

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

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SUBJECT: Court Facilities Contracting Policies and Procedures (Action Required)

Issue Statement

The Administrative Office of the Courts (AOC), Office of Court Construction and Management (OCCM) staff have prepared new policies and procedures for contracting products and services related to the acquisition and construction of court facilities, titled *Court Facilities Contracting Policies and Procedures*. This policy document fulfills the mandate of the Trial Court Facilities Act of 2002 (Gov. Code, §§ 70301–70404) and the California Government Code concerning the adoption of independent contracting policies and procedures for acquisition and development of court facilities by the Judicial Council in consultation with the state Department of Finance.

Recommendation

Staff of the Administrative Office of the Courts recommend that the Judicial Council approve the *Court Facilities Contracting Policies and Procedures* attached to this report.

Rationale for Recommendation

In accordance with the Trial Court Facilities Act of 2002, the Judicial Council has the authority to establish its own policies and procedures for the planning, acquisition, design, construction, operations, and maintenance of court facilities. The proposed document provides the contracting business community and the general public with a clear description of the AOC's open and competitive processes and establishes a transparent, consistent, and accountable procurement system. The document is also the foundation of AOC staff procedures by which it can determine the most effective methods to achieve the desired results. Such methods will deliver quality products and services at a fair and reasonable cost with the appropriate allocation and management of identified risks.

The Trial Court Facilities Act of 2002 specifically identifies the Judicial Council and the AOC as not subject to the Public Contract Code. However, the intent of many elements of the Public Contract Code remains valid and has informed the development of these recommended policies.

These policies and procedures employ qualifications-based selections that respond to market trends and contemporary best practices in project delivery. These efficient methods will assist in addressing the current backlog of inadequate courthouse facilities that must be brought up to state standards. They also define the types of products, services and contracts that may be utilized in the acquisition and development of court facilities. The competitive proposal process incorporates selection criteria that are based on established standards and that can be cost-based, skill-based, or a combination of the two. Controls exist at each phase of the process to identify qualified providers, to implement emergency measures to deal with critical situations and to provide simplified steps for small scaled needs.

The contracting policies and procedures support the main goals of the court facility improvement program and the mission and policy direction expressed in Goal VI (Branchwide Infrastructure for Service Excellence) of the Judicial Council's Long-Range Strategic Plan, which is to provide safe and secure facilities and to improve existing court facilities to allow adequate and suitable space for the conduct of court business.

Alternative Actions Considered

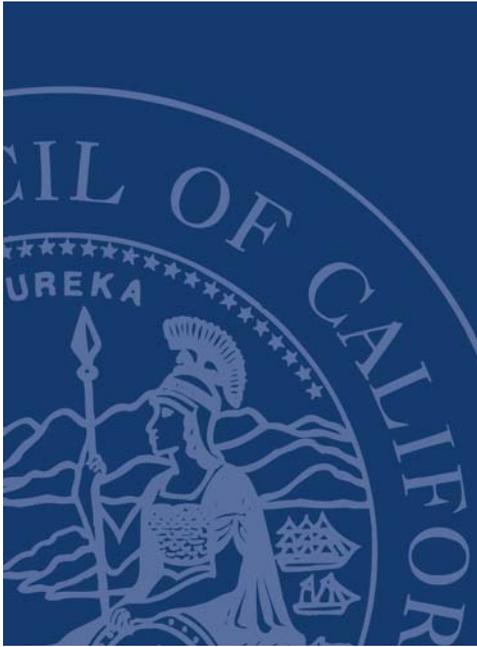
Since the implementation of the Trial Court Facilities Act of 2002, staff have considered the effectiveness of adopting, in whole or in part, various existing contracting policies and procedures, including those found in the *Public Contract Code*, the *State Administrative Manual*, and the policies used by the Department of General Services, the University of California system, the California State University system, the California Community College system, and the AOC. None of these policies provides the flexibility and contemporary best practices in selection processes and delivery methods that are deemed necessary for the AOC OCCM to implement an efficient, modern facilities program.

Comments From Interested Parties

In addition to a public comment period, these contracting policies and procedures have been reviewed by the Judicial Council's Court Facilities Transitional Task Force, the AOC's Office of the General Counsel, the state Department of Finance, and AOC directors. Their comments have been reviewed and incorporated into this policy.

Implementation Requirements and Costs

The procedures for issuing Requests for Qualifications and Requests for Proposals already exist. The contracting policies and procedures potential for creating and maintaining prequalified provider lists reduces the need for repeating expensive and time-consuming selection processes. Notable cost savings and increased staff efficiencies as well as cost competitiveness and higher quality will result from soliciting smaller project-specific bids from the provider list. A predictable standardized process that eliminates ongoing preparation of proposals for similar services will extend cost savings to providers.



Court Facilities Contracting Policies and Procedures

DECEMBER 7, 2007



ADMINISTRATIVE OFFICE
OF THE COURTS

OFFICE OF COURT CONSTRUCTION
AND MANAGEMENT

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I. POLICY

To provide Californians the best value initially and over the long-term operational life of court facilities the Administrative Office of the Courts (AOC) will follow competitive practices as set forth in these policies and procedures when contracting with qualified firms and individuals for products and services to be used in the planning, acquisition, design, construction, operation, and maintenance of trial and appellate court facilities.

II. BACKGROUND

The Trial Court Facilities Act of 2002 as amended (the act¹) and the California Rules of Court adopted by the Judicial Council² provide that the Administrative Office of the Courts (AOC) is responsible for acquisition, space programming, construction, design, operation, and maintenance of trial court facilities. Government Code section 69204 provides that the Judicial Council has full authority and responsibility for appellate court facilities, including their acquisition and development. Both the act and the statutes applicable to appellate court facilities require that the Judicial Council adopt policies and procedures that address acquisition and construction of court facilities.

Section 70374(b)(2) of the act states, in pertinent part:

Acquisition and construction of facilities are not subject to the provisions of the Public Contract Code, but shall be subject to facilities contracting policies and procedures adopted by the Judicial Council after consultation and review by the Department of Finance.

The Judicial Council has adopted these policies and procedures in accordance with the above provision. In doing so, the council also has delegated to the Administrative Director of the Courts the authority and responsibility to amend these policies and procedures as necessary or desirable in a manner consistent with the interests of the judicial branch and the public it serves.

The AOC's Office of Court Construction and Management (OCCM) is responsible for administering the policies and procedures described in this document, which is intended to achieve the following objectives:

1. For firms and individuals that provide products and services, this document describes the selection processes to be used by the AOC, the types of products and services that may be required, and the nature of the contracts that may be entered into for trial and appellate court facilities related products and services.
2. For the AOC, this document establishes selection and contracting procedures that provide for qualifications-based selections and acknowledges that contracts must provide for contemporary delivery methods and best practices related to facilities planning, acquisition, design, construction, operations, and maintenance of court facilities.

¹ See Gov. Code, § 70301, et seq.

² See Cal. Rules of Court, rules 10.182(b) and 10.184(b).

3. For the public, this document sets forth fiscally responsible and accountable policies and procedures that are intended to ensure that the best value is received by the judicial branch for the benefit of all Californians.

III. DEFINITIONS

Best Value means that a product or a service provides superior performance with respect to one or more of the following factors: quality, durability, aesthetics, reliability, initial cost, life-cycle cost, energy efficiency, past performance, similar experience, the composition and stability of the Proposer's team, and the capacity of the Proposer to predictably meet quality, budget, and schedule requirements.

A **Blanket Purchase Orders** creates an arrangement under which the AOC contracts with a vendor to provide an undetermined amount of products and ancillary services for a specified period of time and up to a maximum dollar amount.

Construction Manager at Risk (CM@Risk) means a firm or individual selected for facilities work based on qualifications and cost prior to the start of traditional construction activities. CM services include, but are not limited to, early coordination during the design phase, engineering, and constructability reviews. The CM@Risk delivery method entails a commitment by the CM to deliver the project within a Guaranteed Maximum Price (GMP). The CM acts as consultant to the AOC in the design phase, as the equivalent of a general contractor during the construction phase, and is responsible for the selection, scheduling, and sequencing of trade contractors.

A **Contractor** is a person, business, corporation, governmental entity, or other lawfully organized entity that provides products or services to another entity under terms specified in a contract.

A **Design-Build Contract** establishes in one firm a single point of responsibility for design and construction. The most common approach is for a construction contractor to serve as the lead firm and hire an architectural or engineering firm as a subcontractor to perform all design services.

Emergency Conditions require immediate action to return a facility to normal operations or will become immediately critical if they are not corrected expeditiously. Such a condition requires action to stop accelerated deterioration or damage, to correct a safety hazard that imminently threatens loss of life or serious injury to the public or court employees, or to remediate intermittent function or service or potential safety hazards. Such conditions may include but are not limited to: major flooding, substantial damage to roofs or other structural building components, and exposure to hazardous materials. Depending on its scope and impact, a severe deterioration in life safety protection may also be considered an emergency condition requiring a facility modification.

An **Indefinite Delivery/Indefinite Quantity (ID/IQ) Contract** is a contract for products or services for which the scope and delivery time are unknown at the time the contract is executed. Through these contracts Providers are given various assignments based on the location and nature of the products or services and the qualifications and resources of the Providers.

A **Job Order Contract** provides for products or services to be supplied at predefined composite rates, as opposed to a time-and-materials basis.

A **Master Agreement** means an agreement that may be used to facilitate contracting for products or services to be provided by suppliers with whom there is a reasonable expectation of continuing intermittent procurements of the same or similar products or services.

A **Proposer** is a person, business, corporation, governmental entity, or other lawfully organized entity that responds to a Request of Qualifications or Request for Proposal.

A **Public-Private Partnership** is a cooperative venture between the public and private sectors, built on the expertise of each partner that best meets clearly defined criteria to serve public needs through the appropriate allocation of resources, risks, and rewards.

A **Request for Proposal (RFP)** is a document used to solicit proposals for the provision of products and/or services. Proposals received in response to an RFP are compared to each other and judged against predetermined, stated criteria, with the goal of negotiating a contract with one or more Proposers.

A **Request for Qualifications (RFQ)** is a document used to solicit statements of qualifications from providers of products and/or services. Responses are compared to each other and judged against predetermined, stated criteria, with the goal of selecting qualified providers of products and services. RFQs may be used for individual projects or for selection of qualified providers on Short Lists to expedite future contracting.

A **Short List** is a list of firms or individuals who are considered to meet or exceed the selection criteria for a specific Request for Qualifications or Request for Proposals. Firms and individuals may qualify for inclusion on a Short List after evaluation of their statements of qualifications, proposals, and/or interviews.

IV. PROCESS

A. Types of Service Providers

This section lists examples of the types of service providers who may be required by the AOC for planning, acquisition, design, construction, operation, and maintenance of court facilities. Examples include, but are not limited to:

1. Planning and Design Services

- a. Acoustical Consultants
- b. Architects
- c. Audio Visual Consultants
- d. Civil Engineers
- e. Code Compliance Plan Review Services
- f. Computer Aided Drafting and Design (CADD) Services
- g. Cost Estimating Services
- h. Electrical Engineers

- i. Energy Conservation Services
 - j. Engineering Geologists
 - k. Environmental Engineers
 - l. Financial Services for capital planning and development
 - m. Fire Protection Engineers
 - n. Geotechnical Engineers
 - o. Industrial Hygienists
 - p. Information Systems Consultants
 - q. Interior Designers
 - r. Landscape Architects
 - s. Land Surveyors
 - t. Mechanical Engineers
 - u. Parking Consultants
 - v. Planning Services
 - w. Program Services
 - x. Registered Professional Engineers
 - y. Safety Consultants
 - z. Security Consultants
 - aa. Structural Engineers
- 2. Construction Services**
- a. Construction Manager at Risk (CM@Risk) Services
 - b. Design-Build Services
 - c. General Engineering Contractor (California “A” Licensed) Services
 - d. General Building Contractor (California “B” Licensed) Services
 - e. Specialty and Limited Specialty Contractor (California “C” Licensed) Services
- 3. Construction Management Services**
- a. Program Management Services
 - b. Project Management Services
 - c. Construction Management Services
- 4. Specialty Construction Consultant Services**
- a. Fire Alarm Consultant Services
 - b. Fire Sprinkler Consultant Services
 - c. Lighting Consultant Services
 - d. Roofing Consultant Services
 - e. Waterproofing Consultant Services
 - f. Elevator/Escalator Services
- 5. Construction Quality Assurance Services**
- a. Inspector of Record Services

- b. Materials Testing Laboratories
- c. Special Inspection Services

6. Operations and Maintenance Services

- a. Building Management and Maintenance Services
- b. Property Inspection and Assessment Services

7. Environmental Health and Site Safety Services

- a. California Environmental Quality Act (CEQA) Services
- b. Environmental Assessment (Phase I, II, and III) Services
- c. Hazardous Waste and Hazardous Materials Management Services
- d. Industrial Hygiene and Safety Services
- e. Remediation Services

8. Real Estate and Acquisition Services

- a. Appraisal Services
- b. Brokerage Services
- c. Build-to-Suit Leasing Services
- d. Business Consulting Services
- e. Financial Consulting Services
- f. Land Use Services
- g. Lease Audit Services
- h. Real Estate Developer Services
- i. Real Estate Services
- j. Title Services

9. Public Private Partnerships

- a. Design-Build
- b. Design-Build-Operate-Maintain
- c. Design-Build-Finance-Operate-Maintain
- d. Land Acquisition-Design-Build-Finance-Move-Operate-Maintain

B. Types of Products

This section lists examples of the types of products that may be required by the AOC for planning, acquisition, design, construction, operation, and maintenance of court facilities. Examples include, but are not limited to:

1. Fixtures

- a. High Density Files
- b. Shelving
- c. Storage Racks

2. Furniture

- a. Exterior Furniture
- b. Freestanding Furniture
- c. Modular Furniture

3. Equipment

- a. Automated Teller Machines (ATMs) and Information Kiosks
- b. Audio Visual Equipment
- c. Health and Safety Equipment
- d. Information Technology Infrastructure
- e. Security Equipment
- f. Teleconference Equipment
- g. Telephone Equipment

4. Other

- a. Artwork
- b. Interior Plants

C. Types of Contracts

This section lists examples of the types of contracts that may be required by the AOC for planning, acquisition, design, construction, operation, and maintenance of court facilities. Because the AOC intends to keep pace with the changing product, service, and delivery environment, as the industry develops new concepts, the AOC will develop new types of contracts. Examples include, but are not limited to:

1. Contracts for Construction

- a. Bid-Build Contracts
- b. Construction Manager at Risk (CM@Risk) Contracts
- c. Design-Build Contracts
- d. Design-Build-Operate-Maintain Contracts
- e. Design-Build-Finance-Operate-Maintain Contracts
- f. ID/IQ Construction Contracts
- g. Job Order Construction Contracts
- h. Land Acquisition-Design-Build-Finance-Move-Operate-Maintain Contracts
- i. Lease Purchase Construction Contracts

2. Contracts for Services

- a. Architectural and/or Engineering Service Contracts
- b. Construction Management Agency Contracts
- c. Construction Quality Assurance Service Contracts
- d. Consultant Service Contracts
- e. Environmental Health and Safety Services Contracts
- f. ID/IQ Service Contracts

- g. Job Order Service Contracts
- h. Moving and Relocation Service Contracts
- i. Operations and Maintenance Service Contracts
- j. Parking Service Contracts
- k. Performance-Based / Cost Reimbursable Contracts
- l. Real Estate and Acquisition Service Contracts
- m. Specialty Construction Consultant Service Contracts
- n. Storage and Warehousing Services Contracts
- o. Utilities Service Contracts
- p. Waste Management Service Contracts

3. Contracts for Products

- a. Project Specific Contracts
- b. Blanket Purchase Orders
- c. Master Agreements

D. Selection Procedure

This section describes the procedures that the AOC will typically follow when seeking to contract for the planning, acquisition, design, construction, operation, and/or maintenance of court facilities. These procedures are intended to assist the AOC in its evaluation of Proposers' products or services and qualifications in order to contract with firms and individuals having the demonstrated capacity to reliably meet contractual obligations thereby securing the best value for the AOC and the public. The following sections describe the typical RFQ or RFP solicitation, selection, and award procedures.

1. General

- a. An OCCM Assistant Division Director may approve alternatives to the described procedures when products or services are of limited scope or for other documented reasons as necessary or appropriate and consistent with the interests of the public and the judicial branch.
- b. Other selection methods may be used in special situations, including:
 - i. Emergency Selection Procedures (see Section 10); and
 - ii. Sole Source Contracts (see Section 11).
- c. Firms and individuals interested in providing services to the AOC must follow the specific instructions as published in the RFQ or RFP to establish their qualifications and/or the competitiveness of their proposals. To the extent they are inconsistent, the specific RFQ or RFP instructions take precedence over this general procedure.
- d. Cost or price may be one qualifying factor or, as in the traditional design-bid-build model, it may be the primary qualifying factor for selecting properly licensed and qualified bidders.

2. Announcement

- a. The AOC publishes RFQs and RFPs seeking submittals from firms or individuals interested in providing products or services to the AOC. Announcements typically will address the following: the purpose of the RFQ or RFP, the scope of service, the

- method of response, the evaluation and selection process, special requirements, administrative rules governing the process, and disabled veteran business enterprise (DVBE) participation goals. Sample contract terms will be included with the RFQ or RFP application materials provided to interested parties. A reasonable length of time, no less than two weeks, will be given between the published notification of an RFQ or RFP and the closing date for submissions. Announcements will be placed on the California Courts Web site (www.courtinfo.ca.gov) and in other media which may include, but are not limited to, the California State Contracts Register (CSCR) Web site (www.cscr.dgs.ca.gov/cscr), a general circulation publication in the geographic area in which the work is located, a trade paper, or journals targeting Disabled Veteran Business Enterprises. Proposers may also be sought by direct solicitation.
- b. Announcements and notifications for RFQs, RFPs, Addenda, Short List Announcements, Related Documents, Notices of Intent to Award, and Awards will be posted on the California Courts Web site. Where no appropriate Short List exists and with the approval of the OCCM Assistant Division Director, announcements and notifications regarding purchases of products or services may be sent informally to a limited number of providers via e-mail or facsimile instead of being posted on the California Courts Web site. Protests are subject to the administrative rules governing the individual RFQ or RFP.

3. Submittals

- Interested Proposers must submit their Statements of Qualifications (for RFQs) or Proposals (for RFPs) using federal General Services Administration Standard Form 330 or as prescribed in the RFQ or RFP. Submittals must be made by the published closing date and time. Submittals will be received and processed by the AOC Business Services unit. Proposers should not send submittals to any other AOC staff member or entity.
- a. The AOC will review all submittals for completeness. Complete submittals will be evaluated based upon established selection criteria stated in the RFQ or RFP.
- b. The AOC may review Performance Evaluations from previous AOC contracts with a Proposer.
- c. Selection criteria may include but are not limited to such factors as the firm's professional excellence, demonstrated competence and specialized experience, the education and experience of key personnel, the staff's capabilities, workload, and ability to meet schedules; principals to be assigned; the nature and quality of completed work; the firm's reliability, continuity, location; professional awards and other considerations deemed relevant. Such considerations may include the scope of products and services offered in relation to the forecasted need, the history of the products or services offered, the AOC's past experience with the firm, the costs associated with the products or services offered, any special expertise, the availability of resources, the financial strength and stability of the firm relative to the size and risk of the contract and the surety bond, if applicable. These factors will be weighted according to the nature of the product, service, or project; the needs of the State; and the complexity and special requirements of the specific project.
- d. The AOC may review the compensation or product cost portion of a proposal, if one exists, as the sole criterion (as in the traditional low-bid model) or as a weighted criterion, or it may request that the compensation portion of the proposal be placed in a separate envelope for consideration independently or at a later date.

- e. The AOC may contact existing clients and users of the products, projects, or services referenced in the submittal. It may also contact any previous recipients of the products or services provided by the Proposer.
- f. Bid bonds in an amount stated in the solicitation notice will be required on “lump sum” and “guaranteed maximum price” projects.

4. Creating a Short List

The AOC may create a Short List of all qualified Proposers and then prioritize the Short List by ranking the listed Proposers for interviewing and negotiating purposes.

- a. Not all submittals may qualify for the Short List.
- b. If no Proposer is considered to be adequately qualified, the AOC may terminate the selection process.
- c. A Short List may contain only one Proposer.
- d. Additional interviews may be required to complete the Short List or ranking process.
- e. Short Lists may be established for general products or services, the scope of which may be defined at a later date, before individual contracts are established.
- f. The AOC is under no obligation to create or use a Short List, and inclusion on a Short List does not confer any rights on a Proposer.

5. Using a Short List

The AOC may elect to do business with a prequalified Proposer on a Short List without soliciting bids or proposals. Alternatively, as in cases where a specific scope of service or product delivery is established after a Short List is created, the AOC may contact prequalified Proposers on the Short List and send a project-specific RFP to those who request it. Interested applicants from the Short List must submit their Proposals by the published closing date and time. The following applies in these situations:

- a. The AOC will review all submittals for completeness and will evaluate the complete submittals as described in Section 3.
- b. Based on responses to a project-specific RFP, the AOC may alter the Short List. The conditions listed in Section 4 apply.

The following apply to all Short Lists:

- c. A Short List may be active for a period of up to three years, after which time the list expires.
- d. Proposers remain on a Short List until the list expires, a Proposer requests removal from the List, a Proposer loses its legal capacity to deliver the service or product, or the Proposer is notified by the AOC of its removal for cause.

6. Interviewing

Generally the RFQ or RFP will indicate whether interviews will be required. The AOC may interview none, one, or more than one Proposer at its discretion, regardless of statements in the RFQ or RFP. The AOC reserves the right to negotiate after submittals are evaluated and may award a contract without creating a Short List or interviewing Proposers.

- a. The AOC may interview as many Proposers as it determines are desirable in order to identify the best applicant for further consideration.

- b. An interview is not to be construed as an intention by the AOC to award a contract or enter into negotiations for a contract.
- c. If the AOC identifies an acceptable candidate through interview, the AOC may negotiate with that candidate without obligation to interview other Proposers.
- d. The AOC may terminate a solicitation at any time, including after interviews are conducted.

7. Negotiating

The AOC will utilize a process of negotiation to finalize contracts. For qualifications-based selection, where price is not the determining factor, mutually acceptable terms and price will be negotiated. For “lump sum” and other fixed price bids, only the non price terms are subject to negotiation.

- a. The AOC may negotiate contract terms with one or more Proposers.
- b. Negotiations do not imply a commitment to enter into a contract. The AOC may terminate negotiations with one Proposer and commence negotiations with the next, ranked Proposer or engage in simultaneous negotiations, at its discretion.
- c. If negotiations fail to reach an outcome satisfactory to the AOC, the AOC may terminate the selection process.

8. Withdrawal of Submittal

Proposers may withdraw their submitted proposals at any time prior to the deadline for submission by notifying the AOC in writing. Withdrawn submittals will be kept sealed and retained by the AOC until the resolution of any protests. The Proposer may thereafter submit a new or modified proposal, provided that it is received by the AOC by the submission deadline identified in the RFQ or RFP. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the deadline for submission.

9. Protests

- a. Any actual or prospective contractor may protest the procurement or award of a contract.
- b. Protests during the solicitation phase must be received by the deadline for submittal.
- c. Protests disputing the Short List must be received no later than five business days after notification of the Short List.
- d. Protests disputing the award must be received no later than five business days after the date that the Intent to Award is posted on the California Courts Web site.
- e. All protests must be in writing, must identify the solicitation number, opening date, and title. For verbal bid/quotations, the Proposer must identify the materials or services requested. The protest must provide a brief summary of the reasons for protesting the procurement or award of the contract. The protest must be submitted to the identified Contracting Officer or designee.
- f. The OCCM Project Manager will initially address any protest. If the matter cannot be resolved at this stage, the Project Manager will serve written notice to the protester that a full and complete formal statement detailing the nature of the problem must be submitted for review. The Contracting Officer or designee must receive the formal statement from the protester within five business days following notification from the

- Project Manager. The notification will be deemed served five days after the date of mailing unless the RFQ or RFP specifies, or the protester and the Project Manager agree to, an alternate form of notice such as e-mail or facsimile, in which case notification will be deemed served on the date the e-mail or facsimile was transmitted. Failure to file the formal statement will mean that the protesting party relinquishes all rights to further protest.
- g. Once the formal statement of protest is received, the matter will be escalated to the OCCM Assistant Division Director for final decision. The Assistant Division Director, in consultation with the AOC Business Services Manager, has final authority to resolve protests arising from the solicitation, selection, or award of a contract. The decision must be communicated in writing and must be mailed or otherwise furnished to the protester in such manner as to reasonably ensure receipt.
 - h. A protester's failure to submit a complete Proposal within the identified time period for doing so is sufficient reason to deny a protest.
 - i. The AOC reserves the right to continue with award of contract while any protest is unresolved if the AOC determines it is the public's best interest to proceed.

10. Emergency Selection Procedures

In the event of an emergency condition (see Section III), the AOC's priorities are to protect public safety and to return court facilities to safe operation. The AOC will respond to an emergency condition as follows:

- a. The AOC will use existing contracts to immediately address an emergency condition.
- b. If there are no existing contracts, the AOC will consider the requirements of the project and contact for immediate consideration and selection any appropriate firms that are currently on an active short list. If there is no active short list, the AOC will contact any appropriate firm or firms and make a selection.
- c. The AOC will expedite the Contract Award Procedure.

An emergency condition may justify a Sole Source Contract.

11. Sole Source Contracts

- a. A Sole Source Contract is a contract awarded without an RFQ or an RFP or a traditional bidding process. A proposal for a Sole Source Contract is solicited from a single source and is done so only under exceptional conditions. Sole source contracts may be used only when approved by the OCCM Assistant Division Director (or Director) for one or more of the following reasons:
 - i. The required product or service is available from only one source (e.g., maintenance and/or upgrades of existing proprietary software or hardware).
 - ii. An emergency condition exists.
 - iii. After solicitation of a number of sources, the competition is determined to be inadequate.
 - iv. The contract is for legal services, including expert witnesses.
 - v. The Sole Source Contract is needed to avoid financial loss to the AOC (e.g., interruption of essential operations, or damage to AOC resources).
 - vi. The contract is for consulting services in an amount less than \$5,000 when pricing is reasonable.

- vii. Exercise of an option to extend the term of a contract for a reasonable period (considering the nature of the contract) when the terms of the original contract provide for extension and the option was an evaluation criterion in the original bid process.
- viii. Competitively bid contracts that did not include an option to extend may be extended on one occasion for a maximum one-year period and for an amount not to exceed 30 percent of the contract value.
- b. Before a Sole Source Contract is awarded, a written justification of the rationale for Sole Source Contract must be submitted to the OCCM Assistant Division Director for review. Factors to be considered in approving a Sole Source Contract include:
 - i. The effort, if any, made to solicit competitive bids or proposals;
 - ii. The reasonableness of the cost of the contract (cost information must contain sufficient detail to support and justify the cost of the contract);
 - iii. The cost for similar services with a comparison of the differences that should be noted and explained;
 - iv. Special factors affecting the cost under the contract; and
 - v. An explanation of why the AOC considers the cost to be appropriate.

E. Contract Award Procedure

1. Award of the Contract

- a. Public posting of the Notice of Intent to Award Contract will be made on the California Courts Web site.
- b. Once agreement on the terms of the Contract is reached, including compensation, an Award of Contract letter may be sent to the selected proposer.
- c. Following preparation and AOC review of the Contract, the Contract will be forwarded to the selected proposer for signature.
- d. All required documentation, such as certificates of insurance or bonds, must accompany the signed Contract.
- e. The AOC will then verify the documentation, sign the Contract, and forward a fully executed Contract to the contractor.

2. Notice to Proceed

After the Contract is fully executed, the AOC will issue a Notice to Proceed (NTP). The NTP notifies the contractor to proceed with the work.

3. Performance Evaluations

The AOC may prepare periodic performance evaluations for each provider of products and/or services. Below-average rankings may be used by the AOC as the basis for a warning, non consideration of current or future submittals, or removal from currently active Short Lists. Non consideration, if imposed, will be effective until the end of the following qualification cycle, after which it will expire unless specifically renewed by the AOC. Affected providers will be given written notification of non consideration and may appeal the decision in writing to the OCCM Assistant Division Director within five business days of the notification. The decision by the Assistant Division Director is final.