**OCA Intake Questions for New Software Contracts (“Full Contract”)**

**Name of Vendor:**

**Name of Software / Product:**

Include with this form:

[ ]  Final quote or price proposal

[ ]  Completed SAQ

[ ]  Any applicable vendor contract documents such as:

* 1. License agreement
	2. EULA - End User License Agreement (usually for on-premise software)
	3. TOS - Terms of Service (usually for SaaS / vendor hosted, or see Subscription Terms)
	4. Subscription terms
	5. SLA - Service Level Agreement
	6. SOW - Statement of Work
1. Has the software been approved for use by City IT through a [New Technology Request](https://cityofmadison.teamdynamix.com/TDClient/2427/Portal/KB/ArticleDet?ID=154266) (NTR)?

[ ]  Yes [ ]  No

1. If your agency has an in-house software or technology team, are they aware of this / are you working through them? [ ]  Yes [ ]  No
2. Was the vendor selected with a [competitive process](https://www.cityofmadison.com/employeenet/finance/documents/ProcurementprocessOverview.pdf) such as RFP, informal quotes, piggy-backing, state contract, etc? [ ]  Yes [ ]  No Provide details:
3. **Do you need a resolution to authorize this contract?**  *If not sure,* [*see this chart*](https://www.cityofmadison.com/attorney/documents/ContractsQuickChart.pdf) *and consult your* [*agency contract liaison*](https://www.cityofmadison.com/employeenet/finance/documents/AgencyContractLiasonList.xlsx) *or finance person. If not sure, ask city attorney.* [ ]  Yes [ ]  No
4. Is this **new** software? [ ]  Yes [ ]  No
	* If not, is this an **upgrade** to an existing system? What is the nature of the upgrade?

* + Are you just **buying more licenses** or new modules for an existing system?
	+ Is this a **transition from on-premise software to SaaS** / **vendor-hosted**?
1. What will the software be used for? (use case – can refer to NTR ticket in TDX.)
2. Any hardware or equipment being purchased? [ ]  Yes [ ]  No

From same vendor or different? [ ]  Same [ ]  Different:

1. Are there more than one vendor / contractor / any third parties? [ ]  Yes [ ]  No

If yes, provide details:

1. Will the software be installed on-premise or is it SaaS (Software-as-a-Service)? [ ]  On-premise [ ]  SaaS
	* **On-premise:** software that will be installed or downloaded onto a city device or city server. Often sold by number of licenses and paid as a one-time purchase. Might require annual support and maintenance services, sold separately. Can be accessed through a desktop application or through a browser.
	* **SaaS**: cloud based, vendor-hosted, the software program is accessed online through the internet and hosted by the vendor or a 3rd party data center. Nothing is installed or downloaded here. Usually sold as an annual subscription. Support and maintenance is usually included in the subscription fee. Sometimes there is a separate hosting fee.
2. Will this software generate or store any **City or customer data that is hosted in the cloud**, either by the vendor or a third party hosting service / data center? [ ]  Yes [ ]  No
	* Will any of that data be sensitive, confidential, etc.? [ ]  Yes [ ]  No
	* If so has somebody already analyzed the risks of outsourcing the storage of such data?

[ ]  Yes [ ]  No

* + Have you checked with the HIPAA privacy officer? [ ]  Yes [ ]  No
	+ Do you need a HIPAA BAA? [ ]  Yes [ ]  No
	+ How will you get the data back from the vendor at the end of the contract? [ ]  Yes [ ]  No
	+ How long will the vendor retain our data in their system (during the contract term and after we end the contract.)
1. Will there be **any public facing feature** of this software? [ ]  Yes [ ]  No
* If so, what is the purpose of the public facing feature?
* Will it collect money? [ ]  Yes [ ]  No
* Will it collect data from the public? [ ]  Yes [ ]  No
* Will it share data with the public? [ ]  Yes [ ]  No
	+ If so, what kind of data or information:
* Will the public be required to click on any legal terms of the vendor to access it? [ ]  Yes [ ]  No
1. What is the total cost of the software or SaaS (minus any other services that come with it), and is it paid one-time or annually? **Please provide a final quote or proposal from the vendor.**

 Cost:       [ ]  One-time [ ]  Annually

1. Are there annual support and maintenance services and fees? Or annual hosting fees? (if not included in an overall subscription fee.) [ ]  Yes [ ]  No If yes, explain:
2. Are you receiving any other professional services with this, like installation, implementation, data conversion, training, etc.? [ ]  Yes [ ]  No
	* If so, do you have a Statement of Work / Scope of Services? [ ]  Yes [ ]  No
	* Are the professional services priced separately, do you have a payment plan worked out for how you will pay for these services? (i.e. milestone based, acceptance, etc.) [ ]  Yes [ ]  No
3. **WHEN** would you like this contract in place by?

**SOFTWARE CONTRACT STRUCTURE**

*Information for Buyers and Agencies*

**The following procedures apply to software contracts *over* $25,000 per year:**

* **If your new software system requires** **professional services**: installation, implementation, data conversion/migration, configuration, training: Use the City’s standard **Software/Technology** POS contract with a Statement of Work/Scope of Services attached, detailing all of the services, a timeline for performance, project schedule, acceptance-based schedule for payment of these service fees (milestone-based payment schedule) and a payment exhibit describing this. The POS may or may not also have the software license or subscription terms attached through sec. 3. See next section. The software license/EULA and subscription/hosting terms must be reviewed and negotiated by the City Attorney. The final SOW, quote, and payment exhibit must not contain any legal terms or links to additional vendor terms and conditions. A link to a privacy policy, or support process might be OK but still has to be reviewed by OCA.
* **If your new software is “on-premise” software**: you will need a **License Agreement** or **EULA** governing the legal terms for the City’s use of the software. The Vendor provides the license agreement. The City **will** edit and negotiate these terms. **EULAs MUST BE REVIEWED BY THE CITY ATTORNEY. Cannot proceed until this is complete.**
* **If your new software requires** **annual support and maintenance**: Use the POS (software/tech) Contract – either a separate one that starts *after* the implementation services are complete and runs for XX years, or it can be combined with the implementation POS contract if the term is described carefully. Attach exhibits describing the support/maintenance services and annual pricing through section 3 of the POS. Figure out when the support/maintenance services will start, and when they will be invoiced and due each year, write this into your contract.
* **If your new software system is cloud-based (SaaS):** Use the POS for Software/Technology to set up the annual subscription. Attach these things through section 3:
	+ **Software Subscription / Hosting legal terms** provided by the vendor – **SAAS terms MUST BE REVIEWED by the City Attorney, edited and negotiated. Cannot proceed until this is complete.**
	+ Quote or other payment exhibit describing the annual fees (stripped of any legal terms – see below) including when they will be invoiced and when they are due.
	+ SAQ form approved by City IT
	+ Optional but important:
		- SLA (Service level agreement) describing downtime, etc. if free from legal terms.
		- Privacy policy – privacy policies are legal documents and must be reviewed by the agency using the software and the City Attorney.
* **Quotes** – vendor quotes are useful to attach to your contract if they are:
	+ Accurate in describing the products, quantities, price and term
	+ Must NOT contain any fine print legal terms (if so –City Attorney must review/negotiate)
	+ Must NOT contain links to vendor t’s and c’s (if so – have those links removed.)
	+ The legal terms reviewed and negotiated by the City Attorney should be the only legal terms that apply to the final contract. This could include our POS + their license terms.
	+ Quotes and price proposals must be reviewed carefully for all fine print.
* **Statement of Work(s) (SOWs):**
	+ **Contracts for professional software implementation require a Statement of Work (SOW) (see page 1 of this handout)** A good SOW takes work, from a person or team of people who are knowledgeable about software implementation procedures, and also familiar with the product you’re buying and your agency’s functionality needs. This hand-out cannot describe everything required in a good SOW. The City Attorney’s office cannot write your SOW. Please work closely with your City IT Project Manager (if one is assigned) and the vendor. See the minimum requirements for a good SOW on page 1 of this handout. Find samples, learn about the process. Be prepared to spend a good amount of time on your SOW and come prepared with a plan to complete this as part of the contract process. Completing the SOW is one of the business tasks for the agency.
	+ City IT has 2 standard forms useful for tech SOWs: Project Milestone Acceptance Procedures, and Change Order procedures. Please ask your IT PM for these forms and discuss whether you need them in the SOW for your project.
* **What is an SLA?**
	+ SLA = Service Level Agreement. (Some think the SLA means software license agreement but the SLA is not that.)
	+ The SLA provides the guaranteed levels of service or “up time” for vendor hosted systems or SaaS. This is because the vendor is in charge of the infrastructure behind the software, including the servers, the data center, etc. Since these things are beyond the City’s control, as Customer, the vendor needs to demonstrate to us that they are capable of keeping the system “up” and available for our use whenever we need it.
	+ SLA will describe guaranteed up time as well as expected downtime for scheduled maintenance, etc. and a method of informing you about scheduled maintenance.
	+ SLA might also describe vendor response time to outages or other requests for support, but the important part of an SLA is the uptime for vendor-hosted SaaS
	+ SLA might include response times for something called RPO and RTO. Consult IT about what this means and if the RPO and RTO response times they are proposing are OK.
	+ A good SLA will tell you how the vendor will compensate the customer for problems caused by downtime – they might offer a monetary credit on your bill if they fail to meet their guaranteed uptime for the month, or other remedies. If they don’t offer – ask.
	+ Sometimes an SLA Is combined with a support agreement or a description of tech support procedures
	+ SLAs are usually not offered for on-premise software.
* **Common acronyms for software contracts:**
	+ EULA – End User License Agreement (usually for on-premise software)
	+ TOS – Terms of Service (usually for SaaS / vendor hosted, or see Subscription Terms)
	+ TOU – Terms of Use same as TOS but can also refer to the legal terms for visiting a website)
	+ Subscription Terms (not an acronym, but this is the equivalent to a EULA for SaaS.)
	+ MSA – Master Service Agreement
	+ SLA – Service Level Agreement
	+ RPO – Return Point Objective
	+ RTO - Return Time Objective (check)
	+ SOW – Statement of Work. Same thing as a Scope of Work or Scope of Services