



# REQUEST FOR PROPOSALS

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**ADMINISTRATIVE OFFICE OF THE COURTS (AOC)**

**REGARDING:**

***JBWCP Risk Management Consulting and Brokerage Services***

***RFP #HR-053012CK***

**PROPOSALS DUE:**

***March 12, 2013*** NO LATER THAN ***1:00*** P.M. PACIFIC STANDARD TIME

## **1.0 BACKGROUND INFORMATION**

- 1.1 Judicial Council of California. The Judicial Council of California (“JCC”), chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system. The California Constitution directs the council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law. The Administrative Office of the Courts (“AOC”) is the staff agency for the council and assists both the council and its chair in performing their duties.
- 1.2 Objective. To seek, identify and retain one qualified Consultant/Broker (“Contractor”) to provide risk management consulting services which include: annual actuarial valuations, third party claims administration (“TPA”) oversight and audits, nurse case management audits, assistance with an annual chargeback allocation model, assistance with the ongoing identification and prioritization of risk reduction measures, implementation of existing strategies and development of new strategies designed to mitigate increased cost to the program and brokerage services for providing excess insurance coverage for the Judicial Branch Workers’ Compensation Program (“JBWCP”).
- 1.3 The selected Contractor shall be required to perform all aspects of the activities listed in Section 1.2; there will be no breaking up of activities.
- 1.4 Website. For additional information about this solicitation, including electronic copies of the solicitation documents, see the California Courts Website located at [www.courts.ca.gov/rfps.htm](http://www.courts.ca.gov/rfps.htm) (“Courts Website”).
- 1.5 On January 1, 2001, each of the 58 trial courts became independent employers. Prior to this date, the trial courts were part of their respective counties. The JBWCP was created on January 1, 2003, in response to the courts transitioning from county-administered plans to the JBWCP. For purposes of properly allocating the cost of the program, the program has been divided into three components, represented by 12 distinct entities (“Member”): 1) the Trial Courts (“TC”); 2) the Judiciary, which includes the Supreme Court (“SC”), 6 District Courts of Appeal (“DCA”), Habeas Corpus Resource Center (“HCRC”), Commission on Judicial Performance (“CJP”), the AOC, and 3) Judicial Officers, which consists of all TC judges of the judicial branch.
- 1.6 The JBWCP is a highly decentralized self-insured program. As of March 9, 2012, 56 of the 58 trial courts participate in the TC program. The JBWCP is self-funded through a cost allocation model with a charge back system to the Members. Each participating Member shares in a pool of allocated risk, with the cost allocations distributed based upon payroll and loss activity. The loss selection that is used to calculate the loss modifier for each Member is limited to a rolling three years of loss data excluding the most recent 12 months. The total allocation is based on an annual

actuarial report projection.

- 1.7 An oversight committee for the JBWCP consisting of Member representatives (“Committee”) convenes annually every April in San Francisco. The Committee, in conjunction with the AOC’s Program Administrator (“Program Administrator”), may make recommendations for change to the Trial Court Budget Working Group (“Working Group”) for submission to the JCC. The JCC provides final approval on any primary programmatic and/or financial change recommendations from the Working Group.
- 1.8 The current TPA provides for nurse case management services, claims administration services, and administration of a medical provider network. The TPA averages approximately 1500 open claims per year. It has two centralized locations for the administration of this state-wide program, located in Sacramento and Rancho Cucamonga. The AOC is currently in the process of developing a Request for Proposals (“RFP”) for the selection of a TPA to provide services outlined above.
- 1.9 The current cost history of current Broker/Contractor’s Contract Cost Range \$450,000-\$606,000 per year.

## **2 DESCRIPTION OF SERVICES AND DELIVERABLES**

The AOC seeks the services of a Contractor with expertise in risk management consultation services, excess insurance brokering, and the collaborative management of a comprehensive state-wide workers’ compensation self-insured public program. The selected Contractor will be expected to provide the following services/perform the following activities listed below:

- 2.1 Risk Consulting and Program Management  
The Contractor will identify, assess, and recommend solutions to control the probability of events and their impacts to the JBWCP utilizing the necessary personnel required to perform the services, which include the ability to:
  - a) Provide a dedicated Program Manager and assigned staff with a minimum of 10 years of experience in the administration and application of California-specific workers’ compensation laws, including demonstrated experience in providing California workers’ compensation risk management consultation services for a decentralized state-wide self-insured public employer workers’ compensation program. The Program Administrator will review the qualifications and have final approval of the Contractor’s Program Manager and program team.
  - b) Provide subject matter experts and qualified backup personnel with demonstrated experience in California workers’ compensation claims (“WC”) administration, managed care, and loss control.
  - c) Analyze current and past JBWCP data and, in coordination with the TPA, identify and develop metrics to reduce the cost of workers’ compensation losses for all JBWCP Members. Metrics should highlight trends, strengths, areas for

improvement, or risks that may impact all Members, and include at a minimum the following factors:

- i. Frequency (volume and rate comparison of types of claims)
  - ii. Severity of workers' compensation losses (average cost per type of claim and average cost per claim open and closed)
  - iii. Duration of Claim
  - iv. Ratio of open vs. closed
  - v. Claims Process Indicators (report lag from date of incident to date of report to date of first contact, closure lag)
  - vi. Outstanding Reserves
  - vii. Claims Handling Costs, which include, for example, costs associated with legal, medical, or subrogation
  - viii. Loss Days
  - ix. Cause of Injury
  - x. Type of injury
  - xi. Location of Injury
- d) Develop and maintain a program project plan to ensure the continued planning, organizing, managing, leading, and controlling of resources to achieve specific goals, as determined through risk analyses, Member needs and initiatives, and directives received from the Program Administrator and Members.
- e) Meet in person monthly in the AOC San Francisco office to assess, strategize and review program metrics and the project plan and ensure that projects come to completion in a timely manner, new projects are introduced, and deadlines are adhered to.

## 2.2 Third Party Claims Administration Oversight

- a) Provide liaison and oversight services for the JBWCP on all matters involving services provided by the TPA. The Contractor will monitor the workers' compensation claims managed by the TPA for accuracy and aggressiveness in moving the claims to closure. The Contractor will also assist the TPA and the Members by ensuring the successful delivery of beneficial and cost effective services provided by attorney firms, investigation services, medical provider networks, nurse case management services and any other workers' compensation service providers utilized by the AOC and its Members.
- b) Oversee the TPA to ensure that the JBWCP's special account instructions are adhered to and that follow-ups with the Program Administrator and all Members as warranted are fulfilled.
- c) Participate on monthly and/or quarterly calls as arranged by the Contractor and /or TPA. The agenda for the calls will be managed by the Contractor in conjunction with the Program Administrator and the TPA. The Contractor will provide minutes of each meeting that will include action plans, strategies for remedies,

and any remaining open items. This meeting may be conducted as a telephone conference or in person as requested by the Program Administrator.

- d) Annually audit the TPA based on established industry metrics and best practices. The audit shall contain a random sampling of all claims handled by all TPA claims technicians staffed to the program. The audit will be on site at TPA locations that contain the program files and the staff assigned to the program. The audit will include a review of the timely and proper administration of claims, utilizing best practices in relation to industry standards and the Program Administrator's expectations. The audit criteria would include at a minimum the evaluation of:
- i. Consistent application of the Three Point Contact which is an industry best practice term: It is the initial timely contact with the injured worker, that supervisor or managers, and the treating physician or clinic. Contact has to be within 24 hours
  - ii. Timely denial or acceptance of claims
  - iii. Use of investigation services
  - iv. Subrogation/Recoveries/Appportionment
  - v. Disability Management
  - vi. Penalties
  - vii. Reserving Strategies
  - viii. Effective Action Plans
  - ix. Effective Return to Work Strategies
  - x. Communication
  - xi. Litigation Management
  - xii. Adherence to Special Account Instructions
- e) Depending on the outcome of the initial audit, the Program Administrator may determine that additional audits may be necessary up to every six (6) months until such time at which the audits of the TPA meet the desired outcome of the Program Administrator. Additional audits shall be provided at no cost to the program.
- f) Conduct random, informal "spot checks of the TPA claims handling to ensure proper application of best practices, special handling instructions, and criteria identified above.
- g) Annually audit the Case Management program, provided by the TPA, based on established industry metrics, best practices, and special account instructions. The audit shall contain a random sampling of all claims assigned to case management. The audit criteria would include at a minimum the evaluation of:
- i. How are the cases triaged and assigned?
  - ii. How is the appropriate level of clinical intervention evaluated?
  - iii. What tools and resources do the nurses use to guide their assessments and action plans?

- iv. When are physician advisors utilized?
  - v. What data is used by the case management program to measure effectiveness? Is there integrated communication between the managed care program and the claims adjusters assigned to the claim?
  - vi. What is the impact of the claim?
  - vii. Use of nationally recognized treatment and disability duration guidelines.
  - viii. Coordination with Members' return-to-work programs.
- h) Depending on the outcome of the initial audit, the Program Administrator may determine that additional audits may be necessary up to every six (6) months until such time at which the audits of the TPA meet the desired outcome of the Program Administrator. Additional audits shall be provided at no additional cost to the program.
- i) Provide draft detailed reports of audit findings to the Program Administrator, with an executive summary, due no later than 45 days post the audit's conclusion. The Contractor will provide a final draft report to the Program Administrator no later than 70 days post the audit's conclusion. Draft and final audit findings will be provided to the TPA, in coordination with the Program Administrator. Representatives from the TPA will have an opportunity to address any discrepancies in the audit findings prior to sharing the final draft report with the Committee. The Program Administrator will review the draft format before the final report is issued to the Committee.
- j) Provide intermittent "one off" claim reviews for high exposure/high sensitivity cases. If there is a need for a written report, the report will be provided by Contractor in draft form to the Program Administrator, before a final version is issued and agreed upon by the Program Administrator and the Contractor.
- k) Develop a project plan for the closure of identified claims. In coordination with the TPA, the Contractor shall provide risk analyses and assistance for the closure of old, inactive claims or claims identified by the Program Administrator, the TPA, and the Contractor to be targeted for enhanced strategies for closure or positioning for resolution. The project will require that the Contractor assign a team of California workers' compensation experts to work with the TPA and the Program Administrator to triage and categorize all claims, identify potential closure timeframes, and provide quarterly reports that indicate success factors to the Program Administrator.
- l) Assist with TPA selection and/or implementation of a TPA, if necessary for the duration of the Contractor's services term.

### 2.3 Training

The Contractor will partner with the Program Administrator to deliver relevant information and training to Members. Specific duties include the ability to:

- a. Design and deliver web-based and/or on-site training for Members, up to six (6) times per year. On-site training may be on AOC locations with a collaboration of surrounding area courts and may not necessarily be in San Francisco, Burbank or Sacramento.
- b. Provide subject matter expertise and guidance for the development of informational and supplemental training materials for distribution to all Members. Materials may include manuals/booklets, forms, newsletters, or web-based media.

### 2.4 Actuarial and Cost Allocation Services

The Contractor will prepare annual reports, based on actuarial methodology, and make recommendations relative to overall program cost liability and Member cost allocations.

- a) Provide annual actuarial reports which include the following components:
  - i. Estimate of retained loss
  - ii. Estimate of allocated loss adjustment expenses (“ALAE”)
  - iii. Combined estimate of retained losses and ALAE for all Members.
  - iv. Break out of the TC Members with estimates of retained losses and ALAE.
- b) Ensure that the certified actuarial valuation report draft and final versions are completed on a timely basis. The draft is due no later than March 1, and the final, bound, and electronic version is due no later than April 1 for each year of service.
- c) Update the annual cost allocation distribution to the Members each fiscal year (July 1 – June 30) based on the application of the existing cost allocation model which utilizes current actuarial estimates, loss history and takes into account program member size.
- d) Present the annual actuarial report and cost allocation to the Committee and Program Administrator in San Francisco, CA. The Contractor, in coordination with the Program Administrator, will also present metrics demonstrating the performance of the program and make recommendations for program improvement, reserve maintenance, and risk assessment in a clear and easily understandable manner.
- e) Ensure that all necessary allocation services will be provided for each year of service at the direction of the Program Administrator.

2.5 Insurance Brokerage

Annually solicit quotes from insurers, conduct a comparison evaluation of competing insurance companies, identify the most beneficial entity for the JBWCP, and negotiate with selected insurers on behalf of the AOC and the JBWCP.

Each year, as required, the Contractor will provide insurance marketing services for excess coverage, using an industry standard competitive process. The JBWCP has maintained excess coverage for the trial court program only at \$2,000,000.00 - \$25,000,000.00. Communication of the workers' compensation excess program will require the Contractor to effectively explain the level of decentralization.

2.6 Runoff Claims

From the period January 1, 2001, to the date of each TC's conversion into the JBWCP, the TC workers' compensation claims were adjusted by their respective counties. While the majority of these county-administered caseloads have been transferred into the JBWCP, the Contractor may be requested to assist with the conversion of several runoff claim transfers. Specific duties may include:

- a) Conduct data verification of:
  - i. Payments made by the counties on behalf of the court files (date of inception: January 1, 2001 to the date of each TC's conversion into the JBWCP).
  - ii. Amounts collected by the counties from the courts for the administration and payment of the court files.
  - iii. Amounts the court reflects as payments made to the counties for the administration and payment of court files.
- b) The Contractor will provide the following:
  - i. Program Management – prioritize unresolved counties runoff liabilities based on available data from the counties and courts, and assist the AOC with dispute resolutions on the unresolved liabilities with the counties.
  - ii. Reserve Analysis – review open runoff claims and determine the adequacy of reserves and exposures.
  - iii. Data Validation and Collection – collect and validate all runoff claims' data, payments, employment of claimants, allocations assessed by the counties to the courts, and verify allocations charged by the counties with the courts. In addition the Contractor will gather additional information as needed for validation purposes.
- c) All of the above will be performed in coordination with the Program Administrator and the TPA.



### 3.0 TIMELINE FOR THIS RFP

The AOC has developed the following list of key events related to this RFP. All dates are subject to change at the discretion of the AOC.

EVENT	DATE
RFP issued	<i>January 23, 2013</i>
Deadline for questions to <a href="mailto:solicitations@jud.ca.gov">solicitations@jud.ca.gov</a>	<i>February, 21, 2013 1:00 PM Pacific Time</i>
Questions and answers posted	<i>February 25, 2013</i>
Latest date and time proposal may be submitted	<i>March 12, 2013 1:00 PM, Pacific Time</i>
Evaluation of proposals ( <i>estimate only</i> )	<i>March 12 – March 28, 2013</i>
Oral Presentations	<i>April 2 - April 5, 2013</i>
Notice of Intent to Award ( <i>estimate only</i> )	<i>April 12, 2013</i>
Negotiations and execution of contract ( <i>estimate only</i> )	<i>April 19, 2013</i>
Notice of Award ( <i>estimate only</i> )	<i>April 26, 2013</i>
Contract start date ( <i>estimate only</i> )	<i>No later than May 1, 2013</i>
Contract end date ( <i>estimate only</i> )	<i>April 30, 2015</i>

#### 4.0 RFP ATTACHMENTS

The following attachments are included as part of this RFP:

ATTACHMENT	DESCRIPTION
Attachment 1: Administrative Rules Governing RFPs (Non-IT Services)	These rules govern this solicitation.
Attachment 2: AOC Standard Terms and Conditions	If selected, the person or entity submitting a proposal (the “Proposer”) must sign the AOC Standard Agreement Terms and Conditions in substantially the form provided.
Attachment 3: Proposer’s Acceptance of Terms and Conditions	<p>On this form, if exceptions are identified, proposers must submit (i) a red-lined version of Attachment 2 – Standard Agreement Terms and Conditions that clearly track proposed changes to this attachment, (ii) written documentation to substantiate each such proposed change and (iii) written explanation to indicate how each proposed change will benefit the AOC.</p> <p><b>Note: A material exception to a Minimum Term may render a proposal non-responsive.</b></p>
Attachment 4: Payee Data Record Form	This form contains information the AOC requires in order to process payments.
Attachment 5: Darfur Contracting Act Certification	Proposer must complete the Darfur Contracting Act Certification and submit the completed certification with its proposal.
Attachment 6: Conflict of Interest Certification Form	Proposer must complete Conflict of Interest Certification and submit the completed certification with its proposal
Attachment 7: Questions for Proposers	Proposer must complete this form and submit with its proposal

#### 5.0 SUBMISSIONS OF PROPOSALS

- 5.1 Proposals should provide straightforward, concise information that satisfies the requirements of Section 6 (“Proposal Contents”). Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the RFP’s instructions and requirements, and completeness and clarity of content.
- 5.2 The Proposer must submit its proposal in two parts, the technical proposal and the cost proposal.

- a. The Proposer must submit **one (1) original and four (4) copies** of the technical proposal. The original must be signed by an authorized representative of the Proposer. The Proposer must write the RFP title and number on the outside of the sealed envelope.
  - b. The Proposer must submit **one (1) original and four (4) copies** of the cost proposal. The original must be signed by an authorized representative of the Proposer. The original cost proposal (and the copies thereof) must be submitted to the AOC in a single sealed envelope, separate from the technical proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.
  - c. The Proposer must submit an electronic version of the entire proposal on CD-ROM. The files contained on the CD-ROM should be in PDF, Word, or Excel formats.
- 5.3 Proposals must be delivered by the date and time listed on the coversheet of this RFP to:
- Administrative Office of the Courts  
Attn: Nadine McFadden, **RFP #HR-053012CK**  
455 Golden Gate Avenue  
San Francisco, CA 94102
- 5.4 Late proposals will not be accepted.
- 5.5 Only written proposals will be accepted. Proposals must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered by hand. Proposals may not be transmitted by fax or email.

## **6.0 PROPOSAL CONTENTS**

- 6.1 Technical Proposal.  
The following information must be included in the technical proposal. A proposal lacking any of the following information may be deemed non-responsive.
- a. Proposer's name, address, telephone and fax numbers, and federal tax identification number. Note that if Proposer is a sole proprietor using his or her social security number, the social security number will be required before finalizing a contract.
  - b. Name, title, address, telephone number, and email address of the individual who will act as Proposer's designated Program Manager for purposes of this RFP.

- c. Names, addresses, and telephone numbers of a minimum of four (4) clients for whom the Proposer has conducted similar services. The AOC may check references listed by Proposer.
- d. Proposed method to complete the work
- e. Risk Consulting and Program Management  
Provide sample reports, preferably including the factors identified in **Section 2.1 (i) through (xi)**, that include workers' compensation metrics and analyses of claims data that demonstrate the Proposer's ability to evaluate the risk and successes of a state-wide workers' compensation self-insured public program.
- f. Third Party Claims Administration (TPA) Oversight  
Provide sample audit reports that demonstrate the Proposer's ability and process for auditing a TPA for technical and managed care administration of a program, as indicated in **Section 2.2 (d), (e), (f), (g), (h)**.  
  
Provide a sample project plan for the closure of identified claims, including relevant risk analyses and strategies for closure or positioning for resolution, as indicated in **Section 2.2 (j)**.
- g. Training  
Provide samples of workers' compensation trainings (including relevant documentation and materials) that demonstrate the Proposer's ability to provide training via a cost-effective delivery method for a state-wide program.
- h. Actuarial and Cost Allocation Services  
Provide sample actuarial reports that demonstrate the Proposer's ability to provide analyses and projections for the purpose of evaluating losses and ALAE of a state-wide workers' multi-member workers' compensation self-insured public program. Samples will not be returned and shall become part of the procurement record. Proposers; should redact any proprietary or confidential information, if necessary
- i. Acceptance of the Terms and Conditions
  - i. On Attachment 3, the Proposer must either indicate acceptance of the Terms and Conditions or clearly identify exceptions to the Terms and Conditions. An "exception" includes any addition, deletion, qualification, limitation, or other change.
  - ii. If exceptions are identified, the Proposer must also submit a red-lined version of the Terms and Conditions that clearly tracks proposed changes, and a written explanation or rationale for each exception and/or proposed change.

- j. Certifications, Attachments, and other requirements.
  - i. Proposer must include the following certification in its proposal:

Proposer certifies it has no interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or rule 10.103 or rule 10.104 of the California Rules of Court, which restrict employees and former employees from contracting with judicial branch entities.
  - ii. Proposer must complete the Darfur Contracting Act Certification attached as Attachment 5 and submit the completed certification with its proposal.
  - iii. Proposer must include in its proposal a completed and signed Payee Data Record Form (see Attachment 4), or provide a copy of a form previously submitted to the AOC.
  - iv. If Proposer is a corporation and the contract will be performed within California, proof that Proposer is in good standing and qualified to conduct business in California. AOC may verify by checking with California's Office of the Secretary of State.
- k. Copies of current business licenses, professional certifications, or other credentials for Proposer.
- l. Resumes for recommended key staff positions of Proposer's staff positions.
- m. Proof of financial solvency or stability (e.g. balance sheets and income states).
- n. Attachment 7, Questions for Proposers, with the Proposer's response to each question.

6.2 Cost Proposal.

The following information must be included in the cost proposal:

- i. A detailed line item budget showing total cost of the proposed services.
- ii. A full explanation of all budget line items in a narrative entitled "Budget Justification."
- iii. A listing of hourly rates by title for each proposed team member assigned to the program. For evaluation purposes provide a break-down of the elements of cost for each proposed Firm Fixed Price.

- iv. Provide estimated hours for each proposed team member/task.
- v. A “not to exceed” total for all work and expenses payable under the contract, if awarded.

**7.0 EVALUATION OF PROPOSALS**

At the time proposals are opened, each proposal will be checked for the presence or absence of the required proposal contents.

The AOC will evaluate the proposals on a 100 point scale using the criteria set forth in the table below. The Award, if made, will be to the highest scored proposal.

<b>CRITERION</b>	<b>MAXIMUM NUMBER OF POINTS</b>
<p><b>Demonstrated Experience and Ability</b></p> <p>Provide a dedicated program manager and assigned staff/subject matter experts with a minimum of 10 years of experience in the timely and effective administration of California-specific workers’ compensation laws.  <b>RFP Section 6 (h) (v) through (vi); RFP Section 2.1 (a)</b></p> <p>Experience in providing consulting and program management services for the maintenance and improvement of a decentralized state-wide workers’ compensation program.  <b>RFP Section 2.1 (a)</b></p> <p>Experience in providing timely and effective liaison and oversight services on all matters pertaining to a TPA and other vendors providing services to the JBWCP.  <b>RFP Section 2.1 (e), 2.2 (a), (d)</b></p> <p>Experience in the development of workers’ compensation metrics to be used in the evaluation of a state-wide workers’ compensation program.  <b>RFP Section 2.1 (c), 6.1 (e)</b></p> <p>Experience with overseeing and auditing TPAs for effective claims handling.  <b>RFP Section 2.2 (d), (e), (f), (g), (h), 6.1 (f)</b></p>	<p>40</p>

<p>Experience in providing workers' compensation related trainings in a variety of formats which may include web-based and in person training. <b>RFP Section 2.3, 6.1 (g)</b></p> <p>Experience in providing annual actuarial valuation reports and cost allocation services. <b>RFP Section 2.4, 6.1 (h)</b></p> <p>Experience in providing insurance brokering services in California. <b>RFP Section 2.5</b></p>	
<p><b>Methodology</b></p> <p>Demonstrated methodology to provide services utilizing an experienced project team, staffed with personnel and relevant subject matter experts. <b>RFP Section 2.1 (a), (b)</b></p> <p>Capacity to provide services from multiple locations and ensuring seamless services from those locations. <b>RFP Section 2.2 (d)</b></p> <p>Employment of a customer service model which demonstrates the ability to provide timely and proactive customer service to all Members, the Program Administrator, and the Committee. <b>RFP Section 2.1 (e), 2.2 (b)</b></p> <p>Demonstrated methodology in the analysis of workers compensation claims data and the development of metrics, which drive cost containment efforts. <b>RFP Section 2.1 (c), 6.1 (e)</b></p> <p>Demonstrated methodology in the provision of liaison and oversight services on all matters involving services provided by the TPA, with an emphasis on audit procedures. <b>RFP Section 2.2, 6.1 (f)</b></p> <p>Demonstrated training/information sessions</p>	<p style="text-align: center;">20</p>

<p>based on various delivery methods  <b>RFP Section 2.3</b></p> <p>Actuarial methodologies are based on clear, understandable industry-wide principles/practices and delivered in a timely fashion.  <b>RFP Section 2.4 (a) through (e)</b></p>	
<p>Cost Reasonableness  <b>RFP Section 6.2</b></p>	30
<p>References and adherence to AOC's Terms and Conditions  <b>RFP Attachment 2</b></p>	10

**8.0 OFFER PERIOD**

A Proposer's proposal is an irrevocable offer for ninety (90) days following the proposal due date. In the event a final contract has not been awarded within this ninety (90) day period, the AOC reserves the right to negotiate extensions to this period.

**NOTE:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

**9.0 INTERVIEWS**

The AOC may conduct interviews with Proposers to clarify aspects set forth in their proposals or to assist in finalizing the ranking of top-ranked proposals. The interviews may be conducted in person or by phone. If conducted in person, interviews will likely be held at the AOC's offices in San Francisco. The AOC will not reimburse Proposers for any costs incurred in traveling to or from the interview location. The AOC will notify eligible Proposers regarding interview arrangements.

**10.0 CONFIDENTIAL OR PROPRIETARY INFORMATION**

One copy of each proposal will be retained by the AOC for official files and will become a public record. California judicial branch entities are subject to rule 10.500 of the California Rule of Court, which governs public access to judicial administrative records (see [www.courtinfo.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10\\_500](http://www.courtinfo.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_500)).



If information submitted in a proposal contains material noted or marked as confidential and/or proprietary that, in the AOC's sole opinion, meets the disclosure exemption requirements of Rule 10.500, then that information will not be disclosed upon a request for access to such records. If the AOC finds or reasonably believes that the material so marked is **not** exempt from disclosure, the AOC will disclose the information regardless of the marking or notation seeking confidential treatment.

Notwithstanding the above, the California Public Contract Code requires the public inspection of certain proposals. If required to do so by the Public Contract Code, the AOC may disclose all information contained in a proposal, including information marked as confidential or proprietary.

### **11.0 DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOALS**

The AOC has waived the inclusion of DVBE participation in this solicitation.

### **12.0 PROTESTS**

Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contract Manual (see [www.courts.ca.gov/documents/jbcl-manual.pdf](http://www.courts.ca.gov/documents/jbcl-manual.pdf)). Failure of a Proposer to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the AOC to receive a solicitation specifications protest is March 8, 2013. Protests should be sent to:

AOC – Business Services  
ATTN: Protest Hearing Officer  
RFP #HR-053012CK  
455 Golden Gate Avenue, Sixth Floor  
San Francisco, CA 94102

### **13.0 Americans with Disabilities Act**

The AOC complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to:

AOC – Business Services  
Attn: ADA Coordinator  
455 Golden Gate Avenue, Sixth Floor  
San Francisco, CA 94102

**ATTACHMENT 1  
ADMINISTRATIVE RULES GOVERNING RFPS  
(NON-IT SERVICES)**

**1. COMMUNICATIONS WITH AOC REGARDING THE RFP**

Except as specifically addressed elsewhere in the RFP, Proposers must send any communications regarding the RFP to [Solicitations@jud.ca.gov](mailto:Solicitations@jud.ca.gov) (the "Solicitations Mailbox"). Proposers must include the RFP Number in subject line of any communication.

**2. QUESTIONS REGARDING THE RFP**

- A. If a Proposer's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the Proposer may submit the question via email to the Solicitations Mailbox, conspicuously marking it as "CONFIDENTIAL." With the question, the Proposer 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 Proposer will be notified.
- B. Proposers interested in responding to the RFP may submit questions via email to the Solicitations Mailbox on procedural matters related to the RFP or requests for clarification or modification of the RFP no later than the deadline for questions listed in the timeline of the RFP. If the Proposer is requesting a change, the request must set forth the recommended change and the Proposer's reasons for proposing the change. Questions or requests submitted after the deadline for questions 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 made available.

**3. ERRORS IN THE RFP**

- A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer shall immediately notify the AOC via email to the Solicitations Mailbox and request modification or clarification of the RFP. Without disclosing the source of the request, the AOC may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.
- B. If a Proposer fails to notify the AOC of an error in the RFP known to Proposer, or an error that reasonably should have been known to Proposer, before the proposal due date and time listed in the timeline of the RFP, Proposer shall propose at its own risk. Furthermore, if Proposer is awarded the agreement, Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

**4. ADDENDA**

- A. The AOC may modify the RFP before the proposal due date and time listed in the timeline of the RFP by posting an addendum on the California Courts Website located at [www.courts.ca.gov/rfps.htm](http://www.courts.ca.gov/rfps.htm) (“Courts Website”). It is each Proposer’s responsibility to inform itself of any addendum prior to its submission of a proposal.
- B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the AOC via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

**5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS**

A Proposer may withdraw its proposal at any time before the deadline for submitting proposals by notifying the AOC in writing of its withdrawal. The notice must be signed by the Proposer. The Proposer 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 in the timeline of the 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 in the timeline of the RFP.

**6. ERRORS IN THE PROPOSAL**

If errors are found in a proposal, the AOC may reject the proposal; however, the 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 Proposer (if selected for the award of the agreement), the Proposer 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.

**7. RIGHT TO REJECT PROPOSALS**

- A. Before the proposal due date and time listed in the timeline of the RFP, the AOC may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, the AOC may reject all proposals and cancel the RFP if the AOC determines that: (i) the proposals received are not really competitive; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the AOC.
- B. The AOC 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 RFP or excuse a Proposer from full compliance with RFP specifications. Until a contract resulting from this RFP is signed, 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 Proposers if it is deemed in the AOC’s best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.

- C. The AOC reserves the right to issue similar RFPs in the future. The 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.
- D. Proposers are specifically directed **NOT** to contact any AOC personnel or consultants for meetings, conferences, or discussions that are related to the RFP at any time between release of the RFP and any award and execution of a contract. Unauthorized contact with any AOC personnel or consultants may be cause for rejection of the Proposer's proposal.

## **8. EVALUATION PROCESS**

- A. An evaluation team will review all proposals that are received by the appropriate deadline to determine the extent to which they comply with RFP requirements.
- B. Proposals that contain false or misleading statements may be rejected if in the AOC's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP.
- C. Cost proposals will be checked only if a technical proposal is determined to be responsive. All figures entered on the cost proposal must be clearly legible.
- D. During the evaluation process, the AOC may require a Proposer's representative to answer questions with regard to the Proposer's proposal. Failure of a Proposer to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.
- E. In the event of a tie, the contract will be awarded to the winner of a single coin toss. The coin toss will be witnessed by two AOC employees. The AOC will provide notice of the date and time of the coin toss to the affected Proposers, who may attend the coin toss at their own expense.
- F. During the evaluation process, the AOC may perform certain checks to determine if a Proposer is deemed ineligible for contract award. For example, if Proposer is a corporation and the contract will be performed within California, Bidder must be qualified to do business in California, and in good standing.
- G. If a contract will be awarded, the AOC will post an intent to award notice on the Courts Website.

## **9. DISPOSITION OF MATERIALS**

All materials submitted in response to the RFP will become the property of the AOC and will be returned only at the AOC's option and at the expense of the Proposer submitting the proposal.

## **10. PAYMENT**

- A. Payment terms will be specified in any agreement that may ensue as a result of the RFP.

**B. THE AOC DOES NOT MAKE ADVANCE PAYMENT FOR SERVICES.**

Payment is normally made based upon completion of tasks as provided in the agreement between the AOC and the selected Proposer. The AOC may withhold ten percent of each invoice until receipt and acceptance of the final deliverable. The amount of the withhold may depend upon the length of the project and the payment schedule provided in the agreement between the AOC and the selected Proposer.

**11. AWARD AND EXECUTION OF AGREEMENT**

- A. Award of contract, if made, will be in accordance with the RFP to a responsible Proposer submitting a proposal compliant with all the requirements of the RFP and any addenda thereto (including any administrative or technical requirements), except for such immaterial defects as may be waived by the AOC.
- B. A Proposer submitting a proposal must be prepared to use a standard AOC contract form rather than its own contract form.
- C. The AOC will make a reasonable effort to execute any contract based on the RFP within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by a Proposer may delay execution of a contract.
- D. Upon award of the agreement, the agreement shall be signed by the Proposer in two original contract counterparts and returned, along with the required attachments, to the AOC no later than ten (10) business days of receipt of agreement form or prior to the end of June if award is at fiscal year-end. Agreements are not effective until executed by both parties and approved by the appropriate AOC officials. Any work performed before receipt of a fully-executed agreement shall be at Proposer's own risk.

**12. FAILURE TO EXECUTE THE AGREEMENT**

The period for execution set forth in Section 11 ("Award and Execution of Agreement") may only be changed by mutual agreement of the parties. Failure to execute the agreement within the time frame identified above constitutes sufficient cause for voiding the award. Failure to comply with other requirements within the set time constitutes failure to execute the agreement. If the successful Proposer refuses or fails to execute the agreement, the AOC may award the agreement to the next qualified Proposer.

**13. NEWS RELEASES**

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of the AOC's Business Services Manager.

**14. ANTI-TRUST CLAIMS**

- A. In submitting a proposal to the AOC, the Proposer offers and agrees that if the proposal is accepted, Proposer will assign to the AOC all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section

16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the AOC pursuant to the proposal. Such assignment shall be made and become effective at the time the AOC tenders final payment to the Proposer. (See Government Code section 4552.)

- B. If the AOC receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Proposer shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the AOC any portion of the recovery, including treble damages, attributable to overcharges that were paid.
  
- C. Upon demand in writing by the Proposer, the AOC shall, within one year from such demand, reassign the cause of action assigned under this section if the Proposer has been or may have been injured by the violation of law for which the cause of action arose and (a) the AOC has not been injured thereby, or (b) the AOC declines to file a court action for the cause of action. (See Government Code section 4554.)

*End of Attachment 1*

Project Title: JBWCP Insurance Brokerage and Consulting Services  
RFP Number: **HR-053012CK**

## **RFP Attachment 2**

### **Contract Terms and Conditions**

**Attachment 2**  
**Contract Terms and Conditions**

**STANDARD PROVISION**  
**(EXHIBIT A)**

**NOTE: As set forth in Section 4 of the RFP: The provisions marked with an (\*) within the Terms and Conditions are minimum contract terms and conditions (“Minimum Terms”)A proposal that takes a material exception (addition, deletion, or other modification) to a Minimum Term will be deemed nonresponsive. The AOC, in its sole discretion will determine what constitutes a material exception.**

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



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permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors.

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

4. No Assignment\*

Contractor may not assign an Agreement, in whole or in part, without the prior written consent of the Program Administrator. Consent may be granted or withheld in the absolute discretion of the AOC. Any attempted assignment without the prior written consent of the AOC is void. No assignment will release Contractor from its duties under an Agreement.

All billing must go through the Contractor.

5. Time of Essence

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

**Attachment 2**  
**Contract Terms and Conditions**

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 full compensation for all the Contractor's time, materials, costs and expenses incurred in the performance of this Agreement unless otherwise expressly provided.

*END OF STANDARD PROVISIONS (EXHIBIT A)*

**Attachment 2**  
**Contract Terms and Conditions**

**SPECIAL PROVISIONS**  
**(EXHIBIT B)**

**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 after the Contractor has completed a Deliverable, Submittal, or other Contract requirement, in compliance with the Contract Documents, including without limitation, the Acceptance of the Work provision set forth in this exhibit.
- 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 any not to exceed 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 Members. 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 Standard Agreement Coversheet. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement.**”
- F. The “**Contractor**” means the individual, subsidiaries, association, partnership, firm, company, consultant, corporation, subcontractors 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.

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- G. **“Court(s)”** or **“Trial Court(s)”** means one or more of the fifty-eight (58) superior courts in the California state trial court system.
- 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)”** 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.
- K. **“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.
- L. **“Judicial Branch Entity”** or **“JBE”** means the Judicial Council of California, the Administrative Office of the Courts, any of the California Appellate Courts (which includes the Supreme Court of California and the California Courts of Appeal), any of the Trial Courts, the Habeas Corpus Resource Center and the Commission on Judicial Performance of the State of California (collectively referred to as Judicial Branch Entities).
- M. **“Key Personnel”** mean the Contractor’s personnel named in Exhibit E, Contractor’s Key Personnel, whom the State has identified and approved to perform the Work of the Contract. Roles of Key Personnel are set forth in Exhibit E, Contractor’s Key Personnel.
- N. **“Material”** means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- O. **“Notice”** means a written document initiated by the authorized representative of either Party to this Agreement and given by:

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- 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.
- P. **"Party"** means either the AOC or Contractor, as the case may be.
- Q. **"Program Administrator"** refers to the AOC's assigned project manager responsible for the oversight of all Contractor activities/services in support of the JBWCP.
- R. **"Program"** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State's representatives.
- S. 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.
- T. **"Standard Agreement Coversheet"** or **"Standard Amendment Coversheet"** means the form used by the State to enter into agreements or amendments with other parties. Several originally signed, fully executed versions of the Standard Agreement Coversheet or Standard Amendment Coversheet, together with the integrated Contract Documents, shall each represent the Agreement or Amendment as an individual **"Contract Counterpart."**
- U. **"Standard Option Amendment Coversheet"** means the form used by the State to exercise an option term set forth in the Agreement Term(s) and Options to Renew provision in this Exhibit B.
- V. **"Stop Work Order"** means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit B.
- W. **"Task(s)"** means one or more functions, if specified in the Contract to be performed by the Contractor for the State.
- X. **"Term"** refers to the period defined by a beginning date and an end date, in accordance with the terms and conditions set forth in the Agreement, during which the Contractor is authorized to provide the Contract Work. The possible Terms of the Agreement are described further in this Exhibit's section 6, Agreement Term(s) and Options to Renew.

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- Y. **“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.
- Z. **“Transition Period”** means a period of time commencing (i) three months prior to the expiration of this Agreement or on an earlier date as the State may request and Contractor may agree, (ii) upon any notice of termination or non-renewal of this Agreement, or (iii) three months prior to any other ceasing of services under this Agreement, as applicable, and continuing through the effective date of expiration, termination or cessation, but for no less than three months. Notwithstanding the foregoing, in no event shall the Transition Period extend more than 60 days beyond the effective date of termination, regardless of the reason for the termination.
- AA. **“Transition Plan”** refers to the plan set forth in this Agreement as necessary to allow the Work to continue without interruption or adverse effect and facilitate the orderly transfer of the Work to the State or the State’s designee.
- BB. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably to refer to the service, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Contractor to the satisfaction of the State. Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Contract.
2. Manner of Performance of Work\*
- The Contractor shall complete all Work specified in these Contract Documents to the State's satisfaction and in compliance with the Nondiscrimination/No Harassment Clause, as set forth in this Exhibit B.
3. Termination Other Than for Cause\*
- A. In addition to termination for cause under Exhibit A, Standard Provisions paragraph 3, the State may terminate this Agreement at any time upon providing the Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, the Contractor shall promptly discontinue all services affected unless the Notice specifies otherwise.
- B. If the State terminates all or a portion of this Agreement other than for cause, the State shall pay the Contractor for the fair value of satisfactory services rendered before the termination, not to exceed the total not to exceed amount.
4. State's Obligation Subject to Availability of Funds\*

**Attachment 2**  
**Contract Terms and Conditions**

- A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to the Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.
- B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
  - i. The State will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and
  - ii. The Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.
- C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

**5. Stop Work**

- A. The State may, at any time, by written Notice to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Work covered by the Stop Work Order during the period of Work stoppage. Within a period of ninety (90) Days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
  - i. Cancel the Stop Work Order; or
  - ii. Terminate the Work covered by the Stop Work Order as provided for in either of the termination provisions of this Agreement.

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- B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume Work. The State shall make an equitable adjustment in the delivery schedule, the not to exceed amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
    - i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and
    - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.
  - C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under Exhibit B, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
  - D. The State shall not be liable to the Contractor for loss of profits because of the Stop Work Order issued under this provision.
- 6. Agreement Term(s) and Options to Renew**
- A. Until this Agreement is mutually signed and delivered, none of the terms and conditions of this Agreement shall have any legal force or effect, and any such prior commencement of performance by the Contractor shall be at the Contractor's own risk; provided, however, following mutual execution and delivery of this Agreement, the terms and conditions of this Agreement shall be deemed to apply equally to both subsequent and prior performance.
  - B. The Agreement shall remain in effect from **May 1, 2013** through **April 30, 2015** ("**Initial Term**").
  - C. The initial Contract Term shall be for two (2) years with three (3) options to extend the Term. Option one (1) for a period of two (2) years, option two (2) for a period of two (2) years, and option three (3) for a period of one (1) year. If the State elects to extend the Term of the Contract, any agreed upon price adjustment (whether an increase or decrease) of hourly rates may not exceed during any option period the previous twelve (12) months change in Exempt Salaried Salary Budget Increase as published in the World at Work 2012-2013 Salary Budget Survey and shall not



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exceed 3% per each set of option years. Firm Fixed Prices will remain in intact throughout the entire term and option periods of this Contract.

- D. In the event the State elects to exercise an option to extend the Agreement, the State will notify Contractor of such election by providing Contractor an executed original of a Standard Amendment Coversheet. The expiration date of the Agreement will thereby be extended to the ending date of such exercised term.

**7. Agreement Administration/Communication**

- A. Under this Agreement, the Program Administrator, 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 Program Administrator.

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

Program Administrator, Judicial Branch Workers' Compensation  
Program  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

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

TBD, Program Administrator

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

TBD

- iv. Other than for Notices, the Contractor may be contacted as follows:

TBD

**8. 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.

**9. Evaluation of Contractor**

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

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**10. Acceptance of the Work**

- A. The Program Administrator 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 Program Administrator 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 Program Administrator. The State shall accept the Work, provided the Contractor has delivered the Work in accordance with the Criteria. The Program Administrator shall use the Acceptance and Signoff Form, provided as Attachment 1 to this Agreement’s Exhibit F, Attachments, to notify the Contractor of the Work’s acceptability.
- D. If the State rejects the Work provided, the Program Administrator shall submit to the Contractor a written rejection using Attachment 1, the Acceptance and Signoff Form, describing in detail the failure of the Work as measured against the Criteria. If the State rejects the Work, then the Contractor shall have a period of ten (10) business days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.
- E. If the Program Administrator requests further change, the Contractor shall meet with the Program Administrator, 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.

## **Attachment 2**

### **Contract Terms and Conditions**

F. If agreement cannot be reached between the Program Administrator 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.

#### **11. Contractor's Personnel and Replacement of Personnel**

The Contractor shall endeavor to retain the same individuals assigned under this Agreement during the performance of the Work of this Agreement. However, the Contractor may, with approval of the State's Program Administrator, release personnel from the Agreement who become unavailable due to separation of employment or whose skill set is no longer is required to complete the Work under this Agreement.

Any substitution or prolonged absence of the personnel who were specifically identified in the original proposal, as accepted, must be approved by the State's Program Administrator. Failure to obtain acceptance shall constitute a major breach of this Agreement.

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.

If any of the Contractor's Key Personnel become unavailable during the term of this Agreement, the Contractor shall, within five days, and at no cost to the State, assign replacement personnel, possessing equivalent or greater experience and skills as that demonstrated in the resume set forth in Exhibit E Contractor's Key Personnel.

There shall be no cost to the State of a replacement person on the Contractor's team coming up to speed. In addition, the cost of other existing contractor staff helping bring the person up to speed is also at no cost to the State.

If the Contractor cannot or does not furnish replacement acceptable to the State, the State may terminate this Agreement for cause pursuant to Exhibit A Standard Agreement paragraph 3-*Termination for Cause*.

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**12. 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 section 4, it is the policy of the State to withhold consent from proposed assignments, subcontracts, or notations when such transfer of responsibility would operate to decrease the State's likelihood of receiving performance under this Agreement. No performance of this Agreement or any portion thereof may be assigned or subcontracted by the Contractor, except as noted in subsection B to this provision, 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 and all billing must come from the Contractor.

**13. Services Warranty**

The Contractor warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in planning, development, training, consulting or related services under the terms of this Agreement shall have the skills, training, and background reasonably commensurate with his or her level of performance or responsibility, so as to be able to perform in a competent and professional manner. The Contractor further warrants that the services provided hereunder will conform to the requirements of this Agreement. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

**14. Changes and Amendments**

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Program Administrator. 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 Program Administrator 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 or Amendment Coversheet.

**15. Accounting System Requirement**

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

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**16. 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.

**17. 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.

**18. 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 insurance that covers the Contractor and the Assigned Personnel employed by the Contractor with limits no less than the following:
- i. Workers' Compensation at statutory requirements of the State of residency.
  - ii. Employers' Liability insurance shall not be less than **\$1,000,000.00** for injury or death for each occurrence.
  - iii. Comprehensive General Liability Insurance shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “occurrence” form, with no coverage deletions. The limit shall not be less than **\$1,000,000.00** for each occurrence / **\$2,000,000.00** aggregate for bodily injury, property damage and personal injury. Coverage shall be:

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(a) by “Additional Insured” endorsement add as insureds the State, its agents, and employees with respect to liability arising out of or connected with the service provided. In the event the Commercial General Liability policy includes a “blanket endorsement by contract,” the following language added to the certificate of insurance will satisfy the State’s additional insured requirement: “The State, its directors, agents and employees with respect to liability arising out of the work performed by or for the Contractor are additional insureds under a blanket endorsement”; and

(b) endorsed to specify that the Contractor’s insurance is primary and that any insurance or self-insurance maintained by the State shall not contribute with it.

iv. Business Automobile Liability Insurance coverage shall be at least as broad as the ISO Business Auto Coverage form covering Automobile Liability, code 1 “any auto.” The limit shall not be less than **\$1,000,000.00** each accident for bodily injury and property damage.

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.

i. The General Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:

(a) 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; and

(b) 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.

ii. In the event the Contractor will provide attorney, architectural, engineering, or other professional services, which require a “standard of care” against negligent acts, the Contractor will also maintain Professional Liability

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insurance, which covers the work provided by such personnel, at not less than \$1,000,000.00 per claims made.

- 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. 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 coverage, provided by Subcontractors 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 of California, Administrative Office of the Courts, Business Services Manager, 455 Golden Gate Ave., 6<sup>th</sup> Floor, San Francisco, CA 94102.

**19. 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 Program Administrator, representatives of the State that are working on the Program. 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

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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.

#### **20. Copyrights and Rights in Data**

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

#### **21. Ownership of Results**

- A. Unless the Contractor and the State reach a written agreement to the contrary, the Contractor agrees for itself and its personnel that pursuant to the State's requirement (i) all documents, deliverables, software, systems designs, disks, tapes, and any other Data or Materials created in whole or in part by the Contractor in the course of or related to providing services to the State shall be treated as if it were "work for hire" for the State, and (ii) the Contractor will immediately disclose to the State all discoveries, inventions, enhancements, improvements, and similar creations (collectively, "**Creations**") made, in whole or in part, by the Contractor in the course of or related to providing services to the State.
- B. All ownership and control of the above Data, Materials, and Creations, including any copyright, patent rights, and all other intellectual property rights therein, shall vest exclusively with the State, and the Contractor hereby assigns all right, title, and interest that the Contractor may have in such Data, Materials, and Creations to the State, without any additional compensation and free of all liens and encumbrances of any type. The Contractor affirms that the amount encumbered under this Agreement for the Work performed includes payment for assigning such rights to the State. The Contractor agrees to execute any documents required by the State to register its rights and to implement the provisions herein. Upon the State's written request, the Contractor shall provide the State with all this Data within thirty (30) Days of the request.
- C. The Contractor agrees not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data. The Contractor shall not publish or reproduce such Data in whole, or part, or any manner or form, or authorize others to do so without the written consent of the State.



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**22. 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.

**23. 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.

**24. 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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**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. 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.

**27. California Law**

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

**28. 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.

**29. 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.

**30. Signature Authority**

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

**31. 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.

**32. Dispute Resolution**

A. Program Administrator Negotiations. The State’s Program Administrator and the Contractor’s Account/Engagement Manager shall attempt in good faith to informally

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and promptly resolve any disagreement that arises (“**Dispute**”) that can be settled within the limits of authority granted them under this Agreement.

- B. Dispute Notice. If the settlement of a disagreement is beyond the authority allowed the State’s Program Administrator and the Contractor’s Program Manager under this Agreement, or if a disagreement has in the opinion of either Party persisted for an undue length of time, either Party may submit a written Notice to the other Party that the Parties will commence the procedure set forth in this section 37 to resolve the Dispute (“**Dispute Notice**”). The Dispute Notice shall include: (i) detailed factual information and supporting documentation in support of the submitting Party’s position; (ii) the specific Agreement provisions on which the Dispute is based; and (iii) if the Dispute involves a cost adjustment, the exact amount of the cost adjustment accompanied by all records supporting the submitting Party’s position. The Dispute Notice shall include a written statement signed by an authorized representative of the submitting Party indicating that the Dispute is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested, if any, accurately reflects the adjustment for which the submitting Party believes the other Party is responsible. To assist the other Party in its review of the Dispute, the submitting Party shall promptly comply with reasonable requests for additional information.
- C. Dispute Notice Response. Within fifteen (15) Days of receiving the Dispute Notice, the receiving Party shall provide a written response to the submitting Party’s Dispute Notice (“**Dispute Notice Response**”). The Dispute Notice Response shall include: (i) detailed factual information and supporting documentation in support of the receiving Party’s position; and (ii) if the Dispute involves a cost adjustment, state the exact amount that the receiving Party believes is at issue accompanied by all records supporting the receiving Party’s position.
- D. Senior Level Negotiations. If after fifteen (15) Days of receipt of the Dispute Notice Response by the submitting Party or, in the event that the receiving Party fails to timely submit a Dispute Notice Response, either Party may, by providing written Notice to the other Party, request that the Dispute be resolved by direct negotiations between senior level negotiators of the Parties (“**Senior Level Negotiations Notice**”). The senior level negotiators shall meet in person or by phone as often as they deem reasonably necessary to exchange information and attempt to resolve the Dispute within thirty (30) Days after the Senior Level Negotiations Notice is given to the other Party.
- E. Litigation. If the senior level negotiations do not result in resolution of the Dispute, either Party may pursue any legally available remedy.

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- F. Confidentiality. All negotiations conducted pursuant to this section 37 are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code section 703.5 and sections 1115 through 1128.
- G. Continuation of Work. Pending the final resolution of any Dispute arising under, related to, or involving this Agreement, Contractor agrees to diligently proceed with the performance any Work under Dispute in accordance with the provisions of this Agreement and the AOC's instructions. Contractor's failure to diligently proceed with performance in this manner will be considered a material breach of this Agreement.

**33. Transition Services**

- A. During the Transition Period, the Contractor shall provide to the State or the State's designee, in a manner consistent with Contractor's normal business practices, the services set forth in the Transition Plan, if any, or any other services reasonably necessary to enable the State to obtain from another contractor, or to provide for itself, services to substitute for or replace the services provided by Contractor under this Agreement without interruption or adverse effect and to facilitate the orderly transfer of the Services to the State or the State's designee (collectively, "**Transition Services**"). Contractor shall provide Transition Services to the State or the State's designee regardless of the reason for termination or expiration.
- B. Transition Services shall be provided at no cost to the State or the State's designated successor except as otherwise provided for in Exhibit C, Payment Provisions.

**34. Contractor Certification Clauses**. Contractor certifies that the following representations and warranties are true. Contractor shall cause these representations and warranties to remain true during the term of this Agreement, and Contractor shall promptly notify the AOC if any representation and warranty becomes untrue.

- A. **\*Non-discrimination**. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has

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a collective bargaining or other agreement of Contractor's obligations of non-discrimination.

- B. \*National Labor Relations Board.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
- C. \*Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the AOC.
- D. \*Iran Contracting Act.** Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the AOC to enter into this Agreement pursuant to PCC 2203(c).
- E. Independent Contractor Status.** Contractor is an independent contractor to the AOC. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor or its personnel and the AOC. Nothing Contractor does, or fails to do, in the performance of this Agreement will make Contractor or its personnel an employee of the AOC. The AOC will not provide to Contractor or its personnel the benefits that the AOC provides its employees.
- F. Agreements over \$10,000.** This Agreement is subject to examinations and audit by the State Auditor for a period of three years after final payment.
- G. Agreements over \$50,000.** No AOC funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).
- H. Agreements of \$100,000 or More.** Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with PCC 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discrimination between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discrimination between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees. Contractor recognizes the

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importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

- I. Agreements for Services over \$200,000 (Excluding Consulting Services).** Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- J. Agreements Resulting from Competitive Solicitations.** Contractor shall assign to the AOC all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the AOC. Such assignment shall be made and become effective at the time the AOC tenders final payment to the Contractor. If the AOC receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the AOC any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the AOC as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the Contractor, the AOC shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the AOC has not been injured thereby, or (b) the AOC declines to file a court action for the cause of action.
- K. \*Agreements Performed in California by Contractors that are Corporations, LLCs, or LPs.** Contractor is, and will remain for the term of the Agreement, qualified to do business and in good standing in California.
- L. Agreements with Contractors that Have Employees.** Contractor must maintain during the term of this Agreement workers' compensation coverage to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease.
- M. \*Agreements that the AOC Cannot Terminate for Convenience.** The AOC's obligations under this Agreement are subject to the availability of applicable funds.

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Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the initial appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the AOC may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the AOC, for lack of appropriation of funds. Upon termination, the AOC will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.

**35. Entire Agreement**

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

*END OF SPECIAL PROVISIONS (EXHIBIT B)*

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**PAYMENT PROVISIONS  
(EXHIBIT C)**

Contract Amount

- A. The total amount the State may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, shall not exceed **\$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.
- C. The initial Contract Term shall be for two (2) years with three (3) options to extend the Term. Option one (1) for a period of two (2) years, option two (2) for a period of two (2) years, and option three (3) for a period of one (1) year. If the State elects to extend the Term of the Contract, any agreed upon price adjustment (whether an increase or decrease) of hourly rates may not exceed during any option period the previous twelve (12) months change in Exempt Salaried Salary Budget Increase as published in the World at Work 2012-2013 Salary Budget Survey and shall not exceed 3% per each set of option years. Firm Fixed Prices will remain in intact throughout the entire term and option periods of this Contract.

Compensation for Contract Work:

- A. The State shall compensate the Contractor as follows:
  - i. **Initial Term:** For performing the Work of this Agreement during the Initial Term as set forth in Exhibit D Work To Be Performed, the State shall compensate the Contractor for either the actual cost, at the hourly rates and hours worked as set forth in Table 1A, below, or for the Firm Fixed Prices provided such total actual cost shall not exceed the not to exceed amounts, below, for completion of each Task and acceptance of all Deliverables set forth in Exhibit D, Work To Be Performed.

**Table 1A: Contract Rates and Firm Fixed Rates for Contractor’s Key Personnel & Not to Exceed Amounts or Firm Fixed Prices for the Work of the Initial Term**

<b>Task No.</b>	<b>Task/Function</b>	<b>Contractor’s Key Personnel</b>	<b>Rate Per Hour</b>	<b>Unit Price</b>	<b>Not to Exceed Amount</b>



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1	<p>The Contractor will identify, assess, and recommend solutions to control the probability of events and their impacts to the JBWCP utilizing the necessary personnel required to perform the services, which include:</p> <p><u>Risk Consulting and Program Management</u></p> <ul style="list-style-type: none"> <li>● Data analysis and development of metrics</li> <li>● Project plan development and maintenance</li> </ul> <p><u>Third Party Claims Administration Oversight</u></p> <ul style="list-style-type: none"> <li>● Monitoring claims for accuracy and aggressiveness in moving claims to closure</li> <li>● Annually auditing the TPA based on</li> </ul>			<b>XXX</b>
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	<p>established metrics and best practices, with selected criteria</p> <ul style="list-style-type: none"> <li>• Conduct “spot checks” of the TPA claims handling process</li> <li>• Annually audit the Case Management program</li> <li>• Provide “one off” claim reviews for high exposure/high sensitivity cases</li> <li>• Provide TPA audit reports for all reviews indicated above.</li> <li>• Develop a project plan for the closure of identified claims</li> <li>• Assist in the selection of a TPA, if necessary during the Contractor’s services term.</li> </ul> <p><u>Training</u></p> <ul style="list-style-type: none"> <li>• Deliver up to six web-based or on-site training for</li> </ul>				
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	<p>Members</p> <ul style="list-style-type: none"> <li>• Provide supplemental training materials and other educational media</li> </ul>				
2	<p><u>Actuarial and Cost Allocation Services</u></p> <p>The Contractor will prepare annual reports, based on actuarial methodology, and make recommendations relative to overall program cost liability and program Member cost allocations.</p>				<b>Firm Fixed Price</b>
3	<p><u>Insurance Brokerage Marketing Services</u></p> <p>Annually solicit quotes, conduct a comparison evaluation of competing insurance companies, and select and negotiate with insurers on behalf of the AOC and the JBWCP</p>				<b>Firm Fixed Price</b>

**Attachment 2  
Contract Terms and Conditions**

4	<u>Runoff Claims</u> As needed, the Contractor may be asked to work with the JBWCP to transfer the balance of each respective county's administered caseloads into the JBWCP program.				<b>Firm Fixed Fee</b>
<b>Not To Exceed Total</b>					<b>XXX</b>

- B. The hourly rates and not-to-exceed and firm fixed fee amounts prices set forth in the Table of this Provision shall be fully burdened and inclusive of all costs, benefits, expenses, commissions, travel related costs, fees, overhead, annual fees and profits payable to the Contractor for services rendered to 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 a job site or any living expenses.
- E. The total actual cost which the State may reimburse the Contractor, pursuant to this paragraph, shall not exceed the not to exceed amount set forth in section 1, of this Exhibit C.

**36. Other Expenses**

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

**37. 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 including any surplus or excess lines and similar taxes. If requested by the Contractor, the State shall provide the Contractor proof of its tax-exempt status.

**Attachment 2**  
**Contract Terms and Conditions**

**38. Method of Payment**

- A. The Contractor shall submit an invoice for Work provided upon completion of the Work, completion and acceptance of the Deliverables as set forth in Exhibit D, Work to be Performed, but at a minimum, Contractor shall submit a monthly invoice to the State. 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:
- i. The Contract number;
  - ii. A unique invoice number;
  - iii. The Contractor's name and address;
  - iv. Taxpayer identification number (the Contractor's federal employer identification number);
  - v. Description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate;
  - vi. For reimbursement of authorized services provided by, Contractor shall provide a copy of authorized invoices broken out by Task which includes dates and hours worked and billing rate(s), as appropriate; and shall break out firm fixed prices as well as hourly rates.
  - vii. 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 Fiscal Services Office, Accounts Payable  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660
- 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.

**39. Disallowance**

If the Contractor claims or receives payment from the State for a service or reimbursement that is later rightfully 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.

**Attachment 2**  
**Contract Terms and Conditions**

**40.**    Payment Does Not Imply Acceptance of Work

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

*END OF PAYMENT PROVISIONS (EXHIBIT C)*

**Attachment 2**  
**Contract Terms and Conditions**

**WORK TO BE PERFORMED**  
**(EXHIBIT D)**

1. Work Requirements

The Contractor shall provide the following Work:

A. The Contractor shall provide the State with the following work for the ongoing risk management of the judicial branch comprehensive workers' compensation program:

i. The Contractor will identify, assess, and recommend solutions to control the probability of events and their impacts to the JBWCP utilizing the necessary personnel required to perform the services, which include:

Risk Consulting and Program Management

- Data analysis and development of metrics
- Project plan development and maintenance

Third Party Claims Administration Oversight

- Monitoring claims for accuracy and aggressiveness in moving claims to closure
- Annually auditing the TPA based on established metrics and best practices, with selected criteria which will be due no later than April 1 of each contract year.
- Conduct "spot checks" of the TPA claims handling process
- Annually audit the Case Management program which will be due no later than April 1 of each contract year
- Provide "one off" claim reviews for high exposure/high sensitivity cases
- Provide TPA audit reports for all reviews indicated above.
- Develop a project plan for the closure of identified claims
- Assist in the selection of a TPA, if necessary during the Contractor's services term.

Training

- Deliver up to six web-based or on-site training for Members
- Provide supplemental training materials and other educational media

ii. Actuarial and Cost Allocation Services

The Contractor will prepare annual reports, based on actuarial methodology, and make recommendations relative to overall program cost liability and program Member cost allocations.

iii. Insurance Brokerage Marketing Services

## **Attachment 2**

### **Contract Terms and Conditions**

Annually solicit quotes, conduct a comparison evaluation of competing insurance companies, and select and negotiate with insurers on behalf of the AOC and the JBWCP.

Create a marketing portfolio to represent the State in the excess insurance market that delivers the opportunity for the best possible rates no later than July 1st of each year.

iv. Runoff Claims

As needed, the Contractor may be asked to work with the JBWCP to transfer the balance of each respective county's administered caseloads into the JBWCP program.

2. Contractor Responsibilities

A. The Contractor's Program Manager will have the following responsibilities under this Contract:

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

3. AOC Responsibilities

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

4. Progress Reports

A. The Contractor shall submit progress reports to the Program Administrator, as required, describing work performed, work status, work progress difficulties encountered, remedial actions, and statement of activity anticipated subsequent to reporting period, for approval prior to payment of invoices.



**Attachment 2**  
**Contract Terms and Conditions**

- B. The Contractor's Program Manager shall meet regularly, as mutually agreed, to evaluate and discuss Contractor's performance of the Work.

*END OF WORK TO BE PERFORMED (EXHIBIT D)*

**Attachment 2  
Contract Terms and Conditions**

**CONTRACTOR'S KEY PERSONNEL  
(EXHIBIT E)**

- The following individual, or equivalent as approved pursuant to Exhibit B, Special Provisions, paragraph 11, Contractor's Personnel and Replacement of Personnel, shall be the Key Personnel designated to perform and function in a key capacity in managing the work of the Contract:

<b>Name of Key Staff</b>	<b>Role</b>
	Program Manager
	Account/Engagement Manager
	Lead Auditor
	Actuary

- The resumes of the Contractor's Key Staff, identified above, are attached to this Exhibit and set forth on the following page(s).

*END OF CONTRACTOR'S KEY STAFF (EXHIBIT E)*

**Attachment 2**  
**Contract Terms and Conditions**

**ATTACHMENTS**  
**(EXHIBIT F)**

This Exhibit includes the following form(s):

Attachment 1, Acceptance & Signoff Form

*END OF ATTACHMENTS (EXHIBIT F)*

**EXHIBIT F**  
**ACCEPTANCE OF WORK AND SIGN-OFF FORM**

▶ Agreement No.

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▶ Description of Work provided by Contractor:

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▶ Date submitted: \_\_\_\_\_

▶ Work is:

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

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

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

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▶ Please indicate the level of satisfaction:  Poor  Fair  Good  Very Good  Excellent

▶ Comments, if any:

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▶ Work:  is accepted.  is unacceptable as noted above.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Project Title: JBWCP Insurance Brokerage and Consulting Services  
RFP Number: **HR-053012CK**

Date: \_\_\_\_\_

*(END OF EXHIBIT F)*

**\*\*END OF CONTRACT TERMS AND CONDITIONS\*\***  
**\*\*RFP ATTACHMENT 2\*\***

## **RFP Attachment 3**

### **Proposer's Acceptance of the RFP's Contract Terms and Conditions**

**Attachment 3**  
**Proposer's Acceptance of the RFP's Contract**  
**Terms and Conditions**  
**or**  
**Exceptions to Contract Terms and Conditions**

Mark the Appropriate Choice, below:

\_\_\_\_\_ Proposer accepts Attachment B, Contract Terms and Conditions, without exception.

OR

\_\_\_\_\_ Proposer proposes exceptions/modifications to Attachment B, Contract Terms and Conditions. Enclose the following:

- A red-lined version of Attachment B that clearly tracks all proposed changes (additions, deletions, modified language, or new provisions) to this attachment, and
- Written documentation to provide an explanation/rationale for each individual change proposed, and which identifies the specific reference/section/sub-section number of Attachment B, and includes:
  - (i) relevance of the change,
  - (ii) rationale for proposing the change and
  - (iii) proposed benefit to the AOC for accepting such individual change.

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

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

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

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

*END OF RFP ATTACHMENT 3*

**ATTACHMENT 5**  
**DARFUR CONTRACTING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a “scrutinized company” as defined in PCC 10476, or (ii) receive written permission from the AOC to submit a bid or proposal.

To submit a bid or proposal to the AOC, you must complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

**OR**

2. We are a “scrutinized company” as defined in PCC 10476, but we have received written permission from the AOC to submit a bid or proposal pursuant to PCC 10477(b). *A copy of the written permission from the AOC is included with our bid or proposal.*

**OR**

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a “scrutinized company” as defined in PCC 10476.

**CERTIFICATION FOR PARAGRAPH 3:**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer/bidder to the clause in paragraph 3. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>



**ATTACHMENT 6**  
**CONFLICT OF INTEREST CERTIFICATION FORM**

**No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.

[ ] Check box to indicate acceptance of clause, above, and provide the following information:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_