**JUDICIAL COUNCIL OF CALIFORNIA**

**QUESTIONS AND ANSWERS REGARDING**

**Request for Proposals (RFP) TCAS-2018-02-MS**

**Telephone Appearance Services**

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1. **Why does the RFP propose a four-year term?**

A four-year term is appropriate for this type of contract and meets the business needs of the courts.

1. **Is the JCC aware of any current proposals to modify the $20.00 State Fee?**

The Judicial Council is not aware of any current proposals to modify the $20.00 portion of the telephone appearance fee that is remitted to the Trial Court Trust Fund under Government Code section 72011(a).

1. **The RFP does not call for separate Technical and Cost Proposals (and thus does not require Evaluators to qualify Technical Proposals before opening Cost Proposals). Why is this the case?**

A RFP format that separates the Technical Proposal and the Cost Proposal is not suitable for a proposal such as this under which a Contractor would provide telephone equipment and services to the courts at no cost. Because there is no cost component to the proposal, the traditional procurement RFP format that separates technical and cost considerations does not fit this contracting situation.

1. **Given the "no-cost" nature of the RFP, and given the JCC itself sets the $86.00 statewide uniform fee, can you explain why there is a 27-point evaluation criterion for "Fee Structure"? How should a Vendor respond to this portion of the RFP?**

The Fee Structure information submitted by proposers is important in determining each Proposer’s ability to provide telephone appearances services to the public at a reasonable fee. The information is also important to the Judicial Council in determining whether any adjustments to the statewide uniform fee structure are warranted. Hence, as discussed further below, vendors are asked to provide detailed information under section 9.2 of the RFP on Fee Structure. (For more information on the Fee Structure section, why it is important, and how to respond to it, see answers to Questions 5, 16. 18. 24, 25, 34, 35, and 36 below)

1. **We assume "RFP for EFM" refers to the JCC's recent RFP for "E-filing Services for the Superior Courts of California" (#BAP-2017-01-PC); is that correct? If so, why does the JCC consider these two RFPs to be comparable vis-à-vis their respective cost proposals? In the EFM RFP, the JCC was not prescribing a uniform fee schedule under which all awarded vendors would operate; in the case of this telephone appearances RFP, the JCC is requiring Vendors to adhere to a uniform fee schedule. Please explain how fee competitiveness among Vendors is relevant in this telephone appearances RFP when the fee schedule is pre-determined.**

First, you are correct that "RFP for EFM" refers to the JCC's recent RFP for "E-filing Services for the Superior Courts of California" (#BAP-2017-01-PC).

Second, the current RFP and the RFP for EFM are similar insofar as neither concerns proposals for contracts that will involve costs that must be paid directly by the courts. For that reason, the traditional format for procurement RFPs that separates the Technical Proposal and Cost Proposal is not appropriate for either of these RFPs.

Third, regarding the current RFP for telephone appearance services, the fee schedule for users of telephone appearance services is uniform but it is not predetermined. The Judicial Council sets the amount of the fees to be paid by users of the telephone appearances services. In determining whether to change the amount of the telephone appearance fees in connection with this RFP, the council needs information. This includes information about the appropriate amount to charge the public based on information provided by potential vendors in a competitive fee-setting context. Hence, all Proposers are required to provide the information specified under the Fee Structure section of the RFP.

Third, although there are differences between this RFP and the RFP for EFMs, both provide for services are at no cost to the courts and involve fee structures for vendors to receive revenues indirectly from fees paid by court users. These fee structures are set by the council or by master agreements.

In sum, for this RFP, to determine whether any changes in the amount of the fees set for telephone appearance services are warranted, the Judicial Council needs information and other input from Proposers about the Fee Structure as stated in section 9.2 of the RFP.

1. **To the extent that, during the term of the Master Agreement, any third party earns revenue (on a "lump sum" basis, a "fee per appearance" basis, or otherwise) from telephone appearance services in a Direct-provision Court, does the JCC believe that such third-party revenue should be included in the JCC's apportionment of the Revenue Sharing Amount? If not, why not?**

This question about “third party revenue” is vague. To the extent that Proposer is asking whether any entity besides a vendor is responsible for contributing any amount to the 2009-2010 FY revenue sharing amount under Government Code section 72011(c) or is to be included in the amount of the apportionment of that amount under section 71011(d), the statute is clear: only vendors must contribute to the amount and are subject to apportionment.

Government Code 72011 provides in pertinent part:

(c) Vendors shall also transmit an amount equal to the total amount of revenue received by all courts from all vendors for providing telephonic appearances for the 2009–10 fiscal year.

(d) The amount set forth in subdivision (c) shall be apportioned by the Judicial Council among the vendors with which the Judicial Council has a master agreement pursuant to Section 72010. Within 15 days of receiving notice from the Judicial Council of its apportioned amount, each vendor shall transmit that amount to the State Treasury for deposit in the Trial Court Trust Fund.

(e) The Judicial Council shall allocate the amount collected pursuant to subdivisions (c) and (d) for the purpose of preventing significant disruption in services in courts that previously received revenues from vendors for providing telephone appearance services. The Judicial Council shall determine the method and amount of the allocation to each eligible court. (Underlining added.)

1. **To the extent that, during the term of the Master Agreement, a court operates as a Direct-provision Court, will the Direct-provision Court be apportioned a pro rata share of the Revenue Sharing Amount?**

To the extent that the question is asking whether courts that directly provide telephone appearance services will be apportioned a pro rata share of the revenue sharing under Government Code section 72011(d), the response is no. Only vendors are required to contribute to the FY 2009-2010 revenue amount and the apportionment is among the vendors. (See answer to previous question.)

1. **To the extent that, during the term of the Master Agreement, a court operates as a Direct-provision Court, will the Direct-provision Court's revenue be included in the calculation of each Vendor's apportionment of the Revenue Sharing Amount?**
2. **For example, assume Vendor A collects revenue totaling $50,000; Vendor B collects revenue totaling $30,000; and all Direct-provision Courts collect revenue totaling $20,000. The total amount of revenue collected is$100,000 ($80,000 of which is collected by Vendors). Will Vendor A's apportionment be equal to 62.5% of the Revenue Sharing Amount ($50,000 / $80,000) or 50% of the Revenue Sharing Amount ($50,000 /$100,000)?**

The FY 2009-2010 amount will be apportioned among the vendors, as provided in Government Code section 72011(c)-(d). Courts that directly provide services under Government Code section 72010(c)(3) are not included in the apportionment under Government Code section 72011.

1. **To the extent that, during the term of the Master Agreement, a Revenue Sharing Court operates as a Direct-provision Court, will the Revenue Sharing Court continue to receive its allocation of the Revenue Sharing Amount pursuant to Gov. Code 72011(e)?**

That depends on whether the court is on the list of courts to which the Judicial Council has allocated a share of the 2009-2010 revenue amount under Government Code section 72011(e).

1. **What constitutes "similar size and scale" in RFP §7.2?**

As stated in section 7.2, the size and scale should be similar to the requested solution in the trial courts; the services should be the same as, or substantially similar to, those described in 2.0 of the RFP.

1. **What is the minimum number of telephone appearances that a Vendor must have conducted during its "five (5) consecutive years of documented experience" to meet the "Experience and Capability" qualifications?**

No minimum number of appearances is specified in the RFP. The Judicial Council will carefully examine and evaluate all the information provided by each Proposer. The number of telephone appearances conducted by a vendor will be considered in determining the extent of that vendor’s documented experience.

1. **What is the minimum number of courts that a Vendor must have concurrently served during its "five (5) consecutive years of documented experience" to meet the "Experience and Capability" qualifications?**

No minimum number of courts is specified in the RFP. The Judicial Council will carefully examine and evaluate all the information provided by each Proposer. The number of courts served by a vendor will be considered in determining the extent of that vendor’s documented experience.

1. **What other metrics (beyond volume of appearances conducted and number of courts concurrently served) will the JCC use to determine Vendors' "Experience and Capability" qualifications?**

Each vendor may submit whatever metrics it deems appropriate to demonstrate the extent of its experience and capability in providing telephone appearance services. In evaluating proposals, the Judicial Council will determine the relevance and importance of the information provided.

1. **The RFP states: "No Contractor may refuse to enter into a Participation Agreement if a trial court elects to enter into such an agreement."Does this mean a Vendor must demonstrate its ability to serve all 58 trial courts to satisfy the Minimum Qualifications related to "Experience and Capability"?**

Contractors need to have the ability to provide telephone appearance services to any trial court that elects to use their services.

1. **If a Vendor's experience is limited to providing software solutions to Direct-provision Courts and does not include any experience providing "administration, coordination and all other necessary services to enable parties to appear by telephone", will the Vendor satisfy any of the Minimum Qualifications related to "Experience and Capability"?**

This question presents a hypothetical situation that is not before the Judicial Council, seems unlikely for vendors responding to this RFP, and appears speculative. Actual proposals are likely to involve more detailed information and more complex situations. In evaluating proposals, the council will be reviewing all the information provided and carefully evaluating the experience and capability of every Proposer.

1. **Does the JCC currently intend to modify the Uniform Fee?**

No decision has been made by the Judicial Council whether to modify the uniform telephone appearance fee. The uniform fee is the basic statewide fee for telephone appearances services (currently $86.00) adopted under California Rules of Court, rule 3.670(k)(1). Whether any modification should made to this uniform fee will depend, among other things, on the information that is received from Proposers under the “Fee Structure” section of this RFP as well as from other sources, showing whether changes to the uniform fee are warranted. This is one reason why 27 points are allocated in the Evaluation to that criterion.

1. **Has the Fiscal Services Office (or any other office within the JCC) conducted any evaluation or analysis of the Uniform Fee or of any proposed modifications to the Uniform Fee? If so, please share the findings of such evaluation or analysis.**

No evaluation or analysis of the uniform fee has been conducted by the Fiscal Services Office or, as far as we have be able to determine, by any other Judicial Council office.

1. **If the JCC modifies the Uniform Fee, is it obliged to use the lowest fee proposed by a Vendor who meets the minimum qualifications? If not, what methodology or criteria will the JCC use to determine the new Uniform Fee?**

No decision has been made by the Judicial Council whether to modify the uniform fee for telephone appearances. If the council decides to change the uniform fee, it is not obliged to use the lowest fee proposed by a vendor who meets the minimum qualifications. It has discretion to decide on what basis and in what amount to set the fee. Factors the council may consider in setting the fee include, but are not limited to, the fairness of the fee, the impact of the amount of the fee on access to justice, the need for consistent, reliable, high quality telephone appearance services, and the costs to vendors and courts in providing these services.

1. **If the JCC modifies the Uniform Fee, when will the new Uniform Fee become effective (i.e., prior to, in conjunction with, or at some point after the awarding of this Master Agreement)?**

No decision has been made by the Judicial Council whether to modify the uniform telephone appearance fee. If the Judicial Council decides to change the uniform fee, it is likely that the goal would be, if possible, to have any new fee become effective after the award of the new master agreement or agreements under this RFP and concurrent with their effective date.

1. **If the JCC modifies the Uniform Fee, does it intend to invite public comment in conjunction therewith? If so, how will that public commenting period be conducted?**

No decision has been made by the Judicial Council whether to modify any of the telephone appearances fees. If there is decision to change the uniform fee, the proposed new fee would need to be circulated for public comment. In order for the new fee is to be circulated and finalized on or before July 1, 2018, the fee proposal would need to be circulated on a special cycle. The draft proposal would be posted on the California Courts Website, public comments would solicited, and the comments would be considered in making the final decision on the fee.

1. **If the JCC modifies the Uniform Fee, does it intend to modify the Vendor Fee only, the State Fee only, or both (recognizing any change to the State Fee would require new legislation)?**

No decision has been made by the Judicial Council whether to modify, or to seek to modify, any of the fees for telephone appearances. The current uniform fee for each telephone appearance is $ 86.00. Of this, amount, $20.00 (the State Fee, in your description)) is by statute transmitted by the vendor to the Trial Court Trust Fund (TCTF). (See Government Code section 72011(a).) The balance of $66.00 goes to the vendor (the Vendor Fee in your description). The Judicial Council has the discretion to change the uniform fee amount. But as you recognize, only the Legislature has the authority to change the $20.00 amount transmitted to the TCTF. The council would need to seek legislation to change that.

1. **If the JCC intends to modify both the Vendor Fee and the State Fee, how will the total increase or decrease be applied to each type of fee? For example, if the JCC intends to establish a Uniform Fee of $96.00 (a $10.00 increase), would the increase be split (i) equally, with $5.00 increases to both the Vendor Fee and the State Fee; (ii) proportionately, with an $8.00 increase to the Vendor Fee and a $2.00 increase to the State Fee (using rounded whole dollars); or (iii) by some other method? If the latter, please describe the method to be used.**

No decision has been made by the Judicial Council to modify the uniform fee for telephone appearances. It is not possible to state at this time what approach the Judicial Council might pursue if the option of modifying the fee both by rule and statute were to be pursued.

1. **If the Legislature modifies the State Fee during the term of the Master Agreement, would the JCC then modify the Uniform Fee dollar-for-dollar?**
2. **For example, assume the JCC enters into one or more Master Agreements using the current Uniform Fee amount ($86.00, of which $66.00 is the Vendor Fee). One year later, the Legislature increases the State Fee from $20.00 to $30.00. In this case, would the Master Agreement include one or more provisions enabling the JCC to increase the Uniform Fee to $96.00 (thus ensuring the Vendor Fee remained $66.00) and would the JCC exercise such a provision? If not, why not?**

It is premature to address this, or other possible statutory fee changes, that might be made by the Legislature. Such changes are speculative. In the event there are legislative changes to the $20.00 dollar amount to be transmitted to the TCTF or to other statutory fee provisions, the telephone appearance fees charged and distributed would need to comply with this legislation. If necessary, the master agreement or agreements would be amended to reflect these statutory changes; and if needed, the Judicial Council could also make corresponding changes to the fee provisions in rule 3.670.

1. **Regarding RFP §9.2.3, what sort of information is the JCC seeking to "explain why the higher fee is reasonable and warranted"?**

As indicated in revised section 9.2.3 of the RFP, if a Proposer proposes a change to the uniform fee, it must provide detailed information demonstrating why the change in the fee amount is reasonable and warranted, including but not limited to information about changes in the costs incurred, the levels of services to be provided, and other similar factors that would justify changing the fee.

1. **Regarding RFP §9.2.3, if a Vendor proposes a lower Uniform Fee, is it required to provide similar information to explain why its proposal is "reasonable and warranted"?**

Yes. See response to question 24.

1. **What instructions or guidance, if any, will Evaluators be given pertaining to the allocation of points within each of the Evaluation Criteria?**

Evaluators will follow the evaluation criteria in the RFP.

1. **Is there a minimum score that a Vendor must achieve to receive an award (if so, what is the minimum score)?**

No minimum score has been established.

1. **If there is a minimum score, will all Vendors achieving that score (or higher) receive an award?**

See response to question 27.

1. **How many Evaluators will serve on the Evaluation Committee?**

This question is not relevant to the current RFP solicitation.

1. **Please identify the Evaluators (preferably by name but minimally by title or general background description).**

This question is not relevant to the current RFP solicitation.

1. **Are Evaluators required to award the maximum allowable points within an evaluation criterion to at least one Vendor? In other words, if an Evaluator concludes that Vendor A is superior to all other Vendors vis-à-vis the "Experience and Capability" criterion, is the Evaluator required to give a score of 25 to Vendor A in that category?**

There is no requirement that evaluators are required to award the maximum allowable number of points within an evaluation criterion to at least one vendor.

1. **Will the Evaluation Committee adjust or "normalize" any or all of the individual Evaluator's scores before determining the Vendors' aggregate scores? If so, what sort of adjustment or normalization method will be used?**

This question’s reference to “normalize” is unclear.

1. **Regarding the statement that “One or more awards will be made to the highest scored proposal or proposals”6: Does this mean that awards will only be made to the Vendor who achieves the highest score (or the Vendors who achieve the same highest score), or does this mean that awards will be made to any number of Vendors that the JCC determines to be among the "highest scored"? For example, assume that Vendor A achieves a score of 95; Vendor B achieves a score of 95, Vendor C achieves a score of 92 and Vendor D achieves a score 70. In this case, would awards be made to Vendors A and B only (i.e., as the two that comprise the "highest scored proposal or proposals"), or would Vendor C also be eligible for an award (as it is among a group that comprises the "highest scored proposals", relative to the outlier Vendor D)?**

As the language of the Government Code section 72010 and the RFP indicates, awards may be made for one or more master agreements. There may be more than one vendor that is awarded a master agreement from among the highest scored Proposers. “Highest scored” is not limited to the single highest score.

1. **How does the JCC intend to score Vendors within the "Fee Structure" criterion, given the JCC itself (not a Vendor) determines the Uniform Fee7 and given the JCC's statement during the Pre-proposal Conference that it is seeking "information [that may] be helpful" if and when it contemplates a change to the Uniform Fee? In other words, will an Evaluator award his or her highest score within this criterion to the lowest cost proposal, to the most helpful (informative) cost proposal, or upon some other basis?**

All the information provided by Proposers under revised section 9.2.3 of the RFA will be taken into account in evaluating their proposals in the Fee Structure portion of the Evaluation Criteria.

1. **If a Vendor states in its proposal that it will comply with the current Uniform Fee, will it receive a full award of 27 points within the "Fee Structure" criterion of the Evaluation Criteria? If not, why not?**

It depends on the full information provided by Proposers in response to section 9.2.3. Some Proposers may be able to demonstrate, under their proposed fee structure, that they will be able to provide better telephone appearance services than under the current uniform fee. Hence, they would receive a higher score than someone else who just states it will comply with the current uniform fee.

1. **If a Vendor states in its proposal that it will comply with any Uniform Fee established by the JCC, will it receive a full award of 27 points within the "Fee Structure" criterion of the Evaluation Criteria? If not, why not?**

No. As indicated in revised section 9.2.3 of the RFP, a statement that the Proposer will comply with any uniform fee established by the Judicial Council will be deemed nonresponsive. The information required by revised section 9.2.3 must be provided by each Proposer.

1. **If a Vendor proposes an increase to the Uniform Fee (supported by credible and verifiable analyses) but also states in that it will ultimately comply with the Uniform Fee established by the JCC, will the Vendor's "Fee Structure" score be penalized? In other words, does a Vendor risk a score reduction for suggesting an increase even if it affirms its willingness to comply with the Uniform Fee established by the JCC?**

It depends on the full information provided by Proposers in response to section 9.2.3. All the information provided by a Proposer pursuant to revised section 9.2.3 will be taken into account in evaluating that vendor’s proposal in the Fee Structure portion of the Evaluation Criteria.

1. **The vendor landscape and telephonic appearance industry has changed since the current master agreement went into effect. Will the Judicial Council of California consider proposals for the master agreement that would provide a Court-hosted option/model, where a vendor can provide a service integrated with a Court’s systems, similar to what Los Angeles Superior Court and Solano Superior Court specified in their recent RFPs?**

The current RFP is only for a master agreement or master agreements for a vendor or vendors to provide telephone appearance services under Government Code section 72010(c)(1). Telephone appearance services under such agreements include the provision of services and equipment by vendors to the courts and assistance to be provided by vendors to callers. This RFP is not intended for the circumstances in which courts themselves directly provide for telephone appearance services under Government Code section72010 and require only equipment and other technical assistance.