



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

FINANCE DIVISION

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-7960 • Fax 415-865-4325 • TDD 415-865-4272

RONALD M. GEORGE  
*Chief Justice of California*  
*Chair of the Judicial Council*

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*Administrative Director of the Courts*

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*Chief Deputy Director*

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*Director, Finance Division*

**TO:** POTENTIAL BIDDERS

**FROM:** Administrative Office of the Courts  
Appellate and Trial Court Judicial Services Division

**DATE:** August 4, 2006

**SUBJECT/PURPOSE  
OF MEMO:** REQUEST FOR PROPOSALS  
2006 STUDY ON APPELLATE PANEL ATTORNEY COMPENSATION

**ACTION REQUIRED:** You are invited to review and respond to the attached Request for Proposals (“RFP”):  
  
Project Title: Appellate Panel Attorney Compensation  
RFP Number: ATCJS-1A

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**SUBMISSION OF  
PROPOSAL:**

**Proposals shall be sent to:**

**Judicial Council of California  
Administrative Office of the Courts  
Attn: Nadine McFadden ATCJS-1A  
455 Golden Gate Avenue  
San Francisco, CA 94102**

**Proposals must be received by:**

**1:00 p.m. Pacific Time,  
September 1, 2006**

**1.0 GENERAL INFORMATION**

1.1 Background

The Judicial Council of California, chaired by the Chief Justice of California, is the chief policymaking 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.

## 1.2 Panel attorney duties and compensation

The State of California constitutionally guarantees the effective assistance of counsel for indigent parties in appellate criminal or juvenile delinquency and dependency proceedings. The Administrative Office of the Courts, the California Courts of Appeal, and the nonprofit California Appellate Projects work together to administer the Court-Appointed Counsel program, which provides for the appointment and oversight of counsel representing indigent appellants. The Appellate Projects select panel attorneys from a pool of qualifying attorneys, match them to cases depending upon their level of experience and expertise, and recommend to the Courts of Appeal that the attorneys be appointed to represent the appellants.

Duties of the attorneys include representing criminal and juvenile appellants by reviewing the record, interviewing clients, identifying and researching relevant issues, writing briefs, preparing and engaging in oral argument before justices of the Court of Appeal, reviewing opinions, and making determinations as to whether to appeal to the Supreme Court of California.

Panel attorneys are compensated according to a three-tier pay scale. The scale was increased by \$5 in October 2005 to \$70, \$80, or \$90 depending upon the experience of the attorney and the complexity of the case.

Prior to the October 2005 increase, the \$65-per-hour bottom tier had not increased since 1989. At that time, all attorneys were paid the same rate regardless of skill and experience. In 1995, the Legislature approved a two-tier rate system of \$65 and \$75 per hour. In 1998, a three-tier system was approved at \$65, \$75, and \$85 per hour, under which the lowest rate is paid to the least experienced attorneys working on an assisted basis and the highest rate is paid to highly experienced attorneys working on complex cases with the most serious charges, such as murder.

Panel attorneys are independent contractors – not employees – and must cover their own benefits and overhead expenses. The attorneys receive malpractice insurance coverage through the Appellate Project for cases assigned through the project. Many of the attorneys on the panel are sole practitioners while others

work for law firms. Some attorneys do this work exclusively, and for others, criminal appellate work is only a portion of their caseload. The pool of experienced attorneys, in particular, has been decreasing in recent years, and it is becoming more difficult to recruit and retain attorneys to commit to this work, partly because of the compensation disincentive.

1.3 Procurement Schedule and General Instructions

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

<b>EVENT</b>	<b>Key Dates</b>
Issue RFP	8-04-06
Deadline for Proposer Requests for Clarifications or Modifications (estimated)	8-18-06 1:00 p.m.
AOC Posts Clarification / Modification Response (estimated)	8-23-06
Proposal Due Date and Time	9-01-06 1:00 p.m.
Evaluation of Proposals (estimated)	9-01-06 thru 9-15-06
Notice of Intent to Award (estimated)	9-15-06
Negotiations (estimated)	9-15-06 thru 9-22-06
Execution of Contract (estimated)	9-22-06

1.3.2 The RFP and any addenda that may be issued will be available on the following website:

<http://www.courtinfo.ca.gov/reference/rfp/> (“Courtinfo website”)

1.4 Request for Clarifications or Modifications

- 1.4.1 Vendors interested in responding to the solicitation may submit questions by e-mail only on procedural matters related to the RFP or requests for clarification or modification of this solicitation document, including questions regarding the General Conditions in Attachment A, to the Solicitations mailbox referenced below. If the vendor is requesting a change, the request must set forth the recommended change and the vendor's reasons for proposing the change.

**Solicitations mailbox:**            [solicitations@jud.ca.gov](mailto:solicitations@jud.ca.gov)

- 1.4.2 All questions and requests must be submitted by email to the Solicitations mailbox no later than the date specified in Section 1.4.1, Procurement Schedule and General Instructions. Questions or requests submitted after the due date will not be answered.
- 1.4.3 All email submissions sent to the Solicitations mailbox **MUST** contain the RFP number and other appropriate identifying information in the email subject line. In the body of the e-mail, always include paragraph numbers whenever references are made to content of this RFP. Failure to include the RFP number as well as other sufficient identifying information in the email subject line may result in the AOC taking no action on a vendor's email submission.
- 1.4.4 Without disclosing the source of the question or request, the AOC Contracting Officer will post a copy of the questions and the AOC's responses on the Courtinfo website.
- 1.4.5 If a vendor's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the vendor may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the vendor 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 concur regarding the proprietary nature of the question, the question will not be answered in this manner and the vendor will be notified.

## **2.0 PURPOSE OF THIS RFP**

The AOC seeks the services of a consultant with expertise in analyzing total compensation, including pay practices in both government and the private sector, to

recommend panel attorney compensation that will fairly reflect the market and help maintain the viability of the program.

### **3.0 SCOPE OF SERVICES**

- 3.1. Services are expected to be performed by the consultant between September 22, 2006 and October 27, 2006.
- 3.2. The consultant will be asked to use a methodology reflecting currently accepted best practices to:
  - 3.2.1 Identify compensation and benefit factors that make up total compensation for the purposes of this study.
  - 3.2.2 Determine the target market group that should be used to compare to current panel attorneys. This may include but should not be limited to federal public defenders, federal prosecutors, federal criminal non capital attorneys, the State Attorney General's Office who represent the People on appeal, attorneys working in law firms and other legal professionals as appropriate.
  - 3.2.3 Compare current panel attorney compensation levels with the compensation and benefit practices in the target market group.
  - 3.2.4 Recommend appropriate compensation rates of panel attorneys based on this research that also takes into account overhead, benefits, and other relevant factors.
  - 3.2.5 Provide recommendations on implementing a process to keep panel attorney compensation current and competitive.
  - 3.2.6 Provide recommendations on areas that may be explored by the AOC to provide changes or improvements on panel attorney compensation.

### **4.0 EVALUATION OF PROPOSALS**

Proposals will be evaluated by the AOC using the following criteria, in order of descending priority:

- a. Quality of work plan submitted
- b. Experience on similar assignments
- c. Reasonableness of cost projections [or Fee proposal]
- d. Credentials of staff to be assigned to the project
- e. Ability to meet timing requirements to complete the project

## **5.0 SPECIFICS OF A RESPONSIVE PROPOSAL**

The following information shall be included as the technical portion of the proposal:

- 5.1 Name, address, telephone and fax numbers, and federal tax identification number. Note that if a sole proprietorship using its social security number is awarded a contract, the social security number will be required prior to finalizing a contract.
- 5.2 Resumes describing the background and experience of key staff, as well as each individual's ability and experience in conducting the proposed activities.
- 5.3 A description of key staff's knowledge of the requirements necessary to complete this project.
- 5.4 Names, addresses, and telephone numbers of a minimum of five (5) clients for whom the consultant has conducted similar services. The AOC may check references listed by the consultant.
- 5.5 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.
- 5.6 Overall plan with time estimates for completion of all work required.
- 5.7 Method to complete the Project
  - 5.7.1 Design of Project Plan
  - 5.7.2 Identification of Approach and Methodology on data gathering and analysis
  - 5.7.3 Identification of target market
  - 5.7.4 Identification of compensation and benefit items that need to be included as part of the study
  - 5.7.5 Proposed method of data presentation and report production.
- 5.8 Return completed Attachment C, DVBE forms.
- 5.9 Return completed Attachment E, Acceptance/Exceptions to Contract Terms and Conditions form.

## **6.0 COST [FEE] PROPOSAL**

As a separate document, using the pricing forms in Attachment D as supporting documentation, submit a detailed budget showing total cost of the services. Fully explain and justify all budget line items in a narrative entitled "Budget Justification."

The total cost for consultant services will not exceed \$20,000 inclusive of personnel, materials, computer support, travel, lodging, per diem, and overhead rates. The method of payment to the consultant will be by cost reimbursement.

## **7.0 SUBMISSION OF PROPOSALS**

7.1 Five copies of the proposal must be signed by an authorized representative of the company, including name, title, address, and telephone number of one individual who is the responder's designated representative. In addition, one electronic copy of the proposal must be provided on a CD.

7.2 Proposals must be delivered to the individual listed in the Submission of Proposals section of the coversheet to this RFP.

7.3 Only written responses will be accepted (along with the electronic version being provided on CD). Responses should be sent by registered or certified mail or by hand delivery. A receipt should be requested for hand delivered material. Proposals received prior to the Proposal Due Date that are marked properly will be securely kept and unopened until the Proposal Due Date.

**PROPOSALS RECEIVED AFTER THE PROPOSAL DUE DATE AND TIME WILL NOT BE CONSIDERED.**

## **8.0 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. 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 proposal. One copy of a submitted proposal will be retained for official files and becomes a public record.

## **9.0 ADDITIONAL REQUIREMENTS**

It may be necessary to interview prospective service providers to clarify aspects of their submittal. If conducted, interviews will likely be conducted by telephone conference call. The AOC will notify prospective service providers regarding the interview arrangements.

## **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.

Incorporated in this RFP, and attached as Attachment B, is a document entitled "Administrative Rules Governing Requests for Proposals." Consultants shall follow these rules in preparation of their proposals.

## **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 vendor'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 vendor 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 Executive Branch requires contract participation goals of a minimum of three percent (3%) for disabled veteran business enterprises (DVBEs). The AOC, as a policy, follows the intent of the Executive Branch program. Therefore, your response should demonstrate DVBE compliance; otherwise, if it is impossible for your company to comply, please explain why, and demonstrate written evidence of a "good faith effort" to achieve participation. Your company must complete the DVBE Compliance form and include the form with your Cost Proposal. If your company has any questions regarding the form, you should contact the individual listed in the Submission of Proposal section on the coversheet of this RFP. For further information regarding DVBE resources, please contact the Office of Small Business and DVBE Certification, at 916-375-4940 or access DVBE information on the Executive Branch's Internet web site at: <http://www.dgs.ca.gov/default.htm>.



## STANDARD PROVISIONS

1. Indemnification

The Contractor shall indemnify, defend (with counsel satisfactory to the State), and save harmless the State and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all other contractors, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor or its agents or employees in the performance of this Agreement.

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.

3. Termination for Cause

- A. Pursuant to this provision, the State may terminate this Agreement in whole or in part under any one of the following circumstances, by issuing a written Notice of termination for default to the Contractor:
- i. If the Contractor (a) fails to perform the services within the time specified herein or any extension thereof, (b) fails to perform any requirements of this Agreement, or (c) so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, after receipt of a written Notice from the State specifying failure due to any of the preceding three (3) circumstances, the Contractor does not cure such failure within a period of five (5) business days or a longer period, if authorized in the Notice of failure; or,
  - ii. If the Contractor should cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors.

- B. In the event the State terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the State may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the State for any excess costs for such similar supplies or services, subject to the limitations contained elsewhere herein; further, the Contractor shall continue the performance of this Agreement to the extent not terminated under this provision.
- C. The Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of acts of Force Majeure; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- D. If, after Notice of termination for default of this Agreement, it is determined for any reason that the Contractor was not in default under this provision, or that the default was excusable under this provision, the obligations of the State shall be to pay only for the services rendered at the rates set forth in the Agreement.
- E. The rights and remedies of either party provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

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 Contractor's performance of 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 the Contractor under this Agreement shall be compensation for all the Contractor's expenses incurred in the performance of this Agreement, including travel and per diem, unless otherwise expressly provided.

## SPECIAL PROVISIONS

### 1. Definitions

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

- A. "**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.
- B. "**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.
- C. "**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.
- D. 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.**"
- E. "**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.
- F. The "**Contractor**" means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.

- G. **“Data”** means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- H. **“Day”** means calendar day, unless otherwise specified.
- I. **“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.
- J. **“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.
- K. **“Key Personnel”** refers to the Contractor’s personnel identified in the resume set forth in Exhibit E, Attachment 2, whom the State has identified and approved to perform the Work of the Contract.
- L. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- M. **“Milestone(s)”** means one or more events or dates, if specified in the Contract Documents, by which Work, as identified, must be provided by the Contractor.
- N. **“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.
- O. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.

- P. 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.
- Q. “**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**.”
- R. “**Stop Work Order**” means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit B.
- S. “**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.
- T. “**Task(s)**” means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- U. “**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.
- V. “**Trial Court(s)**” or “**Court(s)**” means one or more of the fifty-eight (58) superior courts in the California state trial court system.
- W. “**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 Exhibit B.

3. Termination Other Than for Cause

- A. In addition to termination for cause under Exhibit 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.
- 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.

4. 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.

5. Stop Work

- A. The State may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
- i. Cancel the Stop Work Order; or
  - ii. Terminate the Work covered by the Stop Work Order as provided for in either of the termination provisions of this Agreement.
- B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and
  - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.

6. Agreement Administration/Communication

- A. 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 the Project Manager as follows:

[TBD], Project Manager  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

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

[TBD]

7. Contractor's Personnel--Replacement

- A. 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.
- B. The responsibilities of the Contractor's Key Personnel are set forth in Exhibit D, Work to be Performed. If the Contractor's Key Personnel, as identified in Exhibit E, Attachment 2, Contractor's Key Personnel's Resume, becomes unavailable during the term of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills to the Contractor's Key Personnel, as demonstrated by the resume set forth in Exhibit E, Attachment 2, Contractor's Key Personnel's Resume.
- C. If the Contractor's Key Personnel identified in Exhibit E, Attachment 2, Contractor's Key Personnel, becomes unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the State's Project Manager.
- D. If the Contractor's Key Personnel becomes unavailable or is 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 Exhibit A.



8. Assignments or Subcontracting

- A. This Agreement is based upon the unique expertise of the Contractor. Therefore, in addition to the prohibition against assignment under Exhibit A, Standard Provisions paragraph 4, it is the policy of the State to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance under this Agreement. No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Contractor without the express written consent of the State, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the State shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the State to subcontract or assign, all the terms of this Agreement shall be included in such subcontract or assignment.
- B. Any substitution or prolonged absence of the personnel who were specifically identified in the original proposal, as accepted, must be approved. Failure to obtain acceptance shall constitute a major breach of this Agreement

9. Acceptance of the Work

- A. The Project Manager shall be responsible for the sign-off acceptance of all the Work required and submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Project Manager will apply the acceptance criteria set forth in subparagraph B of this provision, as appropriate, to determine the acceptability of the Work provided by the Contractor. Unsatisfactory ratings will be resolved as set forth in this provision.
- B. Acceptance Criteria for Work (“Criteria”) provided by the Contractor pursuant to this Agreement:
  - i. Timeliness: The Work was delivered on time;
  - ii. Completeness: The Work contained the Data, Materials, and features required in the Contract; and
  - iii. Technical accuracy: The Work is accurate as measured against commonly accepted standard (for instance, a statistical formula, an industry standard, or de facto marketplace standard).
- C. The Contractor shall provide the Work to the State, in accordance with direction from the Project Manager. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The State’s Project Manager shall use the Acceptance and Signoff Form, provided as Attachment 1 to this Agreement, to notify the Contractor of the Work’s acceptability.

- D. If the State rejects the Work provided, the State's Project Manager shall submit to the Contractor a written rejection using Attachment 1, the Acceptance and Signoff Form, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the Project Manager requests further change, the Contractor shall meet with the Project Manager, within three (3) business days of such request, to discuss changes for the final submission of the Work. The Contractor shall provide the Work within three (3) business days after this meeting, at which time the Work will be accepted or the question of its acceptability referred to the Administrative Director of the AOC and a principal of the Contractor, as set forth in subparagraph F below.
- F. If agreement cannot be reached between the State's Project Manager and the Contractor on the Work's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Work and will notify the Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the State may terminate this Agreement pursuant to the terms of Standard Provisions paragraph 3, as set forth in Exhibit A.

10. Evaluation of Contractor

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

11. 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.

12. 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.

13. Copyrights and Rights in Data

All copyrights and rights in the Data produced with funding from this Agreement that may presumptively vest in the Contractor shall be transferred to the State.

14. Ownership of Results

- A. 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.
- B. 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.

15. 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.

16. Accounting System Requirement

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

17. 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 four (4) 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.

18. 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 four (4) years after final payment under this Agreement.

19. 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.

20. Limitation on State's Liability

The State shall not be responsible for loss of or damage to any non-State equipment arising from causes beyond the State's control.

21. 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 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.
- 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,
- 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., 7<sup>th</sup> Floor, San Francisco, CA 94104.

22. Conflict of Interest

- A. 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.
- B. The Contractor certifies and shall require any Subcontractor to certify to the following:
- Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.

23. 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.

24. 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, unappealable 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.

25. 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.

26. 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.
- 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.

27. 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.

28. 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.

29. California Law

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

30. 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.

31. 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 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.



32. Signature Authority

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

33. 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.

34. Entire Agreement

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a duly authorized representative of the State.

## **PAYMENT PROVISIONS**

1. Contract Amount

- A. The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, shall be [TBD], as set forth in this Exhibit.
- B. The Contractor has estimated the costs and expenses necessary to complete the Work. The State's acceptance of the Contractor's proposal and price does not (i) imply that the State approves of or adopts the Contractor's plan, means, methods, techniques, or procedures required to perform the Work, nor (ii) relieve the Contractor from the sole responsibility for the accuracy of its estimate and timely completion of the Work of this Agreement within the total amount for compensation set forth herein.

2. Payment for Contract Work

- A. For performing the Work of this Agreement, the State shall compensate the Contractor at the firm fixed prices, as set forth in Table 1, below, for the completion and acceptance of each Deliverable, as set forth in Exhibit D, Work to

be Performed, inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for services rendered to the State.

**Table 1: Firm Fixed Price by Deliverable**

<i>Deliverable</i>	<i>Due Date</i>	<i>Firm Fixed Price Per Deliverable</i>
[TBD]		

B. The total amount the State may pay the Contractor, pursuant to this provision, shall be \$[TBD].

3. Compensation for Allowable Expenses

The State shall reimburse the Contractor as follows:

A. Administrative and Operating Expenses

- i. The State shall reimburse the Contractor for itemized administrative and operating expenses that are reasonably incurred in performing this Agreement, provided that the Project Manager approves them. These expenses may include communication, clerical assistance, graphics, production, duplicating, and reasonable costs.
- ii. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed \$[TBD].

B. Transportation, Meals, and Lodging Expenses

- i. The State shall reimburse the Contractor for actual expenses incurred for reasonable and necessary transportation, meals, lodging, and other travel-related expenses required to perform the Work of this Agreement.
- ii. The Contractor shall submit a written travel plan to the Project Manager *prior to incurring any travel expenses*, including the reason for the trip, number of persons traveling, types of expenses the Contractor expects to incur and the estimated costs. Prior approval of the travel plan is required.
- iii. For necessary air transportation, the State will reimburse the Contractor for 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 writing.

- iv. For overnight travel, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the State will reimburse the Contractor for meal and lodging expenses in an amount not to exceed **\$150.00** per day, plus sales tax. Meals shall be reimbursed 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/or incidentals~**\$6.00**. Hotel room rental shall be reimbursed for the actual cost not to exceed **\$110.00** per Day plus tax and/or energy surcharge.
- v. For necessary private vehicle ground transportation usage, the State will reimburse the Contractor up to **\$0.34** cents per mile.
- vi. Upon the Project Manager's request, the Contractor shall provide copies of receipts for reimbursement of transportation, lodging, and meal expenses.
- vii. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed \$[TBD]. The Contractor shall provide Notice to the State if the Contractor has reason to believe that the travel required to perform the Work will exceed this amount.

4. Other Expenses

The State shall not consider reimbursement for costs not defined as allowable in this Agreement, including but not limited to any administrative, operating, travel, meals, and lodging expenses incurred during the performance of this Agreement.

5. Taxes

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

6. Method of Payment

- A. The Contractor shall submit an invoice for Work provided upon completion of the Work, and/or completion and acceptance of each Deliverable, as set forth in Exhibit D, Work to be Performed. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.
- B. The State will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate
  - i. The Contract number;
  - ii. A unique invoice number;

- iii. The Contractor's name and address;
- iv. Taxpayer identification number (the Contractor's federal employer identification number);
- v. Description of the completed Work, including Deliverable(s) made;
- vi. The dates worked;
- vii. The appropriate contractual charge(s) as set forth in this Exhibit; and,
- viii. Preferred remittance address, if different from the mailing address.

C. The Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California  
Administrative Office of the Courts  
c/o Finance Division, Accounts Payable  
455 Golden Gate Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94102-3688

D. Please note that invoices or vouchers not on printed bill heads shall be signed by the Contractor or the person furnishing the supplies or services.

7. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by the State as provided in this Exhibit, shall in no way lessen the liability of the Contractor to replace unsatisfactory Work or Material, even if the unsatisfactory character of such Work or Material may not have been apparent or detected at the time such payment was made. Materials, Data, components, or workmanship that do not conform to Exhibit D, Work to Be Performed, shall be rejected and shall be replaced by the Contractor without delay.

## **WORK TO BE PERFORMED**

1. Summary of Work

The Contractor will: 1) Identify compensation and benefit factors that make up total compensation for the purposes of this study; 2) determine the target market group to be used for comparison with panel attorneys, including federal attorneys, attorneys in the state Attorney General's Office who represent the People on appeal, and other legal professionals as appropriate; 3) compare panel attorney compensation levels with the compensation and benefit practices of the target market group; 4) recommend appropriate compensation rates of panel attorneys based on this research that also takes into account overhead, benefits, and other relevant factors; 5) provide recommendations on implementing a process to keep panel attorney compensation current and competitive; and 6) provide recommendations on areas that may be explored by the AOC to provide changes or improvements on panel attorney compensation.

2. Scope of Work

In accordance with the schedules in the following Table, or as determined by the State, the Contractor will prepare and submit the Deliverables set forth in Table 1, below.

**Table 1: Project Deliverables**

<i>Deliverable Number</i>	<i>Deliverables</i>	<i>Completion Date</i>
[TBD]		

3. Contractor Responsibilities

A. The Contractor's Key Personnel will have the following responsibilities under this Contract:

- i. Responsible for the end results and for day-to-day Project management;
- ii. Serves as the Contractor's primary contact;
- iii. Works closely with AOC Project Manager;
- iv. Provides on-going status reports to AOC management;
- v. Manages, prepares, and refines the Contract's end results;
- vi. Proactively assists with resolution of issues with any aspect of the Work;
- vii. Proactively anticipates Project deviations and is responsible for taking immediate corrective action;
- viii. Works with Project Manager to manage and coordinate work and knowledge transfer; and
- ix. Responsible for management of Project budget within constraints of Work requirements.

4. AOC Responsibilities

The State's **Project Manager** will be responsible for managing, scheduling, and coordinating all Project activities, including Project plans, timelines, and resources, and escalating issues for resolution to AOC management.

5. Progress Reports

The Contractor shall provide progress reports as determined by the Project Manager.

**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 vendor'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 vendor submitting a proposal discovers any ambiguity, conflict, discrepancy, omission, or other error in this solicitation document, the vendor 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 vendors to whom the solicitation document was sent.
2. If prior to the date fixed for submission of proposals a vendor 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 vendor shall bid at its own risk, and if the vendor 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 vendor's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the vendor may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the vendor 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 concur regarding the proprietary nature of the

question, the question will not be answered in this manner and the vendor will be notified.

2. If a vendor 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 vendor may submit a written request that the solicitation document be changed. The request must set forth the recommended change and vendor'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 posting an addendum to the AOC website where the original RFP is posted. It is each vendor's responsibility to monitor the AOC website for any addenda. If any vendor 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 vendor 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 vendor. The vendor 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.

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 vendor's representative to answer questions with regard to the vendor's proposal. Failure of a vendor 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 vendor 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 vendors 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 vendor 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 vendor may delay execution of a contract
2. A vendor 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 vendor 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 vendor 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 vendor has submitted a proposal that it believes to be responsive to the solicitation document;
- b. The vendor 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 vendor believes that the AOC has incorrectly selected another vendor submitting a proposal for an award.

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 vendor 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.

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 vendor 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 vendor. 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 vendor's request for appeal shall include:

- a. The name, address telephone and facsimile numbers, and email address of the vendor 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.

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 vendor submitting the proposal. One copy of a submitted proposal will be retained for official files and become a public record. Any material that a vendor considers as confidential but does not meet the disclosure exemption requirements of the California Public Records Act should not be included in the vendor'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

provide in the agreement between the AOC and the selected vendor. 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 vendor.

## 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 \_\_\_\_\_%

**SUBCONTACTORS/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.

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

**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.*)

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

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

<b><i>Company Name:</i></b>	
<b><i>Contact Name &amp; Title:</i></b>	

<b><i>Telephone Number:</i></b>	
<b><i>Nature of Work:</i></b>	
<b><i>Reason Why Rejected:</i></b>	

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

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.

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

**Pricing Form #1, Pricing Recap - Proposal**

Transfer the totals from Pricing Form #s 2, 4, and 5 to the table below.

Description	Amount
<b>Labor (from Pricing Form #2)</b>	
<b>Administrative, Operating, and Incidental Expenses (from Pricing Form #4)</b>	
<b>Travel (from Pricing Form #5)</b>	
<b>Total Not To Exceed Amount</b>	

**Pricing Form #2, Pricing Recap - Labor**

First, enter the high level Task/Deliverable description and estimated completion dates, then go to Pricing Form #3. Transfer the total number of billable hours and the not to exceed amounts from Pricing Form #3.

Task/ Deliverable Number	Task/Deliverable Description	Task/ Deliverable Due Date / Completion Date	Total Hours	Amount
1				
2				
3				
<b>Total Not To Exceed Amount For Labor – All Deliverables</b>				

*Note: Add additional lines as required for additional Tasks/Deliverables*

**Pricing Form #3, Pricing Details - Labor**

Instructions: 1) Use the format below for each deliverable that corresponds with the deliverables and descriptions in Pricing Form #2 above. 2) Provide the name(s) of the person(s) providing the work, number of hours each person will work on the deliverable,

each person’s hourly rate, the extended amount for each person. 3) Transfer the Subtotal Hours and Amount from each task item to Pricing Form #2 above.

<b>Deliverable Number</b>	<b>Names</b>	<b>Hourly Rates</b>	<b>Estimated Maximum Number of Hours</b>	<b>Extended Amount</b>
<b>1</b>	<i>Name</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
	<i>Name</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
	<i>Name (Add more lines if necessary)</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
<b>Sub Total - Deliverable 1</b>				
<b>2</b>	<i>Name</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
	<i>Name</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
	<i>Name (Add more lines if necessary)</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
<b>Sub Total - Deliverable 2</b>				
<b>3</b>	<i>Name</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
	<i>Name</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
	<i>Name (Add more lines if necessary)</i>	<i>Rate</i>	<i>Hours</i>	<i>Amount</i>
<b>Sub Total - Deliverable 3</b>				

**Pricing Form #4, Pricing Details – Administrative, Operating, and Incidental Expenses**

List estimated maximum administrative, operating, and incidental expenses and provide assumptions for each expense. Transfer the total amount to Pricing Form #1.

<b>Expense</b>	<b>Assumptions</b>	<b>Amount</b>
<b>Total Administrative, Operating, and Incidental Expenses</b>		<i>Total Amount</i>

**Pricing Form #5, Pricing Details – Travel Expenses**

List estimated maximum travel expenses and provide assumptions for each expense.  
Transfer the total amount to Pricing Form #1.

<b>Expense</b>	<b>Assumptions</b>	<b>Amount</b>
<b>Total Administrative, Operating, and Incidental Expenses</b>		<i>Total Amount</i>

**VENDOR'S ACCEPTANCE OF TERMS OR  
EXCEPTIONS TO CONTRACT TERMS AND CONDITIONS**

*(Mark the Appropriate Choice)*

       **Vendor accepts the contract terms in Attachment A of this Request For Proposal without exception.**

**OR**

       **Vendor proposes the following exceptions to the contract terms in Attachment A of this Request For Proposal:**

NOTE: If exceptions are proposed, vendor must submit a "redlined" version of the term or condition showing all modifications (additions or deletions, or new provisions) proposed by the vendor. The vendor must also provide an explanation/rationale as to why each individual modification is required.

*(List all exceptions)*

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**