



RFP No. 114594

PROFESSIONAL, TECHNICAL AND EXPERT SERVICES

City of Portland, Oregon

REQUEST FOR PROPOSALS

for

Implementation of the SAP Learning Solution

PROPOSALS DUE: October 3, 2012 by 4:00 p.m.

Envelope(s) shall be sealed and marked with RFP # and Project Title.

SUBMITTAL INFORMATION: Refer to PART II, SECTION B.3 (PROPOSAL SUBMISSION)

Submit the Proposal and refer all questions to:

City of Portland
Attn: B. J. Gibson, CPPO
Procurement Manager
1120 SW Fifth Ave., Room 750
Portland, OR 97204
Email: barbara.gibson@portlandoregon.gov

GENERAL INSTRUCTIONS AND CONDITIONS

DIVERSITY IN EMPLOYMENT AND CONTRACTING REQUIREMENTS – The City of Portland seeks to extend contracting opportunities to Minority Business Enterprises, Women Business Enterprises and Emerging Small Businesses (M/W/ESBs) in order to promote their economic growth and to provide additional competition for City contracts. Therefore, the City has established an overall 20% utilization goal in awarding PTE contracts to ESBs. No goal is set for the use of M/WBE firms, but the City is committed to ensuring that such firms receive opportunities and equal consideration to be awarded City PTE contracts.

CITY SUSTAINABILITY OBJECTIVES – The City has a history of striving to be more sustainable in its operations and planning. Starting with the City's Sustainable City Principles (1994) the City has established a variety of policies to guide its work on sustainability, including: the Sustainable Procurement Policy, Green Building Policy, Climate Action Plan, and the Stormwater Management Manual (to view these and related City policies, go to the Portland Policy Documents Website: <http://www.portlandonline.com/auditor/index.cfm?c=26818>). As applicable to City procurement, these policies guide the City to buy products and services that reduce the City's negative environmental and social impacts, while maintaining fiscal health in the short and long term. As such, the City seeks to do business with firms that will actively contribute to the City's sustainability objectives.

ENVIRONMENTAL CLAIMS – Upon request, the vendor must provide and make publicly available verifiable evidence supporting every environmental claim made about the products or services provided to the City. Environmental claims for which verifiable evidence must be provided include any claim provided on products, product packaging, product or service sales literature and websites, and information provided to respond to this solicitation.

INVESTIGATION – The Proposer shall make all investigations necessary to be informed regarding the service(s) to be performed under this request for proposal.

SPECIAL CONDITIONS – Where special conditions are written in the Request for Proposal, these special conditions shall take precedence over any conditions listed under the Professional, Technical and Expert Service "General Instructions and Conditions".

CLARIFICATION OF REQUEST FOR PROPOSAL – Proposers who request a clarification of the RFP requirements must submit questions in writing to the person(s) shown in the REFER QUESTIONS TO section on the cover of this RFP, or present them verbally at a scheduled pre-submittal meeting, if one has been scheduled. The City must receive written questions no later than the date stated herein. The City will issue a response in the form of an addendum to the RFP if a substantive clarification is in order.

Oral instructions or information concerning the Request for Proposal given out by City bureaus, employees or agents to prospective Proposers shall not bind the City.

ADDENDUM – Any change to this RFP shall be made by written addendum issued no later than 72 hours prior to the proposal due date. The City is not responsible for any explanation, clarification or approval made or given in any manner except by addendum.

COST OF PROPOSAL – This Request for Proposal does not commit the City to pay any costs incurred by any Proposer in the submission of a proposal or in making necessary studies or designs for the preparation thereof, or for procuring or contracting for the services to be furnished under the Request for Proposal.

CANCELLATION – The City reserves the right to modify, revise or cancel this RFP. Receipt and evaluation of proposals or the completion of interviews do not obligate the City to award a contract.

LATE PROPOSALS – Proposals received after the scheduled closing time for filing will be rejected as non-responsive and returned to the Proposer unopened.

REJECTION OF PROPOSALS – The City reserves the right to reject any or all responses to the Request for Proposal if found in the City's best interest to do so. In the City's discretion, litigation between the City and a Proposer may be cause for proposal rejection, regardless of when that litigation comes to the City's attention and regardless how the Proposer's proposal may have been

scored. Proposals may also be rejected if they use subcontractors or subconsultants who are involved in litigation with the City. Proposers who are concerned about possible rejection on this basis should contact the City before submission of a proposal for a preliminary determination of whether its proposal will be rejected.

CITY OF PORTLAND BUSINESS LICENSE – Successful Proposer shall obtain a current City of Portland Business License prior to initiation of contract and commencement of the work.

WORKERS' COMPENSATION INSURANCE – Successful Proposer shall be covered by Workers' Compensation Insurance or shall provide evidence that State law does not require such coverage.

CERTIFICATION AS AN EEO AFFIRMATIVE ACTION EMPLOYER – Successful Proposers must be certified as Equal Employment Opportunity Affirmative Action Employers as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with Procurement Services, City of Portland, prior to contract execution.

EQUAL BENEFITS PROGRAM – Successful Proposers must provide benefits to their employees with domestic partners equivalent to those provided to employees with spouses as prescribed by Chapter 3.100 of the Code of the City of Portland. The required documentation must be filed with Procurement Services, City of Portland, prior to contract execution.

LOCAL CONTRACTING – If the final evaluation scores are otherwise equal, the City prefers goods or services that have been manufactured or produced by a Local Business. The City desires to employ local businesses in the purchase, lease, or sale of any personal property, public improvements or services. The City wants the residents of the State of Oregon and SW Washington to benefit from optimizing local commerce and services, and the local employment opportunities they generate. [City of Portland Resolution #36260]

CONFLICT OF INTEREST – A Proposer filing a proposal thereby certifies that no officer, agent or employee of the City who has a pecuniary interest in this Request for Proposal has participated in the contract negotiations on the part of the City, that the proposal is made in good faith without fraud, collusion or connection of any kind with any other Proposer of the same request for proposals, and that the Proposer is competing solely in its own behalf without connection with or obligation to, any undisclosed person or firm.

PUBLIC RECORDS – Any information provided to the City pursuant to this RFP shall be public record and subject to public disclosure pursuant to Oregon public records laws (ORS 192.410 to 192.505). Any portion of a proposal that the proposer claims as exempt from disclosure must meet the requirements of ORS 192.501(2) and ORS 192.502(4) and/or ORS 646.461 et seq. The fact that a proposer marks and segregates certain information as exempt from disclosure does not mean that the information is necessarily exempt. The City will make an independent determination regarding exemptions applicable to information that has been properly marked and redacted. Information that has not been properly marked and redacted may be disclosed in response to a public records request. When exempt information is mixed with nonexempt information, the nonexempt information must be disclosed.

If the City refuses to release the records, the proposer agrees to provide information sufficient to sustain its position to the District Attorney of Multnomah County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, the City will notify the proposer in order for the proposer to take all appropriate legal action. The proposer further agrees to hold harmless, defend, and indemnify the city for all costs, expenses, and attorney fees that may be imposed on the City as a result of appealing any decision regarding the proposer's records.

The Chief Procurement Officer has the authority to waive minor irregularities and discrepancies that will not affect the competitiveness or fairness of the solicitation and selection process.

These Professional, Technical and Expert Services Request for Proposal "General Instructions and Conditions" are not to be construed as exclusive remedies or as a limitation upon rights or remedies that may be or may become available under ORS Chapter 279.

PART I

CONTRACT REQUIREMENTS

SECTION A

GENERAL INFORMATION

1. INTRODUCTION

The Enterprise Business Solution (EBS) Division of the Office of Management and Finance is responsible for the ongoing support and enhancement of the City's SAP enterprise resource planning (ERP) system. The City's SAP ERP system software solution incorporates Citywide standardization, use of best-practice business processes and provides consistent financial, purchasing, payroll, and human resources functionality Citywide.

As additional, expanded, and/or modified system software and functionality are required by the City, the EBS Division is responsible for planning, performing, and managing the blueprinting, configuration, development, testing, change management, training development and delivery, and implementation of the new, expanded, and/or modified SAP ERP system software and accompanying business processes.

The City is seeking a Contractor to help with implementation of the SAP Learning Solution.

2. BACKGROUND

The Enterprise Business Solution (EBS) Project: The EBS Project began in November 2006. The City SAP ERP system software and accompanying best-practice business processes were implemented in two phases: Finance and Logistics (FILO) on November 27 2008 and Human Capital Management (HCM) on June 10, 2009. Following the implementation, the EBS Division was established and assumed responsibility for the ongoing support and enhancement of the ERP system.

City SAP ERP System Function Groupings: The City of Portland runs SAP ERP 6.0 / NW7.02 EHP5 for all financial and human resources business processes. The following SAP FILO and HCM business modules and functions, along with the supporting Technology (TECH) and Help Desk (CHD) functions, form the set of functionality currently in use by the City:

Present FILO Functions

- Financials (FI)
- Controlling (CO)
- Funds Management (FM)
- Grants Management (GM)
- Accounts Receivable (AR)
- Accounts Payable (AP)
- Asset Accounting (AA)
- Project Systems (PS) - Limited to WBS level functionality for CoP Capital Projects
- Treasury (TR) - Excludes Debt and Investment Management solutions
- Sales & Distribution (SD) - Limited to Basic SD functions
- Business Intelligence (BI) - Limited to CAFR (Comprehensive Annual Financial Report) reports
- Material Management (MM) - Excludes inventory functions and SRM/E Procurement

- Business Intelligence (FILO)

Present HCM Functions

- Organization Management (OM)
- Benefits (BN) – Only limited functionality
- Personnel Administration (PA)
- Time Management (TA)
- Payroll (PY)
- Employee Self-Service (ESS)
- Manager Self Service (HCM) – Only limited functionality

The City currently uses a learning management system (LMS) called Pathlore (by SumTotal). Functionality of this system is basic and includes a catalog of on-site courses, a web-portal for course registration, and historical registration status for employees. All billing, correspondence, approvals, course planning and appraisals occur outside of both Pathlore and SAP. Furthermore, other City bureaus (i.e., Water Bureau, Portland Bureau of Transportation, Bureau of Environmental Services, etc) use other means to capture bureau-specific training requirements for their employees.

The current Pathlore license terminates January 17, 2013. The City of Portland wants to have the Learning Solution (LSO) operational prior to that date in order to meet the training needs of BHR and EBS. In addition, we would like make Learning Solution available to all City bureaus to meet their training needs.

At this time, the City already owns LSO and has purchased licenses to cover up to 4500 employees. SAP is already used for both HCM and Financial data within the City and the portal is already in use through both ESS and MSS. Requirements gathering and blueprinting have already begun towards defining a phased implementation for LSO.

The City of Portland, Bureau of Human Resources (BHR), and Enterprise Business Systems (EBS) Division desire to implement the SAP LSO to capture internal training and records for employees in the 23 bureaus/divisions throughout the City. Only about 4500 employees will have access initially to the learner portal, but training records may be maintained in the system for all City employees; approximately 5500 regular full-time employees and up to 4000 seasonal employees.

3. SCOPE OF WORK

The City of Portland, Office of Management and Finance, Enterprise Business Solution Division is seeking proposals from individuals, firms, teams or consultants, hereafter called "Proposer(s)," with demonstrated experience in SAP Learning Solution / Enterprise Learning, and proposes to engage the successful Proposer for the following services.

The scope of work for the City of Portland, SAP LSO project is to support the EBS Division to create blueprint documentation, configure to specifications and ensure a successful implementation of the LMS. The project will begin the first week of November, or when contract negotiations are final; this project will conclude January 31, 2013.

4. PROJECT FUNDING

The proposal shall include the Proposer's true estimated cost to perform the work irrespective of the City's budgeted funds for this work.

5. TIMELINE FOR SELECTION

The following dates are proposed as a timeline for this project:

Written proposals due at 2:00 p.m.	October 3, 2012
Selection committee recommendation for award or shortlist for interviews, if deemed necessary	October 10, 2012
Contract negotiation with successful Proposer completed	October 31 2012
Notice to proceed – work starts	November 5, 2012

The City reserves the right to make adjustments to the above noted schedule as necessary.

SECTION B

WORK REQUIREMENTS

1. TECHNICAL OR REQUIRED SERVICES

The successful Proposer shall perform the tasks listed below for this project, and shall be expected to work closely with designated City personnel to accomplish these goals:

- a) Work with EBS staff through the Business Blueprint and Realization and Testing of initial implementation of the project, as needed. This work could include blueprint documentation, test strategy development, realization configuration and functional requirements documentation. In addition, resources may be needed for development activities and data migration. The consultant shall help EBS develop a process that is replicable across multiple implementations for future phased roll out of the LSO.
- b) Recommend best/standard business practices when implementing Learning Solution for all phases of the project, including developing data conversion strategy for existing data.
- c) Train and work to transfer knowledge to EBS team members throughout the Project such that after the conclusion of the Project ongoing system support can be performed by regular City employees.
- d) The Proposer must provide a 6 month warranty for all work performed.

While the City plans to implement the project in two parts or phases, the proposer will propose on the components for implementation of Phase One only, which is defined below. The initial phase will be to deliver limited functionality to BHR and EBS customers by January 22, 2013. This phase will consist of migration of existing Pathlore data to SAP, establishment of business practices to support training administration and portal use for learners, development of solutions to ensure that all City employees are aware of and have completed required compliance-related training, and the establishment of governance practices for the LSO.

After the initial implementation, the City will begin the development of additional functionality to LSO, including content integration processes and practices to support eLearning initiatives, advanced reporting and correspondence enhancements, course assessments and MSS services. This functionality is not part of the requirements for Phase One of this proposal.

In 2013, the City will begin the roll out of LSO across all bureaus, data conversion of bureau-specific training records, building appropriate master data catalogs, and ensuring that their business specific requirements are met. This phase is not included in the proposal requirements at this time as all work will be performed and completed by the City. However, part of the blueprinting

for Phase One should take into consideration the expanded roll out at a future date.

Below is an overview of the expected functional scope for the project. This information may be subject to modification during blueprinting with the proposer.

Functional Scope:

- Training Administration
 - Develop corporate LMS governance procedures
 - Design training administration practices to support training management and enrollment for City employees
 - Design business process to track training history for contractors and other non-City employees who require formal training history. Complementary portal process will not be developed for non-City employees
 - Establish business processes to target mandatory training to groups of employees, both with and without qualifications
 - Design processes to support current existing training administration: Compliance training; Outside Agency training; Leadership/Management training
 - Resource Management for Rooms/Instructors
 - Leverage Delivery Method functionality to support Classroom, Static and Virtual Classroom training
 - Leverage Notifications Functionality using Request-based Correspondence (RBC) and either Adobe Forms or SmartForms
 - Simple cost tracking functions to support chargeback requirements.
- Qualifications Management
 - Initial development of a qualifications catalog to manage recurring required training for compliance purposes.
 - Enhancement to support Qualification Assignment as Requirements at the Organizational Unit and Position level.
 - Process to support initial timing/grace period for training requirements.
- Portal
 - Implement Learning Portal iView
 - Add reports to MSS
- Content
 - Support Static content, hosted on external CMS/DMS

Development Scope: The following identifies the development areas that are expected as a part of initial implementation functionality. (NOTE: City of Portland has a development resource on staff, proposer will only need to provide required documentation for development)

- Reports (As defined during Blueprinting session; some already identified include:)
 - Training Not Taken
 - Reminder Notification
 - Mandatory Training Notification for employees and managers
- Interfaces

- NA
- Conversions
 - Training Master Data (Course Catalog and related data) Migration
 - Attendee Training History migration
- Enhancements
 - Minimum of 1 BAdi for correspondence: Ensure that notifications do not go out for 'after the fact' bookings (LSO CORRESPONDENCE41)
 - Correspondence BAdIs:
 - Stop correspondence to select groups of employees without email addresses (LSO_CORRESPONDENCE45 and LSO_CORRESPONDENCE46)
 - Manager sender and correspondence title information (LSO_CORRESPONDENCE43 and LSO_CORRESPONDENCE44)
 - Addition of a calendar attachment for booking notifications.
 - Learner Portal BSP changes to increase usability
 - Navigation Changes
 - Follow-up Enhancement
 - Training Activities Changes
- Forms
 - Adobe Forms/SmartForms development for Correspondence
- Authorizations
 - New Role for Super User Administrator
 - New Role for Administrators
 - New Role for Administrator Light
 - Enhanced Role and Portal Role for Managers
 - New Role and Portal Role for Learner
 - Additional as identified in Blueprint
- Portals
 - iView implementation for Learner
 - Addition of R/3 backend reports to MSS to show training history for the team and expiring qualifications for the team
- Solution to track training requirements due within specific time period (based on date of personnel action)
 - Solution Design
 - Infotype to track timing
 - Enhancement to BSP to indicate timing/expirations
 - Enhancement to reporting to track timing/expirations
 - Custom notifications for timing/expirations

Geographic and Language Scope: All infrastructures will be located at the City of Portland, Portland, OR. Employees must be able to access SAP Learning Solution from locations within the City of Portland.

There is one language to be supported for the implementation: English

2. WORK PERFORMED BY THE CITY

The City has assigned a project manager to oversee the successful Proposer's work and provide support as needed. Specific duties the City will perform include:

- a) Project plan development
- b) "As Is" process documentation
- c) Requirements definitions
- d) Change management and EU training
- e) System setup
- f) Assist with Master data and business process design
- g) User acceptance testing
- h) Provide technical resources (Basis and Security)
- i) Review and evaluate deliverables.

The City will provide the successful Proposer with the necessary working space and network access during implementation as agreed upon by the contractual parties.

3. DELIVERABLES AND SCHEDULE

Deliverables shall be considered those tangible resulting work products that are to be delivered to the City such as reports, draft documents, data, interim findings, training, meeting presentations, final training materials, and reports. The successful Proposer is encouraged to provide any deliverables in accordance with the City's Sustainable Paper Use Policy. The policy can be viewed at: <http://www.portlandonline.com/omf/index.cfm?c=37732>.

The project will begin the first week of November, or when contract negotiations are final; Phase One of the project will be completed by January 31, 2013. Deliverables will be finalized after requirements review, but will include but not be limited to:

- Blueprint:
 - Requirements review
 - Blueprint document creation
- Data conversion plan
- Realization:
 - Test Strategy
 - Configuration
 - Basic settings
 - Day-to-Day activities
 - Correspondence
 - Recurring Activities
 - Follow-up
 - Learning Portal
 - Configuration Unit Testing
- Functional Requirements Documentation
- Master Data and Business Process Design
 - BPP/Integration Test Documents
 - Master Data Collection Spreadsheets
 - Qualifications Data Collection – Catalog and Scales
 - Course Catalog Data Collection – Catalog and Metadata
- Any system or process documentation necessary to perform the knowledge transfer to EBS staff
- Submission of a Monthly Subconsultant Payment and Utilization Report by the 15th of each month with invoice (reference Part II, Section C.5 of the RFP).

All deliverables and resulting work products from this contract will become the property of the City of Portland. As such, the Contractor and any subcontractors grant the City the right to copy and distribute (in any and all media and formats) project deliverables for regulatory, project certification/recognition, program development, public education, and/or for any purposes at the sole discretion of the City of Portland.

4. PLACE OF PERFORMANCE

The successful Proposer shall agree to be on-site in EBS offices throughout the blueprinting process. Thereafter, the location for the work may be split between on-site and offsite. On-site work will be conducted at the Portland Building, 1120 SW 5th Ave., Room 1450, Portland, Oregon, 97204. Document development may occur remotely. All other supporting activities may require on-site visits for knowledge transfer. The combination of on-site and remote work will be agreed upon in detail during the negotiation phase by both contractual parties.

5. PERIOD OF PERFORMANCE

The City anticipates having the successful Proposer begin work immediately upon contract execution with submittal of final deliverables to the City occurring by December 31, 2012.

6. PUBLIC SAFETY

Public safety may require limiting access to public work sites, public facilities, and public offices, sometimes without advance notice. The Proposer shall anticipate delays in such places and include the cost of delay in the proposed cost. The successful Proposer's employees and agents shall carry sufficient identification to show by whom they are employed and display it upon request to security personnel. City project managers have discretion to require the successful Proposer's employees and agents to be escorted to and from any public office, facility or work site if national or local security appears to require it.

The proposer will need to pass a criminal background check. Temporary accounts will be issued to the consultant for each system, which are to be used only for work pertaining to the Learning Solution project. Upon completion of the project these accounts will be closed.

7. INSURANCE

The successful Proposer shall agree to maintain continuous, uninterrupted coverage of all insurance as required by the City. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without a 30-day written notice, or a 10-day written notice for non-payment from the successful Proposer or its insurer(s) to the City.

Workers' Compensation Insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (firms with one or more employees, unless exempt under ORS 656.027).

General Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract, and shall provide that the City of Portland, and its agents, officers, and employees are Additional Insureds but only with respect to the successful Proposer's services to be provided under this Contract.

Automobile Liability Insurance with a combined single limit of not less than

\$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Information Security & Privacy Liability for Service Provided to Others: Technology Products and Services E&O with a per occurrence limit of not less than \$1,000,000. This is to cover claims and losses with respect to, but not limited to, network risks such as data breaches, unauthorized access or use, ID theft, invasion of privacy, damage to or loss of data, data degradation, downtime and intellectual property infringement such as copyrights, trademarks, service marks, and trade dress.

Certificates of Insurance: As evidence of acceptable insurance coverage, the successful Proposer shall furnish insurance certificates to the City at the time signed contracts are returned to the City. The certificate will specify all of the parties who are Additional Insureds and will include a 30-day cancellation clause and a 10-day non-payment clause as identified above. Insuring companies or entities are subject to City acceptance. If requested, complete policy copies shall be provided to the City. The successful Proposer shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

SECTION C

ATTACHMENTS

1. INDEX

Exhibit A City of Portland PTE Subcontract Disclosure Form
Exhibit B Sample Technology Professional, Technical and Expert Services Contract with Exhibit A, Statement of Work and Payment Schedule
Exhibit C Detailed Cost Breakdown of Estimated Costs

2. SAMPLE CONTRACT

The Technology Professional, Technical, and Expert Services Contract is the City's standard contract and will be used as a result of this selection process. A sample contract is attached as Exhibit B.

PART II

PROPOSAL PREPARATION AND SUBMITTAL

SECTION A

PRE-SUBMITTAL MEETING/CLARIFICATION

1. PRE-SUBMITTAL MEETING

There will be no pre-submittal meeting or site visit scheduled for this project.

2. RFP CLARIFICATION

Questions and requests for clarification regarding this Request for Proposal must be directed in writing, via email or fax, to the person listed below. **The deadline for submitting such questions/clarifications is 7 days prior to the original proposal due date.** An addendum will be issued no later than 72 hours prior to the proposal due date to all recorded holders of the RFP if a substantive clarification is in order.

B. J. Gibson, CPPO
Procurement Services
1120 SW Fifth Ave., Room 750
Portland, Oregon 97204
E-mail: barbara.gibson@portlandoregon.gov
Phone: (503) 823-7665

SECTION B

PROPOSAL SUBMISSION

1. PROPOSALS DUE

Sealed proposals must be received no later than the date and time, and at the location, specified on the cover of this solicitation. The outside of the envelope shall plainly identify the subject of the proposal, the RFP number and the name and address of the Proposer. It is the Proposer's responsibility to ensure that proposals are received prior to the specified closing date and time, and at the location specified. Proposals received after the specified closing date and/or time shall not be considered and will be returned to the Proposer unopened. The City shall not be responsible for the proper identification and handling of any proposals submitted to an incorrect location.

2. PROPOSAL

Proposals must be clear, succinct and not exceed 20 pages. Vendor team resumes, specifications and requirements documents, reference information, section dividers, title page, and table of contents do not count in the overall page count of the proposal. Proposers who submit more than the pages indicated may not have the additional pages of the proposal read or considered.

For purposes of review and in the interest of the City's Sustainable Paper Use Policy and sustainable business practices in general, the City requests the use of submittal materials (i.e. paper, envelopes, etc.) that contain post-consumer recycled content and are readily recyclable. Submittals shall NOT include 3-ring binders or any plastic binding, folders, or indexing materials. Reusable binding posts, clips or rings and recycled content paper envelopes or folders are examples of acceptable bindings. Submittals shall be printed on both sides of a single sheet of paper wherever applicable; if sheets are printed on both sides, it is considered to be two pages. Color is acceptable, but content should not be lost by black-and-white printing or copying.

All submittals will be evaluated on the completeness and quality of the content. Only those Proposers providing complete information as required will be considered for evaluation. The ability to follow these instructions demonstrates attention to detail.

3. PROPOSAL SUBMISSION

For purposes of this proposal submission, the proposer shall submit: one (1) original printed copy and one (1) electronic copy on USB flash drive or CD. If the proposer

requests redactions please submit one (1) unprotected MS Word format document with redactions highlighted on a USB flash drive or CD. If no redactions are requested please state that in the Cover Letter portion of your submittal. The entire proposal submittal must be received at the place and on or before the time and date specified on the cover page of this RFP document.

REDACTION FOR PUBLIC RECORDS: Any portion of a proposal that the proposer claims as exempt from disclosure must meet the requirements of ORS 192.501(2), ORS 192.502(4) and/or ORS 646.461 et seq. Proposers are required to submit a redacted copy of their proposal and all attachments. "Redaction" means the careful editing of a document to obscure confidential references; a revised or edited document thereby obscuring the exempt information but otherwise leaving the formatted document fully intact. **The redacted copy must be a complete copy of the submitted proposal, in which all information the Proposer deems to be exempt from public disclosure has been identified.**

When preparing a redaction of your proposal submission, a proposer must plainly mark, but leave readable, the redactions by highlighting the specific areas your firm asserts are exempt from public disclosure. In addition, a summary page identifying the pages where redactions occur shall be included with the proposal submission (summary is not included in page limitations). **If a proposer fails to submit a redacted copy of their proposal as required, the City may release the proposer's original proposal without redaction.** If the entire proposal is marked as constituting a "trade secret" or being "confidential", at the City's sole discretion, such a proposal may be rejected as non-responsive.

Unless expressly provided otherwise in this RFP or in a separate written communication, the City does not agree to withhold from public disclosure any information submitted in confidence by a proposer unless the information is otherwise exempt under Oregon law. The City agrees not to disclose proposals until the City has completed its evaluation of all proposals and publicly announces the results.

Please refer to the GENERAL INSTRUCTIONS AND CONDITIONS for more information about confidential information within public records.

4. ORGANIZATION OF PROPOSAL

Proposers must provide all information as requested in this Request for Proposal (RFP). Responses must follow the format outlined in this RFP. Additional materials in other formats or pages beyond the stated page limit(s) may not be considered. The City may reject as non-responsive, at its sole discretion, any proposal or any part thereof, which is incomplete, inadequate in its response, or departs in any substantive way from the required format. Proposal responses shall be organized in the following manner:

1. Cover Letter
2. Project Team
3. Proposer's Capabilities
4. Project Approach and Understanding
5. Diversity in Employment and Contracting Requirements
6. Proposed Cost
7. A completed First Tier Subconsultant Disclosure Form (refer to Part II.C.5)

SECTION C

EVALUATION CRITERIA

1. COVER LETTER

By submitting a response, the Proposer is accepting the General Instructions and Conditions of this Request for Proposal (reference second page of the RFP) and the Standard Contract Provisions of the Professional, Technical and Expert Services contract.

The Cover Letter must include the following:

- RFP number and project title
- name(s) of the person(s) authorized to represent the Proposer in any negotiations
- name(s) of the person(s) authorized to sign any contract that may result
- contact person's name, mailing or street addresses, phone and fax numbers and email address
- statement that no redactions are requested, if applicable

A legal representative of the Proposer, authorized to bind the Proposer in contractual matters must sign the Cover Letter.

BUSINESS COMPLIANCE

The successful Proposer(s) must be in compliance with the laws regarding conducting business in the City of Portland before an award may be made. The Proposer shall be responsible for the following:

Certification as an EEO Affirmative Action Employer

The successful Proposer(s) must be certified as Equal Employment Opportunity Employers as prescribed by Chapter 3.100 of the Code of the City of Portland prior to contract award. Details of certification requirements are available from Procurement Services, 1120 SW Fifth Avenue, Room 750, Portland, Oregon 97204, (503) 823-6855, website: <http://www.portlandonline.com>. To apply for certification go to our website at: www.ebidexchange.com/cityofportland.

Non-Discrimination in Employee Benefits (Equal Benefits)

The successful Proposer(s) must be in compliance with the City's Equal Benefits Program as prescribed by Chapter 3.100 of the Code of the City of Portland prior to contract award. Details of compliance requirements are available from Procurement Services, 1120 SW Fifth Avenue, Room 750, Portland, Oregon 97204, (503) 823-6855, website: www.portlandonline.com. To apply for certification go to our website at: www.ebidexchange.com/cityofportland.

Business License

The successful Proposer(s) must be in compliance with the City of Portland Business License requirements as prescribed by Chapter 7.02 of the Code of the City of Portland prior to contract award. Details of compliance requirements are available from the Revenue Bureau License and Tax Division, 111 SW Columbia Street, Suite 600, Portland, Oregon 97201, (503) 823-5157, website: <http://www.portlandonline.com/omf/index.cfm?c=29320>

If your firm currently has a business license, is in compliance with the Equal Benefits Program, and is EEO certified, include in the Cover Letter your firm's City of Portland Business License number, a statement that your firm's Equal Benefits Application has been approved as well as your Equal Employment Opportunity (EEO) expiration date.

2. PROJECT TEAM

Please describe:

- a. Approximate number of people to be assigned to the City's project.
- b. Management Approach

Describe or provide a detailed description of firm's approach to overall management and integration of all activities required by the scope of work, including the management objectives and techniques that demonstrate how the work requirements will be met.

This section of the proposal might include organizational charts, a statement regarding lines of authority and responsibility, and a statement regarding how the Proposer is prepared to respond promptly to problems and any changes to scope of work.

c.. Key Personnel

Describe the educational background, directly related work experience, professional development, and demonstrated performance record of the proposed key personnel: project principal and key project team members, including any subconsultants.

d. Include the names of key members who will be performing the work on this project, and:

- o their responsibilities on this project
- o current assignments and location
- o experience on similar or related projects
- o unique qualifications

Provide key personnel's resumes that demonstrate that the individual(s) meets the qualification and experience requirements for performing the work outlined in Part I, Section B. Extent of company's principal member's involvement.

3. PROPOSER'S CAPABILITIES

Provide team qualifications and experience on similar or related projects as they relate to:

- Qualifications and relevant experience of prime consultant
- Qualifications and relevant experience of sub-consultants, if any
- Project manager's experience with similar projects
- Describe similar projects performed within the last five years, which best characterize firm's capabilities, work quality and cost control.
- Describe similar projects with other government agencies.
- Describe firm's resources available to perform the work for the duration of the project and other on-going projects.
- Describe firm's internal procedures and/or policies associated or related to work quality and cost control.
- Describe firm's management and organizational capabilities.

Additionally, proposers will include a minimum of 3 references, and may include other information pertinent to the project or work to be performed. References must include the following:

- a) The contact person's name, agency, address, phone number, and email address,
- b) The contact person's role in the project (e.g., project manager, etc.),
- c) The name of the project, and the reference's contract number(s) for all contracts under which the work was performed,
- d) The dates between which the work was done, and
- e) The names of any project team members that are being proposed to the City who were involved in the reference project, and the roles that those project team members fulfilled.

4. PROJECT APPROACH

- Describe the proposed work tasks and activities, the methodology that will be used

AND UNDERSTANDING

to accomplish them, and identify the team members who will work on each task.

- Describe the proposed work products that will result from each task or activity.
- Identify points of input and review with City staff.
- Identify the time frame estimated to complete each task.

5. DIVERSITY IN EMPLOYMENT AND CONTRACTING REQUIREMENTS

The City is committed to increasing contracting opportunities for State of Oregon certified minority, women and emerging small business (M/W/ESB) enterprises. The City values, supports and nurtures diversity, and encourages any firm contracting with the City to do the same, maximizing M/W/ESB business participation with regard to all City contracts. As such, the City has established an overall 20% utilization goal in awarding PTE contracts to State of Oregon certified emerging small business (ESB) enterprises. No goal is set for the use of minority (MBE) and women business (WBE) enterprises, but the City is committed to ensuring that such firms receive opportunities and equal consideration to be awarded City PTE contracts. The City has assigned at least 15% of the total points available on this solicitation to this criterion to determine the award of this contract.

All Proposers shall address the following in their proposals:

- a. Indicate if your firm is currently certified in the State of Oregon as an MBE, WBE and/or ESB, or if your firm has applied for certification with the State of Oregon's Office of Minority, Women and Emerging Small Business (OMWESB). Provide a copy of the State of Oregon certification letter confirming receipt of application, or a copy of the approval letter certifying your firm as a State of Oregon M/W/ESB (a copy of this letter does not affect the page-limit identified under Part II, Section B.2 of this document).
- b. Identify your current diversity of workforce and describe your firm's commitments to providing equal employment opportunities. Include in your response:
 - Number of total employees and description of type of work performed.
 - Number of minorities and women within your current workforce, broken out by ethnicity and positions held.
 - Any underutilization of minorities or women within your workforce and your firm's efforts to remedy such underutilization.
 - Any plans to provide innovative mentoring, technical training or professional development opportunities to minorities and women in your workforce in relation to this project, or plans to employ minorities and women to work on this project.
 - Description of the process your firm uses to recruit minorities and women.
- c. Have you subcontracted or partnered with State of Oregon certified M/W/ESB firms on any project within the last 12 months? If so, please describe the history of the firm's subcontracting and partnering with certified M/W/ESB firms. Include in your response:
 - List of State of Oregon certified M/W/ESB firms with which your firm has had a contractual relationship during the last 12 months.
 - Any innovative or successful measures that your firm has undertaken to work with M/W/ESB firms on previous projects.
 - Any mentoring, technical or other business development services your firm has provided to previous or current M/W/ESB subconsultants or partners, or will provide in relation to this project.
- d. Are you subcontracting any element of your proposal? Describe your firm's plan for obtaining maximum utilization of State of Oregon certified M/W/ESB firms on this project. Include in your response:

- Subcontracting opportunities your firm has identified in the scope of this project.
 - Efforts made relating to outreach and recruitment of certified M/W/ESB firms. Did your firm advertise contracting opportunities in the *Daily Journal of Commerce*, *Skanner*, *Oregonian*, *Observer*, *El Hispanic News*, *Asian Reporter*, and/or other trade publications? Did your firm conduct any outreach meetings? Did your firm use the State's OMWESB certification list, or other source, as a basis for direct outreach? What were the actual results of any of the above efforts?
 - Any proposals received from certified M/W/ESB firms. If any such proposals were rejected, provide reasons for rejection.
 - Other efforts your firm used or proposes to use in relation to this project.
- e. If your firm will be utilizing State of Oregon certified M/W/ESB firms on this project, please list those firms and detail their role within your proposal. In addition, **all Proposers must submit Exhibit A - First Tier Subconsultant Disclosure Form 1** with their proposal, which requires Proposers to identify the following:
- The names of **all** subconsultants to be used on this project with subcontracts greater than or equal to \$10,000.
 - The names of all State of Oregon certified MBE, WBE and ESB firms. If firms have more than one certification (i.e., ESB and MBE, and/or ESB and WBE) note that on the form so that proper credit can be given for the ESB goal and for tracking MBE and WBE utilization.
 - The proposed scope or category of work for each subconsultant.

If Proposers will not be using any subconsultants that are subject to the above disclosure requirements, Proposers are required to indicate "NONE" on the First Tier Subconsultant Disclosure Form 1.

The City expects thoughtful consideration of all of the above Diversity in Employment and Contracting criteria in the preparation of proposals. The City will enforce all diversity in workforce and M/W/ESB commitments submitted by the successful Proposer, and the successful Proposer will be required to submit a completed Monthly Subconsultant Payment and Utilization Report to ensure that subconsultants are utilized to the extent originally proposed and submitted in its proposal. The successful Proposer will not be permitted at any time to substitute or add a subconsultant without the prior written approval of the Chief Procurement Officer. ALL subconsultants, including M/W/ESB firms, and first tier subconsultants shall be reported on the Monthly Subconsultant Payment and Utilization Report as well as contract amounts and payments. For reference, a copy of this form may be obtained at: <http://www.portlandonline.com/shared/cfm/image.cfm?id=119851> .

6. PROPOSED COST

The proposal shall include the Proposer's true estimated cost or fixed-price estimate for the proposed project approach irrespective of the City's anticipated cost. Additionally, this cost shall include the hourly rates of each person associated with the project as well as the estimated number of hours each staff member will be expected to work on each task.

Completion and submittal of the Detail Cost Breakdown worksheet (Exhibit C) for the outlined deliverables.

The cost estimates should include the personnel you would assign to the task for the project, their hourly rate, and an estimate of the number of hours required to complete each task.

PART III

PROPOSAL EVALUATION

SECTION A

PROPOSAL REVIEW AND SELECTION

1. EVALUATION CRITERIA SCORING

Each proposal shall be evaluated on the following evaluation criteria, weighting and maximum points, as follows:

Criteria		Maximum Score
a.	Cover Letter	0
b.	Project Team	20
c.	Proposer's Capabilities	20
d.	Project Approach and Understanding	25
e.	Diversity in Employment and Contracting	15
f.	Proposed Cost	20
	Total Points Available	100

2. PROPOSAL REVIEW

An evaluation review committee will be appointed to evaluate the proposals received. For the purpose of scoring proposals, each committee member will evaluate each proposal in accordance with the criteria and point factors listed above. The evaluation committee may seek outside expertise, including but not limited to input from technical advisors, to assist in the evaluation process.

The successful Proposer shall be selected by the following process:

- a. An evaluation committee will be appointed to evaluate submitted written proposals.
- b. The committee will score the written proposals based on the information submitted according to the evaluation criteria and point factors.
- c. The committee will require a minimum of **5 - 7** working days to evaluate and score the written proposals.
- d. A short list of Proposers, based on the highest scores, may be selected for oral interviews if deemed necessary. The City reserves the right to increase or decrease the number of Proposers on the short list depending on the scoring and whether the Proposers have a reasonable chance of being awarded a contract.
- e. If oral interviews are determined to be necessary, the scores from the written proposals will be considered preliminary. Final scores, based on the same evaluation criteria, will be determined following the oral interviews.

All communications shall be through the contact(s) referenced in Part II, Section A.2 of the RFP. At the City's sole discretion, communications with members of the evaluation committee, other City staff or elected City officials for the purpose of unfairly influencing the outcome of this RFP may be cause for the Proposer's proposal to be rejected and disqualified from further consideration.

For contracts over \$100,000, the evaluation committee's recommendation for contract award will be submitted to the Portland City Council for approval. The City has the right to reject any or all proposals for good cause, in the public interest.

NOTE: In the City's discretion, litigation between the City and a Proposer may be cause for proposal rejection, regardless of when that litigation comes to the City's attention and regardless how the Proposer's proposal may have been scored. Proposals may also be rejected if they use subcontractors or subconsultants who are involved in litigation with the City. Proposers who are concerned about possible rejection on this basis should contact the City before submission of a proposal for a preliminary determination of whether its proposal will be rejected.

3. CLARIFYING PROPOSAL DURING EVALUATION

At any point during the evaluation process, the City is permitted, but is not required, to seek clarification of a proposal. However, a request for clarification does not permit changes to a proposal.

SECTION B

CONTRACT AWARD

1. CONSULTANT SELECTION

The City will attempt to reach a final agreement with the highest scoring Proposer. However, the City may, in its sole discretion, terminate negotiations and reject the proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the second highest scoring Proposer and may continue on, in the same manner, with remaining proposers until an agreement is reached. A consultant selection process will be carried out under Portland City Code Chapter 5.68.

2. CONTRACT DEVELOPMENT

The proposal and all responses provided by the successful Proposer may become a part of the final contract. Any information included as part of this contract shall be a public record and not exempt from disclosure, including items redacted from the proposal. The form of contract shall be the City's Contract for PTE Services.

3. AWARD REVIEW AND PROTESTS

REVIEW:

Following the Notice of Intent to Award, the public may view proposal documents. However, any proprietary information so designated by the Proposer as a trade secret or confidential and meeting the requirements of ORS 192.501, 192.502 and/or ORS 646.461 et seq., will not be disclosed unless the Multnomah County District Attorney determines that disclosure is required. At this time, Proposers not awarded the contract may seek additional clarification or debriefing, request time to review the selection procedures or discuss the scoring methods utilized by the evaluation committee.

PROTESTS:

Protests may be submitted to the Chief Procurement Officer only for formal solicitations resulting in contract(s) individually valued at or above the Formal Solicitation Process Dollar Threshold (reference www.portlandonline.com/omf/index.cfm?c=44169&a=74585), and only from those Proposers who would receive the contract if their protest was successful.

Protests must be in writing and received by the Chief Procurement Officer within seven (7) calendar days, UNLESS OTHERWISE NOTED, following the date the City's Notice of Intent to Award, Notice to Short List, or notification for non-responsiveness was issued. The protest must specifically state the reason for the protest and show how its proposal or the successful proposal was mis-scored, or show how the selection process deviated from that described in the solicitation document. No contract will be awarded until the protest has been resolved.

Protests must be timely and must include all legal and factual information regarding the protest, and a statement of the form of relief requested. Protests received later than specified or from other than the Proposer who would receive the contract if the protest was successful will not be considered. The exercise of judgment used by the evaluators in scoring the written proposals and interviews, including the use of outside expertise, is not grounds for appeal.

The Chief Procurement Officer may waive any procedural irregularities that had no material effect on the selection of the proposed contractor, invalidate the proposed award, amend the award decision, request the evaluation committee re-evaluate any proposal or require the bureau to cancel the solicitation and begin again to solicit new proposals. In the event the matter is returned to the evaluation committee, the Chief Procurement Officer shall issue a notice canceling the Notice of Intent to Award.

September 19, 2012

Decisions of the Chief Procurement Officer are final and conclude the administrative appeals process.

EXHIBIT A

CITY OF PORTLAND
PROFESSIONAL TECHNICAL & EXPERT (PTE) SERVICES
FIRST TIER SUBCONSULTANT DISCLOSURE FORM

CITY PTE DISCLOSURE REQUIREMENTS

The City's disclosure program was adopted to document the use of subconsultants on City projects over \$100,000; particularly Oregon certified Minority, Women and Emerging Small Businesses (M/W/ESBs).

This Request for Proposal (RFP) requires submission by the Proposer of the First Tier Subconsultant Disclosure Form. When the contract amount of a first-tier subconsultant furnishing services, labor or labor and materials would be greater than or equal to \$10,000, the Proposer must disclose the following information about such subconsultants:

- 1) The subconsultant's contact information and Employer Identification Number (EIN or FED ID#)
- 2) State of Oregon M/W/ESB designation
(Verify certification status with the Office of Minority, Women and Emerging Small Business at <http://egov.oregon.gov/DCBS/OMWESB/index.shtml>)
- 3) The proposed scope or category of work that the subconsultant will be performing
- 4) The amount of the subconsultant's contract
- 5) Report all amounts in United States Dollars (USD)

If the Proposer will not be using any subconsultants that are subject to the above disclosure requirements, the Proposer is required to indicate "**NONE**" on the accompanying form.

ATTACHMENTS: Form 1: City of Portland PTE First Tier Subconsultant Disclosure Form

**CITY OF PORTLAND
PTE FIRST TIER SUBCONSULTANT DISCLOSURE FORM
(FORM 1)**

This Request for Proposal requires submission by the Proposer of the First Tier Subconsultant Disclosure Form. When the contract amount of a first tier subconsultant furnishing services, labor or labor and materials would be greater than or equal to \$10,000, the Proposer must disclose the following information about that subconsultant.

Proposer Name: _____

Proposer's Total Cost: _____

RFP Number: _____

Project Name: _____

SUBCONSULTANT INFORMATION (Please Print)	M/W/ESB	SCOPE/TYPE OF WORK	SUBCONTRACT AMOUNT
Firm Legal Name: Email: Phone #: Fax#: FED ID OR EIN # (No SS#):			\$
Firm Legal Name: Email: Phone #: Fax#: FED ID OR EIN # (No SS#):			\$
Firm Legal Name: Email: Phone #: Fax#: FED ID OR EIN # (No SS#):			\$
Firm Legal Name: Email: Phone #: Fax#: FED ID OR EIN # (No SS#):			\$
Firm Legal Name: Phone #: Email: Fax#: FED ID OR EIN # (No SS#):			\$
NOTE: 1) Report all amounts in United States Dollars (USD) 2) If the Proposer will not be using any subconsultants that are subject to the above disclosure requirements, the Proposer is required to indicate "NONE" on this form. 3) All subconsultants with contracts \$10,000 or over must be listed on this form. Leave M/W/ESB column blank if firm is not confirmed certified through the <i>State of Oregon Office of Minority, Women and Emerging Small Business</i> : http://egov.oregon.gov/DCBS/OMWESB/index.shtml . 4) Do not enter social security numbers on this form.			

Exhibit B
CITY OF PORTLAND
AGREEMENT FOR PROFESSIONAL, TECHNICAL, OR EXPERT SERVICES

CONTRACT No. **3#####**

SHORT TITLE OF PROJECT:
Implementation of the SAP Learning Solution

This Contract is made effective _____ (“Effective Date”), by and between the **City of Portland**, a municipal corporation of the State of Oregon, and its successors or assigns (hereafter called "City"), and _____, a(n) _____ corporation (hereafter called “Contractor”), by and through their duly authorized representatives. This Contract may refer to the City and Contractor individually as a “Party” or jointly as the “Parties.” The City's Project Manager for this contract is _____..

Effective Date and Duration. Unless terminated sooner under the provisions of this Contract, the term of this Contract shall be for one year, from _____, to _____.

Consideration

- (a) City agrees to pay Contractor a sum not to exceed \$_____ for accomplishment of the work.
- (b) Payments shall be made to Contractor according to the schedule identified in Exhibit A, Statement of Work and Payment Schedule.

=====

CONTRACTOR DATA AND CERTIFICATION

Contractor Name: _____
Address: _____
Employer Identification Number (EIN) _____
City of Portland Business License # _____

Payment information will be reported to the IRS under the name and Employer I.D. number provided above. Information must be provided prior to contract approval. Information not matching IRS records could subject you to twenty percent (20%) backup withholding.

=====

STANDARD CONTRACT PROVISIONS FOR PROFESSIONAL, TECHNICAL & EXPERT SERVICES (MANDATORY PROVISIONS)

1. Definitions

These definitions apply to the entire Contract including Exhibits, subsequent Amendments, and Task Orders:

“Acceptance” means a Deliverable has been delivered, inspected, configured, and diagnostic tests have been performed to demonstrate, to the City’s satisfaction, that the Deliverable conforms and operates according to the requirements of this Contract, applicable Acceptance Criteria or Documentation, and Contractor’s representations.

“Acceptance Criteria” means all specifications, functionality and performance requirements as set forth in the Statement of Work or a Task Order (as such specifications, and requirements and Statement of Work or Task Order may be changed from time to time by mutual agreement in writing) and Contractor’s representations and warranties. The City’s acceptance criteria will be based on reliance on Contractor’s experience and expertise. City and Contractor agree to establish the Acceptance Criteria in writing for the purpose of conducting Acceptance Testing.

“Acceptance Date” means the date on which the City issues a Certificate of Acceptance for a Deliverable or Service. In regard to a particular Task Order without a requirement for an Acceptance Test, the Acceptance Date is the date when the City certifies to Contractor in writing that the Deliverable or Service is complete.

“Acceptance Test” means the evaluation and testing method, procedures, or both, that are used to determine whether or not a Deliverable requiring Acceptance Testing operates in accordance with the Acceptance Criteria. Acceptance Testing may occur in one or more phases, depending on the integration of contingent products, scalability, performance tuning or other measurable features or milestones.

“Amendment” means a written document required to be signed by both Parties when in any way altering the terms and conditions, term, or cost provisions of the Contract or changing, adding to, or substantially altering a Statement of Work.

“Business Day” means a calendar day of twenty-four hours, excluding weekends and City recognized holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Calendar Day” means a calendar day of twenty-four hours, including weekdays, weekends and holidays, beginning at midnight and ending at midnight twenty-four hours later.

“Certificate of Acceptance” means a written instrument by which the City notifies Contractor either that in its sole discretion the Acceptance Criteria have been met or waived, in whole or in part.

“Change Order” means a document, agreed and signed by both Parties, that changes an existing Statement of Work or Task Order..

“City Confidential Information” means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (8) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the City.

“Confidential Information” means any information that is disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if the information is in verbal form, it is identified as confidential or proprietary at the time of disclosure and is confirmed in writing within thirty (30) Calendar Days of the disclosure. Confidential Information does not include any information that: is or becomes publicly known through no wrongful or negligent act of the receiving party; is already known to the receiving party without restriction when it is disclosed; is, or subsequently becomes, rightfully and without breach of this Contract or any other agreement between the Parties or of any applicable protective or similar order, in the receiving party’s possession without any obligation restricting disclosure; is independently developed by the receiving party without breach of this Contract; or is explicitly approved for release by written authorization of the disclosing party.

“Coverage Hours” means those hours specified in this Contract or subsequent Task Order during which period Contractor shall provide Services.

“Customization” means (a) any modification to or adaptation of the Software or System, or (b) any new component or accessory or new code, whether prepared, created, or developed by Contractor at the City’s request as a work for hire, by the City, or by the City in conjunction with Contractor.

“Deliverable(s)” means the means the goods or services or documents or other tangible work products described in the Statement of Work or a Task Order, to be provided to the City by Contractor.

“Documentation” means User manuals and other written materials in any form that describe the features or functions of the Software, System, or Deliverables, including but not limited to published specifications, marketing materials, technical manuals, and operating

instructions provided to the City, or readily available to the public, or as required to be produced by Contractor subject to the terms of this Contract.

“Error” means any defect, problem, condition, bug, or other partial or complete inability of a Deliverable to perform either in accordance with the applicable Specifications or in the same manner in which it operated as of the Acceptance Date.

“Fix” means a correction to Software or other Deliverable that does not function or operate in accordance with the applicable Specifications. A Fix is not a Modification or Upgrade.

“Hardware” means any equipment, machinery, device, tool, computer, computer component, computer system, including add-ons, or peripherals of tangible form together with the necessary supplies for upkeep and maintenance, and other apparatus necessary for the proper operation, modification, or support of the System.

“Maintenance” means services provided by Contractor to the City designed to keep Software operating in optimum condition, including Updates and Upgrades and application development to accommodate changes in the business requirements of the City.

“Material Breach” means any breach of this Contract that (a) causes or may cause substantial harm to the non-breaching party; or (b) substantially deprives the non-breaching party of the benefit it reasonably expected under this Contract.

“Operating System Software” means any computer program product that is installed on, and is a component integral to the function and basic operation of the hardware of a specific data-processing system or platform in order to allow Users and application programs to make use of it.

“Product(s)” means Software, Hardware, Documentation and supplies, Services including warranty services, installation and Maintenance and professional services, which may include Upgrades, Customization and training.

“Project” means the overall collection of Deliverables, Services, and activities required under this Contract, any of which Contractor may be providing in whole or in part.

“Repair” means to fix, repair, patch, reprogram, or replace the Software or System or component thereof so as to eliminate Errors or failure to the City’s satisfaction.

“Services” means both ordinary and professional services as required to be performed by Contractor under this Contract for the City as set forth in the Statement of Work.

“Software” means the, including, without limitation, the applications and programs used in the FileNet System as well as any Customization, diagnostic software, Updates, Upgrades and any related Documentation related to this System, as well as any other applications and programs covered by Services supplied by Contractor under this Contract.

“Specifications” means the most current statement of capabilities, functionality and performance requirements as set out in the Acceptance Criteria, the Statement of Work, Documentation, Contractor’s Proposal and Proposal Clarifications, and the City’s Request for Proposals.

“Statement of Work” (SOW) means the written detailed specifications of the Deliverables or Services(s) to be delivered to the City by Contractor subject to the terms and conditions of this Contract.

“Subcontractor” means any person or business entity employed to perform all or part of an obligation of this Contract under the control of Contractor.

“System” means collectively all products, Hardware, Software, and other tangible components and interfaces.

“System Response Time” means the time required for a representative sample of User transactions to be processed by the System.

“Task Order” means any written request or document issued by the City and signed by both Parties for additional Product(s) or Service(s) to be provided under this Contract. Task Orders shall document the description of goods and/or services, price, payment schedule, project and performance schedule, due dates, milestones and deliverables.

“Update” means a change, modification, or enhancement to the System or Software, and related Documentation, which improves its performance or efficiency, but does not alter its core functionality.

“Upgrade” means a newer, better version, change, modification, or enhancement to the System or Software, and related Documentation, which incorporates major new features or increases the core functionality of the System or Software and may be considered a new version.

“User” means any person employed or working on behalf of the City, its Bureaus, Divisions, Offices, Directors, and any person or entity under contract or authorized by the City to provide it with services and to use the City’s resources in whole or in part, in the course of assisting the City.

2. Order of Precedence

In the event there is a conflict between the terms and conditions of one portion of this Contract with another portion of this Contract, the conflict will be resolved by designating which portion of the Contract documents takes precedence over the other for purposes of interpretation, except where a clear statement of precedence other than that set forth in this section is included in the document. In this Contract the order of precedence shall be:

1. Amendments to this Contract
2. This Contract’s terms and conditions
3. Change Orders
4. Task Orders
5. Exhibit A, Statement of Work and Payment Terms
6. Exhibit B, Contractor’s Proposal.

3. Task Orders and Change Orders

3.1 The City and Contractor agree that if the City requires additional Services or Products, it may submit a Task Order to Contractor. Task Orders are subject to the terms of this Contract. Agreed-upon changes shall not be retroactive and shall apply as of the effective date of the respective Task Order. Changes to a Task Order shall be done via the Change Order process, outlined below.

3.2 Change Orders to a Task Order. The City reserves the right to make changes, at any time to a Task Order in the form of a Change Order agreed to in writing by the Parties. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor’s obligations, the Parties shall execute an Amendment to the Contract as needed or adjust the fee accordingly, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified fee.

3.3 Survival of Orders. In the event that a Task Order/Change Order is not completed prior to the expiration of this Contract, the Task Order/Change Order shall survive the expiration of such until completion and all provisions of this Contract shall be considered active and in full force until the Task Order/Change Order reaches conclusion. In no case shall a new Task Order/Change Order be placed by the City or be accepted by Contractor after the expiration date of this Contract. The City reserves the right to make changes, at any time to a Task Order in the form of an amendment agreed to by the Parties. Contractor agrees to timely alter the delivery of Products or Services accordingly. If such changes materially increase or decrease Contractor’s obligations, the City shall execute an Amendment to the Contract, and if the amount of such adjustment is not calculable as a function of hours or tasks, the Parties shall negotiate in good faith a modified fee.

3.4 In no case shall a new Task Order be placed by the City or be accepted by Contractor after the expiration date of this Contract.

4. Access to Records

Contractor shall maintain, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of Contractor which are directly pertinent to this specific Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

5. Audits

- 5.1 The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by section 1, Access to Records. Audits will be conducted in accordance with generally accepted auditing standards as promulgated in Government Auditing Standards by the Comptroller General of the United States General Accounting Office.
- 5.2 If an audit discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, then Contractor shall repay the amount of the excess to the City.
- 5.3 If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies provided under section 7, Early Termination of Contract and section 9, Remedies.

6. Effective Date and Duration

The passage of the Contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

7. Early Termination of Contract

- 7.1 The City and Contractor, by mutual written agreement, may terminate this Contract at any time.
- 7.2 The City, on thirty (30) Calendar Days' written notice to Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion.
- 7.3 Either the City or Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) Calendar Days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

8. Payment on Early Termination

- 8.1 In the event of termination under subsection 7.1 or 7.2, the City shall pay Contractor for work performed in accordance with the Contract prior to the termination date.
- 8.2 In the event of termination under subsection 7.3 by Contractor due to a breach by the City, then the City shall pay Contractor as provided in subsection 9.1.
- 8.3 In the event of termination under subsection 7.3 by the City due to a breach by Contractor, then the City shall pay Contractor as provided in subsection 9.1, subject to set off of excess costs, as provided for in section 9.1.
- 8.4 In the event of early termination all of Contractor's work product will become and remain property of the City.

9. Remedies

- 9.1 In the event of termination under subsection 7.3 by the City due to a breach by Contractor, then the City may complete the work either itself, by agreement with another contractor or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Contractor shall pay to the City the amount of the reasonable excess.
- 9.2 The remedies provided to the City under section 7, Early Termination of Contract and section 9, Remedies for a breach by Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

9.3 In the event of breach of this Contract by the City, then Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in subsection 7.3 and subsection 8.2.

10. Subcontracts and Assignment

Contractor shall not subcontract, assign or transfer any of the work scheduled under this Contract, without the prior written consent of the City. Notwithstanding City approval of a subcontractor, Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to Contractor hereunder. Contractor agrees that if subcontractors are employed in the performance of this Contract, Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

11. Compliance with Applicable Law

In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations including the City's Equal Benefits Ordinance and its administrative rules, all of which are incorporated by this reference. Failure to comply with the Ordinance permits the City to impose sanctions or require remedial actions as stated in Section 13.1 of the administrative rules. Contractor shall complete the INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT, which is attached hereto and by this reference made a part hereof.

12. Indemnification and Insurance

12.1 Indemnity - Claims for Other than Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this Contract. Nothing in this section requires Contractor or its insurer to indemnify the City for any claims or losses arising out of death, or bodily injury to persons, or property damage caused by the negligence of the City.

12.2 Indemnity - Claims for Professional Liability

Contractor shall defend, save, and hold harmless the City of Portland, its officers, agents, and employees, from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of Contractor or its subcontractors and sub-consultants, agents or employees in performance of professional services under this Contract. Nothing in this section requires Contractor or its insurer to indemnify the City for any claims or losses caused by the negligence of the City.

12.3 Indemnity - Standard of Care

If Contractor's services involve engineering or consulting, the standard of care applicable to Contractor's service will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services at the time such services are performed. Contractor will re-perform any services not meeting this standard without additional compensation.

12.4 Indemnity – Infringement of Intellectual Property Rights

Contractor shall, at its own expense, hold harmless, indemnify, and defend the City, its directors, officers, employees, agents and affiliates from and against any and all claims, demands, damages, liabilities, losses, and expenses (including reasonable attorney fees, whether or not at trial and/or on appeal), arising out of or in connection with any actual or alleged violation or infringement by the Software of any proprietary right of any person whatsoever, including any copyright, patent, trade name, trademark, or misappropriation of the trade secrets of any third party. The City agrees to notify Contractor of the claim and gives Contractor sole control of the defense of the claim and negotiations for its settlement or compromise. No settlement that prevents the City's continuing use of the Software or products shall be made without the City's prior written consent. If any third party claim causes the City's use of the Software to be endangered, restricted or disrupted, Contractor shall (i) cause the Software to be replaced, at no additional charge, with a compatible functionally equivalent and non-infringing product; (ii) cause the Software to be modified to avoid the infringement; (iii) obtain a license for the City to continue using the Software and pay any additional fee required for such license; or (iv) if, after Contractor uses all due diligence or standard of

care none of the foregoing alternatives is possible, Contractor will terminate the license and refund to the City fees actually paid by the City and any direct damages documented by City for the affected Software and Documentation.

12.5 **Insurance Coverage.** During the term of this Contract Contractor shall maintain in force at its own expense, the insurance coverage noted below:

12.5.1 Workers' Compensation Insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).

12.5.2 General Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract, and shall provide that City of Portland, and its agents, officers, and employees are Additional Insured but only with respect to Contractor's services to be provided under this Contract.

12.5.3 Automobile Liability Insurance with a combined single limit of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable:

12.5.4 Technology Errors & Omissions (Professional Liability) Insurance covering acts, errors or omissions arising out of the performance or failure to perform professional services related to the Services under this Contract will be maintained. The coverage shall be placed with an insurer with an AM Best Rating of A-VII or better and shall include the following coverage parts:

Technology Products & Services E&O -Information Security & Privacy Liability for Service Provided to Others

Such insurance shall cover any and all errors, omissions or negligent acts in the delivery of products, Services and Licensed Programs under this Contract. Such errors and omissions insurance shall include coverage for claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, etc.) and intellectual property infringement, such as copyrights, trademarks, service marks and trade dress.

Such insurance shall include limits of coverage of the local currency equivalent of not less than USD \$1,000,000 (one Million U.S. dollars) and shall remain in effect for not less than three (3) years following the date of termination of this Contract. Evidence of coverage must be sent to the City for three years following termination of this Contract.

12.5.5 Insurance Certificate. As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City prior to or with the return of the signed contract. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance. If the insurance is canceled, terminated, or expires prior to completion of the Contract, Contractor notify the City immediately and shall provide a new policy with the same terms. Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract. Failure to maintain insurance as required by this Contract may be cause for immediate termination of the Contract by the City. Contractor's insurance will cover damages excluded from any limitation of liability to the extent of its policy limits indicated herein. If requested by the City, complete policy copies shall be provided to the City.

12.5.6 Additional Insureds. The coverage shall apply as to claims between insureds on the policy. The insurance shall be without prejudice to coverage otherwise existing. For liability coverage, the insurance certificate shall name as additional insureds "the City of Portland, Oregon, and its officers, agents and employees." Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

12.5.7 Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

13. **Ownership of Work Product**

All work products produced by Contractor under this Contract are the exclusive property of the City. "Work product" shall include but

not be limited to research, reports, computer programs, manuals, drawings, recordings, photographs, artwork and any data or information in any form; Contractor and the City intend that such work product shall be deemed "work made for hire" of which the City shall be deemed the author. If for any reason a work product is deemed not to be a "work made for hire," Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor shall obtain such interests and execute all documents necessary to fully vest such rights in the City. Contractor waives all rights relating to work product, including any rights arising under 17 USC 106A, or any other rights of authorship, identification or approval, restriction or limitation on use or subsequent modifications.

14. Nondiscrimination

Non-discrimination; Civil Rights. In carrying out activities under this Agreement, Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Contractor shall take actions to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, handicap, familial status, sexual orientation or national origin. Actions 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, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices provided by City setting forth the provisions of this nondiscrimination clause. Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, handicap, familial status, sexual orientation, or national origin. Contractor shall incorporate the foregoing requirements of this paragraph in all of other agreements for work funded under this Agreement, except agreements governed by Section 104 of Executive Order 11246.

15. Successors in Interest

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns.

16. Severability

The parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

17. Waiver

The failure of the City to enforce any provision of this Contract shall not constitute a waiver by the City of that or any other provision.

18. Warranties

18.1 Contractor warrants that the work performed under this Contract will meet the standards of skill and diligence normally employed by professional engineers or consultants performing the same or similar services, that work will be free from errors and from defects in workmanship and materials, and that deliverables shall conform to the performance standards, specifications, functions and other descriptions and standards applicable thereto as set forth in the Statement of Work. Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Contract without undue delays and without additional cost.

18.2 Contractor warrants it has complied and shall comply with all applicable law in connection with the execution, delivery, and performance of this Contract; that the execution, delivery, and performance of this Contract and any Task Order subject to this Contract shall not contravene the terms of any contracts with third parties, or any third-party rights in any patent, trademark, copyright, trade secret, or similar right; and, as of the date of this Contract, there are no actual or threatened legal actions with respect to the matters in this Contract.

18.3 Contractor warrants and represents the following:

- (1) Software, including all components and Upgrades supplied by Contractor, shall operate in accordance with Acceptance

Criteria and all Documentation.

(2) Software is compatible with the City's existing data files and systems as may be applicable and identified at the time of this Contract or a Task Order, and shall run in accordance with the Documentation.

(3) No Material Defects or Viruses/Illicit Code. Software is free of any defect in material of the media in which it is delivered and is free of any virus, Trojan horse, spyware, malware, or other program routine designed to erase, disable or otherwise harm the City's hardware, data or other programs that Contractor knew or should have known was contained in the Software or other code or program.

(4) Software shall not:

- A) contain any hidden files that Contractor or any Subcontractor to Contractor knew or should have known were contained in the Software or programming;
- B) replicate, transmit, or activate itself without the control of an authorized person operating computing equipment on which it resides, unless requested or authorized by the City;
- C) alter, damage, or erase any data or computer programs without the control of an authorized person operating the computing equipment on which it resides; or
- D) contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, which restricts or may restrict use or access to any programs or data developed under this Contract, based on residency on a specific hardware configuration, frequency of duration of use or other limiting criteria (any of the foregoing shall constitute "illicit code").

18.4 Documentation Explains Use. Contractor warrants that the Documentation shall explain the operation of the Software in terms understandable by City Users of reasonable technical competence.

19. Governing Law

The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon, without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

20. Dispute Resolution, Governing Law, and Jurisdiction

Contractor shall cooperate with the City to assure that all claims and controversies which arise during Contractor's performance of Services under this Contract or a Task Order subject to this Contract and which might affect the quality of such Services will be resolved as expeditiously as possible in accordance with the following resolution procedure:

20.1 Any dispute between the City and Contractor arising prior to completion of Contractor's services or the earlier termination of the Contract shall be resolved, if possible by the Contract Manager or their designee on behalf of the City and Erik Willsey on behalf of Contractor.

20.2 If the Contract Manager or the Contract Manager's designee and Contractor are unable to resolve any dispute within three (3) Business Days after notice of such dispute is given by either Party to the other, the matter shall be submitted to Bureau of Technology Services Chief Technology Officer on behalf of the City and Erik Willsey on behalf of Contractor for resolution, if possible.

20.3 Oregon Venue/Choice of Law. This Contract shall be construed according to the laws of the State of Oregon without reference to its conflict of laws provisions. Any litigation between the City and Contractor arising under this Contract or arising out of work performed under this Contract shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

20.5 Unless ordered by the City to suspend all or any portion of Contractor's Services, Contractor shall proceed with the

performance of such Services without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures and shall comply with any mutually agreed upon Task Order that the City may issue regarding the acceleration of all or any portion of the Services. During the pendency of any of the foregoing dispute resolution procedures, the City shall continue to make all payments that are not in dispute, in accordance with the provisions of the Contract or Task Order.

21. Amendments

No provision of this Contract may be amended or modified unless such Amendment or modification is approved as to form by the City Attorney and executed in writing by authorized representatives of the Parties. All changes that would permanently change any provisions of this Contract shall be memorialized in the form of an Amendment. If the requirements for Amendment or modification of this Contract as described in this section are not satisfied in full, then such Amendments or modifications automatically will be deemed null, void, invalid, non-binding, and of no legal force or effect.

22. Business License

Contractor shall obtain a City of Portland business license as required by PCC 7.02 prior to beginning work under this Contract. Additionally, Contractor shall pay all fees or taxes due under the Business License Law and the Multnomah County Business Income Tax (MCC Chapter 12) during the full term of this Contract. Failure to be in compliance may result in payments due under this Contract to be withheld to satisfy amount due under the Business License Law and the Multnomah County Business Income Tax Law.

23. Prohibited Interest

No City officer or employee during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof. No City officer or employee who participated in the award of this Contract shall be employed by Contractor during the period of the Contract.

24. Payment to Vendors and Subcontractors

Contractor shall timely pay all suppliers, lessors and contractors providing it services, materials or equipment for carrying out its obligations under this Contract. Contractor shall not take or fail to take any action in a manner that causes the City or any materials that Contractor provides hereunder to be subject to any claim or lien of any person without the City's prior written consent.

25. Written Notifications

All notices to, and other written communication between, the Parties to this Contract shall be deemed received five (5) Business Days after being sent by first class mail, or upon receipt when sent by courier services or by fax transmission with telephone confirmation of receipt. All notices and written communications shall be sent to the Parties set forth below, or to such other places as they may designate by like notice from time to time:

For City:

City of Portland
1120 SW Fifth Avenue, Room 1450
Portland, OR 97204
Attn: Tracey Letmate

For Contractor:

XXXXXX

Copy to:

City of Portland
Technology Contracts Management
Procurement Services
1120 Southwest Fifth Avenue, Room 750
Portland, OR 97204

26. Conflict of Interest

Contractor warrants it has no present interest and shall not acquire any interest that would conflict in any manner with its duties and obligations under the Contract.

27. Return of Parties' Property

When the Contract or any Task Order placed pursuant to the Contract is terminated or expired, each Party shall return to the other all papers, materials, and properties of the other Party then in its possession. The City will retain one (1) copy of the Documentation for the express purposes of public record archiving.

28. Notice of Change in Financial Condition.

Contractor must maintain a financial condition commensurate with the requirements of the Contract. If, during the Contract, Contractor experiences a change in its financial condition which may adversely affect its ability to perform, or changes the ownership or control, the City shall be immediately notified in writing. Failure to notify the City of such a change in financial condition or change in ownership or control is sufficient grounds for terminating the Contract.

29. Confidentiality

29.1 "City Confidential Information" means any information, in any form or media, including verbal discussions, whether or not marked or identified by the City, which is reasonably described by one or more of the following categories of information: (1) financial, statistical, personnel, human resources data or Personally Identifiable Information as described in the Oregon Consumer Identity Theft Protection Act of 2007; (2) business plans, negotiations, or strategies; (3) unannounced pending or future products, services, designs, projects or internal public relations information; (4) trade secrets, as such term is defined by ORS 192.501(2) and the Uniform Trade Secrets Act ORS 646.461 to 646.475; (5) Exempt per ORS 192.501 and/or ORS 192.502 (6) attorney/client privileged communications, (7) exempt per federal laws (including but not limited to Copyright, HIPPA) and (7) information relating to or embodied by designs, plans, configurations, specifications, programs, or systems developed for the benefit of the City including without limitation, data and information systems, any software code and related materials licensed or provided to the City by third parties; processes; applications; codes, modifications and enhancements thereto; and any work products produced for the City.

29.2 Maintenance of Confidentiality. Contractor shall treat as confidential any City Confidential Information that has been made known or available to Contractor or that Contractor has received, learned, heard or observed; or to which Contractor has had access. Contractor shall use Confidential Information exclusively for the City's benefit and in furtherance of the goods and/or services provided by Contractor. Except as may be expressly authorized in writing by the City, in no event shall Contractor publish, use, discuss or cause or permit to be disclosed to any other person such Confidential Information. Contractor shall (1) limit disclosure of the Confidential Information to those directors, officers, employees and agents of Contractor who need to know the Confidential Information in connection with the City Project/Network, (2) exercise reasonable care with respect to the Confidential Information, at least to the same degree of care as Contractor employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing Confidential Information, in whatever form, that are in Contractor's possession or custody or under its control. Contractor is expressly restricted from and shall not use the City's intellectual property without the City's prior written consent.

29.3 Scope. This Contract shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Contractor. This Contract shall not apply to Confidential Information which (1) is or later becomes part of the public domain without breach of this Contract and through no wrongful act of Contractor, (2) Contractor rightly receives from a third party, or (3) was developed independently by and was reduced to writing by Contractor prior to the earlier of the date of this Contract or the date of any access or exposure to any Confidential Information. Contractor's obligations under this Contract shall survive termination.

29.4 Equitable Remedies. Contractor acknowledges that unauthorized disclosure of City Confidential Information or misuse of a City system or network will result in irreparable harm to the City. In the event of a breach or threatened breach of this Contract, the City may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

29.5 Contractor's Confidential Information. During the term of the Contract, Contractor may disclose to the City, certain confidential information pertaining to Contractor's business ("Confidential Information"). Contractor shall be required to mark "CONFIDENTIAL" with a restrictive legend or similar marking. If CONFIDENTIAL is not clearly marked or cannot

be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Contractor shall identify the Confidential Information at the time of disclosure or within a reasonable time thereafter. The City shall not be deemed to have breached this Section if (a) Confidential Information later becomes part of the public domain through no act or omission of the City; (b) is required to be disclosed under operation of law; or (c) the City lawfully receives Confidential Information from a third party with no breach of any duty of confidentiality.

30. Public Records Request

Contractor acknowledges that the City of Portland is subject to the Oregon Public Records Act and Federal law. Third persons may claim that the Confidential Information Contractor submits to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Law. Subject to the following conditions, the City agrees not to disclose any information Contractor submits to the City that includes a written request for confidentiality and as described above, specifically identifies the information to be treated as Confidential. The City's commitments to maintain certain information confidential under this Contract are all subject to the constraints of Oregon and federal laws. Within the limits and discretion allowed by those laws, the City will maintain the confidentiality of information.

31. Survival

All obligations relating to confidentiality; indemnification; publicity; proprietary rights; limitation of liability; and obligations to make payments of amounts that become due under this Contract prior to termination (except that payments for services not performed by the date of termination shall be prorated) shall survive the termination or expiration of this Contract and shall, to the extent applicable, remain binding and in full force and effect for the purposes of the ongoing business relationship by and between Contractor and the City. Nothing in this Contract shall alter, modify, or supersede the content and survival of such provisions, except as otherwise expressly agreed to in writing by the Parties and with the prior written approval of the City Attorney's office.

32. Progress Reports

Contractor shall provide progress reports to the Project Manager as requested in the Statement of Work attached as Exhibit A. Exhibit A shall list what information Contractor must include in progress reports.

33. Task Orders

33.1 The City may assign additional individual projects or tasks in the Statement of Work on a Task Order, time-and-materials basis as project needs are identified. The scope of work, schedule, Deliverables, and compensation for each project will be defined in the Task Order prior to commencement of the work. Any changes to the scope of work, schedule, Deliverables, and compensation in a Task Order must be agreed upon by Contractor and the City in writing as a Change Order to the Task Order.

33.2 Following the execution of each Task Order, the City's Project Manager will work directly with Contractor for the duration of the project, unless otherwise noted on the Task Order.

34. Acceptance Testing

34.1 Prior to Accepting Deliverables, the City shall have the right to perform Acceptance Testing. Contractor shall cooperate with the City in the development of Acceptance Criteria and the Acceptance Test Plan that shall codify and set forth the location, date, and other specifications of the test.

34.2 Procedure and Timetable. Unless otherwise specified, the City shall commence the Acceptance Test no later than ten (10) Business Days after receipt of a Deliverable. Contractor shall provide, at no additional cost, reasonable and appropriate support, assistance, and consultation regarding the Deliverable in order to facilitate Acceptance Testing. Acceptance Testing shall not exceed thirty (30) Business Days; and The City will make all reasonable efforts to complete the Acceptance Test within the time period specified. If the Acceptance Test is successful the City shall issue a written Certificate of Acceptance.

34.3 Failure of Acceptance Test. The City will notify Contractor if a Deliverable or a portion of a Deliverable, fails to pass an Acceptance Test and will specify in reasonable detail the identified failures and possible reasons for failure. After City's notification, Contractor shall correct the Deliverable, or the affected portion, within ten (10) Business Days and notify the

City that the Correction has been completed. After Contractor's Correction notification, the City shall perform a second Acceptance Test. If the Deliverable, or portion of the Deliverable, fails to pass the second Acceptance Test, the City shall notify Contractor in writing, and the City may, in its sole discretion: (a) terminate the Contract or Task Order with no further liability; (b) request Contractor to replace the Deliverable or defective portion of the Deliverable at no additional cost to the City, c) request Contractor make further corrections to prepare for retesting again; (d) accept the Deliverable at a reduced cost to be negotiated between the Parties; or (e) issue an Acceptance Certificate entitled "Acceptance with Exception(s)."

- 34.4 If the City issues an "Acceptance with Exception(s)" the City will list the exception(s) and the date for Contractor's correction. If exceptions are corrected by the listed date(s) the City agrees to commence further Acceptance Testing of the Deliverable or affected portion(s). If the Deliverable passes the Acceptance Tests, the City will issue a Certificate of Acceptance. If a Deliverable fails a second Acceptance Test (or in the event of a single Acceptance Test, the Acceptance Test) in no event shall there be an increase to the original price agreed to by the Parties for the Deliverable.
- 34.5 If the City elects to accept the Deliverable even with the failure(s), then the City may request that Contractor issue a refund to the City in an amount equal to a percentage of the full fee value of the Deliverable that the Parties mutually determine represents the loss of functionality of the Deliverable.
- 34.6 The City shall have the right to revoke "Acceptance with Exception(s)" if the City granted an "Acceptance with Exception(s)" based on Contractor's commitment to correct the defect within a reasonable period of time, but the defect has not been so corrected. The City shall also have the right to revoke Acceptance if the City accepted the Deliverable without discovery of the defect, and the Acceptance was reasonably induced by Contractor's assurances or by the difficulty of discovery of the defect before Acceptance. Revocation is effective only if it occurs within a reasonable time after the City discovers or should have discovered the reasons for revocation.

35. Security

- 35.1 Contractors providing or having access to data containing City confidential or personally identifiable information (as defined in the Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628) must maintain and demonstrate compliance with the following:
- 35.2 Oregon Consumer Identity Theft Protection Act, ORS 646A.600 to 646A.628. Specifically Contractors must develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal of the data. Contractors must also provide immediate notification to the City of a data security breach (as defined) and in cooperation with the City, provide notice to affected consumers. Any costs or fees incurred by the City due to Contractor's data breach, including but not limited to notification, consumer credit reports or fines by the Department of Consumer and Business Services, shall be reimbursed to the City by Contractor.
- 35.3 City of Portland, Bureau of Technology Services Security Standards. Specifically Contractors must comply with Technology Services, Information Security Administrative Rules 2.01, 2.02, 2.08, 2.12 and 2.15. These rules are located at: <http://www.portlandonline.com/auditor/index.cfm?c=26821>.
- 35.4 Additionally, any Contractor who provides or has access to Software which process and /or interacts with credit/debit card information must also be compliant with the Payment Card Industry- Data Security Standard (PCI-DSS). Current standards are maintained at www.pcisecuritystandards.org

36. Travel Reimbursement

Contractor may be reimbursed, upon advance written approval by authorized City personnel, for certain expenses incurred in connection with personnel assigned to provide services for the City on the City's site. All invoices shall be accompanied by original receipts and any additional backup that may be appropriate, and required by any subsequent amendment. Reimbursement will be made based on the following guidelines:

- 36.1 Commercial Air Travel. Commercial air travel reservations are to be arranged based on the lowest coach fare available within a reasonable time frame surrounding the desired arrival or departure time. The City shall reimburse Contractor for one round trip to the subject work location, unless otherwise agreed to by the City in writing. When possible, air travel arrangements should be reserved at least seven (7) to fourteen (14) Calendar Days in advance. Direct billing for commercial

air travel is NOT permitted; however, City may elect to arrange travel reservations on behalf of Contractor personnel. Weekend travel is not reimbursable, unless otherwise agreed to by the City's Project Manager in writing. In the event weekend travel is reimbursed, such reimbursement shall be made based on an amount up to and in lieu of any authorized per diem amounts and, if applicable, any other daily expense reimbursement.

- 36.2 Rental Cars/Surface Transportation. Contractor shall choose the most economical mode of transportation. Vehicle rental will be reimbursed based on a minimum ratio of one (1) compact auto per two (2) Contractor personnel. Reimbursement for vehicle rental will not be approved for Contractor personnel falling below that ratio. Cost for additional insurance is not reimbursable, nor will reimbursement be permitted for fuel obtained at a vehicle rental agency. City does not assume any liability of any type in connection with rental vehicles reserved or operated by Contractor personnel. Direct billing for rental vehicles is not permitted. If the City's Project Manager elects to provide a per diem for auto rental, such per diem shall be the same per diem as allowed for City employees. The City will reimburse Contractor personnel for surface transportation such as taxicabs, shuttles, and mass transit, at actual cost when reimbursement requests are accompanied by original receipts.
- 36.3 Lodging. Contractor shall arrange for their own lodging. The City will reimburse Contractor per individual for a daily lodging expenses based on GSA per diem rates; such per diem shall be the same per diem as allowed for City employees. GSA lodging allowances can be found at the U.S. General Services Administration website: <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>
- 36.4 Meal and Incidental Expenses. The City will provide per diem for each full day (eight hours) worked for Contractor personnel assigned to deliver Services. The per diem rate will be the same as the one published on the U.S. General Services Administration website, identified as the Meal and Incidental Expenses (M&IE) for the Portland, Oregon area. GSA per diem rates can be found at the U.S. General Services Administration website: <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=0>
- 36.5 Personal Entertainment. Expenses incurred for personal entertainment while traveling on the City business are not reimbursable. Personal entertainment includes items such as in-room movie charges, sightseeing, attendance at sporting events, reading materials, birthday gifts, haircuts, etc. This Contract, together with all Exhibits, Attachments and those documents which by their reference have been incorporated herein, constitutes the entire Contract between the City and Contractor and supersedes all proposals, oral and written agreements, between the Parties on this subject.

The Parties agree the City and Contractor may execute this Contract and any future amendments by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed.

CITY OF PORTLAND

_____ **(CONTRACTOR)**

Chief Procurement Officer Date

Authorized Signature Date

Christine Moody
Printed Name

Printed Name and Title

Approved as to Form

Address: _____
Phone: _____
Fax: _____

Office of City Attorney Date

INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

SECTION A

CONTRACTOR CERTIFICATION I, undersigned, am authorized to act on behalf of entity designated below, hereby certify that entity has current Workers' Compensation Insurance.

Contractor Signature _____ Date _____ Entity _____

If entity does not have Workers' Compensation Insurance, City Project Manager and Contractor complete the remainder of this form.

SECTION B

ORS 670.600 Independent contractor standards. As used in various provisions of ORS Chapters 316, 656, 657, and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. The contracted work meets the following standards:

- 1. The individual or business entity providing the labor or services is free from direction and control over the means and manner of providing the labor or services, subject only to the right of the person for whom the labor or services are provided to specify the desired results;
2. The individual or business entity providing labor or services is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local government ordinances for the individual or business entity to conduct the business;
3. The individual or business entity providing labor or services furnishes the tools or equipment necessary for performance of the contracted labor or services;
4. The individual or business entity providing labor or services has the authority to hire and fire employees to perform the labor or services;
5. Payment for the labor or services is made upon completion of the performance of specific portions of the project or is made on the basis of an annual or periodic retainer.

City Project Manager Signature _____

Date _____

SECTION C

Independent contractor certifies he/she meets the following standards:

- 1. The individual or business entity providing labor or services is registered under ORS Chapter 701, if the individual or business entity provides labor or services for which such registration is required;
2. Federal and state income tax returns in the name of the business or a business Schedule C or form Schedule F as part of the personal income tax return were filed for the previous year if the individual or business entity performed labor or services as an independent contractor in the previous year; and
3. The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist. Contractor check four or more of the following:

A. The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;

B. Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;

C. Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;

D. Labor or services are performed only pursuant to written contracts;

E. Labor or services are performed for two or more different persons within a period of one year; or

F. The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor Signature _____

Date _____

**EXHIBIT A
TO
TECHNOLOGY PROFESSIONAL, TECHNICAL & EXPERT SERVICES CONTRACT
STATEMENT OF WORK
AND PAYMENT SCHEDULE**

CONTRACT No.

1. SUMMARY

2. SCOPE OF WORK

Contractor shall _____.

Contractor shall perform the following tasks to accomplish this goal:

Task No.	Description
1	
2	
3	
4	
5	

3. DELIVERABLES

The individual Deliverables for each task are described in more detail in the table below. Acceptance Testing will occur as set out in [Section 34](#) of the Contract.

3.1 All Tasks - Deliverables. Contractor shall provide the following Deliverables:

Task No. and Elements	Descriptions
Task 1	
Deliverables	
Dependencies	
Acceptance Criteria	
Task 2	
Deliverables	
Dependencies	
Acceptance Criteria	

Task No. and Elements	Descriptions
Task 3	
Deliverables	1.
Dependencies	
Acceptance Criteria	
Task 4	
Deliverables	
Dependencies	
Acceptance Criteria	

4. Project Schedule

The Project will be completed by January 31, 2013 or other date as mutually agreed by the Parties in writing. The Project Schedule is attached as Appendix XX to this Statement of Work.

5. Status Reports

6. Subcontractors

Contractor shall assign the following subcontractors to perform work in the capacities designated:

Name	Role on Project
-- NONE --	

7. Price and Payment

7.1 Price

Prices are as set forth in Exhibit XX to this Contract, Contractor’s Proposal.

7.2 Payment Schedule/Milestones

7.3 Payment Terms

Contractor shall provide a single invoice for the full amount of the Contract upon final Acceptance by the City of all Deliverables. Any travel expenses shall be separately itemized on the invoice.

Payment shall be issued by the City thirty (30) Calendar Days from the date of the invoice from Contractor. Contractor invoices must contain Contractor’s name and address; invoice number; date of invoice; Contract number and date; description of Deliverables and/or

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Services; and the name of the individual, labor category, direct labor rate, hours worked during the period, and tasks performed; and the title and phone number of the responsible official to whom payment is to be sent. The City may stipulate how line items are entered on an invoice to ensure compatibility with the City's accounting and financial systems and to facilitate payment to vendor. Contractor shall also attach photocopies of any claimed reimbursable expenses.

Payment of any bill does not preclude the City from later determining that an error in payment was made and from withholding the disputed sum from the next progress payment until the dispute is resolved.

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Exhibit C
Detailed Cost Breakdown for Estimate of Costs

Phase One: Milestone	Responsible	Proposed Resource	Hourly Rate	Expected # of hours
Blueprint				
Requirements Gathering	Consultant/Business Team			
Blueprint Document Creation	Consultant			
Blueprint Review and Sign-off	Business	N/A		
Project Plan Development	Project Manager/Consultant			
Realization - Project Management				
Test Strategy Completion	Consultant			
Document Test Strategy	Consultant			
Identify Test Participants	Business Leads	N/A		
Confirm Testing Timeline with Participants	Business Leads	N/A		
Realization - Configuration				
Configuration				
Basic Settings	Consultant			
Day-to-Day Activities	Consultant			
Correspondence	Consultant			
Recurring Activities	Consultant			
Follow-Up	Consultant			
Learning Portal	Consultant			
Configuration Unit Testing - Pass 1	Consultant			
Realization - Development				
Functional Requirements Documents				
Correspondence Forms	Consultant			
BSP Navigation	Consultant			
BSP Information Page	Consultant			
BSP Training Activities	Consultant			
BSP Training Type	Consultant			
MSS	Consultant			
Identified Reports	Consultant			
Development Activities				
Correspondence Forms	City Technical Team	N/A		
BSP Navigation	City Technical Team	N/A		
BSP Information Page	City Technical Team	N/A		

BSP Training Activities	City Technical Team	N/A		
BSP Training Type	City Technical Team	N/A		
MSS	City Technical Team	N/A		
Identified Reports	City Technical Team	N/A		
Configuration Unit Testing - Pass 2	Consultant			
Realization - Master Data and Business Process Design				
BPP/Integration Test Documents	Business Leads/Consultant			
Master Data Collection Spreadsheets	Business Leads/Consultant			
Qualifications Data Collection - Catalog and Scales	Business Leads/Consultant			
Course Catalog Data Collection - Catalog and Metadata	Business Leads/Consultant			
Realization - Integration Testing				
QA Cutover	City BASIS	N/A		
Integration Testing Plan Setup	Business Leads/Consultant			
Integration Testing	Business Leads/Consultant			
Realization - Roles Design				
Develop Roles based on delivered roles	Business Leads/Consultant			
Unit Test Roles	Business Leads/Consultant			
Realization - User Acceptance Testing				
UAT Plan and Setup	Business Leads	N/A		
UAT Execution	Business Team/Extended Team	N/A		
Final Preparation				
Realization Completion (Wrap-up and sign-off)	Project Team	N/A		
Cutover to PRP	City BASIS	N/A		
Go-Live and Support				
Go Live and Support (Production System - PROD)	Business Leads/Business Team	N/A		