

Proposed Sole Source Purchase: Document 2023-01

-Specialty Software

The Mid-Region Council of Governments intends to make a purchase for which it believes there is no competition. This will be a "Sole Source" purchase made in accordance with State of New Mexico 13-1-126 NMSA 1978. The purpose of this notice is to attempt to identify possible alternatives.

How to Comment/Respond

Any potential vendor who does not agree that this product or service is available only from the intended source must contact this office within fifteen (30) calendar days from the date posted.

Your response must be in writing and a description of the product or service you are offering as an equivalent must be included.

Please send your response, via e-mail by sending an email to ppino@mrcog-nm.gov. Please reference the Document Number of the Sole Source/Emergency Procurement you have interest in.

A sole source **determination** is not effective until the **sole source request for determination** has been posted for thirty (30) calendar days without challenge, and subsequently approved in writing by the MRCOG Chief Procurement Officer.

I. Name of Agency: Mid-Region Council of Government

Agency Chief Procurement Officer: Phil Pino

Telephone Number: 505-247-1750

II. Name of prospective Contractor: Envision Sustainability Tools, Inc (also known as MetroQuest)

Address of prospective Contractor: 1111 Melville Street, Suite 510, Vancouver, BC, V6E 3V6

Amount of prospective contract: \$50,750

Term of prospective contract: 2 years

III. Please thoroughly list the services (scope of work), construction or items of tangible personal property of the prospective contract:

Envision develops and makes available to transportation planning agencies across the U.S. a planning survey software product called MetroQuest. The software is a SaaS internet application delivered to its customers via the internet and utilized via a web browser. The software includes the survey platform and administrative tools. Software support is provided by Envision for both its customers and for survey respondents. All content data is the property of the customer (MRCOG). Envision provides back-ups and recovery of data, provides a warranty, and provides it's product via an annual subscription.

IV. Provide a detailed, sufficient explanation of the reasons, qualifications, proprietary rights or unique capabilities of the prospective contractor that makes the prospective contractor **the one source** capable of providing the required professional service, service, construction or item(s) of tangible personal property. (Please do not state the source is the "best" source or the "least costly" source. Those factors do not justify a "sole source.")

Response – MetroQuest is software designed specifically to support public planning processes. It has been widely adopted by almost 1/3rd of US DOT's. It has also been adopted for both DOT and state-wide MPO/RPO use in North Carolina, Maine, Virginia and New Hampshire to help bring consistency and efficiency to public involvement for transportation planning in those states. MetroQuest surveys enable the public to learn about the nuances and trade-offs of complex transportation planning initiatives, in a visual and interactive manner, while simultaneously providing the public an opportunity to provide valuable informed input to the project proponents.

- V. Provide a detailed, sufficient explanation of how the professional service, service, construction or item(s) of tangible personal property is/are **unique and how this uniqueness is substantially related to the intended purpose of the contract.**

Response – MetroQuest is a proprietary SaaS based product, licensed via subscription only from Envision. There are no other vendors that provide an offering with the specific capabilities required by the Mid Region Council of Governments as described in detail in the MetroQuest Sole Source Considerations document. Additional specifications can be found in the MetroQuest Service Level Agreement (SLA).

- VI. Explain why other similar professional services, services, construction or item(s) of tangible personal property **cannot** meet the intended purpose of the contract.

Response – MRCOG staff have used other tools to gather input from the public (online surveys, online mapping tools), but these products do not provide the same functionality and engagement potential as MetroQuest.

- VII. Provide a narrative description of the agency’s due diligence in determining the basis for the procurement, including procedures used by the agency to conduct a review of available sources such as researching trade publications, industry newsletters and the internet; reviewing telephone books and other advertisements; contacting similar service providers; and reviewing the State Purchasing Agent’s vendor list. Include a list of businesses contacted (**do not state that no other businesses were contacted**), date of contact, method of contact (telephone, mail, e-mail, other), and documentation demonstrating an explanation of why those businesses could not or would not, under any circumstances, perform the contract; or an explanation of why the agency has determined that no businesses other than the prospective contractor can perform the contract.

Response – MRCOG staff undertook the following as part of our due diligence:

- Staff involved in outreach at other agencies in the region have been asked about known tools that are similar to MetroQuest at a recent Public Engagement and Equity Meeting (January 2023). No other similar tools were brought up.
- Staff continually reads about public outreach efforts across the profession and country, regularly attend related webinars, and read publications such as industry e-newsletters, perform internet research, learn about products/vendors at conferences, etc., but have not come across other tools that are as impactful at providing virtual public engagement as MetroQuest. Reviewing the State Purchasing Agent’s vendor list was not performed since the tool will be purchased using Federal funds.

Certified by:

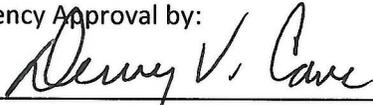
Date: 3/30/2023



 Chief Procurement Officer

Agency Approval by:

Date: 3-30-23



 Executive Director, Dewey V. Cave

Software Subscription and Service Level Agreement

This Software-as-a-Service ("**SaaS**") Subscription and Service Level Agreement (this "**Agreement**"), effective as of [REDACTED] (the "**Effective Date**"), is by and between Envision Sustainability Tools Inc., a private, for-profit corporation incorporated in Canada ("**Envision**"), with principal offices located at 510 – 1111 Melville Street, Vancouver BC, V6E 3V6 and Mid Region Council of Governments (the "**Customer**"), with principal offices located at 809 Copper Avenue NW, Albuquerque NM, 87102 . Envision and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

MetroQuest® online survey software ("**Software**") is an internet application that is developed and provided by Envision. The Software is provided through a SaaS subscription model.

The provision of the SaaS subscription provided by Envision is dictated by this Agreement.

Definitions

"**Authorized User**" means Customer's respective employees, consultants, contractors, and agents who are authorized by Customer to access and use the Software under the rights granted to Customer pursuant to this Agreement.

"**Channel**" refers to the different combinations of hardware and software through which a Survey can be made available to Respondents.

"**Customer Data**" means information, data, and other content, in any form or medium, created by or in any way originating from Customer and all data that is submitted, uploaded, entered in, residing in, produced by, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through use of the Software.

"**Respondent**" means the public and other persons that use the Software to provide input about a project or initiative that the Customer is undertaking and is seeking input on.

"**Survey**" an instance of the Software configured by the Customer specifically for a project or initiative that the Customer is undertaking and is seeking input on.

Software

The Software is a SaaS internet application, meaning that it is delivered to the Customer via the internet and utilized via a web browser. The Software is housed on secure web server(s) and made up of two distinct components:

- i. An online survey platform that can be used by Customer to configure Surveys that can then be made available Respondents, to gather input, the ("**Survey Platform**"); and
- ii. A set of administration tools used to create and manage Surveys and access input data provided by Respondents, the ("**Administration Tools**").

The Survey Platform, any Survey, the Administration Tools and all associated services are collectively the "**Software**."

Software Support

“Support” refers to the Customer’s ability to contact Envision in the event of any questions or problems with the survey or participant data. This includes live survey events and survey events still collecting public input outside of the licence period. Support does not end with the Agreement but with the survey close. Customer can continue to contact.

Envision will provide the following Support for the Software:

For Customers:

- (a) Support will be available to the Customer between the hours of 7:00 am to 5:00 pm Monday to Friday (**“Support Days”**) Pacific Time, excluding New Year’s Day, Good Friday, Labor Day, and Christmas Day, via email, not including priority responses for system outages.
- (b) Support email requests from the Customer (**“Customer Service Request”**) must be sent via email to support@metroquest.com.
- (c) In the event of a Customer Service Request, Envision will:
 - acknowledge the Customer Service Request upon receipt, via email;
 - resolve or develop a resolution plan within 4 hours upon receipt of the first Customer Service Request; and
 - prior to the Customer Service Request being closed, confirm with the Customer that the Service Request has been resolved.

For Respondents:

- (a) Support will be available to the Respondents on Support Days.
- (b) Support email requests from Respondents (**“Respondent Service Request”**) must be sent via email to support@metroquest.com.
- (c) In the event of a Respondent Service Request, Envision will:
 - acknowledge the Respondent Service Request by the Respondent upon receipt via email;
 - notify the appropriate Customer of the Respondent Service Request;
 - work with the Customer to resolve or develop a resolution plan for the Respondent Service Request; and
 - prior to the Respondent Service Request being closed, confirm with the Customer that the Respondent Service Request has been resolved.

Software Availability

Envision will ensure the Software is available 99.5% of the time, measured on a twenty-four (24) hour clock, monthly. The Software is hosted by Microsoft Windows Azure, a cloud-based server technology which delivers a 99.95% monthly service level. (<https://azure.microsoft.com/en-us/support/legal/sla/>). Microsoft Azure is one of the largest and most reliable hosting platforms in the world.

"Downtime" is defined as a system outage or the time(s) when the Software is unavailable as measured from the time a severity level 1, 2 or 3 incident is reported to the time that incident is resolved.

The following table indicates the response and resolution time the Customer can expect, based on the type of incident, defined by "Severity Level" once Envision has been notified of an incident, as well as the remedy that will be provided in the unlikely event that service levels fall below 99.5%.

| Severity Level | Software Component | Incident Type | Response Time | Resolution Time | Rebate |
|----------------|----------------------|--|---------------|-----------------|--|
| 1 | Survey Platform | Full System Outage /or a reproducible error that causes the Survey Platform to crash for a Respondent | 1 hour | 1 day | 1 day credit for each 1 hour of Downtime |
| 1 | Administration Tools | Full System Outage /or a reproducible error that causes the Administration Tools to crash for a Customer | 1 hour | 1 day | 1 day credit for each 1 hour of Downtime |
| 2 | Survey Platform | Partial System Outage/ a reproducible error that has a workaround and does not cause the Survey Platform to crash for a Respondent; or content or other information that are not displaying as agreed upon | 4 hours | 2 days | N/A |
| 2 | Administration Tools | Partial System Outage/ a reproducible error that has a workaround and does not cause the Administration Tools to crash for a Customer | 4 hours | 2 days | N/A |
| 3 | Either | Minor Incident / General Support | 24 hours | 5 days | N/A |

Supported Browsers

Respondents can complete a Survey using the following browsers:

| Desktop | |
|---------------------------------|--|
| Microsoft Edge | Latest stable version supported |
| Mozilla Firefox (all platforms) | Latest stable version supported |
| Google Chrome (Windows and Mac) | Latest stable version supported |
| Safari (Mac) | Latest stable version on latest OS release supported |
| Mobile | |
| Mobile Safari (iOS) | Latest stable version supported |
| Chrome (Android and iOS) | Latest stable version supported |

Authorized Users can utilize the Survey Platform and Administration Tools using the following browsers:

| Desktop | |
|---------------------------------|--|
| Google Chrome (Windows and Mac) | Latest stable version supported |
| Safari (Mac) | Latest stable version on latest OS release supported |

Roles and Responsibilities for Survey Respondents

Three elements are required to enable Survey Respondents to provide Usage Data via a Survey:

- i. A Survey created by an Authorized User that has completed testing by Envision, (“**Pre-Launch**”) and made available for public input;
- ii. A Channel, either:
 - a. a Respondent’s device and the web browser on that device, (“**Web Channel**”);
 - b. a Respondent’s smart phone and the web browser on that smart phone, (“**Smart Phone Channel**”);
 - c. a device and the web browser running on that device provided by Customer directly to a Respondent, (“**Peer-to-Peer Channel**”);
- iii. A connection to the internet.

The following table explains who is responsible for providing each element.

| Elements | Responsibility by Channel | | |
|--|---------------------------|-------------|--------------|
| | Web | Smart Phone | Peer-to-Peer |
| Survey | Envision | Envision | Envision |
| Input Device | Respondent | Respondent | Customer |
| Internet Connection¹ | Respondent | Respondent | Customer |

1. Internet Connection is the sole responsibility of the Respondent or Customer. In the case of the Peer-to-Peer Channel, the Customer will provide an active internet connection that is available while the Peer-to-Peer Channel is required.

Data Ownership and Integrity

The Software utilizes two (2) types of Customer Data:

- i. Content provided by the Customer to create a Survey, such as text, images, numeric information, ("**Content Data**");
- ii. Information collected from Respondents by the Software based on Respondents providing input to a Survey, ("**Usage Data**").

Content Data Ownership and Use

Envision agrees that the Customer is the owner of all Customer Data, including any content, Content Data and Usage Data uploaded to the Survey Platform. Envision acknowledges that all Content Data is and remains the property of the Customer or the respective owner of the Content Data in the case where the Content Data belongs to another party. The Customer acknowledges that it has the right to use the Content Data that is uploaded to the Survey Platform as part of a public Survey or has obtained permission from the respective owner to use the Content Data as part of a public Survey. Envision shall not be responsible for any copyright infringement claims by third parties relating solely to the use of Content Data provided by the Customer.

Usage Data Ownership, Reporting and Delivery

Envision acknowledges that all Usage Data is and remains the property of the Customer or their client in the case where the Usage Data is being collected on behalf of the Customer's client. Envision reserves the right to utilize all non-personal Usage Data collected for the sole purpose of determining trends and patterns in usage. For purpose of clarification, Envision may not use any Respondent or Customer names, email addresses, phone numbers, comments or questions uploaded by or related to a Respondent. Envision represents and warrants that it has or will obtain permission from the respective owner to use the Usage Data as required by applicable laws, including applicable data security and privacy laws.

Usage Data is based on Respondent activity and Respondent responses collected during a "**Respondent Session**". A Respondent Session is defined below for each Channel:

- i. A Web session is defined as all interaction with a Survey from within a single browser window; opening a new browser tab and/or browser window and subsequently navigating to a Survey in this new window constitutes a new session;
- ii. A Smart Phone session is defined as all interaction with a Survey from within a single browser window; opening a new browser tab and/or browser window and subsequently navigating to a Survey in this new window constitutes a new session;
- iii. A Peer-to-Peer session is defined as all interaction with a Survey from an individual once the Customer provides access to a Survey via the Customer's device for a Respondent, until the Respondent stops providing input.

At the “**Closing of the Survey**”, defined at the point in time when a Survey is no longer available to receive Respondent input, all Usage Data collected can be accessed via the Administration Tools. The Usage Data can be downloaded via the Administration Tools in Microsoft Excel format.

The Customer may request that Envision delete all Usage Data collected for a particular Survey after the Closing of the Survey. Envision agrees to comply with such a request within thirty (30) business days.

Backups and Recovery

Envision will use reasonable endeavors to backup all data required to recover from a disaster within 5 business days. As Envision uses Microsoft Azure as its platform provider, this will involve backing up data both within the data center where the data resides (primary data center), as well as one other Azure data center within the United States. The data center to data center backup will occur daily.

In the event of a disaster, defined as a Severity Level 1 service outage for more than 12 hours in the primary data center, Envision will undertake a disaster recovery. Software availability will be restored within 5 business days of the start of the disaster recovery commencing.

Use of Personal Information

For some Surveys the Survey Platform may be setup by the Customer and subsequently used to collect Personal Information such as names and email addresses. The decision to use the Software to collect Personal Information rests entirely with the Customer. In the event that Personal Information is collected, Envision warrants that it will never, under any circumstances, use this information for any purpose without the express written consent of the Customer. This information will only be provided to the Customer. The Customer may request that Envision delete all Personal Information collected from a particular Survey after the Closing of the Survey. Envision agrees to comply with such a request within thirty (30) business days.

System Security

The MetroQuest servers are hosted by Microsoft Windows Azure, one of the largest and most secure hosting platforms in the world. Our servers are located in at least two (2) of Microsoft’s data centers located in the continental United States. MetroQuest is backstopped by Microsoft’s commitment to security, privacy and data integrity (<https://www.microsoft.com/en-us/trust-center>)

Envision will notify Customer immediately upon discovering any breach or compromise of Envision’s security protocols or measures or any unauthorized access to any personal information and Envision shall promptly conduct an investigation and submit an oral report of its findings to Customer within forty-eight (48) hours, to be followed by a written report within seven (7) days. Envision will cooperate with Customer in connection with the investigation and incident management of any such event.

Envision logs all access to the Administration Tools and Survey Platform. In addition, it maintains audit logs for all direct database access.

Administration Tools Security

Envision utilizes Azure Active Directory to provide authentication services for authorized users of the Administration Tools.

Warranties

Envision warrants that during the term of this Agreement the Software (i) will be provided in compliance with all applicable laws and (ii) does not contain any virus or other malicious code. Envision further represents and warrants that it has, and throughout the term of this Agreement and any additional periods during which Envision does or is required to provide the Software, it will have, the unconditional and irrevocable right, power, and authority to provide the Software and grant and perform all rights and licenses granted or required to be granted by it under this Agreement.

Envision does not warrant that:

- (a) The Software will be uninterrupted or error free;
- (b) The Software will meet Customer's requirements, other than as expressly set out in this Agreement; or
- (c) The Software will be free from external intruders (hackers), denial of services attack, or other persons having unauthorized access to the services or systems of the Customer.

Nothing in the above warranty exclusions negates any of Envision's representations expressly set forth in this Agreement.

Publicity, Publication and Usage Statistics

In order to improve the Software, Envision computes general usage statistics. As part of promoting its product and services, Envision promotes certain customer Surveys as examples of how to use the Software. Envision may not use Customer's logos or trademarks without Customer's prior written approval and then only to the extent granted in the approval.

Software Intellectual Property Rights and Ownership

The Customer acknowledges that Envision will use the Software to provide the service under this Agreement and the Customer will use the Software to access Usage Data. The Customer acknowledges and agrees that all intellectual property contained in the Software is and will remain the property of Envision and that no part of this Agreement assigns any right, title, or interest in the Software to the Customer.

MetroQuest® is a Registered Trademark of Envision Sustainability Tools, Inc.

Other General Terms

Entire Agreement.

This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

Notices

All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

Amendment and Modification

No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

No Waiver

A party's failure or delay to enforce a provision under this Agreement is not a waiver of its right to do so later.

Governing Law

This Agreement will be governed by and construed in accordance with the laws of British Columbia applicable therein.

Subscription

The Software is provided via an annual subscription.

Subscription Start Date is defined as the Effective Date or the date this agreement is executed, whichever is later.

Subscription Expiry Date is defined as two years (730 days) following the Subscription Start Date.

Last Survey Launch Date is defined as the last date that Survey submitted by Customer for Pre-Launch. Once a Survey is launched, it can remain open for public use indefinitely.

Limited Use

The use of MetroQuest to initiate and launch a MetroQuest Survey, and to receive assistance and support from MetroQuest, is limited to the employees of the Mid Region Council of Governments.

Subscription Fee

An invoice will be issued upon execution of this agreement for the entire Subscription Fee as described in Appendix A. Payment of the Subscription Fee is due on the Subscription Start Date.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Envision Sustainability Tools Inc.

Customer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A – Subscription Details

Quote Reference: 20230302-124326994

| Item | Description | Subscription Fee |
|---|--|--|
| 1-Year MetroQuest Unlimited Subscription | Use of MetroQuest for to create an unlimited number of surveys in up to 3 languages (includes support for an unlimited period of public access for each MetroQuest Survey via computer web browser, mobile and peer to peer tablet; hardware not included) | Year 1 \$25,000 (Due at start of year 1) |
| 1-Year MetroQuest Unlimited Subscription | Use of MetroQuest for to create an unlimited number of surveys in up to 3 languages (includes support for an unlimited period of public access for each MetroQuest Survey via computer web browser, mobile and peer to peer tablet; hardware not included) | Year 2 \$25,750 (if paid at start of year 1) |
| Total | | \$50,750 |

All figures shown are in USA Dollars. Any applicable taxes are not included and will be borne by the Client.

Additional Languages: The process to create and launch a survey in an additional language requires the client to first complete a survey in English. MetroQuest will provide client with a Translation Table of all words/phrases for the client to translate. MetroQuest will utilize the translation to create the additional language survey.

Subscription Renewal: Envision will commit to a 3rd Year License renewal fee of \$26,500 for One year or a Two-Year renewal fee of \$53,800 USD. Renewal rates are contingent on continuity of service.

March 21, 2023

Mid Region Council of Governments

Dear Procurement Official:

Envision Sustainability Tools Inc. ("Envision") is pleased to provide the Mid Region Council of Governments (MRCOG) information pertaining to the proprietary nature of Envision's planning survey software product, MetroQuest. The City of Santa Fe has been successfully using MetroQuest since 2018 to support its planning and outreach efforts and will be able to continue to build on previous surveys, data collected, and knowledge acquired for future success.

MetroQuest is software designed specifically to support public planning processes. It has been widely adopted by almost 1/3rd of US DOT's. It has also been adopted for both DOT and state-wide MPO/RPO use in North Carolina, Maine, Virginia and New Hampshire to help bring consistency and efficiency to public involvement for transportation planning in those states.

MetroQuest surveys enable the public to learn about the nuances and trade-offs of complex transportation planning initiatives, in a visual and interactive manner, while simultaneously providing the public an opportunity to provide valuable informed input to the project proponents.

MetroQuest is a proprietary SaaS based product, licensed via subscription only from Envision. It includes a diverse suite of survey templates that the agency can leverage to create public involvement surveys. These templates include but are not limited to:

- participatory budget allocation by stacking coins in categories
- placing markers (pins) on maps by topic to indicate desired transportation amenities or concerns
- image ranking and voting where the public can first visualize nuances and trade-offs on multiple topics
- rating scenarios (preliminary plans) after first being presented with images, descriptions, and pros & cons indicators
- selecting preferred potential agency planning projects on a map after first seeing locations, attributes, and costs

Envision is the developer, sole owner and sole provider of MetroQuest. There are no third-party vendors or suppliers authorized to sell MetroQuest subscriptions.

There are no other vendors that provide an offering with the specific capabilities required by the City of Santa Fe as described in detail in the MetroQuest Sole Source Considerations document. Additional specifications can be found in the MetroQuest Service Level Agreement (SLA).

Sincerely,



Mike Walsh
President
Envision Sustainability Tools, Inc.