ATTACHMENT 1

Administrative Rules Governing RFPS

(IT goods and SERVICES)

1. **COMMUNICATIONS WITH THE ESTABLISHING JUDICIAL BRANCH ENTITY (“Establishing JBE”) REGARDING THE RFP**

Except as specifically addressed elsewhere in the RFP, Proposers must send any communications regarding the RFP to TCSolicitation@jud.ca.gov (the “Solicitations Mailbox”). Proposers must include the RFP Number in subject line of any communication.

1. **QUESTIONS REGARDING THE RFP**

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

1. **ERRORS IN THE RFP**

A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer must immediately notify the Establishing JBE via email to the Solicitations Mailbox and request modification or clarification of the RFP. Without disclosing the source of the request, the JBE may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.

B. If a Proposer fails to notify the Establishing JBE of an error in the RFP known to the Proposer, or an error that reasonably should have been known to the Proposer, before the proposal due date and time listed in the timeline of the RFP, the Proposer shall propose at its own risk. Furthermore, if the Proposer is awarded the agreement, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

1. **ADDENDA**

A. The Establishing JBE may modify the RFP before the proposal due date and time listed in the timeline of the RFP by issuing an addendum and posting it on the Judicial Council’s bid Web site at <http://www.courts.ca.gov/rfps.htm>. It is each Proposer’s responsibility to inform itself of any addendum.

B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the Establishing JBE via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

1. **WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS**

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

1. **ERRORS IN THE PROPOSAL**

If errors are found in a proposal, the Establishing JBE may reject the proposal; however, the Establishing JBE may, at its sole option, correct arithmetic or transposition errors or both. If these corrections result in significant changes in the amount of money to be paid to the Proposer (if selected for the award of the agreement), the Proposer will be informed of the errors and how they were corrected, and given the option to abide by the corrected amount or withdraw the proposal.

1. **RIGHT TO REJECT proposals**
	1. Before the proposal due date and time listed in the timeline of the RFP, the Establishing JBE may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, the Establishing JBE may reject all proposals and cancel the RFP if the Establishing JBE determines that: (i) the proposals received do not reflect effective competition; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the Establishng JBE and the Superior Courts of California.
	2. The EstablishingJBE may or may not waive an immaterial deviation or defect in a proposal. The Establishing JBE’s waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a Proposer from full compliance with RFP specifications. Until a contract resulting from this RFP is signed, the Establishing JBE reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual Proposers if it is deemed in the Establishing JBE’s and Superior Courts’ best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.
	3. The Establishing JBE reserves the right to issue similar RFPs in the future. The RFP is in no way an agreement, obligation, or contract and in no way is the Establishing JBE or the State of California responsible for the cost of preparing the proposal.

D. Proposers are specifically directed **NOT** to contact any Establishing JBE personnel or consultants for meetings, conferences, or discussions that are related to the RFP at any time between release of the RFP and any award and execution of a contract. Unauthorized contact with any Establishing JBE personnel or consultants may be cause for rejection of the Proposer’s proposal.

1. **EVALUATION PROCESS**

A. The Establishing JBE will follow the following process in evaluating proposals.

1. The Establishing JBE will first open the non-cost portion of each proposal received by the appropriate deadline to confirm that it meets the format requirements specified in the RFP.

2. The Establishing JBE will complete its evaluation of the non-cost portions of all such proposals using the methods specified in the RFP.

3. The Establishing JBE will publish the results of the completed non-cost evaluation at the following location: <http://www.courts.ca.gov/rfps.htm>. Because the small business preference and DVBE incentive cannot be properly applied until both the non-cost and cost portions of the proposals have been scored, these factors will be excluded when publishing the results of the completed non-cost evaluation.

4. The Establishing JBE will publicly open the cost portion of the proposals as specified in the RFP. The Establishing JBE will not, however, open the cost portion of any proposal determined to have a material deviation in the non-cost portion.

5. The Establishing JBE will evaluate the cost portion of the proposals opened in item A.4 above. All figures entered on the cost portion must be clearly legible.

B. Proposals that contain false or misleading statements may be rejected if in the Establishing JBE’s opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP.

C. During the evaluation process, the Establishing JBE may require a Proposer's representative to answer questions with regard to the Proposer’s proposal. Failure of a Proposer to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.

E. The Establishing JBE’s Small Business Preference Procedures for the Procurement of Information Technology Goods and Services (“Small Business Procedures”) address the resolution of certain ties involving the small business preference. In the event of a tie not addressed in the Small Business Procedures, the contract will be awarded to the winner of a single coin toss. The coin toss will be witnessed by two employees of the Establishing JBE. The Establishing JBE will provide notice of the date and time of the coin toss to the affected Proposers, who may attend the coin toss at their own expense.

1. **PROTEST PROCEDURE**
2. General: Failure of a Proposer to comply with the protest procedures set forth in this Section K - Protest Procedures, will render a protest inadequate and non-responsive, and will result in rejection of the protest.
3. 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 due date and time for submittal of proposals, as set forth in the RFP timeline. The protestor shall have exhausted all administrative remedies discussed in this Attachment 1 prior to submitting the protest. Failure to do so may be grounds for denying the protest.

In no event will Judicial Council staff consider a protest if all proposals have been rejected or the solicitation was cancelled for any reason.

1. After Notice of Intent to Award/Not to Award.

A Proposer submitting a proposal may protest the Judicial Council’s intent to award based upon allegations of improprieties occurring during the proposal evaluation or selection period if it meets all of the following conditions:

i. The Proposer has submitted a proposal that it believes to be responsive to the solicitation document;

ii. The Proposer 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,

iii. The Proposer believes that another Proposer submitting a proposal for an award was incorrectly selected.

Protests must be received no later than five (5) business days after the Notice of Intent has been posted on the Judicial Council’s website.

In no event will Judicial Council staff consider a protest if all proposals have been rejected or the solicitation was cancelled for any reason.

1. Form of Protest

A Proposer who is qualified to protest should submit the protest to the individual addressed under Submission of Proposals, as set forth in the RFP cover memo, who will forward the matter to the appropriate Contracting Officer.

i. 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 on the RFP cover memo under Submission of Proposals. If the protest is hand-delivered, a receipt must be requested.

ii. The protest shall include the name, Proposer, physical and electronic addresses, and telephone and facsimile numbers of the party protesting or their representative.

iii. The title and number of the solicitation document under which the protest is submitted shall be identified.

iv. A detailed description of the specific legal and factual grounds of protest and any supporting documentation shall be included.

v. The specific ruling or relief requested must be stated.

Judicial Council staff, 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, Judicial Council staff will not consider such new grounds or new evidence.

1. Determination of Protest Submitted Prior to Submission of a 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, Judicial Council staff will provide a written determination to the protestor prior to the date and time for submittal of proposals, as set forth on the RFP cover memo. If required, Judicial Council staff may extend such proposal due date and time 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 Judicial Council staff, 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.

1. Determination of Protest Submitted After Submission of a Proposal

Upon receipt of a timely and proper protest, Judicial Council staff will investigate the protest and will provide a written response to the Proposer within a reasonable time. If Judicial Council staff requires additional time to review the protest and is not able to provide a response within ten (10) business days, Judicial Council staff will notify the protester. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below. Judicial Council staff, 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.

1. Appeals Process

The Contracting Officer’s decision shall be considered the final action by Judicial Council staff unless the protesting party thereafter seeks an appeal of the decision by filing a request for appeal with the Judicial Council’s Principal Manager of Procurement, at the same address set forth under Submission of Proposal on the RFP cover memo, within five (5) calendar days of the issuance of the Contracting Officer’s decision.

The justification for appeal is specifically limited to:

i. Facts and/or information related to the protest, as previously submitted, that were not available at the time the protest was originally submitted;

ii. 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

iii. Decision of the Contracting Officer was in error of law or regulation.

The protester’s request for appeal shall include:

i. Name, protester, physical and electronic addresses, and telephone and facsimile numbers of the proposer filing the appeal or their representative;

ii. Copy of the Contracting Officer’s decision;

iii. Legal and factual basis for the appeal; and

iv. 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 Judicial Council’s Principal Manager of Procurement will send the appeal to the Judicial Council’s legal counsel to review the request and the Contracting Officer’s decision. The Judicial Council’s Principal Manager of Procurement shall issue a final determination. The decision of the Judicial Council’s Principal Manager of Procurement shall constitute the final action of the Judicial Council.

1. Protest Remedies

If the protest is upheld, the Judicial Council 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 Judicial Council and the Superior Courts, the urgency of the procurement, and the impact of the recommendation(s) on the Judicial Council and the Superior Courts. The Judicial Council may recommend any combination of the following remedies:

i. Terminate the contract for convenience;

ii. Re-solicit the requirement;

iii. Issue a new solicitation;

iv. Refrain from exercising options to extend the term under the contract, if applicable;

v. Award a contract consistent with statute or regulation; or

vi. Other such remedies as may be required to promote compliance.

1. **DISPOSITION OF MATERIALS**

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

1. **PAYMENT**

A. Payment terms will be specified in any agreement that may ensue as a result of the RFP.

B. **THE SUPERIOR COURTS DO NOT MAKE ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as provided in the agreement between the Establishing JBE and the selected Proposer. The Superior Court’s may withhold ten percent of each invoice until receipt and acceptance of the final deliverable. The amount of the withhold may depend upon the length of the project and the payment schedule provided in the agreement between the Establishing JBE and the selected Proposer.

C. Upon a Proposer’s timely request, the Establishing JBE may consider a Proposer’s “best financing alternative” (including lease or purchase alternatives). If the RFP is posted more than 30 days before the proposal due date and time listed in the timeline of the RFP, the Proposer’s request must be received by the Establishing JBE at least 30 days before the proposal due date and time. If the solicitation is posted less than 30 days before the proposal due date and time, the Proposer’s request must be received by the Establishing JBE by the day that is halfway between the posting date and the proposal due date. The Establishing JBE may determine that a specific financing alternative should not be considered.

1. **AWARD AND EXECUTION OF AGREEMENT**

A. Award of contract, if made, will be in accordance with the RFP to a responsible Proposer submitting a proposal compliant with all the requirements of the RFP and any addenda thereto (including any administrative or technical requirements), except for such immaterial defects as may be waived by the Establishing JBE.

B. A Proposer submitting a proposal must be prepared to use a standard contract form of the Establishing JBE rather than its own contract form.

C. The Establishing JBE will make a reasonable effort to execute any contract based on the RFP within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by a Proposer may delay execution of a contract.

D. Upon award of the agreement, the agreement shall be signed by the Proposer in two original contract counterparts and returned, along with the required attachments, to the Establishing JBE no later than ten (10) business days of receipt of agreement form or prior to the end of June if award is at fiscal year-end. Agreements are not effective until executed by both parties. Any work performed before receipt of a fully-executed agreement shall be at the Proposer’s own risk.

1. **FAILURE TO EXECUTE THE AGREEMENT**

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

1. **NEWS RELEASES**

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of the Director of the Judicial Council of California’s Branch Accounting and Procurement office.

1. **anti-trust claims**

A. In submitting a proposal to the Establishing JBE, the Proposer offers and agrees that if the proposal is accepted, the Proposer will assign to the Establishing JBE and the Superior Courts of California all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the Establishing JBE or the Superior Courts of California pursuant to the proposal. Such assignment shall be made and become effective at the time the Establishing JBE or the Superior Courts of California tenders final payment to the Proposer. (See Government Code section 4552.)

B. If the Establishing JBE or the Superior Courts of California receive, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Proposer shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Establishing JBE or the Superior Courts of California any portion of the recovery, including treble damages, attributable to overcharges that were paid.

C. Upon demand in writing by the Proposer, the Establishing JBE and the Superior Courts of California shall, within one year from such demand, reassign the cause of action assigned under this section if the Proposer has been or may have been injured by the violation of law for which the cause of action arose and (a) neither the Establishing JBE or the Superior Courts of California have been injured thereby, or (b) the Establishing JBE and Superior Courts of California decline to file a court action for the cause of action. (See Government Code section 4554.)

1. **AMERICANS WITH DISABILITIES ACT**

The JBE complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to the Supervisor of Contracts using email box TCSolicitation@jud.ca.gov.

1. **feasibility studies and acquisition recommendations**

Proposals in response to procurements for assistance in the preparation of feasibility studies or the development of recommendations for the acquisition of IT goods and services must disclose any financial interests (e.g., service contracts, original equipment manufacturer (OEM) agreements, remarketing agreements) that may foreseeably allow the Proposer to benefit materially from the Establishing JBE’s adoption of a course of action recommended in the feasibility study or of the acquisition recommendations.