

REQUEST FOR PROPOSALS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
ALAMEDA

REGARDING:

Children's Waiting Room Services
RFP SC 1500.2018.1

PROPOSALS DUE:

May 14, 2018 NO LATER THAN 3:00 P.M. PACIFIC TIME

1.0 BACKGROUND INFORMATION

- 1.1 The Superior Court of California, County of Alameda, “Court” seeks a vendor to provide childcare services for the Court’s children’s waiting room (CWR) for an initial one (1) year period, starting July 1, 2018 and will be renewable at the option of the Court for up to four (4) additional one (1) year periods.

CWR services are provided on a drop in basis to parents and guardians having business in the Court, are available for children up to the age of 16, and operate without charge to the public. Currently the Court operates CWRs in Hayward, but have additional CWR locations in Oakland, Dublin, and San Leandro.

2.0 DESCRIPTION OF SERVICES AND DELIVERABLES

The Court seeks the services of a person or entity with expertise in childcare services for the Court’s children’s waiting room.

- A. Contractor will provide child care services at the Hayward Hall of Justice location 52 weeks per year during specified operating hours, as noted below, excluding Court holidays. Service may change upon 45 days’ notice and hours of operation may be adjusted occasionally to better serve the needs of the public and the Court.
- B. The minimum number of staff required to be present at each location is indicated in parentheses below.

	Hours of Operation
Monday to Friday	8:30 AM to 12:30 PM (2) 1:30 PM to 4:30 PM (2)

- C. All the Contractor’s staff for the CWR will have passed the Court mandated background check; screening for substance abuse and a history of child abuse.
- D. If necessary for caregivers to be absent, whether planned or unplanned, or due to a staff emergency, Contractor shall secure a substitute for the absent caregiver with staff that have passed the Court’s mandated background check.
- E. CWR staff must comply with the Court’s Professional Appearance Policy. Exception: CWR staff may wear jeans as long as they do not violate other provisions of the Court’s Professional Appearance Policy.
- F. Follow established safety and security procedures that strictly control access to CWRs, and effectively respond to legal and physical custodial arrangements for children, emergency situations, the remand of parents into custody by the Court, and failure of parents to reclaim their children from the CWR at the appropriate time, all in a manner that minimizes anxiety, fear, and disruption for the child.

- G. The childcare services provided in the Children's Waiting Rooms shall include age-appropriate activities & curriculum to meet the emotional, social, developmental, and physical needs of all children who may use the waiting room.
- i. CWR staff shall ensure all toys and equipment are safe and do not pose choking or other hazards.
 - ii. CWR staff shall ensure that educational and play materials contained in the waiting room reflect a range of racial, ethnic, linguistic, and family structures.
 - iii. CWR staff shall provide nutritious snacks to children on a flexible schedule that meets the needs of children who arrive at any time during the day.
 - iv. CWR staff shall utilize procedures and practices for appropriately and thoughtfully dealing with departures, arrivals, separations between children and their families, toileting, napping, and other transitions.
 - v. Non punitive child-centered rules regarding children's behavior and respectful supportive management of that behavior shall be utilized.
 - vi. CWR staff shall maintain a neat, attractive space that encourages confidence in parents deciding to leave their children in the CWR.
 - vii. Contractor is responsible for the service and maintenance costs for all appliances used to maintain the CWR services both Court and Contractor owned.
- H. Use child safety, infection control, facility cleaning, and maintenance procedures that protect children from hazards and harm, and reduce the incidence of illness or injury among staff and visitors.
- I. On a form provided by the Courts, keep accurate monthly statistics regarding number of children and families served by the CWR.
- J. Prior to admittance, a Child Registration Form must be completed, including such items as:
- i. Date
 - ii. Child's name
 - iii. Child's age
 - iv. Address
 - v. Telephone number

- vi. Arrival time
 - vii. Courtroom or location to which parent or guardian is assigned
 - viii. Expected departure time
 - ix. Parent or guardian signature
 - x. Special instructions for the care of the child
- K. The parent or guardian and child will be provided with a form of matching identification.
- L. The parent or guardian is to be provided with a Parent Information Sheet which they are instructed to read carefully. The child care specialist or equivalent reviews the form with the parent or guardian to insure that the parent or guardian understands his/her responsibilities.
- M. Departure Procedures:
- i. Before releasing any child to the parent or guardian, staff must:
 - ii. Verify that the parent or guardian picking up the child satisfies the identification protocol in place which identifies the child to the parent or guardian.
 - iii. Complete the registration process to include:
 - iv. Departure time
 - v. The parent or guardian's signature
- N. PARENT/GUARDIAN RESPONSIBILITIES:
- i. Each parent or guardian who requests that a child be cared for in the Children's Waiting Room will be informed of their obligation to comply with the following rules and responsibilities:
 - i. Registration forms must be complete and signed;
 - ii. Photo identification must be provided upon request;
 - iii. No sick children will be admitted. If it is determined that the child is sick (i.e., lice, chicken pox, fever, etc.) after the parent or guardian leaves, the adult will be contacted and requested to pick-up the child immediately;

- iv. Children will be released only to the parent or guardian satisfying the identification protocol in place. No exceptions will be made unless ordered by a judge or commissioner;
- v. Parent or guardian must inform the Children’s Waiting Room of the courtroom in which their proceeding will take place and in the event of a courtroom change;
- vi. Parent or guardian may not leave the courthouse while the child is in the waiting room. No exceptions;
- vii. If a child is not picked up on time, the Children’s Waiting Room staff may call the Sheriff’s Department to take the child into protective custody;
- viii. No inappropriate language or behavior will be tolerated by adults or children visiting the Children’s Waiting Room; and,
- ix. Children must be picked up no later than closing time as indicated in the Hours of Operation in this Scope of Work. If a child is not picked up on time, the Sheriff’s Department will be contacted and the child will be taken into protective custody.

3.0 TIMELINE FOR THIS RFP

The Court has developed the following list of key events related to this RFP. All dates are subject to change at the discretion of the Court.

EVENT	DATE
RFP issued	April 18, 2018
Deadline for questions	April 25, 2018
Questions and answers posted	April 30, 2018
Latest date and time proposal may be submitted	May 14, 2018
Anticipated interview dates (<i>estimate only</i>)	Week of May 21, 2018
Evaluation of proposals (<i>estimate only</i>)	May 25, 2018
Notice of Intent to Award (<i>estimate only</i>)	June 8, 2018

EVENT	DATE
Negotiations and execution of contract (<i>estimate only</i>)	June 15, 2018
Contract start date (<i>estimate only</i>)	June 16, 2018
Contract end date (<i>estimate only</i>)	June 15, 2022

4.0 RFP ATTACHMENTS

The following attachments are included as part of this RFP:

ATTACHMENT	DESCRIPTION
Attachment 1: Administrative Rules Governing RFPs (Non-IT Services)	These rules govern this solicitation.
Attachment 2: Court Standard Terms and Conditions	If selected, the person or entity submitting a proposal (the “Proposer”) must sign a Court Standard Form agreement containing these terms and conditions (the “Terms and Conditions”).
Attachment 3: Proposer’s Acceptance of Terms and Conditions	On this form, the Proposer must indicate acceptance of the Terms and Conditions or identify exceptions to the Terms and Conditions.
Attachment 4: General Certifications Form	The Proposer must complete the General Certifications Form and submit the completed form with its proposal.
Attachment 5: Darfur Contracting Act Certification	The Proposer must complete the Darfur Contracting Act Certification and submit the completed certification with its proposal.
Attachment 6: Payee Data Record Form	This form contains information the Court requires in order to process payments and must be submitted with the proposal.
Attachment 7: Unruh and FEHA Certification	The Proposer must complete the Unruh Civil Rights Act and California Fair Employment and Housing Act Certification.

5.0 PAYMENT INFORMATION

- The Court will process for payment invoices within 45 days of receipt and approval by Court’s Project Manager.
- All invoices must reference contract purchase order.

- Court will not pay or reimburse vendor, or their employees, for travel, or any other related, expenses that are required as part of the Scope of Work.
- Any requests made outside of the contract scope of work will be considered a separate purchase order outside of the contract purchase order and will be processed on a separate purchase order.
- Vendor must provide written notice to Court of the specific excess charge and obtain Court's consent prior to performing any additional service that would incur an excess charge.
- Each monthly billing statement should contain the latest contact phone number to correct or update billing information.
- Payment terms will be specified in the contract document that will be executed as a result of an award made under this RFP, however, prospective Contractors are hereby advised that the Court payments are made by the State of California, and the State does not make any advance payment for services. Payment by the State is normally made based upon completion of tasks as provided for in the agreement between the Court and the selected Service Provider.

6.0 SUBMISSIONS OF PROPOSALS

- 6.1 Proposals should provide straightforward, concise information that satisfies the requirements of the "Proposal Contents" section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the RFP's instructions and requirements, and completeness and clarity of content.
- 6.2 The Proposer must submit its proposal in two parts, the technical proposal and the cost proposal.
- a. The Proposer must submit **one (1) original and five (5) copies** of the technical proposal. The original must be signed by an authorized representative of the Proposer. The original technical proposal (and the copies thereof) must be submitted to the Court in a single sealed envelope, separate from the cost proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.
 - b. The Proposer must submit **one (1) original and five (5) copies** of the cost proposal. The original must be signed by an authorized representative of the Proposer. The original cost proposal (and the copies thereof) must be submitted to the Court in a single sealed envelope, separate from the technical proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.
 - c. The Proposer must submit an electronic version of the entire proposal USB memory stick/flash drive. The files must be in PDF, Word, or Excel formats.

- 6.3 Proposals must be delivered by the date and time listed on the coversheet of this RFP to:

Vicki Leung
Finance & Facilities Division
Procurement Unit
1225 Fallon Street, Room 210
Oakland, CA 94612

- 6.4 Late proposals will not be accepted.
- 6.5 Only written proposals will be accepted. Proposals must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered by hand. Proposals may not be transmitted by fax or email.

7.0 PROPOSAL CONTENTS

7.1 Technical Proposal. The following information must be included in the technical proposal. A proposal lacking any of the following information may be deemed non-responsive.

- a. The Proposer's name, address, telephone and fax numbers, and federal tax identification number. Note that if the Proposer is a sole proprietor using his or her social security number, the social security number will be required before finalizing a contract.
- b. Name, title, address, telephone number, and email address of the individual who will act as the Proposer's designated representative for purposes of this RFP.
- c. For each key staff member: a resume describing the individual's background and experience, as well as the individual's ability and experience in conducting the proposed activities.
- d. Names, addresses, and telephone numbers of a minimum of five (5) clients for whom the Proposer has conducted similar services. The Court may check references listed by the Proposer.
- e. Proposed method to complete the work.
 - i. The evaluation team will be evaluating all proposals submitted based on their ability to provide all the products and services requested by the Court in this RFP. The vendor's ability to meet the requirements provided in section 2.0.

ii. Vendor shall describe the level of customer service that will be provided, including procedures that the vendor has the ability to deliver high quality, children's waiting room services and any other services consistent with the stated specifications. Selection will result from the Court's overall judgment that a proposal meets or exceeds its requirements, as measured against the following criteria (not listed in order of importance):

- Superior responsiveness to specifications, quality of work plan, and demonstrated understanding of the purposes of this project. Specifications for documentation, performance, service or any other deliverables are the minimum requirements for this RFP. Provider qualifications, office hours, and prompt and continuous availability of quality care during the Children's Waiting Room's proposed hours are critical.
- The number of years the vendor has been in business, the size of its organization, the number of employees and the number of their successful drop-in child waiting room facilities operated by the vendor under similar conditions to those proposed for the Children's Waiting Room.
- Capabilities of the vendor in terms of qualifications and relevant past experience. Vendors shall indicate their past performance functioning as a vendor agency, including past performance in providing similar types of program services, children's waiting room services, and/or family support services; and working with the target population and with the judiciary.
- Past service history of vendor regarding child safety, family and staff satisfaction. Indicate any significant problems that have occurred at a program owned, operated or serviced by your agency (e.g. complaints, lawsuits and liability proceedings, incidents when a child was seriously injured or killed; findings of the sexual abuse, physical abuse or neglect of a child by a staff member, employee discrimination or wrongful dismissal suits). Discuss any corrective action that the agency has taken as a result of the problem or problems.
- Start Up and Transition Plan – If the proposer would be a new CWR provider, or is an existing provider proposing to modify its existing organizational model, provide a description of the plan to start up operations and transition representation from the current CWR provided. If a proposer does not require a startup and transition plan, a statement to that effect must be provided in this section.

f. Acceptance of the Terms and Conditions.

- i. On Attachment 3, the Proposer must check the appropriate box and sign the form. If the Proposer marks the second box, it must provide the required additional materials. An "exception" includes any addition, deletion, or other modification.
 - ii. If exceptions are identified, the Proposer must also submit (i) a red-lined version of the Terms and Conditions that implements all proposed changes, and (ii) a written explanation or rationale for each exception and/or proposed change.
- g. Certifications, Attachments, and other requirements.
- i. The Proposer must complete the General Certifications Form (Attachment 4) and submit the completed form with its proposal.
 - ii. The Proposer must complete the Darfur Contracting Act Certification (Attachment 5) and submit the completed certification with its proposal.
 - iii. If Contractor is a California corporation, limited liability company ("LLC"), limited partnership ("LP"), or limited liability partnership ("LLP"), proof that Contractor is in good standing in California. If Contractor is a foreign corporation, LLC, LP, or LLP, and Contractor conducts or will conduct (if awarded the contract) intrastate business in California, proof that Contractor is qualified to do business and in good standing in California. If Contractor is a foreign corporation, LLC, LP, or LLP, and Contractor does not (and will not if awarded the contract) conduct intrastate business in California, proof that Contractor is in good standing in its home jurisdiction.
 - iv. Copies of the Proposer's (and any subcontractors') current business licenses, professional certifications, or other credentials.
 - v. Proof of financial solvency or stability (e.g., balance sheets and income statements).
 - vi. The Proposer must complete the Unruh Civil Rights Act and California Fair Employment and Housing Act Certification (Attachment 7) and submit the completed certification with its bid.
- 7.2 Cost Proposal. The following information must be included in the cost proposal.
- i. A detailed line item budget showing total cost of the proposed services.
 - ii. A full explanation of all budget line items in a narrative entitled "Budget Justification."

- iii. A “not to exceed” total for all work and expenses payable under the contract, if awarded.

NOTE: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

8.0 OFFER PERIOD

A Proposer's proposal is an irrevocable offer for ninety (90) days following the proposal due date. In the event a final contract has not been awarded within this period, the Court reserves the right to negotiate extensions to this period.

9.0 EVALUATION OF PROPOSALS

- 9.1 At the time proposals are opened, each proposal will be checked for the presence or absence of the required proposal contents.

The Court will evaluate the proposals on a 100 point scale using the criteria set forth in the table below. Award, if made, will be to the highest-scored proposal.

If a contract will be awarded, the Court will post an intent to award notice at <http://www.alameda.courts.ca.gov/Pages.aspx/Contract-Opportunities>.

CRITERION	MAXIMUM NUMBER OF POINTS
<i>Quality of work plan submitted</i>	25
<i>Experience on similar assignments and review and evaluation of Contractor’s submittals of past service history</i>	10
<i>Cost</i>	30
<i>Credentials of staff to be assigned to the project</i>	10
<i>Acceptance of the Terms and Conditions</i>	10
<i>Ability to meet timing requirements to complete the project</i>	12
<i>DVBE Preference</i>	3

9.2 Criterion Details

- a. Quality of work plan submitted: Section 2.0
- b. Experience on similar assignments: Section 7.1.E
- c. Cost: Section 7.2.
- d. Credentials of staff to be assigned to the project: Section 7.1.C.
- e. Acceptance of the Term and Conditions: Section 7.1.F.
- f. Ability to meet timing requirements to complete the project: Section 2.0.B and 2.0.D.
- g. DVBE Preference: Section 13.0.

11.0 INTERVIEWS

The Court may conduct interviews with Proposers to clarify aspects set forth in their proposals or to assist in finalizing the ranking of top-ranked proposals. The interviews may be conducted in person or by phone. If conducted in person, interviews will likely be held at the Court's offices. The Court will not reimburse Proposers for any costs incurred in traveling to or from the interview location. The Court will notify eligible Proposers regarding interview arrangements.

12.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

PROPOSALS ARE SUBJECT TO DISCLOSURE PURSUANT TO APPLICABLE PROVISIONS OF THE CALIFORNIA PUBLIC CONTRACT CODE AND RULE 10.500 OF THE CALIFORNIA RULES OF COURT. The Court will not disclose (i) social security numbers, or (ii) balance sheets or income statements submitted by a Proposer that is not a publicly-traded corporation. All other information in proposals will be disclosed in response to applicable public records requests. Such disclosure will be made regardless of whether the proposal (or portions thereof) is marked "confidential," "proprietary," or otherwise, and regardless of any statement in the proposal (a) purporting to limit the Court's right to disclose information in the proposal, or (b) requiring the Court to inform or obtain the consent of the Proposer prior to the disclosure of the proposal (or portions thereof). Any proposal that is password protected, or contains portions that are password protected, may be rejected. Proposers are accordingly cautioned not to include confidential, proprietary, or privileged information in proposals.

13.0 DISABLED VETERAN BUSINESS ENTERPRISE INCENTIVE

Qualification for the DVBE incentive is not mandatory. Failure to qualify for the DVBE incentive will not render a proposal non-responsive.

Eligibility for and application of the DVBE incentive is governed by the Court's DVBE Rules and Procedures. Proposer will receive a DVBE incentive if, in the Court's sole determination, Proposer has met all applicable requirements. If Proposer receives the DVBE incentive, a number of points will be added to the score assigned to Proposer's proposal. The number of points that will be added is specified in Section 10.0 above.

A DVBE incentive of 3% is open to all DVBE (Disabled Veteran Business Enterprise) vendors participating in this solicitation. Vendor's applicable for the DVBE incentive, must complete Attachment 7 (Bidder Declaration form) and Attachment 8 (DVBE Declaration form). Please submit these forms along with your RFP for review.

14.0 PROTESTS

Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contracting Manual (see www.courts.ca.gov/documents/jbcl-manual.pdf). Failure of a Proposer to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the Court to receive a solicitation specifications protest is the proposal due date. Protests should be sent to:

Laura Stine
Superior Court of California, County of Alameda
1225 Fallon Street, Room 210
Oakland, CA 94612

The deadline to submit an Award Protest is five (5) business days after the Court posts the intent to award. Protests should be sent to:

Attn: Laura Stine
Superior Court of California, County of Alameda
1225 Fallon Street, Room 210
Oakland, CA 94612

**ATTACHMENT 1
ADMINISTRATIVE RULES GOVERNING RFPS
(NON-IT SERVICES)**

**1. COMMUNICATIONS WITH THE JUDICIAL BRANCH ENTITY ("COURT")
REGARDING THE RFP**

Except as specifically addressed elsewhere in the RFP, Proposers must send any communications regarding the RFP to bidquestions@alameda.courts.ca.gov (the "Solicitations Mailbox"). Proposers must include the RFP Number in subject line of any communication.

2. QUESTIONS REGARDING THE RFP

Proposers interested in responding to the RFP may submit questions via email to the Solicitations Mailbox on procedural matters related to the RFP or requests for clarification or modification of the RFP no later than the deadline for questions listed in the timeline of the RFP. Once submitted, questions become part of the procurement file and are subject to disclosure; Proposers are accordingly cautioned not to include any proprietary or confidential information in questions. If the Proposer is requesting a change, the request must set forth the recommended change and the Proposer's reasons for proposing the change. Questions or requests submitted after the deadline for questions will not be answered. Without disclosing the source of the question or request, a copy of the questions and the Court's responses will be made available prior to the proposal due date and time.

3. ERRORS IN THE RFP

- A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer must immediately notify the Court via email to the Solicitations Mailbox and request modification or clarification of the RFP. Without disclosing the source of the request, the Court may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.
- B. If a Proposer fails to notify the Court of an error in the RFP known to the Proposer, or an error that reasonably should have been known to the Proposer, before the proposal due date and time listed in the timeline of the RFP, the Proposer shall propose at its own risk. Furthermore, if the Proposer is awarded the agreement, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

4. ADDENDA

- A. The Court may modify the RFP before the proposal due date and time listed in the timeline of the RFP by issuing an addendum. It is each Proposer's responsibility to inform itself of any addendum prior to its submission of a proposal.
- B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the Court via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS

A Proposer may withdraw its proposal at any time before the deadline for submitting proposals by notifying the Court in writing of its withdrawal. The notice must be signed by the Proposer. The Proposer may thereafter submit a new or modified proposal, provided that it is received at the Court no later than the proposal due date and time listed in the timeline of the RFP. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the proposal due date and time listed in the timeline of the RFP.

6. ERRORS IN THE PROPOSAL

If errors are found in a proposal, the Court may reject the proposal; however, the Court may, at its sole option, correct arithmetic or transposition errors or both on the basis that the lowest level of detail will prevail in any discrepancy. If these corrections result in significant changes in the amount of money to be paid to the Proposer (if selected for the award of the agreement), the Proposer will be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the proposal.

7. RIGHT TO REJECT PROPOSALS

- A. Before the proposal due date and time listed in the timeline of the RFP, the Court may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, the Court may reject all proposals and cancel the RFP if the Court determines that: (i) the proposals received do not reflect effective competition; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the Court.
- B. The Court may or may not waive an immaterial deviation or defect in a proposal. The Court's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a Proposer from full compliance with RFP specifications. Until a contract resulting from this RFP is signed, the Court reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual Proposers if it is deemed in the Court's best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.

- C. The Court reserves the right to issue similar RFPs in the future. The RFP is in no way an agreement, obligation, or contract and in no way is the Court or the State of California responsible for the cost of preparing the proposal.
- D. Proposers are specifically directed **NOT** to contact any Court personnel or consultants for meetings, conferences, or discussions that are related to the RFP at any time between release of the RFP and any award and execution of a contract. Unauthorized contact with any Court personnel or consultants may be cause for rejection of the Proposer's proposal.

8. EVALUATION PROCESS

- A. An evaluation team will review all proposals that are received by the appropriate deadline to determine the extent to which they comply with RFP requirements.
- B. Proposals that contain false or misleading statements may be rejected if in the Court's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP.
- C. During the evaluation process, the Court may require a Proposer's representative to answer questions with regard to the Proposer's proposal. Failure of a Proposer to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.
- D. In the event of a tie, the contract will be awarded to the winner of a single coin toss. The coin toss will be witnessed by two Court employees. The Court will provide notice of the date and time of the coin toss to the affected Proposers, who may attend the coin toss at their own expense.

9. DISPOSITION OF MATERIALS

All materials submitted in response to the RFP will become the property of the Court and will be returned only at the Court's option and at the expense of the Proposer submitting the proposal.

10. PAYMENT

- A. Payment terms will be specified in any agreement that may ensue as a result of the RFP.
- B. **THE COURT DOES NOT MAKE ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as provided in the agreement between the Court and the selected Proposer. The Court may withhold ten percent of each invoice until receipt and acceptance of the final deliverable. The amount of the withhold may depend upon the length of the project and the payment schedule provided in the agreement between the Court and the selected Proposer.

11. AWARD AND EXECUTION OF AGREEMENT

- A. Award of contract, if made, will be in accordance with the RFP to a responsible Proposer submitting a proposal compliant with all the requirements of the RFP and any addenda thereto (including any administrative or technical requirements), except for such immaterial defects as may be waived by the Court.
- B. A Proposer submitting a proposal must be prepared to use a standard Court contract form rather than its own contract form.
- C. The Court will make a reasonable effort to execute any contract based on the RFP within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by a Proposer may delay execution of a contract.
- D. Upon award of the agreement, the agreement shall be signed by the Proposer in two original contract counterparts and returned, along with the required attachments, to the Court no later than ten (10) business days of receipt of agreement form or prior to the end of June if award is at fiscal year-end. Agreements are not effective until executed by both parties. Any work performed before receipt of a fully-executed agreement shall be at the Proposer's own risk.

12. FAILURE TO EXECUTE THE AGREEMENT

The period for execution set forth in Section 11 ("Award and Execution of Agreement") may only be changed by mutual agreement of the parties. Failure to execute the agreement within the time frame identified above constitutes sufficient cause for voiding the award. Failure to comply with other requirements within the set time constitutes failure to execute the agreement. If the successful Proposer refuses or fails to execute the agreement, the Court may award the agreement to the next qualified Proposer.

13. NEWS RELEASES

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of the Court Executive Officer.

14. ANTI-TRUST CLAIMS

- A. In submitting a proposal to the Court, the Proposer offers and agrees that if the proposal is accepted, the Proposer will assign to the Court all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the Court pursuant to the proposal. Such assignment

shall be made and become effective at the time the Court tenders final payment to the Proposer. (See Government Code section 4552.)

- B. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Proposer shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid.
- C. Upon demand in writing by the Proposer, the Court shall, within one year from such demand, reassign the cause of action assigned under this section if the Proposer has been or may have been injured by the violation of law for which the cause of action arose and (a) the Court has not been injured thereby, or (b) the Court declines to file a court action for the cause of action. (See Government Code section 4554.)

15. AMERICANS WITH DISABILITIES ACT

The Court complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to the Court Executive Officer.

ATTACHMENT 2

General Terms and Conditions

1. Provisions Applicable to Services

- 1.1 Qualifications.** Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the Court is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.
- 1.2 Turnover.** Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.
- 1.3 Background Checks.** Contractor shall cooperate with the Court if the Court wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Court may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Court of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Court and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the Court: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the Court, the Court advises are unacceptable to the Court.

2. Contractor Certification Clauses. Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the Court if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

- 2.1 Authority.** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.
- 2.2 Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Court.
- 2.3 No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- 2.4 No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- 2.5 No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- 2.6 No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.
- 2.7 Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.
- 2.8 Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.

- 2.9 No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- 2.10 Noninfringement.** The Goods, Services, Deliverables, and Contractor's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3. Insurance

- 3.1 Basic Coverage.** Contractor shall provide and maintain at the Court's discretion and Contractor's expense the following insurance during the Term:
- A. Commercial General Liability.** The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
 - B. Workers Compensation and Employer's Liability.** The policy is required only if Contractor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
 - C. Automobile Liability.** This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
 - D. Professional Liability.** This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.
 - E. Commercial Crime Insurance.** This policy is required only if Contractor handles or has regular access to the Court's funds or property of significant value to the Court. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$500,000.

- 3.2 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 3.3 Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.4 Deductibles and Self-Insured Retentions.** Contractor shall declare to the Court all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Court's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- 3.5 Additional Insured Endorsements.** Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Court, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.
- 3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the Court certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days' prior written notice to the Court.
- 3.7 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Court, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the Court or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any Goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Court's prior written consent, which consent shall not be unreasonably withheld; and the Court shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through

counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

5. **Option Term.** Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the Court may, at its sole option, extend this Agreement for a single one-year term, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the Court must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Contractor's signature.
6. **Tax Delinquency.** Contractor must provide notice to the Court immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Court may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.
7. **Termination**
 - 7.1 **Termination for Convenience.** The Court may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Court, Contractor shall immediately: (a) stop Services as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.
 - 7.2 **Termination for Cause.** The Court may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the Court, is not capable of being cured within this cure period); (ii) Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
 - 7.3 **Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
 - 7.4 **Termination for Changes in Budget or Law.** The Court's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Court may terminate this Agreement or limit Contractor's Services (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the Court if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Court determines that Contractor's performance under this Agreement has become infeasible due to changes in applicable laws.
 - 7.5 **Rights and Remedies of the Court.**
 - A. *Nonexclusive Remedies.* All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Court immediately if Contractor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Contractor is in default, the Court may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the Court's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

- B. *Replacement.* If the Court terminates this Agreement in whole or in part for cause, the Court may acquire from third parties, under the terms and in the manner the Court considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the Court for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Court for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Court. Contractor shall continue any Services not terminated hereunder.
- C. *Delivery of Materials.* In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the Court with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any Court-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the Court shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the Court’s termination is not for cause, the Court shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the Court’s termination Notice.

7.6 **Survival.** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

8. **Assignment and Subcontracting.** Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Court. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

9. **Notices.** Notices must be sent to the following address and recipient:

If to Contractor:	If to the Court:
<u>[name, title, address]</u>	<u>[name, title, address]</u>
<u>With a copy to:</u>	<u>With a copy to:</u>

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10. **Provisions Applicable to Certain Agreements.** The provisions in this section are *applicable only to the types of orders specified in the first sentence of each subsection*. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

10.1 **Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no Court funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no Court funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

10.2 **Domestic Partners, Spouses, and Gender Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with, PCC 10295.3 which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status.

- 10.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 10.4 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- 10.5 Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to Court an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Court to enter into this Agreement pursuant to PCC 2203(c).
- 10.6 Loss Leader Prohibition.** *If this Agreement involves the purchase of goods, this section is applicable.* Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.
- 10.7 Recycling.** *If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.* Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- 10.8 Sweatshop Labor.** *If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable.* Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the Court.
- 10.9 Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable

only if sufficient funds are made available to the Court by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Court may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.

10.10 DVBE Commitment. *This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement.* Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Court approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Court: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

10.11 Antitrust Claims. *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Court. Such assignment shall be made and become effective at the time the Court tenders final payment to Contractor. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the Court shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the Court has not been injured thereby, or (b) the Court declines to file a court action for the cause of action.

10.12 Legal Services. *If this Agreement is for legal services, this section is applicable.* Contractor shall: (i) adhere to legal cost and billing guidelines designated by the Court; (ii) adhere to litigation plans designated by the Court, if applicable; (iii) adhere to case phasing of activities designated by the Court, if applicable; (iv) submit and adhere to legal budgets as designated by the Court; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the Court; and (vi) submit to legal bill audits and law firm audits if so requested by the Court, whether conducted by employees or designees of the Court or by any legal cost-control provider retained by the Court for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the Court. If (a) the Contract Amount is greater than \$50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in section 6213 of the Business and Professions Code, during each year of the Agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours

equal to ten percent (10%) of the Contract Amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a Judicial Branch Entity for legal services.

- 10.13 Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.
- 10.14 Equipment Purchases.** *If this Agreement includes the purchase of equipment, this section is applicable.* The Court may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the Court, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Court at no expense to the Court. If a theft occurs, Contractor must file a police report immediately.
- 10.15 Four-Digit Date Compliance.** *If this Agreement includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the Court. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.
- 10.16 Janitorial Services or Building Maintenance Services.** *If this Agreement is for janitorial or building maintenance services, this section is applicable.* If this Agreement requires Contractor to perform Services at a new site, Contractor shall retain for sixty (60) days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.
- 10.17 Small Business Preference Commitment.** *This section is applicable if Contractor received a small business preference in connection with this Agreement.* Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the Court the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

11. Miscellaneous Provisions.

- 11.1 Independent Contractor.** Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. If any governmental entity concludes that Contractor is not an independent contractor, the Court may terminate this Agreement immediately upon Notice.
- 11.2 GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Contractor must allow the Court or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the Court five percent (5%) or more during the time period subject to audit, Contractor must reimburse

the Court in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.

- 11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services or the delivery of the Goods. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Court's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Court owns all right, title and interest in the Confidential Information. Contractor will notify the Court promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Court to protect such Confidential Information. Upon the Court's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the Court or, if so directed by the Court, destroy all Confidential Information (in every form and medium), and (b) certify to the Court in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Court shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the Court ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the Court.
- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Court.
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Court. A waiver of enforcement of any of this Agreement's terms or conditions by the Court is effective only if expressly agreed in writing by a duly authorized officer of the Court. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

- 11.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 11.12 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 11.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.14 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 11.15 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.
- 11.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.


ATTACHMENT 3
BIDDER'S ACCEPTANCE OF TERMS AND CONDITIONS

Instructions: Mark the appropriate choice below and sign this attachment.

1. Bidder accepts Attachment 2: Court Standard Terms and Conditions ("Attachment 2") without exception.

OR

2. Bidder proposes exceptions or modifications to Attachment 2. Bidder must also submit (i) a red-lined version of Attachment 2 that clearly tracks proposed modifications, and (ii) a written explanation or rationale for each exception or proposed modification.

BY (Authorized Signature) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**ATTACHMENT 4
GENERAL CERTIFICATIONS FORM**

Check the box below, if agreed, and sign this attachment. Please note that the Court will reject a proposal from a Proposer that does not indicate acceptance of these clauses.


Conflict of Interest. Proposer has no interest that would constitute a conflict of interest under California Public Contract Code (PCC) sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with judicial branch entities.

Suspension or Debarment. Proposer certifies that neither Proposer nor any of Proposer’s intended subcontractors is on the California Department of General Services’ list of firms and persons that have been suspended or debarred from contracting with the state because of a violation of PCC 10115.10, regarding disabled veteran business enterprises.

Tax Delinquency. Proposer certifies that it is not on either (i) the California Franchise Tax Board’s list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization’s list of 500 largest delinquent sales and use tax accounts.

Conflict Minerals. Proposer certifies that either (i) it is not a scrutinized company as defined in PCC 10490(b), or (ii) the goods or services the Proposer would provide to the Court are not related to products or services that are the reason the Proposer must comply with Section 13(p) of the Securities Exchange Act of 1934. (Note: PCC 10490(b) defines a “scrutinized company” as “a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement.”)

Check box to indicate acceptance of the clauses above.

BY (Authorized Signature) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**ATTACHMENT 5
DARFUR CONTRACTING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 10478, if a bidder currently or within the previous three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a “scrutinized company” as defined in PCC 10476, or (ii) receive written permission from the Court to submit a bid.

To submit a bid to the Court, you must complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

OR

2. We are a “scrutinized company” as defined in PCC 10476, but we have received written permission from the Court to submit a bid pursuant to PCC 10477(b). *A copy of the written permission from the Court is included with our bid.*

OR

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a “scrutinized company” as defined in PCC 10476.

CERTIFICATION FOR PARAGRAPH 3:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the bidder to the clause in paragraph 3. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>

ATTACHMENT 7

UNRUH CIVIL RIGHTS ACT AND CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the Court for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the Court for the purchase of goods or services of \$100,000 or more.

CERTIFICATIONS:

1. We are in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. We are in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code); **and**
3. We do not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the proposer/bidder/vendor to certifications made in this document.

<i>Company Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>	