

RFP NUMBER: CFCC-09-09-CT
ATTACHMENT 1
ADMINISTRATIVE RULES GOVERNING REQUESTS FOR PROPOSALS

A. General

1. This solicitation document, the evaluation of proposals, and the award of any contract shall conform with current competitive proposing procedures as they relate to the procurement of goods and services. A vendor's proposal is an irrevocable offer for **ninety (90)** 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/>).

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D. 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.

E. 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.

F. 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.

G. 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

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

H. 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 RFP's 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.

I. 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.

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4. Cost sheets will be checked only if a proposal is determined to be otherwise qualified. All figures entered on the cost sheets must be clearly legible.
5. During the evaluation process, the AOC may require a vendor's representative to answer questions with regard to the vendor's proposal. Failure of a vendor to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.

J. 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 RFP Attachment 1 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

(i) 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.

(ii) Protests must be received no later than five (5) business days after the protesting party receives a notice of intent not to award.

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4. Form of Protest

(i) 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.

- 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.

(ii) 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

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response within ten (10) business days, the AOC will notify the vendor. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below. The AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the agreement.

7. Appeals Process

(i) 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) business days of the issuance of the Contracting Officer's decision.

(ii) 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.

(iii) 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.

(iv) 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

(i) 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

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of the procurement, and the impact of the recommendation(s) on the AOC. The AOC may recommend any combination of the following remedies:

- a. Terminate the contract for convenience;
- b. Re-solicit the requirement;
- c. Issue a new solicitation;
- d. Refrain from exercising options to extend the term under the contract, if applicable;
- e. Award a contract consistent with statute or regulation; or
- f. Other such remedies as may be required to promote compliance.

K. 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.

L. 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.

M. 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 forty-five (45) 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 (2) 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.

N. 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).

O. 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.

P. 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.

END OF RFP ATTACHMENT 1

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MINIMUM CONTRACT TERMS

EXHIBIT A
STANDARD PROVISIONS
STATE COURT IMPROVEMENT DATA SHARING PROGRAM

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 Judicial Council of California / Administrative Office of the Courts.

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.

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

4. NO ASSIGNMENT

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

5. TIME OF ESSENCE

Time is of the essence in the Contractor's performance of this Agreement.

6. VALIDITY OF ALTERATIONS

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

7. CONSIDERATION

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

End of Standard Provisions Exhibit

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EXHIBIT B
SPECIAL PROVISIONS
STATE COURT IMPROVEMENT DATA SHARING PROGRAM

1. DEFINITIONS

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

- A. **“Accounting”** refers to the Grant Accounting contact person designated and authorized by the State to oversee the fiscal functions of the Agreement between the State and the Contractor.
- 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 modifies 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. **“Appropriation Year”** means the period of time that the legislative authority has authorized spending for a defined purpose. The Appropriation Year for agreements funded by the Legislature of the State of California commences July 1 and ends on June 30 of the following year. The Appropriation Year for agreements funded by the United States Congress commences October 1 and ends on September 30 of the following year.
- E. **“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.
- F. 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.”**

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- G. “**Contract Amount**” means the total amount encumbered under this Agreement for any reimbursement by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- H. The “**Contractor**” means the individual, association, partnership, firm, company, 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.
- I. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- J. “**Day**” means calendar day, unless otherwise specified.
- K. “**Deliverable(s)**” or “**Submittal(s)**” means one or more items, if specified in the Contract Documents, that the Contractor shall complete and deliver or submit to the State for acceptance.
- L. “**Force Majeure**” means a delay which impacts the timely performance of Work for which neither the Contractor nor the State are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God or the public enemy;
 - ii. Acts or omissions of any government entity;
 - iii. Fire or other casualty for which a party is not responsible;
 - iv. Quarantine or epidemic;
 - v. Strike or defensive lockout; and
 - vi. Unusually severe weather conditions.
- M. “**Grant**” means the funded award from the U. S. Department of Health and Human Services, Administration for Children and Families that provides the State’s Appropriation Year allocation for the **State Court Improvement Data Sharing Program**.
- N. “**Key Personnel**” refers to the Contractor’s personnel identified in the resume set forth in *Exhibit TBD - Contractor’s Key Personnel*, whom the State has identified and approved to perform the Work of the Contract.
- O. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.

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- P. **“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.
- Q. **“Program”** or **“State Court Improvement Data Sharing Program”** refers to all activity relative to this Agreement, including activity of the Contractor, its subcontractors, the State, and the State’s representatives, pertaining to the efforts established under the provisions of §438 Part B of Title IV of the Social Security Act.
- R. The **“State”** refers to the Judicial Council of California / Administrative Office of the Courts (**“AOC”**). The State is one of the parties to this Agreement. The term State shall also include any individual designated to perform technical and/or administrative functions, as set forth therein.
- S. **“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.”**
- T. **“Subcontractor”** shall mean an individual, firm, partnership, corporation, local public agency or non-profit organization/agency 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, subconsultants, suppliers, and materialmen.
- U. **“Suspend Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to suspend all, or any part, of the Work of this Agreement, for the period set forth in the Suspend Work Order. The Suspend Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Suspend Work provision in this Exhibit B.
- V. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- W. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint

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ventures, other than the State or the Contractor, which is not a party to this Agreement.

- X. **“Work” or “Work to be Performed”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.

2. MANNER OF PERFORMANCE OF WORK

The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Nondiscrimination/No Harassment Clause, as set forth in this Exhibit B.

3. TERMINATION OTHER THAN FOR CAUSE

- A. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the State may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.
- B. If the State terminates all or a portion of this Agreement other than for cause, the State shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total Contract Amount.

4. STATE'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the 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, upon written Notice to the Contractor, terminate this Agreement in whole or in part. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount appropriated. 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.

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- 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.

5. SUSPEND WORK

- A. The State may, at any time by written Notice as a Suspend Work Order to the Contractor, require the Contractor to suspend 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 Suspend Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Suspend Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Suspend Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Suspend 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 Suspend Work Order; or
 - ii. Terminate the Work covered by the Suspend Work Order as provided for in either of the termination provisions of this Agreement.
- B. If a Suspend Work Order issued under this provision is canceled or the period of the Suspend 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 Contract Amount, and the Agreement shall be modified, in writing, accordingly, if:
- i. The Suspend 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 Suspend Work Order is not canceled and the Work covered by the Suspend Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the State shall allow reasonable costs resulting from the Suspend Work Order in arriving at the termination settlement.

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- D. The State shall not be liable to the Contractor for loss of profits because of the Suspend Work Order issued under this provision.

6. AGREEMENT ADMINISTRATION/COMMUNICATION

- A. The Program Manager for this Agreement is _____. Under this Agreement, the Program Manager shall monitor and evaluate the Contractor's performance in accordance with polices governed by the Grant Program. All requests and communications about the Work to be Performed under this Agreement shall be made through the Program Manager.

- i. Any Notice from the Contractor to the State shall be in writing and shall be delivered to the State's Program Manager as follows:

Judicial Council of California
Administrative Office of the Courts
_____, Program Manager
455 Golden Gate Avenue
San Francisco, CA 94102-3688

- ii. Other than for Notices, the Program Manager may be contacted as follows:

TBD

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

TBD

7. STANDARD OF PROFESSIONALISM

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

8. ACCEPTANCE OF THE WORK

- A. The Program 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 reimbursement, the Program 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:

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

9. GRANT REQUIREMENTS

- A. The Grant shall be administered in compliance with conditions set forth in §438B of Part B Title IV of the Social Security Act, including the State application and plan, all assurances, approved amendments or revisions applicable Federal regulations, program policies and instructions.

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- B. This program is governed by the following Federal regulations:
- i. **2 CFR Part 225** – Cost Principles for State, Local and Indian Tribal Governments
 - ii. **45 CFR Part 16** – Procedures of the Departmental Grant Appeals Board;
 - iii. **45 CFR Part 30** – Claims Collection;
 - iv. **45 CFR Part 76** – Debarment and Suspension from Eligibility for Financial Assistance (Nonprocurement);
 - v. **45 CFR Part 80** – Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964;
 - vi. **45 CFR Part 81** – Practice and Procedures for Hearing Under Part 80 of this Title;
 - vii. **45 CFR Part 84** – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance;
 - viii. **45 CFR Part 86** – Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance;
 - ix. **45 CFR Part 87** – Equal Treatment for Faith-Based Organizations;
 - x. **45 CFR Part 91** – Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;
 - xi. **45 CFR Part 92** – Uniform Administration Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments;
 - xii. **45 CFR Part 93** – New Restrictions on Lobbying;
 - xiii. **45 CFR Part 95, Subpart E** – Cost Allocation Plans; and
 - xiv. **45 CFR 100.12** – How may a State simplify...Federally required State plans?
- C. This program is also governed by the Office of Management and Budget Circular A-133-Audits of States, Local Governments and Non-Profit Organizations, including the audit requirements of the Single Audit Act of 1984 (Public Law 98-502).
- D. In accordance with Public Law 103-333, the “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of 1995,” the following:
- i. Section 507: “Purchases of American-Made Equipment and Products – It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in the Act should be American-made.”
 - ii. Section 508: “When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all States receiving Federal funds, including but not limited to State and local governments and recipients of

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Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.”

- E. In accordance with Title XII of Public Law 103-227, the “PRO-KIDS Act of 1994,” smoking may not be permitted in any portion of any indoor facility owned or regularly used for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments. Federal programs include grants, cooperative agreements, loans and loan guarantees, and contracts. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment.
 - F. The above language must be included in any sub-awards that contain provisions for children’s services and all sub-grantees shall certify compliance accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000.00 per day.
 - G. Direct Federal grants, sub-awards, or contracts under this program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this program. (See 45 DFR Part 87.)
 - H. Federal grant funds provided under these awards may not be used by the grantee or any sub-grantee to support lobbying activities to influence proposed or pending Federal or State legislation appropriations. This prohibition is related to the use of Federal grant funds and is not intended to affect an individual’s right or that of any organization, to petition Congress, or any other level of Government, through the use of other resources. (See 45 CFR Part 93.)
 - I. These awards are subject to the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000 (22 USC 7104). The full text of this requirement is found at <http://www.acf.gov/grants/award terms.html>
10. Sub-Recipients Under Grants
- A. The State is required to determine recipient type when sub-granting or contracting using Federal funds. In accordance with the standards set in OMB Circular A-133, the determination is based on the substance of the relationship with the State, rather than the form of the agreement.

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- B. The presence of one or more of the following conditions would indicate that the recipient should be considered a sub-grantee and is subject to the provisions of the OMB Circular A-133:
- i. Determines who is eligible to receive what Federal financial assistance;
 - ii. Has its performance measured against whether the objectives of the Federal program are met;
 - iii. Has responsibility for programmatic decision making;
 - iv. Has responsibility for adherence to applicable Federal program compliance requirements;
 - v. Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity;
- C. The presence of one or more of the following conditions would indicate that the recipient should be considered a vendor and is not subject to the provisions of OMB Circular A-133:
- i. Provides the goods and services within normal business operations;
 - ii. Provides similar goods or services to many different purchasers;
 - iii. Operates in a competitive environment;
 - iv. Provides goods or services that are ancillary to the operation of the Federal program;
 - v. Is not subject to compliance requirements of the Federal program.
- D. No organization may participate in this program in any capacity or be a recipient of Federal funds designated for this program if the organization has been debarred or suspended or otherwise found to be ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." (See 45 CFR 92.35.) The Contractor must include a similar term and/or condition for all sub-awards or contracts awarded under this program. Prior to issuing sub-awards or contracts under these grants, the state must consult the ineligible list to ensure that organizations under funding consideration are not ineligible. The list is available on the Web at <http://www.epls.gov>.
- E. The Contractor is responsible for monitoring grant, sub-grant/sub-recipient and contract supported activities to assure compliance with Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function and activity. (See 45 CFR 92.40.)
- F. The Contractor is required to advise sub-grantees/sub-recipients of requirements imposed on them by Federal laws, regulations, and the provisions of grant agreements or contracts as well as any supplemental requirements imposed by the Contractor. These include grant administration requirements under 45 CFR Part 92, audit requirements under OMB Circular A-133 and cost principles according to recipient type:
- i. Non-Profit Organizations: 2 CFR Part 230;

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- ii. Educational Institutions: 2 CFR Part 220; and
 - iii. Commercial Vendors or Subcontractors: 48 CFR Part 31
- G. Federal funds awarded under this grant program must constitute no more than 75 percent of total program expenditures. The remaining 25 percent of program expenditures must be derived from non-Federal sources, including State funds, local funds or cash or in-kind contributions.
- H. Federal funds awarded under this Grant must not be used for construction and/or the purchase of land.
- I. Federal funds awarded through these grants must be expended for the purposes for which they were awarded and within the time period allotted, in accordance with the deadlines discussed below.
- J. Obligating and Liquidating Federal Funds
- i. The Federal funds included in this award may be used for allowable program expenditures made on or after **October 1, 2008**. All funds must be obligated no later than **September 30, 2010**. Any funds not obligated by that date will be recouped by the State.
- K. The U.S. Government Accountability Office (GAO) maintains **FraudNET**, a system for reporting allegations of fraud, waste and abuse under Federal grants and cooperative agreements. Reports are kept confidential; you need not provide your name. Information provided through the Internet web site is secure and all information is safeguarded against unauthorized disclosure. Report the possible misuse of federal funds, through one of the following methods:
- i. Telephone: (800) 424-5454;
 - ii. Facsimile: (202) 512-3086;
 - iii. Email: fraudnet@gao.gov; and
 - iv. Mail: GAO FraudNET,
441 "G" Street N.W.
Washington, D.C. 20548.

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11. FINANCIAL MANAGEMENT

- A. Federal funds awarded under this grant program must constitute no more than 75 percent of total program expenditures. The remaining 25 percent of program expenditures must be derived from non-Federal sources, including State funds, local funds or cash or in-kind contributions.
- B. Federal funds awarded under this program must not be used for construction or the purchase of land.
- C. Federal funds awarded through these grants must be expended for the purposes for which they were awarded and within the time period allotted, in accordance with the deadlines discussed below.

12. CONTRACTOR'S PERSONNEL AND REPLACEMENT OF PERSONNEL

- A. The State reserves the right to disapprove the continuing assignment of any of the Contractor's personnel provided to the State under this Agreement if in the State's opinion, the performance of the Contractor's personnel is unsatisfactory. The State agrees to provide Notice to the Contractor in the event it makes such a determination. If the State exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- B. If any of the Contractor's personnel become unavailable during the term of this Agreement, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills.
- C. The Contractor shall endeavor to retain the same individuals on the Project during the performance of the Work of this Agreement. However, the Contractor may, with approval of the Project Manager, introduce personnel to the Project with specific skill sets or release personnel from the Project whose skill set is not needed at the time.
- D. If any of the Contractor's personnel identified within the Agreement become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the Project Manager.
- E. If any of the Contractor's personnel become unavailable or are disapproved and the Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement for cause pursuant to *Exhibit A - Standard Provisions, paragraph 3*.

13. INSURANCE REQUIREMENTS

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- 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.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor’s liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability 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.

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- ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the State, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,
 - iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. Sub-Contractor Providers. The Contractor shall include any Sub-contractor Providers as insured under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Sub-Contractor Provider. Insurance coverages provided by Sub-Contractors Providers as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.
- G. 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.
- H. 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.

14. CONFIDENTIALITY

- A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State 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 Sub-Contractor and, as directed by the Project Manager, representatives of the State that are working on the Project. All such employees and Sub-Contractor

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Providers 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.

15. LIMITATION ON PUBLICATION

In any contract the Contractor may enter into with a Subcontractor for Work provided under this Agreement, the Contractor shall include language that prohibits the Subcontractor from publishing or broadcasting any article, press release, advertisement, or other writing that references "Judicial Council of California" or "Administrative Office of the Courts", unless previously approved in writing by the AOC's Business Services Manager and Public Information Officer, as applicable.

16. COPYRIGHTS AND RIGHTS IN DATA

- A. Subject to any rights derived under the Grant, all communications and Data originated or prepared by the Contractor pursuant to this Agreement, not including the Contractor's administrative communications, shall become the exclusive property of the State and may be copyrighted by the State. Upon the State's written request, the Contractor shall provide the State with all this Data within thirty (30) Days.
- B. Subject to any rights derived under the Grant, the State reserves the right to use and copyright, in whole or in part, any Data produced with funding of any amount from this Agreement.
- C. The Contractor agrees not to copyright any Data produced, with funding of any amount from this Agreement unless the State gives the Contractor express written permission to do so. If such permission is obtained and the Data is copyrighted, the State will be given an exemption that reserves for it the right to use, duplicate, and disseminate the Data without fee.
- D. The ideas, concepts, know-how, or techniques relating to processing Data, developed during the course of this Agreement by the Contractor or jointly by the Contractor and the State, can be used by either party in any way it may deem appropriate.
- E. Subject to any rights derived under the Grant, all inventions, discoveries, or improvements developed pursuant to this Agreement shall be the property of the

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State. The State agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor, or any other such person, and further agrees that the Contractor, or any other such person, may sublicense additional persons on the same royalty-free basis.

- F. This Agreement shall not preclude the Contractor from developing Data or Materials outside this Agreement that are competitive, irrespective of any similarity to Data or Materials developed pursuant to this Agreement.

17. PUBLICATIONS

- A. The following disclaimer will accompany the dissemination and/or publication of all Data developed under funding from this Agreement:

“The preparation of this information was financially assisted through a grant from the federal government under a subsequent contract with the State of California. The opinions, findings, and conclusions in this publication are those of the author and not necessarily those of the federal or state government. The State reserves the right to grant a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, and use this information.”

- B. No dissemination or publication of Data developed under funding from the Agreement will take place before the Agreement has expired and the products of this Agreement have been approved for release by the State. Once State approval has been obtained, the Contractor may publish the Data.

18. LOBBYING

Funds awarded to the Contractor shall not be used, indirectly or directly, to influence Executive Orders or similar promulgation by federal, state, or local agencies, or to influence the passage or defeat of any legislation by federal, state, or local legislative bodies.

19. POLITICAL ACTIVITIES

The Contractor shall not contribute or make available Grant funds, Program personnel, or equipment awarded by the Agreement to any political party or association, or the campaign of any candidate for public or party office. The Contractor shall not use funds awarded to the Contractor in advocating or opposing any ballot measure, initiative, or referendum. Finally, the Contractor and employees of the Contractor shall not intentionally identify the State with any partisan or nonpartisan political activity associated with a political party or association or campaign of any candidate for public or party office.

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20. NON-DUPLICATION OF GRANT-FUNDED EXPENDITURES

The Contractor certifies that neither the Contractor or any Subcontractors have any ongoing or completed projects with the State, or other funding sources, that duplicate or overlap any Work contemplated or described in this Agreement. The Contractor agrees that any pending or proposed request for other funds that would duplicate or overlap Work under this Agreement will be revised to exclude any such duplication of funded expenditures. Any such duplication of expenditures subsequently determined by audit will be subject to recovery by the State.

21. ACCOUNTING SYSTEM REQUIREMENT

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

22. 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 adequately protect such Data against fire or other damage.

23. CHANGES AND AMENDMENTS

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Program 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. Failure to inform the Program Manager of any changes or modifications may result in the loss of future funding and/or suspension of funds. 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 Program 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.

24. ASSIGNMENTS OR SUBCONTRACTING

A. This Agreement is based upon the unique expertise of the Contractor. Therefore, in addition to the prohibition against assignment under Exhibit A, Standard Provisions paragraph 4, No Assignment, it is the policy of the State to withhold consent from proposed assignments, subcontracts, or novations, when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance under this Agreement. No performance of this Agreement or any

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portion thereof may be assigned or subcontracted by the Contractor without the express written consent of the State, and any attempt by the Contractor to assign or subcontract any performance of this Agreement without the express written consent of the State shall be void and shall constitute a breach of this Agreement. If the Contractor is authorized by the State to subcontract or assign, **all the terms of this Agreement shall be included in such subcontract or assignment.**

- B. The Contractor shall provide the Program Manager with copies of any memoranda of understanding, subcontracts, purchase orders, or any other Program related agreements, as requested.

25. 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.

26. 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.

27. DRUG-FREE WORKPLACE

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The Contractor certifies that it will provide a drug-free workplace as required by California Government Code, sections 8355 through 8357.

28. NONDISCRIMINATION/NO HARASSMENT CLAUSE

- A. During the performance of this Agreement, the Contractor 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 shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor interact in the performance of this Agreement. The Contractor 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 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.

29. AMERICANS WITH DISABILITIES ACT

By signing this Agreement, the 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.

30. RIGHT TO AUDIT

- A. The Contractor shall permit all Data and records relating to performance, procedures, and billing to the State under this Agreement to be inspected and/or audited, at any

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reasonable time, by the authorized representative of any of the following or its designee:

- i. The State;
- ii. Department of Health and Human Services;
- iii. The Bureau of State Audits; and/or
- iv. Any state or federal government auditing agency.

B. The right of each agency to inspect and/or audit this Agreement is independent of whether or not any other audit or inspection has been performed.

31. AUDIT COMPLIANCE

The Contractor shall accept responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate state and federal audit agencies that directly relate to the services to be performed under this Agreement. A draft of any reply shall be reviewed and approved for release by AOC Internal Audit prior to release to the cognizant entity. A copy of the final reply shall be submitted to AOC Internal Audit.

32. AUDIT LIABILITY

The Contractor shall pay to the State the amount, if any, of the State's liability to the federal government that results from the Contractor's failure to perform the services or comply with the conditions required by this Agreement and identified by any audit exception.

33. CALIFORNIA LAW

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

34. 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.

35. 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.

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36. SIGNATURE AUTHORITY

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

37. 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.

38. AGREEMENT TERM

- A. This Agreement is of no force and effect until signed by both parties and all approvals are secured. Any commencement of performance prior to agreement approval shall be done so at the Contractor's own risk; notice to proceed shall not be official until this Agreement is fully executed.

- B. The Work of this Agreement shall commence on _____ and the Agreement shall expire on _____, unless otherwise set forth in writing, in accordance with the terms and conditions of this Agreement.

39. 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.

End of Special Provisions Exhibit

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EXHIBIT C
REIMBURSEMENT PROVISIONS
STATE COURT IMPROVEMENT DATA SHARING PROGRAM

1. CONTRACT AMOUNT

The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, shall be the firm fixed price per Deliverable, not to exceed the Contract Amount of **\$50,000.00**, as set forth in this Exhibit C.

2. COMPENSATION FOR CONTRACT WORK

- A. In accordance with Exhibit B, Special Provisions, paragraph 9, Acceptance of the Work, the State will pay the Contractor the firm fixed price per Deliverable, as set forth in Table 1, below, upon the completion and acceptance of each Deliverable as identified in Exhibit D, Work to be Performed. The firm fixed prices set forth in Table 1, below, shall be inclusive of all costs, benefits, expenses, overhead and fees payable to the Contractor for services rendered to the State.
- B. For completion and acceptance of the Deliverables, as set forth in Exhibit D, Work to be Performed, the total amount the State may pay the Contractor, pursuant to this paragraph, shall not exceed **\$ TBD** for the Work of this Agreement.

3. DIRECT EXPENSES

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

4. METHOD OF PAYMENT

- A. The Contractor shall submit an invoice for Work provided, as set forth in Exhibit D - Work to be Performed. In no event shall the Contractor bill the State more often than once during any 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 and any required documentation. The Invoice must clearly indicate the following information:

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- i. Contract number;
- ii. Unique invoice number;
- iii. Contractor's name and address;
- iv. The taxpayer identification number;
- v. Preferred remittance address, if different from the mailing address;
- vi. The name and telephone number, facsimile number, and e-mail address of the Contractor's accounting contact;
- vii. Program title ("State Court Improvement Data Sharing Program")
- viii. A description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) completed and accepted, as appropriate;
- ix. The dates and hours worked;
- x. The appropriate contractual billing rate(s), including rate(s) for allowable expenses(if allowed), as set forth herein; and
- xi. Appropriate documentation for reimbursement; and
- xii. The signature(s) of the authorized Contractor official(s). (Use blue ink to indicate an original invoice).

C. The Contractor shall submit the invoices to:

Judicial Council of California
Administrative Office of the Courts
Attn: Grant Accounting
455 Golden Gate Avenue
San Francisco, Ca 94102-3688

D. For reimbursement, the Work must be provided during _____ to _____. Any and all obligations must be liquidated prior to the Contractor's final invoice. The Contractor's final invoice must be received by Accounting no later than **September 30, 2010**. Invoices received after this date will not be paid.

5. DISALLOWANCE

If the Contractor receives payment from the State for a 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..

6. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any payment by the State, as provided herein, shall in no way lessen the liability of the Contractor to replace unsatisfactory Work or Material, even if the unsatisfactory character of such Work or Material may not have been apparent or detected at the time such payment was made. Materials, Data, components, or workmanship that do not

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conform to Exhibit D, Work to Be Performed, shall be rejected and shall be replaced by the Contractor without delay.

7. 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.

8. AOC ACCOUNTING CONTACT

The Contractor shall contact the following AOC Accounting contact for any accounting concerns:

TBD

End of Reimbursement Provisions Exhibit

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EXHIBIT D
WORK TO BE PERFORMED
STATE COURT IMPROVEMENT DATA SHARING PROGRAM

TBD

End of Work To Be Performed Exhibit

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EXHIBIT E
CONTRACTOR'S KEY PERSONNEL

[TBD]

End of Contractor's Key Personnel Exhibit

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**ATTACHMENT 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:_____

End of Acceptance and Signoff Form

END OF RFP ATTACHMENT 2

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ATTACHMENT 3
VENDOR'S ACCEPTANCE OF THE RFP'S MINIMUM CONTRACT TERMS

Proposers must indicate acceptance of the Attachment 2, Minimum Contract Terms, by signing below, and including the signed form with vendor's proposal:

Vendor accepts Attachment 2, Minimum Contract Terms, without exception.

Signature

Printed Name

Title

Date

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ATTACHMENT 4
PAYEE DATA RECORD

Insert Payee Data Record (STD-204) Here

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ATTACHMENT 5
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 SERVICE PROVIDER

Company Name: _____

Nature of Work _____ Tier: _____

Claimed Value: _____ DVBE \$ _____

Percentage of Total Contract Cost: DVBE _____%

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***SUBCONTACTORS/SUBSERVICE
PROVIDER/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>	

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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>

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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>	

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<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>	

END OF RFP ATTACHMENT 5