



City of Durham
Request for Proposal (RFP) – Re-Bid

Date of Issue: **March 29, 2016**
Due Date: **April 6, 2016**

**BUSINESS EQUIPMENT TO PROVIDE A LEARNING MANAGEMENT SYSTEM
FOR THE CITY OF DURHAM**

Through this RFP, the City of Durham is seeking proposals from corporations to provide a learning management system, as outlined in the scope of work.

Project Sponsor	Finance & Human Resources Departments
Project Manager	Sharon Williams
Title	Human Resources Manager
Department	Human Resources Department
Address	101 City Hall Plaza, Durham, NC 27701
Telephone	919-560-4214, ext. 23279
Fax	919-560-4969
Email	Sharon.Williams@DurhamNC.gov

Selected Contents

DESCRIPTION OF PROJECT AND NATURE OF RFP	
Project.....	3
Background.....	4
Scope of Work.....	5
Definitions in this RFP.....	5
Contract.....	5
Trade Secrets and Confidentiality.....	5
Bonds.....	5
Insurance.....	5
Discretion of the City.....	6
SCHEDULE	
Schedule.....	7
Deadline to Submit Proposals.....	7
GETTING MORE INFORMATION ON THE PROJECT AND RFP PROCESS	
Updates and revisions to RFP.....	8
PROPOSAL EVALUATION	
Proposal Review/Selection Committee	8
Evaluation Criteria.....	8
Notice of Award.....	9
CONTENTS OF PROPOSAL	
Contents of Proposal.....	9
Contact information; Executive Summary, Table of Contents, Cover Letter; Legal status; Qualifications; Project Team, Location of Work, and Subcontracting; Methods; Compensation; Assumptions; SDBE; Small Local Business Enterprises (SLBEs); Financial Condition, Insurance, and Bonds; Conflict of Interest; Non-collusion	
HOW TO SUBMIT A PROPOSAL	
How to Submit a Proposal.....	14
Format.....	14
Alternative Submittals.....	14
Candidate to Bear Expense; No Claims against City.....	14
Notice Under the Americans with Disabilities Act (ADA).....	15
Iran Investment Act Certification.....	15
Treatment of Employees of Contractors.....	15
Livable Wage.....	15
EQUAL OPPORTUNITY AND EQUITY ASSURANCE (EOEA)	
EOEA Goals	18
EOEA Forms	23
PRICING WORKSHEET.....	48

Date of RFP: The date of issuance is March 29, 2016 and the due date for submitting proposals is April 6, 2016 @ 9:00am EST in suite 1600 at 101 City Hall Plaza, Durham, NC 27701.

Project Manager and Contact with City:

Attn: Sharon Williams
Human Resources Department
101 City Hall Plaza
Durham, NC 27701
Phone: (919) 560-4214, ext. 23279
Fax: (919) 560-4969
Email: Sharon.williams@durhamnc.gov

DESCRIPTION OF PROJECT AND NATURE OF RFP

Project: The City of Durham is seeking proposals from qualified firms capable of providing an integrated, cloud- based learning management system (LMS). A solution is desired that will support enterprise-wide administration, documentation, tracking, reporting, authoring and delivery of training. There is also a need for a repository for e-based content covering the gamut from off the shelf to custom developed solutions addressing enterprise-wide skill building and compliance needs. Support for the integration of digital and online media with more traditional classroom content to create blended learning solutions is also highly desirable. The overarching goal is to provide City of Durham employees with more qualitative development options as well as control over time, place, path and pace in the delivery of just-in-time learning.

Tangible deliverables include a customizable cloud-based solution with the aforementioned as well as some (or all) of the following features:

- single sign-on
- uploading of in-house developed and/or vendor provided content in any or all of the following formats: SCORM, AICC, and Xapi
- self-enrollment
- automatic notifications
- management and tracking of singular and reoccurring delivery of all live and virtual forms of training
- classroom and classroom resource management
- certificate of completion generation
- document library
- eSignature
- best practice integration or interfacing methodologies
- learning compliance paths
- mobile learning options
- assessment development and tracking

- virtual classroom integration
- learning content (compliance and soft-skills)

The resulting recommendation is also expected to address software integration methodology including the estimated time and projected costs for testing, system integration, conversion, issue resolution and GOLIVE for a minimum of three (3) and a maximum of five (5) years. Post launch maintenance and on-going support for the aforementioned period(s) should also be addressed in the proposal.

Background: The City of Durham has approximately 2,200 plus full-time employees working in 26 Departments in multiple locations. The largest Departments are Police, Fire, Water Management, Solid Waste, Public Works, Neighborhood Improvement Services, Parks & Recreation and General Services. These eight (8) Departments comprise approximately three-quarters of the employee population and positions vary widely from law enforcement and professional staff to maintenance, road crews and parks and recreation staff. And during the summer months, the employee population grows approximately 30% to accommodate seasonal workers.

Training enterprise-wide is primarily instructor-led and focused, almost exclusively, on compliance and/or technical requirements for specific roles. The organization also provides a limited amount of leadership, management, employee engagement and business skills training. As with the compliance and technical training offerings, this training is also primarily instructor-led and available to only a small percentage of employees each year.

The City of Durham's applicant tracking system is NEOGOV and is used for recruitment, candidate tracking and onboarding. MUNIS, an integrated HRIS system, is used for other matters related to personnel management including compensation, performance management and employee tracking. These two management systems are not compatible, so separate sign-ons are required and data sharing capability between NEOGOV and MUNIS is accommodated manually.

The City of Durham also has a learning management system. The current LMS has been in place for several years and is being used by two (2) of the City of Durham's twenty-six (26) departments. Some of the desired features not currently available include:

- landing page customization/branding
- integration of webinar technology
- administrative support for instructor led training (e.g. scheduling)
- communication and collaboration features (chat, blog, discussion forums)
- management of capacity (waitlists, cancellations and notification of availability)
- real-time, custom and ad-hoc reporting
- integration with existing personnel management system

Scope of Work: The goal of this RFP process is to identify a candidate to provide, implement and maintain a cost-effective and integrated, cloud-based learning management system that supports enterprise-wide administration, documentation, tracking, reporting, authoring and delivery of training for a minimum of three (3) and a maximum of five (5) years. The proposed solution should be available 24 hours a day, 7 days a week with the ability to support learning and development for 2,200 plus full-time employees and 600 plus seasonal employees across 26 departments and a variety of functions.

Definitions in this RFP: RFP, City, Proposal, Candidate, Contractor, Should. Unless the context indicates otherwise – (a) the expressions “RFP,” “this RFP,” and “the RFP” refer to this document as it may be amended or updated. (b) “City” and “city” mean the City of Durham. (c) The “Proposal” is the response of a person, firm, or corporation proposing to provide the services sought by this RFP. (d) The word “Candidate” is the person, firm, or corporation that submits a proposal or that is considering submitting a proposal. © The word “Contractor” or “contractor” is the person, firm, or corporation with which the City enters into a contract to provide the services sought by this RFP. That is, “contractor” generally refers to a successful candidate that has obtained a fully executed contract with the City, while “candidate” is generally reserved for the stage before a contract has been signed. (f) The word “should” is used to tell candidates what the City thinks it wants and/or what the project manager thinks is best. Candidates that want to increase the likelihood of being selected will, in general, do what the RFP says candidates “should” do, but failure to comply with all “shoulds” will not necessarily and automatically result in rejection.

Contract: The City anticipates that at the conclusion of the RFP process a written contract between the City and the successful candidate will be executed defining the roles and responsibilities of each party and under which the successful candidate will provide the goods and services generally described in this RFP. A copy of the City of Durham standard contract is provided (Exhibit A). This is the contract we expect to enter into with the successful candidate. Please review the contract and address major concerns or recommended changes in your proposal response.

Trade Secrets and Confidentiality: N/A

Bonds: No fidelity bond, performance bond or payment bond is required for this agreement.

Insurance: Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage’s and limits. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

Commercial General Liability – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

Additional Insured – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘City of Durham as its interest may appear’.

Certificate of Insurance – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage’s, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham
Attn: (Insert Name of Department maintaining the Contract)
101 City Hall Plaza
Durham, NC 27701

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Durham’s Risk Manager.

Discretion of the City:

A. the City of Durham reserves the right to cancel a solicitation, or reject any or all Proposals in whole or in part when the cancellation or rejection is in the City’s best interests. This includes rejecting any proposal not in compliance with all prescribed public solicitation procedures and requirements, and for good cause, rejecting all proposals upon a finding that it is in the public interest to do so.

B. NOTWITHSTANDING anything to the contrary in this document or in any addendums to this document, unless the contrary provision refers specifically to this provision, the City reserves the right (i) to negotiate changes of any nature with any candidate with respect to any term, condition, or provision in this document and/or in any Proposals, whether or not something is stated to be mandatory and whether or not it is said that a proposal will be rejected if certain information or documentation is not submitted with it, and (ii) to enter into an agreement for some or all of the work with one or more persons, firms, or corporations that do not submit Proposals. For example, all deadlines are for the administrative convenience or needs of the City and may be waived by the City at its

discretion. This subparagraph B applies to the entire RFP, including the SDBE portions.
 C. Where the City asks or tells candidates to do stated things, such as that a Proposal should follow a stated format or that the candidate should do stated things in seeking the contract, the City may reject a Proposal because it does not comply with those requests, so the candidate is adding to its risk of rejection by non-compliance. Still, the City may, in its discretion, waive non-compliance. This subsection does not limit subsections (A) and (B).
 D. Of course, once an agreement is signed, the parties to the agreement may enforce the agreement according to its terms as allowed by applicable law.

SCHEDULE

Schedule: The work schedule set out herein represents the City’s best estimate of the schedule that will be followed. If a component of the schedule, such as the completion date is delayed, the overall schedule will be adjusted accordingly.

The City expects that the winning candidate will be able to provide a fully operational LMS by July 1, 2016.

Timeline for RFP Process
RFP Posting/Bid Released to Vendors: March 29, 2016
Receive Proposals/RFP Close Date: April 6, 2016 @ 9:00am
Selection of candidate: April 11, 2016
Negotiation with selected candidate: April 12, 2016
Automated Agenda Deadline April 19, 2016
Agenda Review April 27, 2016
Work Session May 5, 2016
City Council Meeting to Approve Contract May 16, 2016
Candidate Begins Project Week of May 16, 2016

Keeping Proposals Open: N/A

Deadline to Submit Proposals: Candidates should provide one original and six (6) copies of their Proposal are received at the following address by 9:00am EST on April 6, 2016: 101 City Hall Plaza, Suite 1600, Durham, NC 27701. Write the following prominently on the outside of the envelope: **“REQUEST FOR PROPOSAL TO PROVIDE A LEARNING MANAGEMENT SYSTEM FOR THE CITY OF DURHAM.”**

GETTING MORE INFORMATION ON THE PROJECT AND RFP PROCESS

Updates and revisions to RFP: This RFP contains addendums one (1), two (2) and three (3) which must be **signed, dated and returned with all proposal submissions**. Additional addenda will be posted on the City's website, on the Purchasing Division's webpage. Check that webpage to see that you have received all addenda at: <http://durhamnc.gov/bids.aspx>

PROPOSAL EVALUATION

The City of Durham will make the contract award (based on the actual proposals received) on the basis of qualifications, experience, resources, proposed services, candidate's demonstrated history of performance, price and other factors identified in the RFP.

Each proposal will be evaluated by the Selection Committee on the basis of how it corresponds to the factors, information and requirements in the RFP. Based upon consideration of the submitted proposals, the evaluation committee may choose to conduct interviews with two or more candidates. Interviews may include a presentation by the candidate and questions regarding the proposal and services to be provided. Specific criteria for selection interviews, if any, will be distributed at the time interviews are scheduled.

Proposal Review/Selection Committee

All proposals meeting the requirements of the RFP will be evaluated and scored by a proposal review/selection committee. The committee will be comprised of:

- HR Manager, Onboarding and Professional Development
- Risk Manager
- Risk Department Safety Training Officer
- Fire Department Representative
- Solid Waste Department Representative
- Water Management Representative

Evaluation Criteria

The City of Durham will review and evaluate proposals on a 100 point basis as outlined below:

- Demonstrated understanding of purpose, scope, expected deliverables and the ability to meet them (25 points)
- Completeness of a step-by-step plan for implementation (20 points)
- Cost proposal (20 points)
- Technical Support (15 points)
- Vendor experience and staff qualifications 10 points)

- References (10 points)

In evaluating the proposals and selecting a contractor, the City of Durham reserves the rights to:

- a) Reject any and all proposals
- b) Issue subsequent Request for Proposals for the same or similar goods or services
- c) Not award a contract for the requested services
- d) Further question any candidate to substantiate claims of experience, background, knowledge and ability
- e) Request a virtual demo from the top two (2) candidates
- f) Waive any irregularities or informalities
- g) Negotiate with any candidate to further amend, modify, redefine or delineate its proposal
- h) Negotiate and accept, without re-advertising, the proposal of the next-highest scored candidate, in the event that a contract cannot be successfully negotiated with the selected candidate, which may occur prior to the time a final recommendation for award is made for executive approval
- i) Accept the proposal which is deemed to be the most beneficial to the City of Durham

Notice of Award

The City will provide written notices of its intent to award to a given candidate at least three (3) days before the award, unless the City determines that a shorter notice period is more practicable.

CONTENTS OF PROPOSAL

The remainder of this RFP contains numbered sections with vendor requirements. It is essential to adhere to the numbering and naming conventions laid forth in the vendor requirements below. Clarity and brevity are strongly encouraged.

- Section 1 Executive Summary
- Section 2 Vendor Qualifications
- Section 3 Core Learning Technologies (excel spreadsheet)
- Section 4 Technical Qualifications (excel spreadsheet)
- Section 5 Implementation & Delivery Qualifications (excel spreadsheet)
- Section 6 Licensing & Deployment Requirements (excel spreadsheet)
- Section 7 Pricing Worksheet (excel spreadsheet)

1 EXECUTIVE SUMMARY

Summarize your proposal response in 2-5 pages that will introduce your company, outline your proposal, and thoroughly address your understanding of our needs, goals, and challenges. This Executive Summary documentation should also be ***preceded in your RFP response*** by the following standard proposal response elements:

- **Cover page** – identifying candidate’s name and address, company logo and the contact information (name, mailing address, email address, fax number, and telephone number) of the person whom the City should contact regarding this proposal.
- **Cover letter** – signed by a principal of the candidate.

The cover letter should contain the following statements:

“The undersigned, whose title and position with the candidate are stated next to or beneath his or her signature, has the authority to submit this Proposal (including this cover letter) on behalf of the candidate in response to the City of Durham’s Request for Proposal. Our Proposal accepts the terms and conditions stated in the RFP, including the description of services to be performed and the provisions of the agreement to be signed.”

The cover letter should contain the following paragraph:

“The candidate is not submitting any trade secrets to the City in connection with this proposal or the contract; if the agreement is awarded to the candidate, the candidate will not submit any trade secrets to the City in connection with this proposal or the agreement. The candidate acknowledges that the City will rely on the preceding sentence.”

- **Table of Contents**– high level proposal outline and corresponding page numbers

Note to Vendor Response Teams: Please note the following exceptions to the proposal submission instructions. It is ***NOT MANDATORY*** that the requirements for the executive summary be repeated in your RFP response. This will allow you to maximize the **3-6 pages allotted for this requirements section of the proposal**. Please also note that while there is a one page limit to the cover letter, the cover letter itself, the RFP response cover page, and the RFP response table of contents ***DO NOT*** count against the 3-6 page limit for this section of the response.

2 VENDOR QUALIFICATIONS

2.1 Company Information

State the full, exact name of the candidate. State whether the candidate is an individual, corporation, limited partnership, general partnership, limited liability company, professional corporation, professional association, etc. If it is anything other than an individual or a general

partnership, specify the State under which the entity is organized. If the State under which the entity is organized is not North Carolina, specify whether the candidate has received a certificate of authority from the NC Secretary of State to transact business in North Carolina. State whether the entity is in existence at the time the proposal is submitted, and if not, whether and when the candidate intends to officially form the entity. State the number of years the candidate has been in business. State the names and titles of the individuals who will sign the agreement with the City.

2.2 Company History

Provide a brief company history including the ownership structure. Is there a parent company? Is the organization public or private? Describe any ongoing mergers or acquisitions and how they might potentially impact the business/relationship with the City of Durham. If you have undergone a merger with another business in the past five years, describe that merger and how it impacted your customer base. What challenges were overcome during the merger and how did they impact clients?

Are you currently sun-setting or forcing a move to a new product version due to retirement of a previous version? Are you making plans to end support for any previously available deployment models? If so, what does that transition look like for clients? How is risk mitigated specifically in the transition between deployment models?

Have there been any innovations in eLearning developed for your technologies. If so, please describe.

2.3 References and Licenses

Define your target industries including experience with similar projects for government agencies. What is your client retention rate? Why does your current client list make you a good fit for the City of Durham?

Provide the names of three (3) to five (5) references, including how to contact them. It is expected that the candidate that will be awarded the contract will have experience implementing three (3) to five (5) learning management solutions for municipalities or government entities serving populations of approximately 200,000 or more.

Specify current licenses that are pertinent to this project.

2.4 Evidence of Financial Stability

If you are a publicly traded firm, please provide the stock symbol and a copy of your annual reports for the past three (3) years. If you are a privately owned company please provide attestation to your fiscal solvency and/or financial good standing.

2.5 Work, Project Team and Subcontracting

Where are you located? Is your hosting facility cloud-based or located at a specific location? Please provide the location of all offices that will impact our business.

State the names and qualifications of the individuals who will have responsibility for this project. How many LMS implementations have your project team members performed?

Please list all third party subcontractors that you utilize to implement your software. If you are awarded a contract with the City of Durham, will any part of the work be contracted? If so what? Please describe the measures and actions taken to mitigate the inherent risk of a third party implementation.

2.6 Methods and Procedures

Address all expectations listed in the Scope of Work section of this RFP, and describe the method and procedures you will use to meet a six (6) week implementation schedule by providing specifics regarding the following project milestones:

Project Milestones	Candidate Team	City of Durham Team	Time Required
Planning			
Template Design			
Data Management			
System Integration			
Training			
Testing/Launch			

2.7 Assumptions regarding City of Durham Actions and Participation

If your proposal assumes that the City will take certain actions, provide facilities, modify our standard contract or do anything else, you should state these assumptions explicitly.

2.8 Terms and Conditions

Provide your standard contract and license documents for the solution you recommend (these documents may be provided as standalone attachments). Please ensure they are properly mapped to this requirement in your response and that the file names are accurately labeled). If you have exceptions to our terms and conditions please list them here and/or indicate your willingness to negotiate mutually beneficial terms.

2.9 Completion of Equal Business Opportunity Program Forms

While there are no SDBE participation goals for this project, in accordance with the Ordinance, all candidates are required to provide information requested in the “SDBE Professional Services Forms” package. **Proposals that do not contain the appropriate, completed “Professional Services Forms” will be deemed non-responsive and ineligible for consideration.**

3 LMS AND TECHNOLOGY QUALIFICATIONS

The City of Durham requests responses to the following questions and requirements below and in the **excel spreadsheet (City of Durham LMS RFP Qualifications)** provided. Please note, the excel spreadsheet contains Sections 3 thru 6. **The sections correspond to the numbers and topics below.**

- Section 3** Core Learning Technologies
- Section 4** Technical Qualifications
- Section 5** Implementation & Delivery Qualifications
- Section 6** Licensing & Deployment Requirements

While we ask that you write in complete sentences and fully answer each question(s), we also ask that you **be brief and clear in your responses, to keep proposal page lengths to a minimum. Marketing tear sheets, links to your website, and boilerplate materials are discouraged.** Screen captures and other graphics are encouraged but are not required. There is no page limit to this portion of your response and you are encouraged to go beyond **Yes/No** answers to provide specifics about the capabilities of your firm.

NON-Collusion

Conflict of Interest: If the candidate has any grounds to believe there could be a conflict of interest, such as that a City employee who is involved in awarding the contract has a connection with the candidate, please explain.

Non-collusion: This RFP constitutes an invitation to bid or propose. Sign the following and include it with your response:

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, _____ affirm that I have not engaged in collusion with any City employee(s), other person, corporations or firms relating to this submittal. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

NON-COLLUSION AFFIDAVIT

By executing this proposal, I certify that this proposal is submitted to the City of Durham competitively and without collusion. I am authorized to represent the candidate both in submitting this bid and in making this Non-collusion Affidavit. To the best of my knowledge and belief, (1) the candidate has not violated N. C. General Statute section 133-24 in connection with the proposal, (2) the candidate has not entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its proposal, and (3) the candidate intends to do the work with its own bonfire employees or subcontractors and is not bidding for the benefit of another contractor. The neuter includes the masculine and the feminine. The candidate to whom this Non-Collusion Affidavit refers is:

(insert name of candidate)

(signature of individual)

HOW TO SUBMIT A REQUEST FOR PROPOSAL

How to submit a Request for Proposal (RFP)

Candidates should submit original and six (6) copies of their proposal in a sealed envelope. The envelope should be addressed for delivery to the Project Manager at the address shown in the "Project Manager and Contact with City" section at the beginning of this RFP.

Write the following prominently on the outside of the envelope: **"REQUEST FOR PROPOSAL TO PROVIDE A LEARNING MANAGEMENT SYSTEM FOR THE CITY OF DURHAM."**

Proposals are to be received no later than 9:00 PM EST on April 6, 2016. Submittals can be made via postal or courier delivery only. **No email or fax deliveries will be accepted.**

Format: The recommended format for this proposal is as outlined in the section labeled **Contents of Proposal**. One original and six (6) copies of the Proposal should be submitted.

Alternative Proposals: NA

Candidate to Bear Expense; No Claims against City: No candidate will have any claims or rights against the City arising out of the participation by a candidate in the RFP process. No candidate will have any claims or rights against the City for the City's failure to award a contract to it or for awarding a contract to another person, firm, or corporation, regardless of whether the other person, firm, or corporation participated in the RFP process or did not submit a Proposal that complied with the RFP. A notice of award will not constitute acceptance by the City; the City's only method of acceptance is the City's execution of a formal contract in accordance with law.

Notice under the Americans with Disabilities Act. A person with a disability may receive an auxiliary aid or service to effectively participate in city government activities by contacting the ADA Coordinator, voice (919) 560-4197, fax 560-4196, TTY (919) 560-1200, or ADA@durhamnc.gov, as soon as possible but no later than 48 hours before the event or deadline date.

Aviso bajo el Acto de Americanos Discapacitados – Una persona con una discapacidad puede recibir asistencia o servicio auxiliar para participar efectivamente en actividades del gobierno de la ciudad con ponerse en contacto con el Coordinador de ADA, buzón de voz (919) 560-4197, fax (919) 560-4196, TTY (919) 560-1200, o ADA@durhamnc.gov, lo más antes posible

Iran Divestment Act Certification – The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the Iran List. In this Iran Divestment Act Certification section -- "Contractor" means the person entering into

this contract with the City of Durham; and “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 143C-6A-4 of the N.C. Iran Divestment Act.

Values of City of Durham regarding Treatment of Employees of Contractors

Statement of City EEO Policy - The City of Durham opposes discrimination in employment because of race, color, religion, sex, national origin, age, disability, sexual orientation, gender identity, gender expression, or genetic information. Therefore, it desires that firms doing business with the City:

- Not discriminate against any employee or candidate for employment because of race, color, religion, sex, national origin, age, disability, sexual orientation, gender identity, gender expression, or genetic information.
- Take affirmative action to ensure that candidates are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, age, disability, sexual orientation, gender identity, gender expression, or genetic information. -. This action includes employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- State, in solicitations or advertisement for employees, that all qualified candidates will receive consideration for employment without regard to race, color, religion, sex, national origin, age, disability, sexual orientation, gender identity, gender expression, or genetic information.
- Include this Statement of City EEO Policy in every purchase order for goods to be used in performing City contracts and in every subcontract related to City contracts.

Livable Wage - The City of Durham desires that firms doing business with the City pay their workers an hourly wage while working on City contracts such that, if annualized, a person working 40 hours per week will earn enough money to support a family of 4 above the poverty level, as poverty is defined by the United States Census Bureau. Currently, that wage is \$12.53 per hour.

EQUAL BUSINESS OPPORTUNITY PROGRAM

It is the policy of the City to provide equal opportunities for City contracting for small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct present effects of past discrimination and to resolve complaints of discrimination.

While there are no SDBE participation goals for this project, in accordance with the Ordinance, all contractors are required to provide information requested in the "SDBE Professional Services Forms" package. **Proposals that do not contain the appropriate, completed "Professional Services Forms" will be deemed non-responsive and ineligible for consideration.** The "Declaration of Performance," "Participation Documentation," Managerial Profile," "Equal Employment Opportunity Statement" and the "Employee Breakdown" documents are required of all contractors. In lieu of "Employee Breakdown," contractors may submit a copy of the current EEO-1 form (corporate basis). Other forms in the package should be used as needed.

The Department of Equal Opportunity/Equity Assurance is responsible for the Equal Business Opportunity Program. All questions about "SDBE Professional Services Forms" should be referred to Deborah Giles or other department staff at (919) 560-4180.



CITY OF DURHAM SMALL DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

PROFESSIONAL SERVICES FORMS

Revised 06/08



Mailing Address:
101 City Hall Plaza
Durham, North Carolina 27701
Phone: 919-560-4180
Facsimile: 919-560-4513

Street Address:
101 City Hall Plaza (Annex)
Durham, North Carolina 27701

CITY OF DURHAM EQUAL BUSINESS OPPORTUNITY PROGRAM

Policy Statement

It is the policy of the City to provide equal opportunities for City contracting to small firms owned by socially and economically disadvantaged persons doing business in the City's Contracting Marketplace. It is further the policy of the City to prohibit discrimination against any firm in pursuit of these opportunities, to conduct its contracting activities so as to prevent such discrimination, to correct the present effects of past discrimination and to resolve complaints of discrimination.

Goals

To increase the dollar value of all City contracts for goods and services awarded to small disadvantaged business enterprises, it is a desire of the City that the contractor will voluntarily undertake efforts to increase the participation of socially and economically disadvantaged individuals at higher skill and responsibility levels within non-minority firms engaged in contracting and subcontracting with the City.

The Equal Opportunity/Equity Assurance Director shall establish project specific goals for each project or contract based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

Equal Business Opportunity Ordinance SDBE Participation Documentation

If applicable information is not submitted with your proposal, your proposal will be deemed non-responsive.

Declaration of Performance must be completed and submitted with your proposal.

SDBE Participation Documentation must be used to document participation of Small Disadvantaged Business Enterprise (SDBE) on Professional Services projects. All SDBEs must be certified by the City of Durham's Equal Opportunity/Equity Assurance Department prior to submission date. If a business listed has not been certified, the amount of participation will be reduced from the total utilization.

Managerial Profile must be used to list the managerial persons in your workforce who will be participating in this project.

Equal Employment Opportunity Statement for your company must be completed and submitted with your proposal.

Employee Breakdown must be completed and submitted for the location providing the service/commodity. If the parent company will be involved in providing the service/commodity on the City contract, a consolidated employment breakdown must be submitted.

Letter of Intent to Perform as a Sub-consultant/Subcontractor must be completed for SDBEs proposed to perform on a contract. This form must be submitted with the proposal.

Post Proposal Submission SDBE Deviation

Post proposal submission SDBE deviation participation documentation must be used to report and deviation from SDBE participation either prior to or subsequent to startup of the project. The Equal Opportunity/Equity Assurance Department must be notified if the proposed sub-consultant/subcontractor is unable to perform and for what reasons. Substitutions of sub-consultants/subcontractor, both prior to and after awarding of a contract, are subject to City approval.

SDBE Goals Not Met/Documentation of Good Faith Efforts

It is the responsibility of consultants/contractors to make good faith efforts. Good Faith Efforts means the sum total of efforts by a particular business to provide equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors.

Whenever contract alternatives, amendments or extra work orders are made individually or in the aggregate, which increase the total value of the original contract, the consultant must make a good faith effort to increase SDBE participation such that the amounts subcontracted are consistent with the established goals.

SELECTION OF CONSULTANTS/CONTRACTORS FOR OTHER PROFESSIONAL SERVICES

Goal

The purpose is to provide Small Disadvantaged Businesses equal opportunities for participation on City of Durham contracts.

Definition of the Scope of the Selection Policy

The Equal Opportunity/Equity Assurance Director shall establish SDBE participation goals for each contract to be awarded by the City. Project specific goals for each project or contract will be based upon the availability of small disadvantaged business enterprises (SDBE's) within the defined scope of work, delineated into percentages of the total value of the work.

In addition to SDBE's specifically certified by the City and listed in a database maintained by the EO/EA Department, the City of Durham may consider a formal certification of another entity to determine whether an candidate meets requirements of the Equal Business Opportunity Program, provided that the City Manager or designee determines that the certification standards of such entity are comparable to those of the City. The City of Durham has determined that the following certifications are comparable to its own and may be used by bidders/candidates: North Carolina Department of Transportation (N.C. DOT), United States Small Business Administration (U.S. SBA) and Raleigh-Durham Airport Authority (RDU).

In lieu of SDBE's listed in its SDBE System, the City of Durham will accept women and minority firms certified by N.C. DOT, U.S. SBA and RDU as meeting its SDBE goal requirements provided the bidder/candidate submits evidence that the firm is currently certified by one of the stated entities at the time of bid/proposal. Failure to provide evidence of certification may disqualify the firm's participation for the purpose of meeting SDBE goals.

Any firm submitted in this manner will be contacted and urged to complete an abbreviated certification process with the City of Durham. For purposes of this document and associated forms, any reference to a "City Certified SDBE," an "SDBE certified by the City" or similar reference shall include reference to a qualified women or minority owned firm certified and approved in accordance with the above paragraphs, even where specific reference is made to the City SDBE database.

Small Disadvantaged Business Proposal Requirements

The prime consultant/contractor shall submit a proposal in accordance with the City of Durham's request for Proposal. In addition, the prime consultant/contractor must submit all required Professional Services SDBE Forms.

Selection Committee for Professional Services

A selection committee shall be established to be composed of the following: City Manager or a designated representative of this office; Director of Finance or a designated representative of this office; department head responsible for the project; City Engineer if engineering services are

involved; the Equal Opportunity/Equity Assurance Director and Purchasing Manager. Other representatives shall be called upon as needed based on their areas of expertise.

The committee shall screen the proposals based on the following criteria:

1. Firms; interest in the project;
2. Current work in progress by firm;
3. Past experience with similar projects;
4. General proposal for carrying out the required work;
5. Designation of key personnel who will handle the project, with resume for each;
6. Proposed associate consultants/contractors, SDBE subconsultants;
7. Indication of capability for handling project;
8. Familiarity with the project;
9. Fees that have been charged for recent comparable projects;
10. References;
11. SDBE Participation; and
12. Documentation of Good Faith efforts.

After ranking the firms presenting proposals based on the above criteria, interviews will be conducted by the selection committee with the top ranked firms (3-5). The contracting department will make the final recommendation, prepare contracts for review by the City Attorney, and prepare the recommendation for the City Council including the following:

1. Description and scope of the project;
2. Recommended firm;
3. Contract cost;
4. Time limits;
5. Basis for selection;
6. Source for funding;
7. Equal Business Opportunity Ordinance compliance; and
8. Recommendation that the contract be approved by the City Council.

Contract Award

A provision must be written in each contract with an architect or engineer requiring them to work with Equal Opportunity/Equity Assurance Department in creating and identifying separate work.

Project Evaluation

An evaluation shall be made of each contract after its completion to be used in consideration of future professional services contracts. The evaluation shall cover appropriate items from the check list for ranking candidates. A copy of the evaluation shall be given to the consultant, and any comment he/she cares to make shall be included in the files.

DECLARATION OF PERFORMANCE BY CONSULTANT/CONTRACTOR

Briefly address each of the following items:

1. A brief synopsis of the company and the products/services it provides:
2. Describe the normal procedure used on a bid of this type, giving the flow of purchase from the company to the ultimate purchaser:
3. List anyone outside of your company with whom you will contract on this bid:

The undersigned consultant/contractor certifies that: (check appropriate box)

- a) _____ It is the normal business practice of the consultant/contractor to perform all elements of the contract with its own workforce without the use of subcontractors/vendors; and
- b) _____ That the above documentation demonstrates this *firm's* capabilities to perform all elements of the contract with its own work force or without the use of subcontractors/vendors.
- c) _____ The vendor/contractor will use a subconsultant(s) in the fulfillment of this scope of work.

Date

Authorized Signature

**PARTICIPATION DOCUMENTATION (REQUIRED)
(TO BE COMPLETED BY PRIME CONSULTANT/CONTRACTOR ONLY)**

Names of all firms (including prime and sub consultants/ Sub contractors)	Location	SDBE Firm Yes/No	Nature of Participation	% of Project Work

TOTAL _____

Name - Authorized Officer of Prime Consultant/Contractor Firm (Print/Type)

Signature - Authorized Officer of Prime Consultant/Contractor Firm

Date

EQUAL EMPLOYMENT OPPORTUNITY STATEMENT (REQUIRED)
 (You may submit your organization's EEO policy in lieu of this sheet)

EMPLOYEE BREAKDOWN

Part A – Employee statistics for the primary location.

Employment category	Total employees	Total males	Total females	M— a — l — e — s					F — e — m — a — l — e — s				
				White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

Part B – Employee statistics for the consolidated company. (See instructions for this form on whether this part is required.)

Employment category	Total employees	Total males	Total females	M— a — l — e — s					F — e — m — a — l — e — s				
				White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native	White	Black	Hispanic	Asian or Pacific Islander	Indian or Alaskan Native
Project manager													
Professional													
Technical													
Clerical													
Labor													
Totals													

Letter of Intent to Perform as a Sub-Consultant

The undersigned intends to perform work in connection with the above project as a SDBE:

- Minority (African American) • Woman • Hispanic
-
- American Indian • Asian American • Handicapped
-

The SDBE status of the undersigned is certified by the City of Durham as identified by the attached copy of certification or the attached SDBE Contractor Identification List supplied by the EO/EA Department.

The undersigned is prepared to perform the following described work in connection with the above project (specify in detail particular work items or parts thereof to be performed):

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>ITEMS</u>	<u>PROJECTED COMMENCEMENT DATE</u>	<u>PROJECTED COMPLETION DATE</u>

The consultant will subcontract _____% of the dollar value of this contract to a SDBE subconsultant/subcontractor and/or non-SDBE subconsultant/subcontractor.

The undersigned will enter into a formal agreement in the amount of \$_____ for the above work with you, conditioned upon your execution of a contract with the City of Durham.

Name _____ Title _____

Company _____ Telephone _____

Address _____

Signature _____

REQUEST TO CHANGE SDBE PARTICIPATION

Project: _____

Name of bidder or consultant: _____

Name and title of representative bidder or consultant: _____

Address (including zip code) _____

Telephone number: _____ Fax number: _____

Email address: _____

Total amount of original contract, before any change orders or amendments: _____

Total amount of the contract, including all approved change orders and amendments to date, but not counting the changes proposed in this form: _____

Dollar amount of changes proposed in this form: _____

The proposed change (*check one*) **increases** **decreases** the dollar amount of the bidder's/consultant's contract with the City.

Does the proposed change decrease the SDBE participation? (*check one*) **yes** **no**

If the answer is **yes**, complete the following:

BOX A. For the subcontract proposed to be changed (increased, reduced, or eliminated):

Name of subconsultant: _____

Goods and services to be provided before this proposed change: _____

Is it proposed to eliminate this subcontract? yes no

If the subcontract is to be increased or reduced, describe the nature of the change (*such as adding \$5,000 in environmental work and deleting \$7,000 in architectural*): _____

Dollar amount of this subcontract before this proposed change: _____

Dollar amount of this subcontract after this proposed change: _____

This subconsultant is (*check one*):

- 1. City-certified Black-owned SDBE
- 2. City-certified Women-owned SDBE
- 3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as: 3(a) Black-owned SDBE 3(b) Women-owned SDBE
- 4. not a City-certified SDBE

BOX B. Proposed subcontracts other than the subcontract described in Box A above

Name of subcontractor for the new work: _____

Goods and services to be provided by this proposed subcontract: _____

Dollar amount proposed of this proposed subcontract: _____

This subcontractor is (*check one*):

- 1. City-certified Black-owned SDBE
- 2. City-certified women-owned SDBE
- 3. City-certified SDBE that is neither Black-owned nor women owned, but to be credited as: 3(a) Black-owned SDBE 3(b) Women-owned SDBE
- 4. not a City-certified SDBE

Add additional sheets as necessary.

SDBE GOALS NOT HAVING BEEN MET. The following information must be presented by the consultant concerning good faith efforts taken.

It is the responsibility of consultants to make good faith efforts. Any act or omission by the City shall not relieve them of this responsibility. For future efforts, it shall be comprised of such efforts which are proposed to allow equitable participation of socially and economically disadvantaged employees and sub-consultants/subcontractors. The City Manager shall apply the following criteria, with due consideration of the quality, quantity, intensity and timeliness of efforts of consultants/contractors, in determining good faith efforts to engage SDBEs along with other criteria that the City Manager deems proper:

Name of Bidder:

*If you find it helpful, feel free to attach pages to explain your answers. **How many pages is your firm attaching to this questionnaire?** _____ (Don't count the 2 pages of this questionnaire.)*

If a yes or no answer is not appropriate, please explain the facts. All of the answers to these questions relate only to the time before your firm submitted its bid or proposal to the City. In other words, actions that your firm took after it submitted the bid or proposal to the City cannot be mentioned or used in any answers.

1. SOLICITING SDBEs.

(a) Did your firm solicit, through all reasonable and available means, the interest of all SDBEs certified (that is, in the City's database) in the scopes of work of the contract?

yes **no**

(b) In such soliciting, did your firm advertise?

yes **no**

Are you attaching copies to this questionnaire, indicating the dates and names of newspaper or other publication for each ad if that information is not already on the ads?

yes **no**

(c) In such soliciting, did your firm send written (including electronic) notices or letters? Are you attaching one or more sample notices or letters?

yes **no**

(d) Did your firm attend the pre-bid conference?

yes **no**

(e) Did your firm provide interested SDBEs with timely, adequate information about the plans, specifications, and requirements of the contract?

yes **no**

(f) Did your firm follow up with SDBEs that showed interest?

yes **no**

(g) With reference to the SDBEs that your firm notified of the type of work to be subcontracted -- Did your firm tell them:

- (i) the specific work your firm was considering for subcontracting? **yes** **no**
- (ii) that their interest in the contract is being solicited? **yes** **no**
- (iii) how to obtain and inspect the applicable plans and specifications and descriptions of items to be purchased? **yes** **no**

2. BREAKING DOWN THE WORK.

- (a) Did your firm select portions of the work to be performed by SDBEs in order to increase the likelihood that the goals would be reached? **yes** **no**

(b) If **yes**, please describe the portions selected.

ANSWER:

3. NEGOTIATION.

In your answers to 3, you may omit information regarding SDBEs for which you are providing Form E-105.

- (a) What are the names, addresses, and telephone numbers of SDBEs that you contacted?

ANSWER:

(b) Describe the information that you provided to the SDBEs regarding the plans and specifications for the work selected for potential subcontracting.

ANSWER:

(c) Why could your firm not reach agreements with the SDBEs that your firm made contact with? Be specific.

ANSWER:

4. ASSISTANCE TO SDBEs ON BONDING, CREDIT, AND INSURANCE.

- (a) Did your firm or the City require any subcontractors to have bonds, lines of credit, or insurance? **yes** **no**

(Note: In most projects, the City has no such requirement for *subcontractors*.)

- (b) If the answer to (a) is **yes**, did your firm make efforts to assist SDBEs to obtain bonds, lines of credit, or insurance? **yes** **no**

If **yes**, describe your firm's efforts.

ANSWER:

- (c) Did your firm provide alternatives to bonding or insurance for potential subcontractors?

yes **no**

If **yes**, describe.

ANSWER:

5. GOODS AND SERVICES. What efforts did your firm make to help interested SDBEs to obtain goods or services relevant to the proposed subcontracting work?

ANSWER:

6. USING OTHER SERVICES.

(a) Did your firm use the services of the City to help solicit SDBEs for the work?

yes **no**

Please explain.

ANSWER:

(b) Did your firm use the services of available minority/women community organizations, minority and women contractors' groups, government-sponsored minority/women business assistance agencies, and other appropriate organizations to help solicit SDBEs for the work?

yes **no**

Please explain.

ANSWER:

[Exhibit A to RFP (Model Services Contract)]

CONTRACT FOR [*descriptive title to be inserted**]

This contract is dated, made, and entered into as of the _____ day of _____, 20____, by the City of Durham (“City”), a N. C. municipal corporation, and [*name of firm*] (“Contractor”), [*Indicate type of entity, for instance:*

a corporation organized and existing under the laws of [name of State];
a limited liability company organized and existing under the laws of [name of State];
a professional corporation organized and existing under the laws of [name of State];
a professional association organized and existing under the laws of [name of State];
a limited partnership organized under the laws of [name of State];
a sole proprietorship;
or a general partnership].

Sec. 1. Background and Purpose. [*Several sentences are usually enough.**]

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor’s. The Contractor shall [*state the services to be provided and the schedule for those services.**]. In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor’s Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. [*City staff - Add any special requirements or detail needed in the invoices.***] Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: [*City staff - Describe the timing of payments, how amounts are calculated, etc. List the kinds of expenses, if any, that the City will reimburse.***]. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled “Prompt Payment to Subcontractors,” he or she will be referred to as the “Project Manager”) determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the

Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance. [*City staff –to be filled in. Consult Risk Management.**]

Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 9. Exhibits. The following exhibits are made a part of this contract: [*If none, write "None." Try to put your requirements, etc. into Section 2 and Section 3 of this contract, or in other appropriate places in this contract, instead of in exhibits. Unless what you want to say is really long, don't use an exhibit. It's easier to keep track of text that is in the middle of the contract and even makes it easier to number the pages. Heavy use of exhibits probably goes back to pre-computer days, when it was hard to cut and paste.**]

Exhibit A [*Insert title of exhibit*] containing [*insert number*] page(s).

Exhibit B [*Insert title of exhibit*] containing [*insert number*] page(s).

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

[*Insert name and department**]

City of Durham

101 City Hall Plaza

Durham, NC 27701-3329

The fax number is (919) [*Insert fax number.**]

Email: [*Insert email address.**]

To the Contractor:

[*Insert name and address*]

The fax number is _____.

Email:

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification. (a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control,

pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. (e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Trade Secrets; Confidentiality. The request for proposals (RFP) section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section (titled "Trade Secrets; Confidentiality") shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. For purposes of this contract, the word "candidate" in the RFP section just cited shall mean the "Contractor."

Sec. 13. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 14. E-Verify Requirements. (a) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (a) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (a) in entering into this contract. (b) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

Sec. 15. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. "Agent for Service of Process" means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the

Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications, Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

By: _____

preaudit certificate, if applicable _____



APPENDIX

City of Durham LMS RFP

Mailing Address:
101 City Hall Plaza, Suite 1600
Durham, North Carolina 27701
Phone: 919-560-4214 x23279
Facsimile: 919-560-4969

Street Address:
101 City Hall Plaza, Suite 1600
Durham, North Carolina 27701



CITY OF DURHAM

Finance Department

101 CITY HALL PLAZA, ANNEX BLDG. | DURHAM, NC 27701

919.560.4132 | F 919.560.4325

www.durhamnc.gov

May 3, 2016

ADDENDUM NO. 1

Request for Proposals to Provide a Learning Management System for the City of Durham

Notice to: Prospective Bidders

This addendum containing the following additions, clarifications, and/or changes, is issued prior to receipt of bids and does hereby become part of the original specifications and documents and supersedes the original specifications and documents in case of conflict. Receipt of this addendum must be acknowledged by signing in the area indicated below. This addendum must be signed and returned with your sealed bid. In the event that your sealed bid has been mailed prior to receiving this addendum, you may submit the addendum by fax or in a second sealed envelope clearly marked as an addendum to be attached to **Bid No. 1**. This addendum and bid response must be received by (8:00am) on Monday, March 29, 2016 as amended below. Failure to do so will result in the disqualification of the corresponding bid.

Pre-Submittal Conference

Meeting Minutes

March 18, 2016

Attendees:

Sharon Williams, City of Durham
Katrena Neal, City of Durham
Angela Henderson, City of Durham
Spencer Snow, Instructure
Tom Goldhardt, Instructure
Charles Apodaca, Travitor
Terry Hatami, TrustVIP
Joie Douglas, CornerstoneonDemand
Alisa England, UL
Jessie Bennett, BIP
Ellen Mulrew, EH UHS
Dave Robbins, IComma

Inquiries

1. Who is the provider of the existing City of Durham learning management system (LMS)?

Target Solutions

2. Will the new system need to be able to import data from Target Solutions.

This not a requirement

3. Will the due date be amended?

If the date is changed, you will receive notification via our website by 5:00pm today. (Please see amended date/time below).

4. Should proposals be provided in an electronic or print format?

Either format is fine. If submitted electronically, please email to

Sharon.Williams@Durhamnc.gov and if mailed they should be sent to Sharon

**Williams, City of Durham Human Resources, 101 City Hall Plaza, Suite 1600,
Durham, NC 27701**

5. Can we submit all of the excel spreadsheets in a single document?

Yes as long as they are formatted correctly and we are clear about the question you are answering

6. Can you confirm the time that proposal are due?

The current due date for submitting proposal is Friday, March 25, 2016 @ 9:00am EST.

Effective today, the due date/time has been amended to Monday, March 29, 2016 @ 8:00am EST

7. Could you please walk through each of the SDBE documents contained in the RFP package and indicate City of Durham requirements?

- **Page 16 contains instructions on completion of required forms**
- **Page 22, 23 and 24 must be completed**
- **The top of Page 25 references an EEO statement for your organization and this statement is required**
- **Parts A & B of the employee breakdown on Page 25 must be completed (in lieu of the breakdown you may submit an EEO-1 report)**
- **Page 26 should be completed only if you are utilizing an SDBE firm**
- **Page 27, 28, 29 and 30 are not required**

For assistance with the SDBE documents please contact Angela Henderson, Sr. EOE Specialist at 919-560-4180, ext. 17244.

All other specifications, terms and conditions remain as required in the initial Request for Bids.

Respectfully,

Sharon Williams

Sharon Williams
Project Manager, Human Resources

I have read and acknowledge receipt of Addendum No. 1

Company: _____ Date: _____

Name: _____ Signature: _____



CITY OF DURHAM

Finance Department

101 CITY HALL PLAZA, ANNEX BLDG. | DURHAM, NC 27701
919.560.4132 | F 919.560.4325

www.durhamnc.gov

May 3, 2016

ADDENDUM NO. 2

Request for Proposals to Provide a Learning Management System for the
City of Durham

Notice to: Prospective Bidders

This addendum containing the following additions, clarifications, and/or changes, is issued prior to receipt of bids and does hereby become part of the original specifications and documents and supersedes the original specifications and documents in case of conflict. Receipt of this addendum must be acknowledged by signing in the area indicated below. This addendum must be signed and returned with your sealed bid. In the event that your sealed bid has been mailed prior to receiving this addendum, you may submit the addendum by fax or in a second sealed envelope clearly marked as an addendum to be attached to **Bid No. 1**. This addendum and bid response must be received by (8:00am), on Monday, March 29, 2016 as amended below. Failure to do so will result in the disqualification of the corresponding bid.

Inquiries

8. Have any other addendums been issued?

Yes, this is addendum number two (2) of two.

9. Can you provide me with a word copy of the addendum?

Yes, please email Sharon.Williams@Durhamnc.gov

10. Your requirements reflect a need for a Single-Tenant SaaS, however you seem to also inquire about a perpetual behind the fire wall solution as well as a Multi-Tenant solution. Do you want our best recommendation pricing based on your asks or have us confirm that we have all 3 configuration or actually provide 3 spreadsheet with pricing on all 3 options?

Because we are a government entity, Single tenant SaaS is required

11. Do you need us to do data migration as well?

Yes

12. Do you need a Social Module and/or a Mobile Module?

Please specify your capabilities.

13. Should we include a content bundle in our quote (if available)?

Please see question 3.1.1 (f)

14. Can we submit all of the excel spreadsheets in a single document?

Yes as long as they are formatted correctly and we are clear about the question you are answering

15. Can you confirm the day and time that proposal are due?

The due date/time has been amended to Monday, March 29, 2016 @ 8:00am EST

16. Could you please walk through each of the SDBE documents contained in the RFP package and indicate City of Durham requirements?

- **Page 17 contains instructions on completion of required forms**
- **Page 23, 24 and 25 must be completed**
- **The top of Page 26 references an EEO statement for your organization and this statement is required**

- **Parts A & B of the employee breakdown on Page 26 must be completed (in lieu of the breakdown you may submit an EEO-1 report)**
- **Page 26 should be completed only if you are utilizing an SDBE firm**
- **Page 27, 28, 29 and 30 are only as applicable**

For assistance with the SDBE documents please contact Angela Henderson, Sr. EOE Specialist at 919-560-4180, ext. 17244.

All other specifications, terms and conditions remain as required in the initial Request for Bids.

Respectfully,

Sharon Williams

Sharon Williams
Project Manager, Human Resources

I have read and acknowledge receipt of Addendum No. 2

Company: _____ Date: _____

Name: _____ Signature: _____

This page intentionally left blank

This page intentionally left blank

XYZ COMPANY
Pricing Worksheet City of Durham LMS RFP

This worksheet reflects a pricing format that will allow us to make a direct and honest comparison between all vendors. Please complete this worksheet and return it with your proposal clearly labeled with your company name. Any deviations from this format may result in disqualification.

	FREQUENCY	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
License Fees						
TOTAL LICENSE FEES						
Implementation & Training Fees	FREQUENCY	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
Implementation						
Administrator Training (Number of Hours)						
Project Management (Length of Time)						
LMS Hosting & Security						
Content Bundle						
Complimentary Licenses						
Custom Courses						
Single Sign On						
HRIS Integration						
HRIS Migration						
Custom HTTPS URL						
Multi-Site Support						
Additional Site Setup						
Additional Training						
Custom Skin						
Authoring Licenses						
System Upgrades						
Other Fees (please explain)						
Other Fees (please explain)						
Other Fees (please explain)						
TOTAL IMPLEMENTATION & TRAINING FEES						
TOTAL LICENSING & IMPLEMENTATION & TRAINING FEES						