



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

FINANCE DIVISION

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-7960 • Fax 415-865-4325 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

CHRISTINE M. HANSEN
Director, Finance Division

TO: POTENTIAL PROPOSERS

FROM: Administrative Office of the Courts
Education Division/Center for Families, Children and the Courts/Information
Services Division

ISSUE DATE: October 27, 2006

SUBJECT/PURPOSE OF MEMO: REQUEST FOR PROPOSALS
Streaming Media Web Hosting Service

ACTION REQUIRED: You are invited to review and respond to the attached Request for Proposals (“RFP”) , as posted at <http://www.courtinfo.ca.gov/reference/rfp/>:
Project Title: Streaming Media ISP
RFP Number: CJER-WEB-06-SS

SOLICITATIONS MAILBOX: solicitations@jud.ca.gov

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

SUBMISSION OF PROPOSAL: Proposals are to be sent to:
Judicial Council of California
Administrative Office of the Courts
Attn: Nadine McFadden, RFP No. CJER-WEB-06-SS
455 Golden Gate Avenue
San Francisco, CA 94102

DUE DATE & TIME FOR SUBMITTAL OF PROPOSALS: Proposals must be received by: **1:00 p.m. on November 22, 2006.**

1.0 GENERAL INFORMATION

1.1 Background

1.1.1 The Judicial Council of California, chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system, including the superior courts, appellate courts and state supreme court. The California Constitution directs the Council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The Council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law. The Council is comprised of twenty-eight (28) members representing the judicial system as well as the State Bar and both houses of the State Legislature.

1.1.2 The Administrative Office of the Courts (AOC) is the staff agency for the Judicial Council, and assists both the Council and its chair in performing their duties. The AOC is located in San Francisco. It is comprised of ten divisions, including the Education Division, which manages streaming content and delivery.

1.2 Outsourcing of Streaming Media Offerings

1.2.1 The AOC currently outsources the hosting of an approximately eight (8) gigabyte library of media-on-demand. The digital library consists of long streaming video (up to 90 minutes), progressive audio clips, and progressive Flash movies. Certain media is available only through the AOC's password-protected Web site; other media is available to the general public through the AOC's public Web site.

1.2.2 The AOC produces an average of two (2) live web broadcasts per month, lasting from 1-to-8 hours per event. Recording locations are both on-site and off-site. In most cases, encoding is performed at the recording location, but we seek a streaming host that is capable of receiving audio or video transmissions via available telecommunications carriers for encoding and online distribution.

1.2.3. The AOC produces audio and video assets that from time to time may be selected for encoding into online publication at various connections speeds in various formats, including Windows Media, QuickTime, and MP3.

1.2.4 The State will establish an internal process for ensuring that the State either owns or otherwise has the right to broadcast all content hosted by the service under the contract for services.

2.0 TIMELINE FOR THIS RFP

- 2.1 The AOC has developed the following list of key events from RFP issuance through intent to award contract. All key dates are subject to change at the AOC's discretion.

EVENT	KEY DATES
Issue RFP	10-27-06
Deadline for submittal of questions	11-10-06, 1:00 p.m.
AOC posts questions and answers at http://www.courtinfo.ca.gov/reference/rfp/	Week of 11-13-06
Proposal due date and time	11-22-06, 1:00 p.m.
Evaluation of proposals (estimate only)	11-27-06 thru 12-8-06
Notice of intent to award (estimate only)	12-11-06
Negotiations (estimate only)	12-11-06 thru 12-22-06
Execution of contract (estimate only)	12-27-06

3.0 SCOPE OF SERVICES

- 3.1 The AOC seeks to identify and retain a qualified contractor to host the AOC's audio and video content as streaming media-on-demand over the Web, to host live web broadcasts, and to encode new streaming and progressive audio/video clips from analog and digital sources into Windows Media, and other digital formats. This RFP is the means for proposers to submit their qualifications to the AOC for selection as the contractor.
- 3.2 Services are expected to be performed by the selected contractor between January 1, 2007 and December 31, 2007 ("Initial Term") with two (2) one-year option terms to extend the agreement under the same terms and conditions in effect for the Initial Term. These option terms are defined as follows: First Option Term: From January 1 2008 and December 31, 2008; and Second Option Term: From January 1, 2009 and December 31, 2009. The decision to exercise the Option Terms will be at the AOC's sole discretion.

- 3.3** The anticipated work for this project is set forth in Exhibit D, Work to be Performed of Attachment 2, Contract Terms.

4.0 RFP ATTACHMENTS

Included as part of this RFP are the following attachments:

- 4.1** Attachment 1, Administrative Rules Governing Request for Proposals. Proposers shall follow the rules, set forth in Attachment 1, in the preparation and submittal of their proposals.
- 4.2** Attachment 2, Contract Terms. Contracts with successful firms will be signed by the parties on a State of California Standard Agreement form and will include terms appropriate for this project. Terms and conditions typical for the requested services are attached as Attachment 2, which consists of Exhibits A through F.
- 4.3** Attachment 3, Vendor's Acceptance of the RFP's Contract Terms. Proposers must either indicate acceptance of Contract Terms, as set forth in Attachment 2, or clearly identify exceptions to the Contract Terms, as set forth in Attachment 2. If exceptions are identified, then proposers must also submit (i) a red-lined version of Attachment 2, that clearly tracks proposed changes to this attachment, and (ii) written documentation to substantiate each such proposed change.
- 4.4** Attachment 4, Payee Data Record Form. The AOC is required to obtain and keep on file, a completed Payee Data Record for each vendor prior to entering into a contract with that vendor. Therefore, vendor's proposal must include a completed and signed Payee Data Record Form, set forth as Attachment 4.
- 4.5** Attachment 5, DVBE Participation Form. Proposers must demonstrate either (i) DVBE compliance with minimum participation goals, or (ii) written evidence of a "good faith effort" explaining why compliance with DVBE goals cannot be achieved. DVBE Participation goals are further explained under item 12.0 of this RFP.
- 4.6** Attachment 6, Pricing Form. Proposers must propose all pricing necessary to accomplish the work requirements of the eventual contract. It is expected that all proposers responding to this RFP will offer the proposer's government or comparable favorable rates and will be inclusive of all pricing necessary to provide the contracted work.

5.0 EVALUATION OF PROPOSALS

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

- 5.1** Quality of workplan submitted.
5.2 Experience on similar projects.
5.3 Reasonableness of pricing.

- 5.4 Compliance with solicitation requirements.
- 5.5 Timely and customizable monthly billing statements.

6.0 SPECIFICS OF A RESPONSIVE TECHNICAL PROPOSAL

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

- 6.1 Quality of workplan submitted.
 - 6.1.1 Propose project or service program and team organization.
 - 6.1.2 Provide proposed selection and use of subcontractors, if any.
 - 6.1.3 Describe your data center environment, including redundant power systems, precisely controlled air and fire controls and monitors, and replacement and back-up server hardware.
 - 6.1.4 Describe your routing and IP systems, including whether you or a third party manage this space; whether you offer redundant, fault-tolerant network architecture that provides multiple paths for traffic to and from your data center, and your incremental backup services and validation and error verification services.
 - 6.1.5 Describe your security system, including standard operating procedures, monitoring and protection capabilities for threats and risks; and encryption technology capabilities.
 - 6.1.6 Describe your technical and customer support system, including whether you have 24x7x365 server and network administrators and monitoring capabilities, your capabilities for tiered support structure, after-hours availability, and problem escalation procedures.
 - 6.1.7 Provide a URL and Free, up to 5-person accessible Login Credentials, if required, to a demonstration or working model of your Web Administration tools.
 - 6.1.8 Describe your administration tool capabilities, including web-based customer management features; registration features; automated link generation and launch capabilities; whether you offer dedicated access to multiple Windows Media Server publishing points, and reporting capabilities.
 - 6.1.9 Provide URL link(s) and samples of online and email request forms for (i) encoding and streaming distribution services, (ii) media encoding services, and (iii) cancellation procedures for both live streaming and media encoding services.
 - 6.1.10 Please list all acceptable input source media and all possible target formats. Source media may include, but not be limited, to the following: VHS, S-VHS, Beta, BetaSP, DV, DVCAM, Mini-DV, AVI, WAV, MOV, MPEG, MP3.
 - 6.1.11 Please list all supported output formats, which may include, but not limited, to the following: Windows Media, QuickTime, MP3, Flash Video.

6.2 Experience on similar projects.

6.2.1 Describe past record of performance, on similar contracts with (i) the AOC, other government agencies or public bodies, and (ii) with private industry, including a brief description of the scope of work, with such factors as quality of work, ability to meet schedules and deadlines, examples of responsiveness and other attitudinal considerations.

6.2.2 Provide resumes describing the background and experience of key staff, as well as, each individual's ability and experience in conducting the proposed activities.

6.2.3 Provide the name, addresses (including email addresses), and telephone number for a minimum of five (5) clients for whom the vendor has provided similar services as those anticipated by this RFP. The vendor should provide a brief description of services provided to the customer and the date and duration of the contract. The AOC may contact some or all of the references provided in order to determine the vendor's performance record. The AOC reserves the right to contact references other than those provided in the proposal and to use the information gained in the evaluation process.

6.3 Compliance with solicitation requirements.

6.3.1 Contact information. Provide proposer's point of contact, including name, address, telephone and fax numbers.

6.3.2 Tax recording information. Complete and submit Attachment 4, Payee Data Record Form. Note that if an individual or sole proprietorship, using a social security number for tax recording purposes, is awarded a contract, the social security number will be required prior to finalizing a contract.

6.3.3 Compliance with Contract Terms. Complete and submit Attachment 3, Vendor's Acceptance of the RFP's Contract Terms. If changes to Attachment 2, Contract Terms, are proposed, then also submit red-lined version of Attachment 2, as well as written justification supporting any such proposed changes.

6.4 Timely and customizable monthly billing statements.

6.4.1 Provide a sample of your monthly invoice, including billing cycle, and describe your capabilities and procedures to provide credits and adjustments on monthly services rendered.

7.0 SPECIFICS OF A RESPONSIVE COST PROPOSAL

7.1 Reasonableness of pricing.

7.1.1 The AOC expects the value of this contract to range from \$3,000 to \$5,000 over the course of each year for on-demand storage and data transmission services; the amount of media encoding services, whether live or from recorded media, would range from \$2,000 to \$4,000.

7.1.2 Propose pricing to be inclusive of all costs, including personnel, materials, computer support, travel, lodging, meal, overhead, markups, and profit.

The method of payment to the consultant will be reimbursement of costs actually incurred at the contracted fees and rates.

7.1.3 Complete and submit Attachment 6, Pricing Form.

7.1.4 Complete and submit Attachment 5, DVBE Participation Form.

8.0 SUBMISSION OF PROPOSALS

- 8.1** Responsive proposals should provide straightforward, concise information that satisfies the requirements noted in items 6.0 and 7.0, above. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the state's instructions, requirements of this RFP, and completeness and clarity of content.
- 8.2** Proposers will submit one (1) original and four (4) copies of the technical proposal signed by an authorized representative of the company, including name, title, address, and telephone number of one individual who is the responder's designated representative.
- 8.3** Proposers will submit one (1) original and four (4) copies of the cost proposal signed by an authorized representative of the company, including name, title, address, and telephone number of one individual who is the responder's designated representative.
- 8.4** Proposals must be delivered to the individual listed under Submission of Proposals, as set forth on the cover memo of this RFP.
- 8.5** Only written responses will be accepted. Responses should be sent by registered or certified mail or by hand delivery.
- 8.6** In addition to submittal of the originals and copies of the proposals, as set forth in items 8.2 and 8.3, above, proposers are also required to submit an electronic version of the proposal on CD-ROM.

9.0 RIGHTS

- 9.1** The AOC reserves the right to reject any and all proposals, in whole or in part, as well as the right to issue similar RFPs in the future. This RFP is in no way an agreement, obligation, or contract and in no way is the AOC or the State of California responsible for the cost of preparing the proposal. One copy of a submitted proposal will be retained for official files and becomes a public record.

10.0 ADDITIONAL REQUIREMENTS

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

11.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

11.1 The Administrative Office of the Courts policy is to follow the intent of the California Public Records Act (PRA). If a vendor's proposal contains material noted or marked as confidential and/or proprietary that, in the AOC's sole opinion, meets the disclosure exemption requirements of the PRA, then that information will not be disclosed pursuant to a request for public documents. If the AOC does not consider such material to be exempt from disclosure under the PRA, the material will be made available to the public, regardless of the notation or markings. If a vendor is unsure if its confidential and/or proprietary material meets the disclosure exemption requirements of the PRA, then it should not include such information in its proposal.

12.0 DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOALS

12.1 The State of California Executive Branch requires contract participation goals of a minimum of three percent (3%) for disabled veteran business enterprises (DVBEs). The AOC, as a policy, follows the intent of the Executive Branch program. Therefore, your response should demonstrate DVBE compliance; otherwise, if it is impossible for your company to comply, please explain why, and demonstrate written evidence of a "good faith effort" to achieve participation. Your company must complete the DVBE Compliance form and include the form with your Cost Proposal. If your company has any questions regarding the form, you should contact the individual listed in the Submission of Proposal section on the coversheet of this RFP. For further information regarding DVBE resources, please contact the Office of Small Business and DVBE Certification, at 916-375-4940 or access DVBE information on the Executive Branch's Internet web site at: <http://www.dgs.ca.gov/default.htm>.

ATTACHMENT 1
ADMINISTRATIVE RULES GOVERNING REQUESTS FOR PROPOSALS

A. General

1. This solicitation document, the evaluation of proposals, and the award of any contract shall conform with current competitive proposing procedures as they relate to the procurement of goods and services. A vendor's proposal is an irrevocable offer for forty-five (45) days following the deadline for its submission.
2. In addition to explaining the Administrative Office of the Courts' (AOC's) requirements, the solicitation document includes instructions which prescribe the format and content of proposals.

B. Communications with AOC Regarding the RFP

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

C. Questions Regarding the RFP

1. If a vendor's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the vendor may submit the question via email to the Solicitations Mailbox, identified on the cover memo of this RFP, conspicuously marking it as "CONFIDENTIAL." With the question, the vendor must submit a statement explaining why the question is sensitive. If the AOC concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the AOC does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the vendor will be notified.
2. Vendors interested in responding to the solicitation may submit questions via email to the Solicitations Mailbox, identified on the cover memo of this RFP, on procedural matters related to the RFP or requests for clarification or modification of this solicitation no later than the due date and time, set forth on the RFP cover memo. If the vendor is requesting a change, the request must set forth the recommended change and the vendor's reasons for proposing the change. Questions or requests submitted after the due date and time will not be answered. Without disclosing the source of the question or request, a copy of the questions and the AOC's responses will be posted on the Courtinfo website (<http://www.courtinfo.ca.gov/reference/rfp/>).

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D. Errors in the RFP

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

E. Addenda

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

F. Withdrawal and Re-submission / Modification of Proposals

1. A vendor may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the AOC in writing of its withdrawal. The notice must be signed by the vendor. The vendor may thereafter submit a new or modified proposal, provided that it is received at the AOC no later than the proposal due date and time listed on the cover letter of this RFP. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the proposal due date and time listed on the coversheet of this RFP.

G. Errors in the Proposal

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

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paid to the vendor (if selected for the award of the agreement), the vendor will be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the proposal.

H. Rights to Reject or Award Proposals

1. The AOC may reject any or all proposals and may or may not waive an immaterial deviation or defect in a proposal. The AOC's waiver of an immaterial deviation or defect shall in no way modify the solicitation document or excuse a vendor from full compliance with solicitation document specifications. The AOC reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual vendors if it is deemed in the AOC's best interest. Moreover, the AOC reserves the right to make no selection if proposals are deemed to be outside the fiscal constraint or against the best interest of the State of California.
2. In addition to the right to reject any and all proposals, in whole or in part, the AOC also reserves the right to issue similar RFPs in the future. This RFP is in no way an agreement, obligation, or contract and in no way is the AOC or the State of California responsible for the cost of preparing the proposal. One copy of a submitted proposal will be retained for official files and becomes a public record.
3. Vendors are specifically directed NOT to contact any AOC or its personnel or consultants for meetings, conferences, or discussions that are specifically related to this RFP at any time prior to any award and execution of a contract. Unauthorized contact with any AOC or its personnel or consultants may be cause for rejection of the vendor's proposal.

I. Evaluation Process

1. An evaluation team will review in detail all proposals that are received to determine the extent to which they comply with solicitation document requirements.
2. If a proposal fails to meet a material solicitation document requirement, the proposal may be rejected. A deviation is material to the extent that a response is not in substantial accord with solicitation document requirements. Material deviations cannot be waived. Immaterial deviations may cause a proposal to be rejected.
3. Proposals that contain false or misleading statements may be rejected if in the AOC's opinion the information was intended to mislead the state regarding a requirement of the solicitation document.
4. Cost sheets will be checked only if a proposal is determined to be otherwise qualified. All figures entered on the cost sheets must be clearly legible.

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5. During the evaluation process, the AOC may require a vendor's representative to answer questions with regard to the vendor's proposal. Failure of a vendor to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.

J. Protest Procedure

1. General

Failure of a vendor to comply with the protest procedures set forth in this Section I, will render a protest inadequate and non-responsive, and will result in rejection of the protest.

2. Prior to Submission of Proposal

An interested party that is an actual or prospective proposer with a direct economic interest in the procurement may file a protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal. Such protest must be received prior to the due date and time for submittal of proposals, as set forth on the RFP cover memo. The protestor shall have exhausted all administrative remedies discussed in this RFP Attachment 1 prior to submitting the protest. Failure to do so may be grounds for denying the protest.

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

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

- a. The vendor has submitted a proposal that it believes to be responsive to the solicitation document;
- b. The vendor believes that its proposal meets the administrative and technical requirements of the solicitation, proposes services of proven quality and performance, and offers a competitive cost; and,
- c. The vendor believes that the AOC has incorrectly selected another vendor submitting a proposal for an award.

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

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4. Form of Protest

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

- a. The protest must be in writing and sent by certified, or registered mail, or overnight delivery service (with proof of delivery), or delivered personally to the address noted on the RFP cover memo under Submission of Proposals. If the protest is hand-delivered, a receipt must be requested.
- b. The protest shall include the name, vendor, address, telephone and facsimile numbers, and email address of the party protesting or their representative.
- c. The title and number of the solicitation document under which the protest is submitted shall be identified.
- d. A detailed description of the specific legal and factual grounds of protest and any supporting documentation shall be included.
- e. The specific ruling or relief requested must be stated.

(ii) The AOC, at its discretion, may make a decision regarding the protest without requesting further information or documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protestor later raises new grounds or evidence that was not included in the initial protest but which could have been raised at that time, the AOC will not consider such new grounds or new evidence.

5. Determination of Protest Submitted Prior to Submission of Proposal

Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal, the AOC will provide a written determination to the protestor prior to the date and time for submittal of proposals, as set forth on the RFP cover memo. If required, the AOC may extend such proposal due date and time to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and the AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the contract.

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6. Determination of Protest Submitted After Submission of Proposal

Upon receipt of a timely and proper protest, the AOC will investigate the protest and will provide a written response to the vendor within a reasonable time. If the AOC requires additional time to review the protest and is not able to provide a response within ten (10) business days, the AOC will notify the vendor. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below. The AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the agreement.

7. Appeals Process

(i) The Contracting Officer's decision shall be considered the final action by the AOC unless the protesting party thereafter seeks an appeal of the decision by filing a request for appeal with the AOC's Business Services Manager, at the same address set forth under Submission of Proposal on the RFP cover memo, within five (5) calendar days of the issuance of the Contracting Officer's decision.

(ii) The justification for appeal is specifically limited to:

- a. Facts and/or information related to the protest, as previously submitted, that were not available at the time the protest was originally submitted;
- b. Contracting Officer's decision contained errors of fact, and that such errors of fact were significant and material factors in the Contracting Officer's decision; or
- c. Decision of the Contracting Officer was in error of law or regulation.

(iii) The vendor's request for appeal shall include:

- a. Name, vendor, address, telephone and facsimile numbers, and email address of the vendor filing the appeal or their representative;
- b. Copy of the Contracting Officer's decision;
- c. Legal and factual basis for the appeal; and
- d. Ruling or relief requested. Issues that could have been raised earlier will not be considered on appeal.

(iv) Upon receipt of a request for appeal, the AOC's Business Services Manager will review the request and the decision of the Contracting Officer and shall issue a final determination. The decision of the AOC's Business Services Manager shall constitute the final action of the AOC.

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8. Protest Remedies

(i) If the protest is upheld, the AOC will consider all circumstances surrounding the procurement in its decision for a fair and reasonable remedy, including the seriousness of the procurement deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive procurement system, the good faith efforts of the parties, the extent of performance, the cost to the AOC, the urgency of the procurement, and the impact of the recommendation(s) on the AOC. The AOC may recommend any combination of the following remedies:

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

K. Disposition of Materials

1. All materials submitted in response to this solicitation document will become the property of the State of California and will be returned only at the AOC's option and at the expense of the vendor submitting the proposal. One copy of a submitted proposal will be retained for official files and become a public record. Any material that a vendor considers as confidential but does not meet the disclosure exemption requirements of the California Public Records Act should not be included in the vendor's proposal as it may be made available to the public.

L. Payment

1. Payment terms will be specified in any agreement that may ensue as a result of this solicitation document.
2. **THE STATE DOES NOT MAKE ANY ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as provide in the agreement between the AOC and the selected vendor. The AOC may withhold ten percent of each invoice until receipt and acceptance of the final product. The amount of the withhold may depend upon the length of the project and the payment schedule provide in the agreement between the AOC and the selected vendor.

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M. Award and Execution of Agreement

1. Award of contract, if made, will be in accordance with the solicitation document to a responsible vendor submitting a proposal compliant with all the requirements of the solicitation document and any addenda thereto, except for such immaterial defects as may be waived by the AOC.
2. The AOC reserves the right to determine the suitability of proposals for contracts on the basis of a proposal's meeting administrative requirements, technical requirements, its assessment of the quality of service and performance of items proposed, and cost.
3. The AOC will make a reasonable effort to execute any contract based on this solicitation document within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by a vendor may delay execution of a contract.
4. A vendor submitting a proposal must be prepared to use a standard state contract form rather than its own contract form.
5. Upon award of the agreement, the agreement shall be signed by the vendor(s) in two (2) original contract counterparts and returned, along with the required attachments, to the AOC no later than ten (10) calendar days of receipt of agreement form, but prior to end of June if award is at fiscal year-end. The period for execution may be changed by mutual agreement of the parties. Agreements are not effective until executed by both parties and approved by the appropriate AOC officials. Any work performed prior to receipt of a fully executed agreement shall be at vendor(s)' own risk.

N. Failure to Execute the Agreement

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

O. Decision

1. Questions regarding the AOC's award of any business on the basis of proposals submitted in response to this solicitation document, or on any related matter, should be addressed to Solicitations Mailbox, set forth on the RFP cover memo.

P. News Releases

1. News releases pertaining to the award of a contract may not be made without prior written approval of the AOC's Business Services Manager.

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**EXHIBIT A
STANDARD PROVISIONS**

1. Indemnification

The Contractor shall indemnify, defend (with counsel satisfactory to the State), and save harmless the State and its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all other contractors, Subcontractors, suppliers, and laborers, and any other person, firm, or corporation furnishing or supplying Work, Materials, Data, or services in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor or its agents or employees in the performance of this Agreement.

2. Relationship of Parties

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

3. Termination for Cause

A. Pursuant to this provision, the State may terminate this Agreement in whole or in part under any one of the following circumstances, by issuing a written Notice of termination for default to the Contractor:

- i. If the Contractor (a) fails to perform the services within the time specified herein or any extension thereof, (b) fails to perform any requirements of this Agreement, or (c) so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and, after receipt of a written Notice from the State specifying failure due to any of the preceding three (3) circumstances, the Contractor does not cure such failure within a period of five (5) business days or a longer period, if authorized in the Notice of failure; or,
- ii. If the Contractor should cease conducting business in the normal course, become insolvent or bankrupt, make a general assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, suffer or permit the appointment of the receiver for its business or assets, merge with or be purchased by another entity, or avail itself of or become subject for a period of thirty (30) Days to any proceeding under any statute of any State authority relating to insolvency or protection from the rights of creditors.

B. In the event the State terminates this Agreement in whole or in part, due to the Contractor's failure to perform, the State may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated,

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and the Contractor shall be liable to the State for any excess costs for such similar supplies or services, subject to the limitations contained elsewhere herein; further, the Contractor shall continue the performance of this Agreement to the extent not terminated under this provision.

- C. The Contractor shall not be liable for any excess costs if the failure to perform the Agreement arises out of acts of Force Majeure; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- D. If, after Notice of termination for default of this Agreement, it is determined for any reason that the Contractor was not in default under this provision, or that the default was excusable under this provision, the obligations of the State shall be to pay only for the services rendered at the rates set forth in the Agreement.
- E. The rights and remedies of either party provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

4. No Assignment

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

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

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

7. Consideration

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

END OF EXHIBIT

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**EXHIBIT B
SPECIAL PROVISIONS**

1. Definitions

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

- A. “**After Hours**” means outside the hours of 8:00 am to 6:00 pm PST on weekdays and anytime during the following holidays: New Year’s Day, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
- B. “**Allotted Space**” means services provided by the Contractor that include, but are not limited to (i) the conversion of the State’s multimedia materials into a streaming video or audio medium format, (ii) the hosting of the State’s streaming video or audio media and related components on the Contractor’s server allocated for the State’s use, and (ii) the granting of permission to link the State’s web site to the Allotted Space.
- C. “**Amendment**” means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (i) a change in the Work; (ii) a change in Contract Amount; (iii) a change in time allotted for performance; and/or (iv) an adjustment to the Agreement terms.
- D. “**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State business or the business of its constituents. Confidential Information does not include: (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party. Confidential Information also includes any video on demand content, whether it is for progressive or streaming download, that is stored within a folder designated as “priv,” as this content contains information that is intended for only a limited audience and is related to the conduct of the State’s business.
- E. The “**Contract**” or “**Contract Documents**” constitute the entire integrated agreement between the State and the Contractor, as attached to and incorporated by a fully executed State Standard Agreement form. The terms “Contract” or “Contract Documents” may be used interchangeably with the term “**Agreement.**”

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- F. “**Contract Amount**” means the total amount encumbered under this Agreement for any payment by the State to the Contractor for performance of the Work, in accordance with the Contract Documents.
- G. The “**Contractor**” means the individual, association, partnership, firm, company, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.
- H. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, digital photos, 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 Event**” 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. Force Majeure Events do not include nonperformance or failures of Subcontractors, but do include although are not limited to the following:
- 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. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- M. “**Notice**” means a written document initiated by the authorized representative of either party to this Agreement and given by:
- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
 - ii. Hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.

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- N. **“Preemptive Event”** means the failure or malfunction of any equipment or transmission lines transmitting the Contractor’s programming in whole or in part, or, in the Contractor's sole and absolute discretion, the requirement for maintenance, testing, or relocation of such equipment and/or transmission lines.
- O. **“Project”** refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State, and the State’s representatives.
- P. 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.
- Q. **“State Standard Agreement”** means the form used by the State to enter into agreements with other parties. Several originally signed, fully executed versions of the State Standard Agreement, together with the integrated Contract Documents, shall each represent the Agreement as an individual **“Contract Counterpart.”**
- R. **“Stop Work Order”** means the written Notice, delivered in accordance with this Agreement, by which the State may require the Contractor to stop all, or any part, of the Work of this Agreement, for the period set forth in the Stop Work Order. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Work provision in this Exhibit.
- S. **“Subcontractor”** means an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term **“Subcontractor”** includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
- T. **“Task(s)”** means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- U. **“To Be Determined”** or **“TBD”** are those items that are not yet identified. Any and all To Be Determined items, set forth herein, shall be determined prior to award or by mutual agreement between the Contractor and the State and incorporated into the Agreement via Amendment(s).
- V. **“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 paragraph 34, Agreement Term(s) and Options to Renew.
- W. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint

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

- X. **“Work” or “Work to be Performed” 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.

3. Agreement Administration/Communication

- A. Under this Agreement, the Project Manager, **TBD**, shall monitor and evaluate the Contractor's performance. All requests and communications about the Work to be Performed under this Agreement shall be made through the Project Manager. Any Notice from the Contractor to the State shall be in writing and shall be delivered to the Project Manager as follows:

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

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

4. Termination Other Than for Cause

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

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5. State's Obligation Subject to Availability of Funds

- A. The State's obligations under this Agreement are 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.

6. Stop Work

- A. The State may, at any time, by written Notice, as a Stop Work Order, to the Contractor, require the Contractor to stop all, or any part, of the Work of this Agreement, for a period up to ninety (90) Days after the Notice is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the 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 and/or the Work Order Amount, and the Agreement shall be modified, in writing, accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and
 - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) Days after the end of the period of Work stoppage; however, if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- C. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated in accordance with the Termination Other Than For Cause provision or the State's Obligation Subject to Availability of Funds provision, as set forth under this Exhibit, 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.

7. Subcontracting

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

8. Contractor's Personnel--Replacement

- A. The State reserves the right to disapprove the continuing assignment 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. If the State exercises this right, the Contractor shall immediately assign replacement personnel, possessing equivalent or greater experience and skills, acceptable to the Project Manager.
- B. If any of the Contractor's personnel identified within the Agreement become unavailable during the term of this Agreement, the Contractor will supply a substitute acceptable to the Project Manager.
- C. If any of the Contractor's personnel identified within the Agreement become unavailable and the Contractor cannot furnish a substitute acceptable to the Project

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Manager, the State may terminate this Agreement for cause pursuant to Standard Provisions paragraph 3, as set forth in Exhibit A.

9. Confidentiality

- A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to the Contractor.
- B. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the State's Confidential Information on a "need to know" basis to the Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the State that are working on the Project. All such employees and Subcontractors of the Contractor shall have executed a confidentiality agreement with the Contractor requiring a promise of confidentiality concerning the Contractor's clients and business.
- C. The Contractor shall acquire no right or title to the Confidential Information. The Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, the Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

10. Insurance Requirements

- A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.
- B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:

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- i. In the event Contractor has employees: Workers' Compensation at statutory requirements of the State of residency.
 - ii. In the event Contractor has employees: Employers' Liability with limits not less than \$1,000,000.00 for each accident.
 - iii. Comprehensive General Liability Insurance with limits not less than \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage; \$2,000,000.00 aggregate.
 - iv. Comprehensive Automobile Liability Insurance with limits not less than \$1,000,000.00 for each occurrence, Combined Single Limit Bodily Injury and Property Damage, including owned and non-owned and hired automobile coverage, as applicable.
- C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the State. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the State and shall be the sole responsibility of the Contractor.
- D. Other Insurance Provisions. The General Liability and Automobile Liability policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
 - i. The State, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement.
 - ii. To the extent of the Contractor's negligence, the Contractor's insurance coverage shall be primary insurance as respects the State, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the State, its officers, officials, employees or agents shall not contribute with the insurance or benefit the Contractor in any way,
 - iii. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- E. The Contractor shall provide the State certificates of insurance satisfactory to the State evidencing all required coverages before Contractor begins any Work under this Agreement, and complete copies of each policy upon the State's request.
- F. Subcontractors. The Contractor shall include any Subcontractors as insured under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence

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of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

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

11. Continued Provision of the Work

- A. If a party's performance of any of its obligations pursuant to this Agreement is prevented, hindered, or delayed by any Force Majeure Event, such party shall use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans, or other means. To the extent a party's performance of any of its obligations pursuant to this Agreement is prevented, hindered, or delayed by a Force Majeure Event and such non-performance, hindrance, or delay could not have been reasonably prevented, then the non-performing, hindered, or delayed party shall be excused for such non-performance, hindrance, or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as the Force Majeure Event continues and such party continues to use its best efforts to recommence performance pursuant to the foregoing sentence. The party whose performance is prevented, hindered, or delayed by a Force Majeure Event shall promptly notify the other party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event.
- B. If a Force Majeure Event continues to prevent, hinder, or delay performance of any of the Work for more than thirty (30) Days, the State may terminate this Agreement, in whole or in part, as of a date specified by the State in a termination Notice to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any Force Majeure Event.
- C. A non-performing party shall be obligated to mitigate the impact of its non-performance notwithstanding the Force Majeure Event.
- D. Whenever a Force Majeure Event causes the Contractor to allocate leveraged resources between or among the Contractor's customers, the State and the Work shall receive at least the same priority as they received immediately prior to the Force

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Majeure Event and no other customer of the Contractor shall receive higher priority in respect of such leveraged resources.

12. Accounting System Requirement

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

13. Changes and Amendments

Changes or Amendments to any component of the Contract Documents can be made only with prior written approval from the Project Manager. Requests for changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to a Force Majeure Event, although the performance period of the Agreement may be amended due to a Force Majeure Event. After the Project Manager reviews the request, a written decision shall be provided to the Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

14. 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.

15. 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.

16. Limitation on Publication

The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's services for the State without prior review and written permission by Project Manager.

17. Limitation on State's Liability

The State shall not be responsible for loss of or damage to any non-State equipment arising from causes beyond the State's control.

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18. Security of Integrity of the State's Media

The Contractor shall provide its best efforts to insure integrity and security of the State's media, including the use of automated tape-back up systems, secure servers, and restricted access to back office systems. The State will agree to maintain separate backups of any media other than the backup systems that the Contractor has in place.

19. Content of the State's Materials

- A. The State shall retain all rights, including all trademark, licensing, and copyright rights, in both the original multimedia materials as well as the streaming media materials.
- B. The Contractor is not required to actively monitor the State's materials nor is the Contractor expected to exercise any editorial control over the content of any material that the State uploads into the Contractor's service. However, the Contractor shall have the right to remove any and/or all of the State's materials from the Contractor's service that are, in the Contractor's discretion, potentially illegal, a violation of trademark and/or copyright, or may subject the Contractor to liability. Upon removal of such materials, the Contractor shall notify the State of the removal of the materials, as well as the reason for removal.

20. Live Events

The State agrees not to use the service to host "live events" without giving the Contractor advance written request of the event schedule and program content. The Contractor will inform the State of any network conditions or limitations that may affect the broadcast of the live event.

21. Disk and Bandwidth Utilization

The Contractor shall implement security mechanisms to prevent disk space over utilization, bandwidth monitoring, and online notification of disk space and bandwidth usage and shall endeavor its best efforts to insure that such security, monitoring and notification mechanisms will work at all times without system failure. The Contractor will make reasonable efforts to keep the State informed of overages exceeding the State's allotment by 200% or more.

22. Third Party Licensing Agreements

- A. **Windows Media.** Prior to commencement of the Work of this Agreement, the Contractor must be a party to a stream licensing agreement with Microsoft which will allow for the Work as set forth in this Agreement. The Contractor shall provide the State with a copy of such stream licensing agreement upon request.
- B. **QuickTime.** Prior to commencement of the Work of this Agreement, the Contractor must be party to a public source licensing agreement with Apple which will allow for

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the Work as set forth in this Agreement. The Contractor shall provide the State with a copy of such public source licensing agreement upon request.

- C. **Music License.** The State shall be responsible for insuring that the State's content will comply with all applicable licensing requirements by federal, state, local, regulated and contractual music licensing fees, including, without limitation, all BMI, ASCAP, and SESAC licensing requirements and fees, as well as all requirements and fees of the Digital Millennium Copyright Act of 1998.

23. Notification of Copyright Infringement

- A. The Digital Millennium Copyright Act requires that all notifications of copyright infringement must be in writing and include substantially the following elements:
- i. A physical or electronic signature of the owner (or person authorized to act on behalf of the owner) of an exclusive right that is allegedly infringed;
 - ii. Specific identification of the copyrighted, trademark or patented work claimed to have been infringed, or if multiple works are covered by a single notification, a list of each work claimed to have been infringed;
 - iii. Information related to the work(s) reasonably sufficient for the Contractor to promptly locate the work (e.g. title of work, URL location - complete Web site address) within the Contractor's Web site, link to the State's Web site, or that of a Third Party Web site, etc.);
 - iv. Information reasonably sufficient to permit the Contractor to directly contact the complaining party, such as a complete name and address, telephone number, and an email address;
 - v. A statement that the complaining party has a good faith belief that use of the work(s) in the manner complained of is not authorized by the copyright owner, its agent, or the law;
 - vi. A statement requesting that the Contractor take a specific act with respect to the alleged infringement (e.g., removal, access restricted or disabled); and
 - vii. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- B. Upon receipt of proper notice of alleged infringement, the Contractor will forward a copy of the notice to the alleged infringing State and act expeditiously to remove, or disable access to the allegedly infringing material. This is not discretionary and does not depend on an analysis of whether the accused material actually constitutes copyright infringement. This is a requirement of the Digital Millennium Copyright

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Act, which states that a service provider shall not be liable to any person for any claim based on the service provider's good faith in disabling access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

- C. If the Contractor receives a compliant "counter notification," as described by the Digital Millennium Copyright Act, from the affected State, the Contractor must promptly provide a copy of the "counter notification" to the complaining party that provided the notice of the alleged copyright infringement, and inform that party that the Contractor will replace or re-enable access to the allegedly infringing material in ten (10) business days. Within ten (10) to fourteen (14) business days after receiving the "counter notification," the Contractor must replace and re-enable access to the removed material, unless the complaining party has notified the Contractor's copyright notice agent that he or she has filed a court action relating to the materials in question in order to stop the alleged copyright infringement.
- D. To function as an effective "counter notification," the Digital Millennium Copyright Act requires that all such "counter notifications" must be in writing and include substantially the following elements:
 - i. Identification of the material that the Contractor removed or disabled access to, and the location at which it previously appeared.
 - ii. A statement, made under penalty of perjury, that the user has a good faith belief that the Contractor removed that material due to mistake or misidentification of the material to be removed or disabled.
 - iii. The State's name, address, and telephone number.
 - iv. A statement that the State consents to the jurisdiction of its local Federal District Court (or, for a user outside of the United States, a Federal District Court where the Contractor is located), and that the user will accept service of process from the person who provided the notice of alleged copyright infringement (or an agent of that person).
 - v. The State's physical or electronic signature.

24. Notification of All Other Claimed Infringement and or Abuse

All other notification of claimed infringement, violation or abuse should be submitted to the Contractor's designated contact, with sufficient information to properly identify and research the claimed infringement, violation and/or abuse and to properly respond to the person or entity submitting the notification, including notifications of claimed infringement related to any of the Contractor's patents, marks and/or logos or to any content, which includes any and all text, graphics, images, illustrations, video, audio, animation, designs or

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logos, of the Contractor or that of the State, whether displayed on the Contractor's Web site, its link to the State's Web site, or on the Web site or email of a Third Party.

25. Conflict of Interest

A. The Contractor and employees of the Contractor shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. The Contractor and employees of the Contractor shall also avoid actions resulting in or creating the appearance of (i) use of an official position with the government for private gain; (ii) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (iii) loss of independence or impartiality; (iv) a decision made outside official channels; or (v) adverse effects on the confidence of the public in the integrity of the government or this Agreement.

B. The Contractor certifies and shall require any Subcontractor to certify to the following:

Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from state service.

26. 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.

27. National Labor Relations Board

By executing this Agreement, the Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

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28. 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.

29. Nondiscrimination/No Harassment Clause

- A. During the performance of this Agreement, the Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. During the performance of this Agreement, the Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- C. The Contractor shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 *et seq.*, and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 *et seq.* The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- D. The Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- E. The Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.

30. 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.

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31. Licenses, Approvals, Permits and Authorizations Required by Applicable Law

The Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable laws for the performance of the Work. The Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations. The Contractor shall be responsible for any fines and penalties arising from its noncompliance with any applicable law, to the extent such noncompliance was not caused by the AOC.

32. Public Contract Code References

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

33. Evaluation of Contractor

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

34. 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 Work of the Agreement shall commence *January 1, 2007* and the Agreement shall expire *December 31, 2007* ("**Initial Term**"), unless otherwise set forth in writing, in accordance with the terms and conditions of the Agreement.
- C. The parties agree that the State may elect to extend the Agreement up to two (2) consecutive optional one-year Terms, identified as follows, if authorized in writing in accordance with the terms and conditions of the Agreement:
 - i. *January 1, 2008 – December 31, 2008* ("**First Option Term**").
 - ii. *January 1, 2009 – December 31, 2009* ("**Second Option Term**").
- D. In the event any option Term is exercised under this Agreement, the unit prices and fees applicable for each option Term shall be set forth in any subsequent Amendments to extend this Agreement. The unit prices and fees as incorporated in Exhibit C, Payment Provisions, may be renegotiated by the parties for each subsequent consecutive Term, as long as the negotiated unit prices or fees do not

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increase more than three percent (3%) over the unit prices or fees established for the Work of the previous Term.

- E. In the event the State elects to exercise an option to extend the Agreement, as set forth in this provision, the parties will modify the Agreement via bilateral execution of the State's Standard Agreement form.

35. California Law

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

36. 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.

37. 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.

38. Signature Authority

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

39. 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.

40. 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 EXHIBIT

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**EXHIBIT C
PAYMENT PROVISIONS**

1. Contract Amount

- A. As further set forth in this Exhibit, the total amount the State may reimburse the Contractor for performing the Work of the Agreement shall be the actual cost not to exceed the Contract Amount.
- B. The Contractor has estimated the costs and expenses necessary to complete the Work. The State's acceptance of the Contractor's 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. If the Agreement is amended to include any optional Term, as set forth in Exhibit A, Standard Provisions, paragraph 34, Agreement Term(s) and Options to Renew, the parties agree that (i) the total Contract Amount, as set forth in this provision, will be amended to incorporate funding for reimbursement at actual cost not to exceed amount(s) to be determined for such work and (ii) the "**TBD**'s," as set forth in the tables in this Exhibit, for each applicable option Term, will be replaced with negotiated unit prices or fees.

2. Compensation for Contract Work

For performing the Work of this Agreement, the State shall compensate the Contractor for the actual cost not to exceed the Contract Amount, as set forth in paragraph 1, above, at the prices and fees set forth in this provision, below, inclusive of all costs, benefits, expenses, markups, fees, overhead, and profits.

- A. **Disk Storage.** For providing disk storage, as set forth in Exhibit D, Work to be Performed, the State shall pay the Contractor at the fixed unit prices set forth in Table 1, below.

Table 1, Unit Price per Disk Storage in Gigabytes

<i>STORAGE IN GIGABYTES (GB)</i>	<i>UNIT PRICE / MONTH</i>
9 GB	<i>TBD</i>
10 GB	<i>TBD</i>
11 GB	<i>TBD</i>
12 GB	<i>TBD</i>
13 GB	<i>TBD</i>
14 GB	<i>TBD</i>
15 GB	<i>TBD</i>

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<i>STORAGE IN GIGABYTES (GB)</i>	<i>UNIT PRICE / MONTH</i>
16 GB	<i>TBD</i>
17 GB	<i>TBD</i>
18 GB	<i>TBD</i>
19 GB	<i>TBD</i>
20 GB	<i>TBD</i>
21 GB	<i>TBD</i>
22 GB	<i>TBD</i>
23 GB	<i>TBD</i>
24 GB	<i>TBD</i>
25 GB	<i>TBD</i>
26 GB	<i>TBD</i>
27 GB	<i>TBD</i>
28 GB	<i>TBD</i>
29 GB	<i>TBD</i>
30 GB	<i>TBD</i>

B. **Backup Retrieval.** For providing backup file retrieval services, as set forth in Exhibit D, Work to be Performed, the State shall pay the Contractor at the following fixed unit price: *TBD* per hour; one (1) hour minimum required.

C. **Data Transfer.**

- i. For providing live and on-demand data transfer services, as set forth in Exhibit D, Work to be Performed, the State shall pay the Contractor at the following fixed unit price: *TBD* per megabyte transferred, without a daily, weekly or monthly threshold.
- ii. At the State’s option and upon an Amendment executed by the parties, the State may convert the pay structure for data transfer services from the fixed unit price per megabyte, as set forth in this provision, above, to a monthly, tiered, data transfer pricing structure, to be set forth in an Amendment to the Agreement.

D. **Encoding Services.**

- i. For providing encoding services, as set forth in Exhibit D, Work to be Performed, the State shall pay the Contractor at the fixed unit prices set forth in Table 2, below.

Table 2, Unit Price for Encoding Services per Output Stream per Minute for Minimum Number of Minutes

<i>ENCODING SERVICE</i>	<i>PRICE PER MINUTE</i>	<i>MINIMUM/MINUTES</i>
Video & Audio	\$	<i>TBD</i>

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<i>ENCODING SERVICE</i>	<i>PRICE PER MINUTE</i>	<i>MINIMUM/MINUTES</i>
Audio Only	\$	<i>TBD</i>

ii. For orders requiring shorter turn-around time than the standard turn-around time for encoding orders, as set forth in Exhibit D, Work to be Performed, the Contractor shall charge the State as follows:

- a. Charges for Initial Term:
- *TBD* for twenty-four (24) hour turn-around.
 - *TBD* for turn-around time between two (2) to four (4) days.

E. Live Web Casting via Satellite, Fiber Switch, or Teleconferencing Connection Service. For providing live web casting encoding and distribution services, as set forth in Exhibit D, Work to be Performed, the Contractor shall charge the State for the applicable service, as follows:

- i. Charges during Initial Term:
- a. In-bound connection services:
- Satellite connection fee (C-Band/Ku-Band): *TBD* per half-hour.
 - Fiber switch connection fee: *TBD* per half-hour.
 - Telephone line connection fee: *TBD*.
- b. Encoding for connection services:
- Satellite and fiber encoding fee: encoding fee is included in the connection fee of *TBD* per half-hour.
 - Telephone fee shall be *TBD* per half-hour;
 - If the services exceed three (3) hours during normal business hours, the Contractor shall discount the encoding portion of the charge by twenty-five percent (25%).
- c. Data transfer for connection services:
- Data transfer fee: *TBD* per megabyte.
- d. In addition to the charges set forth for live web casting above, the Contractor shall charge the State the following costs for After Hours Work:
- Teleconferencing services: *TBD* per hour.
 - Satellite/fiber connection services: *TBD* per hour.

F. Alternate Service. If the State requests that the Contractor provide an alternate means of data transmission, due to loss of or lack of transmission capacity, as set forth

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in Exhibit D, Work to Be Performed, the State shall reimburse the Contractor the actual cost that the subcontracted provider of the alternate means of transmission bills the Contractor for such transmission, not including any markup from the Contractor, and the Contractor shall use its commercially reasonable efforts to provide the requested alternate means of transmission. The Contractor shall obtain the State’s written approval of the cost for the alternate means of data transmission from the Project Manager prior to placing the order with the subcontracted provider of the alternate means of transmission. Upon request, the Contractor shall provide a copy of the applicable invoice/bill.

- G. **Cancellation of Firm Bookings.** As set forth in Exhibit D, Work to be Performed, the Contractor may charge the State for a cancellation of satellite or transmission services in accordance with the following fee structure. Cancellation Fee shall not apply if the State terminates the Work pursuant to Exhibit A, Standard Provisions, paragraph 3, Termination for Cause, or Exhibit B, Special Provisions, paragraph 12, State Obligation Subject to Availability of Funds.

Table 4, Cancellation Fee for Bookings

<i>Policy</i>	<i>Fee</i>
An order must be firm booked or released within two (2) hours after another customer of the Contractor challenges an event with an inquired status only.	<i>TBD</i>
Cancellation of a firm booking 12-24 hours prior to the event’s start.	<i>TBD</i>
Cancellation of a firm booking less than 12 hours prior to the event’s start.	<i>TBD</i>
Costs incurred to Third Party vendors, if applicable.	<i>TBD</i>

- H. **Self-Service Webcasting.** As set forth in Exhibit D, Work to be Performed, the State shall pay the Contractor at the following fixed unit price: ***TBD***/publishing point/month.

3. Direct Expenses

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

4. Other Expenses

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

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5. 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.

6. Method of Payment

A. The Contractor shall submit an invoice for Work provided, as set forth in Exhibit D, Work to be Performed, no more often than once a month. After receipt of invoice, the State will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

B. The State will make payment in arrears after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate the following:

- i. The Contract number;
- ii. An unique invoice number;
- iii. The Contractor's name and address;
- iv. The Contractor's taxpayer identification number;
- v. A description of the completed Contract Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate;
- vi. The applicable dates, times, and unit measurements for Work provided;
- vii. The contractual charges, including the appropriate price, rate, fee, cost, or expenses, if allowable under this Contract;
- viii. The appropriate receipts for reimbursement of allowable expenses;
- ix. The DVBE dollars expended, as applicable; and
- x. A preferred remittance address, if different from the mailing address.

C. The Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California
Administrative Office of the Courts
c/o Center for Judicial Education & Research
Attention: **TBD**
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102-3688

D. Please note that invoices or vouchers not on printed bill heads shall be signed by the Contractor or the person furnishing the supplies or services.

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7. Disallowance

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

END OF EXHIBIT

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**EXHIBIT D
WORK TO BE PERFORMED**

1. Background

- A. The Judicial Council of California, chaired by the Chief Justice of California, is the chief policy making agency of the California judicial system. The California Constitution directs the Council to improve the administration of justice by surveying judicial business, recommending improvements to the courts, and making recommendations annually to the Governor and the Legislature. The Council also adopts rules for court administration, practice, and procedure, and performs other functions prescribed by law. The Administrative Office of the Courts (AOC) is the staff agency for the Council and assists both the Council and its chair in performing their duties.
- B. The AOC currently outsources the hosting of an approximately eight (8) gigabyte library of media-on-demand. The digital library consists of long streaming video (up to 90 minutes), progressive audio clips, and progressive Flash movies. Certain available is only through the AOC's password-protected Web site; other media is available to the general public through the AOC's public Web site.
- C. The AOC produces an average of two (2) live web broadcasts per month, lasting from 1-to-8 hours per event. Recording locations are both on-site and off-site. In most cases, encoding is performed at the recording location, but the Contractor shall be capable of receiving audio or video transmissions via available telecommunications carriers for encoding and online distribution.
- D. The AOC produces audio and video assets that from time to time may be selected for encoding into online publication at various connections speeds in various formats, including Windows Media, QuickTime, and MP3.
- E. In addition to expanding this existing library of online educational videos, the AOC wishes to digitize and make available to the general public a variety of self-help educational materials on the AOC's public Internet web site that are now available only on videotape.
- F. The State will establish an internal process for ensuring that the State either owns or otherwise has the right to broadcast all content hosted by the Contractor under this Agreement.

2. Objective

The Contractor will host the AOC's video content as streaming video-on-demand over the Internet and to encode new streaming audio/video from tape sources into digital formats,

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including but not limited to those provided or supported by Real Media, Inc. and Microsoft Windows Media.

3. Summary of Work

In general, the Contractor will provide the following Work:

A. Network.

- i. The Contractor shall maintain a reliable redundant-site content delivery system employing a distribution network with diverse connections to multiple tier-1 backbone providers and employing load-balancing technologies that are effectively monitored and supported on a continuous basis with the goal of one hundred percent reliability in content delivery. The Contractor will allow the AOC's viewers to use and occupy the Allotted Space, providing the necessary support to ensure access and content will be served to AOC viewers without advertisements, pop-ups, or other indicators of the Contractor's identity through the viewer's browser or media player.
- ii. The Contractor will provide the AOC with all necessary information to construct, and maintain, a hyperlink from the AOC's web site to the Allotted Space.
- iii. Upon the AOC's request, the Contractor shall convert, through its own efforts and those of its Subcontractors, the AOC's multimedia materials into a streaming video and/or audio format. The AOC shall provide the Contractor with a copy of the materials to be converted in the format as specified on the quote submitted to the Contractor.

B. Web-based Content Administration

- i. The Contractor shall provide a web-based application for administering the hosting account, including account information, web and FTP access and upload information, disk and data transfer usage reports (updated on a real-time or close to real-time basis and broken down by file name, length of access, and times of access), templates for constructing HTML pages with built-in links to content and for building pre-stream and post-stream ads to content video, and methods for assigning password authentication security to specified content and for scheduling release and expiration dates of content availability.

C. Support

- i. The Contractor will use all reasonable commercial efforts to make the Allotted Space available for viewing by Third Parties twenty-four (24) hours each day, seven (7) days per week.

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- ii. The Contractor shall make available live technical support for network delivery and account administration by e-mail, fax, and phone twenty-four (24) hours a day, year-round.

D. Cost Overrun Alert System

- i. The Contractor will employ an “email notification system” whereby the State can set its own threshold for data transfer. When the account reaches that data threshold, the Contractor will email a notification of that event, to provide an alert to any unusual data transfer spikes.

4. Scope of Services

A. **Disk Storage and Backup Retrieval.** The Contractor shall maintain disk storage by gigabyte, at the limits set forth in Exhibit C, Payment Provisions, in a secure facility with procedures that include daily backup of content, with monthly offsite storage in a secure location. The State will inform the Contractor in writing as to the appropriate gigabyte for storage. The Contractor will also provide backup retrieval service, if State has deleted files from disk storage and requests the Contractor to retrieve the files from tape backup. The Contractor shall charge the State at the prices set forth in Exhibit C, Payment Provisions for backup retrieval; however, the Contractor shall not charge the State for restoring files to the server if retrieval was necessary due to a system error on the Contractor’s part.

B. **Data Transfer.** Data Transfer refers to the amount of data sent by a server to a client computer. Generally data transfer is measured in megabytes (MB) or gigabytes (GB). The Contractor shall deliver data reliably in all formats (including Windows Media, QuickTime, Flash, MP3,) in both live and on-demand streaming and progressive download transfer processes from the on-demand disk storage account.

C. **Encoding Services and Acceptable Source Materials.**

- i. The Contractor will encode the State’s media at the most optimal bitrates and place the encoded media into the State’s disk storage account.
- ii. Source media which the State may use shall include but shall not be limited to the following: VHS, S-VHS, Beta, BetaSP, DV, DVCAM, Mini-DV, AVI, WAV, MOV, MPEG, and MP3.
- iii. In accordance with the payment terms set forth in Exhibit C, Payment Provisions, the State may submit online or offline requests to the Contractor for encoding services, substantially in the form set forth in Exhibit F, Attachment **TBD**. The Contractor will then provide the AOC with a quote for the costs of conversion, which must be signed and returned to the Contractor

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prior to commencement of service. The State may submit online requests for encoding services via the following URL link: *TBD*. The State may submit offline requests for encoding services to the following: *TBD*.

- iv. The State must submit the tapes for encoding in final version of the material to the Contractor. The State shall submit copies of the master versions of tapes only, not any master versions of the tapes. The Contractor will not provide any editorial services.
- v. The Contractor's standard turn-around time for encoding orders shall be five (5) business days from receipt of materials. For expedited turn-around requests, the Contractor shall charge the State for additional costs, as set forth in Exhibit C, Payment Provisions.

D. Live Web Casting via Satellite, Fiber Switch, or Teleconference Connection Service.

- i. The Contractor shall provide live web casting encoding and distribution services, which includes broadcasting live audio and/or video over the Internet, synonymous with live streaming.
- ii. The Contractor will provide live web casting services in three (3) potential service areas:
 - a. In-bound connection services, including satellite connection (C-Band/Ku-Band), fiber switch connection, or telephone line connection.
 - b. Encoding services, including satellite and fiber or telephone.
 - c. Data transfer of outbound files in Real Networks, Windows Media, and QuickTime formats.
- iii. The State shall initiate a request for live web cast service by submitting a written request to the Contractor, containing at least the following information:
 - a. Step 1- Select one (1) of the following inbound services:
 - Satellite: C-Band/Ku-Analog/Ku-Digital (Requires DVB compliant data stream).
 - Fiber: AT&T/Genesis.
 - Teleconference: Dial-in.
 - b. Step 2 - Select one (1) of the following live streaming outbound formats:
 - Windows Media.
 - QuickTime.
 - Real Networks.

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- c. Step 3 - Set start date, start time, end date, end time, and total duration.
 - iv. In accordance with the payment terms set forth in Exhibit C, Payment Provisions, the State will submit online requests to the Contractor for live broadcast services, using the form set forth in Exhibit F, Attachment 2, **TBD**. Using the form set forth in Exhibit F, Attachment 3, **TBD**, the State will identify services needed and submit the form to the Contractor.
- E. **Alternative Service.** In the event that the State’s programming cannot be transmitted as scheduled due to either a Preemptive Event or a Force Majeure Event, as defined in this Agreement, the Contractor may, but shall not be obligated to, shift transmission of the live web casting to another streaming media host or make other arrangement to provide alternative live web casting service to State on either a temporary or permanent basis. If the State requests additional transmission time during a scheduled live web casting, the Contractor will, based upon availability, make commercially reasonable efforts to accommodate the State’s request based on the rates stated herein.
- F. **Cancellation of Firm Bookings.** The State may inquire into availability of satellite or transmission services on a per-specific-event basis. The State may “firm book” inquiries on the date of the event or months in advance, and may cancel at any time, subject to the Cancellation Fees, as set forth in Exhibit C, Payment Provisions. Inquiries that fall After Hours, or events that require special staff scheduling, vendor coordination, venue coordination, etc. must be resolved by the parties within the constraints of advance requirements of Third Party vendors and venues, and no later than forty-eight (48) hours prior to the event.
- G. **Self-service Web Casting.** The Contractor shall provide the State with two (2) Windows Media Server publishing points for the State’s exclusive use in distributing streams encoded by the State for live Web casts.

END OF EXHIBIT

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**EXHIBIT E
SERVICE LEVEL AGREEMENT**

1. Service Availability

A. The Contractor shall provide its best efforts to keep its service up and running. However, the parties acknowledge the Contractor cannot and will not guarantee 100% uptime of its service. The Contractor provides the following Service Level Guaranty for its Work:

- i) Uptime Guaranty. The Contractor's service is guaranteed to be available and capable of forwarding IP packets ninety-nine and 9/10th percent (99.9%) of the time, as averaged over a one-year term. Downtime shall consist of IP packet loss which is sustained in excess of fifty (50%) for fifteen (15) consecutive minutes, or other internal issue which causes all the Contractor's services to be nonfunctional to the general Internet (as monitored by the Contractor and/or the Contractor's designated third party monitoring service).

2. System Monitoring

The Contractor agrees to monitor its services 24 X 7 X 365 (twenty-four hours per day, seven days per week, 365 days per year). The Contractor will employ monitoring services, acting independent of each other, to continuously test service availability by submitting electronic "requests" to critical systems/servers in the Contractor's architecture at intervals ranging from five (5) to fifteen (15) minutes apart. If a "request" fails, a second attempt will be initiated and if that request fails, a series of emergency notifications will be transmitted to the Contractor's engineering staff for emergency response handling.

3. System Redundancy

The Contractor shall use its best efforts to employ system redundancy through the following technologies: load balancing, global Domain Name Server (DNS) distributing, hot-swappable drives, and other system architectural elements whereby single points of failure are either eliminated or minimized.

4. System Maintenance

The Contractor will operate fully redundant systems and multiple data centers that will enable its engineering staff to perform maintenance without downtime to the Contractor's service. As a result, all maintenance will be performed during normal business hours without disruption of service availability.

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CONTRACT TERMS

5. Data Security and Integrity

The Contractor shall use industry standard security practices, policies, and procedures to operate its network and services in a secure manner. The Contractor will maintain data backups of its customer data and manage physically redundant and geographically separate storage of that data for disaster recover purposes. The Contractor will secure its network through the use of firewalls, VPN technology, encryption, and other industry acceptable practices.

6. Customer Service and Technical Support Availability

The Contractor will provide customer service and technical support availability for customers during normal business hours, not After Hours.

7. Downtime Resolution

- A. If the Contractor sustains downtime (a disruption of service) of a duration of more than eight (8) hours and forty-five (45) minutes in aggregate, during the Term of the Contract, then the State may elect to terminate the Contract, and the Contractor will reimburse the State, on a daily pro-rated basis, upon request, any fees paid to the Contractor for which service was unavailable and/or not rendered.
- B. This guaranty shall not apply for disruption of service to end-user that is due to network congestion on the Internet or other related disruptions on the Internet that are not related to the Contractor's service, as it is very possible that the Contractor's service is fully operational, but the end-user's access to the media is disrupted by means of independent backbone carrier issues. For continual (24X7X365) monitoring of its primary and backup systems, the Contractor shall employ an independent party which will provide statistical evidence of its uptime and may be used to resolve a dispute.
- C. The State must provide information supporting the claim of this Service Level Agreement violation such as trace-route and/or PING data produced during the time of the incident.

END OF EXHIBIT

**ATTACHMENT 2
CONTRACT TERMS**

**EXHIBIT F
ATTACHMENTS**

This Exhibit includes the following form:

Attachment 1, *TBD*

Attachment 2, *TBD*

Attachment 3, *TBD*

END OF EXHIBIT

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

Mark the Appropriate Choice, below:

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

OR

_____ Vendor proposes exceptions/modifications to Attachment 2, Contract Terms. Summarize any and all exceptions to Attachment 2, Contract Terms, below. Enclose both a red-lined version of Attachment 2, Contract Terms, that clearly shows each proposed exception/modification, and provide written documentation to substantiate each proposed exception/modification.

Signature

Printed Name

Title

Date

**ATTACHMENT 5
DVBE PARTICIPATION FORM**

Proposer Name: _____
RFP Project Title: _____
RFP Number: _____

The State of California Executive Branch's goal of awarding of at least three percent (3%) of the total dollar contract amount to Disabled Veterans Business Enterprise (DVBE) has been achieved for this Project. *Check one:*

Yes _____ *(Complete Parts A & C only)*

No _____ *(Complete Parts B & C only)*

"Contractor's Tier" is referred to several times below; use the following definitions for tier:

- 0 = Prime or Joint Contractor;
- 1 = Prime subcontractor/supplier;
- 2 = Subcontractor/supplier of level 1 subcontractor/supplier

PART A – COMPLIANCE WITH DVBE GOALS

Fill out this Part ONLY if DVBE goal has been met; otherwise fill out Part B.

**INCOMPLETE DOCUMENTATION MAY RESULT IN DISQUALIFICATION
FROM FURTHER PARTICIPATION IN SELECTION PROCESS FOR THIS
SOLICITATION**

PRIME CONTRACTOR

Company Name: _____

Nature of Work _____ Tier: _____

Claimed Value: DVBE \$ _____

Percentage of Total Contract Cost: DVBE _____%

**ATTACHMENT 5
DVBE PARTICIPATION FORM**

SUBCONTACTORS/SUBCONTRACTOR/PROPOSERS/SUPPLIERS

1. Company Name: _____
 Nature of Work: _____ Tier: _____
 Claimed Value: DVBE \$ _____

Percentage of Total Contract Cost: DVBE _____%

2. Company Name: _____
 Nature of Work: _____ Tier: _____
 Claimed Value: DVBE \$ _____

Percentage of Total Contract Cost DVBE _____%

3. Company Name: _____
 Nature of Work: _____ Tier: _____
 Claimed Value: DVBE \$ _____

Percentage of Total Contract Cost DVBE _____%

GRAND TOTAL: DVBE _____%

I hereby certify that the "Contract Amount," as defined herein, is the amount of \$_____. I understand that the "Contract Amount" is the total dollar figure against which the DVBE participation requirements will be evaluated.

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

**ATTACHMENT 5
DVBE PARTICIPATION FORM**

PART B – ESTABLISHMENT OF GOOD FAITH EFFORT

Fill out this Part ONLY if DVBE goal will not be met but you have made a good faith effort to meet such goal.

INCOMPLETE DOCUMENTATION MAY RESULT IN DISQUALIFICATION FROM FURTHER PARTICIPATION IN SELECTION PROCESS FOR THIS SOLICITATION

1. List contacts made with personnel from state or federal agencies, and with personnel from DVBEs to identify DVBEs.

<i>Source</i>	<i>Person Contacted</i>	<i>Date</i>

2. List the names of DVBEs identified from contacts made with other state, federal, and local agencies.

<i>Source</i>	<i>Person Contacted</i>	<i>Date</i>

3. If an advertisement was published in trade papers and/or papers focusing on DVBEs, attach proof of publication.

<i>Publication</i>	<i>Date(s) Advertised</i>

**ATTACHMENT 5
DVBE PARTICIPATION FORM**

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

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

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

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

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

**ATTACHMENT 5
DVBE PARTICIPATION FORM**

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

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

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

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

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

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

**ATTACHMENT 6
PRICING FORM**

1. Introduction

- A. Pricing, as requested via this form, is based upon the description of work and pricing provisions set forth in Exhibit D, Work to be Performed, and Exhibit C, Payment Provisions of Attachment 2, Contract Terms. The proposer must submit pricing, using this form, that reflects the anticipated work to be performed and payment provisions that would be set forth in a subsequent contract, if awarded. Any changes proposed to Exhibit D, Work to be Performed, or Exhibit C, Payment Provisions, must also be reflected in this form, as appropriate, by changing its structure to reflect the appropriate pricing proposed. In any event, the proposer is to provide a cost proposal which encompasses all pricing, including the applicable charges, costs, fees, labor, benefits, expenses, markups, overhead, and profits, necessary to provide the State with the work.
- B. Propose pricing for the anticipated Initial Term (1/1/2007 through 12/31/2007) only. Option Terms, if any, will be negotiated and authorized as set forth in Attachment 2, Contract Terms, Exhibit B, Special Provisions, paragraph 34, Agreement Term(s) and Options.

2. Pricing for Disk Storage

- A. Propose a fixed unit price per month for disk storage for each of the number of gigabytes requested, below.

<i>STORAGE IN GIGABYTES (GB)</i>	<i>UNIT PRICE / MONTH</i>
9 GB	\$
10 GB	\$
11 GB	\$
12 GB	\$
13 GB	\$
14 GB	\$
15 GB	\$
16 GB	\$
17 GB	\$
18 GB	\$

**ATTACHMENT 6
PRICING FORM**

<i>STORAGE IN GIGABYTES (GB)</i>	<i>UNIT PRICE / MONTH</i>
19 GB	\$
20 GB	\$
21 GB	\$
22 GB	\$
23 GB	\$
24 GB	\$
25 GB	\$
26 GB	\$
27 GB	\$
28 GB	\$
29 GB	\$
30 GB	\$

3. Pricing for Backup Retrieval

- A. Propose a fixed unit price per hour, below, for providing backup file retrieval services.

<i>SERVICE</i>	<i>UNIT PRICE / HOUR</i>
Backup retrieval	\$

4. Pricing for Data Transfer

- A. Propose a fixed unit price per megabyte transferred, below, for on-demand and live data transfer services.

<i>SERVICE</i>	<i>UNIT PRICE / MEGABYTE</i>
Data Transfer	\$

**ATTACHMENT 6
PRICING FORM**

5. Pricing for Encoding Services

A. Propose a fixed unit price per minute, below, for on-demand encoding services.

<i>ENCODING SERVICE</i>	<i>PRICE / MINUTE</i>	<i>MINIMUM # OF MINUTES</i>
Video & Audio	\$	
Audio Only	\$	

B. Propose a fixed unit price per order, below, for encoding orders within a short turn-around period.

<i>SERVICE</i>	<i>UNIT PRICE / ORDER</i>
Within twenty-four (24) hour turn-around	\$
Between two (2) to four (4) days turn-around	\$

6. Pricing for Live Web Casting via Satellite, Fiber Switch, or Teleconferencing Connection Service

A. Propose a fixed unit price, below, per half hour, for each in-bound connection service.

<i>IN-BOUND CONNECTION SERVICE</i>	<i>UNIT PRICE / HALF HOUR</i>
Satellite connection fee (C-Band/Ku-Band)	\$
Fiber switch connection	\$
Telephone line connection	\$

B. Propose a fixed unit price, below, per half hour, for each encoding connection service. Propose any discounts that may be provided for services that extend more than three (3) hours during normal business hours.

**ATTACHMENT 6
PRICING FORM**

<i>ENCODING CONNECTION SERVICE</i>	<i>UNIT PRICE / HALF HOUR</i>	<i>DISCOUNT FOR +3 HOUR EVENT</i>
Satellite and fiber encoding	\$	%
Telephone	\$	%

7. Pricing for Cancellation of Firm Bookings

- A. Should the State terminate work pursuant to the agreement's other than for cause termination provision, a fixed price for such cancellation would be applicable. Propose a fixed unit price per such cancellation, below.

<i>CANCELLATION EVENT</i>	<i>UNIT PRICE / CANCELLATION</i>
An order must be firm booked or released within two (2) hours after another customer of the Contractor challenges an event with an inquired status only.	\$
Cancellation of a firm booking 12-24 hours prior to the event's start.	\$
Cancellation of a firm booking less than 12 hours prior to the event's start.	\$
Costs incurred to Third Party vendors, if applicable.	\$

8. Pricing per Self-Service Webcasting

- A. Propose a fixed unit price per month, for the cost of a dedicated publishing point.

<i>SERVICE</i>	<i>UNIT PRICE / MONTH</i>
Self Service Webcasting Publishing Point	\$

9. Certification

The undersigned is authorized to bind the proposer and certifies on the proposer's behalf that the pricing offered is binding for at least 45 days following the deadline for submission. Additionally, the undersigned certifies that the proposer and any proposed subcontractor has the financial capability to perform the work which is the subject of this

**ATTACHMENT 6
PRICING FORM**

solicitation and knows of no personal and/or organizational conflicts of interest prohibited under federal, state, and local law. The proposer certifies that its Cost Proposal is submitted in accordance with this solicitation and all issued addenda, if any, and that it agrees to sign the State's Agreement form, if awarded a contract.

Proposer: _____

Signature: _____

Title: _____

Date: _____

END OF ATTACHMENT