College's own forces. The Contractor shall participate with other contractors and the College's Project Manager and College in reviewing schedules when directed to do so. The Contractor shall make any revisions to their construction schedule information deemed necessary after a joint review.
- (9) Approval by the College's Project Manager of any schedule information submitted shall constitute approval of the schedule information only for general conformity with Contract requirements and shall not constitute approval, acceptance or admission of the reasonableness, accuracy, achievability, or feasibility of the schedule information or of the Contractor's ability to meet the schedule, or waiver or excuse of default or delay by the Contractor, extension of the time for completion, waiver or modification of Contract requirements, admission of fault or responsibility for delay on the part of the College or acceptance or admission on the part of the College of any liability or responsibility for the schedule or for acceleration or other costs or delay damages of the Contractor which are inferable from the Contractor's schedule information or update.
- (10) The College is not obligated to pay the Contractor for Work completed until proper, accurate schedule information, and updates are furnished as required and it is not liable for and Contractor is not entitled to damages, compensation, or time extensions for delays starting, occurring or continuing during the period when an accurate and reasonable schedule information or update was due but not furnished by the Contractor.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.7.3.4. All schedule information, including initial schedule information, recovery schedule information and monthly updates, shall be submitted in three (3) paper copies and one (1) electronic copy in Portable Document Format (PDF), unless otherwise indicated.

3.7.4. Progress Meetings

3.7.4.1. Contractor shall plan and participate in routine Project progress meetings to brief College's Project Manager and Architect/Engineer on the status of the Project. Frequency of meetings shall be determined at a preconstruction conference, but shall typically occur not less than every two weeks. Primary agenda topics shall include reporting status of: Regulatory Approvals, Submittals, RFIs, Commissioning, Safety, Security and Housekeeping, Schedule, Contracts/Finance and Close-Out. Unless otherwise indicated in the Contract Documents, record meeting minutes will be prepared by the Contractor.

3.7.4.2. Contractor shall provide reasonable advance notice to the College's Project Manager and Architect/Engineer regarding scheduling of pre-construction and pre-installation conferences with subcontractors. At a minimum, Contractor should anticipate College's participation in conferences related to underground work, demolition work, primary structural work, all building enclosure work, MEP and telecommunications, AV and security systems work.

3.7.5. Progress Meeting Documentation and Reports

3.7.5.1. Contractor shall prepare, maintain, monitor and make available to the College, reasonable Project progress documentation including, but not limited to:

- (1) Contractor's Daily Reports: listing weather conditions, trades on site, manpower, brief description of activities underway, quality control issues raised, commissioning activities underway and any safety or security issues encountered. Append Daily Reports from Subcontractors to the Contractor's Daily Report.
- (2) Minutes from Pre-Construction and Pre-Installation conferences.
- (3) Minutes from Contractor's Subcontractor and/or Foreman's meetings: including agenda topics, brief summary of issues discussed resolutions discussed and issues requiring attention.
- (4) Inspection reports provided by Independent Testing Agencies and/or Laboratories, when applicable.
- (5) Inspection reports provided by any authorities having jurisdiction on the Project.

3.8. REFERENCE DOCUMENTS FOR THE WORK

3.8.1. Conformance Documents

3.8.1.1. The College may issue conformance documents, incorporating all Addenda issued during the bid/proposal period into the Contract Documents, for the Contractor's convenience at the start of Work. It is the Contractor's sole responsibility to verify the accuracy of the conformance documents. At the Contractor's election, conformance documents may serve as the basis for Progress Documents. Use of such documentation shall not in any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents. In the event of a discrepancy between the conformance documents and the Contract Documents, the Contract Documents shall govern.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.8.2. Progress Documents

3.8.2.1. The Contractor shall keep one complete set of all Drawings, Specifications, Construction Progress Schedule, and shop drawings at the job-site current and in good order. As the Work progresses, the Contractor shall keep a complete and accurate record of all changes or deviations from the Contract Documents, indicating the Work as actually installed. All underground utility locations associated with the scope of work, or revealed during the conduct of the work, shall be recorded by the Contractor's surveyor and referenced to a campus benchmark provided by the College. All such changes shall be neatly and correctly shown on black line prints of the drawings affected, or in the Specifications, with appropriate supplementary notes. This record set of prints of Drawings, shop drawings and Specifications shall be kept at the job site for inspection by the College's Project Manager and Architect/Engineer.

3.8.3. Record Documents

3.8.3.1. At the completion of the Work, the Contractor shall certify by endorsement thereof, that each of the revised prints of the Drawings and Specifications is complete and accurate. Prior to the Contractor's Application for Final Payment, and as a condition to its approval by the College, the Contractor shall assemble its record drawings and specifications, review them for completeness and submit them to the College's Project Manager. The Contractor shall provide suitable transfer cases and deliver the records therein, indexed and marked for each division of the Work.

3.8.3.2. No review or receipt of such records by the College's Project Manager shall be a waiver of any deviation from the Contract Documents or the Shop Drawings or in any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents and the Shop Drawings to the extent they are in accordance with the Contract Documents.

3.9. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.9.1. After checking and verifying all field measurements and after complying with applicable procedures specified in the Contract Documents, Contractor shall submit to the College's Project Manager and Architect/Engineer, in accordance with the Contractor's schedule, Shop Drawings and other submittals which will bear a stamp or specific written indication that the Contractor has satisfied its responsibility under the Contract Documents with respect to the review of such submissions. The data on the Shop Drawings or submittal must be complete with respect to quantities, dimensions, specified performance and/or design criteria, materials and similar data to enable the Architect/Engineer to review the information as required. These documents shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.

3.9.2. Obtaining electronic documentation to aid in the preparation of Shop Drawings and submittals shall be the sole responsibility of the Contractor and may be subject to certain terms and conditions required by the Architect/Engineer and/or College. The College cannot guarantee that electronic documentation prepared by the Architect/Engineer will be made available to the Contractor. If provided, Contractor shall not be entitled to rely on such documentation for accuracy and use of such documentation shall not in any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

3.9.3. The Contractor shall prepare and routinely update a submittal log indicating the status of submittals.

3.9.4. Unless otherwise indicated in the Contract Documents or agreed to by the College in writing, the Contractor shall send the College one copy of all Shop Drawings and product data coincident with the initial and any subsequent submissions to the Architect/Engineer. The College will forward any comments it desires to make to the Architect/Engineer within the designated review time.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.9.5. In addition to the items noted in the Specifications as requiring Shop Drawings or other details, Shop Drawings and details shall be required for all items which are specifically fabricated for the Work or when the assembly of several items is required for a working unit.

3.9.6. The College's Project Manager and Architect/Engineer will examine the Shop Drawings and product data submittals with reasonable promptness. The College's Project Manager and Architect/Engineer will note whether they are approved, approved with corrections and/or conditions, or rejected. The Architect/Engineer will return the Shop Drawings and project data submittals with the final action to the Contractor and also provide one copy each to the College and College's Project Manager.

3.9.7. The Contractor must allow the Architect/Engineer, College's Project Manager at least fourteen calendar days following receipt of each submittal or re-submittal of Shop Drawings and product data submittals to review the documents and respond to the Contractor. Items requiring longer than fourteen calendar days of review time will be identified in the Specifications. The minimum time allowed for the Architect/Engineer, College's Project Manager to review the submittal shall be increased to the extent that additional time for review is needed due to the fault or the responsibility of the Contractor or its Subcontractors and suppliers. The Contractor will be notified of the cause of the delay and advised of how long it will take to complete the review; provided, however, that mere failure to give the Contractor such notice shall not entitle the Contractor to compensation or a time extension.

3.9.8. When the Architect/Engineer, College's Project Manager or the College desires corrections, or rejects the Shop Drawings, the Contractor shall resubmit the Shop Drawings with the required corrections in a timely manner.

3.9.9. Unless the Contractor has, in writing, at the time of the submissions, expressly notified the Architect/Engineer, College's Project Manager and the College to the contrary, the College and the Architect/Engineer may assume that Shop Drawings and other submittals from the Contractor are in conformity with the Contract Documents and do not involve any change in the Contract price, or any change which will alter the space within the structure, or alter the nature of the building or Work from that contemplated by the Contract Documents, or constitute a substitution of material or equipment or a change in the Contract or the scope of Work. If the Contractor fails to give notice strictly in accordance with this subsection, approval of any Shop Drawing or submittal shall not be binding on the College.

3.9.10. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, product data, samples and similar submittals until the respective submittal has been approved by the Architect/Engineer. Such Work shall be in accordance with accepted submittals. Work performed without approval shall be at the Contractor's risk.

3.9.11. Shop Drawings, product data, samples and similar submittals shall be marked, tagged, or otherwise properly identified with the name of the Contractor, the name of the Project, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number for identification of each item. Each tag or sticker shall have clear space for the stamps of the Contractor, College's Project Manager and the Architect/Engineer.

3.9.12. Samples of materials which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions shall, if not submitted in the standard containers, be supplied with such labels and application standards.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.9.13. Should the Contractor consider any rejection or notation on the Shop Drawings or other submittals by the College's Project Manager or Architect/Engineer or any other action or inaction of the College's Project Manager or the Architect/Engineer to cause a change in the scope of the Work from that required by the Contract Documents, whether or not such change may affect contract price or time, then the Contractor shall desist from further action relative to the item in question and shall in writing (1) immediately notify the Architect/Engineer, the College and College's Project Manager requesting clarification; and (2) furnish them, within seven (7) days, with a notice explaining the nature of the change and whether increased or decreased cost and/or time is anticipated. No Work concerning the Shop Drawing or other submittal in question shall be executed until the entire matter is clarified and the Contractor is ordered by the College to proceed. Failure of the Contractor to serve written notice as required above shall constitute a waiver of any claim in relation thereto.

3.10. SITE INFORMATION, ACCESS, USE AND RESTRICTIONS

3.10.1. Site Information

3.10.1.1. Contractor shall review existing conditions and related College record information to become completely familiar with site and adjacent conditions. Contractor shall make arrangements to review available documentation and undertake explanatory site visits with College's Project Manager and Campus Facilities Office.

3.10.2. Campus Coordination Requirements

3.10.2.1. Contractor shall furnish a Site Mobilization Plan to the College's Project Manager for review and approval prior to the start of Work. Plan shall indicate features including proposed construction delivery route, materials and trash storage areas, site office and toilet facility locations, fencing, erosion control measures, tree and plant protection, temporary lighting, temporary traffic control measures and signage.

3.10.2.2. Contractor shall meet with Campus Facilities and Security Offices prior to the start of Work to review Contractor's proposed Site Mobilization Plan, and to coordinate Project needs with Campus Operations and Maintenance, House and Grounds-keeping and Security operations.

3.10.2.3. In the event that Contractor's operations affect or disrupt campus access roads and/or building entrances or exits, Contractor shall coordinate maintaining or re-directing access in accordance with the Contract Documents and following the direction and policies of the Campus Security Office and any affected emergency service providers.

3.10.2.4. Contractor shall meet with College's Environmental Safety Office prior to the start of Work for projects where Hazardous Materials Abatement or use of Hazardous or Toxic Substances is expected.

3.10.2.5. Any Utility shut down required must be scheduled with relevant utility Owner and Campus Facilities at least 5 days in advance.

3.10.2.6. Unless otherwise indicated in the Contract Documents, vehicular and pedestrian access to properties shall be maintained operational to the maximum possible extent. Driveways to private properties shall not be blocked. Sidewalks and crossings shall be kept open for the passage of pedestrians. Streets shall not be unnecessarily obstructed and, unless the College shall authorize the complete closing of a street, the Contractor shall take such measures as may be necessary to keep the street open for traffic. The Contractor shall provide and maintain suitable and sufficient provisions, including but not limited to flag persons, barricades, warning signs and detour signs, necessary for the protection of the work and safety of the public. All barricades, obstructions and signage shall be illuminated from sunset to sunrise, daily.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.10.2.7. Parking at all campus locations is limited. Other than one or two spaces for supervisory personnel, parking space for construction site personnel in campus parking lots should not be anticipated. For Projects where Work is confined within a site construction fence, Contractor may provide limited parking for construction personnel within that fenced area as long as parking does not impede progress of the Work or impede access by emergency or campus service vehicles.

3.10.3. Coordination where Work is in or adjacent to an Occupied Existing Building

3.10.3.1. In cases where Work is scheduled to take place in or adjacent to occupied existing buildings, Contractor shall coordinate the Work as reasonably directed by the College's Project Manager to reduce impact of construction operations on building occupants.

3.10.3.2. Noise that disrupts classes cannot generally be tolerated. The Contractor shall notify the College's Project Manager before starting any Work which might disrupt classes. Notification shall be given well in advance of any such situation in order that the Contractor and College's Project Manager together can reach a mutually agreeable time in which the Work can be accomplished. Noise of a brief/infrequent nature may not be found necessary to reschedule. Always contact the College's Project Manager if in doubt. Any rescheduling required due to noise aversion will not be a cause for either a delay or cost claim.

3.10.3.3. When requested, Contractor shall provide a detailed adjacent Work coordination plan indicating information including schedule of activities, limits of disturbance, sequence of construction, access points and their management, barriers, interface with controls such as fire alarm, security or building automation systems operation, for areas that directly interface with or are affected by the Work.

3.10.4. Temporary Facilities

Unless otherwise indicated in the Contract Documents:

3.10.4.1. The Contractor shall be responsible for arranging with the College's Project Manager for general services and temporary facilities as required for the proper and expeditious prosecution of the Work; including but not limited to: use of toilets; temporary storage; temporary electrical power; and temporary water.

3.10.4.2. The Contractor shall, at its own expense, make all temporary connections to utilities and services in locations acceptable to the College's Project Manager and local authorities having jurisdiction thereof; furnish all necessary labor and materials, and make all installations in a manner subject to the acceptance of such authorities and the College's Project Manager; separately meter and pay for utilities (electricity, water, sewer, and telephone) consumed; maintain such connections; remove the temporary installation and connections when no longer required; restore the services and sources of supply to proper operating conditions.

3.10.4.3. The Contractor shall supply and maintain an office trailer or shed and a telephone, telefax, and/or computer on the site for the purpose of facilitating construction coordination and communication.

3.10.4.4. At the completion of the Work, Contractor's onsite facilities shall be removed, and the site restored to conditions that meet or exceed those existing at the start of Work.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.10.5. Existing Utilities

3.10.5.1. The attention of the Contractor is directed to the likely presence of existing underground utilities and overhead utilities and poles located within the Work site. The Contractor is cautioned that some utilities may not be catalogued on College or utility service provider record documents. Further, due to depth and/or types of materials used, some utilities may not be identifiable using traditional utility service locating methods.

3.10.5.2. Where any underground services are expected to be encountered during construction, prior to the start of work, the Contractor shall:

- (1) Review College record documents pertaining to affected underground services.
- (2) Interview Campus Facilities office with regard to affected underground services.
- (3) Call "Miss Utility" at least 48 hours in advance of construction for marking of public utilities.
- (4) Be responsible for costs and coordination of utility locator services necessary to locate and mark any private utility services within the Work site, whether or not indicated on record or Contract Documents.
- (5) Notify the College's Project Manager, Campus Facilities office, electric utility company, natural gas supplier, providers of communications, and any affected utility or other organization with a right-of way in or immediately adjacent to the Work area at least one week prior to starting work in the areas in which services are located and cooperate with any organization who elects to have a representative present during the conduct of the Work.

3.10.5.3. The Contractor shall exercise special care not to damage or disturb the utility infrastructure in any way.

3.10.5.4. The Contractor shall carefully hand dig representative test pits across the full width of anticipated trenches to confirm utility locations and to reveal any unknown utility conditions for assessment prior to permitting use of mechanical excavation equipment.

3.10.5.5. All underground utility locations associated with the scope of Work, or revealed during the conduct of the Work, including the location, size and material of all water, sanitary sewer, storm sewer, gas, electric, telephone, data, fiber, cable television, duct banks, steam and chilled water utilities within the project area, shall be recorded by the Contractor's surveyor and referenced to a campus benchmark provided by the College, which is in Maryland State Plane NAD83(NSRS2007) horizontal datum; NAVD88 vertical datum.

Indicate rim and invert elevation of sanitary sewers, storm sewers and storm water management structures. For all sub-surface utility lines on the site, locate the first connection to the off-site system. The horizontal and vertical location of all subsurface utilities must be measured directly prior to backfill. Locations shall be recorded on project progress documents. Electronic record documentation, in AutoCAD format, is required at project close-out.

3.10.5.6. Contractor shall maintain utility paint marks and flags, showing utility location and depth, until work is complete and survey information is transferred to project progress documents.

3.10.5.7. Contractor shall notify the College's Project Manager and Campus Facilities Office when underground utilities are discovered that are not identified by prevailing industry standard marking methods (e.g. color-coded tape and trace wires for non-metallic utilities). Campus Facilities Office will coordinate proper marking of utilities prior to Contractor's completion of the Work.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.10.5.8. In the event that utility service is damaged during the conduct of the Work, Contractor shall notify the College's Project Manager and Campus Facilities and Security Offices. Repair of damages resulting from Contractor's actions shall be the responsibility of the Contractor. Regardless of responsibility, Contractor shall immediately undertake necessary repairs, including conducting Work off-hours and/or on weekends, to ensure prompt restoration of service in order to minimize impact of unplanned utility outages on College operations.

3.10.6. Erosion Control

3.10.6.1. The Contractor shall incorporate all permanent erosion control features, where applicable, into the Work at the earliest practicable time and shall maintain them in proper condition during the course of the Contract.

3.10.6.2. Temporary measures shall be used to control conditions that develop prior to installation of permanent control features, or that are needed to temporarily control erosion resulting from normal construction practices. Temporary controls may include off site control measures where such Work is necessary as a direct result of Contractor's construction activity.

3.10.7. Tree and Plant Protection

3.10.7.1. Unless otherwise shown in the Contract Documents, the Contractor shall protect all trees and plants which are liable to injury by construction operations and/or site mobilization plan.

3.10.7.2. Trees may not be used for any attachment or anchorage. Tree root zones shall be protected from overburden from construction traffic or storage of materials.

3.10.8. Snow and Ice Removal

3.10.8.1. Contractor shall provide snow and ice removal from within the project site area and from pedestrian or vehicular routes providing immediate access to or routing around the project site.

3.10.8.2. When the College is officially closed due to snow and ice conditions and the Contractor plans to work, it is the Contractor's responsibility to provide additional snow and ice removal, including removal beyond the site project limits, as necessary to provide access required by its Workers, Subcontractors and/or suppliers.

3.10.8.3. At all times, Contractor shall cooperate and coordinate his snow and ice removal activities with College's snow and ice removal activities.

3.10.9. Trash Removal: Salvage and Recycling

Unless otherwise indicated in the Contract Documents:

3.10.9.1. Salvage rights belong to the Contractor when the Project scope of Work includes demolition and removal of existing materials or equipment.

3.10.9.2. Contractor shall implement best recycling practices as part of its trash removal protocol, with particular attention to sorting and recycling corrugated cardboard packaging materials, wood pallets, paper products and metal products.

3.10.10. Project Signage

3.10.10.1. Contractor may place his identification signage for promotional purposes at the Project site, subject to review and approval by the College's Project Manager.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.11 HAZARDOUS AND TOXIC SUBSTANCES

3.11.1. Hazardous and Toxic Substances

3.11.1.1. The Contractor shall comply with all applicable federal, state, bi-county and local laws, ordinances and regulations relating to hazardous and toxic substances, including such laws, ordinances and regulations pertaining to access to information about hazardous and toxic substances, in effect on the date of the Contract and as amended from time to time. The Contractor shall further comply with any special provisions or requirements, including more stringent provisions, mandated by any entity having jurisdiction, including but not limited to the Montgomery County Department of Environmental Protection.

3.11.1.2. At least ten (10) calendar days prior to commencing any on-site Work required by these Contract Documents, the Contractor shall compile, maintain and submit to the College's Project Manager a "Chemical Information List" which shall contain the following information for each hazardous and toxic substance used, manufactured, processed, formulated, packaged, repackaged, handled, reacted, transferred, or stored at the job site: the common name, the chemical name, and identification of the Work area in which the hazardous chemical is found. A copy of this list shall be posted at all times at the Contractor's on-site project office. This list shall be updated and maintained in a current status by the Contractor as to the hazardous and toxic substance used, manufactured, processed, formulated, packaged, repackaged, handled, reacted, transferred or stored at the job site. The Contractor shall submit to the College's Project Manager an updated Chemical Information List at least 48-hours prior to the introduction of any additional hazardous and toxic substance not listed on the current Chemical Information List which is to be used, manufactured, processed, formulated, packaged, repackaged, handled, reacted, transferred or stored at the job site.

3.11.1.3. The Contractor shall provide the College's Project Manager at least 48-hours prior to commencing Work requiring the use of a hazardous and toxic substance with a "Material Safety Data Sheet" or, in the case of a controlled hazardous waste substance, a hazardous waste manifest, for each hazardous and toxic substance listed or subsequently added to the Chemical Information List in compliance with applicable laws, ordinances and regulations.

3.11.2. Asbestos-Containing Materials

3.11.2.1. The Contractor shall not use, install, or apply any asbestos-containing building materials on any Work. Any exception to this requirement must be requested in writing by the Contractor with an explanation of Work requirements. The College will review any such request and must approve in writing the use of any asbestos-containing building materials on any Work prior to use, installation or application. Upon completion of the Project and before final acceptance is issued by the College, the Contractor shall provide the College's Project Manager with written and notarized certification that it did not use, install or apply asbestos-containing materials.

3.11.3. Environmental Litigation

3.11.3.1. If the performance of all or any part of the Work is suspended, delayed or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation as defined below, or by the order of any state or federal agency or official enforcing applicable laws, such expense, delay or interruption shall be considered as if ordered by the College under Article 2, College's Right To Stop Or Suspend Work. If it is determined that the suspension, delay, or interruption is due wholly or in part to acts or omissions of the Contractor or breach or violation of the terms of this Contract or acts of the Contractor not required by this Contract, the Contractor shall be responsible for all additional costs and delays resulting from such acts or omissions. The term "environmental litigation" as used herein means a complaint filed in court alleging that the Work will have an adverse effect on the environment and that the College has not duly considered, either substantively or procedurally, the effect of the Work on the environment.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.12. CUTTING AND PATCHING

3.12.1. The Contractor shall be responsible for any cutting, fitting, or patching, required to complete the Work or to make its parts fit together properly.

3.12.2. The Contractor shall not damage or endanger a portion of the Work or other construction of the College or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the College or a separate contractor except with written consent of the College and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the College or a separate contractor the Contractor's consent to cutting or otherwise altering its Work.

3.13. CLEANING

3.13.1. Progress Cleaning

3.13.1.1. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract, and shall remove and dispose of waste materials or rubbish prior to the end of each working day.

3.13.1.2. If the Contractor fails to clean up as provided in the Contract Documents, the College's Project Manager may do so and the cost thereof shall be charged to the Contractor.

3.13.2. Final Cleaning

3.13.2.1. At completion of the Work the Contractor shall remove from and about the Work waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

3.13.2.2. Contractor shall wet clean all floors and surfaces or otherwise clean any equipment and materials installed in accordance with manufacturer's instructions.

3.14. ROYALTIES, PATENTS AND LICENSE FEES

3.14.1. The Contractor assumes the risk that any materials, equipment, processes or other items required under the Contract or furnished by the Contractor are subject to any patent, copyright, mark, secret or other property right of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by the College. Contractor shall defend all suits or claims of infringement of any patent, copyright, mark, secret or other property right of another and shall save the College harmless from loss or expense on account thereof.

3.14.2. When an item specified by the College or furnished by the Contractor infringes or is alleged to infringe any patent, copyright, mark, secret or other property right of another, the Contractor will, at its option, and at no additional cost to the College, (1) procure for the College the right to use the item; (2) replace the item with an approved, non-infringing equal; or (3) modify the item so that it becomes non-infringing and performs substantially the same as the original item.

3.14.3. The review by the College of any method of construction, invention, appliance, process, article, device or material of any kind shall be for its adequacy for the Work, and shall not be an approval of the use thereof by the Contractor in violation of any patent or other rights or any third person.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

3.15. INDEMNIFICATION

3.15.1 The Contractor shall be responsible for any property damage, loss, personal injury, death and/or any other damage which may occur by reason of the Contractor's acts, negligence, willfulness or failure to perform any of the obligations required by this Agreement. The Contractor agrees to indemnify and save harmless the College and its respective employees, volunteers, students, and trustees, as applicable, (the "Indemnitees") from any claims, loss, costs, damages or other expenses suffered or incurred by the Indemnitees, including attorney's fees and costs, by reason of the Contractor's acts, negligence, willfulness or failure to perform any of the obligations required by this Agreement. The Contractor at its own expense shall defend the Indemnitees in any action or suit brought against any of the Indemnitees arising out of the Contractor's acts, negligence, willfulness or failure to perform any of the obligations required by this Agreement. Any acts, negligence, willfulness or failure to perform any of the obligations required by this Agreement on the part of any agent, servant, employee or Subcontractor of the Contractor, or any Subcontractor's agent, servant or employee, are deemed to be the Contractor's acts, negligence, willfulness or failure to perform any of the obligations defined by this Agreement.

3.15.2 In claims against any person or entity indemnified under subsection 3.15.1 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under subsection 3.15.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.15.3. The College may retain such moneys due or to become due the Contractor under this Agreement as it considers necessary until such suits or claims for damages have been settled or otherwise disposed of and satisfactory evidence to that effect has been furnished to the College.

3.15.4. The provisions of this Article shall survive the termination of the Agreement.

ARTICLE 4 – ADMINISTRATION OF THE CONTRACT

4.1. CLARIFYING INSTRUCTIONS

4.1.1. The College shall be the final interpreter of the Contract Documents. Through the College's Project Manager, the College will furnish, with reasonable promptness, such clarifications as it may deem necessary for the proper execution of the Work. Except as otherwise expressly provided in the Contract Documents, all recommendations by the Architect/Engineer and/or College's Project Manager with cost or schedule ramifications are subject to approval by the College. The Work shall be executed in conformity therewith and the Contractor shall do no Work without proper drawings and instructions. The Architect/Engineer and/or College's Project Manager have no authority to waive or change the requirements of the Contract Documents except to make minor changes in the Work which do not result in a claim for extra cost or time, and which are consistent with the intent of the Contract Documents.

4.1.2. Wherever typical parts or sections of the Work are completely detailed on the drawings and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.1.3. Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on drawings, the Architect/Engineer shall supply them on request to the Contractor.

4.2. REQUESTS FOR INFORMATION

4.2.1. In the event that the Contractor requires clarifications on or discovers conflicts or discrepancies in the Contract Documents, the Contractor shall submit a "Request for Information", in a format suitable to the College's Project Manager and Architect/Engineer prior to proceeding with the Work.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

4.2.2. Unless otherwise indicated in the Contract Documents, the Contractor shall prepare and routinely update an RFI log indicating the status of RFIs.

4.2.3. The Contractor must allow the Architect/Engineer, College's Project Manager and the College a reasonable time following receipt of each RFI to review the documents and respond to the Contractor. To the extent that additional time for review is needed to clarify the information submitted by the Contractor or its Subcontractors and suppliers, the Contractor will be notified of the cause of the delay and advised of how long it will take to complete the review; provided, however, that mere failure to give the Contractor such notice shall not entitle the Contractor to make a claim for additional compensation or a time extension. The Architect/Engineer will return the completed RFI response to the Contractor and also provide one copy each to the College and College's Project Manager.

4.2.4. The Contractor shall perform no portion of the Work requiring RFI response until the respective RFI response has been issued by the Architect/Engineer. Work performed without a response shall be at the Contractor's risk.

4.2.5. Should the Contractor consider any RFI response to cause a change in the scope of the Work from that required by the Contract Documents, whether or not such change may affect contract price or time, then the Contractor shall desist from further action relative to the item in question and shall in writing (1) immediately notify the Architect/Engineer, the College and College's Project Manager requesting clarification; and (2) furnish them, within seven (7) days, with a notice explaining the nature of the change and whether increased or decreased cost and/or time is anticipated. No Work related to the RFI shall be executed until the entire matter is clarified and the Contractor is ordered by the College to proceed. Failure of the Contractor to serve written notice as required herein shall constitute a waiver of any claim in relation thereto.

4.3. SITE VISITS AND OBSERVATIONS

4.3.1. The College's Project Manager, and Architect/Engineer, shall at all times have access to the Work wherever it is in progress. The Contractor shall provide proper and safe facilities for such access and for visits at the place of manufacture or elsewhere.

4.3.2. Inspections by the College's Project Manager, or Architect/Engineer, are for the sole benefit of the College. If the Contract Documents, the College Project Manager's, or Architect/Engineer's instructions, or laws, ordinances or any public authority require any Work to be specially tested or reviewed, the Contractor shall give the College's Project Manager timely notice of the Work's readiness for inspection. If the Work is scheduled to be inspected by an authority other than the College's Project Manager, and Architect/Engineer, the Contractor shall inform the College's Project Manager of the date fixed for such inspection. Required certificates of inspection shall be secured by the Contractor. Inspections by the College's Project Manager and Architect/Engineer shall be made promptly and where practicable, inspections may be made at the source of supply.

4.3.3. If any Work has been covered up contrary to the requirements of the Contract Documents or instructions of the College's Project Manager or Architect/Engineer before it has been observed, such Work must, if required by the College's Project Manager and/or Architect/Engineer, be uncovered for observation and replaced and/or recovered, at the Contractor's expense.

4.3.4. If any questioned Work has been covered up which is not required to be observed by the College's Project Manager and/or Architect/Engineer prior to being covered, the College's Project Manager and/or Architect/Engineer may request to see the Work in question and it shall be uncovered by the Contractor as directed. If such Work is found to be in accordance with the requirements of the Contract Documents, the College shall reimburse the Contractor for the cost of such uncovering and recovering. Such reimbursement shall be limited to the direct cost incurred plus the Contract's approved percentage for overhead and profit. If the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall pay all costs associated with uncovering, correcting and recovering the Work.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

4.3.5. The Contractor shall place its field engineers at the College's Project Manager's or Architect/Engineer's disposal for field checking during any inspection period. When layouts of the building and site work are to be made, the Contractor shall notify the College's Project Manager and Architect/Engineer in sufficient time so that the College's Project Manager and Architect/Engineer may be present.

4.3.6. Neither the presence nor the absence of the College's Project Manager or Architect/Engineer on the job shall relieve the Contractor from responsibility to comply with the provisions of the Contract Documents, nor from responsibility to remove and replace Work not in accordance therewith.

4.4. CLAIMS AND DISPUTES

4.4.1. Definition of Claim

4.4.1.1. A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to the terms of the Contract. The term "claim" also includes other disputes and matters in question between the College and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate claims shall rest with the party making the claim.

4.4.2. Claims for Concealed or Unknown Conditions

4.4.2.1. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the Contractor shall give notice to the College's Project Manager promptly before conditions are disturbed and in no event later than fifteen (15) calendar days after first observance of the conditions. Upon receipt of such notice the College's Project Manager and Architect/Engineer will promptly investigate such conditions and if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work will determine an equitable adjustment in the Contract Sum or Contract time or both. No change in the Contract Sum or Contract time or both will be allowed except by formal approval of the College. If it is determined that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the College's Project Manager shall so notify the Contractor in writing stating the reasons. Claims by Contractor which dispute such a determination must be made in accordance with subsection 4.4.5.

4.4.3. Claims for Extension of Time

4.4.3.1. If the Contractor is delayed at any time in the progress of the Work by any act or omission of the College, or its employees or by any other contractor employed by the College, or by changes ordered in the Work, or by strikes, lockouts, fire, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the College pending a decision, or by any cause which the College shall decide to justify the delay, the time of completion shall be extended for such reasonable time as the College may decide.

4.4.3.2. The Contractor may be entitled to a time extension, but no additional compensation, if the delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of another contractor in the performance of a contract with the College, fires, floods, epidemics, quarantine restrictions, strikes, foreign embargoes, unusually severe weather, or delays of Subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractor or suppliers, the time of completion shall be extended for such reasonable time as the College may decide.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

4.4.3.3. Claims for extension of time will be considered by the College only if made in writing to the College. Any claim for an extension of time must be made within seven (7) calendar days of the occurrence of conditions which in the opinion of the Contractor warrant such an extension. Failure to submit a claim for an extension of time within seven (7) calendar days shall constitute a waiver of Contractor's right to claim or receive a time extension. In the case of a continuing cause of delay, only one claim is necessary. Within thirty (30) days of filing a time extension claim notice, the Contractor shall submit a clear written statement and relevant supporting documentation substantiating the claim. The documentation shall include a revised schedule, which conforms to the schedules submitted each month with the payment requests and which shows the duration of the delay, its relation to other activities, and how the alleged delay was on the critical path. No time extension will be allowed except by formal approval of the College. The College with advice and assistance from the College's Project Manager shall ascertain the facts and the extent of the delay and extend the time for completing the Work, when in the College's judgment the findings of fact justify such an extension. The College's findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in section 4.5 of this Contract.

4.4.4. Claims for Equitable Adjustment for Delay

4.4.4.1 If a delay in completion of the Work is caused by the College and compensation is not provided for under Changes in the Work otherwise negotiated, and the Contractor's Work is materially affected by that delay, then the Contractor may be entitled to submit a claim for an equitable adjustment in compensation.

4.4.4.2 Schedule management within the Contract duration established at time of Bid/Proposal, including decisions that may alter sequencing of all or part the Work, does not constitute grounds for an equitable adjustment for delay claim from Contractor or its subcontractors or vendors. All prices are firm for the duration of the overall Contract term.

4.4.4.3 Only the following items may be recoverable by the Contractor as compensation or damages for delay:

- (1) Direct costs, consisting of
 1. actual additional salaried and non-salaried on-site labor expenses;
 2. actual additional costs of materials;
 3. actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment;
 4. actual additional extended field office expenses, excluding those which are to be included in overhead;
 5. actual additional reasonable costs of Subcontractor and suppliers at any tier for which the Contractor is liable;
- (2) actual additional costs proven by clear and convincing evidence, resulting from labor or other inefficiencies but only if proven by clear and convincing evidence; and
- (3) an additional percentage for overhead and profit of 15% for actual additional Work performed by the Contractor's own forces and 5% for actual additional Work performed by a Subcontractor.

4.4.4.4. No claim under this subsection shall be allowed for any costs incurred more than twenty days before the Contractor shall have notified the College in writing of the delay.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

4.4.4.5. No other compensation or damages are recoverable by Contractor for compensable delays or extensions of the completion time except as expressly stated herein. In particular, the College will not be liable for the following (by way of example and not of limitation) whether claimed by the Contractor or by a Subcontractor or supplier at any tier: (a) profit in excess of that provided herein; (b) loss of profit; (c) home office or other overhead in excess of that provided herein; (d) overhead calculated by use of the Eichleay formula or similar formulae; (e) consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency; (f) indirect costs or expenses of any nature except those expressly provided for herein; and (g) attorneys fees, costs of claims preparation and presentation, and costs of litigation.

4.4.4.6. There shall be deducted from the compensation payable to the Contractor under this section for delay any and all costs, expenses, and overhead recovered or recoverable by the Contractor under change orders issued to the Contractor or otherwise recovered or recoverable by the Contractor.

4.4.4.7. Contractor shall not be entitled to compensation or damages for delay unless, within seven (7) calendar days of the act, omission, occurrence, event or other factor alleged to have caused the delay, the Contractor notifies the College in writing of (a) the alleged delay and its anticipated duration; and (b) the act, omission, occurrence, event or other factor allegedly causing the delay. Knowledge on the part of the College or College's Project Manager of the act, omission, occurrence, event, or other factor or of the delay allegedly resulting there from, shall not excuse Contractor's failure to give the College the written notice required by this subsection.

4.4.5. Claims and Disputes Procedure

4.4.5.1. Unless a lesser period is prescribed by the Contract, the Contractor shall file a written notice of claim relating to the Contract, to the College's Project Manager within fifteen days after the basis of the claim is known or should have been known, whichever is earlier. Contemporaneously with, or within thirty days of filing of a notice of claim, but, as approved by College's Project Manager, no later than the date that final payment is made, the Contractor shall submit the claim to the College's Project Manager. The claim shall be in writing and shall contain:

- (1) an explanation of the claim, including references to all Contract provisions upon which it is based;
- (2) the amount of the claim;
- (3) the facts upon which the claim is based;
- (4) all pertinent data and correspondence that the Contractor relies upon to substantiate its claim. The Contractor shall submit such additional information as may be requested by the College's Project Manager; and
- (5) a certification by a senior official, officer or general partner of the Contractor or the Subcontractor, as applicable, that, to the best of the person's knowledge and belief, the claim is made in good faith, supporting data are accurate and complete, and the amount requested accurately reflects the Contract adjustment for which the person believes the College is liable.

4.4.5.2. A notice of claim or a claim that is not filed within the time prescribed by subsection 4.4.5.1 or a lesser period prescribed elsewhere in the Contract shall be dismissed and the claim shall be considered to be waived.

4.4.5.3. Upon receipt of the Contractor's claim, the College's Project Manager, shall take steps deemed necessary to review and investigate the claim. These steps may include an investigation and review of the facts pertinent to the claim, requesting additional information or substantiation from the Contractor or anyone else and taking such other steps as the College's Project Manager may consider appropriate.

4.4.5.4. Following their investigation, the College's Project Manager shall issue a written opinion regarding the claim, which shall contain such information as they consider appropriate.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

4.4.5.5. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the College's Project Manager's opinion, order, finding or interpretation. The Contractor shall take all reasonable action to mitigate or to avoid costs or damages for which the College may be liable. The College Project Manager's decision shall be final and conclusive unless the Contractor files a written appeal to the Vice President of Facilities & Public Safety within fifteen days of the date of the College's Project Manager's opinion. The Contractor shall include in its appeal all of the information which it wants considered in the appeal. The Vice President of Facilities & Public Safety, in consultation with such other persons as deemed advisable, shall prepare and deliver a written decision to the Contractor. The Vice Presidents' response shall be the College's final decision.

4.4.5.6. If the Contractor does not appeal the College's Project Manager's decision to the Vice President of Facilities & Public Safety within the time required under subsection 4.4.5.5, then the College's Project Manager's opinion shall be considered to be final, conclusive and binding upon the Contractor and College. There shall be no further right of review either administratively or in the courts. If the Contractor's timely appeals the College's Project Manager's decision to the Vice President of Facilities & Public Safety, the Vice President of Facilities & Public Safety's decision shall be considered to be conclusive and final unless within thirty days from the date of the Vice President of Facilities & Public Safety' decision the Contractor requests submitting the dispute to non-binding mediation as a condition precedent to commencing an action in the Circuit Court for Montgomery County. If no action is commenced within thirty days after the date of the Vice President of Facilities & Public Safety's decision, the Vice President of Facilities & Public Safety's decision shall be considered to be final, conclusive and binding on the Contractor and the College and the Contractor's right to appeal to the courts shall be waived.

4.4.5.7. If a court action is contemplated, all claims, disputes and other matters in question arising out of or related to the Contract or breach thereof shall first be submitted to non-binding mediation. Such mediation shall be in the nature of settlement discussions and privileged. The location of the mediation shall be in Rockville, Maryland.

4.4.5.8. The timely filing of a claim and the receipt of an opinion by the Contractor from the College's Project Manager, receipt of a decision from the College's Vice President of Facilities & Public Safety and pursuit of non-binding mediation are conditions precedent to filing an action in court. Any action which may be commenced against the College shall be filed in the appropriate state court in Montgomery County, Maryland. The Contract and disputes arising out of it shall be governed by the laws of the State of Maryland without regard to conflicts of laws provisions.

4.4.5.9. Claims by the College against the Contractor may be commenced at any time in any appropriate court without regard to the other provisions of the Contract Documents, including subsection 4.4. This right is in addition to all other rights which the College may have under the Contract Documents.

4.5. DELAYS AND DAMAGES

4.5.1. No Waiver of Delay

4.5.1.1. Except as may be expressly agreed otherwise by the College in writing, no action or inaction by the College or its Project Managers shall constitute a grant of an extension of the completion date or the waiver of a delay or other default by the Contractor, including: (1) schedule, a recovery schedule, or an anticipated completion date from Contractor; (2) allowance, approval or acceptance of any schedule; (3) failure to terminate for default at an earlier date; or (4) demand that the Contractor finish the project by the required completion date or by any subsequent date promised by the Contractor.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

4.5.2. Mitigation of Delays and College Remedies.

4.5.2.1. If Contractor should at any time cause interference, stoppage or delay to the Project or any activity necessary to complete the Project by the time required by this Contract (collectively, "Delay"), Contractor shall take all reasonable action to avoid or mitigate the effects the Delays, including but not limited to: (1) rescheduling or re-sequencing the Work and (2) re-assigning personnel. When the Contractor is responsible for any Delay, the College may order the Contractor to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or to do anything else reasonably necessary in order to finish on time, at no additional cost to the College. The Contractor does not have the unilateral right to complete the Work late and pay liquidated or other damages.

4.5.2.2 If Contractor should at any time cause the Delays described in subsection 4.5.2.1, then in addition to any other remedies the College may have under the Contract, the College, after notifying Contractor that it has forty-eight (48) hours within which to cure the Delay, may attempt to remedy the Delay by whatever means the College may deem necessary or appropriate including, but not limited to, correcting, furnishing, performing or otherwise completing the Work, or any part thereof by itself or through others, (utilizing where appropriate, any materials and equipment previously purchased for that purpose by Contractor), or by supplementing the Contractor's forces. The Contractor shall be liable to the College for all costs incurred by the College in attempting to remedy the Delay. The College may deduct the cost to remedy the Delay from any monies due or to become due to the Contractor.

4.5.3. Severe Weather Delays

4.5.3.1. "Unusually severe weather" is weather which is more severe than the historical average for the month as evidenced by the National Weather Service for the locality of the Work. Time extensions for unusually severe weather will be allowed on a tentative basis only and the final decision will be reserved until the Work is substantially completed. Weather conditions prevailing throughout the entire Contract period will be considered, including consideration for abnormally mild conditions to offset abnormally severe conditions. Extension of time due to abnormal weather conditions will be granted on the basis of one (1) calendar day for each normal working day lost, or as mutually agreed upon by the College and the Contractor. No additional compensation will be provided to the Contractor.

4.5.3.2. The College and the Contractor shall use the following table labeled "Monthly Anticipated Adverse Weather Days (in workdays)" as the basis for determining the anticipated number of "unusually severe weather" workdays at the construction site:

Monthly Anticipated Adverse Weather Days (in work days)											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	5	4	5	5	3	3	3	2	4	4	4

A lost workday shall be considered a weather delay when unusually severe weather exists and when such weather conditions directly cause work to be delayed on the activity or activities which are on the critical path according to the latest accepted update of the schedule during that month. Weather-caused schedule losses shall be measured in half (0.5) workday increments if the unusually severe weather affects work at the site only for one half of a normal workday. If unusually severe weather occurs during the first half of a normal work and also delays work during the second half of the day (e.g., due to employees not being required to report to work due to unusually severe weather), the entire work day shall be considered a weather caused lost work day. The Contractor's request for weather caused time extensions during a given month shall be considered only for actual work days lost in excess of the number of work days listed in the table above and meeting the above criteria. The Contractor shall meet the submission and notification requirements and follow the procedures for requesting time adjustments to the schedule as described in Section 4.4.3.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

4.5.4. Liquidated Damages

4.5.4.1. It is agreed that time is of the essence and therefore the College will suffer substantial damages if the Work is not completed within the time stated in the Preliminary Project Schedule contained in the Contract Documents. For each day that the Work shall be uncompleted after the date set for Substantial Completion, the Contractor may be liable for liquidated damages in the amount specified in the Contract Documents. Prior to and after expiration of the Contract completion time, the College may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgment of the College is behind schedule so as not reasonably to be able to permit completion of the Project on time. Due account shall be taken of excusable delays, any extensions of time reasonably due the Contractor for completion of additional Work under change orders, and for delays for which the College is responsible, provided that the Contractor has properly requested time extensions therefore. After submission of a price, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the Contract. These assessed damages shall not be considered as a penalty, but as mutually agreed upon as the ascertained damages suffered by the College because of the delay.

4.5.5. Waiver of Consequential Damages

4.5.5.1 The Contractor waives claims against the College for consequential damages arising out of or relating to this Contract. The waiver includes but is not limited to damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit of any type.

This waiver is applicable, without limitation, to all consequential damages due to Contractor in accordance with Article 12 of this Contract.

ARTICLE 5 – CONSTRUCTION BY COLLEGE OR BY SEPARATE CONTRACTORS

5.1 SEPARATE CONTRACTS

5.1.1. The College reserves the right to let other contracts in connection with the Project. The Contractor shall afford other contractors' reasonable opportunity for the introduction and storage of their materials and for the execution of their work, and shall properly connect and coordinate its Work with theirs. The Contractor shall work harmoniously with other contractors. The Contractor is not entitled to overhead, profit, or other compensation for work done for the College by other contractors.

5.1.2. If any part of the Contractor's Work depends on the proper execution or completion of any other contractor's work, the Contractor shall inspect and measure the work of the other contractor(s) and promptly report to the College's Project Manager any defects or discrepancies in such work. The Contractor's failure to inspect and make such a report shall constitute an acceptance of the other contractor's work as fit and proper for the proper execution of its Work, except as to latent defects.

5.1.3. The College's Project Manager will schedule and coordinate the Work of the Contractor with the work of all separate contractors on the Project including use of the site by the Contractor and the separate contractors. The College's Project Manager will keep the Contractor informed of the progress schedule to enable the Contractor to reasonably plan and perform its Work properly. The College's Project Manager may issue appropriate directions and require the Contractor to take such other measures as may be necessary to timely coordinate and progress the Work. Any neglect or refusal by the Contractor to comply with directions issued by the College's Project Manager shall constitute a failure to perform the Work in accordance with the Contract requirements and will justify action from withholding of payments otherwise due up to and including termination of the Contract.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

5.1.4. The College and College's Project Manager do not guarantee the unimpeded operations of the Contractor. The Contractor acknowledges that the award of more than one contract for a Project necessitates the proper scheduling and sequencing of the Work with the work of all other contractors, and may lead to inherent delays in the progress of the Work. The Contractor agrees to re-sequence its Work as may be reasonably directed by the College's Project Manager from time to time. The Contractor hereby agrees to make no claim for delays caused by the presence or operations of other contractors engaged on the Project.

5.1.5. Should the Contractor sustain any damage through any act or omission of any other contractor having a contract with the College for the performance of work on the Project, or through any act or omission of a subcontractor of such other contractor, the Contractor shall make no claim against the College or its consultants (including but not limited to the Architect/Engineer and College's Project Manager) for such damage, but shall have a right to recover such damage from the other contractor under a provision similar to subparagraph 5.1.6 which has been or will be inserted in all contracts with such other contractors. The Contractor hereby releases the College, College's Project Manager and Architect/Engineer and their respective officers and employees from all damages to the Contractor caused by other contractors on the Project.

5.1.6. Should any other contractor under contract with the College for performance of work on the Project sustain any damage through any act or omission of the Contractor hereunder, or through any act or omission of a Contractor's subcontractor of any tier, the Contractor agrees to reimburse such other contractor for all such damages and to indemnify and hold the College, College's Project Manager and Architect/Engineer harmless from all such claims, including attorneys' fees, to the fullest extent permitted by law.

5.1.7. The Contractor agrees that in the event of a dispute as to cooperation or coordination with other contractors on the Project, the College's Project Manager will act as mediator and decisions made by the College's Project Manager will be binding.

5.1.8. The Contractor shall fully cooperate and coordinate its Work with other contractors working on separate projects for other buildings, road work, and the like in accordance with College's Project Manager's direction.

5.1.9. Wherever work being done by any contractors or subcontractors is contiguous to Work covered by the Contract Documents, the respective rights of the parties shall be established by the College's Project Manager to secure the completion of the various portions of the Work in general harmony.

5.1.10. If a dispute arises among the Contractor and other contractors as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in these General Conditions, the College's Project Manager may direct who shall perform the cleanup. The College's Project Manager reserves the right to clean up and allocate the cost in a timely manner among those responsible as the College's Project Manager determines to be just.

ARTICLE 6 – CHANGES IN THE WORK

6.1. CHANGES IN THE WORK

6.1.1. Changes

6.1.1.1. The College unilaterally may, at any time, without notice to the sureties, if any, and without invalidating the Contract Documents, by written order designated or indicated to be an order, make any change in the Work including but not limited to changes in the Specifications, Drawings in the method or manner of performance of the Work, the College-furnished facilities, equipment, materials, services, or site or directing acceleration in the performance of the Work. Any other written order or an oral order, including a direction, instruction, interpretation, or determination from the College that causes or constitutes any such change shall be treated as a change order under this section provided that before performing the Work directed by the change that the Contractor gives the College's Project Manager written notice stating the date, circumstances and source of the order and that the Contractor regards the order as a change order.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

The Contractor shall not proceed to perform the Work described in the written or oral order unless the College's Project Manager acknowledges in writing to the Contractor that the order is a change order and that the Contractor is to proceed with the Work as a change.

6.1.1.2. If any change under this subsection causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under the Contract, whether or not changed by an order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, except for claims based on defective Specifications or Drawings, that no claim for any order under subsection 6.1.1.1 above shall be allowed for any cost incurred more than twenty days before the Contractor gives written notice as therein required. In the case of defective Specifications or Drawings for which the College is responsible, the equitable adjustment shall include any increased costs reasonably incurred by the Contractor in attempting to comply with such defective Specifications or Drawings. The Contractor shall submit to the College Project Manager within ten (10) days after every ninety (90) days from the order to proceed with the Work a detailed list of all costs incurred attempting to comply with defective Specifications or Drawings during the immediately preceding ninety (90) day period until the effect of the defects are overcome. Costs included more than ninety (90) days old in a detailed list of costs are waived and will not be paid.

6.1.1.3. If the Contractor intends to assert a claim for an equitable adjustment under subsection 6.1.1, it shall, within thirty days after receipt of an order for the furnishing of written notice under subsection 6.1.1.1 submit to the College's Project Manager a written statement setting forth the general nature of the monetary extent of the claim.

6.1.2. Disputed Work

6.1.2.1. In the event of a dispute between the College and the Contractor as to whether any Work is included in the scope of the Contract, such that the Contractor will be obligated to provide that Work at no additional cost to the College, the College's Project Manager may order the Contractor in writing under this section to perform the Work. If the Contractor considers such an order to be a change in the scope of the Contract entitling the Contractor to additional compensation, a time extension, or other relief, the Contractor must provide notice within seven days (7) from receipt of the College's Project Manager's written order under the section to perform the Work and to initiate a claim therefore in accordance with Contract requirements.

6.1.2.2. A request by the Contractor for additional time or additional costs caused by the impact of an order of the College on the critical path for completion must be accompanied by (a) a reasonably detailed description of the effect of the order on the adjusted critical path and (b) supporting documentation. The mere existence of a change order does not entitle the Contractor to an extension of time, compensation for delay or damages or costs associated with delay. Contractor's entitlement thereto shall depend upon the effect of the change order on the adjusted critical path for completion and shall be subject to the requirements of Article 3.7, Prosecution and Progress of the Work.

6.1.2.3. Upon receipt of a signed written order of the College's Project Manager under this subsection, the Contractor shall comply with the order promptly, within the requirements of the completion schedule, whether or not the Contractor signs or accepts the change order. Failure to comply with the order in a timely manner shall constitute a breach of the Contract and grounds for termination for default or any other remedy available to the College.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

6.1.3. Modification of Contract Sum

6.1.3.1. When changes in the Work may require a modification of the Contract Sum, the Contractor shall provide to the College's Project Manager, within thirty (30) days of its receipt of a proposal request, an itemized breakdown showing quantities, unit costs, hours and rates of labor, and other costs in such detail as may be required to allow the reasonableness of the cost to be established. Similar cost information covering Subcontractor's Work shall be included as part of the Contractor's proposal. Minimum charges for "handling" will not be acceptable. Charges for general supervision and management will not be acceptable.

6.1.3.2. Modification of the Contract Sum, when required, shall be determined as follows:

- (1) When applicable unit prices are stated in the Contract or have been subsequently agreed upon, by application of such unit prices.
- (2) A lump sum price agreed upon by the College and the Contractor.
- (3) If job conditions or circumstances or the extent or nature of the change, or failure of the College and the Contractor to agree upon a lump sum price or the application of unit prices, prevent the determination of the cost of any proposed change, the Work shall be paid pursuant to subsection 6.1.3.4.
- (4) If a change involves a credit to the College, unless the amount must be determined by the application of unit prices, the amount of the credit shall be the greater of (a) the alternate or other itemized price for such Work stated in Contractor's price or (b) a reasonable price, including profit and overhead.
- (5) If the change involves both a credit and a debit, the sums shall be shown and the two sums balanced to determine the adjusted total cost or credit.
- (6) The mark up allowable to the Contractor for combined overhead and profit for Work performed solely by the Contractor with its own forces shall be a reasonable amount, but not to exceed 15% of the Contractor's costs (excluding items includable in overhead).
- (7) The mark up allowable to a Subcontractor for combined overhead and profit for Work performed solely with its own forces shall be a reasonable amount, but not to exceed 15% of the Subcontractor's cost of labor and materials and equipment. Mark ups for Sub-subcontractors or suppliers, if required, must be provided from within the markup allowance provided to the Subcontractor. No additional markup allowance will be allowed for Sub-subcontractors or suppliers. For Work performed by a Subcontractor solely with its own forces, the Contractor is entitled to a reasonable mark up for combined overhead and profit, but not to exceed 5% of the Subcontractor's labor, materials and equipment cost.

Sample Maximum Mark-Up Calculation:

A.	Subcontractor's cost (LME) <i>(include direct costs of Sub-subcontractors and/or suppliers)</i>	= A
B.	Sub-contractors combined OH&P	= 15% of A
C.	Subcontractor's Bonds and Builder's Risk Insurance if required	= as a % of A+B
D.	Contractors combined OH&P	= 5% of A
E.	Contractor's Bonds and Builder's Risk Insurance if required	= as a % of A+B+C+D
F.	Total Maximum Modification of Contract Sum:	= A+B+C+D+E

- (8) The Contractor shall be allowed the actual, reasonable additional cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the Work required on the change, but no percentage shall be added to this cost.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

- (9) The Contractor and separately bonded subcontractors, if any, shall be allowed the actual, reasonable additional cost for Bonds and Builder's Risk Insurance, if required.

6.1.3.3. The allowable percentages for cost and overhead and profit as provided in subsections 6.1.3.2 (6) and (7) and elsewhere are deemed to include but not be limited to all costs and expenses of the following kinds: project management, supervision and coordination; job supervision and field office expenses required by the Contract; expenses for supervisors, superintendents, managers, timekeepers, clerks and watchmen; cost of correspondence of any kind; insurance not specifically mentioned herein; all expenses in connection with the maintenance and operation of the field office, use of small tools, cost of vehicles generally used for transporting either Workers, materials, tools or equipment to job location and incidental job burdens; and all expenses or maintenance for operation of Contractor's regularly established principle office, branch office, similar facilities and all other costs and expenses customarily classified as overhead or general conditions. The Contractor's entitlement to compensation or additional time for delays for which the College is responsible or for which an extension is due to the Contractor is also subject to section 4.5.

6.1.3.4. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the College on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit as stated in subsection 6.1.3.2 (6) and (7). In such a case, the Contractor shall keep and present in such form as the College's Project Manager may prescribe an itemized accounting together with appropriate supporting data. The itemized accounting shall be prepared daily and presented to the College's Project Manager at the conclusion of each day. Unless otherwise provided in the Contract Documents, reimbursable costs to the Contractor shall be limited to the following:

- (1) Costs of labor, including Social Security, old age and unemployment insurance, fringe benefits required by agreement or custom and Workers' compensation insurance;
- (2) Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- (3) Rental costs of machinery and equipment exclusive of hand tools, whether rented from the Contractor or others; and
- (4) Cost of premiums for all bonds and insurance and permit fees related to the Work, provided that, the penal sum of the surety bond has been increased and the surety has increased the premium cost to the Contractor.
- (5) Pending final determination of the costs accumulated pursuant to subsection 6.1.3.4, amounts not in dispute may be included in an Application for Payment.

6.1.3.5. The College's Project Manager will review and make a recommendation regarding the adjustment in Contract Sum and/or Time proposed by the Contractor to the College. Only the College is authorized to approve adjustments in Contract Sum and/or Time. Approval by the College requires review and administrative processing, based on claim value, in accordance with the Board of Trustees Policy and Procedures, and the following schedule:

- Claims less than \$ 99,999 require review and approval by the College's Vice President for Facilities & Public Safety.
- Claims between \$ 100,000 and \$ 249,999 require review and approval by the College's Vice President for Administrative and Fiscal Services.
- Claims \$ 250,000 and greater require approval by the College's Board of Trustees as an action item at a monthly business meeting. Items requiring such approval must follow Board of Trustees agenda action item submission requirements. (Normally, action items are placed on the Board meeting agenda at least one month prior to the scheduled meeting date to allow time to conduct necessary internal administrative reviews prior to the Board meeting.)

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

6.1.4. Minor Changes in the Work

6.1.4.1. The College's Project Manager will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order of the College's Project Manager and shall be binding on the College and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 7 – PAYMENTS AND COMPLETION

7.1. SCHEDULE OF VALUES

7.1.1. To facilitate checking the Work performed, the Contractor shall furnish to the College's Project Manager a detailed Schedule of Values of the various parts of the Work, including quantities, aggregating to the Contract Sum. The schedule shall be divided so as to facilitate payments to Subcontractors, if any, made out in the form prescribed by the College's Project Manager, and, if required, supported by such evidence of its correctness as the College's Project Manager may direct. The Schedule of Values cost breakdown shall be used as a basis for Certificates of Payment unless it is found to be in error.

7.1.2. The Schedule of Values shall be submitted as soon as possible, but not less than fifteen (15) days prior to the first scheduled Application for Payment described in the General Conditions.

7.2. PROGRESS PAYMENTS

7.2.1. Application for Payment

7.2.1.1. No later than the 25th day of each month, the Contractor shall submit to the College's Project Manager an original and accurate Application for Payment dated the last day of the month in the form prescribed by the Contract Documents together with the supporting documentation listed herein. Applications for Payment received after the 25th day of each month, or not submitted on an original, or containing erroneous information, or missing the required supporting documentation, shall not be processed during that month's payment cycle. Payments shall be made on the value of Work expected to be completed up to and including the last day of the month based upon the labor and materials incorporated in the Work; and of materials suitably stored at the site; less the aggregate of any previous payments, retainages and amounts withheld under subsection 7.2.1.9. The Applications for Payment, including final payment, shall be reviewed and certified by the College's Project Manager. After reviewing and certifying the amounts due the Contractor, the College's Project Manager will submit the Project Application and the Project Certificate for Payment, along with the Contractor's Applications and Certificates for Payment, to the Architect/Engineer. Based on the Architect/Engineer's observations and valuations of Contractor's Applications for Payment, and the Certifications of the College's Project Manager, the Architect/Engineer will review and certify the amounts due the Contractor and will issue a Project Certificate for Payment.

- (1) The Contractor shall promptly pay each Subcontractor, if any, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which each Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of the Subcontractor's Work. The Contractor may not withhold from the Subcontractor any portion of the payment due to any cause unrelated to the Subcontractor's performance of the Work on the Project, notwithstanding any prior agreement between Contractor and Subcontractor to the contrary.

7.2.1.2. No later than the 25th day of each month, each Application for Payment shall be supported by the following documentation, each in a form prescribed by the College, or in the case no form is prescribed, on a form provided by the Contractor and approved by the College's Project Manager:

- (1) Updated schedule information of Contractor's progress to date, including assessment of progress compared to scheduled completion date.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

- (2) Subcontractors' certificates, statements and affidavits showing that portions of the Work covered by the Application for Payment have been completed and material included therein have been and will be delivered.
- (3) Affidavit from Contractor and Subcontractor on forms prescribed by the College, stating respectively that their work force, subcontractors, vendors and material suppliers have been paid from the proceeds of the last Application for Payment, and will be paid from the current Application for Payment, and that there are no outstanding claims for payment.

7.2.1.3. That part of the payment which is requested on account of materials delivered and suitably stored at the site or other approved location but not incorporated in the Work shall, if required by the College's Project Manager, be conditioned upon submission by the Contractor of bills of sale or upon such other procedure as will establish the College's title to such material or otherwise adequately protect the College's interest as determined by the College's Project Manager, including applicable insurance coverage and cost of transportation to the Project site for those materials and equipment stored off the site.

7.2.1.4. Provided that the Contractor has furnished acceptable payment and performance security equal to 100% of the Contract Sum, from each Application for Payment the College shall withhold as retainage no more than 5% of the amount earned. Unless otherwise agreed to by the College in writing, the retainage withheld shall be paid within 120 days after satisfactory completion of the Contract or within 120 days after resolution of a dispute or contract claim concerning the satisfactory completion of the Contract, whichever is later. The College reserves the right to withhold from payments otherwise due the Contractor any amount that the College reasonably believes necessary to protect its interest, including, but not limited to, the College concluding in its sole judgment that the Work may not be completed by the date required by the Contract or the Work is otherwise not in conformance with the requirements of the Contract Documents. Following Substantial Completion of the Project, the College in its sole discretion, may authorize reduction of retainage withheld to an amount not less than two (2) times the College's Project Manager's estimate of the value of the Contractor's punch list items.

7.2.1.5. Application for Payment shall be in the format required by the Contract Documents and the College's Project Manager. The Application shall include an itemized breakdown of the various items of the Work based on the previously submitted Schedule of Values.

7.2.1.6. The provisions for payment, withholding, retainage and Certificates of Payments are solely for the benefit of the College, and no other party (including sureties of the Contractor) may assert any claim for negligence or other action against the College, or anyone acting on behalf of the College for waiving or misapplying these provisions.

7.2.1.7. No Certificate issued nor payment made to the Contractor may be construed as an acceptance of the Work or be construed or relied upon as any indication that the labor or materials are in accordance with the Contract Documents or that the amounts paid or certified therefore represent the correct cost or value of the Work or that such amounts are in fact or law due the Contractor.

7.2.1.8. Any Application for Payment which is based on a pending claim for additional compensation may be certified by the College's Project Manager and the Architect/Engineer to the extent that it is determined that the payments yet to be made under the Contract and/or the retainage are sufficient to protect the College. Nothing herein shall be construed as requiring the College's Project Manager and Architect/Engineer to certify such applications or to release retainage. All certifications and payments, including those pursuant to a pending claim, shall be tentative and conditional.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

7.2.1.9. In addition to the College's general right to withhold payment as set forth in subsection 7.2.1.4, the College may withhold payment or, on account of subsequently discovered evidence, nullify or reduce the whole or part of any certificate or payment on account of:

- (1) failure to update schedules properly as required by subsection 3.7;
- (2) failure to furnish the documents required by subsection 7.2.1.1 and 7.2.1.2;
- (3) liquidated damages which may be assessed under the Contract Documents or other damages or compensation due the College for claims of the College against the Contractor;
- (4) the cost (measured by the contract value or fair market value whichever is greater) of completing unfinished or defective Work not remedied or deductions or amounts due the College under the Contract;
- (5) failure of the Contractor to perform any material Contract requirements;
- (6) claims filed or likely to be filed against the College for which the Contractor may be liable to the College;
- (7) failure of the Contractor to make payments properly to Subcontractors or suppliers for material or labor or amounts claimed by the Contractor's surety or insurer under any right of subrogation;
- (8) a reasonable doubt the Work can be completed for the residual balance of the Contract;
- (9) damage to another Contractor;
- (10) any claim of the College or debt owed to the College by the Contractor;
- (11) failure to maintain as-built drawings; or
- (12) the cost of completing unfinished warranty Work.

7.3. ACCEPTANCE OF THE WORK AND FINAL PAYMENT

7.3.1. Partial Acceptance

7.3.1.1. If, in its sole discretion, the College desires to occupy any portion of the Work, the College shall have the right to occupy and use those portions of the Work which in the opinion of the College can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities for the Contractor and the College for maintenance, heat, light, utilities and insurance are mutually agreed to by the Contractor and the College. The College has no obligation to accept the Work in portions. Partial occupancy shall in no way relieve the Contractor of its responsibilities under the Contract.

7.3.1.2. When the College occupies the Work in portions or accepts the Work in portions, if the beneficial use of any accepted portion of the Work as a whole depends on Substantial Completion or beneficial use of any other portion, then, unless otherwise agreed to by the College in writing: (1) warranties on the accepted portions do not begin to run until substantial completion of all portions on which beneficial use of the whole Work depends, and (2) Substantial Completion of the whole Work shall not be deemed to be achieved until Substantial Completion of all portions on which beneficial use of the whole depends.

7.3.2. Substantial Completion and Final Inspection

7.3.2.1. When the Work is substantially completed, the Contractor shall notify the College's Project Manager and Architect/Engineer in writing that the Work will be ready for final inspection and testing on a definite date. Reasonable notice shall be given by the Contractor to permit the College's Project Manager and Architect/Engineer to schedule the final inspection.

7.3.2.1.1 "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the College can occupy or utilize the Work for its intended use.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

7.3.2.2. The inspection shall be conducted by the College's Project Manager and the Architect/Engineer. On the basis of the inspection, if it is determined that the Work appears to be substantially complete and the Work appears to be ready for occupancy and usable for its intended purpose, the College's Project Manager and Architect/Engineer shall establish the date of Substantial Completion, shall fix the times at which the warranties will begin, and the Architect/Engineer shall issue a Certificate of Substantial Completion.

7.3.2.3. If it is determined that Substantial Completion has been achieved, the College's Project Manager shall fix the time within which the Contractor shall complete any remaining items of Work which will be indicated on a list (the "punch list"). If the Contractor fails to complete the remaining items so listed in the time stipulated, the College shall have the undisputed right to complete the Work at the Contractor's expense. The Contractor may be required to complete multiple punch lists until the Contract is performed in its entirety. Failure to complete punch list work in a timely manner shall constitute grounds for termination of the Contract for default. Final payment shall not be made until all Contract Work, including all punch list Work, is complete to the satisfaction of the College's Project Manager.

7.3.2.4. Acceptance of the Work as substantially complete shall not excuse or waive any failure of the Contractor to complete the Contract as required by the Contract Documents. The Work shall not be considered substantially complete until (1) all electrical, mechanical, and life safety systems shall be completed and successfully tested and successfully inspected for conformity to all requirements of the Contract Documents and all applicable codes and standards, (2) a certificate of occupancy has been obtained for all parts of the Work and (3) all other requirements for Substantial Completion are met.

7.3.2.5. Upon completion of the Work, the Contractor shall forward to the College's Project Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the College's Project Manager a final Application for Payment. The final Application for Payment shall be processed in accordance with Subparagraph 7.3.3. Upon receipt, the College's Project Manager will forward the notice and Application to the Architect/Engineer who with the College's Project Manager will promptly make such inspection. When the Architect/Engineer, based on the recommendation of the College's Project Manager, finds the Work acceptable under the Contract Documents, the Architect/Engineer shall issue a Final Application and Certificate for Payment stating that the Work provided for in the Contract has been completed and is acceptable under the terms and conditions thereof and that the entire balance found to be due to the Contractor and noted in the final application is due and payable. The College's Project Manager and Architect/Engineer may not issue the Final Certificate and Application for Payment until all Work is fully completed and all other obligations of the Contractor under the Contract Documents have been completed.

7.3.3. Application for Final Payment

7.3.3.1. Upon completion of the Work, the Contractor shall prepare and submit to the College's Project Manager an Application for Final Payment. The College's Project Manager and Architect/Engineer will promptly proceed to make any necessary final surveys, to complete any necessary computations of quantities, and to complete other activities necessary to determine the Contractor's right to final payment. The College's Project Manager and Architect/Engineer will certify so much of the Contractor's Application for Final Payment as they consider due. The Contractor shall be informed of all deductions, damages, costs, back-charges, and other charges assessed against the Contractor by the College and the reasons therefore. Notwithstanding what is stated above, prior to or in the absence of a request from the Contractor for final payment, the College may determine the amount of the final payment it considers to be due to the Contractor.

7.3.3.2. If the Contractor disputes the amount determined by the College to be due it, it may initiate a claim under Article 4.4, Claims and Disputes.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

7.3.3.3. Acceptance by the Contractor of any payment identified by the College as being a final payment shall operate as an accord and satisfaction and a general release of all claims of the Contractor against the College arising out of or connected with the Contract, except as may be expressly agreed otherwise in writing between the Contractor and the College. No claims by the Contractor may be asserted for the first time after the Contractor submits its Application for Final Payment or after final payment is made by the College.

7.3.3.4. Prior to final payment and before issuance of the College's Project Manager's and Architect/Engineer's final Certificates therefore, the Contractor shall fully comply with the following requirements:

- (1) Cleanup the Work area in accordance with the Specifications and federal, state, bi-county, county and local rules and regulations.
- (2) Provide a notarized affidavit stating that all monetary obligations to suppliers of material, services, labor and all Subcontractors have been completely fulfilled and discharged.
- (3) Complete all punch list Work and furnish to the College's Project Manager all documents, manuals and record (as-built) documents, including all BIM documents, if any.

7.4. ASSIGNMENT OF CONTRACT MONIES

7.4.1. The Contractor shall not assign any monies due to it under the Contract without the consent of the College, and the assignee in such case shall acquire no rights against the College.

7.5. AUDIT

7.5.1. If the Contractor has submitted any claim or request for additional payment exceeding \$50,000, or if the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this Contract, the College shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing or performing the modification or claim in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. In addition to the above, the Contractor shall make available to the College the original project price estimate and backup takeoffs and records, and the actual monthly or periodic job cost records. If the Contractor fails or refuses to comply with applicable provisions concerning the Contract changes or claims, the College shall have no obligation to make payment to the Contractor for the change or claim.

7.5.2. The Contractor shall permit audit and fiscal and programmatic monitoring of the Work performed under this Contract. The Contractor shall make available at its office at all reasonable times, the materials described in subsection 7.5.1, for examination, audit or reproduction, for 3 years after final payment under the Contract.

7.5.3. If the Contract is completely or partially terminated, the records relating to the Work terminated shall be made available for 3 years after any resulting final termination settlement.

7.5.4. Records pertaining to claims, contract disputes, or to litigation or the settlement of claims arising under or relating to the performance of the Contract shall be made available until final disposition of such appeals, litigation, or claims.

ARTICLE 8 – PROTECTION OF PERSONS AND PROPERTY

8.1. SAFETY PRECAUTIONS AND PROGRAMS

8.1.1. The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

8.1.2. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contractor shall comply and cooperate with College safety and security programs.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

8.1.3. Except as otherwise directed by the Contract Documents, in the event the Contractor encounters on the site material reasonably believed to be hazardous, including but not limited to asbestos or polychlorinated biphenyl (PCB), which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the College's Project Manager in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the College's Project Manager and Contractor if in fact the material is hazardous and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of hazardous material.

8.2. PROTECTION OF PERSONS AND PROPERTY

8.2.1. The Contractor shall take all necessary precautions to ensure the safety of the public and of workers on the job, and to prevent accidents or injury to any persons on, about, or adjacent to the premises where the Work is being performed. The Contractor shall comply with the "Williams-Steiger Occupational Safety and Health Act of 1970, as amended, and all laws, ordinances, codes, rules and regulations relative to safety and the prevention of accidents, and shall also comply with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America and with the applicable provisions of the American Standard Safety Code for Building Construction, ANSI A 10 Series, unless prevention of accidents is regulated by a more stringent local, State or Federal code, ordinance or law. The Contractor shall erect and properly maintain at all times, as required by laws and regulations and the conditions and progress of the Work, proper safeguards, including minimum provision of six (6) foot fall protection, for the protection of Workers and the public and shall post signs and other warnings against the dangers created by openings, stairways, falling materials, open excavations and all other hazardous or unsafe conditions. It shall be the Contractor's exclusive responsibility to take all safety precautions which may be necessary to protect all persons and property from injury or damage.

8.2.2. Contractor shall request permission in writing of the College's Project Manager, and have received written permission from the College's Project Manager, prior to the storage, use, or transportation onto the campus of explosives or other hazardous materials or equipment required for the execution of the Work. The Contractor is prohibited from storing, using or transporting hazardous materials or equipment not required for the execution of the Work onto the campus. The Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel if such written permission has been granted.

8.2.3. All damage or loss to any property referred to in this section, caused in whole or in part by the Contractor, and Subcontractor, and sub-subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable solely due to faulty Drawings or Specifications or to the acts or omissions of the College or Architect/Engineer or anyone employed by either of them or for whose acts either of them may be liable, and not also attributable to the fault or negligence of the Contractor.

8.2.4. The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the College's Project Manager.

8.2.5. Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

8.2.6. In any emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency Work shall be determined as provided for in these General Conditions.

8.2.7. The Contractor shall continuously protect the Work and the College's property from damage, injury or loss arising in connection with operations under the Contract Documents. It shall make good any such damage, injury or loss, except such as may be caused solely by agents or employees of the College.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

8.2.8. The Contractor shall be solely responsible for all damage due to intrusion and for the proper protection of the Project site from damage due to fire, rain, wind or other causes. The Contractor shall provide sufficient security personnel as it deems necessary for proper protection of the Work and project site at all times. The Contractor shall provide temporary protection to prevent unauthorized persons from obtaining access to the site during the night and at other non-working hours.

8.2.9. The Contractor shall assume sole financial responsibility for vandalism or loss of materials and equipment not covered by Contractor's Builder's Risk insurance.

8.2.10. The Contractor shall protect all streets, sidewalks, light poles, hydrants and concealed or exposed utilities of every description affected by or adjacent to the Work and if such items are damaged by the Contractor or Subcontractors, the Contractor shall make all necessary repairs thereto or replacements thereof at no cost to the College.

8.2.11. Tight wood sheathing or plywood shall be laid under any materials that are stored on finished cement surfaces.

8.2.12. The Contractor shall at all times provide and maintain adequate protection against weather so as to preserve all Work, materials, equipment, apparatus and fixtures free from injury or damage.

8.2.13. The Contractor shall provide and maintain adequate protection for all properties adjacent to the site. When required by law or for the safety of the Work, the Contractor shall shore up, brace, underpin and protect as necessary, foundations and other portions of existing structures which are in any way affected by the operations under the Contract Documents. The Contractor, before commencement of any part of the Work, shall give any notices required to be given to an adjoining landowner or other parties.

8.2.14. The Contractor shall confine its construction equipment, the storage of materials and the operations of workers to the limits indicated by laws, ordinances, permits and as may be established by the College, and shall not unreasonably encumber the premises with construction equipment or material.

8.2.15. The Contractor shall enforce the College's Project Manager's instructions regarding signs, advertisements, fires and smoking.

8.3. FIRE PROTECTION

8.3.1. Adequate precautions shall be taken against fire throughout all the Contractor's and Subcontractors' operations. Flammable material shall be kept at an absolute minimum, and, if any, shall be properly handled and stored. Except as otherwise provided herein, the Contractor shall not permit fires to be built or open salamanders to be used in any part of the Work.

8.3.2. Construction practices, including cutting and welding, and protection during construction shall be in accordance with the published standards of the Industrial Risk Insurers and the National Fire Protection Association; provide a sufficient number of approved portable fire extinguishers, distributed about the project; and use non-freeze type in cold weather.

8.3.3. Gasoline and other flammable liquids shall be stored in and dispensed from Underwriters' Laboratories listed safety containers in conformance with the National Fire Protection Association recommendations. Storage of any flammable liquids, however, shall not be within buildings.

8.3.4. All tarpaulins that may be used for any purpose during construction of the Work shall be made of material which is resistant to fire, water and weather. All tarpaulins shall have the Underwriters' Laboratories approval and shall comply with FS CCC-D-746.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

8.3.5. The Contractor shall maintain emergency and fire exits from the Work area, or establish alternative exits satisfactory to the Fire Marshal.

8.3.6. Fire protection and safety during the execution of the Work are the exclusive responsibility of the Contractor.

8.4. EMERGENCIES

8.4.1. In an emergency affecting the safety of life, the Work or adjoining property, the Contractor, without special instructions or authorization from the College's Project Manager, is permitted to act at the Contractor's discretion to prevent such threatened loss or injury. In such an emergency the Contractor shall act prudently and expeditiously to prevent any threatened loss or injury and shall immediately notify the College's Project Manager and the Campus Security Office of such actions.

8.5. ACCIDENTS

8.5.1. The Contractor shall provide at the site, and make available to all workers, medical supplies and equipment necessary to supply first aid service to all persons injured in connection with the Work.

8.5.2. Contractor must promptly report in writing to the College's Project Manager and the Campus Security Office all accidents arising out of, or in connection with, the performance of the Work, whether on or off the site, which caused death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death or serious damages are caused, the accident shall be reported immediately by telephone or messenger. If any claim is made by anyone against the Contractor or any Subcontractor on account of any accident, the Contractor shall promptly report the facts in writing to the College's Project Manager and the Campus Security Office, giving full details of the claim.

ARTICLE 9 – INSURANCE AND BONDS

9.1. INSURANCE

9.1.1. Unless otherwise indicated in the Contract Documents, the Contractor shall maintain in force at all times during the term of this Agreement, with an insurance carrier licensed to do business in the State of Maryland acceptable to the College, the following minimum insurance coverage. 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 College, the proposed awardees/Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

a) Worker's Compensation Insurance covering the Contractor's employees as required by State of Maryland law with the following minimum limits:

Bodily Injury by Accident	\$ 100,000 each accident
Bodily Injury by Disease	\$ 500,000 policy limit
Bodily Injury by Disease	\$ 100,000 each employee.

b) Commercial General Liability Insurance, excluding automobiles owned or hired by the Contractor, with limits as follows:

Bodily Injury and Property Damage:	\$ 10,000,000 combined single limit of bodily injury and property damage per occurrence
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MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

- c) Comprehensive Automobile Liability Insurance, providing bodily injury and property damage coverage for owned vehicles, hired vehicles and non-owned vehicles with limits as follows:
- | | |
|------------------|------------------------------|
| Bodily Injury: | \$ 1,000,000 each person |
| | \$ 2,000,000 each occurrence |
| Property Damage: | \$ 2,000,000 each occurrence |
- d) Builder's Risk Insurance, providing property damage and theft replacement coverage for goods provided and services rendered during construction. For building renovation projects, when custody of the building is turned over to the Contractor, the Builder's Risk policy must additionally include building replacement value.
- e) Insured - The College, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured and loss payee on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of Contractor's products, goods and services provided under this Agreement.

9.1.2. Prior to the College signing the Contract, the Contractor shall provide the College with evidence of payment for the above insurance coverage. Any agreement for an extension of time to the Contract shall also include evidence of payment for extending the above insurance coverage for that agreed upon period of time.

9.1.3. These coverages and limits are to be considered minimum requirements under this Agreement and shall in no way limit the liability or obligations of the Contractor. The insurance shall provide that policy coverage will not be canceled, altered or materially changed without sixty (60) calendar days' prior notice to the College by registered or certified mail. The insurance shall not be limited to claims made only while the policy is in effect.

9.1.4. The Contractor shall furnish the College with a certificate of insurance as evidence of the required coverage. The certificates of insurance must name the College as an additional insured.

9.1.5. In the event that the Contractor's insurance is terminated, the Contractor shall immediately obtain other coverage and any lack of insurance shall be grounds for immediate termination of this Agreement.

9.1.6. For the purposes of this article, the word "licensed" shall be deemed to mean an insurance carrier either licensed or approved to do business in the State of Maryland.

9.2. PERFORMANCE, LABOR AND MATERIAL BONDS AND MAINTENANCE BOND

9.2.1. The College may require the Contractor to furnish bonds. The bonds furnished by the Contractor shall be issued by a surety licensed to conduct business in the State of Maryland. The surety shall be approved by the College. The bonds furnished shall comply in all respects with the requirements of Maryland's Little Miller Act and shall be in the form prescribed by the College.

9.2.2. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

9.2.3. If at any time, the surety becomes insolvent, files for bankruptcy or for any reason whatsoever loses its right to do business in the State of Maryland, the Contractor shall, as soon as practicable but no later than within five calendar days, inform the College of this occurrence in writing.

9.2.4. If at any time, the surety becomes insolvent, files for bankruptcy or for any reason whatsoever loses its right to do business in the State of Maryland, the Contractor shall, within ten (10) calendar days after notice from the College to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety as may be satisfactory to the College.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ARTICLE 10 – CORRECTION OF WORK

10.1. CORRECTION OF WORK

10.1.1. Correction of Work Before Final Payment

10.1.1.1. The Contractor shall promptly remove from the premises all materials, equipment (whether incorporated in the Work or not) and Work rejected by the College's Project Manager as failing to conform to the Contract Documents, and the Contractor shall promptly replace and re-execute all Work under its Contract in accordance with the Contract Documents and without expense to the College and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.

10.1.1.2. If the Contractor fails to correct nonconforming Work and does not proceed with correction of such Work within a reasonable period fixed by written notice from College's Project Manager, the College's Project Manager may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) calendar days after written notice, the College's Project Manager may upon ten (10) additional calendar days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the College's Project Manager's and Architect/Engineer's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the College.

10.1.2. Correction of Work after Substantial Completion of Work

10.1.2.1. If, within one year, or other time period established in the Contract Documents, after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to not be in accordance with the Contract Documents, the Contractor, at its own expense shall correct it promptly after receipt of written notice from the College to do so. The Contractor shall pay for such tests and inspections made necessary by the faulty Work. The Contractor shall pay the costs incurred by the College for professional services and expenses, including but not limited to design professional and College's Project Manager fees, required as a result of Work found not in accordance with the Contract Documents, during the correction period. The correction period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation shall survive Final Completion of the Work under the Contract and the Contract Closeout.

10.2. ACCEPTANCE OF NON-CONFORMING WORK

10.2.1. If, in the opinion of the College, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the Work injured or not performed in accordance with the Contract Documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgment of the College to be equitable. Such adjustment shall be affected whether or not final payment has been made.

ARTICLE 11 – MISCELLANEOUS PROVISIONS

11.1. LEGAL OBLIGATIONS, RELATIONS AND RESPONSIBILITIES

11.1.1. Laws to be Observed

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

11.1.1.1. The Contractor shall keep fully informed of all Executive Orders, Federal, State, county, bi-county, regional and local laws, ordinances, rules and regulations and all orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any matter affect those engaged or employed on the Work, or which in any way effect the conduct of the Work. It shall at all times observe and comply with all such laws, rules, ordinances, regulations, orders and decrees; it shall protect and indemnify the College and its Project Managers against any such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by itself or its employees, Subcontractors or suppliers at any tier. Whenever the Contract Documents require the Contractor to comply with provisions of Federal, State or local laws, regulations, ordinances or codes, the Contractor must comply whether such laws, regulations, ordinances or codes are expressly incorporated into the Contract or not.

11.1.1.2. The Contractor must comply with the provisions of the Workers' Compensation Act and Federal, State and local laws relating to hours of labor.

11.1.1.3. This Contract shall be construed and interpreted according to the laws of the State of Maryland, without regard to principles of conflicts of law.

11.1.1.4. If the Contractor observes that the Contract Documents are at variance with any applicable law, ordinance or regulation, it shall promptly notify the College's Project Manager, and any necessary change shall be adjusted as provided in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice, it shall bear all costs arising therefrom.

11.1.2. Regulations

11.1.2.1. Wherever any provision of any section of the Specifications conflicts with any agreements or regulations of any kind at any time in force among members of any Associations, Unions or Councils, which regulate or distinguish what work shall or shall not be included in the work of any particular, the Contractor shall make all necessary arrangements to reconcile any such conflict without delay, damage or cost to the College and without recourse to the College.

11.1.2.2. In case the progress of the Work is affected by any undue delay in furnishing or installing any items of material or equipment required under the Contract because of a conflict involving any such agreement or regulation, the College's Project Manager and Architect/Engineer may require that other material or equipment of equal kind and quality be provided at no additional cost to the College.

11.2. INDEPENDENT CONTRACTOR

11.2.1. The Contractor shall perform the Contract as an independent contractor and shall not be considered as an agent of the College, nor shall any employee or agent of the Contractor be considered subagents of the College. Nothing in this Contract shall be construed as constituting a partnership, joint venture, or agency between the College and Contractor. Other than duties of the College's Project Manager based on authority granted to the College's Project Manager by the College, no acts performed or representations, whether oral or written, made by or with respect to third parties and the Contractor shall be binding on the College.

11.3. EQUAL OPPORTUNITY

11.3.1. During the performance of this Contract, and in accordance with applicable law, the Contractor shall not discriminate in any manner on the basis of age, sex, race, color, religious belief, national origin, creed, status as a qualified individual with a disability or handicap, pregnancy, marital status or status as a disabled veteran or veteran of the Vietnam era.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

11.3.2. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated equally during employment without regard to their age, sex, race, color, religious belief, national origin, creed, status as a qualified individual with a disability or handicap, pregnancy, marital status or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

11.3.3. During the performance of this contract, the Contractor agrees that it shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to sex, race, age, color, creed, national origin, religious belief, handicap, marital status or status as a disabled veteran or veteran of the Vietnam era. The Contractor further assures the College that, in accordance with the Immigration Reform and Control Act of 1986, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.

11.3.4. The Contractor shall comply with all provisions of Executive Order 11246, as amended and of the rules, regulations and relevant orders of the Secretary of Labor.

11.3.5. The Contractor shall furnish all information and reports required by Executive Order 11246, as amended and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to the Contractor's books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

11.3.6. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, or the College may take such other action as may be necessary to obtain compliance. If such noncompliance appears continuing, the College may suspend all Contract payments until the noncompliance has ceased. Any delay in completion of the Contract as the result of the College taking action to obtain compliance with the nondiscrimination clauses of this Contract shall not preclude the imposition and collection of the liquidated damages for each day of delay in completion of the Work as provided for elsewhere in the Contract Documents. The Contractor may also be declared ineligible for further contracts with the College in accordance with procedures authorized in Executive Order 11246, as amended. The College's conceptual rights and remedies provided under this section are in addition to any other rights and remedies as provided in Executive Order 11246, as amended or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law or under this Contract.

11.3.7. Subcontractors shall not be approved by the College without first agreeing to the above terms and conditions, and the Contractor shall include the provisions of subsections (1) through (7) of this section in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, as amended, so that such provisions shall be binding upon each Subcontractor or vendor. The Contractor shall take such action with respect to any Subcontractor or purchase order as the College may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the College, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

11.4. COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

11.4.1. The Contractor warrants that both the Contractor and/or any subcontractor of the Contractor do not and shall not hire, recruit or refer for a fee, for employment under this Agreement or any subcontract, an alien knowing the alien is an unauthorized alien and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 (hereinafter referred to as "IRCA"), including but not limited to any verification and record keeping requirements. The Contractor agrees to indemnify and save the College, its

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

employees and/or trustees harmless from any loss, costs, damages or other expenses suffered or incurred by the College, its employees and/or trustees by reason of the Contractor's or any subcontractor of the Contractor's noncompliance with "IRCA." The Contractor agrees to defend the College, its employees and/or trustees in any proceeding, action or suit brought against the College, including but not limited to administrative and judicial proceedings, arising out of or alleging noncompliance of the Contractor with "IRCA." The Contractor recognizes that it is the Contractor's responsibility to ensure that all certifications and verifications as required by law are obtained and maintained for the applicable time period.

11.5. ASSURANCE OF NONCONVICTION OF BRIBERY

11.5.1. The Contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the Federal Government.

11.6. CONFLICT OF INTEREST

11.6.1. No employee of the College or of the State of Maryland, or any department, commission, agency or branch thereof whose duties as such employee include matters relating to or affecting the subject matter of this Agreement shall, until such time as the Contractor receives final payment, become or be an employee of the party or parties hereby contracting with the College, the State of Maryland, or any department, commission, agency or branch thereof.

11.7. ASSIGNMENT AND SUBCONTRACTING

11.7.1. Neither the College nor the Contractor shall sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or its right, title or interest therein, or its obligations there under, without the written consent of the other. A change in membership of the Contractor's firm of one or more officers shall not constitute an assignment.

11.7.2. The Contractor shall not make any contracts for professional services with any other party for furnishing any of the work or services to be performed under this Agreement without the written approval of the College; however, this provision shall not be taken as requiring the approval of the contract of employment between the Contractor and its personnel assigned for the purposes of performing this Agreement.

11.8. CONTINGENT FEES

11.8.1. The Contractor hereby declares and affirms that neither it nor any of its representatives has employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

11.9. MARYLAND PUBLIC INFORMATION ACT

11.9.1. The College is subject to the Maryland Public Information Act, Title 4 of the General Provisions Article of the Annotated Code of Maryland. Contractor agrees that it will provide any justification as to why any material, in whole or in part, is deemed to be confidential, proprietary information or secrets and provide any justification of why such materials should not be disclosed pursuant to the Maryland Public Information Act.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

11.10. TESTING AND INSPECTION

11.10.1. The College may retain, or may require the Contractor to retain, the services of testing/inspection laboratories/firms to perform the tests and make the required inspections and reports during the course of the Work as specified in the various sections of the Specifications or as required by the College in case of questions as to the strength or suitability of materials. However, for the purpose of preparing and testing design concrete mixes, the Contractor will retain the services of a testing laboratory which shall be other than that retained by the College. The Contractor shall also be responsible for all tests as indicated in the Specifications.

11.10.2. Testing/inspection laboratories/firms shall be responsible for conducting and interpreting the tests, shall state in each report whether or not the specimens tested conform to all requirements of the Contract Documents and shall specifically note deviations, if any, from said requirements. All testing/inspection laboratories/firms shall be subject to the College's approval.

11.10.3. The cost of testing services required solely for the convenience of the Contractor in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

11.10.4. The Contractor shall furnish to the College's Project Manager samples of all materials and component parts of the Work required as test specimens in connection with the specified tests, and shall furnish labor and facilities at the site as necessary in connection with testing and inspection services whether such services are performed at the expense of the College or the Contractor.

11.10.5. The nature and scope of testing services performed by an agency retained by the Contractor shall be in accordance with requirements of governing authorities having jurisdiction over the Work and as otherwise specified, and shall be consistent with reasonable standards of engineering practice.

11.10.6. If, in the performance of any testing, control, balancing, adjusting or similar activities to be performed by the Contractor or an agent of the Contractor, it is the opinion of the College's Project Manager that the Contractor or said agent has failed to substantiate its ability to perform such work, the Contractor shall, at its expense, retain the services of a testing laboratory or service organization which is satisfactory to the College's Project Manager for the performance of such work.

11.11. NO WAIVER OF RIGHTS – COLLEGE'S REMEDIES CUMULATIVE – COLLEGE'S DAMAGES

11.11.1. The College shall not be precluded or estopped by any measurement, estimate, change order, contract modification, certificate of payment, or payment from showing the true amount and character of the Work furnished by the Contractor, or from showing that any measurement, estimate, change order, contract modification, certificate of payment, or payment is untrue or was incorrectly made, or from showing that the Work does not in fact conform to the Contract Documents. The College may recover from the Contractor or its sureties, or both, such damages, loss or additional expense incurred as a result of any such error or measurement, estimate, change order, contract modification, certificate of payment, or payment as a result of such failure to conform to the Contract Documents. The College's right in this respect shall not be waived or barred by any inspection, acceptance or approval of the Work, or by payment therefore, or by granting an extension of time, or by taking possession, or by execution of a change order based on the erroneous measurement, estimate, or change order, contract modification, certificate of payment or payment.

11.11.2. The activities of the College's Project Manager, Architect/Engineer and the College respecting this Contract, including inspection of the Work, review of submittals, monitoring of progress, and so forth, are for the benefit of the College only and are not for the benefit of the Contractor. The College's failure to bring to the attention of the Contractor deficiencies in the Work or in the Contractor's performance will not constitute a waiver or excuse of the Contractor's failure to comply strictly with contract requirements.

11.11.3. The waiver by the College of any breach of contract by the Contractor shall not operate as a waiver of any other or subsequent breach.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

11.11.4. The rights and remedies of the College and the obligations of the Contractor under various provisions of the Contract Documents and under provisions of the law are cumulative and not exclusive.

11.11.5. For any claim or cause of action accruing to the College as a result of or arising out of this Contract, the College may collect damages of any kind, including consequential damages, or damages for purely economic loss.

11.12 REGISTRATION FOR CORPORATIONS NOT INCORPORATED IN THE STATE OF MARYLAND

Pursuant to 7-201 et seq. of the Corporation and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. By signing this agreement, the Contractor certifies that it has qualified with the Department of Assessments and Taxation.

ARTICLE 12 – TERMINATION OF THE CONTRACT

12.1. TERMINATION FOR DEFAULT

12.1.1. The performance of the Work or services under this Contract may be terminated by the College, in whole or in part, from time to time, effective upon receipt of notice, whenever the Contractor shall default in the performance of this Agreement and fails to make progress in the prosecution of the contract work or endangers such performance and shall fail to cure such default within ten (10) calendar days period after receipt of written notification from the College specifying the default.

12.1.2. The College may terminate the Contract if the Contractor;

12.1.2.1. persistently or repeatedly refuses or fails to supply enough properly skilled Workers or materials;

12.1.2.2. fails to make payment to Subcontractors for materials or labor in accordance with their respective agreements between the Contractor and the Subcontractors;

12.1.2.3. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;

12.1.2.4. refuses or fails to prosecute the Work, or any separable part thereof with such diligence as shall ensure its completion within the time specified in the Contract or in the extension thereof;

12.1.2.5. fails to complete the Work within the time allotted by the Contract; or

12.1.2.6. is in breach of any material obligation of the Contract, including a breach which may occur after Substantial Completion.

12.1.3. If any of the above reasons exist, the College may without prejudice to any other rights or remedies of the College and after giving the Contractor and the Contractor's surety, if any, seven days written notice, terminate the employment of the Contractor and may, subject to any rights of the surety:

12.1.3.1. take possession of the site and all materials, equipment, tools, and construction equipment and machinery owned by the Contractor; and

12.1.3.2. finish the Work by whatever reasonable means the College may deem is in its interests.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

12.1.4. When the College terminates the Contract for one of the reasons stated herein, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost to finish the Work, such excess shall be applied to the Contractor's unreimbursed costs, if any, accrued from the last payment prior to termination to time of termination. This amount shall become due to the Contractor. Any unreimbursed costs exceeding the difference of unpaid balance of the Contract Sum and the cost to finish the Work shall be lost to the Contractor. If the cost to finish the Work exceeds the Contract Sum, the Contractor shall pay the difference to the College. The amount to be paid to the Contractor or College, as the case may be, shall survive termination of the Contract.

12.2. TERMINATION FOR CONVENIENCE

12.2.1. The College may, at any time, terminate the Contract in whole or in part for the College's convenience and without cause.

12.2.2. Upon receipt of written notice from the College of such termination for the College's convenience, the Contractor shall (1) cease operations as directed by the College in the notice; (2) take actions necessary, or that the College may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

12.2.3. In the case of such termination for the College's convenience, the Contractor shall be entitled to receive payment from the College for all expenses incurred by it for satisfactory work, including reasonable termination expenses. Upon satisfactory proof that the Contractor would have earned a profit for Work performed prior to the date of termination, the Contractor shall be paid a reasonable amount for profit not to exceed 10% of the Contractor's costs incurred. Under no circumstances shall the Contractor be entitled to payment for anticipated but unearned profit, overhead, and damages. In no event shall the Contractor's cost of the Work and profit, if any, to be reimbursed exceed the Contract Sum as adjusted by approved change orders.

END OF GENERAL CONDITIONS

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT I: STANDARD FORM OF CONTRACT

**CONTRACT
BETWEEN
MONTGOMERY COLLEGE
AND**

**Board of Trustees
Montgomery College
Rockville, Maryland 20850**

Project Title: _____

Contract No.: _____

Account No.: _____

This **AGREEMENT** made this _____ day of _____ 202**X**, by and between the Board of Trustees of **MONTGOMERY COLLEGE**, a public institution of higher education, hereinafter called the "College", and _____, a _____, registered in the State of _____, located at _____, hereinafter called the "Contractor".

WITNESSETH, that the College and the Contractor for the consideration named agree as follows:

QUALIFICATIONS OF THE CONTRACTOR

The Contractor hereby assures the College that the Contractor is qualified to perform the services provided for in this Agreement in accordance with all applicable laws, orders, rules and regulations. The Contractor further assures the College that the Contractor is free from any financial interests which may conflict with the proper performance of this Agreement.

DEFINITION OF THE PROJECT

The Contractor agrees to provide all of the necessary labor, materials, equipment and insurance to perform all of the Work described in the Contract Documents. The Work to be performed by the Contractor shall include all items accepted by the College as part of the Contractor's bid submittal, base bid and alternate prices.

TIME OF COMPLETION

The Work to be performed under this Agreement shall be in accordance with the Preliminary Project Schedule contained in the Contract Documents. It is agreed that time is of the essence and therefore the College will suffer substantial damages if the Work is not completed within the time stated in the Preliminary Project Schedule contained in the Contract Documents.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

LIQUIDATED DAMAGES

It is agreed that time is of the essence and therefore the College will suffer substantial damages if the Work is not completed within the time stated in the Preliminary Project Schedule contained in the Contract Documents. If the Contractor fails to achieve Substantial Completion of its Work on or before the date set for Substantial Completion of the Contract and as a result causes the Project to be completed after the date set for Substantial Completion of the Project as set forth in the Preliminary Project Schedule, liquidated damages shall be assessed against the Contractor in the amount of \$ **1,000** per day for each calendar day that the Contractor delays Substantial Completion of the Project. These assessed damages shall not be considered as a penalty but as mutually agreed upon as the ascertained damages suffered by the College because of the delay. Where, under the contract, additional time is allowed for the completion of the work, the new time limits will be the essence of the contract.

CONTRACT DOCUMENTS

The Contract Documents are the Agreement, the Request for Bid/Proposal, Instructions for Bidders/Offerors, the General Conditions of the Contract, Supplementary Information and Conditions, Preliminary Project Schedule, Drawings, Specifications, Addenda issued prior to execution of the Contract, Modifications issued after execution of the Contract, the Performance Bond, the Labor and Material Payment Bond, the Contractor's Bid Form and all attachments thereto received from the Contractor. The term "Contract" when used in the Specifications or Drawings shall be considered as synonymous with the term "Contract Documents".

CHANGES TO THE CONTRACT

The College may make any alterations, deviations, additions or omissions to the Contract Documents which it deems to be in the best interest of the College without otherwise affecting the obligations of the Contractor or making void this Agreement. Any alterations, deviations, additions or omissions shall be processed as a change order in the Work and shall be prepared in accordance with the procedure set forth for issuing changes in the Work in the Contract Documents.

CONTRACT SUM

The College shall pay the Contractor the Contract Sum of _____ Dollars (\$ _____ .00) for the Work performed strictly in accordance with the requirements of this Agreement. All invoices submitted for Work performed under this Agreement shall include the College's project title, contract number and account number. The Contract Sum is a firm lump sum paid in accordance with the General Conditions of this Agreement.

PROGRESS PAYMENTS

Payments shall be made to the Contractor on a monthly basis provided that the Contractor submits Applications for Payments which are prepared in accordance with the General Conditions and supported by such data as the College may reasonably require. The College shall have the right to audit the Contractor's records to verify the payment request. Payment shall be made within thirty (30) calendar days after the requisition, properly prepared and authorized by the College representative, is received in the Finance Office.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ACCEPTANCE AND FINAL PAYMENT

Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance, the College and/or its representatives shall promptly make such final inspection. When the College Representative finds the Work fully acceptable under the Agreement and the Agreement fully performed, the College Representative shall issue a final certificate stating that the Work provided for in this Agreement has been completed and is acceptable under the terms and conditions thereof and that the entire balance found to be due to the Contractor and noted in the final certificate is due and payable. Before issuance of a final certificate, the Contractor shall submit such evidence the College deems necessary to ensure that all payrolls, materials bills and other indebtedness connected with the Work have been paid. Final payment shall be made within (15) fifteen calendar days after the issuance of a final certificate from the College's Representative that the Work has been fully completed and the Agreement fully performed.

Neither the acceptance by the College or any representative of the College nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the College, shall operate as a waiver of any portion of the Agreement or of any power reserved to the College or any right to recover damages. The waiver of any breach of the Agreement shall not be held to be a waiver of any other prior or subsequent breach.

NOTICES

Any notice to be provided shall be sent by first class mail and shall be addressed as follows or as may be later designated in writing:

a) For the College: Mr. Sherwin A. Collette
Senior Vice President for
Administrative and Fiscal Services
Montgomery College
9221 Corporate Boulevard
Rockville, Maryland 20850

b) For the Contractor: _____

INTERPRETATION OF CONTRACT

This Agreement is a contract under seal and shall be construed and interpreted according to the laws of the State of Maryland, without regard to principles of conflicts of law.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

COMPLIANCE WITH LAWS

The Contractor agrees to comply, at no additional expense, with all applicable Executive Orders, Federal, State, county, bi-county, regional and local laws, ordinances, rules and regulations in effect as of the date of this Agreement and as they may be amended from time to time, including but not limited to the equal opportunity clause set forth in 41 CFR 60-250.4 as amended. The Contractor shall further agree to comply with any special provisions or requirements, including more stringent provisions, mandated by any entity having jurisdiction.

INDEPENDENT CONTRACTOR

The Contractor shall perform the Contract as an independent contractor and shall not be considered as an agent of the College nor shall any employee or agent of the Contractor be considered subagents of the College. Nothing in this Contract shall be construed as constituting a partnership, joint venture, or agency between the College and Contractor. Other than duties of the Construction Manager based on authority granted to the Construction Manager by the College, no acts performed or representations, whether oral or written, made by or with respect to third parties and the Contractor shall be binding on the College.

NONDISCRIMINATION

The Contractor assures the College that, in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of sex, race, age, color, creed, national origin, religious belief, pregnancy, handicap, marital status or status as a disabled veteran or veteran of the Vietnam era. The Contractor further agrees to post in conspicuous places notices setting for the provisions of the non-discrimination clause and to take affirmative action in accordance with applicable law to implement these provisions.

The Contractor further assures the College that, in accordance with the Immigration Reform and Control Act of 1986, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.

The College is committed to providing a work and study environment that is free from discrimination and harassment on the basis of sex, race, age, color, creed, national origin, religious belief, pregnancy, handicap, marital status or status as a disabled veteran or veteran of the Vietnam era. Behavior contrary to this philosophy, which has the purpose or effect of creating an intimidating, hostile, or offensive environment, will not be tolerated by the College, and it is the Contractor's responsibility to ensure that such behavior by its employees, agents and subcontractors does not occur. This policy extends to maintaining an environment free from sexual harassment. Therefore, sexual advances or sexual remarks, requests for sexual favors, and other verbal or physical conduct of a sexual nature must not be condoned or permitted by the Contractor. This prohibition extends to such harassment within the employment context as well as harassment of students, staff and visitors of the College. It should be assumed that all sexual behavior by the Contractor's employees, agents and subcontractors on any campus or facility of the College is improper and unwelcome.

COMPLIANCE WITH THE IMMIGRATION REFORM AND CONTROL ACT OF 1986

The Contractor warrants that both the Contractor and/or any subcontractor of the Contractor do not and shall not hire, recruit or refer for a fee, for employment under this Agreement or any subcontract, an alien knowing the alien is an unauthorized alien and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 (hereinafter referred to as "IRCA"), including but not limited to any verification and record keeping requirements. The Contractor agrees to indemnify and save the College, its employees and/or trustees harmless from any loss, costs, damages or other expenses suffered or incurred by the College, its employees and/or trustees by reason of the Contractor's or any subcontractor of the Contractor's noncompliance with "IRCA." The Contractor agrees to defend the College, its employees and/or trustees in any proceeding, action or suit brought against the College, including but not limited to administrative and judicial proceedings, arising out of or alleging noncompliance of the Contractor with "IRCA." The Contractor recognizes that it is the Contractor's responsibility to ensure that all certifications and verifications as required by law are obtained and maintained for the applicable time period.

ASSURANCE OF NONCONVICTION OF BRIBERY

The Contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any state or the Federal Government.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

CONFLICT OF INTEREST

No employee of the College or of the State of Maryland, or any department, commission, agency or branch thereof whose duties as such employee include matters relating to or affecting the subject matter of this Agreement shall, until such time as the Contractor receives final payment, become or be an employee of the party or parties hereby contracting with the College, the State of Maryland, or any department, commission, agency or branch thereof.

ASSIGNMENT AND SUBCONTRACTING

Neither the College nor the Contractor shall sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or its right, title or interest therein, or its obligations there under, without the written consent of the other. A change in membership of the Contractor’s firm of one or more officers shall not constitute an assignment.

The Contractor shall not make any contracts for professional services with any other party for furnishing any of the work or services to be performed under this Agreement without the written approval of the College; however, this provision shall not be taken as requiring the approval of the contract of employment between the Contractor and its personnel assigned for the purposes of performing this Agreement.

INSURANCE

19.1 The Contractor shall maintain in force at all times during the term of this Agreement, with an insurance carrier licensed to do business in the State of Maryland acceptable to the College, the following minimum insurance coverage. 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 College, the proposed awardees/Contractor shall provide a copy of the insurance policies. The Contractor’s insurance shall be primary.

- a) Worker’s Compensation Insurance covering the Contractor’s employees as required by State of Maryland law with the following minimum limits:

Bodily Injury by Accident	\$ 100,000 each accident
Bodily Injury by Disease	\$ 500,000 policy limit
Bodily Injury by Disease	\$ 100,000 each employee.

- b) Commercial General Liability Insurance, excluding automobiles owned or hired by the Contractor, with limits as follows:

Bodily Injury and Property Damage:	\$ 10,000,000 combined single limit of bodily injury and property damage per occurrence
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- c) Comprehensive Automobile Liability Insurance, providing bodily injury and property damage coverage for owned vehicles, hired vehicles and non-owned vehicles with limits as follows:

Bodily Injury:	\$ 1,000,000 each person \$ 2,000,000 each occurrence
Property Damage:	\$ 2,000,000 each occurrence

- d) Builder’s Risk Insurance, providing property damage coverage and theft replacement coverage for goods provided and services rendered during construction. For renovation projects, when custody of the building is turned over to the Contractor, the Builder’s Risk policy must additionally include building replacement value.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

- e) Insured - The College, its elected and appointed officials, officers, consultants, agents and employees must be named as additional insured and loss payee on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of Contractor's products, goods and services provided under this Agreement.
- 19.2 At the time this Agreement is made, the Contractor shall provide the College with evidence of payment for the above insurance coverage as resulted by this Agreement. Any request for extension of time of this Agreement shall also include evidence of payment for the above insurance coverage as required by an extension of time for this Agreement.
- 19.3 These coverages and limits are to be considered minimum requirements under this Agreement and shall in no way limit the liability or obligations of the Contractor. The insurance shall provide that policy coverage will not be canceled, altered or materially changed without sixty (60) calendar days' prior notice to the College by registered or certified mail. The insurance shall not be limited to claims made only while the policy is in effect.
- 19.4 The Contractor shall furnish the College with a certificate of insurance as evidence of the required coverage. The certificates of insurance must name the College as an additional insured.
- 19.5 In the event that the Contractor's insurance is terminated, the Contractor shall immediately obtain other coverage and any lack of insurance shall be grounds for immediate termination of this Agreement.
- 19.6 For the purposes of this article, the word "licensed" shall be deemed to mean an insurance carrier either licensed or approved to do business in the State of Maryland.

SAVE HARMLESS

The Contractor shall be responsible for any property damage, loss, personal injury, death and/or any other damage which may occur by reason of the Contractor's acts, negligence, willfulness or failure to perform any of the obligations required by this Agreement. The Contractor agrees to indemnify and save harmless the College and its respective employees, volunteers, students, and trustees, as applicable, (the "Indemnitees") from any claims, loss, costs, damages or other expenses suffered or incurred by the Indemnitees, including attorney's fees and costs, by reason of the Contractor's acts, negligence, willfulness or failure to perform any of the obligations required by this Agreement. The Contractor at its own expense shall defend the Indemnitees in any action or suit brought against any of the Indemnitees arising out of the Contractor's acts, negligence, willfulness or failure to perform any of the obligations required by this Agreement. Any acts, negligence, willfulness or failure to perform any of the obligations required by this Agreement on the part of any agent, servant, employee or Subcontractor of the Contractor, or any Subcontractor's agent, servant or employee, are deemed to be the Contractor's acts, negligence, willfulness or failure to perform any of the obligations defined by this Agreement.

In claims against any person or entity indemnified under subsection 21.1 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under subsection 21.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The College may retain such moneys due or to become due the Contractor under this Agreement as it considers necessary until such suits or claims for damages have been settled or otherwise disposed of and satisfactory evidence to that effect has been furnished to the College.

The provisions of this Article shall survive the termination of this Agreement.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

DISPUTES

Any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the President of the College or his designee. Pending the final decision of the dispute, the Contractor shall proceed diligently with the Agreement performance. Nothing hereunder shall be interpreted to preclude the parties from seeking, after completion of the Agreement, any and all remedies provided by law.

TERMINATION FOR THE CONVENIENCE OF THE COLLEGE

The performance of the work or services under this Agreement may be terminated by the College, in whole or in part, whenever the President of the College shall deem that termination is in the best interest of the College. In such event, the College shall be liable only for payment in accordance with the payment provisions of this Agreement for work or services performed or furnished prior to the effective date of termination, plus reasonable costs of termination, if any, which costs shall be specifically approved by the College in writing. The Contractor shall not be reimbursed for anticipatory profits. Termination hereunder shall become effective by delivering to the Contractor a written notice of termination upon which date the termination shall become effective.

TERMINATION FOR DEFAULT

The performance of the work or services under this Agreement may be terminated by the College, in whole or in part, from time to time, effective upon receipt of notice, whenever the Contractor shall default in the performance of this Agreement and fails to make progress in the prosecution of the contract work or endangers such performance and shall fail to cure such default within ten (10) calendar days period after receipt of written notification from the College specifying the default. Should the Agreement be terminated by the College for failure to perform on the part of the Contractor, no additional compensation shall be paid.

DELAY

In the event the performance of work or services under this Agreement is delayed by causes beyond the control of and without the fault or negligence of the Contractor, the College shall have the option to:

- a.) Terminate the Agreement, or
- b.) Allow the President of the College or his designee to extend the time for performance. No monetary compensation will be awarded for the time extension.

Any changes made in this Agreement as a result of delay shall be in writing. In the event the time for performance of this Agreement is extended beyond the term provided for, all other terms and conditions shall remain in full force and effect.

WORK UNDER CONTRACT

Work may not commence under this Contract until all conditions for commencement are met, including execution of the Contract by both parties, compliance with insurance requirements and issuance of any required notice to proceed.

CONTINGENT FEES

The Contractor hereby declares and affirms that neither it nor any of its representatives has employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

CAPTIONS

The captions and headings contained herein are solely for convenience and reference and do not constitute a part of this Agreement.

ENTIRE AGREEMENT

This Agreement and the other items identified as Contract Documents constitute the entire agreement between the parties except that any change orders issued by the College shall automatically be deemed to be part of this Agreement. Any other changes or additions hereto shall not become binding upon any parties until reduced to writing and signed by both parties.

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

AUDIT

The Contractor shall permit audit and fiscal and programmatic monitoring of the Work performed under this Agreement. The College shall have access to and the right to examine and/or audit any records, books, documents and papers of Contractor and any Subcontractor involving transactions related to this Agreement during the term of this Agreement and for a period of three (3) years after final payment under this Agreement, whether or not disputes (including litigation) exist between the parties.

REGISTRATION FOR CORPORATIONS NOT INCORPORATED IN THE STATE OF MARYLAND

Pursuant to 7-201 et seq. of the Corporation and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. By signing this agreement, the Contractor certifies that it has qualified with the Department of Assessments and Taxation.

SEVERABILITY

If any provision of this Agreement shall be held illegal, unenforceable, or in conflict with any law governing this Agreement, the validity of the remaining portions shall not be affected thereby.

IN WITNESS WHERETO, the Contractor and the College have hereunto set their hands and seals the day and year first above written.

Montgomery College

Witness

By: _____
Dr. Jermaine F. Williams
President

Date: _____

Contractor

Witness

By: _____

Date: _____

Fed Tax I.D. No.: _____

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

This contract is executed by the Montgomery College Board of Trustees pursuant to Board Resolution No. _____, dated _____.

Certify that this Contract has been prepared in accordance with College Policy and Procedures and certify as Account Manager for this account, and funds are available for this Contract.

Contract No.
Account No
Amount:

Sherwin A. Collette
Sr. Vice President for Administrative and Fiscal Services

Date

End of Form of Contract

MONTGOMERY COLLEGE • OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

ATTACHMENT J: STANDARD PERFORMANCE BOND

Montgomery College
Standard Performance Bond

Any singular reference to Contract, Surety, Owner or Other Party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*):

SURETY (*Name and Principle Place of Business*):

OWNER (*Name and Address*):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Dated):

Amount:

Modifications to this Bond:

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

None

SURETY

Company:

See Page 3

(Corporate Seal)

Signature: _____
Name and Title:

Signature: _____
Name and Title:

(Any additional signatures appear on the last page)

(FOR INFORMATION ONLY – Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party)

MONTGOMERY COLLEGE - OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
RFP NUMBER: E925-003
RFP CLOSING DATE AND TIME: December 13, 2024 @ 3:00 PM

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, and administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract in accordance with its terms, the Surety and the Contractor shall have no obligation under this Bond.

3 Whenever the Contractor shall be declared by the Owner to be in default under the Contract, the Surety shall, at its sole expense, within 15 days after Owner having mailed to Surety a copy of the notice of default sent to Contractor, take one of the following actions:

3.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

3.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

4 If the Surety does not proceed as provided in Paragraph 3, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy

available to the Owner. If the Surety proceeds as provided in Subparagraph 3.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

5 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 3.2 or 3.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract. The Surety is obligated without duplication for:

5.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

5.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 3;

5.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor, and

5.4 All other costs and damages permitted to be recovered by the Owner under the Construction Contractor at law.

MONTGOMERY COLLEGE - OFFICE OF BUSINESS SERVICES
REQUEST FOR PROPOSAL (RFP) TITLE: ON-CALL GENERAL CONTRACTOR SERVICES
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6 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

7 Any proceeding, legal or equitable, under this Bond may be instituted only in the Circuit Court for Montgomery County, Maryland and the Surety waives venue in any other court.

8 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

9 This Bond had been furnished to comply with a statutory or other legal requirement of the State of Maryland. Any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

10 DEFINITIONS

10.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

10.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

10.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	(Corporate Seal)	Company:	(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address: