



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF COURT CONSTRUCTION AND MANAGEMENT

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*Acting Director, Office of Court
Construction and Management*

TO: POTENTIAL BIDDERS

FROM: Administrative Office of the Courts
Office of Court Construction and Management

DATE: August 29, 2005

**SUBJECT/PURPOSE
OF MEMO:** REQUEST FOR PROPOSALS
REAL ESTATE APPRAISAL SERVICES

ACTION REQUIRED: You are invited to review and respond to the attached Request for Proposals (“RFP”):

Project Title: Real Estate Appraisal Services
RFP Number: OCCM- ECB 08-24-05

**PRE-PROPOSAL
CONFERENCE** **Prospective Participants are required to attend the Pre – Proposal conference that will be held on September 22, 2005, at 455 Golden Gate Avenue, San Francisco, CA 94102, 10:00 A.M – Noon, Golden Gate Room, Floor 3, or by telephone conference to 866-751-8221, method to be posted to the AOC website.**

**PROPOSAL DUE
DATE:** **Proposals must be received by Noon. on October 13, 2005**

**SUBMISSION OF
PROPOSAL:** Proposals should be sent to:
Judicial Council of California
Administrative Office of the Courts
Attn: Nadine McFadden, Business Services, Floor 7
455 Golden Gate Avenue
San Francisco, CA 94102

1.0 GENERAL INFORMATION

1.1 Background

The Judicial Council of California, chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system. The California Constitution directs the Council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The Council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law. The Administrative Office of the Courts (AOC) is the staff agency for the Council and assists both the Council and its chair in performing their duties.

The Judicial Council has authorized funding to implement the Trial Court Facilities Act of 2002 (SB 1732 - Escutia). Under SB 1732, the Judicial Council and the AOC, on behalf of the State of California, have statutorily prescribed duties to take title and/or responsibility for existing Superior Court facilities located throughout the 58 counties in the State for over 450 court facilities.

1.2 General Information

The Administrative Office of the Courts, Office of Court Construction and Management (“OCCM”) is responsible for site acquisition, planning, design, construction, and real estate and asset management for the Superior and Appellate Court facilities in California. OCCM is currently engaged in the process of transferring title to existing court facilities in the 58 counties throughout the State of California to the AOC. In some instances, an appraisal of existing court facilities will be needed in order to facilitate the transfer of title. In other instances, an appraisal of a potential future site for a court facility will be needed.

2.0 PURPOSE OF THIS RFP

The AOC seeks to identify and retain qualified Service Providers to determine the fair market value of existing court facilities and prospective court facility sites in California. This RFP is the means for prospective Service Providers to submit their qualifications, provide a detailed description of various types of appraisal reports that could be written to address various needs, which may include full reports for prospective land acquisitions; abbreviated replacement cost reports for valuation of existing court facilities; etc.; and provide their pricing. The court facilities to be evaluated include courthouses, administrative and support offices, parking lots and/or structures, and undeveloped land located throughout the various counties of California.

3.0 SCOPE OF SERVICES

- 3.1. The Service Provider is expected to perform appraisals of an as yet undetermined number of existing court facilities and prospective future court facility sites throughout the State of California. The contract term will be November, 2005 to May, 2007, and appraisal reports may be ordered at various points throughout this period. The subject properties are located in urban, suburban and rural areas. In order to submit a Proposal and obtain a contract for provision of said services to the AOC, the Service Provider must be willing to provide said services in all 58 California counties. Do not participate if you cannot meet this requirement. The selected Service Provider will be allowed to use subcontractors as it wishes, however, the Service Provider will itself remain the sole point of contact with the AOC, shall be completely responsible for the supervision and the acts of said subcontractors, and shall warrant the work of such subcontractors as if it were the Service Provider's own work.
- 3.2. The Service Provider will be asked to submit various types of written appraisal reports developed and signed by the owner or a principal partner of the contracting firm. The appraisal must conform to the Uniform Standards of Professional Appraisal Practice (USPAP) currently adopted by the Appraisal Standards Board of the Appraisal Foundation.

Among other things, the appraisals ordered may be used for purposes of assisting in negotiating a property acquisition or other transaction, obtaining a policy of title insurance, satisfying internal business approval and reporting procedures, etc. In addition to USPAP reporting requirement, the appraisal reports may contain some or all of the following, depending on their purpose:

- 3.2.1 Title page with sufficient identification of appraisal project.
- 3.2.2 Letter of transmittal summarizing important assumptions and conclusions, value estimate, date of value, date of report, etc.
- 3.2.3 Table of contents.
- 3.2.4 Assumptions and Limiting Conditions.
- 3.2.5 Description of the scope of work, including the extent of data collection and limitations, if any, in obtaining relevant data.
- 3.2.6 Definition of Fair Market Value, as defined by California Code of Civil Procedure, Section 1263.320.
- 3.2.7 Photographs of significant physical features, including all buildings and site improvements.

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- 3.2.8 Copies of Assessor's plat maps with the subject parcels marked and an assemblage of all contiguous Assessor's parcels that depicts the ownership.
- 3.2.9 The legal description of subject property.
- 3.2.10 Aerial photographs or topographical maps depicting the subject boundaries.
- 3.2.11 Sale history of subject property (if any).
- 3.2.12 Discussion of any current Agreement of Sale, option, or listing of subject. If the appraiser discovers evidence of an Option, or the possible existence of an Option, and the terms cannot be disclosed due to a confidentiality clause, then the appraiser is to cease work and contact the undersigned state representative. Current policy requires disclosure of any Option or Purchase Agreement. If the Agreement is not made available, the appraisal will not be reviewed.
- 3.2.13 Regional, area, and neighborhood analyses.
- 3.2.14 Market conditions and trends including identification of the relevant market, a discussion of supply and demand within the relevant market area (or other areas of competition), and a discussion of the relevant market factors impacting demand for site acquisition and leasing within the relevant market area.
- 3.2.15 Discussion of subject land/site characteristics (size, topography, current use, zoning and land use issues, development entitlements, General Plan designations, utilities, offsite improvements, access, easements and restrictions, flood and earthquake information, toxic hazards, taxes and assessments, etc.).
- 3.2.16 Description of any existing improvements on the subject property, including square footage, physical age, type of construction, quality of construction, landscaping, etc.
- 3.2.17 Subject leasing and operating cost history (if any).
- 3.2.18 For prospective site acquisition properties: opinion of current value of the subject property, based on an in depth analysis. Such support typically requires a discussion of criteria or tests utilized to determine the current value.
- 3.2.19 For prospective site acquisition opportunities: opinion of highest and best use for the subject property, based on an in depth analysis supporting

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the concluded use. Such support typically requires a discussion of the four criteria or tests utilized to determine the highest and best use of a property. If alternative feasible uses exist, explain and support market, development, cash flow, and risk factors leading to an ultimate highest and best use.

3.2.20 For valuation of existing court facilities: replacement cost analysis to determine current value.

Map(s) showing all comparable properties in relation to subject property.
Photographs and plat maps of comparable properties.

3.2.21 In depth discussion of comparable properties, and direct comparisons to subject property.

3.2.22 Discussion of replacement cost methodology, data source(s) used, costs included and excluded.

3.2.23 Copies of replacement cost data including, section and pages of cost manual (date of estimate or date of publication of cost manual must be provided if not indicated on page), copies of cost estimate if provided from another source, and supporting calculations including worksheets or spreadsheets.

3.2.24 Effect of title exceptions on fair market value (preliminary [title] reports will be provided by the AOC, as available). In the event the appraisal assignment is for a portion of a larger legal parcel, additional appraisal specifications will be required, and provided by the AOC Office of Court Construction and Management.

3.2.25 Implied dedication statement.

3.2.26 Reconciliation and final value estimate. Explain and support conclusions reached.

3.2.27 Discussion of any departures taken in the development of the appraisal.

3.2.28 Signed Certification.

3.3. Initial versions of the appraisals prepared for the AOC will be subject to review and comment. Service Provider will revise the appraisal to address comments and resubmit to the AOC.

4.0 SPECIFICS OF A RESPONSIVE PROPOSAL

The following information must be included in Service Provider's proposal:

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- 4.1 Name, address, telephone and fax numbers, and social security number or federal tax identification number of your organization. Utilize the full and correct legal name under which you propose to do business with the AOC.
- 4.2 One fully completed and signed original of the Vendor Data Form attached.
- 4.2 Five (5) copies of the proposal signed by an authorized representative of the company, including name, title, address, e-mail, telephone and fax number of one individual who will serve as the responder's designated representative with regard to their proposal. Provide a copy of your proposal on disk, with all text in MS Word format, all tables in Excel format.
- 4.3 Resumes describing the background and experience of the key staff members that the Service Provider intends to utilize for the performance of the work, describing each individual's ability and experience in conducting the proposed activities.
- 4.4 Names, addresses, and telephone numbers of five (5) references/clients for whom the Service Provider has provided similar services at some point in the last 12 months. The AOC will speak with the references/clients listed by the Service Provider. By virtue of submission of the Service Provider's Proposal identifying said clients, Service Provider thereby releases the AOC and said clients from any liability for any and all claims of harm caused to Service Provider's reputation by virtue of said discussions.
- 4.6 Provide a description of the methodology you propose to use in performing the appraisal services requested in this RFP, along with a proposed schedule to complete such appraisal services. Detail the activities and the duration of the activities you would expect to be necessary to produce a draft appraisal, and the activities and duration you would expect to be necessary to revise and provide a final appraisal (after receipt) of AOC comments. Service Provider is requested to at least provide the expected methodology they would intend to use for an MAI appraisal of a 100,000 square ft. government building, 50 years of age, in an urban area. If there are various other types of appraisals that you as a Service Provider feel will be provided to fulfill the AOC's needs as described in this RFP, and the methodology and duration will vary from the above, provide each separately. Indicate any interim approvals, direction, or information that you will require the AOC to supply in support of your methodology.
- 4.7 An alphabetical listing by county listing all California counties in which the Service Provider has actually provided appraisals to its clients during the period from August 1, 2004 through July 31, 2005, including the name(s) of the clients serviced and numbers and types of appraisals provided.

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4.8 Website Access: Provide the AOC with access to any website that you would intend to make available to the AOC as part of the Services you expect to provide. Provide any passwords or codes needed for temporary access. If a separate area must be established for AOC use, populate said area with the postings you would expect for the project requested in the Methodology above.

4.9 Fee Proposal

The proposal should include the Service Provider's proposed fee schedule indicating cost of an individual appraisal, including but not limited to: full written report; limited scope; and other variations as proposed by Service Provider for the various different types of appraisals to be provided. It is expected that all Service Providers responding to this RFP will offer the Service Provider's government or comparable favorable rates. Service Provider's quoted rates will become a part of the contract.

Please be aware that in the event the AOC obtains an appraisal of an existing court facility or a prospective site and provides the same to Service Provider for their review and use, the Service Provider will be requested to reduce their proposed fee schedule for appraisal of such properties... The proposal should include the Service Provider's reduced fee schedule for occasions where such an appraisal report is available. The proposal should also include the fee to update an appraisal provided by the Service Provider, where the original appraisal report was submitted to the AOC within 24 months of the update request.

If travel and living expenses are necessary to provide the Services, the Service Provider will, if such travel is authorized in advance by the AOC, be reimbursed at its actual cost, but subject to the AOC's Travel and Living Expense Policy:

- If air transportation is authorized, the State will reimburse Service Provider only at the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) Days prior to travel, unless the Project Manager agrees otherwise in the Work Authorization.
- If overnight lodging expense is authorized, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the State will reimburse Service Provider only (i) for hotel room rental at the actual cost not to exceed **\$110.00** per Day, plus occupancy tax and/or energy surcharge; and (ii) for meals, at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~**\$6.00**; lunch~**\$10.00**; dinner~**\$18.00**; and incidentals~**\$6.00**.
- If private vehicle ground transportation expense is authorized, the State will reimburse Service Provider at **\$0.34** cents per mile.

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- 4.12 Responsive proposals should provide straightforward, concise information that satisfies the requirements noted above. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the state's instructions, requirements of this RFP, and completeness and clarity of content.

5.0 RFP Schedule

The AOC has developed the following list of key events from RFP issuance through contract award. All deadlines are subject to change at the AOC's discretion.

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No	Events	Key Dates
1	Issue RFP	08/29/05
2	Letter of Intent from Bidder to Participate in Pre-Proposal Conference	09/19/05
3	Pre-Proposal Conference	10:00 A.M - 12:00 P.M. 09/22/05
4	Deadline for Service Provider Requests for Clarifications, Modifications or Questions	09/29/05
5	Clarifications, Modifications and/or Answers to Questions posted on the "Courtinfo Website"	10/06/05
6	Proposal Due Date and time	Noon on 10/13/05
7	Telephone Interviews (Estimated)	10/27/05
8	Notice of Intent to Award (Estimated).	11/03/05

6.0 RIGHTS

The AOC reserves the right to reject any and all proposals, in whole or in part, as well as the right to issue similar RFPs in the future. The award made as a result of this RFP may be made to a single or to multiple Service Providers. This RFP is in no way an agreement, obligation, or contract and in no way is the AOC or the State of California responsible for the cost of preparing the Service Provider's proposal. One copy of a submitted proposal will be retained for official files and becomes a public record.

Only written responses will be accepted. Responses should be sent by registered or certified mail or by hand delivery.

7.0 PROJECT MANAGEMENT

The Project Manager for this RFP process is:

Mr. John McGlynn
 Office of Court Construction and Management
 Administrative Office of the Courts
 Business Services

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455 Golden Gate Avenue
San Francisco, CA 94102
John.McGlynn@jud.ca.gov
(415) 865-8893

Any questions regarding the RFP process shall be directed in writing to the above.

8.0 EVALUATION OF PROPOSALS

An evaluation panel of OCCM staff will review the submittals. Proposals will be evaluated by the AOC using the following criteria all of which will be weighted equally:

- a. Prior experience as evidenced by evaluation of the Service Provider's reputation as evidenced by discussions with the Service Provider's reference clients.
- b. Credentials of the staff that Service Provider proposed be assigned to the project as evidenced by evaluation of the Service Provider's resumes submitted.
- c. Reasonableness of Fee proposal including discounts from any published price lists that are offered.
- d. Duration required to complete a typical project as evidenced by the Service Provider's Methodology submitted.
- e. Quality of the Methodology submitted.
- f. Breadth of Geographic Area in which appraisals were actually provided.
- g. Website interface usefulness.

9.0 ADDITIONAL REQUIREMENTS

It may be necessary to interview prospective Service Providers to clarify aspects of their Proposals. If conducted, interviews will be conducted by telephone conference call or in person, at the discretion of the AOC. The AOC will notify prospective Service Providers regarding the interview arrangements.

Submittals should be sent by registered mail, certified mail or by hand delivery. Incomplete submittals and/or submittals received after the deadline will be rejected without review.

If a Service Provider intends to submit an RFP, they must inform the AOC on or before the date and time specified in the RFP Schedule in an e-mail to Ms. Nadine McFadden at: nadine.mcfadden@jud.ca.gov.

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Intended participants must attend the Pre-Proposal conference in person or via telephone on the date and time specified in the RFP Schedule. Schedule

Registered prospective Service Providers may submit questions to the AOC via e-mail to nadine.mcfadden@jud.ca.gov on or before the due date and time for submission of said questions that is specified in the RFP Schedule. . The AOC will post answers to all questions, any RFP clarifications, and any RFP addenda on its website <http://www.courtinfo.ca.gov/reference/rfp/>.

Other than during the Pre-Proposal Conference, contact with the AOC shall be made only in writing and only through the email addresses noted in this RFP. Telephone calls will not be accepted.

10.0 PROPOSED CONTRACT TERMS AND ADMINISTRATIVE RULES

Contracts with successful firms will be signed by the parties on a State of California Standard Agreement form and will include terms appropriate for this project. Terms and conditions typical for the requested services are attached as Attachment A. The AOC's Standard Provisions that the AOC expects to apply to this procurement are given in Attachment A, however, this shall in no way act to limit the AOC's right to negotiate additional or different terms if it sees necessary.

The AOC's Standard Administrative Rules governing the Submission of Proposals are given in Attachment B. By virtue of submission of a Proposal, the Service Provider agrees to be bound by said Administrative Rules with regards to this RFP and said Proposal.

11.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

The Administrative Office of the Courts policy is to follow the intent of the California Public Records Act (PRA). If a Service Provider's proposal contains material noted or marked as confidential and/or proprietary that, in the AOC's sole opinion, meets the disclosure exemption requirements of the PRA, then that information will not be disclosed pursuant to a request for public documents. If the AOC does not consider such material to be exempt from disclosure under the PRA, the material will be made available to the public, regardless of the notation or markings. If a Service Provider is unsure if its confidential and/or proprietary material meets the disclosure exemption requirements of the PRA, then it should not include such information in its proposal.

12.0 DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOALS

The State of California requires contract participation goals of a minimum of three percent (3%) for disabled veteran business enterprises (DVBES). The AOC is subject to

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this participation goal. Upon selection of a Consultant for the project assignment under this RFP, the AOC will require that the selected Consultant demonstrate DVBE compliance and complete a DVBE Compliance Form. If it would be impossible for the selected Consultant to comply, explanation of why and demonstration of written evidence of a “good faith effort” to achieve participation would be required. Information about DVBE resources can be found on the Executive Branch’s Internal website at <http://www.dgs.ca.gov/default.htm>. or by calling the Office of Small Business and DVBE Certification at 916-375-4940.

STANDARD PROVISIONS

1. Indemnification

The Contractor agrees, to the fullest extent permitted by law, to indemnify, defend (with counsel satisfactory to the AOC), and hold harmless (collectively, "Indemnify") the State, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, contractors, representatives, volunteers and employees (individually, an "Indemnified Party") from any and all claims, lawsuits, losses, costs (including attorney fees and costs), liabilities, and damages arising from, related to or in connection with, in whole or in part, any of the following:

- (a) the Contractor's negligent acts, omissions, or intentional misconduct,
- (b) the Contractor's breach of its obligations under this Agreement,
- (c) the Contractor's violation of any applicable law, rule, or regulation, and
- (d) a claim from or lawsuit by a third party, contractor, subcontractor, supplier, or worker, or any other person, firm, or corporation, (i) furnishing or supplying work, Services, materials, or supplies in connection with the performance of this Agreement, or (ii) who may be injured or damaged by the Contractor or its agents or employees arising from, related to, or in connection with, the Contractor's performance of this Agreement.

This paragraph does not require the Contractor to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage that arises solely from the negligence or intentional misconduct of the Indemnified Party.

2. Relationship of Parties

The Contractor and the agents and employees of the Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

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3. Termination for Cause

The State may terminate this Agreement and be relieved of the payment of any consideration to the Contractor if the Contractor fails to perform the provisions of this Agreement at the time and in the manner provided. If the Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost to the State to perform this Agreement shall be deducted from any sum due the Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to the Contractor upon demand.

4. No Assignment

Without the written consent of the State, the Contractor shall not assign this Agreement in whole or in part.

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

7. Consideration

The consideration to be paid to Contractor under this Agreement shall in no event exceed the Contract Amount. Contractor shall be paid in accordance with the Payment Provisions set forth in Exhibit "C" of this Agreement. The State's payments to Contractor pursuant to this section shall constitute full compensation for all of Contractor's time, materials, costs and expenses incurred in the performance of this Agreement.

SPECIAL PROVISIONS

1. Definitions

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

- A. “**Acceptance**” means the written acceptance issued to the Contractor by the State after the Contractor has completed a Deliverable, Submittal, or other Contract requirement, in compliance with the Contract Documents, and the Acceptance of the Work provision set forth in this exhibit.
- B. “**Administrative Director**” refers to that individual, or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- C. “**Amendment**” means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (1) a change in the Work; (2) a change in Contract Amount; (3) a change in time allotted for performance; and/or (4) an adjustment to the Agreement terms.
- D. “**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- E. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement**.”
- F. “**Contract Amount**” means the total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- G. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including

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joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.

- H. **“Data”** means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- I. **“Day”** means calendar day, unless otherwise specified.
- J. **“Deliverable(s)”** or **“Submittal(s)”** means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- K. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God or the public enemy;
 - ii. Acts or omissions of any government entity;
 - iii. Fire or other casualty for which a party is not responsible;
 - iv. Quarantine or epidemic;
 - v. Strike or defensive lockout; and,
 - vi. Unusually severe weather conditions.
- L. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- M. **“Notice”** means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
 - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- N. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- O. The **“State”** refers to the Judicial Council of California / Administrative Office of the Courts (**“AOC”**). The State is one of the parties to this Agreement. The term **“State”** shall also include any individual designated to perform technical and/or administrative functions, as set forth herein.

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- P. **“State Standard Agreement”** means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual **“Contract Counterpart.”**
- Q. **“Subcontractor”** shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term **“Subcontractor”** includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
- R. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- S. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.
- T. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

2. Manner of Performance of Work

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Nondiscrimination/No Harassment Clause, as set forth in this Attachment A.

3. Evaluation of Contractor

The State shall evaluate the Contractor's performance under the Agreement.

4. Termination Other Than for Cause

- A. In addition to termination for cause under Attachment A, Standard Provisions paragraph 3, the State may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.

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- B. If the State terminates all or a portion of this Agreement other than for cause, the State shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.

5. State's Obligation Subject to Availability of Funds

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
 - i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
 - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

6. Agreement Administration/Communication

Under this Agreement, the Project Manager shall monitor and evaluate the Contractor's performance. All requests and communications about the Work to be Performed under this Agreement shall be made through the Project Manager. Any Notice from the Contractor to the State shall be in writing and shall be delivered to the Project Manager.

- A. Notice to the Contractor shall be directed in writing to:

Firm Name
Contact Name
Address 1
Address2

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7. Subcontracting

The Contractor shall not subcontract this Agreement or services provided under this Agreement, unless the State agrees to the subcontracting in writing. Any authorized subcontract(s) shall be executed in the same manner as this Agreement. No party to this Agreement shall in any way contract on behalf of or in the name of another party to this Agreement.

8. Changes and Amendments

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Project Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After the Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

9. Contractor's Personnel--Replacement

- A. The Contractor shall provide a Key Personnel to perform the Tasks and provide the Deliverables set forth in this Agreement. The Contractor's Key Personnel shall:
- i. Serve as the primary contact with the State's personnel;
 - ii. Manage the day to day activities of the Contractor's personnel;
 - iii. Identify the appropriate resources needed;
 - iv. Plan and schedule the Work;
 - v. Meet budget and schedule commitments on this Project;
 - vi. Provide Progress Reports and Project Reviews in accordance with this Agreement; and
 - vii. Manage the overall quality of the Deliverables and the Work performed.
- B. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the State under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- C. If any of the Contractor's Key Personnel become unavailable during the term of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.

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- D. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the State's Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time, except for the Contractor's Project Contact.
- E. If any of the Contractor's Key Personnel identified within the Agreement become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the State's Project Manager.
- F. If any of the Contractor's Key Personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement for cause pursuant to Standard Provisions paragraph 3, as set forth in Attachment A.

10. Accounting System Requirement

The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP.

11. Retention of Records

The Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with State and Federal law, a minimum retention period being no less than three (3) years. The retention period starts from the date of the submission of the final payment request. The Contractor is also obligated to protect Data adequately against fire or other damage.

12. Audit

The Contractor shall permit the authorized representative of the State or its designee or both at any reasonable time to inspect or audit all Data relating to performance and billing to the State under this Agreement. The Contractor further agrees to maintain such Data for a period of three (3) years after final payment under this Agreement.

13. Insurance Requirements

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional

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liability, when required, may be acceptable on a “claims made” form. If coverage is approved and purchased on a “claims made” basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.

- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:
- i. Workers' Compensation at statutory requirements of the State of residency.
 - ii. Employers' Liability with limits not less than **\$1,000,000.00** for each accident.
 - iii. Commercial General Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
 - iv. Business Automobile Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
 - v. Professional Liability: Errors and Omissions; **\$1,000,000.00**.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
- i. The State, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
 - ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the State, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,

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- iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.
- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council, Administrative Office of the Courts, Business Services Manager, 455 Golden Gate Ave., 7th Floor, San Francisco, CA 94102.

14. Confidentiality

- A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to the Contractor.
- B. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the State's Confidential Information on a "need to know" basis to the Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the State that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor's clients and business.
- C. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

15. Conflict of Interest

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The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (1) use of an official position with the government for private gain; (2) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (3) loss of independence or impartiality; (4) a decision made outside official channels; or (5) adverse effects on the confidence of the public in the integrity of the government or this Agreement.

16. Ownership of Results

Any interest of the Contractor in Data in any form, or other documents and/or recordings prepared by the Contractor for performance of services under this Agreement shall become the property of the State. Upon the State's written request, the Contractor shall provide the State with all this Data within thirty (30) Days of the request.

The Contractor agrees not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole, or part, or any manner or form, or authorize others to do so without the written consent of the State.

17. Limitation on Publication

The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the State without prior review and written permission by the State.

The State review shall be completed within thirty (30) Days of submission to the Project Manager and, if permission is denied, the State shall provide its reasons for denial in writing.

18. Services Warranty

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

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19. Permits and Licenses

The Contractor shall observe and comply with all federal, state, city, and county laws, rules, and regulations affecting services under this Agreement. The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits and licenses necessary to accomplish the Work contemplated in this Agreement.

20. Covenant Against Gratuities

The Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State will have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

21. National Labor Relations Board

By executing this Agreement, the Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, non-appealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

22. Drug-Free Workplace

The Contractor certifies that it will provide a drug-free workplace as required by California Government Code, Sections 8355 through Section 8357.

23. Nondiscrimination/No Harassment Clause

A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

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- B. During the performance of this Agreement, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- C. The Contractor shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 *et seq.*, and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 *et seq.* The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- D. The Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. The Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

24. Americans with Disabilities Act

By signing this Agreement, Contractor assures the State that it complies with applicable provisions of the Americans with Disabilities Act (“**ADA**”) of 1990 (42 U.S.C. Sections 012101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

25. California Law

This Agreement shall be subject to and construed in accordance with the laws of the State of California.

26. Severability

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

27. Waiver

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other

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party at the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

28. Signature Authority

The parties signing this Agreement certify that they have proper authorization to do so.

29. Survival

The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

ADMINISTRATIVE RULES GOVERNING REQUESTS FOR PROPOSALS

A. General

1. This solicitation document, the evaluation of proposals, and the award of any contract shall conform with current competitive bidding procedures as they relate to the procurement of goods and services. A Service Provider's proposal is an irrevocable offer for 30 days following the deadline for its submission.
2. In addition to explaining the Administrative Office of the Courts' (AOC's) requirements, the solicitation document includes instructions which prescribe the format and content of proposals.

B. Errors in the solicitation document

1. If a Service Provider submitting a proposal discovers any ambiguity, conflict, discrepancy, omission, or other error in this solicitation document, the Service Provider shall immediately provide the AOC with written notice of the problem and request that the solicitation document be clarified or modified. Without disclosing the source of the request, the AOC may modify the solicitation document prior to the date fixed for submission of proposals by issuing an addendum to all Service Providers to whom the solicitation document was sent.
2. If prior to the date fixed for submission of proposals a Service Provider submitting a proposal knows of or should have known of an error in the solicitation document but fails to notify the AOC of the error, the Service Provider shall bid at its own risk, and if the Service Provider is awarded the contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

C. Questions regarding the solicitation document

1. If a Service Provider's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the Service Provider may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the Service Provider must submit a statement explaining why the question is sensitive. If the AOC concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the AOC does not

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concur regarding the proprietary nature of the question, the question will not be answered in this manner and the Service Provider will be notified.

2. If a Service Provider submitting a proposal believes that one or more of the solicitation document's requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, the Service Provider may submit a written request that the solicitation document be changed. The request must set forth the recommended change and Service Provider's reasons for proposing the change. Any such request must be submitted to the project manager listed in Section 9 of the RFP by the proposal due date and time listed on the cover letter of this RFP.

D. Addenda

1. The AOC may modify the solicitation document prior to the date fixed for submission of proposals by faxing an addendum to the Service Providers to whom the solicitation document was sent. If any Service Provider determines that an addendum unnecessarily restricts its ability to bid, it must notify the project manager listed in Section 9 of the RFP no later than one day following the receipt of the addendum.

E. Withdrawal and resubmission/modification of proposals

1. A Service Provider may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the AOC in writing of its withdrawal. The notice must be signed by the Service Provider. The Service Provider may thereafter submit a new or modified proposal, provided that it is received at the AOC no later than the proposal due date and time listed on the cover letter of this 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 on the coversheet of this RFP.

F. Evaluation process

1. An evaluation team will review in detail all proposals that are received to determine the extent to which they comply with solicitation document requirements.
2. If a proposal fails to meet a material solicitation document requirement, the proposal may be rejected. A deviation is material to the extent that a response is not in substantial accord with solicitation document requirements. Material deviations cannot be waived. Immaterial deviations may cause a bid to be rejected.

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3. Proposals that contain false or misleading statements may be rejected if in the AOC's opinion the information was intended to mislead the state regarding a requirement of the solicitation document.
4. Cost sheets will be checked only if a proposal is determined to be otherwise qualified. All figures entered on the cost sheets must be clearly legible.
5. During the evaluation process, the AOC may require a Service Provider's representative to answer questions with regard to the Service Provider's proposal. Failure of a Service Provider to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal nonresponsive.

G. Rejection of bids

1. The AOC may reject any or all proposals and may or may not waive an immaterial deviation or defect in a bid. The AOC's waiver of an immaterial deviation or defect shall in no way modify the solicitation document or excuse a Service Provider from full compliance with solicitation document specifications. The AOC 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 Service Providers if it is deemed in the AOC's best interest. Moreover, the AOC reserves the right to make no selection if proposals are deemed to be outside the fiscal constraint or against the best interest of the State of California.

H. Award of contract

1. Award of contract, if made, will be in accordance with the solicitation document to a responsible Service Provider submitting a proposal compliant with all the requirements of the solicitation document and any addenda thereto, except for such immaterial defects as may be waived by the AOC.
2. The AOC reserves the right to determine the suitability of proposals for contracts on the basis of a proposal's meeting administrative requirements, technical requirements, its assessment of the quality of service and performance of items proposed, and cost.

I. Decision

1. Questions regarding the AOC's award of any business on the basis of proposals submitted in response to this solicitation document, or on any related matter, should be addressed to the individual listed in the Submission of Proposals section on the coversheet of this RFP who will forward the matter to the appropriate contracting officer.

J. Execution of contracts

1. The AOC will make a reasonable effort to execute any contract based on this solicitation document within 30 days of selecting a proposal that best meets its requirements. However, exceptions taken by a Service Provider may delay execution of a contract
2. A Service Provider submitting a proposal must be prepared to use a standard state contract form rather than its own contract form.

K. Protest procedure

1. General

Failure of a Service Provider to comply with the protest procedures set forth in this Section K, will render a protest inadequate and non-responsive, and will result in rejection of the protest.

2. Prior to Submission of Proposal

An interested party that is an actual or prospective proposer with a direct economic interest in the procurement may file a protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal. Such protest must be received prior to the Proposal Closing Time. The protestor shall have exhausted all administrative remedies discussed in this Attachment B prior to submitting the protest. Failure to do so may be grounds for denying the protest.

3. After Award

A Service Provider submitting a proposal may protest the award based on allegations of improprieties occurring during the proposal evaluation or award period if it meets all of the following conditions:

- a. The Service Provider has submitted a proposal that it believes to be responsive to the solicitation document;
- b. The Service Provider believes that its proposal meets the administrative and technical requirements of the solicitation, proposes services of proven quality and performance, and offers a competitive cost; and,
- c. The Service Provider believes that the AOC has incorrectly selected another Service Provider submitting a proposal for an award.

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Protests must be received no later than five (5) business days after the protesting party receives a Non-Award letter.

4. Form of Protest

A Service Provider who is qualified to protest should submit the protest to the individual listed in the Submission of Proposals section on the coversheet of this RFP who will forward the matter to the appropriate Contracting Officer.

- a. The protest must be in writing and sent by certified, or registered mail, or overnight delivery service (with proof of delivery), or delivered personally to the address noted above. If the protest is hand-delivered, a receipt must be requested.
- b. The protest shall include the name, address, telephone and facsimile numbers, and email address of the party protesting or their representative.
- c. The title of the solicitation document under which the protest is submitted shall be included.
- d. A detailed description of the specific legal and factual grounds of protest and any supporting documentation shall be included.
- e. The specific ruling or relief requested must be stated.

The AOC, at its discretion, may make a decision regarding the protest without requesting further information or documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protestor later raises new grounds or evidence that was not included in the initial protest but which could have been raised at that time, the AOC will not consider such new grounds or new evidence.

5. Determination of Protest Submitted Prior to Submission of Proposal

Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal, the AOC will provide a written determination to the protestor prior to the Proposal Due Date. If required, the AOC may extend the Proposal Due Date to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and the AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the contract.

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6. Determination of Protest Submitted After Submission of Proposal

Upon receipt of a timely and proper protest, the AOC will investigate the protest and will provide a written response to the Service Provider within a reasonable time. If the AOC requires additional time to review the protest and is not able to provide a response within ten (10) business days, the AOC will notify the Service Provider. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below. The AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the agreement.

7. Appeals Process

The Contracting Officer's decision shall be considered the final action by the AOC unless the protesting party thereafter seeks an appeal of the decision by filing a request for appeal with the AOC's Business Services Manager, at the same address noted in the Submission of Proposal section of the coversheet of this RFP, within five (5) calendar days of the issuance of the Contracting Officer's decision.

The justification for appeal is specifically limited to:

- a. Facts and/or information related to the protest, as previously submitted, that were not available at the time the protest was originally submitted;
- b. The Contracting Officer's decision contained errors of fact, and that such errors of fact were significant and material factors in the Contracting Officer's decision; or
- c. The decision of the Contracting Officer was in error of law or regulation.

The Service Provider's request for appeal shall include:

- a. The name, address telephone and facsimile numbers, and email address of the Service Provider filing the appeal or their representative;
- b. A copy of the Contracting Officer's decision;
- c. The legal and factual basis for the appeal; and
- d. The ruling or relief requested. Issues that could have been raised earlier will not be considered on appeal.

Upon receipt of a request for appeal, the AOC's Business Services Manager will review the request and the decision of the Contracting Officer and shall issue a final determination. The decision of the AOC's Business Services Manager shall constitute the final action of the AOC.

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8. Protest Remedies

If the protest is upheld, the AOC will consider all circumstances surrounding the procurement in its decision for a fair and reasonable remedy, including the seriousness of the procurement deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive procurement system, the good faith efforts of the parties, the extent of performance, the cost to the AOC, the urgency of the procurement, and the impact of the recommendation(s) on the AOC. The AOC may recommend any combination of the following remedies:

- a. Terminate the contract for convenience;
- b. Re-solicit the requirement;
- c. Issue a new solicitation;
- d. Refrain from exercising options to extend the term under the contract, if applicable;
- e. Award a contract consistent with statute or regulation; or
- f. Other such remedies as may be required to promote compliance.

L. News releases

1. News releases pertaining to the award of a contract may not be made without prior written approval of the AOC's Business Services Manager.

M. Disposition of materials

1. All materials submitted in response to this solicitation document will become the property of the State of California and will be returned only at the AOC's option and at the expense of the Service Provider submitting the proposal. One copy of a submitted proposal will be retained for official files and become a public record. Any material that a Service Provider considers as confidential but does not meet the disclosure exemption requirements of the California Public Records Act should not be included in the Service Provider's proposal as it may be made available to the public.

N. Payment

1. Payment terms will be specified in any agreement that may ensue as a result of this solicitation document.
2. **THE STATE DOES NOT MAKE ANY ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as

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provide in the agreement between the AOC and the selected Service Provider. The AOC may withhold ten percent of each invoice until receipt and acceptance of the final product. The amount of the withhold may depend upon the length of the project and the payment schedule provide in the agreement between the AOC and the selected Service Provider.

DVBE PARTICIPATION FORM

Propser Name: _____

RFP Project Title: _____

RFP Number: _____

The State of California Executive Branch's goal of awarding of at least three percent (3%) of the total dollar contract amount to Disabled Veterans Business Enterprise (DVBE) has been achieved for this Project. *Check one:*

Yes _____ *(Complete Parts A & C only)*

No _____ *(Complete Parts B & C only)*

"Contractor's Tier" is referred to several times below; use the following definitions for tier:

0 = Prime or Joint Contractor;

1 = Prime subcontractor/supplier;

2 = Subcontractor/supplier of level 1 subcontractor/supplier

PART A – COMPLIANCE WITH DVBE GOALS

Fill out this Part ONLY if DVBE goal has been met; otherwise fill out Part B.

INCOMPLETE DOCUMENTATION MAY RESULT IN DISQUALIFICATION FROM FURTHER PARTICIPATION IN SELECTION PROCESS FOR THIS SOLICITATION

PRIME CONTRACTOR

Company Name: _____

Nature of Work _____ Tier: _____

Claimed Value: DVBE \$ _____

Percentage of Total Contract Cost: DVBE _____%

SUBCONTRACTORS/SUBCONTRACTOR/PROPOSERS/SUPPLIERS

1. Company Name: _____
 Nature of Work: _____ Tier: _____
 Claimed Value: DVBE \$ _____

Percentage of Total Contract Cost: DVBE _____%

2. Company Name: _____
 Nature of Work: _____ Tier: _____
 Claimed Value: DVBE \$ _____

Percentage of Total Contract Cost DVBE _____%

3. Company Name: _____
 Nature of Work: _____ Tier: _____
 Claimed Value: DVBE \$ _____

Percentage of Total Contract Cost DVBE _____%

GRAND TOTAL: DVBE _____%

I hereby certify that the "Contract Amount," as defined herein, is the amount of \$_____. I understand that the "Contract Amount" is the total dollar figure against which the DVBE participation requirements will be evaluated.

<i>Firm Name of Proposer</i>	
<i>Signature of Person Signing for Proposer</i>	
<i>Name (printed) of Person Signing for Proposer</i>	
<i>Title of Above-Named Person</i>	
<i>Date</i>	

PART B – ESTABLISHMENT OF GOOD FAITH EFFORT

Fill out this Part ONLY if DVBE goal will not be met but you have made a good faith effort to meet such goal.

INCOMPLETE DOCUMENTATION MAY RESULT IN DISQUALIFICATION FROM FURTHER PARTICIPATION IN SELECTION PROCESS FOR THIS SOLICITATION

1. List contacts made with personnel from state or federal agencies, and with personnel from DVBEs to identify DVBEs.

<i>Source</i>	<i>Person Contacted</i>	<i>Date</i>

2. List the names of DVBEs identified from contacts made with other state, federal, and local agencies.

<i>Source</i>	<i>Person Contacted</i>	<i>Date</i>

3. If an advertisement was published in trade papers and/or papers focusing on DVBEs, attach proof of publication.

<i>Publication</i>	<i>Date(s) Advertised</i>

4. Solicitations were submitted to potential DVBE contractors (list the company name, person contacted, and date) to be subcontractors. Solicitation must be job specific to plan and/or contract.

<i>Company</i>	<i>Person Contacted</i>	<i>Date Sent</i>

5. List the available DVBEs that were considered as subcontractors or suppliers or both.
 (Complete each subject line.)

<i>Company Name:</i>	
<i>Contact Name & Title:</i>	
<i>Telephone Number:</i>	
<i>Nature of Work:</i>	
<i>Reason Why Rejected:</i>	

<i>Company Name:</i>	
<i>Contact Name & Title:</i>	
<i>Telephone Number:</i>	
<i>Nature of Work:</i>	
<i>Reason Why Rejected:</i>	

<i>Company Name:</i>	
<i>Contact Name & Title:</i>	
<i>Telephone Number:</i>	
<i>Nature of Work:</i>	
<i>Reason Why Rejected:</i>	

PART C – CERTIFICATION *(to be completed by ALL Proposer)*

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representations made herein and, to the best of my knowledge and belief, each firm set forth in this bid as a Disabled Veterans Business Enterprise complies with the relevant definition set forth in section 1896.61 of Title 2, and section 999 of the Military and Veterans Code, California Code of Regulations. In making this certification, I am aware of section 10115 *et seq.* of the Public Contract Code that establishes the following penalties for State Contracts:

Penalties for a person guilty of a first offense are a misdemeanor, civil penalty of \$5,000, and suspension from contracting with the State for a period of not less than thirty (30) days nor more than one (1) year. Penalties for second and subsequent offenses are a misdemeanor, a civil penalty of \$20,000 and suspension from contracting with the State for up to three (3) years.

**IT IS MANDATORY THAT THE FOLLOWING BE COMPLETED ENTIRELY;
FAILURE TO DO SO WILL RESULT IN IMMEDIATE REJECTION.**

<i>Firm Name of Proposer:</i>	
<i>Signature of Person Signing for Proposer</i>	
<i>Name (printed) of Person Signing for Proposer</i>	
<i>Title of Above-Named Person</i>	
<i>Date</i>	