



**CITY OF PHILADELPHIA**

**PHILADELPHIA INTERNATIONAL AIRPORT**

**REQUEST FOR PROPOSALS**

**FOR**

**ON-CALL MAXIMO CONSULTING AND SUPPORT SERVICES**

<b>Deadline for Receipt of Proposals:</b>	<b>11/5/2020, 5:00 PM</b> <b>(Local Philadelphia Time)</b>
<b>Mandatory Virtual Pre-Proposal Meeting:</b> <b>(Meeting link is provided in Section 3.1.2)</b>	<b>10/19/2020 at 10 a.m.</b> <b>(Local Philadelphia Time)</b>
<b>Deadline for Questions:</b>	<b>10/21/2020, 5:00 PM</b> <b>(Local Philadelphia Time)</b>

*James F. Kenney, Mayor*  
*Mark Wheeler, Chief Information Officer*

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# **1 General Information**

## **1.1 Background and General Scope of Work**

The Division of Aviation (“Aviation”) of the City of Philadelphia (“the City”) is seeking one or more qualified Applicant(s) to provide on-call, task order-based consulting services to support and enhance its IBM Maximo 7.6.X system on an as-needed basis. Aviation reserves the right to select multiple Applicants with which to contract. The City does not guarantee that each successful Applicant will receive an assignment throughout the Agreement.

Applicants must possess extensive, broad-based, and referenceable experience in delivering IBM Maximo system implementations and solutions to medium and large hub airports. Applicants must also demonstrate strong, proven capabilities to maintain, enhance, upgrade, and expand Aviation’s Maximo system, as needed, to satisfy current and future needs for additional processes, functionality, and scalability.

No computer hardware or other equipment, and no network or computer installation services (such as cabling or physical installation of equipment) will be purchased under any contract resulting from this Request for Proposals. The City will purchase such equipment and services separately, through its normal procurement process.

### **Philadelphia Airport System**

Philadelphia International Airport (“PHL”) is the only major airport serving the 8th largest metropolitan statistical area in the United States. The Airport is classified by the Federal Aviation Administration (“FAA”) as a large air traffic hub. A large hub is defined by the FAA as a community that enplanes 1.0% or more of the total passengers enplaned on certificated airlines in the United States. According to data reported by Airports Council International – North America, PHL was ranked the twentieth (20th) busiest airport in the United States based on passenger traffic and nineteenth (19th) busiest based on aircraft operations (takeoffs and landings), serving 31.7 million passengers in Calendar Year 2018. General information may be viewed at the Airport website [www.phl.org](http://www.phl.org). Monthly statistics detailing passenger traffic and aircraft operations may be viewed at the Airport’s Activity Reports <http://www.phl.org/Pages/Business/ReportsPlans/activityReports.aspx>.

During July 2019, PHL’s peak season, an average of 26 airlines served the airport and provided over 515 daily nonstop departures to 140 destinations, including over 55 nonstop daily departures to 38 international destinations.

The Airport serves residents and visitors from a broad geographic area that includes eleven (11) counties within four (4) states: Pennsylvania, New Jersey, Delaware, and Maryland. The Airport is easily accessible by car and public transportation. The Airport is directly linked to ramps from Interstates 95 and 76 and the SEPTA Airport Rail Line provides direct service to and from

Center City Philadelphia, from stations located at all terminals. The Airport system consists of the following:

(a) Philadelphia International Airport

Land: Approximately 2,584 acres located partly in the Southwestern section of the City and partly in the Northeastern section of Delaware County, about 7.2 miles from Center City Philadelphia.

Runways: The Airport's runway system consists of parallel Runways 9L-27R and 9R-27L, crosswind Runway 17-35, commuter Runway 8-26, and interconnecting taxiways.

Terminal Buildings: The Airport consists of approximately 3.3 million square feet between Terminals A-West, A-East, B, C, D, E and F. Terminal buildings principally include ticketing areas, passenger hold rooms, baggage claim areas and approximately 180 food, retail and service establishments.

Other Buildings and Areas: The Airport has 449,761 square feet of cargo space, including six (6) active cargo facilities and two (2) American Airlines aircraft maintenance hangars.

Outside Terminal Area: The Airport is host to a 15-story, 419-room hotel, seven (7) rental car facilities, a 150-vehicle cell-phone lot, two (2) employee parking lots containing 4,200 spaces, and five (5) parking garages and surface lots offering a total of 18,940 vehicle spaces, separately operated by the Philadelphia Parking Authority.

(b) Northeast Philadelphia Airport

Northeast Philadelphia Airport ("PNE") is located on approximately 1,150 acres situated within City limits, ten (10) miles Northeast of Center City Philadelphia. PNE serves as a reliever airport for PHL and provides for general aviation, air taxi, corporate, and occasional military use. The airport currently has no scheduled commercial service. There are presently 85 T-hangars, ten (10) corporate hangars and six (6) open hangars for general aviation activities.

PNE is Pennsylvania's 5th busiest airport, providing "on-call" U.S. Customs, Immigrations and United States Department of Agriculture services to corporate international travel. It is surrounded by low density and light development to the east and west, and to the northeast by a high-density residential area. The Airport averages 145-based aircraft, dominated by single engine aircraft, plus twins, jets, turboprops and helicopters.

## **1.2 General Statement of Proposal Requirements**

Detailed requirements for the System and/or services sought by this RFP are provided in Appendix A, *Detailed Project Requirements*.

### 1.3 Proposal Submission Date; Anticipated Procurement Schedule

The date for submitting Proposals pursuant to this RFP (the “Submission Date”) is as provided below. Proposals must be submitted as provided in Section 3.1.5, *Proposal Submission Requirements*, by the time on the Submission Date indicated below.

<u>Date</u>	<u>Activity</u>
<i>October 5, 2020</i>	Issue Request for Proposals
<i>October 19, 2020</i> 10 a.m. EST	Mandatory, Virtual Pre-Proposal Meeting via Microsoft Teams
<i>October 21, 2020</i>	Submit questions, requests for clarification, information to Primary Contact, in writing
<i>October 29, 2020</i>	Response to Questions Posted
<i>November 5, 2020</i>	Submit Proposals
<i>February 1, 2021</i>	Project Start Date

These dates are estimates only and the City reserves the right, in its sole discretion, to alter this schedule as it deems necessary or appropriate. Notice of changes in the Pre-Proposal Meeting date/time or location, the due date/time for submission of Applicant questions, and the date/time for Proposal Submission will be posted on the City’s website at <https://secure.phila.gov/econtract> (“eContract Philly”). The other dates/times listed may be changed without notice to prospective Applicants.

Applicants to this RFP (each an “Applicant” and collectively “Applicants”) must submit their responses and applications electronically on eContract Philly and in accordance with Section 3.1.5, *Proposal Submission Requirements*. Submissions will not be considered unless the Applicant has proceeded through the eContract Philly system. For more information, please consult the reference materials found on the website, e-mail [econtractphilly@phila.gov](mailto:econtractphilly@phila.gov) or call 215-686-4914. **Applicants who have failed to file complete applications to the correct opportunity number through the eContract Philly online application process prior to the closing date and time will *not* be considered for the contract.** The City encourages Applicants to start and complete their online applications as early as possible.

### 1.4 City’s Primary Contact

The name, address, and contact information for the City’s Primary Contact for this RFP are as follows:

David M. Wilson, Procurement Technician I  
Philadelphia International Airport

E-mail address: [David.Wilson@phl.org](mailto:David.Wilson@phl.org)

All questions, requests for clarification, and requests for additional information regarding this RFP must be submitted in writing by the deadline set forth in Section 1.3. No oral response by any employee or agent of the City shall be binding on the City or shall, in any way, constitute a commitment by the City. If an Applicant finds any inconsistency or ambiguity in the RFP, the Applicant is requested to notify the City by the questions due date set forth in Section 1.3.

## **1.5 Compliance with Chapter 17-1400 of The Philadelphia Code**

Under any contract resulting from this RFP, the successful Applicant shall be required to comply with the terms and conditions set forth in Appendix C, *Provisions Required by Chapter 17-1400 of the Philadelphia Code*, which shall be incorporated into the contract.

# **2 RFP Requirements and Conditions**

## **2.1 Cost Proposals**

This is an on-call contract; therefore, the successful Applicant(s) hours will be determined by Aviation when and if services are required. The successful Applicant(s) will be expected to begin work on any assignment within seven (7) calendar days and to work diligently to complete work in a timely manner.

As part of its response to this RFP, Applicants shall provide representative hourly labor rate ranges for all personnel proposed that will be responsible for providing the services detailed in the “*Description of Anticipated Service Requests & Deliverables*” section. At a minimum, Applicants shall furnish rates and brief descriptions of their anticipated responsibilities for the following job titles or their equivalents: Project Manager, Lead Functional Analyst, Lead Technical Analyst, Business Analyst, Senior Developer, Developer, Technical Support Agent, Administrative Support, Business Process Lead, Trainer, and Network Administrator. Aviation will not consider blended rates for the services contemplated in this RFP, so Applicants must provide hourly rate ranges by job classification.

Subcontractor hourly rate ranges by job title must also be stated. **Mark-up to subcontractor costs is not permitted.**

Any contract resulting from this RFP will provide for a not-to-exceed amount in the compensation section of the contract. In the event that the City requests the successful Applicant to perform services, the City may, in its sole discretion, require the successful Applicant to submit a fixed price statement of work for the services requested.



## **2.2 Maintenance and Support; Warranty; Source Code**

### **2.2.1 Maintenance and Support Services**

The Proposal must include a section describing the maintenance and support services to be provided under the contract resulting from the RFP. Any task order for maintenance and support services may require the successful Applicant(s) to provide this information. A minimum of one (1) year of maintenance/support services, commencing on final acceptance of the System and project by the City, must be included in the fixed price statement of work, with the price identified in a separate line item. The City expects that maintenance and support will be furnished on a “turnkey” basis – i.e. the successful Applicant will itself be contractually responsible for all maintenance and support services for all elements of the System, including but not limited to all software and any data transport services that are required under the contract, and will be the single point of contact for service and support. Applicants are requested to price four additional years of maintenance and support, with the price for each of years two through five identified in a separate line item. The City expects that the successful Applicant will guarantee the availability of maintenance and support services for application software, on the foregoing “turnkey” basis, for a minimum of five (5) years from final acceptance of the System. Proposals must include a description of the proposed services, stating whether the Applicant will comply with the foregoing terms, and describing the Applicants problem resolution procedures – including problem severity classifications, response times and “fix” times for each level of severity, and the escalation procedures (including on-site service) that will apply where resolution is not immediately achieved.

### **2.2.2 Warranty**

Where applicable, the City requires a warranty from the successful Applicant that covers the entire System, including all software, other deliverables, design, implementation/integration and other services required under the contract resulting from the RFP and ensures compliance with all specifications, including performance standards, in the contract. The warranty must be on a “turnkey” basis – i.e. the successful Applicant must itself be contractually responsible for all warranty obligations and must be the single point of contact for service under the warranty. The warranty period must be a minimum of one (1) year, commencing on final acceptance of the System and project by the City. The price of such a one-year warranty must be included in the statement of work, with the price identified in a separate line item. The City strongly prefers a two year or greater warranty period and requests that Applicants price two additional warranty years, with the price for each additional warranty year identified in a separate line item of the cost proposal. Any premium charged for a warranty year – i.e. any charge in addition to the price for a concurrent year’s maintenance and support services – should be identified in the statement of work.

### **2.2.3 Training**

The City may require end-user training and other training services described in Appendix A, *Detailed Project Requirements*, in accordance with the conditions there provided. If required by the City, a statement of work in response to a task order should describe, and in the Cost Proposal provide, line item costs for the training that the Applicant is capable of providing, the training methodologies and materials to be used, and the Applicant’s experience in furnishing the kinds of training requested. Proposals should state clearly, in the Requirements Compliance

Certification, whether each type of training requested will be offered in accordance with the requirements of Appendix A.

## **2.3 Software Source Code**

Where applicable, the City expects delivery and ownership of the source code, including complete documentation and specifications, for custom software developed and furnished specifically for the System under any contract resulting from this RFP. For software that is proprietary to the successful Applicant or to third parties, the City expects that source code, including complete documentation and specifications, will be deposited in escrow, at no expense to the City and on terms satisfactory to the City, with regular updates of the deposited code and documentation to reflect enhancements, upgrades, updates, and corrections to the software.

## **2.4 Responsiveness**

Proposals must satisfy all requirements set forth in this RFP. Any Proposal that does not adhere strictly to RFP requirements may, in the sole discretion of the City, be rejected, as not responsive to the RFP, without further consideration. Proposals will be evaluated, in part, according to whether the Applicant meets the qualifications described in the RFP and submits a Proposal complying with all RFP requirements. The City reserves the right, in its sole discretion, to determine whether any deviation(s) from or exception(s) to RFP requirements make the Proposal non-responsive or otherwise unacceptable such that the Proposal will be rejected without further consideration.

## **2.5 Disclaimer**

This RFP and the process it describes are proprietary to the City and are for the sole and exclusive benefit of the City. This RFP is not binding on the City. No other party, including any Applicant to this RFP or future Applicant to any RFP that may be issued by the City, is intended to be granted any rights hereunder. Proposals and other materials submitted in response to this RFP, whether written or verbal and including, without limitation, ideas of Proposers elicited in response to the RFP, shall become the sole and absolute property of the City upon submission or communication, and the City shall have title thereto and unrestricted use thereof. The City shall have the right to disclose the Proposals, materials and any ideas to any person or entity including, employees of the City, its consultants and contractors, and authorized agents, as required to carry out this RFP procurement. Any such Proposal, materials, and ideas may be publicly disclosed by the City or any authorized agent of the City, for any reason the City, in its sole discretion, deems appropriate, or pursuant to the Pennsylvania Right To Know Act or other applicable law. The Proposer acknowledges and agrees that the City and its authorized agents shall have the foregoing right of public disclosure notwithstanding any notice or statement by the Proposer (whether made in the Proposal or otherwise) asserting the confidential or proprietary nature of the Proposal or of any materials submitted or ideas elicited in response to the RFP.

## **2.6 Publicity**

All publicity (including, but not limited to, news releases, news conferences, and commercial advertising) relating to this RFP and/or the services or products sought by this RFP and/or any

contract awarded pursuant to this RFP shall require the prior written approval of the Chief Information Officer, Mark Wheeler.

## **2.7 Applicants Restricted**

No Proposal shall be accepted from, or contract awarded to, any City employee or official, or any firm in which a City employee or official has a direct or indirect financial interest. No Applicant may be the prime contractor or prime Applicant for more than one Proposal submitted pursuant to this RFP. Entities that are legally related to each other or to a common entity may not submit separate Proposals as prime contractors or prime Applicants. Any Proposal may be rejected that, in the City's sole judgment, does not comply with these conditions. Nothing contained in this RFP is intended to preclude a Proposal by a system integrator that proposes to perform the substantive work proposed through subcontractors.

## **2.8 Participation of Disadvantaged Business Enterprises**

Each Applicant is subject to the provisions of Mayoral Executive Order 03-12, the City's Antidiscrimination Policy, and is required to exercise its "Best and Good Faith Efforts" in response to the ranges specified in Appendix B included with this RFP for participation by Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE") and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE") as those terms are defined in Executive Order 03-12. Forms, instructions and special contract provisions for the Antidiscrimination Policy explain these requirements in more detail and are included in Appendix B-1 to this RFP. Applicants are required to complete and return with their proposals the "Solicitation for Participation and Commitment Form" which is included in Appendix B-1.

If Applicant is a nonprofit organization, Mayoral Executive Order 03-12 requires nonprofit Applicants to document their diversity policies. Applicants that are nonprofit organizations should refer to the special contract provisions and instructions attached to this RFP as Appendix B-2. Included in Appendix B-2 is the form, "Diversity Report of Nonprofit Organizations," which should be completed and returned with proposals submitted by nonprofit Applicants even if a nonprofit Applicant is also submitting a "Solicitation for Participation and Commitment" form.

## **2.9 Acceptance of the Terms and Conditions of This RFP**

All Proposals submitted are subject to the terms and conditions set forth in this RFP. The Applicant, by submitting its Proposal, expressly acknowledges and agrees to all terms, conditions and requirements contained in this RFP.

## **2.10 Proposal Submission, Evaluation and Selection**

### **2.10.1 General**

The City reserves the right, in its sole discretion, to reject all Proposals and reissue this RFP at any time prior to execution of a final contract; to require, in any RFP for similar products and/or services that may be issued subsequent to this RFP, terms and conditions that are substantially different from the terms and conditions set forth in this RFP; and/or to cancel this RFP with or without issuing another RFP.

### **2.10.2 Rights and Options Reserved**

The City reserves and in its sole discretion may, but shall not be required to, exercise the following rights and options with respect to the Proposal submission, evaluation and selection process under this RFP:

- (a) To reject any Proposals if, in the City's sole discretion, the Proposal is incomplete, the Proposal is not responsive to the requirements of this RFP (see "Detailed Project Requirements" in the RFP appendices), the Applicant does not meet the Qualifications set forth in the RFP, or it is otherwise in the City's best interest to do so;
- (b) To supplement, amend, substitute or otherwise modify this RFP at any time prior to selection of one or more Applicants for negotiation and to cancel this RFP with or without issuing another RFP;
- (c) To accept or reject any or all of the items in any Proposal and award the contract(s) in whole or in part if it is deemed in the City's best interest to do so;
- (d) To reject the Proposal of any Applicant that, in the City's sole judgment, has been delinquent or unfaithful in the performance of any contract with the City or with others, is financially or technically incapable or is otherwise not a responsible Applicant;
- (e) To reject as informal, non-responsive, or otherwise non-compliant with the requirements of this RFP any Proposal which, in the City's sole judgment, is incomplete, is not in conformity with applicable law, is conditioned in any way that is unacceptable to the City, deviates from this RFP and its requirements, contains erasures, ambiguities, or alterations, or proposes or requires items of work not called for by this RFP;
- (f) To waive any informality, defect, non-responsiveness and/or deviation from this RFP and its requirements that is not, in the City's sole judgment, material to the Proposal;
- (g) To permit or reject at the City's sole discretion, amendments (including information inadvertently omitted), modifications, alterations and/or corrections of Proposals by some or all of the Applicants following Proposal submission;
- (h) To request that some or all of the Applicants modify Proposals based upon the City's review and evaluation;
- (i) To request additional or clarifying information or more detailed information from any Applicant at any time, before or after Proposal submission, including information inadvertently omitted by the Applicant;
- (j) To inspect and otherwise investigate projects performed by the Applicant, whether or not referenced in the Proposal, with or without the consent of or notice to the Applicant;
- (k) To conduct such investigations with respect to the financial, technical, and other qualifications of each Applicant as the City, in its sole discretion, deems necessary or appropriate; and
- (l) To waive and/or amend any of the factors identified in the RFP as pertaining to the Applicant's qualifications.

### **2.10.3 Contract Negotiation and Award**

The City reserves and in its sole discretion may, but shall not be required to, exercise the following rights and options with respect to the contract negotiation and award process resulting from this RFP:

The City reserves the right to enter into post-submission negotiations and discussions with any one or more Applicants regarding price, scope of services, and/or any other term of their

Proposals, and such other contractual terms as the City may require, at any time prior to execution of a final contract. The City may, at its sole election, enter into simultaneous, competitive negotiations with multiple Applicants or negotiate with individual Applicants seriatim. Negotiations with Applicants may result in the enlargement or reduction of the scope of services, or changes in other terms that are material to the RFP and the submitted Proposals. In such event, the City shall not be obligated to inform other Applicants of the changes, or to permit them to revise their Proposals in light thereof, unless the City, in its sole discretion, determines that doing so is in the City's best interest.

In the event negotiations with any Applicant(s) are not satisfactory to the City, the City reserves the right to discontinue such negotiations at any time; to enter into or continue negotiations with other Applicants; to enter into negotiations with firms that did not respond to this RFP and/or to solicit new proposals from firms that did not respond to this RFP, including but not limited to negotiations or proposals for components of the System, if any, that are deleted by the City from the successful Proposal or the contract resulting from it. The City reserves the right not to enter into any contract with any Applicant, with or without re-issue of the RFP, if the City determines that such is in the City's best interest.

#### **2.10.4 Proposal Evaluation**

Proposals the City determines, in its sole discretion, are responsive to the RFP will be reviewed by a selection committee designated by the City. The City, in its sole discretion, may require any Applicant to make one or more presentations of its Proposal to the selection committee, in City offices or virtually, at no cost to the City, addressing its ability to satisfy the requirements of this RFP. The City shall not be required, however, to permit any Applicant to make such a demonstration.

Cost to the City is a material factor, but not the sole or necessarily the determining factor in Proposal evaluation. The City may, in its sole discretion, award a contract resulting from this RFP to a person or entity other than the responsible and qualified Applicant submitting the lowest price. The contract will be awarded to the Applicant whose Proposal the City determines, in its sole discretion, is the most advantageous to the City and in the City's best interest.

Proposal evaluation will include evaluation of the Applicant's qualifications, based on Volume 1 of the Proposal and such other information and investigations as the City deems necessary and appropriate; and evaluation of the Applicant's technical solutions and Cost Proposals as set forth in Volume 2 of the Proposal. The City, in its sole discretion, may, but shall not be required to, reject without further consideration the Proposal of any Applicant that has not demonstrated, in the City's sole judgment, that it satisfies the qualifications criteria provided in the RFP. The City reserves the right, in its sole discretion and without notice to Applicants, to modify this evaluation procedure as it may deem to be in the City's interest.

Evaluation factors to be considered by the City include, but are not limited to, the following (no particular order of importance, weighting, or other priority is assigned to these factors or reflected by their order in the list):

- 1) Superior ability or capacity to meet particular requirements of contract and needs of City Department and those it serves -

- a) Project understanding and soundness of proposed project methodology, including but not limited to the detail and accuracy of the proposed scope and statement of work and implementation plan;
- 2) Eligibility under Code provisions relating to campaign contributions;
- 3) Superior prior experience of Applicant and staff -
  - a) References provided by the Applicant, particularly from projects of similar complexity and scope;
  - b) Demonstrated ability to provide Services and Deliverables comparable to those requested in this RFP;
- 4) Superior quality, efficiency and fitness of proposed solution for City Department -
  - a) The impact of the proposed solution on the operations of the using department, and the demonstrated ability of the solution to enhance operational efficiency and effectiveness;
- 5) Superior skill and reputation, including timeliness and demonstrable results -
  - a) The Applicant's financial and technical qualifications to perform the work required by the RFP, as presented in its Proposal and determined by any other investigations conducted or information obtained by the City;
  - b) Commitment and ability to complete the project within the time frame specified in the Proposal;
- 6) Special benefit to continuing services of incumbent, such as operational difficulties with transition or needs of population being served;
- 7) Benefit of promoting long-term competitive development and allocation of experience to new or small businesses, including those owned by minority or disabled persons or by women;
- 8) Lower cost;
- 9) Administrative and operational efficiency, requiring less City oversight and administration;
- 10) Anticipated long-term cost effectiveness;
- 11) Meets prequalification requirements as set forth in this RFP; and,
- 12) Applicant's certification of its Local Business Entity/Local Impact status pursuant to Executive Order 04-12.

### **2.10.5 Site Inspections**

The City may, at its sole option, inspect the Applicant's work at one or more sites where the Applicant's or a proposed subcontractor's products are installed, or services have been provided. If a list of such sites is not required elsewhere in this RFP or included in its Proposal, the Applicant will promptly provide such a list upon written request by the City.

### **2.10.6 Prime Contractor Responsibility**

All subcontractors will be subject to approval by the City. Prior to contract execution, the successful Applicant will be required to furnish the corporate or company name and the names of the officers and principals of all subcontractors. Notwithstanding any such approval by the City, the successful Applicant shall itself be solely responsible for the performance of all work set forth in any contract resulting from the RFP, and for compliance with the price and other terms provided in the contract. The successful Applicant shall cause the appropriate provisions of its Proposal and the contract to be inserted in all subcontracts.

The City's consent to or approval of any subcontract or subcontractor Proposed by an Applicant shall not create or purport to create any obligation of the City to any such subcontractor, or any form of contractual relationship or relationship of privity between the City and the subcontractor. Any Applicant who obtains such approval or consent of the City shall be required to insert a clause so providing in all subcontracts.

## **2.11 Responsibility for Proposal Costs**

The Applicant shall be solely and fully responsible for all costs associated with the development, preparation, transmittal, and submission of any Proposal or material submitted in response to this RFP. The City may, in its sole discretion, ask selected Applicants to present their Proposal in person to the City's representatives at the City's offices, and the costs of such presentations, as well as the costs of any pilot implementation required by the City under Section 2.3, shall be solely the responsibility of the Applicant. The City assumes no contractual or other obligations as a result of the issuance of this RFP, the preparation or submission of a Proposal by an Applicant, the evaluation of Proposals, the Applicant's conduct of presentations or pilot implementations, or the selection of any Applicant for further negotiations. There may be no claims whatsoever for reimbursement from the City or any of its consultants for such costs. All costs incurred by the Applicant during the selection process and during negotiations will be solely the responsibility of the Applicant.

## **2.12 Reserved**

## **2.13 Withdrawal or Modification of Proposals**

Applicants may withdraw or modify their Proposals at any time prior to the Proposal Submission Date provided in Section 1.3, *Proposal Submission Date; Anticipated Procurement Schedule*, by written notice of withdrawal or written submission of the modification, signed in the same manner and by the same persons who signed the Proposal. Such written notice must be addressed to the City Primary Contact as specified in Section 1.4.

# **3 Proposal Requirements**

## **3.1 Administrative Requirements**

Applicants are expected to comply with all administrative requirements provided in this Section 3.1.

### **3.1.1 Mandatory Online Registration and Filing Requirements**

You must apply online in order to be eligible for award of the non-competitively bid contract opportunity described in this RFP; proposals and any other related documents prepared in response to this RFP will not be considered unless they are filed to the correct contract opportunity established for this RFP (identified by opportunity number), within the prescribed time period, through eContract Philly, which can be accessed on the City's website at [Twww.phila.gov/contracts](http://Twww.phila.gov/contracts) by clicking on eContract Philly. The posting of this RFP on eContract Philly is also referred to as a Notice of Contracting Opportunity.

The City requires that any Applicant who establishes an account on eContract Philly and utilizes that account for the purpose of responding to a particular contract opportunity is the same individual or business entity that, if awarded the contract, will enter into and perform the resulting contract with the City. Applicants MUST ensure that the company name and Tax Identification Number (TIN) with which they are registered on eContract Philly is the identical name and TIN under which they are submitting their application. Any deviation from this may result in the disqualification of the Applicant at the sole discretion of the City. If the Applicant wishes to apply for an opportunity using a name or TIN which is different from the registration account, the Applicant must register the new name and TIN with eContract Philly before submitting its application for the opportunity. Except in the case of joint ventures, applications posted on eContract Philly from Applicants that purport to be filing an application on behalf of another individual or business entity will not be considered, even if the other business entity is an affiliate of the Applicant.

In the case of multiple business entities that if awarded a contract have formed, or intend to form a joint venture to perform the contract, a single business entity may file an application on behalf of all such business entities so long as (i) the filing business entity is or will be a member of the joint venture, (ii) the application is made in the name of the existing or proposed joint venture, (iii) documentation is submitted with the application identifying all business entities that comprise, or will comprise, the joint venture, and demonstrating a binding agreement among those business entities to perform the contract as the joint venture identified in the application (for a joint venture that has not yet been formed, documentation signed by each identified business entity evidencing a commitment to form the joint venture if awarded the contract is sufficient), and (iv) the non-filing business entities are eligible for award of a City contract and make the disclosures required by Chapter 17-1400 of the Philadelphia Code (described in greater detail below) within fourteen (14) days after the joint venture receives notice that it has been awarded the contract.

Pursuant to Chapter 17-1400 of the Philadelphia Code, Applicants are required to disclose their direct and indirect campaign contributions to candidates who are running for, and/or incumbents who are currently serving in local Philadelphia elected office and to political committees/parties that are operating in Philadelphia (federal campaign contributions are not included unless the subject of the campaign is also running for, or currently serving in a local Philadelphia elected office); any consultants used in responding to the RFP and contributions those consultants have made; prospective subcontractors; and whether Applicant or any representative of Applicant has received any requests for money or other items of value or advice on particular firms to satisfy minority-, woman- or disabled-owned business participation goals from City employees. This information, as well as a proposal or any other response document required, is part of the online application. For more information, please consult the text of Chapter 17-1400 (especially section 17-1402(1)(b)(i).(2) and section 17-1405), consult the reference materials found on the website, e-mail [econtractphilly@phila.gov](mailto:econtractphilly@phila.gov), or call 215-686-4914.

Applicants are advised that under Chapter 17-1400 individuals and businesses that make campaign contributions in excess of the amounts set forth in Section 17-1404(1), as periodically adjusted, are ineligible to enter into a City contract or subcontract at any tier. Applicants should



take this into consideration in electing to apply for this opportunity or in selecting subcontractors if awarded a contract to perform the work sought by this RFP.

At their option, Applicants may require that their subcontractors disclose to the Applicants, the subcontractors' direct and indirect campaign contributions to candidates who are running for, and/or incumbents who are currently serving in local Philadelphia elected office and to political committees/parties that are operating in Philadelphia (federal campaign contributions are not included unless the subject of the campaign is also running for, or currently serving in a local Philadelphia elected office). Disclosure forms may be found on the Disclosure/Eligibility – Subcontractor Disclosure tab on eContract Philly. Applicants are not required to submit these forms to the City.

Applicants who have failed to file complete applications to the correct opportunity – including the online disclosure forms – through the eContract Philly online application process prior to the closing date and time will not be considered for the contract.

You are encouraged to start and complete your online application on eContract Philly as early as possible. Please be aware that internet connection speed depends on a variety of factors including: configuration of your computer, configuration of your business or home network, the condition of the wiring at your location, network or internet congestion (available bandwidth). Please prepare and plan accordingly to ensure a timely submission. Your proposal and other application documents will not be considered submitted until you sign the application and click on the “submit” button at the conclusion of the eContract Philly process. It is your responsibility to make sure that you have signed and submitted your complete application to the correct contract opportunity established for this RFP.

You can begin uploading (or attaching) your proposal and other application materials at any time. It is especially prudent for you to start uploading your attachments earlier if you have a large number of attachments (e.g. over five documents) or larger-sized attachments (e.g. above 5 MB). Please be advised that the eContract Philly website will not accept documents larger than 8 MB. If you have documents larger than 8 MB, you must separate them into smaller documents in order to successfully upload them to the system. Until you sign and submit your application, your materials are not accessible to any staff with the City of Philadelphia. Once you have signed and submitted your application, your application is accessible only to appropriate contract staff within the City of Philadelphia.

You are advised that any individual who signs and submits an application on eContract Philly must be an authorized signatory of the Applicant, authorized to both bind the Applicant to its proposal and to make the disclosures required to complete the eContract Philly process. Therefore, in conjunction with their electronic signatures provided at the conclusion of the submission of their applications online, signatories will be required to certify that they are the Applicant or are employees or officers of the Applicant duly authorized to execute the application and make disclosures on the Applicant's behalf; and they represent and covenant that, to the best of their knowledge after appropriate inquiry, all of the information and disclosures provided are true and contain no material misstatement or omissions.

Except as expressly provided otherwise on the eContract Philly, Applicants that obtain the RFP via the eContract Philly shall be bound by all instructions, disclaimers, terms and conditions for viewing, downloading and/or printing the RFP that are posted on the “Terms of Use” page of the site (accessed by clicking on the “Terms of Use” link on the Phila.Gov Home Page). These Terms of Use are incorporated in and made a part of this RFP by reference.

### **3.1.2 Pre-Proposal Meeting**

A Virtual Pre-Proposal Meeting to review the requirements of this RFP will be held via Microsoft Teams on Monday, October 19, 2020, starting at 10 a.m. EST. Attendance at the pre-proposal meeting is mandatory. Here is the link to join the virtual mandatory pre-proposal meeting: [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NTZhNGJINGQtYThmMi00NWNkLWFhNGItN2JjZjY3ZGIxYjdh%40thread.v2/0?context=%7b%22Tid%22%3a%22182f890-6790-42ac-ab97-58afd4eb2b6d%22%2c%22Oid%22%3a%22e02853ce-d25a-4642-bead-4a1088bd27b7%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NTZhNGJINGQtYThmMi00NWNkLWFhNGItN2JjZjY3ZGIxYjdh%40thread.v2/0?context=%7b%22Tid%22%3a%22182f890-6790-42ac-ab97-58afd4eb2b6d%22%2c%22Oid%22%3a%22e02853ce-d25a-4642-bead-4a1088bd27b7%22%7d)

**Attendance at the Pre-Proposal meeting is mandatory, and the City reserves the right, in its sole discretion, to reject without evaluation the Proposal of any Applicant that does not attend the meeting.** Applicants are expected to be present for the entire meeting and the City reserves the further right, in its sole discretion, to refuse admission to any prospective Applicant arriving more than thirty (30) minutes after the start of the Meeting, and to reject without evaluation any Proposal subsequently submitted by such an Applicant.

The City believes that attendance at the Pre-Proposal Meeting is essential for successful participation in this RFP procurement and expects every Applicant to attend. The City reserves the right, in its sole discretion, to reject any Proposal submitted by an Applicant that does not attend the Pre-Proposal Meeting, but may, in its sole discretion, consider such a Proposal if it deems consideration to be in the City’s best interest, or determines that the Applicant’s failure to attend was caused by circumstances reasonably beyond the Applicant’s control.

### **3.1.3 Addenda to the RFP; Requests for Information; Inconsistencies**

The City may, in its sole discretion, issue addenda to this RFP containing responses to questions and requests for information, addressing matters raised at the Pre-Proposal meeting(s), clarifications of the RFP, revisions to the RFP, or any other matters that the City deems appropriate. Addenda will be posted on eContract Philly. It is the Applicant’s responsibility to monitor eContract Philly for Addenda and to comply with their terms.

All questions, requests for clarification, and requests for additional information regarding this RFP must be submitted to the City’s Primary Contact not later than the deadline set forth in Section 1.3. All such questions and requests must be submitted in writing, by email to the City’s Primary Contact. Responses to such questions and requests shall be at the City’s sole discretion and nothing in this RFP shall create an obligation on the City to respond to the submitting party or at all. In the City’s sole discretion, responses may be posted on eContract Philly without formal notification to prospective Applicants.

No oral response by any employee or agent of the City shall be binding on the City or shall in any way constitute a commitment by the City.

If an Applicant finds any inconsistency or ambiguity in the RFP or an addendum to the RFP issued by the City, the Applicant is requested to notify the City in writing by the questions due date as set forth in Section 1.3.

### **3.1.4 Proposals Binding**

By submitting its Proposal, the Applicant agrees to be bound by all terms and conditions of its Proposal, including, without limitation, the prices stated therein, for a period of one hundred and eighty (180) days from the Submission Date. An Applicant's refusal to enter into a contract that reflects such terms and conditions may, in the City's sole discretion, result in rejection of the Proposal, termination of any negotiations with the Applicant, and/or Applicant's forfeiture of its Proposal Security, if required by this RFP, as set forth in the "Proposal Security" section of the RFP (included in the RFP if Proposal Security is required).

It shall be the Applicant's responsibility to review and verify the completeness of its Proposal.

Applicants may withdraw or modify their Proposals at any time prior to the Submission Date by written notice of withdrawal or written submission of the modification, signed in the same manner and by the same person(s) who signed the initial Proposal, to the City's Primary Contact. The City reserves the right, at its sole discretion, to permit or require modifications to any Proposal after it is submitted, as set forth in the "Reservation of Rights" sections of the RFP.

### **3.1.5 Proposal Submission Requirements**

Proposals submitted in response to this RFP must be submitted electronically on eContract Philly, in accordance with the instructions and requirements there posted and by the time and date provided in Section 1.3, *Proposal Submission Date; Anticipated Procurement Schedule*. Proposals should include a table of contents listing all sections, figures, and tables and their corresponding page numbers.

Qualifications and Technical/ Cost Proposals in Separate Volumes. Applicants will organize their Proposals into two separate electronic files, referred to herein as Volume 1 and Volume 2. The details for each volume are provided below:

- Volume 1 - Qualifications  
Volume 1 will set forth the Applicant's qualifications and must be labeled on the cover with "On-Call Maximo Consulting and Support Services Proposal, Volume 1 – Vendor Qualifications." The required contents of Volume 1 are defined in the "Qualifications of Applicants" section below.
- Volume 2 – Technical Approach and Cost Proposal  
Volume 2 will set forth the Applicant's technical approach and solution for meeting the requirements of the RFP, and its cost proposal, and must be labeled on the cover with "On-Call Maximo Consulting and Support Services Proposal, Volume 2 – Technical

Approach and Cost Proposal.” The required contents of Volume 2 are defined in the “Technical Approach and Cost Proposal” section below.

### **3.2 *Implementation Plan, Statement of Work, Project Schedule and Milestone Payment Schedule***

As may be required by the City, Applicants must submit the following documents (collectively, “Project Documents”) as part of their statement of work, in response to a task order issued by the City in accordance with the overall structure of the work as set forth in the RFP and the specific format and other requirements provided in Appendix A (if no requirements are provided in Appendix A, Applicants should submit the Project Documents in the form they currently use for work of the type here sought):

- (a) an implementation plan for the proposed System and/or services that describes in detail (i) the methods, including controls, by which the Applicant manages projects of the type sought by this RFP; (ii) where software is to be developed, customized, and/or implemented as part of the project, the Applicant’s software development and implementation methodology, including, but not limited to, version control, error correction, pre-delivery testing and de-bugging procedures, and post-installation testing; (iii) and any other project management or implementation strategies or techniques that the Applicant intends to employ in carrying out the work;
- (b) a detailed statement of the work to be performed, in a form that the Applicant considers appropriate and sufficient for incorporation in a contract document;
- (c) a detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, principal schedule milestones, and overall time of completion; and
- (d) a milestone payment schedule setting forth the frequency and amount of progress payments and identifying the tasks and deliverables (“milestones”) to be completed for each payment.

Proposals will be evaluated in part on the adequacy of the proposed Project Documents. The City reserves the right, in its sole discretion, to impose additional or different requirements on any of the Project Documents submitted in any Proposal, without notice to other Applicants.

### **3.3 Proposal Contents**

#### **3.3.1 Volume 1 – Qualifications of Applicants**

Proposals will be evaluated, in part, on the Applicant’s ability, in the City’s sole judgment, to demonstrate technical and financial capacity to perform the work it proposes in accordance with the requirements of this RFP. Applicants are accordingly required to furnish the information described below. The City reserves the right, in its sole discretion, to require additional or different qualifications information, and is the sole judge of whether the Applicant’s submissions meet the information requirements provided below and are sufficient to demonstrate the Applicant’s qualifications.

Volume 1 of the Proposal should include the following sections, with the information specified for each.

Volume 1, Section 1: Description of Applicant. The Applicant shall provide:

- (a) Name, street address, mailing address if different, email address, and telephone and facsimile numbers of the Applicant.
- (b) Year established (include former firm names and year each applied). Identify the country and state in which the firm was incorporated or otherwise organized.
- (c) Type of ownership and parent company and subsidiaries, if any. Include dates of any corporate mergers and/or acquisitions including all present and former subsidiaries with dates of any and all re-structuring since the founding date.
- (d) Address and telephone number of production facility(ies) where any of the work is to be accomplished (if different than item a); name, address, and telephone number of the proposed project manager.
- (e) A narrative description and organization chart depicting the management of the Applicant's organization and its relationship to any larger business entity.
- (f) A description of the overall operations of the Applicant, the number and scope of other projects currently ongoing or set to begin in the near future.
- (g) A narrative description of Applicant's familiarity with and prior operating experience in the Philadelphia region. Specifically identify (i) all projects in the last five years on which Applicant has worked that are valued at over \$100,000 and located in the City of Philadelphia, (ii) any contracts valued at over \$100,000 entered into with the City of Philadelphia in the last five years; and (iii) any contracts valued at over \$100,000 entered into with any other government entity in the last five years (the 30 most recent such contracts shall be sufficient; Applicants may list more than 30).
- (h) Provide, at Applicant's option, any additional information not specifically listed above which demonstrates the qualifications of the Applicant to perform the scope of work specified in this RFP.

Volume 1, Section 2: Technical Qualifications

- (a) The Applicant shall provide information that demonstrates that it possesses the technical expertise that the City requires for this RFP.
- (b) Applicants should submit references from owners of projects that are comparable in size, complexity and scope of work sought by this RFP. The references should also demonstrate the Applicant experience with the technology solution proposed. The histories of such projects that they have completed, firm resumes and resumes of key personnel should also

be included as well as other such information believed to demonstrates the indicated types of experience. All references should include the name, title, telephone number of both the current owner of the project and the owner of the project at time of work effort. Specific reasons for using the reference must also be provided.

- (c) The Applicant must demonstrate adequate experience in the following areas specific to the Maximo system; the City prefers a minimum of five years such experience working in an Airport environment:
  - 1. Hosting & MaaS Services
  - 2. System Maintenance
  - 3. System Performance & Functionality Reviews
  - 4. Upgrade Execution & Support
  - 5. Data Loads & Conversions
  - 6. Asset Walk-Down/Collection
  - 7. Business & System Process Reviews
  - 8. System Configuration Changes & Enhancements
  - 9. Systems Integrations & Interfaces
  - 10. Mobile Solution Implementation
  - 11. Report Development
  - 12. End-User Training
  - 13. Database Conversion
  - 14. Infrastructure Model Conversion Analysis
  - 15. Technical Support/Helpdesk Services

Volume 1, Section 3: Financial Qualifications. The Applicant shall provide:

- (a) A narrative that demonstrates its financial capacity to undertake and complete the project as proposed and to furnish software systems and/or services in accordance with the RFP;
- (b) A current audited statement of financial condition prepared by an independent certified public accountant;
- (c) Financial statements for the two (2) years preceding the year to which the statement required in b applies, prepared by an independent certified public accountant;
- (d) A bank reference;
- (e) A statement disclosing any audits of the Applicant by the federal government;
- (f) A statement disclosing any bankruptcy or insolvency proceeding that Applicant has filed or that has been against Applicant pursuant to Chapter 11 or Chapter 7 of the United States Bankruptcy Code, or any applicable state law of comparable effect.
- (g) If performance and/or payment bonds are required under the RFP, a notarized letter from an approved surety stating the willingness of the surety to issue the bonds to the Applicant as principal;

- (h) A description of contracts with municipalities for work of similar type, scope, and value as the work sought by this RFP; including, for each, the name, address, and telephone number of a contact person;
- (i) A copy of the most recent Form 10-K filed by the Applicant with the U.S. Securities and Exchange Commission, and copies of all Form 8-Ks filed since the filing of the most recent 10-K. If a Form 10-K is not filed with the SEC, submit the following:
  - certified audited financial statements for the past three fiscal years including, at a minimum, income statements, balance sheets and statements of changes in financial position; if fewer than three years of financial statements are available, this information should be provided to the fullest extent possible;
  - copies of the latest quarterly financial reports;
  - a copy of the Applicant's most recent annual report;
- (j) If the Proposal is submitted by a partnership and/or joint venture, provide full information concerning the nature and structure of the partnership and/or joint venture, including:
  - What entity will be guaranteeing contract performance?
  - Date of joint venture or partnership.
  - Does the agreement between members comprising the joint venture make each jointly and severally liable for contractual obligations of this project?
- (k) Any other information not specifically itemized above that it believes to be demonstrative of its financial capacity.

Volume 1, Section 4: Local Business Entity or Local Impact Certification. (Optional if applicable to Applicant)

If applicable, Applicant may elect to provide the certification statement in the form of Appendix F as to Applicant's status as a Local Business Entity or its local impact if awarded the contract. (See Section 3.5 for more information.)

### **3.3.2 Volume 2 – Technical Approach**

Volume 2 will set forth the Applicant's technical approach for meeting the requirements of the RFP. Volume 2 of the Proposal should be divided into two index-tabbed sections, including the information identified below for each section.

Volume 2, Section 1: Organization and Management. The Applicant shall provide the following in Section 1:

- (a) Organizational charts addressing the delineation of authority and responsibilities in performing the work described in the Proposal and identifying all key personnel, including, but not limited to, the project manager.
- (b) Company affiliation, job title, and resume of each individual listed in on the organizational chart, setting forth work experience, education, professional achievements, and any

publications related to the type of work to be performed. (The City will require that the key people proposed for the project participate in their proposed capacities and the City must approve any substitutions or replacements.)

- (c) General descriptions of the following:
  - The system development methodology; and
  - The project management approach

Volume 2, Section 2: Scope of Work Plan.

Section 2 will provide a general description of the Applicant's plan for completing the work proposed.

- (a) A written description of how the Applicant intends to accomplish each task;
- (b) The name of key personnel identified in Volume 2, Section 1 who will be assigned to complete each task;
- (c) All assumptions relied upon to develop how the Applicant intends to accomplish each task with specific emphasis on City responsibilities; and
- (d) Any other technical or management approach or process that the Applicant will use to ensure that the task can be accomplished.

### **3.4 Certification of Compliance with Equal Benefits Ordinance**

If this RFP is a solicitation for a "Service Contract" as that term is defined in Philadelphia Code Section 17-1901(4), and results in a Service Contract in an amount in excess of \$250,000, then, pursuant to Chapter 17-1900 of The Philadelphia Code, the contractor shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Philadelphia Code Section 19-1502(1)(b), be required to extend the same employment benefits contractor extends to spouses of its employees to life partners of such employees, absent a waiver by the City under Section 17-1904. By submission of their Proposals in response to this RFP, all Applicants so acknowledge and certify that, if awarded a Service Contract pursuant to this RFP, they will comply with the provisions of Chapter 17-1900 of The Philadelphia Code and will notify their employees of the employment benefits available to life partners pursuant to Chapter 17-1900. Following the award of a Service Contract subject to Chapter 17-1400 and prior to execution of the Service Contract by the City, the successful Applicant shall certify that its employees have received the required notification of the employment benefits available to life partners and that such employment benefits will actually be available, or that the successful Applicant does not provide employment benefits to the spouses of married employees. The successful Applicant's failure to comply with the provisions of Chapter 17-1900 or any discrimination or retaliation by the successful Applicant against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of any Service Contract resulting from this RFP.



### **3.5 Local Business Entity or Local Impact Certification**

Pursuant to Mayoral Executive Order No. 04 -12, the Department will, in the selection of the successful Applicant, consider whether that Applicant has certified that either (1) Applicant meets the criteria stated in Section 17-109(3)(b) of the Philadelphia Code to qualify as a Local Business Entity or (2) in the performance of the resulting contract, Applicant will employ City residents, or perform the work in the City. Any Applicant who wishes to demonstrate its eligibility for this consideration shall do so by completing, executing and attaching to its application a completed Local Business Entity or Local Impact Certification, the form of which is attached to this RFP as Exhibit D. The Applicant shall then also include in a separate section of the application, labeled “Local Business Entity or Local Impact Certification,” a statement that the Applicant believes it has met the Local Business Entity or Local Impact criteria “as set forth in the attached Local Business Entity or Local Impact Certification.” The City Department shall deem it a positive factor where the Applicant has, in the City’s sole discretion, met the Local Business Entity or Local Impact criteria.

### **3.6 The Philadelphia Tax and Regulatory Status and Clearance Statement**

It is the policy of the City of Philadelphia to ensure that each contractor and subcontractor has all required licenses and permits and is current with respect to the payment of City taxes or other indebtedness owed to the City (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), and is not in violation of other regulatory provisions contained in the Philadelphia Code. To assist the City, through its Department of Revenue and Department of Licenses and Inspections, in determining this status, each Applicant is required to submit with its proposal the certification statement entitled City of Philadelphia Tax and Regulatory Status and Clearance Statement which is attached to this RFP as Appendix D.

If the Applicant is not in compliance with the City’s tax and regulatory codes, an opportunity will be provided to enter into satisfactory arrangements with the City. If satisfactory arrangements cannot be made, Applicants will not be eligible for award of the contract contemplated by this RFP.

The selected Applicant will also be required to assist the City in obtaining the above information from its proposed subcontractors (if any). If a proposed subcontractor is not in compliance with City Codes and fails to enter into satisfactory arrangements with the City, the non-compliant subcontractor will be ineligible to participate in the contract contemplated by this RFP and the selected applicant may find it necessary to replace the non-compliant subcontractor with a compliant subcontractor. Applicants are advised to take these City policies into consideration when entering into their contractual relationships with proposed subcontractors.

If an Applicant or a proposed subcontractor is not currently in compliance with the City’s tax and regulatory codes, please contact the Revenue Department to make arrangements to come into compliance at 215-686-6600 or [revenue@phila.gov](mailto:revenue@phila.gov).

Applicants need not have a City of Philadelphia Business Income and Receipts Tax Account Number (formerly Business Privilege Tax Account Number) and Commercial Activity License Number (formerly Business Privilege License Number) to respond to this RFP, but will, in most circumstances, be required to obtain one or both if selected for award of the contract

contemplated by the RFP.<sup>[1]</sup> Applications for a Business Income and Receipts Tax Account Number or a Commercial Activity License<sup>[2]</sup> may be made on line by visiting the City of Philadelphia Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> and clicking on “Register Now.” If you have specific questions, call the Department of Revenue at 215-686-6600 for questions related to City of Philadelphia Business Income and Receipts Tax Account Number or the Department of Licenses and Inspections at 215-686-2490 for questions related to the Commercial Activity License.

## **4 City-Wide Contract Requirements**

Any Applicant selected to enter into final negotiations will be expected to enter into a contract with the City containing terms acceptable to the City, including, but not limited to, terms substantially similar to the insurance, indemnification and other provisions set forth or described below, which are generally required by the City in contracts for software systems and/or consulting services that involve software design, development or implementation. The City reserves the right, however, to require or negotiate different and/or additional terms and conditions in any final contract resulting from this RFP if, in the sole judgment of the City, it is in the best interest of the City to do so, without notice to other Applicants and without affording other Applicants any opportunity to revise their proposals based on such different or additional terms.

Applicants may state for the City’s consideration any objections to the following contract terms, in a separate section of the Proposal. Any such objection must identify the specific section(s) objected to, state the reason(s) for the objection, and propose alternative language or terms. Terms to which no objection is asserted will be presumed acceptable to the Applicant. The City may, in its sole discretion, evaluate proposals in part according to whether the Applicant so objects, and the number and type of objections asserted.

### **4.1 Term and Renewal**

The initial term of the Contract shall commence on February 1, 2021, and, unless sooner terminated by the City pursuant to the terms of the Contract, shall expire twelve (12) months thereafter, on January 31, 2022. The City may, at its sole option, amend the Contract to add up to three (3) additional successive one-year terms (“Additional Terms”). Except as may be stated otherwise in such amendment, the terms and conditions of this Contract shall apply throughout each Additional Term.

### **4.2 Certificate of Non-Indebtedness**

The Contractor hereby certifies and represents that the Contractor and the Applicant’s parent company (ies) and subsidiary (ies) are not currently indebted to the City and will not, if awarded the Agreement, at any time during the term of the Contract (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent water bills and/or delinquent

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<sup>[1]</sup> Applicants that have a Business Privilege Tax Number should use that number, as it is automatically their Commercial Activity License Number, and need not apply for a new Commercial Activity License Number. Similarly, Applicants with a Business Privilege Tax Account Number should use that number as their Business Income and Receipts Tax Account Number.

<sup>[2]</sup> Commercial Activity Licenses are not typically required for non-profit organizations; however, Business Income and Receipts Tax Account Numbers typically are required.

taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written Contractor payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, the Contractor acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the withholding of payments otherwise due to the Contractor under the Agreement and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Agreement for default (in which case the successful Contractor shall be liable for all excess costs and other damages resulting from the termination).

The Sub-consultant hereby certifies and represents that the sub-consultant and sub-consultant's parent company (ies) and subsidiary (ies) are not currently indebted to the City and will not at any time during the term of the Contractor's Agreement with the City, including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent water bills and/or delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written Contractor payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, sub-consultant acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to sub-consultant for services rendered in connection with the Contract and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to sub-consultant and/or the termination of sub-consultant for default (in which case sub-consultant will be liable for all excess costs and other damages resulting from the termination).

## **4.3 Insurance**

### **4.3.1 Insurance**

The Contractor will be required to procure and maintain, at its sole cost and expense, the types and minimum limits of insurance described below, on the terms specified; provided, however, that the City may, at its sole discretion, establish different minimum limits based on the final scope of work for the project.

Unless otherwise approved by the City's Risk Management Division in writing, the Contractor shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the furnishing of the Deliverables. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except the Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is

materially changed, canceled, or non-renewed. **The City, its officers, employees, and agents shall be named as additional insureds on the General and Cyber Liability Insurance Policies.** Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded City and its officers, employees, and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

- (a) Workers Compensation and Employers Liability
  - Workers Compensation: Statutory limits
  - Employers Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
  - Other states insurance including Pennsylvania.
- (b) General Liability Insurance
  - Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City sole discretion, the potential risk warrants.
  - Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).
- (c) Automobile Liability
  - Limit of liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - Coverage: Owned, non-owned and hired vehicles.
- (d) Professional Liability Insurance
  - Limit of liability: \$1,000,000 with a deductible not to exceed \$50,000.
  - Coverage: Errors and omissions including liability assumed under contract.
  - Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the work required under this contract shall be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) years after completion of the work.
- (e) Cyber Liability
  - Limit of Liability: \$1,000,000 Per Claim/Aggregate
  - Coverage: Information security and privacy liability that arise from the Agreement, including but not limited to: data while in transit or in the possession of any third parties hired by the Provider (such as data back-up services) to electronic system; loss of, damage to or destruction of electronic data breaches arising from the unauthorized access or exceeded access; or malicious code, viruses, worms or malware; electronic business income and

extra expense as a result of the inability to access website due to a cyber attack or unauthorized access; Privacy Notification Extra Expense Coverage (including Credit Monitoring Expense).

- The City of Philadelphia, its officers, employees and agents shall be named as additional insureds.
- Insurance may be written on a claims-made basis provided that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement; and that continuous coverage will be maintained, or an Extended Discovery Period will be purchased for a period of at least two (2) years after expiration or termination of this Agreement.

Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Management Division, and copies shall be submitted to the City at the address set forth in the contract. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each renewal term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of in such situations where such waiver will benefit the City, but under no circumstances shall the Contractor actually begin work (or continue work, in the case of renewal) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's Risk Management Division. The City reserves the right to require the Contractor to furnish certified copies of the original policies of all insurance required under the Contract at any time upon ten (10) days written notice to the Contractor.

Contractor may not self-insure any of the coverages required under the Contract without the prior written approval of the City. In the event that Contractor desires to self-insure any of the coverages listed above, it shall submit to the City, prior to the commencement of work hereunder, a certified copy of Contractor's most recent audited financial statement, and such other evidence of its qualifications to act as a self-insurer (e.g., state approval) as may be requested by the City. In the event the City grants, Contractor understands and agrees that the City, its officers, employees, and agents, shall be entitled to receive the same coverages and benefits under Contractor's self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of the Contract, Contractor self-insures its professional liability or workers' compensation and employers' liability coverage, Contractor may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit, or reduce the indemnifications made in the contract by Contractor to the City, or to limit Contractor's liability under the contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Contractor hereunder.

## **4.4 Reserved**

## **4.5 Indemnification**

The Contractor shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, liability and expenses occasioned wholly or in part by the Contractor's act or omission or negligence or fault or the act or omission or negligence or fault of the Contractor's agents, Subcontractors, employees or servants in connection with the Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, failure to pay such Subcontractors and suppliers, any breach of the Contract, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). This obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall survive the termination of the Contract.

## **4.6 Proprietary Rights Indemnification**

### **4.6.1 Indemnification**

- (a) Contractor warrants that all Software, Documentation, Services, and Deliverables do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the City, the City shall promptly notify Contractor in writing and Contractor shall defend such claim, suit or action at Contractor's expense, and Contractor shall indemnify the City against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs and counsel fees) whether or not such claim, suit or action is successful.
- (b) Contractor will not, however, be responsible for such loss, cost, damage, expense or liability if infringement is finally determined by a court of competent jurisdiction to be the sole result of (1) the City's modification of the Software or its use of the Software in a manner not intended by the Parties or contemplated by this Contract; (2) the City's failure to use corrections or enhancements made available by Contractor that do not materially alter the functionality of the Software as it exists at the time furnished; (3) the City's distribution or marketing of the Software to third parties for revenue producing purposes; or (4) the act or omission of the third party supplier of a software product used in combination with Contractor's Software but not furnished by Contractor under this Contract. Prior to such final determination, however, Contractor shall remain fully responsible, at its expense, for the defense and indemnification of any infringement claim in accordance with this Section; provided, that if the claimed infringement is finally determined to be solely the result of one or more of (1)-(4) noted above, the City will reimburse Contractor for its reasonable expenses (including reasonable litigation costs and attorney's fees) incurred therein.

#### **4.6.2 Infringing Products**

If Software, Documentation, or Deliverables furnished by Contractor is, or in Contractor's reasonable judgment is likely to be, held to constitute an infringing product, Contractor shall at its expense and option either:

- (a) Procure the right for the City to continue using the Software or other product;
- (b) Replace the Software or other product with a non-infringing equivalent;
- (c) Modify the Software or other product to make it non-infringing, provided that the modification does not materially alter the functionality of the Software or other product, or the City agrees to and accepts the modification in writing; or

In the event Contractor is ordered by a court of competent jurisdiction to remove the Software or other product, and all right of appeal or stay is exhausted as to such order, accept return of the Software or other product and refund to the City the full amount paid by the City to Contractor pursuant to this Contract.

#### **4.6.3 Exclusive Remedy**

The foregoing remedies constitute the City's sole and exclusive remedies and Contractor's entire liability with respect to infringement of proprietary rights. To receive the foregoing indemnity, the City must promptly notify Contractor in writing of an infringement claim or suit, provide reasonable cooperation (at Contractor's expense), and full authority to Contractor to defend or settle the claim or suit. Contractor will have no obligation to indemnify the City under any settlement made without its written consent.

### **4.7 Century Date Standard**

#### **4.7.1 Covered Work**

Contractor represents and warrants that the following items furnished under the contract shall conform to the City of Philadelphia Century Date Standard set forth below; such warranties and representations are in addition to, and not in lieu of, Contractor's warranties and representations set forth in Propriety Rights Indemnification in this section, Warranty and elsewhere in the Contract, and shall not limit or excuse any of Contractor's obligations under such warranties:

All operating system software, application software, and other software, and all firmware, including, but not limited to, any authorization code or other code incorporated in such software or firmware for the purpose of disabling or limiting the functionality of the software under conditions specified by the manufacturer or publisher of the software;

#### **4.7.2 Century Date Standard**

The City of Philadelphia Century Date Standard consists of the following standards for General Integrity, Date Integrity, and Interface Integrity:

- (a) General Integrity. No value for current date will cause interruptions in the operation of the software, firmware, or equipment and the software, firmware and equipment will operate without any date-related faults or failures and without producing inaccurate data, including any calculation involving a span of time, which crosses a century.
- (b) Date Integrity. All manipulations of time-related data (including, without limitation, dates,

durations, days of week, month, and year) will produce results that conform to the manufacturer's specifications for the software or equipment for all valid date values within the application domain.

- (c) Interface Integrity.
- (d) Explicit Century: Date elements in interfaces and data storage shall permit specification of the century by means that will eliminate all ambiguity as to the applicable century for date and date-related data.
- (e) Implicit Century: For any date element represented without century, the correct century shall be unambiguous for all manipulations involving that element before, during, and after January 1, 2000.
- (f) Source code. Source code for software shall comply with the standard set forth in Federal Information Processing Standard Publication 4-2 (FIPS PUB 4-2), Representation of Calendar Date for Information Interchange.

#### **4.7.3 Defects and Errors**

Contractor shall, at no cost to the City, repair any equipment, firmware and/or software that does not conform to the standards set forth above and cause it to conform such standards, or shall replace the software or equipment with software that does conform to such standards.

#### **4.8 Performance Standards**

For any task order resulting from this RFP, the City expects the successful Applicant(s) to meet, where applicable, performance standards for the System, including but not limited to response times for System functions and data-throughput/transfer rates.

#### **4.9 Acceptance**

##### **4.9.1 Conditional Acceptance**

- a) If the City, in its sole discretion, chooses to make payments according to a Milestone Payment Schedule, Contractor shall notify the City in writing when Contractor contends that all Work comprising a Milestone is completed and ready for Conditional Acceptance by the City. Within thirty (30) days following receipt of Contractor's written notice, the City shall issue its written statement of Conditional Acceptance of the Milestone, or its written notice that the Work comprising the Milestone is not Conditionally Accepted. Conditional Acceptance will not be unreasonably withheld provided that all Work comprising the Milestone is completed and conforms to the Conditional Acceptance Standards.
- b) In the event any Work comprising a Milestone is rejected by the City, the City shall, in its notice of rejection, specify in reasonable detail the reasons for the rejection, including a description of the defects on which the rejection is based. Contractor shall, within five (5) business days following receipt of the City's notice, deliver to the City its plan for correcting all defects identified in the City's notice. Upon the City's written approval of the plan of correction, Contractor shall proceed to correct the defective Work in accordance with the approved plan and shall complete all corrections within thirty (30) calendar days following receipt of the City's approval of the plan, or such longer period as the City may agree to in writing (the "First Correction Period"). Upon completion of the corrections, Contractor shall notify the City in writing of such completion. The City



shall determine whether the corrected Work complies with the Conditional Acceptance Standards and issue its written notice of Conditional Acceptance or rejection of the corrected work to Contractor. If the Work is rejected a second time, Contractor shall again be required to correct the defects within thirty (30) days; and if the Work still does not comply with the Conditional Acceptance Standards, following the Second Correction Period, the City may, in its sole discretion, (i) request Contractor, in writing, to remove the rejected portion at Contractor's expense and to restore the System (and the premises, if applicable) to its condition prior to performance of the Milestone; and/or (ii) remove the rejected portion itself, at Contractor's expense, if Contractor does not comply with such request; and/or (iii) perform the rejected portions of the work itself, through its own personnel or third parties, at Contractor's expense.

(c) The Conditional Acceptance Standards consist of the following:

- the descriptions of functionality and standards of performance that are set forth in the Statement of Work, the Performance Standards, the Functional Requirements, and elsewhere in this Contract, and that apply to the Milestone;
- the manufacturer's (including, without limitation, Contractor's, where applicable) most current published specifications for the Software, Equipment, and Deliverables that apply to the Milestone;
- the Preliminary Design and Detailed Design;
- the test criteria and standards of performance provided in the Test Plan(s) that are accepted and approved by the City and apply to the Milestone; and
- successful completion of the Conditional Acceptance Tests and the Reliability Period.

#### **4.9.2 Final Acceptance**

(a) Contractor shall notify the City in writing when Contractor contends that all Work required for the Project is completed and that the System and all other components of the Project have been fully performed in accordance with the Contract, including, without limitation, the Final Acceptance Standards, and the Work is ready for Final Acceptance Test(s). Following receipt of such notice, the City shall establish a schedule for commencing and conducting the Final Acceptance Test(s); the commencement date shall be not more than thirty (30) calendar days following the date on which the City receives Contractor's notice except as may be agreed otherwise by the parties. The Project shall not be Finally Accepted unless and until the System and all other components of the Project function together as an integrated whole in accordance with the Final Acceptance Standards.

(b) The Final Acceptance Standards consist of the following:

- the descriptions of functionality and performance and all standards of performance that are set forth in the Statement of Work, the Performance Standards, the Functional Requirements, and elsewhere in this Contract;
- the Documentation;
- the manufacturer's (including, without limitation, Contractor's, where applicable) most current published specifications for all Software, and Deliverables;

- all design documents prepared by Contractor under the Contract, including, without limitation, the Preliminary Design and Detailed Design;
- the test criteria and standards of performance set forth in the Test Plan(s), as accepted and approved by the City; and
- successful completion of the Final Acceptance Tests and the Reliability Period.

#### **4.9.3 Acceptance Test(s); Test Plan(s)**

Where applicable, the Services and Deliverables comprising each Milestone in the Milestone Payment Schedule shall be subject to conditional acceptance testing as approved and accepted by the City (the “Conditional Acceptance Tests”), and the Services and Deliverables as an integrated system shall be subject to final acceptance testing as approved and accepted by the City (the “Final Acceptance Tests”). No Conditional or Final Acceptance Test or other test of the Services and Deliverables shall commence unless and until Contractor has delivered and the City has accepted and approved, in writing, Contractor’s written plan or plans setting forth, for the Conditional Acceptance Test(s) and the Final Acceptance Test(s), a test method and criteria and standards of performance that must be satisfied for the test to be successful (collectively, the “Test Plan(s)”). The Test Plan(s) shall include, without limitation, test methods and criteria and standards of performance for all Project Milestones, shall include all elements provided in the Statement of Work and otherwise conform to the general test requirements set forth in the Statement of Work, and shall fully test the System for conformance to the Performance Standards and other Final Acceptance Standards. The Test Plan(s) shall be Deliverables under the Contract.

#### **4.9.4 Reliability Periods**

- (a) For Conditional Acceptance: The Software to be Conditionally Accepted must function in conformance with the Conditional Acceptance Standards and without any Material Defect or Material Failure for a period of [TBD during contract negotiation] consecutive calendar days, commencing on the day following the first successful completion of the Conditional Acceptance Test. In the event such Software suffers any Material Defect or Material Failure prior to the expiration of such period (the “Reliability Period”), Contractor shall remedy such Material Defect, and a new [TBD during contract negotiation] consecutive calendar day Reliability Period (the “Second Reliability Period”) shall begin on the day that Contractor notifies the City that the remedy has been completed. In the event the Software does not successfully complete the Second Reliability Period without any Material Defect, the City may, at its sole discretion, proceed in accordance with this Section and exercise any remedy provided herein. For purposes of this Section, the following conditions shall also be deemed to be Material Failures sufficient to trigger the foregoing requirements and remedies: [TBD during contract negotiation]
- (b) For Final Acceptance: It shall be a condition of Final Acceptance that the completed and fully integrated System function in conformance with the Final Acceptance Standards and without any Material Defect for a period of [TBD during contract negotiation] consecutive calendar days, commencing on the day following the first successful completion of the Final Acceptance Test. In the event the System suffers any Material Defect or Material Failure prior to the expiration of such period (the “Reliability Period”), Contractor shall remedy such Material Defect Failure, and a new [TBD during contract negotiation] consecutive calendar

day Reliability Period (the “Second Reliability Period”) shall begin on the day that Contractor notifies the City that the remedy has been completed. In the event the System does not successfully complete the Second Reliability Period without any Material Defect, the City may, at its sole discretion, terminate the Contract for default and exercise any one or more of the remedies provided to the City in the Contract.

#### **4.10 Retainage**

The City shall retain twenty (20) percent of each Milestone Payment set forth in the Milestone Payment Schedule unless and until the Services and Deliverables are finally accepted in accordance with the Contract. The retained amounts shall be payable to Contractor sixty (60) days following such final acceptance of the Services and Deliverables by the City.

#### **4.11 City Audit**

From time to time during the Initial Term and any Additional Term(s) of the Contract, and for a period of five (5) years after termination of the Contract, the City may audit Contractor’s performance under the Contract. Audits may be conducted by representatives of the Department or other authorized City representatives including, without limitation, the City Controller. If so requested, Contractor shall submit to the City all vouchers or invoices presented for payment pursuant to the Contract, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to the Contract. All such vouchers or invoices, work papers, books, records, accounts, cancelled checks, documentation and justification shall be subject to periodic review and audit by the City.

#### **4.12 Termination for Convenience**

The City shall have the right to terminate this Contract at any time during the term of the Contract, for any reason, including, without limitation, its own convenience. If the Contract is terminated solely for the City’s convenience, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination.

#### **4.13 Termination for Default**

If Contractor commits or permits an event of default, as set forth in this Section, the City shall so notify Contractor in writing, specifying in reasonable detail the nature of the default. Contractor shall have thirty (30) calendar days from receipt of that notice to correct the default. If the default is not cured within that time period, the City may terminate the Contract by providing Contractor with written notice of termination for default. The following shall constitute events of default on the part of Contractor:

- (a) Contractor’s failure to comply with any provision, term, or condition of this Contract.
- (b) the appointment of a receiver, trustee or custodian to take possession of all or substantially all the assets of Contractor for the benefit of creditors, or any action taken or suffered by Contractor under any federal or state insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute;
- (c) falseness of any warranty or representation of Contractor contained in any of the Contract Documents;

- (d) misappropriation by Contractor of any funds provided under the Contract or failure by Contractor to notify the City upon discovery of any misappropriation;
- (e) a violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Contractor, its directors, employees, or agents (1) directly or indirectly relating to the Contract or the Work required under the Contract, whether or not such offense is ultimately adjudged to have occurred or (2) which adversely affects the performance of the Contract; and/or
- (f) indictment of or issuance of charges against Contractor, its directors, employees or agents for any criminal offense or any other violation of law directly relating to the Contract or the Work required under the Contract or which adversely affects the performance of the Contract, whether or not such offense or violation is ultimately adjudged to have occurred.

#### **4.14 Sales and Use Tax Exemption**

The City is not subject to federal, state, or local sales or use taxes or to federal excise tax. Contractor hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials purchased in connection with the Contract, and unless directed by the City, Contractor shall not file a claim for any sales or use tax refund subject to this assignment. Contractor authorizes the City, in its own name or the name of Contractor, to file a claim for a refund of any sales or use tax subject to this assignment.

#### **4.15 Unavailability of Funds**

If funding for the Contract from any source is not obtained and continued at an aggregate level sufficient to allow for payment for the Services and Deliverables under the Contract, the City may exercise one of the following options without liability or penalty to the City:

- (a) Terminate the Contract effective upon a date specified in a Termination Notice; or
- (b) Continue the Contract by reducing, through written notice to Contractor, the amount of the Contract and Services and Deliverables, consistent with the nature, amount, and circumstances of available funding.
- (c) The City's exercise of either option under this Section shall not affect any obligations or liabilities of either party accruing prior to such termination or reduction of Services or Deliverables. Contractor shall be compensated in accordance with the terms of the Contract for Services and Deliverables, satisfactorily performed and delivered prior to such termination under this Section.

Commodities or services on the contract resulting from this RFP to be ordered after the end of the current fiscal year are subject to the issuance of purchase orders for the following fiscal years. The City is not liable for the portion of the award involving following fiscal year's funds until such orders are issued. The Vendor's obligation to deliver on such purchase orders shall not take effect until the orders are issued.

#### **4.16 Tax Requirements**

Contractor is subject to Philadelphia's business tax and Ordinances and regulations. The City Solicitor has ruled that anyone who is awarded a contract by the City and/or School District pursuant to a bid has entered into a contract within the City, and the subsequent delivery of goods into the City or performance of services within the City constitutes "doing business" in the

City and subjects the successful bidder, including but not limited to, one or more of the following taxes:

- (a) Business Income and Receipts Tax
- (b) Net Profits Tax
- (c) City Wage Tax

The successful Applicant, if not already paying the aforesaid taxes, is required to apply to the Department of Revenue, 1401 John F. Kennedy Blvd., Public Service Concourse, Municipal Services Building, Philadelphia, PA 19102, for a tax identification number and to file appropriate business tax returns as provided by law. Questions should be directed to the CBET Unit at (215) 686-6600.

#### **4.17 Assignment**

Contractor shall not assign or otherwise transfer its rights, duties or obligations under this Contract, except with the prior written consent of the City; any assignment or transfer (including, but not limited to, assignment of any subcontract) without such consent shall be null and void. In no event shall the City's consent to any assignment or transfer by Contractor of any rights, duties or obligations under the Contract relieve Contractor from its duties or obligations hereunder or change the terms of the Contract. Contractor retains full responsibility for and guarantees the performance of any and all assignees and transferees of Contractor, including but not limited to, their subcontractors, notwithstanding the assignment or transfer.

#### **4.18 Document Preparation Fee**

Pursuant to Chapter 17-700 of The Philadelphia Code, the successful Applicant must generally pay a contract preparation fee. Regulations promulgated by the City Solicitor currently establish the following schedule of fees for preparation of the initial contract and subsequent amendments, based upon the amounts involved and whether the successful Applicant is a for-profit or nonprofit entity:

<b><u>Amount of Contract or Amendment</u></b>	<b><u>For-Profit Fees</u></b>		<b><u>Non-Profit Fees</u></b>	
	<b><u>Contract</u></b>	<b><u>Amendment</u></b>	<b><u>Contract</u></b>	<b><u>Amendment</u></b>
\$0-\$30,000	\$50	\$50	\$50	\$50
\$30,001-\$100,000	\$200	\$170	\$100	\$85
\$100,001-\$500,000	\$500	\$340	\$200	\$170
\$500,001-\$1,000,000	\$900	\$520	\$300	\$260
Over \$1,000,000	\$1,500	\$1,000	\$500	\$500

In its discretion, the Law Department may grant a full or partial waiver of any of the above fees in exceptional cases for good cause shown, such as violation of a grant covenant. Governmental entities are exempt from the fees. The Law Department reserves the right to collect up to twice the stated fee if extensive negotiation is required to reach a final contract with the successful Applicant.

## **4.19 Nondisclosure of City Data and Contractor Data**

### **4.19.1 Nondisclosure**

Contractor and its employees, agents, Subcontractors, suppliers, and any person or entity acting on its behalf (i) will maintain in strict confidentiality all of the “City Data,” as defined and set forth below; (ii) will not, without the City’s written permission, divulge, disclose, communicate, or distribute any of the City Data to any person or entity except as may be strictly necessary to perform the Contract; (iii) will not, without the City’s written permission, in any way use any of the City Data for their businesses or other advantage or gain (except as may be necessary to perform the Contract), including, without limitation, any use of the City Data in any presentation, demonstration, or proposal to perform work, to the City or to others, that may be conducted or created as part of their business activities or otherwise; (iv) will use the City Data solely and exclusively in accordance with the terms of this Contract in order to carry out its obligations and exercise its rights under this Contract; (v) will afford the City Data at least the same level of protection against unauthorized disclosure or use as Contractor uses to protect its own trade secrets, proprietary information, and other confidential information (but will in no event exercise less than reasonable care and protection); and (vi) will, immediately upon the City's Final Acceptance of the Services and Deliverables required under the Contract, return all City Data to the City, destroy any and all copies of any City Data that are in their possession, whether on paper or in electronic or other form, and if requested by the City in writing, will certify in writing that there has been full compliance with this Section. The City will maintain the “Contractor Data,” as defined and set forth below, in confidence and will afford the Contractor Data at least the same level of protection against unauthorized disclosure or use as the City uses to protect its own trade secrets, proprietary information, and other confidential information (but will in no event exercise less than reasonable care and protection).

### **4.19.2 City Data**

Except as provided otherwise in this Contract, the City Data shall include any and all of the following, whether in electronic, microfilm, microfiche, video, paper, or other form, and any copies or reproductions thereof:

- (a) any and all other records, documents, computer software (whether owned by the City or licensed or otherwise furnished to the City by third parties), and data furnished by the City to Contractor in relation to the work required under the Contract; and
- (b) all Deliverables and other work product(s) and items of work created by Contractor for the City as part of the work required under the Contract.

### **4.19.3 Contractor Data**

Except as provided otherwise in this Contract, the Contractor Data shall include any and all of the following, whether in electronic, microfilm, microfiche, video, paper, or other form, and any copies or reproductions thereof: [TBD during contract negotiation.]

### **4.19.4 Exclusions**

Neither the Contractor Data nor the City Data shall include any information or data which:

- (a) was known to the party receiving the Data (the “Receiving Party”), prior to the commencement of its performance of the Contract, free of any obligation to keep it confidential, and/or is proprietary to the Receiving Party; or
- (b) was generally known to the public at the time of receipt by the Receiving Party, or becomes generally known to the public through no act or omission of the party disclosing or furnishing the Data (the “Disclosing Party”); or
- (c) was independently developed by the Receiving Party without knowledge or use of any Data of the Disclosing Party; or
- (d) is required to be disclosed by law or judicial process.

#### **4.19.5 Remedy for Breach**

In the event of any actual or threatened breach of any of the provisions of this Section by the Receiving Party, and in addition to any other remedies that may be available to the Disclosing Party in law or equity, the Disclosing Party shall be entitled to a restraining order, preliminary injunction, permanent injunction, and/or other appropriate relief to specifically enforce the terms of this Section. The parties agree that a breach of the terms of this Section by the Receiving Party would cause the Disclosing Party injury not compensable in monetary damages alone, and that the remedies provided herein are appropriate and reasonable.

#### **4.20 Ethics Requirements**

To preserve the integrity of and public confidence in the competitive bidding system, the City intends to enforce vigorously the various ethics restrictions as they relate to City employees in the bidding and execution of City contracts. Among such restrictions are the following three categories:

##### **4.20.1 Gifts**

Philadelphia Code Section 20-604 and Executive Order No. 10-16 regulate the acceptance of gifts by City officers and employees.

Philadelphia Code Section 20-604 restricts the acceptance of gifts by City officers and employees that are given by certain persons. This gift law limits gifts to City employees from persons (1) who are seeking official action from a gift-receiving City employee; or (2) who have a financial interest at the time, or in close proximity to the time the gift is received, that the gift-receiving employee is able to substantially affect through official action. Subject to certain exceptions, City officers and employees may not accept any gifts of money from these two categories of persons and may only accept non-cash gifts worth \$99 or less in the aggregate in a calendar year. Reciprocally, this gift law restricts the offering or giving of gifts of money or non-cash gifts worth more than \$99 in the aggregate per calendar year by these two categories of persons to City officers and employees.

If an Applicant offers or gives a City officer or employee a gift in violation of Philadelphia Code Section 20-604, the Applicant may be subject to civil monetary penalties pursuant to Code Chapter 20-1300 as well as sanctions with respect to future City contracts, ranging from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

Pursuant to Executive Order 10-16, no City officer or employee may accept or receive a gift of any monetary value from a person who, at the time or within 12 months preceding the time a gift is received:

- (a) is seeking, or has sought, official action from that officer or employee; or
- (b) has operations or activities regulated by that officer's or employee's department, agency, office, board or commission, or, in the case of members of the Mayor's Cabinet, has operations or activities that are regulated by any department, agency, office, board or commission within the Executive and Administrative branch; or
- (c) has a financial or other substantial interest in acts or omissions taken by that officer or employee, which the officer or employee is able to affect through official action.

If an Applicant offers a gift of any monetary value to a City officer or employee that would violate the provisions of Executive Order 10-16, sanctions may range from disqualification from participation in particular City contracts to debarment, depending on the nature of the particular violation.

#### **4.20.2 City Employee Interest in City Contracts**

Section 10-102 of The Philadelphia Home Rule Charter prohibits City officers and employees from being directly or indirectly interested in City contracts for the supplying of any services, for the purchase of property of any kind, or for the erection of any structure. No proposal shall be accepted from or contract awarded to any Applicant in violation of this provision. All Applicants are required to disclose any current City officers or employees who are employees or officials of the Applicant's firm, or who otherwise would have a financial interest in the City contract.

#### **4.20.3 Conflict of Interest**

The City Ethics Code and the State Ethics Act contain conflict of interest restrictions that apply to City officers and employees. Under these restrictions, City officers and employees are generally prohibited from taking official action or using the authority of their public offices, or any confidential information gained thereby, in a manner that affects the financial interests of themselves, certain family members, for-profit or non-profit entities with which they or certain family members are associated, or fellow members of for-profit entities of which they are members. City officers and employees with a conflict of interest are required to disclose the conflict publicly and disqualify themselves from taking official action regarding the matter in which they have a conflict as provided in Code Section 20-608.

#### **4.21 Non-Discrimination; Fair Practices**

This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic



information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section, the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

#### **4.22 The Philadelphia Code, Section 17-400**

In accordance with Chapter 17-400 of The Philadelphia Code, as it may be amended from time to time, Contractor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

Contractor agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Contractor's failure to so cooperate shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

#### **4.23 Americans with Disabilities Act**

Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in the Contract or from activities or Services provided under the Contract. As a condition of accepting and executing the Contract, Contractor shall comply with all provisions of the Americans With Disabilities Act (the "Act"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, Services, activities, facilities and programs provided in connection with the Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under the Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, facilities, activities, facilities and programs. Without limiting the applicability of the preceding sentence, Contractor shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of "The Americans With Disabilities Act," as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

#### **4.24 Business Interests in Northern Ireland**

In accordance with Section 17-104 of The Philadelphia Code, the Contractor by execution of this Agreement certifies and represents that (i) the Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) does not have, and will not have at any time during the term of this Agreement (including any extensions thereof), any

investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided to the City under this Agreement will originate in Northern Ireland, unless Contractor has implemented the fair employment principles embodied in the MacBride Principles.

In the performance of this Agreement, the Contractor agrees that it will not utilize any suppliers, subcontractors or sub-consultants at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, sub-consultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. The Contractor further agrees to include the provisions of this subparagraph, with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements that are entered into in connection with the performance of this Agreement.

The Contractor agrees to cooperate with the City's Director of Finance in any manner, which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. The Contractor expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

#### **4.25 Business, Corporate and Slavery Era Insurance Disclosure**

In accordance with Section 17-104 of The Philadelphia Code, Contractor, after execution of this Agreement, will complete an affidavit certifying and representing that Contractor (including any parent company, subsidiary, exclusive distributor or company affiliated with Contractor) has searched any and all records of the Contractor or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

Contractor expressly understands and agrees that any false certification or representation in connection with this Paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

#### **4.26 Limited English Proficiency**

Contractor understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, shall comply with all provisions of Title VI of the Civil Rights Act of 1964, the President of the United States of

America Executive Order No. 12250, the Mayor of the City of Philadelphia Executive Order No. 04-01, “Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency” dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Contractor, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

#### **4.27 Health Insurance Portability and Accountability Act**

Where applicable, the contract will require the Contractor to comply fully with the federal Health Information Portability and Accountability Act and all related federal regulations (collectively, “HIPAA”), including, but not limited to, HIPAA requirements relating to the confidentiality of protected health information and HIPAA requirements relating to the security of information systems. City contracts subject to HIPAA requirements will be governed by “Terms and Conditions Relating to Protected Health Information” which are posted on the City’s website at <https://secure.phila.gov/eContract/> under the “About” link and which will be incorporated into the contract.

#### **4.28 Philadelphia 21<sup>st</sup> Century Minimum Wage and Benefits Standard**

Applicants are advised that any contract awarded pursuant to this RFP is a “Service Contract,” and the successful Applicant under such contract is a “Service Contractor,” as those terms are defined in Chapter 17-1300 of the Philadelphia Code (“Philadelphia 21st Century Minimum Wage and Benefits Standard Ordinance”). Any subcontractor at any tier proposed to perform services sought by this RFP is also a “Service Contractor” for purposes of Chapter 17-1300. If any such Service Contractor (i.e. Applicant and subcontractors at any tier) is also an “Employer,” as that term is defined in Section 17-1302 (more than five employees), and is among the Employers listed in Section 17-1303 of the Code, then during the term of any resulting contract, it is subject to the minimum wage and benefits provisions set forth in Chapter 17-1300 unless it is granted a waiver or partial waiver under Section 17-1304. Absent a waiver, these minimum wage and benefits provisions, which include a minimum hourly wage that is adjusted annually based on the CPI, health care and sick leave benefits, are mandatory and must be provided to Applicant’s employees or the employees of any subcontractor at any tier who perform services related to the City contract resulting from this RFP. Applicants and any subcontractors at any tier proposed by Applicants are strongly encouraged to consult Chapter 17-1300 of the Philadelphia Code and the “About/Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors” links on the eContract Philly home page for further details concerning the applicability of this Chapter to, and obligations it imposes on certain City contractors and subcontractors at any tier. In addition to the enforcement provisions contained in Chapter 17-1300, the successful Applicant’s failure or the failure of any subcontractor at any tier to comply (absent an approved waiver) with the provisions of Chapter 17-1300, or any discrimination or

retaliation by the successful Applicant or Applicant's subcontractors at any tier against any of their employees on account of having claimed a violation of Chapter 17-1300, shall be a material breach of any Service Contract resulting from this RFP. By submitting a proposal in response to this RFP, Applicants acknowledge that they understand, and will comply with the requirements of Chapter 17-1300, and will require the compliance of their subcontractors at any tier if awarded a contract pursuant to this RFP. Applicants further acknowledge that they will notify any subcontractors at any tier proposed to perform services related to this RFP of the requirements of Chapter 17-1300.

#### **4.29 Electronic Payment**

For any contract awarded for work to be performed on or after July 1, 2019 the City has instituted a policy of making all of its payments under the contract through electronic deposits into the awarded entity's designated bank account. Before any City payments are made, the awarded entity will be required to supply the City with the information necessary for the City to initiate electronic payments by completing one of the electronic payment processing enrollment forms available on the City's vendor portal at <https://financevendormapayment.phila.gov>. Applicants awarded a contract before July 1, 2019 are encouraged to complete one of the electronic payment processing enrollment forms before the conversion to electronic payments becomes mandatory. The City intends to stop issuing paper checks.

#### **4.30 LGBTQ Applicant Opportunity Data**

As part of the City's commitment to diversity, equity and inclusion in all aspects of City procurement, the City is collecting data to identify the number of companies beneficially owned and controlled by Lesbian, Gay, Bisexual, Transgender and Queer persons who wish to do business with the City (collectively, "LGBTQ businesses"). The data will be used to identify the number of LGBTQ businesses currently doing business with the City. It will also assist in efforts to include LGBTQ certified businesses into the City's vendor database.

Please see LGBTQ form attached to this RFP on eContract Philly. Response to this form is voluntary.