

NEW

State of Maine



Master Agreement

Effective Date: 07/01/17

Expiration Date: 06/30/22

Master Agreement Description: Portland Webworks. 7/1/17 to 6/30/2022

Buyer Information

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

Issuer Information

Gwendolyn Decicco 207-822-0704 ext. gwendolyn.decicco@courts.maine.gov

Requestor Information

Gwendolyn DeCicco 207 822 0704 ext. gwendolyn.decicco@Courts.Maine.gov

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor ID

VC1000073599

Vendor Name

PORTLAND WEBWORKS INC

Alias/DBA

Vendor Address Information

5 MILK ST

PORTLAND, ME 04101

US

Vendor Contact Information

JUSTIN DAVIS

207-773-6600 ext.

Commodity Information

Vendor Line #: 1

Vendor Name: PORTLAND WEBWORKS INC

Commodity Line #: 1

Commodity Code: 20655

Commodity Description: infrastructure support

Commodity Specifications:

Commodity Extended Description: infrastructure support

Quantity

0.00000

UOM

Free on Board

Unit Price

\$0.00

Delivery Days

Contract Amount

\$0.00

Service Start Date

07/01/17

Service End Date

06/30/22

Catalog Name

Discount

0.0000 %

Discount Start Date

Discount End Date

Terms and Conditions

Agreement Terms and Conditions

T&C #: 165

T&C Name: Payment Terms

T&C Details: Net 30

STATE OF MAINE
JUDICIAL BRANCH
Agreement to Purchase Services

THIS AGREEMENT, made this 11th day of April, 2017, is by and between the State of Maine, Judicial Branch, hereinafter called "Department," and Portland Webworks, Inc. located at 5 Milk Street, Portland, Maine, 04104, telephone number 207.773.6600 hereinafter called "Provider", for the period of July 1, 2017 to June 30, 2022.

The AdvantageME Vendor/Customer number of the Provider is VC1000073599

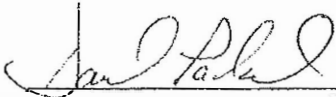
WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A – Specifications of Work to be Performed
- Rider B-IT – Payment and Other Provisions
- Rider C – Exceptions to Rider B-IT
- Rider D/E/F – At Department's Discretion
- Rider G – Identification of Country in Which Contracted Work will be Performed

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.


IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in 2 original copies.

Department Name: Judicial Branch AOC/OIT


By: 
Dave Packard, Chief Information Officer

and

Provider Name: Portland Webworks, Inc.

By: 
Justin Davis, President

Total Agreement Amount: \$ 300,000 annual cap _____

Approved: 
Chair, State Purchases Review Committee
BP54 (Rev 9/07) – (Rev Rider B-IT 7/15/09)

May 22, 2017

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

Vendor Partner: Portland Webworks, Inc.

A. Background & Applicability

This agreement provides for the delivery of professional services through Portland Webworks, referred to hereinafter as PWW, for ongoing MEJIS software* support services, as further described in the below specifications.

This support is for the 5 -year period from July 1, 2017 through June 30, 2022. PWW, will provide such services to the Maine Judicial Branch (MJB), as described herein.

**MEJIS is the primary case management system for the MJB. Please note that for the purposes of this document MEJIS also includes: all ancillary programs, applications, data exchanges and any other component that comprises, supports or interfaces with either the MEJIS production environment or development processes. PLEASE NOTE: Although IT services related directly or indirectly to MEJIS represent the overwhelming majority, as the in-place, integration systems arm of the MJB, there may be some ancillary IT integration services required not specific to MEJIS.*

B. Specifications

The below specifications are meant to serve as an outline of the primary services that are expected to be afforded by PWW. Please note that the below list shall not be considered as all inclusive and that additional services are subject to the approval of the Chief Information Officer and the account representative for PWW.

• **Quality Assurance (QA) Testing**

- PWW shall provide quality assurance testing services for MJB software. This professional services work shall include but is not limited to the following:
 - Management of QA Efforts and Activities
 - PWW will provide a designated QA Manager, who will provide day-to-day oversight and direction to a small team of staff that are dedicated to QA testing. This team may be comprised of both MJB staff and contractors. Representative activities may include but are not limited to the following:
 - Assignment of testing activities to team members.
 - All testing activities and assignments will be recorded as tasks and managed accordingly in JIRA.

- In conjunction with the MJB Applications Manager, the QA Manager will prioritize and manage the work of the test team such that it aligns with individual project schedules and the MJB portfolio.
 - Review team member test plans for completeness and accuracy.
 - Review reported issues or bugs for validity and handle according to processes, as established by the MJB Applications Manager.
 - Serve as a primary gatekeeper, for signing off on testing activities and production readiness of software releases.
 - In conjunction with the MJB Applications Manager, assist in managing testing activities and processes such that they align with best practices.
- Test Plan Development & Execution
 - PWW staff will develop test plans to support software implementations and upgrades.
 - Test plans shall include test cases and associated test scripts.
 - Test cases and scripts shall be documented in QA test software, as determined by the Applications Manager.
 - Execution of test scripts and resulting outcomes shall also be documented in the QA Test software program.
 - At times testing may also require the utilization of automated testing tool software, such as eggPlant.
 - As determined by the Applications or designated QA Manager, PWW staff will often be required to engage with various MJB representatives, contractors and other project stakeholders.
 - All testing and associated functions shall be performed under the direction of the designated QA Manager and established best practices.
 - All testing related documentation and associated media shall be considered the property of the MJB and shall be maintained in the established QA testing software.
 - Issue Reporting and Resolution
 - Issues or bugs found during testing shall be documented in JIRA and reported to the designated QA Manager.

- Automated Testing Tools
 - PWW shall work to maintain, expand and increase the efficiency of automated testing tools such as eggPlant.
 - The utilization and expansion of eggPlant shall be done in conjunction with and approval of the MJB Applications Manager.
 - All software testing code shall be considered the property of the MJB and shall be maintained in the established code management repository.
- **Business Analysis Services**
 - At times PWW will be asked to perform business analysis services. Representative activities may include but are not limited to the following:
 - Participation in MJB user group forums.
 - Development of system requirements in support of requests for new functionality and changes to existing.
 - Work may include business analysis services, to support the development of an RFP, for a new case management system, to replace MEJIS.
 - Analysis of software requests and changes to determine impact and associated effort of implementing the requests.
 - Compilation of 'release documents' that outline all changes included in a software implementation.
 - Management of all MEJIS form change requests, according to processes established by the MJB Applications Manager.
 - All business analysis related documentation and associated media shall be considered the property of the MJB and shall be maintained in a repository, as identified by the MJB Applications Manager.
 - All business analysis activities will be performed under the direction and guidance of the MJB Applications Manager.
- **Development Support**
 - PWW may support the development and maintenance of MEJIS-satellite applications. These applications are designed to be utility tools that support court processing, such as the dynamic generation of court orders.

- **Other Provisions**

- All source code, discovery, development documentation, specifications and any other work product or application created under this agreement, is considered to be the property of the Maine Judicial Branch.

C. Reporting & Communications**

- The PWW account representative shall meet with MJB Applications Manager on a quarterly basis.
- The designated QA Manager shall meet regularly with the MJB Applications Manager, on a schedule as determined by the Applications Manager.
- The MJB Applications Manager reserves the right to require additional activity and status reporting processes.

D. Staffing**

PWW will provide resources as necessary to support MJB's implementation portfolio.

- The Applications Manager will work with the PWW account representative to ensure staffing is kept at appropriate levels.
- PWW will provide a designated QA Manager, who will provide day-to-day oversight and direction to a small team of staff that are dedicated to QA testing.
- All staff will work a non-traditional 40 hour workweek and will have schedules that support a maximum # of hours per week. These weekly thresholds can only be exceeded upon approval of the Applications Manager or designee.
- MJB agrees, to the extent possible, to strive to maintain a structured and consistent schedule for each PWW staff member.
- Staff shall complete work on site at the Maine Judicial Center and during normal business hours, unless the Applications or QA Manager has approved other arrangements.
- PWW must first seek pre-approval from the MJB Applications Manger should PWW wish to make staffing changes.
- MJB reserves the right to 1) approve all new potential PWW staff members and 2) to remove a staff member from work.

- All staff will be expected to record time and activities as further specified in the below 'financial arrangement' section.

E. Financial Arrangements**

Rates - all work will be completed at an hourly rate of \$100/hour which is mutually established by PWW and the MJB.

- PWW shall not change the established hourly rate, without first receiving approval from the MJB Chief Information Officer.

Invoicing - PWW will submit monthly invoices to the designated MJB representative.

- An invoice shall be submitted for each PWW staff member.
- Invoices shall clearly specify the hours consumed, by activity and resource, and shall also include a copy of the time sheets involved.
- MJB agrees to process and disburse payment of all invoices, in a timely manner.

***Please see following 'Rider B-IT' for additional related provisions.*

RIDER B-IT

METHOD OF PAYMENT AND OTHER PROVISIONS

1. AGREEMENT AMOUNT \$ 300,000 annual cap
2. INVOICES AND PAYMENTS The Department will pay the Provider as follows:

Payment will be disbursed in accordance with monthly invoices received.

Invoices for payment, submitted on forms approved by the Department, shall be submitted to the Agreement Administrator. Invoices shall contain sufficient detail to allow proper cost allocation and shall be accompanied by supporting documentation. No invoice will be processed for payment until approved by the Agreement Administrator. All invoices require the following:

- A. All invoices must include the Vendor Code number assigned when registering as a vendor with the State of Maine. This number appears on all Contracts and Purchase Orders and can be acquired from the agency contact.
- B. All invoices must include the vendor's Federal ID Number.
- C. All invoices must include either the Purchase Order number or the Contract number relating to the commodities/services provided.
- D. In cases where hourly rates of contracted resources are concerned, invoices must contain a copy or copies of time sheets associated with that invoice. Time sheets will need to be reviewed and approved by the State's contract administrator.

Payments are subject to the Provider's compliance with all items set forth in this Agreement. The Department will pay the Provider within thirty (30) days following the receipt of an approved invoice. The Department may withhold a Retainage for project-based services in the following manner:

- The allowable payment amount from each project milestone payment will be multiplied by ten (10) percent, giving the amount that will be withheld from payment. Ninety (90) percent of the allowable project milestone payment amount will be paid to the Provider.
- The Retainage will be held by the Department until the end of the warranty period.

The charges described in this Agreement are the only charges to be levied by the Provider for the products and services to be delivered by it. There are no other charges to be made by the Provider to the Department, unless they are performed in accordance with the provisions of Section 5, Changes in the Work. The Provider shall maintain documentation for all charges against the Department under this Agreement.

3. **INDEPENDENT CAPACITY** In the performance of this Agreement, the Provider shall act in the capacity of an independent contractor and not as an employee or agent of the State.

4. **AGREEMENT ADMINISTRATOR** The Agreement Administrator is the Department's representative for this Agreement. S/he is the single authority to act on behalf of the Department for this Agreement. S/he shall approve all invoices for payment. S/he shall make decisions on all claims of the Provider. The Provider shall address all contract correspondence and invoices to the Agreement Administrator. The following person is the Agreement Administrator for this Agreement:

Name: Dave Packard
 Title: Chief Information Officer
 Address: 1 Court Street, Augusta, Maine 04330
 Telephone: 207.213.2929
 E-mail address: dave.packard@courts.maine.gov

The following individual is designated as the Program Administrator for this Agreement and shall be responsible for oversight of the programmatic aspects of this Agreement. All project status reports, day to day operational issues and project program material and issues shall be directed to this individual.

Name: Chris Oberg
 Title: IT Applications Manager
 Address: 1 Court Street, Augusta, Maine 04330
 Telephone: 207.592.9430
 E-mail address: christopher.oberg@courts.maine.gov

5. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to the execution of the changed work.

6. **SUBCONTRACTORS** The Provider may not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Department. This provision shall not apply to contracts of employment between the Provider and its employees.

The Provider is solely responsible for the performance of work under this Agreement. The approval of the Department for the Provider to subcontract for work under this Agreement shall not relieve the Provider in any way of its responsibility for performance of the work.

All Subcontractors shall be bound by the terms and conditions set forth in this Agreement. The Provider shall give the State immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement. The Provider shall indemnify and hold harmless the Department from and against any such claim, loss, damage, or liability as set forth in Section 16, State held Harmless.

7. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign, or otherwise dispose of this Agreement, or any portion thereof, or of its right, title, or interest therein, without the written approval of the Department. Such approval shall not in any case relieve the Provider of its responsibility for performance of work under this Agreement.

8. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider certifies as follows:

1. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a *bona fide* occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Provider shall, in all solicitations or advertising for employees placed by, or on behalf of, the Provider, relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

3. The Provider shall send to each labor union, or representative of the workers, with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section, and shall post copies of the notice in conspicuous places, available to employees and applicants for employment.

4. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights, etc.) against itself by any individual, as well as any lawsuit regarding alleged discriminatory practice.

5. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment, and in the provision of service, to include accessibility and reasonable accommodations for employees and clients.

6. Contractors and Subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

7. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

9. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Provider shall not engage on a full-time, part-time, or any other basis, during the period of this Agreement, any personnel who are, or have been, at any time during the period of this Agreement, in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time, or any other basis, during the period of this Agreement, any retired employee of the Department, who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement, so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

10. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed, or any time thereafter, shall be admitted to any share or part of this Agreement, or to any benefit that might arise there from, directly or indirectly, due to his employment by, or financial interest in, the Provider, or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each Subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **NO SOLICITATION** The Provider certifies that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement, and that it has not paid, or agreed to pay, any company or person, other than a *bona fide* employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from, the award of this Agreement. For breach or violation of this provision, the Department shall have the right to terminate this Agreement without liability or, at its discretion, to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

12. **ACCOUNTING, RECORDS, AND AUDIT**

1. The Provider shall maintain all books, documents, payrolls, papers, accounting records, and other evidence pertaining to this Agreement, including interim reports and working papers, and make such materials available at its offices at all reasonable times during the period of this Agreement, and for a period of five (5) years following termination or expiration of the Agreement. If any litigation, claim or audit is started before the expiration of the 5-year period, the records must be retained until all litigation, claims or audit findings involving the agreement have been resolved.

2. Unless the Department specifies in writing a shorter period of time, the Provider agrees to preserve and make available all documents and records pertaining to this Agreement for a period of five (5) years from the date of termination of this Agreement.

3. Records involving matters in litigation shall be kept for one year following the termination of litigation, including all appeals.

4. Authorized Federal and State representatives shall have access to, and the right to examine, all pertinent documents and records during the five-year post-Agreement period. During the five-year post-Agreement period, delivery of, and access to, all pertinent documents and records will be at no cost to the Department.

5. The Provider shall be liable for any State or Federal audit exceptions, if applicable, that arise out of any action, inaction, or negligence by the Provider. In the event of an audit exception for which the Provider is liable, the Provider shall have thirty (30) days to remedy that exception. If the Provider fails to remedy that exception within this time period, the Provider shall immediately return to the Department all payments made under this Agreement which have been disallowed in the audit exception.

6. Authorized State and Federal representatives shall at all reasonable times have the right to enter the premises, or such other places, where duties under this Agreement are being performed, to inspect, monitor, or otherwise evaluate, the work being performed. All inspections and evaluations shall be performed in such a manner that will not compromise the work unreasonably.

7. **ACCESS TO PUBLIC RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

13. TERMINATION The performance of work under this Agreement may be terminated by the Department in whole or in part, whenever, for any reason the Agreement Administrator shall determine that such termination is in the best interests of the Department. Any such termination shall be effected by the delivery to the Provider of a Notice of Termination specifying the extent to which the performance of work under this Agreement is terminated, and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination and modified accordingly.

Upon receipt of the Notice of Termination, the Provider shall:

1. Stop work under this Agreement on the date and to the extent specified in the Notice of Termination;

2. Take such action as may be necessary, or as the Agreement Administrator may direct, for the protection and preservation of the property, information, and data related to this Agreement, which is in the possession of the Provider, and in which the Department has, or may acquire, an interest;
3. Terminate all orders to the extent that they relate to the performance of the work terminated by the Notice of Termination;
4. Assign to the Department in the manner, and to the extent directed by the Agreement Administrator, all of the rights, titles, and interests of the Provider under the orders so terminated, in which case the Department shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders;
5. With the approval of the Agreement Administrator, settle all outstanding liabilities and claims, arising out of such termination of orders, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this Agreement;
6. Transfer title to the Department (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Agreement Administrator, equipment and products purchased pursuant to this Agreement, and all files, source code, data manuals, or other documentation, in any form, that relate to all the work completed, or in progress, prior to the Notice of Termination;
7. Complete the performance of such part of the work as shall not have been terminated by the Notice of Termination; and
8. Proceed immediately with the performance of the preceding obligations, notwithstanding any delay in determining or adjusting the amount of any compensation under this section.

Notwithstanding the above, nothing herein shall limit the right of the Department to pursue any other legal remedies against the Provider.

14. **GOVERNMENTAL REQUIREMENTS** The Provider shall comply with all applicable governmental ordinances, laws, and regulations.

15. **GOVERNING LAW** This Agreement shall be governed by, interpreted, and enforced in accordance with the laws, statutes, and regulations of the State of Maine, without regard to conflicts of law provisions. The provisions of the United Nations Convention on Contracts for the International Sale of Goods and of the Uniform Computer Information Transactions Act shall not apply to this Agreement. Any legal proceeding against the Department regarding this Agreement shall be brought in the State of Maine in a court of competent jurisdiction.

16. **STATE HELD HARMLESS** The Provider shall indemnify and hold harmless the Department and its officers, agents, and employees from and against any and all claims, liabilities, and costs, including reasonable attorney fees, for any or all injuries to persons or property or claims for money damages, including claims for violation of intellectual property rights, arising from the negligent acts or omissions of the Provider, its employees or agents, officers or Subcontractors in the performance of work under this Agreement; provided, however, the Provider shall not be liable for claims arising out of the negligent acts or omissions of the Department, or for actions taken in reasonable reliance on written instructions of the Department.

17. LIMITATION OF LIABILITY The Provider's liability for damages sustained by the Department as the result of Provider's default or acts or omissions in the performance of work under this Agreement, whether such damages arise out of breach, negligence, misrepresentation, or otherwise, shall be no greater than:

1. Damages for violation or infringement of any copyright or trademark;
2. Damages for bodily injury (including death) to persons, and damages for physical injury to tangible personal property or real property; and
3. The amount of any other actual direct damages up to the greater of \$500,000 or three times the value of the Product or Service that is the subject of the claim, up to a maximum of \$25,000,000. For example, if the Product or Service that is the subject of the claim was valued at \$15,000,000, then the Provider would be liable for no more than \$25,000,000. For purposes of this subsection, the term "Product" would typically include the following, but not be limited to, Materials, Source Code, Machine Code, and Licenses.

Notwithstanding the above, Provider shall not be liable for any indirect or consequential damages.

18. NOTICE OF CLAIMS The Provider shall give the Agreement Administrator immediate notice in writing of any legal action or suit filed related in any way to this Agreement, or which may affect the performance of duties under this Agreement, and prompt notice of any claim made against the Provider by any Subcontractor, which may result in litigation related in any way to this Agreement, or which may affect the performance of duties under this Agreement.

19. APPROVAL This Agreement must be approved by the State Controller and the State Purchases Review Committee before it can be considered a valid enforceable document.

20. INSURANCE REQUIREMENTS The Provider shall procure and maintain, for the duration of the Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection with, the fulfillment of this Agreement by the Provider, its agents, representatives, employees, or Subcontractors.

1. **Minimum Coverage**

1. Commercial general liability (including products, completed operations, and broad-form contractual): \$1,000,000 per occurrence;
2. Workers' Compensation and employer's liability: as required by law;
3. Professional liability: \$1,000,000; and
4. Property (including contents coverage for all records maintained pursuant to this Agreement): \$1,000,000 per occurrence.

2. **Other Provisions** Unless explicitly waived by the Department, the insurance policies should contain, or be endorsed to contain, the following provisions:

1. The Provider's insurance coverage shall be the primary insurance. Any insurance or self-insurance maintained by the Department for its officers, agents, and employees shall be in excess of the Provider's insurance and shall not contribute to it.
2. The Provider's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
3. The Provider shall furnish the Department with certificates of insurance and with those endorsements, if any, effecting coverage required by these Insurance Requirements. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Department before this Agreement commences. The Department reserves the right to require complete, certified copies of all required insurance policies at any time.
4. All policies should contain a revised cancellation clause allowing thirty (30) days notice to the Department in the event of cancellation for any reason including nonpayment.

21. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the Department does not receive sufficient funds to pay for the work to be performed under this Agreement, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

22. **SEVERABILITY** The invalidity or unenforceability of any particular provision, or part thereof, of this Agreement shall not affect the remainder of said provision, or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

23. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B-IT (except for expressed exceptions to Rider B-IT included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

24. **FORCE MAJEURE** Either party may be excused from the performance of an obligation under this Agreement in the event that performance of that obligation by a party is prevented by an act of God, act of war, riot, fire, explosion, flood, or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, strike or labor dispute, provided that any such event, and the delay caused thereby, is beyond the control of, and could not reasonably be avoided by that party. Upon the occurrence of an event of force majeure, the time period for performance of the obligation excused under this section shall be extended by the period of the excused delay, together with a reasonable period, to reinstate compliance with the terms of this Agreement.

25. **SET-OFF RIGHTS** The State shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement, up to any amounts due and owing to the State with regard to this Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

26. INTERPRETATION OF THE AGREEMENT

1. **Reliance on Policy Determinations** The Department shall determine all program policy. The Provider may, from time to time, request the Department to make policy determinations, or to issue operating guidelines required for the proper performance of this Agreement, and the Agreement Administrator shall respond in writing in a timely manner. The Provider shall be entitled to rely upon, and act in accordance with, such written policy determinations and operating guidelines, unless subsequently amended, modified, or changed in writing by the Department, and shall incur no liability in doing so unless the Provider acts negligently, maliciously, fraudulently, or in bad faith. Nothing contained in this Agreement, or in any agreement, determination, operating guideline, or other communication from the Department shall relieve the Provider of its obligation to keep itself informed of applicable State and Federal laws, regulations, policies, procedure, and guidelines, to be in complete compliance and conformity therewith.

2. **Titles Not Controlling** Titles of sections and paragraphs used in this Agreement are for the purpose of facilitating ease of reference only and shall not be construed to imply a contractual construction of the language.

3. **No Rule of Construction** This is a negotiated Agreement and no rule of construction shall apply that construes ambiguous or unclear language in favor of or against any party.

27. **PERIOD OF WORK** Work under this Agreement shall begin no sooner than the date on which this Agreement has been fully executed by the parties and approved by the Controller and the State Purchases Review Committee. Unless terminated earlier, this Agreement shall expire on the date set out on the first page of this Agreement, or at the completion and acceptance of all specified tasks, and delivery of all contracted products and services as defined in this Agreement, including performance of any warranty and/or maintenance agreements, whichever is the later date.

28. **NOTICES** All notices under this Agreement shall be deemed duly given: 1) upon delivery, if delivered by hand against receipt, or 2) five (5) business days following posting, if sent by registered or certified mail, return receipt requested. Either party may change its address for notification purposes by giving written notice of the change and setting forth the new address and an effective date.

29. **ADVERTISING AND PUBLICATIONS** The Provider shall not publish any statement, news release, or advertisement pertaining to this Agreement without the prior written approval of the Agreement Administrator. Should this Agreement be funded, in whole or in part, by Federal funds, then in compliance with the Steven's Amendment, it will be clearly stated when issuing statements, press releases, requests for proposals, bid solicitations, and other documents: (1) the percentage of the total cost that was financed with Federal moneys; and (2) the dollar amount of Federal funds.

30. **CONFLICT OF INTEREST** The Provider certifies that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of its services hereunder. The Provider further certifies that in the performance of this Agreement, no person having any such known interests shall be employed.

31. **LOBBYING**

1. **Public Funds** No Federal or State-appropriated funds shall be expended by the Provider for influencing, or attempting to influence, an officer or employee of any agency, a member of Congress or State Legislature, an officer or employee of Congress or State Legislature, or an employee of a member of Congress or State Legislature, in connection with any of the following covered actions: the awarding of any agreement; the making of any grant; the entering into of any cooperative agreement; or the extension, continuation, renewal, amendment, or modification of any agreement, grant, or cooperative agreement. Signing this Agreement fulfills the requirement that Providers receiving over \$100,000 in Federal or State funds file with the Department on this provision.

2. **Federal Certification** Section 1352 of Title 31 of the US Code requires that funds appropriated to a Federal agency be subject to a requirement that any Federal Provider or grantee (such as the Department) certifies that no Federal funds will be used to lobby or influence a Federal officer or member of Congress.

The certification the Department has been required to sign provides that the language of this certification shall be included in the award documents for all sub-awards at all tiers (including sub-agreements, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall verify and disclose accordingly. The certification also requires the completion of Federal lobbying reports and the imposition of a civil penalty of \$10,000 to \$100,000 for failing to make a required report. As a sub-recipient, the Provider understands and agrees to the Federal requirements for certification and disclosure.

3. **Other Funds** If any non-Federal or State funds have been or will be paid to any person in connection with any of the covered actions in this section, the Provider shall complete and submit a "Disclosure of Lobbying Activities" form to the Department.

32. **PROVIDER PERSONNEL**

1. The parties recognize that the primary value of the Provider to the Department derives directly from its Key Personnel assigned in the performance of this Agreement. Key Personnel are deemed to be those individuals whose résumés were offered by the Provider in the Proposal. Therefore, the parties agree that said Key Personnel shall be assigned in accordance with the time frames in the most recent mutually agreed upon project schedule and work plan, and that no re-deployment or replacement of any Key Personnel may be made without the prior written consent of the Agreement Administrator. Replacement of such personnel, if approved, shall be with personnel of equal or greater abilities and qualifications.

2. The Department shall retain the right to reject any of the Provider's employees whose abilities and qualifications, in the Department's judgment, are not appropriate for the performance of this Agreement. In considering the Provider's employees' abilities and qualifications, the Department shall act reasonably and in good faith.

3. During the course of this Agreement, the Department reserves the right to require the Provider to reassign or otherwise remove any of its employees found unacceptable by the Department. In considering the Provider's employees' acceptability, the Department shall act reasonably and in good faith.

4. In signing this Agreement, the Provider certifies to the best of its knowledge and belief that it, and all persons associated with this Agreement, including any Subcontractors, including persons or corporations who have critical influence on or control over this Agreement, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal or State department or agency.

5. During the course of this Agreement, the Department reserves the right to require a background check on any of the Provider's personnel (employees and Subcontractors) that are in any way involved in the performance of this Agreement.

33. **STATE PROPERTY** The Provider shall be responsible for the proper custody and care of any Department or State owned property furnished for the Provider's use in connection with the performance of this Agreement, and the Provider will reimburse the Department for its loss or damage, normal wear and tear excepted.

34. **PATENT, COPYRIGHT, AND OTHER PROPRIETARY RIGHTS**

1. The Provider certifies that all services, equipment, software, supplies, and any other products provided under this Agreement do not, and will not, infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any claim by a third party against the Department, the Department shall promptly notify the Provider and the Provider, at its expense, shall defend, indemnify, and hold harmless the Department against any loss, cost, expense, or liability arising out of such claim, including reasonable attorney fees.

2. The Provider may not publish or copyright any data without the prior approval of the Department. The State and the Federal Government, if applicable, shall have the right to publish, duplicate, use, and disclose all such data in any manner, and for any purpose whatsoever, and may authorize others to do so.

35. **PRODUCT WARRANTY** The Provider expressly warrants its products and services for one full year from their final written acceptance by the Department. The responsibility of the Provider with respect to this warranty is limited to correcting deficiencies in any deliverable using all the diligence and dispatch at its command, at no additional cost to the Department. The Provider is also responsible for correcting and/or updating any documentation affected by any operational support performed under this warranty provision.

36. **OPPORTUNITY TO CURE** The Agreement Administrator may notify the Provider in writing about the Department's concerns regarding the quality or timeliness of a deliverable. Within five (5) business days of receipt of such a notice, the Provider shall submit a corrective action plan, which may include the commitment of additional Provider resources, to remedy the deliverable to the satisfaction of the Agreement Administrator, without affecting other project schedules. The Department's exercise of its rights under this provision shall be not be construed as a waiver of the Department's right to terminate this Agreement pursuant to Section 13, Termination.

37. **COVER** If, in the reasonable judgment of the Agreement Administrator, a breach or default by the Provider is not so substantial as to require termination, and reasonable efforts to induce the Provider to cure the breach or default are unavailing, and the breach or default is capable of being cured by the Department or by another contractor without unduly interfering with the continued performance by the Provider, then the

Department may provide or procure the services necessary to cure the breach or default, in which event the Department shall withhold from future payments to the Provider the reasonable costs of such services.

38. ACCESSIBILITY All IT products must be accessible to persons with disabilities, and must comply with the State Accessibility Policy and the Americans with Disabilities Act. All IT applications must comply with the Computer Application Program Accessibility Standard (Maine.gov/oit/accessiblesoftware). All IT applications and contents delivered through web browsers must comply with the Website Standards (Maine.Gov/oit/webstandard) and the Website Accessibility Policy (Maine.Gov/oit/accessibleweb).

39. STATE IT POLICIES All IT products and services delivered as part of this Agreement must conform to the State IT Policies, Standards, and Procedures (Maine.Gov/oit/oitpolicies) effective at the time this Agreement is executed

40. CONFIDENTIALITY

1. All materials and information given to the Provider by the Department, or acquired by the Provider on behalf of the Department, whether in verbal, written, electronic, or any other format, shall be regarded as confidential information.
2. In conformance with applicable Federal and State statutes, regulations, and ethical standards, the Provider and the Department shall take all necessary steps to protect confidential information regarding all persons served by the Department, including the proper care, custody, use, and preservation of records, papers, files, communications, and any such items that may reveal confidential information about persons served by the Department, or whose information is utilized in order to accomplish the purposes of this Agreement.
3. In the event of a breach of this confidentiality provision, the Provider shall notify the Agreement Administrator immediately.
4. The Provider shall comply with the Maine Public Law, Title 10, Chapter 210-B (Notice of Risk to Personal Data Act).

41. OWNERSHIP

1. All data (including Geographical Information Systems data), notebooks, plans, working papers and other works produced, and equipment and products purchased in the performance of this Agreement are the property of the Department, or the joint property of the Department and the Federal Government, if Federal funds are involved. The State (and the Federal Government, if Federal funds are involved) shall have unlimited rights to use, disclose, duplicate, or publish for any purpose whatsoever all information and data developed, derived, documented, or furnished by the Provider under this Agreement, or equipment and products purchased pursuant to this Agreement. The Provider shall furnish such information and data, upon the request of the Department, in accordance with applicable Federal and State laws.
2. Upon termination of this Agreement for any reason, or upon request of the Department, the Provider agrees to convey to the Department good titles to purchased items free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

42. **CUSTOM SOFTWARE** For all custom software furnished by the Provider as part of this agreement, the following terms and conditions shall apply:

1. The Department shall own all custom software. The Department shall grant all appropriate Federal and State agencies a royalty-free, non-exclusive, and irrevocable license to reproduce, modify, publish, or otherwise use, and to authorize others to do so, all custom software. Such custom software shall include, but not be limited to, all source, object and executable code, operating system instructions for execution, data files, user and operational/administrative documentation, and all associated administrative, maintenance, and test software that are relevant to this Agreement.

2. A fundamental obligation of the Provider is the delivery to the Department of all ownership rights to the complete system, free of any claim or retention of rights thereto by the Provider. The Provider acknowledges that this system shall henceforth remain the sole and exclusive property of the Department, and the Provider shall not use or describe such software and materials without the written permission of the Department. This obligation to transfer all ownership rights to the Department on the part of the Provider is not subject to any limitation in any respect.

43. **OFF-THE-SHELF (OTS) SOFTWARE** For all OTS software purchased by the Provider as part of this Agreement, the following terms and conditions shall apply.

1. This Agreement grants to the Department a non-exclusive and non-transferable license to use the OTS software and related documentation for its business purposes. The Department agrees that the Provider may, at its own expense, periodically inspect the computer site in order to audit the OTS software supplied by the Provider, installed at the Department's site, at mutually agreed upon times. In the event that a separate license agreement accompanies the OTS software, then the terms of that separate license agreement supersede the above license granted for that OTS software.

2. This Agreement does not transfer to the Department the title to any intellectual property contained in any OTS software. The Department will not decompile or disassemble any OTS software provided under this Agreement, or modify any OTS software that bears the copyright notice of a third party. The Department will make and maintain no more than one archival copy (for back-up purpose) of each OTS software, and each copy will contain all legends and notices, and will be subject to the same conditions and restrictions as the original.

3. If the CPU on which any OTS software is licensed becomes temporarily unavailable, use of such OTS software may be temporarily transferred to an alternative CPU until the original CPU becomes available.

44. **SOFTWARE AS SERVICE** When the software is fully owned, hosted, and operated by the Provider, and the Department uses said software remotely over the Internet, the following terms and conditions shall apply:

1. The Provider, as depositor, shall enter into an escrow contract, upon terms acceptable to the Department, with a recognized software Escrow Agent. The escrow contract must provide for the Department to be an additional party/beneficiary. The Provider shall deposit with the Escrow Agent the software, all relevant documentation, and all of the Department's data, and all updates thereof (the "Deposit Materials"), in electronic format. Deposits will occur no less frequently than once a month.

2. The escrow contract shall provide for the retention, administration, and controlled access of the Deposit Materials, and the release of the Deposit Materials to the Department, upon receipt of a joint written instruction from the Department and the Provider, or upon receipt of written notice from the Department that:

- a. The Provider has failed to carry out its obligations set forth in the this Agreement; or
- b. A final, non-appealable judicial determination that the Provider has failed to continue to do business in the ordinary course; or
- c. The Provider has filed a voluntary petition in bankruptcy, or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, or becomes subject to an involuntary petition in bankruptcy, which petition or proceeding is not dismissed or unstayed within sixty (60) days from the date of filing; or
- d. The Provider is in material breach of its maintenance and support obligations and has failed to cure such breach within thirty (30) days from the date of receipt by the Provider of written notice of such breach; or
- e. A condition has occurred that materially and adversely impacts the Provider's ability to support the software and the Provider has failed to cure such condition within thirty (30) days from the date of receipt by the Provider of written notice of such condition.

3. The Provider is responsible for all fees to be paid to the Escrow Agent.

4. The Escrow Agent may resign by providing advance written notice to both the Department and the Provider at least thirty (30) calendar days prior to the date of resignation. In such an event, it is the obligation of the Provider to establish a new escrow account with a new Escrow Agent.

45. PRICE PROTECTION

1. The Provider shall ensure that all prices, terms, and warranties included in this Agreement are comparable to, or better than, the equivalent terms being offered by the Provider to any present customer meeting the same qualifications or requirements as the Department. If, during the term of this Agreement, the Provider enters into agreement(s) that provide more favorable terms to other comparable customer(s), the Provider shall provide the same terms to the Department.

2. If Federal funding is used for the acquisition of products and/or services under this Agreement, interest cannot be paid under any installment purchase or lease-purchase agreement entered into as a part of this Agreement.

46. THIS ITEM IS INTENTIONALLY LEFT BLANK

47. ENTIRE AGREEMENT This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to this Agreement that any implied waiver

occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of this Agreement, or to exercise an option or election under this Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option, or election, but the same shall continue in full force and effect. Use of one remedy shall not waive the Department's right to use other remedies. Failure of the Department to use a particular remedy for any breach shall not be deemed as a waiver for any subsequent breach. No waiver by any party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies under this Agreement.

RIDER C
EXCEPTIONS TO RIDER B-IT

NONE REQUESTED

RIDER D

Not Required; For use at Department's Discretion

NOT APPLICABLE – INTENTIONALLY LEFT BLANK

RIDER E

Not Required: For use at Department's Discretion

NOT APPLICABLE – INTENTIONALLY LEFT BLANK

RIDER F

Not Required: For use at Department's Discretion

NOT APPLICABLE – INTENTIONALLY LEFT BLANK

RIDER G
IDENTIFICATION OF COUNTRY
IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:

- United States. Please identify state: Maine**
- Other. Please identify country: _____**

Notification of Changes to the Information

The Provider agrees to notify the Division of Purchases of any changes to the information provided above.

State of Maine Waiver of Competitive Bidding Request Form

Form Instructions: Please provide the requested information in the white boxes below. This form is to precede all contract requests that are not the direct result of a competitive bid process.

| | | | |
|---|--|--|------------------------------|
| Requesting Department's Contract Administrator: | Dave Packard | Office/Division/Program of Contract Administrator: | Judicial Branch |
| Est. Contract Amount: | \$300,000 annual | Contract or RQS Number: | CT 2017 0419 + 3085 |
| Proposed Start Date: | July 1 st , 2017 | Proposed End Date: | June 30 th , 2022 |
| Vendor/Provider Name, City, State | Portland WebWorks Inc. - Master Agreement 18P - 110310....175 (renewed ctr.#20081223 *3876) | | |
| Short Description of Good or Service: | Infrastructure support, software development, maintenance & Quality Assurance of MJB's legacy enterprise Maine Judicial Information System (MEJIS) – <i>to be deprecated over the next 5 years.</i> | | |
| Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Purchases' website for a period of seven consecutive calendar days. | | To be completed by the Division of Purchases Posting dates on Division of Purchases' website: From: <u>05/18/2017</u> To: <u>05/25/2017</u> | |
| Notice of Intent to Waive Competitive Bidding Number: | | NOI# 0520170658 | |
| 1. Statutory Justification | | | |
| State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification, which applies to this specific request. | | | |
| A. | The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served; | | |
| B. | The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services; | | |
| | <i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i> | <i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i> | |
| | Signature: | Printed Name: | Date: |
| X | C. After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source; | | |
| | D. It appears to be in the best interest of the State to negotiate for the procurement of petroleum products; | | |
| | E. The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs; | | |
| | <i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Purchases "GOVCOOP" form, found here: http://www.maine.gov/purchases/info/forms/govcoop.doc.</i> | | |
| | F. The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids; | | |
| | G. The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need. | | |
| | If a different authorization specifically allows for this non- | | |

State of Maine Waiver of Competitive Bidding Request Form

competitive procurement, please provide that reference here:

Please note that the following four points below (#2 through 5) all require a response.

2. Description of Specific Need

Please identify, and fully describe, the specific problem, requirement, or need the resulting non-competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.

These are services to support the system development and maintenance of the MJB's current enterprise Information System (MEJIS) environment until it is replaced with the new Tyler Technologies Odyssey System (5 years from now).

MEJIS is the MJB's existing enterprise computer information system environment and supports information processing of 14 of the Branches 17 case types, (i.e. criminal, civil, Family Matters, etc.).

3. Availability of other Public Resources

Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.

Via a competitive bid process in 2005, MEJIS 2 has been developed and supported by contracted resources, (ILIOS Inc., NTT Data Inc., and Portland WebWorks Inc.). MEJIS 2 is a custom built system, unique to the Maine Judicial Branch (MJB). In addition, the architecture of MEJIS 2 is a proprietary Apple client/server architecture, which will run only on Apple MACs machines. No other state courts in the country have an Apple client/server solution.

The three vendors have been working closely with the MJB for several years as a "collective" proprietary vendor supporting our infrastructure and engaging in system enhancements and new development. They have been working closely with the MJB and each other to provide project management, requirements analysis, design, coding, testing and training. Breaking them up to compete would significantly disrupt the operational integrity of our current infrastructure. This is particularly problematic for us at this time as we support and augment our current system, while implementing a completely new e-Filing Case Manage System (Tyler's Odyssey Case Manage Sytem) that can support Maine's future e-Filing Initiative. Please see the "eFiling Maine" report at http://www.courts.state.me.us/reports_pubs/reports/index.html

The RFP, Proposal, and Contract for the New eFiling Case Management System (eFMCS), can be viewed at these sites:

- **RFP and Supporting Documents:** <https://sites.google.com/a/courts.maine.gov/electronic-filing/request-for-proposal>
- **Proposals:** <https://sites.google.com/a/courts.maine.gov/electronic-filing/submitted-proposals>
- **Contract:** <https://sites.google.com/a/courts.maine.gov/electronic-filing/efcms-contract>

State of Maine Waiver of Competitive Bidding Request Form

4. Cost

Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are **fair and reasonable**.

The original master contract was the result of a competitive bid process. Depending on the work to be performed and the resources required, the current rates range from \$60/hour to \$120/hour.

5. Future Competition

Please describe potential opportunities, which may be available to foster competition for these goods or services in the future.

As described in section 7 below, the unique skills required to develop and maintain our current environment (MEJIS) will no longer be necessary once Tyler Technologies' new e-Filing Odyssey Case Management System is fully implemented and the current MEJIS system is fully deprecated (2022).

Please note that only one of the two points below ("Uniqueness" or "Timeframe") requires a response. Requesting Departments are not required to respond to both points.

6. Uniqueness

Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

Please see the answer to item number 3 above.

Additionally, the number of enterprises (Fed/State/Local Governments) developing and maintaining an Apple platform is miniscule in the industry, as low as 2% – 3%. In contrast, our new system Case Management System from Tyler Technologies is a mainstream Microsoft .Net application implemented statewide in 11 other states and over 600 counties nationwide.

Without the support of ILIOS/PWW/NTT, almost all knowledge to develop and maintain our current MEJIS environments would be lost. MEJIS' reliability and availability would be greatly affected. Additionally, because of the unique skills and experience required to support the Apple client/server architecture, it would take years for a new contractor to get "up-to-speed", if possible.

State of Maine Waiver of Competitive Bidding Request Form

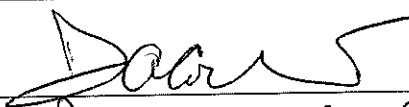
7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

For the next 5 years, MEJIS will need to be maintained while we acquire, customize, migrate to, and implement the new Case Management System. During this 5-year period, additional development of MEJIS will be required to support new statutes and data exchange initiatives.

The period of time is based on the implementation plan of the new Case Management System, which will be implemented in phases over the next 5 years. The new system will be implemented in stages, by judicial region (there are 8 regions). The Violation Bureau will be implemented first in late 2018, followed by Region 5 in 2019, (Region 5 includes Bangor, Newport, Dover-Foxcroft, Lincoln, and Millinocket). The remaining regions will be phased in incrementally after Region 5. During this same period of time, our current system, MEJIS, will be phased-out, region-by-region until it is completely replaced and shut down (summer of 2022).

As stated in item 6 above, without the support of ILIOS/PWW/NTT, all enterprise knowledge would be lost. MEJIS reliability and availability would be greatly affected. Additionally, because of the unique skills required to support the Apple client/server architecture, it would take years for a new contractor to get "up-to-speed", if possible.

| | |
|---|---|
| Signature of requesting Department's Commissioner or Chief Executive (or designee within the Commissioner's Office): | <i>By signing below, I signify that my Department requests, and I approve of, this Waiver of Competitive Bidding.</i> |
| Printed Name: |  Dennis A. Corliss |
| Date: | 4/11/17 |