



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

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CHRISTINE M. HANSEN
Director, Finance Division

TO: POTENTIAL BIDDERS

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

DATE: April 27, 2005

SUBJECT/PURPOSE OF MEMO: **REQUEST FOR QUALIFICATIONS**

The Administrative Office of the Courts, Office of Court Construction and Management seeks to identify subject matter experts qualified to provide cost-benefit and return-on-investment analyses related to seismic rehabilitation of certain court buildings. Selected consultants will be awarded contracts for specific project assignments beginning in July 2005.

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

Project Title: Seismic Cost-Benefit Studies 2005
RFQ Number: CSE04

DUE DATE: Submittals must be received by 1 p.m. on **Friday, May 13, 2005.**

SUBMISSION OF QUALIFICATIONS: Send materials to:
Judicial Council of California
Administrative Office of the Courts
Attn: Nadine McFadden
455 Golden Gate Avenue
San Francisco, CA 94102

CONTACT FOR FURTHER INFORMATION:

NAME: David Bonowitz
TEL: 415-865-8034
FAX: 415-865-8885

E-MAIL: occmrfq@jud.ca.gov

Please put RFQ Number in subject line.

1.0 GENERAL INFORMATION

1.1 Background

The Judicial Council of California, chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system. The California Constitution directs the Council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The Council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law. The Administrative Office of the Courts (AOC) is the staff agency for the Council and assists both the Council and its chair in performing their duties. The Office of Court Construction and Management (OCCM), is the division of the AOC responsible for the planning, design, construction, and asset management of real estate and facilities for the Superior and Appellate Courts of California. The mission of OCCM is to enhance the administration of justice by providing responsible and efficient professional stewardship of the court facilities of California; to promote excellence in the built environment in support of equal access to justice; and to provide leadership in the design and management of judicial architecture.

1.2 Seismic Assessment Program & Loss Estimation Studies

The Trial Court Facilities Act of 2002 (SB 1732, Escutia) as amended, among other requirements will shift the governance of California's Superior Court buildings from the counties to the state, commencing July 1, 2004 and completing by June 30, 2007. The current inventory comprises over 450 court buildings containing approximately ten million usable square feet of space devoted to court occupancy. As required by SB 1732, OCCM and its consultants in 2003 completed seismic evaluations of about 225 court facilities. In February 2005, OCCM and its consultant completed a preliminary loss estimation and seismic risk analysis of the portfolio. Now, OCCM seeks to supplement these studies with cost-benefit and return-on-investment analyses for certain rehabilitation scenarios in order to help prioritize the AOC's capital outlay plan.

2.0 PURPOSE OF THIS RFQ

OCCM seeks the services of a subject matter expert (the Consultant) in cost-benefit analysis, return-on-investment analysis, seismic hazard analysis, and seismic loss estimation for individual building structures and for portfolios. This RFQ is the means for prospective Consultants to submit qualifications to OCCM to be evaluated as the first part of a selection process described below.

3.0 SCOPE OF SERVICES

- 3.1. Services are expected to be performed by the Consultant between July 2005 and October 2005. Intermediate deadlines and phase durations may be established prior to the start of work.
- 3.2. The scope of services will include some or all of the following: review of preliminary loss estimation assumptions and findings from OCCM's February 2005 study, supplemental loss estimation or risk analysis of the existing portfolio, definition of earthquake hazards and scenarios, modification of conventional software to suit the portfolio, definition of alternate rehabilitation or risk reduction strategies for the portfolio, loss estimation for the various strategies, financial cost-benefit analysis, return-on-investment analysis, report production, presentation to AOC staff and non-expert decision makers, and limited training of OCCM staff to reproduce and extend results in-house. Structural engineering needed to characterize the performance of existing or rehabilitated buildings is outside the scope; broad performance characteristics and rehabilitation cost estimates will be provided by OCCM.
- 3.3. The Consultant will work collaboratively with the AOC, OCCM, and peer reviewers or technical advisers of OCCM's choosing who will provide quality assurance and project guidance under a separate agreement with the AOC.

4.0 EVALUATION OF QUALIFICATIONS & SELECTION PROCESS

- 4.1. For each project, OCCM, with the assistance of its technical advisers and other AOC staff, will evaluate Statements of Qualifications (SOQs) using the following criteria, weighted as shown:

Points	Criterion
30	Relevant technical expertise as evidenced by project experience and industry leadership within the Consultant team regarding: <ol style="list-style-type: none"> 1. Cost-benefit and return-on-investment analysis for building rehabilitation (15 pts) 2. Planning and decision-making for public or institutional facilities and portfolios (10 pts) 3. Standards, guidelines, and software tools for cost-benefit and return-on-investment analysis (5 pts)
40	Relevant technical expertise as evidenced by project experience and industry leadership within the Consultant team regarding: <ol style="list-style-type: none"> 1. Earthquake performance and fragility of building structures (15 pts) 2. Cost-benefit and return-on-investment analysis related to natural hazards, especially earthquakes (15 pts) 3. Seismic loss estimation for California buildings and portfolios (10 pts)

Points	Criterion
30	<p>Suitability to the project scope of services as evidenced by project experience of key individuals regarding:</p> <ol style="list-style-type: none"> 1. Collaborative definition of project criteria and goals (15 pts) 2. Modification of conventional tools and assumptions to fit a unique portfolio (5 pts) 3. Extension and extrapolation of incomplete data (5 pts) 4. Report writing and presentation to non-expert decision makers (5 pts)
4.2	Based on its evaluation, OCCM will create a “short-list” of qualified firms for each project. OCCM will notify all submitters of the short-list. Each short-listed firm will be offered an interview.
4.3	Firms on the short-list will be notified of their interview time and place. At the discretion of OCCM, interviews may be conducted by telephone conference call. Notification of interview will include an agenda of topics, requested participants from the Consultant’s team, and the members of the interview panel. The interview panel will evaluate each firm and allot up to 30 points additional to those awarded based on the SOQs. Interview points will be allotted based on the team’s discussion of the project in terms of possible approaches, opportunities, and obstacles, based on its experience with other projects.
4.4	The most qualified Consultant firm will be the one with the highest total score from the SOQ and the interview. OCCM will notify the most qualified Consultant firm to initiate contract negotiation. If a satisfactory contractual agreement on services and compensation cannot be reached in principle between the AOC and the first selected Consultant within 30 calendar days of notification of selection, the AOC may reassign the project to the next most-qualified Consultant.
4.5	A Consultant selected under this RFQ will not be precluded from consideration nor given special status in future RFQs issued by the AOC.
4.6	The AOC cannot guarantee the amount or duration of the work. The scope of services is subject to change up to the time a contract is executed, at the sole discretion of OCCM. A Consultant selected by OCCM for the initial phase of a project will be retained for subsequent phases of that project, subject to the successful performance of services, appropriation of funds by the California Legislature, and pursuant to the AOC Agreement for Architectural and Engineering services.

5.0 SPECIFICS OF A RESPONSIVE STATEMENT OF QUALIFICATIONS

Each SOQ should clearly and accurately demonstrate specialized knowledge and experience suited to the project in a way that addresses the evaluation criteria (section 4.0 of this RFQ). A responsive Statement of Qualifications (SOQ) provides straightforward, concise information that satisfies the requirements noted here.

All of the information listed below must be included in the SOQ. The document format is left to the discretion of the prospective Consultant, as long as the required information is presented clearly and logically. A completed Standard Form 255 or Standard Form 330 that includes the required information is also acceptable. Regardless of format, expensive bindings, color displays, and the like are discouraged.

The following information shall be included:

- 5.1 Name, mailing address, telephone and fax numbers, and social security number or federal tax identification number for the prospective Consultant firm.
- 5.2 Name, title, e-mail address (and mailing address, telephone and fax numbers, if different from the firm's) of one individual who is the Consultant's designated representative.
- 5.3 Names, specializations, and intended project responsibilities of any firms acting as sub-consultants.
- 5.4 Resumes (maximum one page per person) describing the relevant background and experience of the Consultant's principal and key project individuals, with reference to projects listed (item 5.5). (A principal is the person committed to the AOC throughout the project assignment, responsible for the Consultant's contractual commitments and quality of service. A project individual is the person responsible for the execution of the work.)
- 5.5 Descriptions (maximum one page per project, maximum ten projects) of current or recent projects relevant to this project in terms of similarity of technical scope, complexity, team composition, or other attributes, with reference to key project individuals listed (item 5.4). Provide the year of project completion and contact information (including telephone number) for the Consultant's client on each project identified. The AOC may contact the client references to verify details of services provided.
- 5.6 Additional information (maximum three pages) demonstrating the suitability of the prospective Consultant to this project, in terms of the evaluation criteria (section 4.0) and with reference to key individuals and projects listed (items 5.4 and 5.5). The information should be presented in a format that follows the evaluation criteria and that identifies which of the criteria is being addressed by each piece of information.

At the Consultant's discretion, this material might include information demonstrating special knowledge or expertise regarding the project in terms of suitable criteria, standards, methods, or software; seismic hazard characterization; seismic rehabilitation schemes; buildings of certain age, size, location, complexity, architectural program, etc.; economics of real estate, construction,

relocation, etc.; implementation constraints on rehabilitation strategies; public sector projects and bond funding; etc. With regard to evaluation criteria regarding experience with report writing, presentations, etc., it is not necessary, nor is it requested, to submit samples of past work. Rather, the prospective Contractor should use items 5.4 and 5.5 to describe the nature of its past work and item 5.6 to relate its experience to this project.

6.0 COST PROPOSAL

Not applicable.

7.0 SUBMISSION OF MATERIALS

- 7.1 Submit one cover letter signed by an authorized representative of the prospective Consultant, including name, title, address, and telephone number of one individual who is the Consultant's designated representative. In a Subject line, refer to the Project Title and RFQ number listed on the coversheet to this RFQ.
- 7.2 Submit five copies of the SOQ described in section 5.
- 7.3 Submittals must be delivered to the individual listed in the Submission of Qualifications section of the coversheet to this RFQ.
- 7.4 Only written responses will be accepted. Responses should be sent by registered or certified mail or by hand delivery.

8.0 RIGHTS

The AOC reserves the right to reject any and all submittals, in whole or in part, as well as the right to issue similar RFQs in the future. This RFQ 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 submittal. One copy of a submitted Statement of Qualifications will be retained for official files and becomes a public record.

9.0 PROJECT MANAGEMENT

The Project Manager for this RFQ process is:

David Bonowitz
Office of Court Construction and Management
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3660
415-865-8034
david.bonowitz@jud.ca.gov

10.0 ADDITIONAL REQUIREMENTS

10.1 Prospective Consultants may register their intention by emailing contact information for the Consultant's Principal (and person responsible for submittal preparation, if different) to occmrfq@jud.ca.gov, putting the RFQ Number, CSE04, in the email subject line. Registered individuals will be notified of a non-mandatory pre-submittal telephone conference call tentatively scheduled for Friday, May 6, 2005. Individuals may register and submit questions by email through the close of business Tuesday, May 3, 2005.

11.0 PROPOSED CONTRACT TERMS AND ADMINISTRATIVE RULES

Contracts with successful firms will be signed by the parties on an AOC Standard Agreement form and will include terms appropriate for this project. Terms and conditions typical for the requested services are attached as Attachment A: Contract Terms. This attachment is intended to provide a synopsis of general terms that the AOC believes will be applicable to these services. It does not itself constitute the legal contract document in full, nor is it an exhaustive list of all terms, nor does it limit the AOC from negotiating additional or different terms in the interest of the AOC.

Incorporated in this RFQ, and attached as Attachment B, is a document entitled "Administrative Rules Governing Requests for Proposals" which applies to this Request for Qualifications. Consultants shall follow these rules in preparation of their Statements of Qualifications.

12.0 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 submittal 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 submitter 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 submittal.

STANDARD PROVISIONS

1. Indemnification

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

- (a) Contractor’s or any of its employees’ or Subcontractors’ negligent acts, omissions, or intentional misconduct;
- (b) Contractor’s breach of its obligations under this Agreement;
- (c) Contractor’s or any of its employees’ or Subcontractors’ violation of any applicable law, rule, or regulation; and/or
- (d) Any claim or lawsuit by any third party, contractor, Subcontractor, supplier, worker, or any other person, firm, or corporation furnishing or supplying Work, Services, Materials, or supplies in connection with the performance of this Agreement who may be injured or damaged by the Contractor or any of its Subcontractors or employees, when such claim arises from, is related to, or is in connection with Contractor’s performance under this Agreement.

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

2. Relationship of Parties

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

3. Termination for Cause

The State may terminate this Agreement and be relieved of the payment of any consideration to the Contractor if the Contractor fails to perform the provisions of this Agreement at the time and in the manner provided. If the Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost to the

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State to perform this Agreement shall be deducted from any sum due the Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to the Contractor upon demand.

4. No Assignment

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

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

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

7. Consideration

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

SPECIAL PROVISIONS

1. Manner of Performance of Work

Contractor shall provide, and shall act to ensure that its Subcontractors shall provide that all Work specified in these Contract Documents is performed to the State's satisfaction, in compliance with the standards specified in Exhibit D, and in compliance with the Nondiscrimination/No Harassment Clause.

2. Standard of Professionalism

Contractor shall conduct all Work consistent with professional standards for the industry and type of work being performed under the Agreement.

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3. Acceptance of the Work

- A. The State's Project Manager shall be responsible for the sign-off acceptance of all the Work required and performed/submitted pursuant to this Agreement. Prior to approval of the Work and prior to approval for payment, the Project Manager will apply the standards established in Exhibit D and the acceptance criteria set forth in subparagraph B of this article, as appropriate, to determine the acceptability of the Work provided by Contractor. If the State's Project Manager rejects the Work, the parties agree to any dispute(s) resulting from such rejection(s) will be resolved as set forth in this article.
- B. Acceptance Criteria for Work ("**Criteria**") provided by Contractor pursuant to this Agreement include:
- i. Timeliness: The Work was provided on time; according to schedule;
 - ii. Completeness: The Work contained all of the Deliverables, Data, Materials, and features required by the Agreement and the Work Authorization; and
 - iii. Technical accuracy: The Work complied with the standards of this Agreement, or, if this Agreement lacks a standard for provision of the Work, the currently generally accepted industry standard.

4. Services Warranty

Contractor warrants and represents that Contractor's employees, Subcontractors, and /or agents assigned to perform Work under this Agreement shall have the skills, training, and background reasonably necessary to the performance of their assigned responsibilities, as judged by currently accepted industry standards, and that they shall perform in a competent and professional manner.

Contractor warrants that the Work to be provided hereunder will conform to the requirements of this Agreement. This warranty shall begin upon the date of the State's final payment for the Work provided for an individual Task, and shall extend for a period of 180 Days (Warranty Period"). If the State identifies defect(s) in the Work provided during the Warranty Period, Contractor shall either reperform the Work or otherwise remedy the defect to the satisfaction of the State. Contractor shall (unless a longer period is agreed to in writing with the State's Project Manager) have a period of thirty (30) Days following receipt of Notice of the existence of a defect in which to provide a cure. In no event shall the State be responsible for any costs incurred by Contractor to remedy any deficiencies in the Work.

5. Copyrights and Rights in Data, Material, and Deliverables

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

6. Ownership

Any interest of Contractor or any of its Subcontractors in any Data, Materials, and/or Deliverables in any form, or other documents and/or recordings prepared by Contractor or its Subcontractors in its performance of Work under this Agreement shall become the property of the State. Upon the State's written request, or upon any termination of this Agreement or any Work Authorization Contractor shall assign and/or shall act to ensure that its Subcontractor's assign any such interest to the State and provide the State with copies of all such Data, Materials, and/or Deliverables, within thirty (30) Days of the request.

7. Contractor's Personnel

- A. Contractor shall provide all personnel and Subcontractor personnel necessary to provide the Work authorized under this Agreement.
- B. Contractor and/or its Subcontractors shall provide certain Key Personnel, including Contractor's Project Manager(s), to perform certain Work set forth in this Agreement and in Work Authorizations.
- C. Contractor's Project Manager shall:
 - i. Serve as the primary contact with the State's Project Manager and personnel;
 - ii. Manage the day to day activities of Contractor and its Subcontractor's personnel;
 - iii. Identify the appropriate resources needed;
 - iv. Plan and schedule the Work;
 - v. Meet budget and schedule commitments;
 - vi. Provide Progress Reports in accordance with this Agreement; and
 - vii. Act to ensure the overall quality of the Work performed.
- D. The State reserves the right to disapprove the continuing assignment of any Key Personnel provided under this Agreement, if, in the State's opinion, the performance of Key Personnel is unsatisfactory. The State agrees to provide Notice to Contractor in the event it makes such a determination. If the State exercises this right, Contractor shall immediately assign replacement Key Personnel, possessing equivalent or greater experience and skills.
- E. If any of Key Personnel assigned to a Project, through no cause or fault of Contractor, become unavailable to perform Work, Contractor shall immediately provide replacement Key Personnel, possessing equivalent or greater experience and skills as required by this Agreement and as further specified in any resumes referenced in Work Authorizations.

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- F. Contractor shall ensure that the same Key Personnel named in Work Authorizations are retained during the performance of the Work of that Work Authorization. However, Contractor may, with approval of the State's Project Manager, introduce substitute Key Personnel with specific skill sets/qualifications, or release Key Personnel whose skill sets/qualifications are no longer needed, if advance approval in writing is received from the State's Project Manager.
- G. If any of the Key Personnel identified as specified in Exhibit D of this Agreement terminate their employment during the period of performance of a Work Authorization, Contractor will provide a substitute acceptable to the State's Project Manager.
- H. If any Key Personnel become unavailable or are disapproved and Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement or the applicable Work Authorization for cause, pursuant to Exhibit A - Standard Provisions, article 3.

8. Termination Other Than for Cause

- A. In addition to termination for cause under Exhibit A, Standard Provisions, article 3, the State may terminate this Agreement or any Work Authorization for convenience and without cause at any time upon providing Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, Contractor shall promptly discontinue all Work 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 Contractor for the fair value of satisfactory Work rendered before the termination, not to exceed the total Contract Amount.

9. 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 Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.

10. Subcontracting

Contractor shall not subcontract the Work to be provided under this Agreement unless Contractor has identified the Subcontractor in writing in a Proposal that is acceptable

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to and authorized by the State. No party to this Agreement shall in any way contract on behalf of or in the name of another party to this Agreement.

11. Retention of Records

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 California State and Federal law, a minimum retention period being no less than three (3) years. The retention period starts from the date of the submission of the final payment request. Contractor is also obligated to protect Data adequately against fire or other damage.

12. Audit

- A. 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. Contractor further agrees to maintain such Data for a period of three (3) years after final payment under this Agreement.

13. Insurance Requirements

- A. General. 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 Contractor under this Agreement. 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, 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. 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.

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- iii. Commercial General Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, and general aggregate Combined Single Limit Bodily Injury and Property Damage.
 - iv. Business Automobile Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
 - v. Professional Liability Insurance; Errors and Omissions —Covering Contractor's performance under this Agreement. The policy shall provide limits of at least **\$1,000,000** per claim or per occurrence and **\$1,000,000** annual aggregate. If the policy is written on a "claims made" form, Contractor shall continue such 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. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to 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, as well as the officers, officials, employees and agents of the Trial Courts 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 as well as the officers, officials, employees and agents of the Trial Courts. Any insurance and/or self-insurance maintained by the State or the Trial Courts, 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.

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- 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. Acceptability of Insurers. Unless otherwise approved by the State:
 - i. Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VIII.
 - ii. Professional Liability, Errors and Omissions insurance may be placed with insurers with a Best's rating of B+: VII. Any exception must be approved by the State.
- G. Subcontractors. The Contractor shall include any Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.
- H. All of the Contractor's policies, including Subcontractors' policies, shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within thirty (30) Days, mailed to the following address: Judicial Council, Administrative Office of the Courts, Contracting Officer, 455 Golden Gate Ave., 7th Floor, San Francisco, CA 94104.

14. Confidentiality

- A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State, the Counties of the State of California, and /or the Courts 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 State's 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

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foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

15. Trade Secret, Patent and Copyright Indemnification

- A. Contractor shall hold the Court(s), the State, its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used by Contractor or its Subcontractors in connection with this Agreement.
- B. Contractor, at its own expense, shall defend any action brought against the Court(s) and/or the State, its officers, agents, and employees, to the extent that such action is based upon a claim that any Deliverable(s), Data or Materials supplied by Contractor or its Subcontractors infringes a United States patent or copyright or violates a trade secret. Contractor shall pay those costs and damages finally awarded against the Courts and/or the State its officers, agents, and employees, in any such action. Such defense and payment shall be conditioned on the following:
 - i. That Contractor shall be notified within a reasonable time in writing by the State of any Notice of such claim; and,
 - ii. That Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the Court(s) and/or the State shall have the option to participate in such action at its own expense.
- C. Should the Deliverable(s), Data, Materials, become, or in Contractor's opinion are likely to become, the subject of a claim of infringement of a United States patent or copyright or a trade secret, the State shall permit Contractor at its option and expense either to procure for the Court(s) and/ or the State the right to continue using the Deliverable, Data or Materials, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables, Data or Materials by the Courts and/or the State shall be prevented by injunction, Contractor agrees to take back such Deliverables, Data or Materials and make every reasonable effort to assist the Courts and/or the State in procuring substitute Deliverables, Data or Materials. If, in the sole option of the State, the return of such infringing Deliverables, Data or Materials makes the retention of other Deliverables, Data or Materials acquired from Contractor under this Agreement impractical, the State shall then have the option of terminating the applicable Work Authorization(s), or applicable portions thereof, or this

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Agreement in its entirety, without penalty or termination charge. Contractor agrees to take back such Deliverables, Data or Materials and refund any sums that the State has paid Contractor less any reasonable amount for use or damage.

- D. The foregoing states the entire liability of Contractor to the Courts and/or the State with respect to infringement of patents, copyrights, or trade secrets.

PAYMENT PROVISIONS

1. Contract Amount

The total amount the State may pay to Contractor under this Agreement for performing all Work, as well as all Travel and Living Expense and/or Reimbursable Expenses, shall be the total of the Total Amounts for said Services and Expenses specified in all Work Authorizations, which total shall not in any event exceed the Contract Amount.

A. Compensation

- i. The total actual amount for which the State will reimburse Contractor under a Work Authorization for performing all Work, as well as all Travel and Living Expense and/or Reimbursable Expenses, shall not in any event exceed the total amount of all such costs and expenses, which shall be specified on the face of that Work Authorization as the total estimated amount (“Total Amount”).

a. Compensation for Work Provided on a Fixed Price Basis

- The price for Work provided on a Fixed Basis shall be at the price specified in This Exhibit C.

B. Compensation for Travel and Living Expenses

- i. Provided that reimbursement for Travel and Living Expenses is authorized separately and said expenses are not included in the Fixed Price, the State shall reimburse Contractor for actual and reasonable transportation, meals, and lodging expenses actually incurred by Contractor’s and its Subcontractor’s employees in the course of their performance of the Work and according to the provisions of the Travel Plan specified in the Work Authorization, but subject to the following:

- If air transportation is authorized, the State will reimburse Contractor only at the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) Days prior to travel, unless the

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Project Manager agrees otherwise in the Work Authorization.

- If overnight lodging expense is authorized, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the State will reimburse Contractor only (i) for hotel room rental at the actual cost not to exceed **\$110.00** per Day, plus occupancy tax and/or energy surcharge; and (ii) for meals, at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~**\$6.00**; lunch~**\$10.00**; dinner~**\$18.00**; and incidentals~**\$6.00**.
- If private vehicle ground transportation expense is authorized, the State will reimburse Contractor at **\$0.34** cents per mile.
- Contractor shall not request nor shall the State consider any reimbursement for any hours of non-production work, including but not limited to time spent traveling to and from the job location.

C. Reimbursable Expenses:

- i. Provided that reimbursement for Reimbursable Expenses is authorized separately, the State shall reimburse Contractor for said expenses. Reimbursable Expenses shall not, without the express written permission of the State's Project Manager, exceed the total estimated amount for said expenses specified on the face of that Work Authorization.
- ii. Reimbursable expenses ("Reimbursable Expenses") are limited to itemized expenses, specified to the State and approved of in this Agreement, for goods or services necessary to the performance of the Work and actually incurred by Contractor and or its Subcontractors in the performance of the Work, .

D. Taxes

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on 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 Deliverables provided or Services rendered pursuant to this Agreement.

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Contract Terms

E. Invoicing Requirements

- i. Upon receipt of a signed Acceptance and Signoff Form from the State's Project Manager indicating the Acceptance of all Work required under a Work Authorization, Contractor shall submit to the State an individual invoice for said Work. Said invoice shall in addition specify all Travel and Living Expenses claimed and any Reimbursable Expenses claimed under said Work Authorization(s). 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, 7th Floor
San Francisco, CA 94102-3660

- ii. Contractor shall simultaneously submit a copy of the invoice to the State's Project Manager:

Mr. or Ms.
Administrative Office of the Courts
Office of Court Construction and Management
455 Golden Gate Avenue, 5th Floor
San Francisco, CA 94102-3660.

- iii. Contractor's invoice(s) shall clearly specify:

- The Contract number; XX, as well as the Work Authorization Number provided on the Work Authorization.
- A unique invoice number;
- Contractor's name and address;
- Contractor's Taxpayer identification number (FEIN);
- Description of the completed Work, including Services rendered and/or Deliverable(s) provided, as appropriate;
- Travel and Living Expenses claimed;
- Reimbursable Expenses claimed;
- Preferred remittance address, if different from the mailing address.

F. Payment

The State will make payment in arrears for all proper invoices within sixty (60) Days after receipt.

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Contract Terms

G. Limitation on Payment

The State's authority to make payment to Contractor expires upon the expiration date of the funding ("Funding Expiration Date") that is specified on the face of the Work Authorization. Contractor agrees that any Work that shall be performed under any Work Authorization executed must be completed on or before 75 Days prior to the Funding Expiration Date. Any Travel and Living Expenses and/or Reimbursable Expenses authorized must be incurred and accounted for on or before 75 Days prior to the Funding Expiration Date. Invoices for all Work performed and all Travel and Living and Reimbursable Expenses claimed must be presented to the State not less than sixty (60) Days prior to the Funding Expiration Date.

H. Price:

TBD

**EXHIBIT D
WORK TO BE PERFORMED,
AND WORK AUTHORIZATION ADMINISTRATION**

To be written

**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

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Administrative Rules Governing Requests for Proposals

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 faxing an addendum to the vendors to whom the solicitation document was sent. 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 may not be changed or withdrawn after the proposal due date and time listed on the coversheet of this RFP.

F. Evaluation process

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

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3. Proposals that contain false or misleading statements may be rejected if in the AOC's opinion the information was intended to mislead the state regarding a requirement of the solicitation document.
4. Cost sheets will be checked only if a proposal is determined to be otherwise qualified. All figures entered on the cost sheets must be clearly legible.
5. During the evaluation process, the AOC may require a 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

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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,

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- 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

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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.

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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.

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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.