

## **ATTACHMENT A**

### **JUDICIAL COUNCIL OF CALIFORNIA**

#### **ADMINISTRATIVE RULES GOVERNING REQUESTS FOR PROPOSALS**

##### **A. General**

1. This solicitation (the “RFP”) (including, without limitation, any modification made thereto in the course of the solicitation), the evaluation of materials to be submitted in response to this solicitation (the “Proposal(s)”), the award of any contract, and any issues to be raised with regards to this solicitation or to these Administrative Rules Governing Requests for Proposals themselves (the “Administrative Rules”) shall be governed by these Administrative Rules. By the act of submission of a Proposal, prospective Consultants agree to be bound by these Administrative Rules. If a prospective Consultant has objections to the Administrative Rules, they must be dealt with in accordance with the provisions of Section B of these Administrative Rules.
2. In addition to explaining the Judicial Council of California’s (“Judicial Council”) requirements and needs for goods and/or services, the RFP includes instructions which prescribe the format, content, and the date and time due of Proposals that are being solicited. Prospective Consultants must adhere to all instructions provided in the RFP when submitting Proposals.
3. An RFP, as published to the California Courts “Request for Proposals” page of the California Courts website, constitutes the entire statement of the Judicial Council’s solicitation with regard to the subject matter of the solicitation, and is not subject to any modification not posted in writing to said website. Any and all other communications, whether prior to or during the course of a solicitation, and whether given in writing, verbally, or published to other Judicial Council, California Courts, State of California, or other websites are hereby disclaimed.

##### **B. Errors in the RFP or Administrative Rules**

1. If a prospective Consultant who desires to submit a Proposal discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP; is of the opinion that the structure of the RFP does not provide a correct or optimal methodology for the solicitation of the goods and/or services sought; believes that one or more of the RFP’s requirements is onerous or unfair; believes that the RFP unnecessarily precludes less costly or alternative solutions; or has objections to these Administrative Rules, the prospective Consultant must, at least two (2) full Judicial Council business days before the due date of the Proposals, provide the Judicial Council with written notice of the same. The written notice shall be accompanied by a written explanation of why the prospective Consultant is of the opinion that the RFP or the Administrative Rules should be changed, as well as a written description of the modification sought. Said written notice must be in the form of an e-mail submitted to the e-mail address established for the submission of questions in the RFP. Failure to provide the Judicial Council with such written notice as specified above on or before the time specified above forfeits the prospective Consultant’s right to raise such issues later in the solicitation process or at any other time.
2. Without disclosing the source of the request, the Judicial Council will evaluate the request and will, prior to the date established for submission of Proposals, at its sole discretion determine if it chooses to modify the RFP. Any modification made will be published by the Judicial Council to the Judicial Council’s website advertising the solicitation.

3. If a prospective Consultant submitting a Proposal knows of (or, if it can be reasonably demonstrated, that it should have known of) an error in the RFP but fails to notify the Judicial Council of the error as prescribed above, the prospective Consultant is submitting a Proposal at its own risk and, if awarded the work, shall not be entitled to additional compensation or time for performance by reason of such error later identified, or by reason of its later correction by the Judicial Council.

**C. Questions; Requests for Access to Public Records; Confidentiality**

1. Prospective Consultants are entitled to ask questions about the RFP and the nature of the goods and/or services being solicited in accordance with the procedure for the submission of such questions specified in the RFP. Except as otherwise specified below, the Judicial Council's responses to questions submitted shall be published to the public website for the procurement.
2. The Judicial Council of California is bound by California Rule of Court 10.500 with regards to disclosure of public records.
3. If the Judicial Council receives a request for public access to documents submitted in response to this RFP or other documents related to this RFP, the Judicial Council will determine whether such documents, in whole or part, are subject to disclosure under Rule 10.500 or other applicable law and inform the inquiring party. If subject to disclosure under Rule 10.500, the Judicial Council will proceed to disclose the documents as public records.
4. Prospective Consultants may note or mark portions of the information submitted on their Proposal in response to this RFP indicating that certain information is confidential and/or proprietary.
5. If the Judicial Council finds or reasonably believes that any portions of the documents requested are exempt from disclosure for reasons of confidentiality, those portions of the documents will not be disclosed.
6. If the documents requested are marked confidential and the Judicial Council reasonably believes that the material so marked is not confidential, the Judicial Council will contact the prospective Consultants with a request to substantiate its claim for confidential treatment; however, if the Judicial Council disagrees with the substantiation provided, the Judicial Council will proceed to disclose the documents as public records pursuant to Rule 10.500 and other applicable law regardless of the marking or notation seeking confidential treatment.

**D. Addenda**

1. In response to questions raised, or at its sole discretion, the Judicial Council may modify the RFP website posting or any of any document(s) provided therein at any time prior to the date and time fixed for submission of Proposals. Such modification shall be made via a posting of such change(s) to the Judicial Council's website.

**E. Withdrawal and Resubmission of Proposals**

1. A prospective Consultant may withdraw its Proposal, but only in its entirety, at any time prior to the deadline for submitting Proposals by notifying the Judicial Council in writing of its withdrawal. Any such notice of withdrawal must bear the signature of an individual and assert that that individual has the requisite authority from their organization to make

such a withdrawal. Withdrawals must be made in writing and must be submitted as a PDF document by e-mail to the e-mail address established for the submission of questions in the RFP document.

2. A prospective Consultant who has withdrawn a Proposal may thereafter submit a new Proposal, provided that it is received at the Judicial Council no later than the Proposal due date and time specified in the RFP.
3. Withdrawals made in any other manner, regardless of whether oral or written, will not be considered and, if received, will not be accepted as valid.
4. Proposals cannot be withdrawn after the Proposal due date and time specified in the RFP.

#### **F. Evaluation Process**

1. In accordance with the provisions of the RFP, an evaluation will be made of all Proposals rightfully received to determine if they are complete with regard to the materials required for submission by the RFP and to determine if they otherwise comply with the requirements established in the RFP.
2. If a Proposal submitted is incomplete with regards to the materials required for submission or fails to meet any other material requirement of the RFP, the Proposal will be rejected. A requirement will be judged to be material to the extent that it is not responsive to or is not in substantial accord with requirements of the RFP. Material deviations cannot be waived.
3. The Judicial Council, at its sole discretion shall have the right to waive immaterial deviations of Proposals with regards to the materials submitted as well as other immaterial deviations from the requirements of the RFP.
4. The Judicial Council's waiver of an immaterial deviation for one prospective Consultant shall in no way act to excuse that prospective Consultant from material compliance with any other RFP requirement. The Judicial Council's waiver of an immaterial deviation for one prospective Consultant shall in no way act to excuse other prospective Consultant(s) from material compliance with that same requirement.
5. Proposals that make false or misleading statements or contain false or misleading information may be rejected if, in the Judicial Council's sole opinion, the Judicial Council concludes that said statements and/or information were intended to mislead the Judicial Council.
6. During the evaluation of the Proposal's, the Judicial Council has the right to require a prospective Consultant's representatives to answer questions with regard to the Proposal submitted. Failure of a prospective Consultant to demonstrate that the claims made in its Proposal are in fact true may be sufficient cause for deeming a Proposal to be materially in non-compliance with the requirements of the RFP.

#### **G. Proposals: Rejection, Negotiation, Selection Rights**

1. In accordance with the provisions of the RFP, the Judicial Council may reject any or all Proposals.

2. The Judicial Council reserves the right to negotiate the content of the Proposal proposed with individual prospective Consultants if it is deemed in the Judicial Council's best interest.
3. The Judicial Council reserves the right to make no selection if, at the Judicial Council's sole discretion, Proposals are deemed to be outside the fiscal constraints of, 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 provisions of the RFP except to the degree that any immaterial deviation(s) have been waived by the Judicial Council.
2. The actual execution of contracts is subject to availability of the funds necessary to pay for the goods and services by the State of California through its budgeting and appropriations methods. The Judicial Council makes no guarantee of funding through its solicitation for goods and/or services via this RFP.

#### **I. Execution of Contracts**

1. The Judicial Council will make a reasonable effort to execute a contract for the goods and/or services solicited in the RFP within the time specified in the RFP or, if no time has been specified in the RFP, within thirty (30) calendar days following the date of publication of award. Exceptions to the contract documents posted with the RFP that are properly raised by a prospective Consultant may delay the execution of contracts. If the negotiation of exceptions raised results in a delay of the planned time of execution past the time period allowed for as specified above (unless otherwise extended in writing by the Judicial Council), the Judicial Council, at its sole discretion, shall have the right disqualify the award made.
2. By submitting a Proposal, a prospective Consultant consents to the use of the form of agreement posted with the RFP rather than its own contract form. If a Consultant has any comments or objections to the form of agreement, it should include those in its Proposal by completing the Acceptance of Terms and Conditions Form (Attachment 1), pursuant to Section 6.1.16 of this RFP. **PLEASE NOTE:** the Judicial Council does not intend to consider any substantive changes to the form of agreement if they are not submitted at or before this time. The Judicial Council makes no promises or guarantees that any changes to the form of agreement posted with this RFP will be accepted or that any negotiations thereof will even be entertained. Questions about and major exceptions to the contract form should be submitted as questions in accordance with the provisions for the raising and answering of questions as given in the RFP, and not following notification of an award. The Judicial Council will make reasonable attempts to answer such questions; however, the contract will not be negotiated until after the award is made, and prospective Consultants shall not construe the Judicial Council's responses to questions as the Judicial Council's final position on a question raised, nor rely on the Judicial Council's answers as a guarantee of a later successful negotiation of terms.

#### **J. Protest Procedure**

1. All protests are subject to, and shall follow, the process provided below.
2. Failure of a prospective Consultant to comply with any of the requirements of the protest procedures set forth herein will render a protest inadequate and will result in rejection of the protest by the Judicial Council. Such failure and subsequent rejection shall act to further

forfeit the right of the prospective Consultant to continue the protest, and is not appealable under this protest procedure.

3. A protest may only be based upon alleged restrictive requirements in the RFP or upon alleged improprieties in regard to the Judicial Council's execution of its responsibilities with respect to receipt and evaluation of the Proposals or grant of award(s), but only as such responsibilities are specified in the RFP document.
4. For protests based on allegedly restrictive requirements: Protests alleging restrictive requirements in the RFP must be submitted and will be subject exclusively to the provisions of Section B of these Administrative Rules. Any protest alleging restrictive requirements in the RFP raised later than the Proposal Due Date noted in Section 4.1, Procurement Schedule, will not be considered a valid protest, will be rejected by the Judicial Council, and the prospective Consultant shall have no further recourse under this procedure, including no further right of appeal.
5. For protests based on alleged improprieties in regard to the Judicial Council's execution of its responsibilities: A prospective Consultant who has actually submitted a Proposal may protest the Judicial Council's rejection of its Proposal for failure to comply with the requirements of the RFP, or upon the basis of an allegation of improprieties with regard to the Judicial Council's responsibility to fairly and impartially evaluate the Proposals and make awards, but only insofar as such responsibilities are specified in the RFP document. In order to be accepted as valid, such protests must meet at least one of the following conditions and must be submitted in writing with the required documentation specified below:
  - a. If a Proposal is rejected because of an alleged failure to provide the Proposal to the Judicial Council on or before the date and time due, and/or to the place required, and/or to otherwise properly provide the Proposal with regard to any other requirement necessary to make a correct submission as specified by the RFP, the prospective Consultant may file a protest. Said Consultant must provide verifiable documentation that it has submitted a Proposal in compliance with all the RFP's directives regarding timeliness, place of delivery and/or other required aspects necessary to make a submission. Such protests must be filed within five (5) Judicial Council business days following the date of dispatch of the notice of rejection.
  - b. If a Proposal is rejected because the Proposal submitted is incomplete with regards to the materials required to make a submission, or fails to meet any other material requirement of the RFP, the prospective Consultant may file a protest. Said protest must provide a written explanation which alleges to reasonably demonstrate that the Proposal submitted was in fact complete and/or was in fact in compliance with the RFP requirement(s) in question. Such protests must be filed within five (5) Judicial Council business days following the date of dispatch of the notice of rejection.
  - c. If a Proposal fails to win an award or qualify the prospective Consultant for a short listing for further evaluation and the prospective Consultant alleges that said failure was due to a failure of the Judicial Council to fairly and impartially execute its responsibilities with regard to evaluation and award of the work as such responsibilities were specified in the RFP, the prospective Consultant may file a protest. Said protest must provide a written explanation which alleges to reasonably demonstrate in what manner the Judicial Council has failed to fairly and impartially execute said responsibilities. Such protests must be filed within (5) Judicial Council business days following the date of posting of award notices to the Judicial Council website for the RFP.

4. In order to be considered valid, all protests to be submitted:
  - a. Must be submitted by e-mail to the e-mail address established for the submission of questions in the RFP document. PDF documents may accompany the e-mail as further detailed below.
  - b. Must include the name, address, telephone and facsimile numbers, and email address of the party protesting or their representative.
  - c. Must provide the title of the solicitation document under which the protest is submitted.
  - d. Must provide a detailed description of the specific legal and/or factual grounds for the protest and all supporting documentation and evidence available to the protesting party. PDF files of documents are acceptable, but the Judicial Council reserves the right to require originals if it so deems necessary. If the protestor fails to include documentation or evidence which could have reasonably been provided at the time the protest is made, such failure shall act to restrict the introduction of such evidence at a later date.
  - e. Must provide a detailed description of the specific ruling or relief requested.
  - f. Must cite all protests that the prospective Consultant intends to make. Failure to raise a protest in the initial protest submittal in accordance with the requirements of the Administrative Rules shall act to disqualify the raising of that protest at a later date.
5. Any protest failing to meet or provide the appropriate requirements as noted above shall not be considered valid and will be rejected as non-compliant by the Judicial Council and the protestor shall have no further recourse under this procedure, including any right of appeal.
6. If the course of investigation of a protest deems doing so necessary, the Judicial Council may request, and the protestor shall make best efforts to provide, further evidence or documentation when and as requested by the Judicial Council.
7. The existence of a protest will in no way act to restrict the right of the Judicial Council to proceed with the procurement. The Judicial Council, at its sole discretion, may elect to withhold the contract award(s) until the protest is resolved or denied or may proceed with the award as it deems in the best interests of the State of California.

#### **K. Protest Decisions**

1. The protest will be forwarded to the appropriate Contracting Officer at the Judicial Council, who will assess the protest submission for compliance with the requirements of these Administrative Rules and, if deemed a valid protest under said rules, shall examine the issues raised and materials provided. Invalid protests shall be returned accompanied with a statement detailing the aspects of the protest submitted that failed to comply with the Administrative Rules.
2. If the protest submission is deemed valid, the Judicial Council will consider the relevant circumstances surrounding the procurement in its prescription of a fair and reasonable remedy.
3. The Contracting Officer will endeavor to provide the protestor with a written judgment within ten (10) Judicial Council business days following the day of receipt of the protest. The judgment shall include a description of any relief or remedy that shall be provided.

4. If awarding a remedy, the Judicial Council shall, at its sole discretion, choose to employ any or a combination of the following remedies:
  - a. Award the contract consistent with the RFP;
  - b. Extend an additional award to the protesting prospective Consultant;
  - c. Terminate the already existing contract that resulted from the RFP and award the contract to the protesting prospective Consultant;
  - d. Terminate the already existing contract that resulted from the RFP for convenience and re-solicit the RFP;
  - e. Refrain from exercising options to extend the term of the contract that resulted from the RFP and re-solicit sooner than originally planned;
  - f. Other such remedies as the Judicial Council may deem necessary and appropriate.
5. While the Judicial Council will endeavor to investigate the protest and provide a written response to the prospective Consultant within ten (10) Judicial Council business days, if the Judicial Council requires additional time to review the protest and is not able to provide a response within said period of time, the Judicial Council will notify the prospective protesting Consultant of the expected time within which it shall provide a response.

**L. Appeals Submission**

1. The Contracting Officer's ruling and any relief specified in the ruling shall be considered the final judgment and adequate relief regarding the protest unless the protesting Consultant thereafter seeks an appeal of the ruling or relief prescribed.
2. All appeals are subject to, and shall follow, the process provided below.
3. The protestor may seek an appeal of the ruling and/or relief by filing a request for appeal addressed to the Judicial Council's Senior Manager, Business Services, at the same address noted for the submission of questions in the RFP. In order to be accepted as valid, any such appeal must be received by the Judicial Council within five (5) Judicial Council business days following the date of issuance of the Judicial Council Contracting Officer's decision.
4. The justification for an appeal is specifically limited to the following:
  - a. Facts and/or information related to the protest, as previously submitted, that were not reasonably available at the time the protest was originally submitted; or
  - b. Allegation(s) that the Contracting Officer's decision regarding the protest contained errors of fact, and that such errors of fact were significant and material factors in the Contracting Officer's decision; or
  - c. Allegation(s) that the decision of the Contracting Officer with regards to the protest was in error of law or regulation.
5. Appeals raising other justifications for appeal shall be rejected as non-compliant and the protesting prospective Consultant shall have no further recourse under this procedure, including any further right of appeal.

6. In order to be considered valid, all requests for appeal must be:
  - a. Must be submitted by e-mail to the e-mail address established for the submission of questions in the RFP document and addressed to the Judicial Council's Senior Manager, Business Services. PDF documents may accompany the e-mail as further detailed below.
  - b. Must include the name, address, telephone and facsimile numbers, and email address of the appealing party or their representative.
  - c. Must provide the title of the solicitation document under which the appeal is submitted.
  - d. Must provide a detailed description of the specific legal and/or factual grounds for the appeal and all supporting documentation and evidence available to the protesting party. PDF files of documents are acceptable, but the Judicial Council reserves the right to require originals if it so deems necessary. If the appeal fails to include documentation or evidence which could have reasonably been provided at the time the appeal is made, such failure shall act to restrict the introduction of such evidence at a later date.
  - e. Must provide a detailed description of the specific ruling or relief requested.
  - f. Must cite **all** appeals that the protesting prospective Consultant intends to make. Failure to raise an appeal in the initial appeal submittal shall act to disqualify the raising of that appeal at a later date.

#### **M. Appeals Decisions**

1. The Judicial Council's Senior Manager, Business Services, will assess the appeal submission for compliance with the requirements of these Administrative Rules and, if deemed a valid appeal under said rules, shall examine the issues raised and materials provided. Invalid appeals shall be returned accompanied with a statement detailing the aspects of the appeal submitted that failed to comply with the Administrative Rules.
2. If the appeal submission is deemed valid, the Judicial Council will consider the relevant circumstances surrounding the procurement in its prescription of fair and reasonable remedy.
3. The Judicial Council Senior Manager Business Services will endeavor to provide the appealing prospective Consultant with a written judgment within ten (10) Judicial Council business days following the day of receipt of the appeal. The judgment shall include a description of any relief or remedy that shall be provided.
4. While the Judicial Council will endeavor to investigate the appeal and provide a written response to the prospective Consultant within ten (10) Judicial Council business days, if the Judicial Council requires additional time to review the appeal and is not able to provide a response within said period of time, the Judicial Council will notify the appealing prospective Consultant of the expected time within which it shall provide a response.
5. The judgment of the Judicial Council Senior Manager, Business Services, and any relief or remedy specified shall be final and are not subject to further appeal.



**N. News Releases**

1. News releases pertaining to the existence or disposition of a protest or appeal may not be made without prior written approval of the Judicial Council Senior Manager, Business Services.

**O. Disposition of Proposal Materials Submitted**

1. All materials submitted in response to the RFP will become the property of the State of California and will be returned only at the Judicial Council's option and at the expense of the prospective Consultant submitting the Proposal. One copy of a submitted Proposal will be retained for official files and become a public record.

**P. Payment and Withholding**

1. Payment terms will be specified in the contract document that will be executed as a result of an award made under this RFP; however, prospective Consultants are hereby advised that Judicial Council payments are made by the State of California, and the State does not make any advance payment for services. Payment by the State is normally made based upon completion of tasks as provided for in the agreement between the Judicial Council and the selected Consultant.
2. The Judicial Council may withhold ten percent of each invoice until receipt and acceptance of the final good or service procured. The amount withheld may depend upon the length of the project and the payment schedule provided in the agreement between the Judicial Council and the awarded Consultant.

**END OF ATTACHMENT**