



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

FINANCE DIVISION

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TO: POTENTIAL PROPOSERS

FROM: Administrative Office of the Courts
Executive Office Programs Division

DATE: April 26, 2006

SUBJECT/PURPOSE OF MEMO: REQUEST FOR PROPOSALS
TO EVALUATE AND DEVELOP RECOMMENDATIONS CONCERNING
THE STATEWIDE EXAMINATION PROCESS AND TESTING
INSTRUMENTS FOR CERTIFICATION AND REGISTRATION OF
CALIFORNIA COURT INTERPRETERS

ACTION REQUIRED: You are invited to review and respond to the attached Request for Proposals
("RFP") , as posted at <http://www.courtinfo.ca.gov/reference/rfp/>:
Project Title: Evaluation of Court Interpreters State Examination
RFP Number: 05-EOP-45065049-01

SOLICITATIONS MAILBOX: solicitations@jud.ca.gov

DUE DATE & TIME FOR SUBMITTAL OF QUESTIONS: Deadline for submittal of questions pertaining to solicitation document is:
1:00 p.m. on May 10, 2006.

SUBMISSION OF PROPOSAL: Proposals are to be sent to:
Judicial Council of California
Administrative Office of the Courts
Attn: Nadine McFadden, RFP No. 05-EOP-45065049-01
455 Golden Gate Avenue
San Francisco, CA 94102

DUE DATE & TIME FOR SUBMITTAL OF PROPOSALS: Proposals must be received by: **1:00 p.m. on May 16, 2006.**

1.0 GENERAL INFORMATION

1.1 Background

- 1.1.1 The Judicial Council of California, chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system, including the superior courts, appellate courts and state supreme court. 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 Council is comprised of 28 members representing the judicial system as well as the State Bar and both houses of the State Legislature.
- 1.1.2 The Administrative Office of the Courts (AOC) is the staff agency for the Judicial Council, and assists both the Council and its chair in performing their duties. The AOC is located in San Francisco. It is comprised of ten divisions, including the Executive Office Programs Division, which houses the Judicial Council's Court Interpreter Program. The Court Interpreter Program oversees the testing, certification and registration process for the statewide qualification of court interpreters, as well as other administrative functions such as statewide recruitment, and statewide scheduling to insure coverage for court proceedings requiring interpreter services.

1.2 Program Authority and Structure

- 1.2.1 The California Constitution states that "a person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings." This right is extended by law to certain civil and juvenile proceedings as well. California Government Code §§68560–68566 directs the Judicial Council to adopt programs and standards to insure that qualified interpreters are provided in the courts. This responsibility includes adopting standards for the testing and certification or registration of court interpreters. The Council is also responsible for designating the languages for which a program of certification shall be established, based upon a study every five years of language and interpreter use and need in court proceedings. For all "nondesignated" languages, the Council is responsible for establishing a program of registration.
- 1.2.2 To assist it with these duties, the Council has appointed a Court Interpreters Advisory Panel. This panel is comprised of judges, court administrators, court interpreters, court staff, and representatives of county offices that are involved in court proceedings. The Court Interpreter

Advisory Panel is charged with making recommendations to the Council on, among other things, the certification, registration, renewal of certification and registration, testing, recruiting, training, continuing education, and professional conduct of interpreters.

1.3 Program Context

- 1.3.1 The need for qualified interpreters in the California courts is pressing, and it is growing with the increasing racial and ethnic diversity of the state's population. Approximately 40% of California's population speaks a language other than English in the home. This includes over 200 languages and dialects. Roughly 20% of Californians speak English less than "very well," which effectively precludes meaningful participation in a judicial proceeding without substantial language assistance. (All data is from the U.S. Census Bureau.)
- 1.3.2 To meet this need, there are currently 1,699 certified or registered interpreters in the Judicial Council's court interpreter program. 1,319 of these are certified and 380 are registered. 1,120 of the 1,319 certified interpreters are certified in Spanish. The other important distinction is whether the individual court interpreters work as employees of the court or as independent contractors. Approximately 630 court interpreters are employees of the courts (about half are part-time). The remainder—over 1,000—work as independent contractors. The daily assignment of court interpreters to the courtrooms that need them requires three dedicated staff statewide.
- 1.3.3 Judges are required to use certified or registered court interpreters in court proceedings except for "good cause" (based on specific guidelines), when a noncertified or nonregistered court interpreter may be used. The shortage of court interpreters in California's courts in relation to demand results in cases having to be rescheduled while the court attempts to secure a qualified interpreter. This causes delays in the administration of justice, and sometimes results in courts having to use noncertified or nonregistered interpreters who may lack the experience or skills of a qualified interpreter.
- 1.3.4 The term "interpretation" is a term of art referring to verbal translation between English and the target language. The term "translation" is used only to refer to translation in writing. The essential function of a court interpreter is to interpret oral court proceedings to a limited-English-proficiency defendant or litigant, and to interpret non-English oral testimony for the court. The interpreter may also be asked to interpret something that is written. Interpretation of testimony is performed sequentially, with the witness speaking phrases or sentences in the target language, followed by the interpreter interpreting what has been said into English. Interpretation of proceedings is performed simultaneously, with

the interpreter listening to the proceedings in English and simultaneously interpreting to the defendant or litigant in the target language.

- 1.3.5 The *2005 Language Need and Interpreter Use Study*, conducted by the Judicial Council, reports that “the top 14 languages by days of interpreter service were Spanish (160,396), Vietnamese (8,477), Korean (3,743), Armenian (3,093), Mandarin (2,439), Khmer (Cambodian) (2,365), Cantonese (2,320), Hmong and Mien (1,824), Russian (1,789), Tagalog (1,215), Farsi (1,072), Punjabi (1,032), Lao (1,011), and Japanese (601)”. These statistics show the overwhelming predominance of Spanish as the most highly-needed language in the California courts, representing almost 84% of the interpreter service days for the 14 top languages.
- 1.3.6 The Judicial Council has so far designated for certification 14 oral languages plus American Sign Language (ASL). The currently designated languages include Arabic, Eastern Armenian, Western Armenian, Cantonese, Japanese, Korean, Mandarin, Portuguese, Russian, Spanish, Tagalog, and Vietnamese. Two additional languages, Punjabi and Khmer, have been recently designated by the Council, but certification tests for those languages have not yet been developed.
- 1.3.7 The certification process involves testing candidates for fluency in both English and the designated target language. There are both oral and written components to the test. For nondesignated languages, interpreters are qualified through a similar process, and become “registered.” However, the registration test is limited to testing for English fluency only. It would be prohibitively expensive to develop tests for fluency in the 200-plus nondesignated languages. To summarize, there are two kinds of tests, the certification test and the registration test, based upon whether the target language is designated or nondesignated. Once a language is designated by the Council, a test is developed to measure fluency in the target language as well as fluency in English.
- 1.3.8 The Administrative Office of the Courts contracts with an external provider to develop and administer the certification and registration tests, following the standards and guidelines adopted by the Judicial Council. The certification and registration tests are owned by the State.
- 1.3.9 Additional information about the Council’s court interpreter program can be accessed at: <http://www.courtinfo.ca.gov/programs/courtinterpreters/>. Additional information about the court interpreter testing program can be accessed at: <http://www.cps.ca.gov/tlc/jc/>.

2.0 PURPOSE OF THIS RFP

- 2.1 The AOC seeks the services of a consultant with extensive expertise in language testing. The purpose of this RFP is to produce a comprehensive report analyzing and presenting specific recommendations concerning the testing methods and

tools used to qualify oral language interpreters in California’s state courts; the knowledge, skills and abilities needed to perform the work of a court interpreter; the background, skills and characteristics of the current pool of qualified court interpreters; models used by other state and national systems for qualifying oral language interpreters and their applicability to the California courts; California’s passage rate compared with those of other state and federal court systems; and the concerns and recommendations of key stakeholders concerning California’s current testing system and their likely response to changes.

3.0 SCOPE OF SERVICES

- 3.1. Services are expected to be performed by the consultant between June 1, 2006 and October 1, 2007.
- 3.2. Although American Sign Language is a designated language for which there is a certification test, it is excluded from the scope of this Request for Proposal.
- 3.3. The consultant will be asked to perform the following:

TABLE 1: SCOPE OF SERVICES

<u>Report No.</u>	<u>Description of Work to be Performed</u>
1.	<p>Analysis of Work Qualifications.</p> <p>An analysis of the knowledge, skills, abilities, and qualifications needed to successfully perform the work of a court interpreter in the California courts.</p> <ul style="list-style-type: none"> • Core functional skills and competencies, including oral, written, behavioral, and cultural; • Essential knowledge, qualifications, and characteristics; • Differences in levels of skill or competency, if any, needed for different levels of complexity of tasks; • Profile of qualifications required by the federal courts and other court systems with established court interpreter programs; and • Recommendation of the specific qualifications, including knowledge, skills and abilities, needed to be an effective court interpreter in the California courts.
2.	<p>Survey of Interpreter Pool.</p> <p>A report based upon conducting a survey of the current pool of 1,699 certified or registered California court interpreters, describing their knowledge, experience, skills, qualifications, and characteristics.</p> <ul style="list-style-type: none"> • Descriptive analysis of characteristics of the entire pool; • Descriptive analysis of meaningful subgroups, including Spanish interpreters, other-than-Spanish (OTS) interpreters, certified interpreters, registered interpreters, geographic distribution by language, etc.; • Analysis of the strengths and weaknesses of the current pool compared to the profile developed under Deliverable #1; and

<u>Report No.</u>	<u>Description of Work to be Performed</u>
	<ul style="list-style-type: none"> • Specific recommendations for enhancing the pool of certified and registered court interpreters.
3.	<p>Assessment of Current Tests.</p> <p>An assessment of what the two current tests (the certification test and the registration test) actually measure and how closely they align with the knowledge, skills and abilities needed.</p> <ul style="list-style-type: none"> • Identify the specific knowledge, skills, and abilities that are measured by the tests; • Describe and assess the test performance measures, how they are developed, the standards on which they are based, and whether those standards align with the minimum level of competency necessary to effectively perform the job of court interpreter; • Describe the extent to which the tests align with the skills and competencies identified under Deliverable #1, and the level of rigor of the tests compared to the essential skills needed to perform the job; • Determine if the structure or content of the current tests are biased against particular language groups, ethnic or cultural groups, and if more than one test structure is needed to serve different languages; and • Recommend specific measures to better align the tests with the essential skills and competencies needed, and to eliminate bias.
4.	<p>Assessment of Current Testing Process.</p> <p>Analysis of the components of the current testing process, and specific recommendations to optimize the number of qualified candidates that successfully complete the process.</p> <ul style="list-style-type: none"> • Review and comment on the process for registering, prequalifying, and taking each part of the test for becoming certified and the test for becoming registered, and present recommendations concerning the process; • To the extent possible, describe the characteristics of candidates that succeed and those that fail at each of the key winnowing points of the process; • Recommend specific candidate data that should be collected in the course of the testing process in order to analyze who passes and who fails, and the reasons for failure; • Identify barriers to accessing services or training needed to prepare candidates to successfully pass the exams; and • Describe the current recruitment process, qualifications, and training for personnel conducting the tests and those scoring the tests, and present recommendations to strengthen the overall rating process.
5.	<p>Review of Other Models.</p> <p>A review of other state and national models to identify peer systems, leaders in the development of methods and tools, and models that could be of use to California.</p> <ul style="list-style-type: none"> • Identify other major systems or institutions that provide oral language interpretation as a core client process; • Identify the leaders in the development of language testing and certification methods

<u>Report No.</u>	<u>Description of Work to be Performed</u>
	<p>and standards;</p> <ul style="list-style-type: none"> • Identify and describe existing models for testing and certification methods and standards that could be of practical use to California’s court system, including the use of progressive certification or qualification for different levels of competency or task complexity; and • Develop recommendations concerning the feasibility of a universal test for all languages.
6.	<p>Analysis of Test Passage Rate.</p> <p>A comparison of California’s test passage rate to the experience of other state and federal systems, with recommendations for increasing the number of qualified interpreters available to the courts.</p> <ul style="list-style-type: none"> • Compare the passage rates for the California certification and registration tests to the rates for the federal courts and other leading court systems; analyze the reason(s) for differences; and • Develop specific recommendations for improving the California passage rate while maintaining adequate standards of performance.
7.	<p>Stakeholder Analysis.</p> <p>An analysis of the attitudes of representative stakeholders in California’s certification / registration process for court interpreters.</p> <ul style="list-style-type: none"> • Identify key stakeholder groups, with AOC assistance; • Conduct four to five discussion groups statewide with representatives of staff court interpreters and independent court interpreters; • Conduct teleconferences with court administrators and presiding judges of key courts like Los Angeles, San Bernardino or Riverside, Orange, Santa Clara, Fresno, and one small northern California court; • Conduct telephone interviews with representatives of other key stakeholder groups, including the court interpreters’ union and the independent interpreters’ professional association; • Describe their interest or stake in the issue and its level of importance to them; • Describe their position, concerns, and recommendations regarding the current certification / registration process; and • Describe their likely response to possible changes to the testing and certification process and address what would they support and what would they oppose, and how.
8.	<p>Report and Recommendations.</p> <p>A comprehensive report including separate sections for each of the seven component reports, above; each component section to include: methodology, findings, analysis, conclusions, and recommendations at both the policy and operational level.</p> <ul style="list-style-type: none"> • Professional quality and appearance; • Professionally copy-edited before submission; and • Submitted electronically as well as 2,000 hard copies.

TABLE 2: REQUIRED MEETINGS
(dates and locations subject to revision)

<u>Meeting No.</u>	<u>Purpose and Audience</u>	<u>Location</u>	<u>Timing</u>
1	Meet key staff as well as AOC and Court Interpreters Advisory Panel (CIAP) leadership to discuss purpose of contract, expectations, desired outcomes.	San Francisco	June 27 or 28, 2006
2	Progress meeting with key staff; briefing with Court Interpreters Advisory Panel to get feedback on project plan.	Burbank	September 26, 2006
3	Briefing with ad hoc stakeholders' group to get feedback on project plan.	Burbank	September 26, 2006
4	Review early findings and possible recommendations with staff and with AOC and CIAP leadership.	San Francisco	February 2007
5	Review early findings and possible recommendations with Court Interpreters Advisory Panel.	San Francisco	February 2007
6	Review early findings and possible recommendations with ad hoc stakeholders' group.	San Francisco	February 2007
7	Present draft results and recommendations to key staff and AOC and CIAP leadership.	TBD	May 2007
8	Present draft results and recommendations to CIAP.	TBD	May 2007
9	Present draft results and recommendations to ad hoc stakeholders' group.	TBD	May 2007
10	Present final report and recommendations results to Judicial Council.	San Francisco	Late June 2007
11	Present final report and recommendations results to CIAP.	Anaheim	September 26, 2007
12	Present final report and recommendations results to ad hoc stakeholders' group.	Anaheim	September 26, 2007
13	Present final report at statewide judicial branch conference.	Anaheim	September 27-28, 2007

TABLE 3: SCHEDULE OF DELIVERABLES

<u>Deliverable No.</u>	<u>Report Section</u>	<u>Deliverable Description</u>	<u>Due Date</u>
1	Report Section 1	Analysis of Work Qualifications, first draft	October 20, 2006
2	Report Section 2	Survey of Interpreter Pool, first draft	October 20, 2006
3	Report Section 3	Assessment of Current Tests, first draft	December 15, 2006

<u><i>Deliverable No.</i></u>	<u><i>Report Section</i></u>	<u><i>Deliverable Description</i></u>	<u><i>Due Date</i></u>
4	Report Section 4	Assessment of Current Testing Process, first draft	December 15, 2006
5	Report Section 5	Review of Other Models, first draft	February 2, 2007
6	Report Section 6	Analysis of Test Passage Rate, first draft	February 2, 2007
7	Report Section 7	Stakeholder Analysis, first draft	March 2, 2007
8	Final Report	Second draft of all sections, first draft of unifying materials	April 13, 2007
9	Final Report	Final draft of entire report	May 14, 2007
10	Final Report	Final copyedited report, electronic and 2,000 hard copies	June 11, 2007
11	Presentation	Presentation of final report at statewide conference	September 27-28, 2007

4.0 RFP ATTACHMENTS

Included as part of this RFP are the following attachments:

- 4.1** Attachment A, Administrative Rules Governing Request for Proposals. Proposers shall follow the rules, set forth in Attachment A, in preparation of their proposals.
- 4.2** Attachment B, Contract Terms. 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 B.
- 4.3** Attachment C, Vendor’s Acceptance of the RFP’s Contract Terms. Proposers must either indicate acceptance of Contract Terms, as set forth in Attachment B, or clearly identify exceptions to the Contract Terms, as set forth in Attachment B. If exceptions are identified, then proposers must also submit (i) a red-lined version of Attachment B, that clearly tracks proposed changes to this attachment, and (ii) written documentation to substantiate each such proposed change.
- 4.4** Attachment D, Payee Data Record Form. The AOC is required to obtain and keep on file, a completed Payee Data Record for each vendor prior to entering into a contract with that vendor. Therefore, vendor’s proposal must include a completed and signed Payee Data Record Form, set forth as Attachment D.
- 4.5** Attachment E, DVBE Participation Form. Proposers must demonstrate either (i) DVBE compliance with minimum participation goals, or (ii) written evidence of a "good faith effort" explaining why compliance with DVBE goals cannot be achieved. DVBE Participation goals are further explained under item 12.0 of this RFP.

5.0 EVALUATION OF PROPOSALS

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

- 5.1** Quality of work plan submitted.
- 5.2** Expertise in oral language testing systems and methods.
- 5.3** Reasonableness and explicitness of fee proposal.
- 5.4** Qualifications and experience of staff to be assigned to the project.
- 5.5** Ability to meet timing requirements to complete the project.

6.0 SPECIFICS OF A RESPONSIVE TECHNICAL PROPOSAL

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

- 6.1** Quality of overall work plan submitted.
 - 6.1.1** Approach.
 - 6.1.1.1** Proposed strategies and methods that will be employed to achieve the project objectives and produce the project deliverables.
 - 6.1.1.2** Proposed data collection methods for each deliverable.
 - 6.1.1.3** Proposed project and team organization.
 - 6.1.1.4** Proposed selection and use of subcontractors, if any.
 - 6.1.2** Contact information. Provide proposer's point of contact, including name, address, telephone and fax numbers.
 - 6.1.3** Tax recording information. Complete and submit Attachment D, Payee Data Record Form. Note that if an individual or sole proprietorship, using a social security number for tax recording purposes, is awarded a contract, the social security number will be required prior to finalizing a contract.
 - 6.1.4** Compliance with Contract Terms. Complete and submit Attachment C, Vendor's Acceptance of the RFP's Contract Terms. If changes to Attachment B, Contract Terms, are proposed, then also submit red-lined version of Attachment B, as well as written justification supporting any such proposed changes.
- 6.2** Expertise in oral language testing systems and methods. Provide the names, addresses, and telephone numbers of a minimum of five (5) clients for whom the

proposer has conducted similar services. The AOC may check references listed by the proposer.

- 6.3** Qualifications and experience of staff to be assigned to the project. Describe key staff's knowledge of the requirements necessary to complete this project. Provide resumes describing the background and experience of key staff, as well as each individual's ability and experience in conducting the proposed activities.
- 6.4** Ability to meet timing requirements to complete the project. Overall plan with time estimates for completion of all work required.

7.0 SPECIFICS OF A RESPONSIVE COST PROPOSAL

7.1 Reasonableness and explicitness of fee proposal.

7.1.1 The total cost for consultant services will range from \$200,000 – \$250,000 inclusive of personnel, materials, computer support, duplication and printing, copyediting, travel, lodging, per diem, and overhead rates. The method of payment to the consultant will be by fees billed for approved deliverables itemized under the above item 3.0, Scope of Services.

7.1.2 As a separate document, submit a detailed line item budget showing total cost of the services. Fully explain and justify all budget line items in a narrative entitled "Budget Justification." Hourly or daily rates must be provided for each position or person who will be involved in the project. Anticipated travel costs should be clearly itemized.

7.1.3 Complete and submit Attachment E, DVBE Participation Form.

8.0 SUBMISSION OF PROPOSALS

- 8.1** Responsive proposals should provide straightforward, concise information that satisfies the requirements noted in items 6.0 and 7.0, 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.
- 8.2** Proposers will submit one (1) original and three (3) copies of the technical proposal 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.
- 8.3** Proposers will submit one (1) original and three (3) copies of the cost proposal 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.

- 8.4** Proposals must be delivered to the individual listed under Submission of Proposals, as set forth on the cover memo of this RFP.
- 8.5** Only written responses will be accepted. Responses should be sent by registered or certified mail or by hand delivery.
- 8.6** In addition to submittal of the originals and copies of the proposals, as set forth in items 8.2 and 8.3, above, proposers are also required to submit an electronic version of the entire proposal on CD-ROM.

9.0 RIGHTS

- 9.1** 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.

10.0 ADDITIONAL REQUIREMENTS

- 10.1** It may be necessary to interview prospective service providers to clarify aspects of their submittal. If conducted, interviews may be conducted in person, by videoconference or telephone conference call. The AOC will notify prospective service providers regarding the interview arrangements.

11.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

- 11.1** 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

- 12.1** 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,

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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>.

ATTACHMENT A
ADMINISTRATIVE RULES GOVERNMENT REQUESTS FOR PROPOSALS

A. General

1. This solicitation document, the evaluation of proposals, and the award of any contract shall conform with current competitive proposing 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. Communications with AOC Regarding the RFP

1. Except as specifically addressed elsewhere in this RFP, including directions pertaining to the submittal of Proposals, vendors shall use the "Solicitations Mailbox," identified on the cover memo of this RFP, for any communications with the AOC regarding the RFP and award. Vendors must include the RFP Number in subject line of any communication.

C. Questions Regarding the RFP

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 via email to the Solicitations Mailbox, identified on the cover memo of this RFP, 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. Vendors interested in responding to the solicitation may submit questions via email to the Solicitations Mailbox, identified on the cover memo of this RFP, on procedural matters related to the RFP or requests for clarification or modification of this solicitation no later than the due date and time, set forth on the RFP cover memo. If the vendor is requesting a change, the request must set forth the recommended change and the vendor's reasons for proposing the change. Questions or requests submitted after the due date and time will not be answered. Without disclosing the source of the question or request, a copy of the questions and the AOC's responses will be posted on the Courtinfo website (<http://www.courtinfo.ca.gov/reference/rfp/>).

ATTACHMENT A
ADMINISTRATIVE RULES GOVERNMENT REQUESTS FOR PROPOSALS

C. Errors in the RFP

1. If, prior to the date fixed for submission of proposals, a vendor discovers any ambiguity, conflict, discrepancy, omission, or error in this solicitation document, the vendor shall immediately notify the AOC via email to the Solicitations Mailbox, identified on the cover memo of this RFP and request modification or clarification of the RFP. Without disclosing the source of the request, the AOC may modify the solicitation document prior to the date fixed for submission of proposals by posting an addendum to the solicitation on the AOC's web site "Courtinfo" (<http://www.courtinfo.ca.gov/reference/rfp/>)
2. If a vendor fails to notify the AOC of an error in the RFP known to vendor, or an error that reasonably should have been known to vendor, prior to the date fixed for submission of proposals, vendor shall propose at its own risk. Furthermore, if vendor is awarded the TPA agreement, vendor shall not be entitled to additional compensation or time by reason of the error or its later correction.

D. Addenda

1. The AOC may modify the solicitation document prior to the due date and time for submission of proposals, as set forth in the RFP cover memo, by posting an addendum on the Courtinfo website at:
(<http://www.courtinfo.ca.gov/reference/rfp/>).
2. If any vendor determines that an addendum unnecessarily restricts its ability to propose, the vendor shall immediately notify the AOC via email to the Solicitations Mailbox, identified on the cover memo of this RFP, no later than one day following issuance of the addendum.

E. Withdrawal and Re-submission / 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. Errors in the Proposal

1. If errors are found in a proposal, the AOC may reject the proposal; however, AOC may, at its sole option, correct arithmetic or transposition errors or both on the basis that the lowest level of detail will prevail in any discrepancy. If these corrections result in significant changes in the amount of money to be paid to the vendor (if selected for the award of the agreement), the vendor will

ATTACHMENT A
ADMINISTRATIVE RULES GOVERNMENT REQUESTS FOR PROPOSALS

be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the proposal.

G. Rights to Reject or Award Proposals

1. The AOC may reject any or all proposals and may or may not waive an immaterial deviation or defect in a proposal. 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.
2. In addition to the right to reject any and all proposals, in whole or in part, the AOC also reserves 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.
3. Vendors are specifically directed NOT to contact any AOC or its personnel or consultants for meetings, conferences, or discussions that are specifically related to this RFP at any time prior to any award and execution of a contract. Unauthorized contact with any AOC or its personnel or consultants may be cause for rejection of the vendor's proposal.

H. 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 proposal 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.

ATTACHMENT A
ADMINISTRATIVE RULES GOVERNMENT REQUESTS FOR PROPOSALS

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 non-responsive.

I. Protest Procedure

1. General

Failure of a vendor to comply with the protest procedures set forth in this Section I, 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 due date and time for submittal of proposals, as set forth on the RFP cover memo. The protestor shall have exhausted all administrative remedies discussed in this Attachment A prior to submitting the protest. Failure to do so may be grounds for denying the protest.

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

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

- 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 notice of intent not to award.

4. Form of Protest

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

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- 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 on the RFP cover memo under Submission of Proposals. If the protest is hand-delivered, a receipt must be requested.
- b. The protest shall include the name, vendor, address, telephone and facsimile numbers, and email address of the party protesting or their representative.
- c. The title and number of the solicitation document under which the protest is submitted shall be identified.
- 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 date and time for submittal of proposals, as set forth on the RFP cover memo. If required, the AOC may extend such proposal due date and time to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and 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

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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 set forth under Submission of Proposal on the RFP cover memo, within five (5) calendar days of the issuance of the Contracting Officer's decision.

The justification for appeal is specifically limited to:

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

The vendor's request for appeal shall include:

- a. Name, vendor, address, telephone and facsimile numbers, and email address of the vendor filing the appeal or their representative;
- b. Copy of the Contracting Officer's decision;
- c. Legal and factual basis for the appeal; and
- d. 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

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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.

J. 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.

K. 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.

L. Award and Execution of Agreement

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.

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3. 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.
4. A vendor submitting a proposal must be prepared to use a standard state contract form rather than its own contract form.
5. Upon award of the agreement, the agreement shall be signed by the vendor(s) in two original contract counterparts and returned, along with the required attachments, to the AOC no later than ten (10) calendar days of receipt of agreement form, but prior to end of June if award is at fiscal year-end. The period for execution may be changed by mutual agreement of the parties. Agreements are not effective until executed by both parties and approved by the appropriate AOC officials. Any work performed prior to receipt of a fully executed agreement shall be at vendor(s)' own risk.

M. Failure to Execute the Agreement

1. Failure to execute the agreement within the time frame identified above shall be sufficient cause for voiding the award. Failure to comply with other requirements within the set time shall constitute failure to execute the agreement. If the successful vendor(s) refuse or fail to execute the agreement, the AOC may award the agreement to the next qualified vendor(s).

N. 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 Solicitations Mailbox, set forth on the RFP cover memo.

O. 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.

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**EXHIBIT TBD
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,

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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 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.

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**ATTACHMENT B
CONTRACT TERMS**

**EXHIBIT TBD
SPECIAL PROVISIONS**

1. Definitions

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

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

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- G. **“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.
- H. **“Data”** means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- I. **“Day”** means calendar day, unless otherwise specified.
- J. **“Deliverable(s)”** means one or more items of Work specified in the Contract that the Contractor is required to deliver or submit to the State for acceptance.
- K. **“Disabled Veteran’s Business Enterprise”** or **“DVBE”** means a business entity that has complied with the requirements under California law to become certified by the California Office of Small Business Certification and Resources as a business owned and operated by a disabled veteran of the United States military, naval or air services.
- L. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable for 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.
- M. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- 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.

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- P. **“State”** means the governmental entity (including the Judicial Council of California and the Administrative Office of the Courts) named on the State Standard Agreement form as a party to this Agreement.
- 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.
- 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. **“To Be Determined”** or **“TBD”** are those items that are not yet identified. Any and all To Be Determined items, set forth herein, shall be determined prior to award or by mutual agreement between the Contractor and the State and incorporated into the Agreement via Amendment(s).
- 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 and activities 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 TBD.

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3. Termination Other Than for Cause

- A. In addition to termination for cause under Exhibit TBD, 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 will 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, as a Stop Work Order, 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

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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 and/or the Work Order Amount, 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 TBD, 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, TBD, 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

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

7. Subcontracting

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

8. Contractor's Personnel -- Replacement

- A. The State has the right to review resumes and interview the Contractor's proposed personnel provided to the State under this Agreement prior to commencement of the Work. If, in the reasonable opinion of the State, any of the proposed personnel is unsatisfactory or does not meet the State's requirements, the Contractor shall submit a different candidate for consideration.
- B. The responsibilities of the Key Personnel are set forth in Exhibit TBD, Work to be Performed. The Contractor's Key Personnel will have the ability and authority to make decisions commensurate with his or her role and level of responsibility regarding the Work of this Contract.
- C. The individuals assigned as the Contractor's Key Personnel at the time of agreement, supported by their resumes, are included in Exhibit TBD. Although an Amendment will not be necessary, any revision to the individuals identified as Key Personnel must be approved in writing by the Project Manager.
- D. The Contractor shall endeavor to retain the same individuals during the performance of the Work of this Agreement. However, the Contractor may, with approval of the Project Manager, introduce personnel with specific skill sets or release personnel, from the Project whose skill set is not needed at the time. If any of the Contractor's personnel become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the State.
- E. The State reserves the right to disapprove the continuing assignment of the Contractor's personnel, including Key Personnel, provided to the State under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. If the State exercises this right and approves a replacement candidate, the Contractor shall immediately within a commercially reasonable time assign the replacement personnel, possessing equivalent or greater experience and skills.
- F. If any of the Contractor's Key Personnel become unavailable and the Contractor cannot furnish a substitute acceptable to the State, the State may terminate this Agreement for cause pursuant to Standard Provisions paragraph 3, as set forth in Exhibit TBD.

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9. 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.

10. 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

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has delivered the Work in accordance with the Criteria. The Project Manager shall use the Acceptance and Signoff Form, provided as Attachment No. 1 to the Agreement, to notify the Contractor of the Work's acceptability.

- D. If the State rejects the Work provided, the Project Manager shall submit to the Contractor a written rejection using Attachment No. 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 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 TBD.

11. Accounting System Requirement

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

12. 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.

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13. 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.

14. 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.

15. 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. In the event Contractor has employees: Workers' Compensation at statutory requirements of the State of residency.
 - ii. In the event Contractor has employees: Employers' Liability with limits not less than \$1,000,000.00 for each accident.
 - iii. Comprehensive General Liability Insurance with limits not less than \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage; \$2,000,000.00 aggregate.
 - iv. Comprehensive 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.

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- C. Other Insurance Provisions. The General Liability and Automobile 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.
- D. 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.
- E. Subcontractors. The Contractor shall include any Subcontractors as insured 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.
- F. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.
- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council, Administrative Office of the Courts, Business Services Manager, 455 Golden Gate Ave., 7th Floor, San Francisco, CA 94102-3688.

16. Service Guarantee

The Contractor agrees that throughout the term of this Agreement, the guarantee set forth in this provision shall apply. The Contractor guarantees that Work performed pursuant to this Agreement shall be fit for use as reasonably intended by the parties and shall be in accordance with Contract and performance requirements.

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17. Protection of Proprietary Software and Other Proprietary Data

- A. The State agrees that all Data and Materials appropriately marked or identified in writing as proprietary, and furnished hereunder, are provided for the State's exclusive use for the purposes of this Agreement only. All such proprietary Data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary Data are not disclosed to others, without prior written consent of the Contractor.
- B. The State will use reasonable efforts to insure, prior to disposing of any media, that any licensed Data and Materials contained thereon have been erased or otherwise destroyed.
- C. The State agrees that it will take appropriate action by instruction, agreement, or otherwise, with its employees or other persons permitted access to licensed software and other proprietary Data, to satisfy its obligations under this Agreement with respect to use, copying, modification, protection, and security of proprietary software and other proprietary Data.

18. Intellectual Property Provisions

- A. Proprietary Rights
 - i. As between Contractor and the State, the State will be the sole and exclusive owner of all inventions, discoveries, literary works, texts, methodologies, specifications, reports, plans, or other works of authorship, in any form or format, owned by it as of the Effective Date of the Agreement, including all domestic and foreign intellectual property rights, and all modifications, enhancements and derivative works thereof ("**State's Preexisting Intellectual Property**"). As of the Effective Date of this Agreement, the Contractor will be granted a limited, non-exclusive license during the term of this Agreement to use, access, copy, maintain, modify, enhance, and create derivative works of State's Preexisting Intellectual Property for the sole purpose of providing the Work under this Agreement. The Contractor may not use State's Preexisting Intellectual Property for any other purpose, and may not sublicense any rights with respect to State's Preexisting Intellectual Property. The Contractor will cease use of State's Preexisting Intellectual Property upon expiration or termination of the Agreement.
 - ii. As between the Contractor and the State, the Contractor will be the sole and exclusive owner of all inventions, discoveries, literary works, texts, methodologies, specifications, reports, plans or other works of authorship in any form or format, owned by it as of the Effective Date of this Agreement, including all domestic and foreign intellectual property rights, and all modifications, enhancements and derivative works thereof ("**Contractor's Preexisting Intellectual Property**"). Contractor's Preexisting Intellectual

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Property also includes work not attached as an Exhibit but beyond the scope of Deliverables under this Agreement. The State will have the right to approve the introduction of any of Contractor's Preexisting Intellectual Property prior to the use of such property to provide the Work. Upon introduction of any of Contractor's Preexisting Intellectual Property in providing Work, the Contractor grants to the State, its employees, agents and, on an as-needed basis, to State's other contractors engaged to provide services related to the Project, rights of access to, and use of Contractor's Preexisting Intellectual Property during the term of the Agreement, as reasonably necessary to conduct the State's business related to the Project.

B. Rights in Deliverables

Except for Contractor's Preexisting Intellectual Property, the Contractor hereby irrevocably assigns, transfers, and conveys to the State, without further consideration, all worldwide right, title, and interest in and to: (i) all Deliverables created and developed pursuant to this Agreement, (ii) any and all modifications or enhancements to such Deliverables, and (iii) those works of authorship, trade secrets, inventions, discoveries, and improvements which are first conceived, reduced to practice, originated, or developed under and pursuant to this Agreement, developed by or on behalf of the Contractor, the Contractor's agents or employees, and the State (collectively, "**State Intellectual Property**"). The rights, title, and interest conveyed by this Agreement shall include worldwide ownership of trade secret rights, copyright and patent rights that may be granted by any country. The Contractor affirms that the amount encumbered under this Agreement for the Deliverables performed includes payment for assigning, transferring, and conveying such rights to the State. At the State's expense, the Contractor agrees to execute any documents or take any other actions as may be reasonably necessary, or as the State may request, to perfect the State's or its designee's ownership of any such State Intellectual Property. The Contractor further agrees to cause any and all of its employees, agents, Subcontractors, and officers to assign any right, title, and interest in the Deliverables created pursuant to this Agreement, sufficient to enable the Contractor to convey such rights to the State. The Contractor does not have an obligation to cause Participants to assign right, title, and interest in Deliverables created pursuant to this Agreement. The Contractor may use State Intellectual Property solely to provide the Deliverables during the term of this Agreement and as provided under subparagraph.

C. Deliverables Warranty

The Contractor warrants and represents that any Deliverable provided by the Contractor to the State under the terms of this Agreement shall conform to all applicable Acceptance Criteria or (if no Acceptance Criteria are specified) perform in accordance with State's functional requirements as provided in Exhibit TBD, for a period of twelve (12) months after the date of State's Acceptance of the Deliverable.

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D. Warranty of Law

The Contractor hereby warrants and represents that, as of the Effective Date, to the best of the Contractor's knowledge: (i) there is no claim, litigation, or proceeding pending or threatened against the Contractor with respect to Contractor's Preexisting Intellectual Property or any component thereof alleging infringement of any patent or copyright or any trade secret or any proprietary right of any person; (ii) Contractor's Preexisting Intellectual Property complies, and upon Acceptance by State, the Data and Materials will comply, in all material respects with applicable laws, rules, and regulations; (iii) the Contractor has full authority to enter into this Agreement and to consummate the transactions contemplated hereby; and (iv) the Contractor's performances under this Agreement are not materially impaired or prohibited by any other agreement to which the Contractor is a party or by which it may be bound.

E. Warranty of Title

The Contractor hereby warrants and represents that: (i) it has good and marketable title to Contractor's Preexisting Intellectual Property, free and clear of all liens, claims, and encumbrances; (ii) it has the absolute right to grant to the State the licenses granted hereunder; (iii) the State shall quietly and peacefully possess and use Contractor's Preexisting Intellectual Property licensed to it hereunder, subject to and in accordance with the provisions of this Agreement; and (iv) the Contractor shall have, upon Acceptance of Work by State, full authority to license or sublicense all proprietary and/or Third Party Data that are incorporated into the Work.

F. Infringement Indemnification

- i. The Contractor agrees to indemnify, defend (with counsel satisfactory to the State) and hold harmless the State and its officers, agents, and employees from any and all claims, damages, losses, settlement amounts, liabilities, judgments, costs, and expenses (including reasonable attorney's fees) for infringement of any patent, copyright, trademark, or other intellectual property right held by a Third Party (including, but not limited to, misappropriation of trade secrets) arising out of: (i) the Data and Materials furnished hereunder by the Contractor; (ii) the State's use thereof as provided for herein; or (iii) changes or modifications of the Data or Materials made by the Contractor (all collectively referred to hereafter as "**Infringement Claim**"). The State shall promptly notify the Contractor in writing of any Infringement Claim, permit the Contractor to defend, compromise, or settle such claim, and provide the Contractor all reasonable information and assistance to enable it to do so. The Contractor shall have sole control of the defense of any Infringement Claim. Subject to the State's continuing right to appoint defense counsel, the State shall not be responsible for any compromise or settlement made without its consent or for any damage, loss, or liability of any kind, including without limitation settlement costs, reasonable attorneys' fees, and court costs to the extent that such loss or liability results from the willful or negligent acts (or

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failure to act) of the Contractor or its directors, officers, agents, or employees, or from the breach of its own obligations under this Agreement. If such Infringement Claim has occurred, or in the Contractor's judgment, is likely to occur, then the Contractor shall promptly: (i) procure for the State the right to continue use of the Data and Materials at no additional charge to the State, or (ii) modify or re-write the Data and Materials to avoid the Infringement Claim (provided that such modification or re-writing does not adversely affect the State's intended use of the Data and Materials) at no additional charge to the State. If neither of the foregoing alternatives are reasonably available to the Contractor, then the State shall return the Data and Materials in question to the Contractor and the Contractor shall provide to the State a refund of that portion of the fees previously paid by the State for such infringing Data and Materials on an equitable basis to be agreed upon by the Contractor and the State.

- ii. Any defense counsel retained by the Contractor to defend the State pursuant to its indemnity obligations hereunder shall be subject to the approval of the State. The Contractor shall keep the State informed of any indemnified claims and shall provide periodic written reports to the State of any significant developments in such claims, including without limitation, all settlement offers, all situations that contemplate dismissal of any parties, and all such other circumstances that may occur that reasonably warrant assessment by the State of its liability exposure. The State reserves the right at all times to appoint defense counsel, including the assumption of lead defense responsibility for any indemnified claim. In such event, the State shall assume direct control for the defense and/or settlement of such claim: (i) with respect to the costs of defending such claim, the Contractor shall only be responsible for the reasonable costs incurred, and (ii) the Contractor shall only be responsible for paying settlement amounts to which it consents in writing, which consent shall not be unreasonably withheld. Upon the State's request, the Contractor shall provide the State will full information and reasonable assistance, at its own cost and expense, in connection with the defense and settlement of all indemnified claims. Subject to the foregoing, the Contractor shall have the right, at its option and expense, to participate in the defense and/or settlement of indemnified claims through counsel of its own choosing.

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 Project Manager.

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.

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21. Preparation and Distribution of Recordings

The Contractor shall permit the State, at its option, to make audio or video recordings, or both, of the Contractor's presentations and to distribute the recordings for educational purposes and not for profit. Any copyright shall be held by the Judicial Council of California. The Contractor shall receive no additional compensation or royalties from the distribution or use of these recordings.

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: (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v) 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.

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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, Section 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.

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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. Disabled Veteran Business Participation Review

In the event DVBE participation is proposed, the Contractor agrees that the State or its designee shall have the right to review, obtain, and copy all Data pertaining to performance of this Agreement. The Contractor agrees to provide the State or its designee with any relevant information requested and shall permit the State or its designee access to its premises, upon reasonable Notice, during working hours for the purpose of interviewing employees and inspecting and copying such Data, books, records, and other accounts that may be relevant to a matter under investigation for the purpose of determining compliance with Public Contract Code Sections 10115 *et seq.* The Contractor further agrees to maintain such Data for a period of four (4) years after final payment under the Agreement.

29. California Law

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

30. Public Contract Code References

References to the Public Contract Code are provided for Contractor’s convenience only and shall not imply that the Public Contract Code applies to the AOC, but rather shall be used to define the Contractor’s obligations under the particular contract provision in which such code section is referenced.

31. 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.

32. Evaluation of Contractor

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

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33. 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.

34. 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.

35. Signature Authority

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

36. 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.

37. 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 officer of the State.

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**EXHIBIT TBD
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 TBD, Work to be Performed, and allowable expenses, shall not exceed the Contract Amount of **\$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. Compensation for Contract Work

- A. Upon the completion and Acceptance of each Deliverable, as set forth in Exhibit TBD, Work to be Performed, the State shall compensate the Contractor for the actual cost, at the hourly rate(s) set forth in Table 1, below, not to exceed the amounts set forth for each Deliverable, as set forth in Table 2, below.

Table 1: Contracted Hourly Rate(s)

<i>Name of Contractor's Key Personnel</i>	<i>Hourly Rate</i>
TBD	\$TBD

Table 2: Amount Payment Will Not Exceed Per Deliverable

<i>Deliverable No.</i>	<i>Deliverable Description</i>	<i>Not to Exceed Amount</i>
1	Analysis of Work Qualifications, first draft	\$TBD
2	Survey of Interpreter Pool, first draft	\$TBD
3	Assessment of Current Tests, first draft	\$TBD
4	Assessment of Current Testing Process, first draft	\$TBD
5	Review of Other Models, first draft	\$TBD
6	Analysis of Test Passage Rate, first draft	\$TBD
7	Stakeholder Analysis, first draft	\$TBD
8	Second draft of all sections, first draft of	\$TBD

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<i>Deliverable No.</i>	<i>Deliverable Description</i>	<i>Not to Exceed Amount</i>
	unifying materials	
9	Final draft of entire report	\$TBD
10	Final copyedited report, electronic and 2,000 hard copies	\$TBD
11	Presentation of final report at statewide conference	\$TBD

- B. With the exception of travel related expenses, in accordance with this Exhibit's provision 3, Compensation for Allowable Expenses, below, the amounts set forth in Tables 1 and 2, above, shall be inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for providing the Work for the State.
- C. The Contractor shall not charge nor shall the State pay any overtime rate.
- D. The Contractor shall not request nor shall the State consider any reimbursement for non-production work including but not limited to time spent traveling to and from the job site or any living expenses.
- E. The total actual cost which the State may reimburse the Contractor, pursuant to this provision, shall not exceed **\$TBD**.

3. Compensation for Allowable Expenses

- A. The State shall reimburse the Contractor for allowable transportation, meals, and lodging expenses, as follows:
 - 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 reasonable actual meal and lodging expenses. Meals shall be reimbursed at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~**\$6.00**;

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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 energy surcharge, when applicable, or **\$140.00** per Day, plus tax and energy surcharge, when applicable, in the counties of Alameda, San Francisco, San Mateo, and Santa Clara.

- 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**.

4. Direct Expenses

All fees and charges noted in this Agreement are inclusive of any and all anticipated travel, lodging, transportation, clerical support, Materials, fees, overhead, profits, markups, and other costs and/or expenses incidental to the performance of the specified requirements under this Agreement.

5. Other Expenses

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

6. 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.

7. Method of Payment

- A. Upon completion of the Work, including Acceptance of each Deliverable, in accordance with the provisions of this Agreement, the Contractor shall submit an invoice for Work provided. In no event shall the Contractor bill the State more often than once a month. 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 the following:

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- i. The Contract number;
- ii. An unique invoice number;
- iii. The Contractor's name and address;
- iv. The taxpayer identification (the Contractor's social security or federal employer identification number, as applicable);
- v. A description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, and travel made, as appropriate;
- vi. The dates Work was performed or allowable expenses were incurred;
- vii. The DVBE dollars expended, if DVBE commitments were made;
- viii. The contractual charges, including the appropriate price(s) allowable under this Contract; and
- ix. A 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, 7th 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.

8. Disallowance

If the Contractor claims or receives payment from the State for a service or reimbursement that is later disallowed by the State, the Contractor shall promptly refund the disallowed amount to the State upon the State's request. At its option, the State may offset the amount disallowed from any payment due or that may become due to the Contractor under this Agreement or any other agreement.

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**ATTACHMENT NO. 1
ACCEPTANCE AND SIGNOFF FORM**

Description of Work provided by Contractor:

Date submitted: _____

Work is:

1) Submitted on time: yes no. If no, please note length of delay and reasons.

2) Complete: yes no. If no, please identify incomplete aspects of the Work.

3) Technically accurate: yes no. If no, please note corrections required.

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

ATTACHMENT C
VENDOR'S ACCEPTANCE OF THE RFP'S CONTRACT TERMS

Mark the Appropriate Choice, below:

_____ Vendor accepts Attachment B, Contract Terms, without exception.

OR

_____ Vendor proposes exceptions/modifications to Attachment B, Contract Terms. Summarize any and all exceptions to Attachment B, Contract Terms, below. Enclose both a red-lined version of Attachment B, Contract Terms, that clearly shows each proposed exception/modification, and provide written documentation to substantiate each proposed exception/modification.

Signature

Printed Name

Title

Date

**ATTACHMENT E
DVBE PARTICIPATION FORM**

Proposer 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 _____%

**ATTACHMENT E
DVBE PARTICIPATION FORM**

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.

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

**ATTACHMENT E
DVBE PARTICIPATION FORM**

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>

**ATTACHMENT E
DVBE PARTICIPATION FORM**

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

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

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

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

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

**ATTACHMENT E
DVBE PARTICIPATION FORM**

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

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

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

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

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

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