

RFP Title: Benefits Broker  
RFP Number: 10-2021-BENE

# REQUEST FOR PROPOSALS

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO**

**REGARDING: *Payroll Benefits Broker*  
10-2021-BENE**

**PROPOSALS DUE:  
May 6, 2022 NO LATER THAN 4:00 P.M. PACIFIC TIME**

## **1.0 BACKGROUND INFORMATION**

The Superior Court of California, County of Fresno ("Court") is issuing this Request for Proposal ("RFP") to find a qualified Benefits Broker ("Broker") to administer its health plans and other employee benefits programs.

The Court currently offers its approximately 500 full-time employees the option to purchase health insurance from Kaiser Permanente or Blue Shield health plans. Also offered are plans from Delta Dental and MetLife, Superior Vision, life insurance coverage, disability, AD&D, and employee assistance program (EAP). Voluntary Plans include flexible spending accounts (FSA), health savings accounts (HSA), Group Universal Life, cancer, home and auto, long-term disability, heart and stroke, and accident insurance.

The Court participates in a Wellness Program administered by one of the insurance providers and does not provide any benefits to retirees.

A copy of the current Employee Benefits Guide and Health Plan Premium rate sheet will be provided upon request to:

[solicitations@fresno.courts.ca.gov](mailto:solicitations@fresno.courts.ca.gov)

Open enrollment for employee health plans begins each year in October. Employee enrollment in one of the available plans is mandatory.

## **2.0 DESCRIPTION OF SERVICES AND DELIVERABLES**

The Court is seeking an employee benefits broker to advise on employee benefit plan issues and assist the Court in obtaining and evaluating competitive bids from various providers, including the following services:

- A. Evaluate existing employee benefit plans, research the market and identify other competitive insurance coverage.
- B. Solicit competitive bids for existing employee benefit plans, evaluate proposals, and make recommendations, all compliant with the current version of the Judicial Branch Contracting Manual (JBCM).
- C. Conduct negotiations for adequate coverage for medical, dental, vision, life insurance, long-term disability insurance, flexible spending account administration, EAP and any benefit plan changes.
- D. Review all insurance carrier contracts and assure that the Court is adequately covered with respect to its benefit plans.
- E. Advise on a continuing basis and in a timely manner any and all significant matters and developments regarding the progress of carrier service issues.
- F. Assist with union negotiations as required relative to informational requests, studies and surveys, and presentations.
- G. Assure the Court complies with all federal, state and local laws, regulations or rulings regarding employee benefits and solicitation and contracting (JBCM).
- H. Provide quarterly statistical reports including, but not limited to, rates, aggregate claims, demographic changes and other market trends.

- I. Provide assistance with benefit issues related to coverage, claims, billing and other related matters that may arise during the normal course of business.
  - 2.1 Consultant Activities. *Activities in this section address activities that the Court may request or require of the Broker, frequently and less frequently.*
    - A. *Frequent Activities*
      1. Provide frequent visits as requested by the Court for actively assisting in the management of the Court's employee benefits plans and programs, including mandatory attendance at the Court's annual health benefits fair.
      2. Review and make recommendations to the Court and to the Health Benefits Advisory Committee (HBAC) for value added benefit plans and programs as well as modifications to the design, cost (rates), and quality of current employee benefit plans and programs.
      3. Provide legal opinions pertaining to the Court's employee benefit plans and programs including analysis and application of all relevant laws, statutes, and regulations, including the Affordable Care Act mandates. If the Vendor subcontracts legal services to another entity and/or person, the Vendor's response must identify that entity or person and a complete resume of experience and training of the person and/or each member of the entity who will provide legal services to the Court must be attached to the response.
      4. Assist the Court in exploring a benefits consortium with other courts or counties in California.
      5. Assist in the design, implementation and administration of new and existing programs.
      6. Make recommendations for items of negotiation with benefit plan providers including, but not limited to, plan design, cost (rates), and quality of services.
      7. Assist in developing and implementing agreements with selected health, welfare, and Third Party Administrator (TPA) providers in accordance with the Court timelines and requirements.
      8. Review and analyze all benefit plan provider agreements for compliance with all applicable federal and state laws, statutes, regulations and the Court agreement.
      9. Assist with the development, negotiation and implementation of performance standards and guarantees with the Court's various benefit plan providers.
10. At designated intervals, evaluate and report the performance of plan

providers to the Court Human Resources Department (HR), Court Executive Office and HBAC.

11. Assist the Court in the preparation and/or review and updating of benefit plan documents and benefit summary plan descriptions.
12. Regularly and timely communicate to the Court changes and proposed changes in state and federal laws, statutes and regulations that may impact the Court's employee benefit plans and programs. Recommend procedures and/or policies the Court should implement to comply with federal and state statutes and regulations.
13. Review and prepare an analysis of all reports submitted by plan providers and TPAs. Make recommendations regarding the format and content of the reports. Recommend additional reports as needed.
14. Provide research and responses to technical questions posed by the Court.
15. Provide financial and/or performance reviews of plans and programs, as well as the Court's TPA.
16. Provide the Court with general guidance on items such as trends in benefit plans, methods for improving cost containment, financial arrangements, and administration.
17. Develop and/or assist in developing and evaluating employee needs and satisfaction surveys.
18. As requested by the Court, provide comparison reports of other employers' benefit plans and programs to determine competitiveness.
19. Provide training programs regarding legislation updates and best practice seminars as requested.
20. Provide assistance, technically and creatively, in the on-going development and preparation of various employee communication materials, including the annual employee benefits guide.
21. Provide day-to-day consultation on matters such as, but not limited to, plan interpretation and problem resolution, including attendance at periodic meetings to facilitate and assist in the management of the Court's health and welfare plans and programs.
22. Participate in negotiations with health and welfare providers on matters such as, but not limited to, premium rates, benefit levels, performance standards and guarantees, agreement terms and conditions, quality assurance standards, utilization and performance reports, statistical and/or financial reports, and plan-specific data such as medical conditions, prescription drugs, high cost procedures, in-patient data, etc.

23. Provide such other reports and services, as requested by the Court, based upon mutual agreement for hourly rates for services.
  24. Maintain full and accurate records with respect to all matters and services provided to the Court regarding its benefit plans and programs. At the Court's request, provide all spreadsheets, assumptions, and calculations upon completion of any project performed on behalf of the Court's benefit plans and programs.
- B. *Less Frequent Activities.*
1. Coordination of and participation in Insurance/TPA meetings.
  2. Coordination of and participation in HBAC meetings.
  3. Review and Renewal of Insured Health Plans, dental, vision, and life.
  4. Review the Long-Term Disability Plan for revision.
  5. Support all aspects of the Section 125 Plans (DCAP).
  6. Ensure legal compliance of all programs (e.g., HIPAA, COBRA, Section 125, FSA, and STD).
  7. Conduct training of HR staff, as needed.
  8. Support all aspects of the Employee Assistance Program (EAP).
  9. Develop RFPs consistent with the Court's policies for review by HBAC and Court Executive Office. Manage the RFP process and prepare a comprehensive report of the proposals received in response to the RFP. Evaluate proposals and recommend those proposals deemed acceptable for further analysis and review by HBAC. Work with HBAC to determine which proposal(s) to recommend to the Court for acceptance. Develop responses to protests from the RFP process. Make presentations regarding the RFP recommendations to HBAC and Court officials.

### **3.0 MINIMUM QUALIFICATIONS**

Vendors responding to this RFP must at least:

- A. Be affiliated with a legal business authorized to do business in the State of California. All required permits and licenses must be in full force at the time Vendor's response is submitted.
- B. Have key personnel who have at least ten (10) years of experience in providing employee benefits consulting and actuarial services to employer groups with at least 550 employees and at least five (5) years of experience providing these services to public entities in the State of California.

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- C. Have public sector clients who have a combined annual volume of ten million dollars (\$10,000,000) or more in annual health and welfare premiums.
- D. Have at least one public sector client who has greater than 250 employees.

The proposer must state specifically in its response how it complies with each minimum qualification specified above. Subject to the Court's right in its complete discretion to waive minor deviations or defects, only those proposals that meet all of the foregoing minimum qualifications shall be considered for a full evaluation and a possible contract award.

#### 4.0 TIMELINE FOR THIS RFP

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

EVENT	DATE
RFP issued	April 8, 2022
Deadline for questions	April 20, 2022, noon
Questions and answers posted	April 22, 2022, 5 p.m.
Latest date and time proposal may be submitted	<b>May 6, 2022, 4 p.m.</b>
Evaluation of proposals ( <i>estimate only</i> )	May 9 - 13, 2022
Anticipated interview dates ( <i>estimate only</i> )	May 19 & 20, 2022
Notice of Intent to Award ( <i>estimate only</i> )	May 27, 2022
Negotiations and execution of contract ( <i>estimate only</i> )	June 2022
Contract start date	July 1, 2022
Contract end date	June 30, 2027

## 5.0 RFP ATTACHMENTS

The following attachments are included as part of this RFP:

ATTACHMENT	DESCRIPTION
<b>Attachment 1:</b> Administrative Rules Governing RFPs	These rules govern this solicitation.
<b>Attachment 2:</b> Court Standard Terms and Conditions	If selected, the person or entity submitting a proposal (the "Proposer") must sign a Court Standard Form agreement containing these terms and conditions (the "Terms and Conditions").  The following provisions within the Terms and Conditions are minimum contract terms and conditions ("Minimum Terms"): Items 4, 7.1, and 10.7.
<b>Attachment 3:</b> Proposer's Acceptance of Terms and Conditions	On this form, the Proposer must indicate acceptance of the Terms and Conditions or identify exceptions to the Terms and Conditions.  <b>Note: A material exception to a Minimum Term will render a proposal non-responsive.</b>
<b>Attachment 4:</b> General Certifications Form	The Proposer must complete the General Certifications Form and submit the completed form with its proposal.
<b>Attachment 5:</b> Darfur Contracting Act Certification	The Proposer must complete the Darfur Contracting Act Certification and submit the completed certification with its proposal.
<b>Attachment 6:</b> Unruh and FEHA Certification	The Proposer must complete the Unruh Civil Rights Act and California Fair Employment and Housing Act Certification.

## 6.0 PAYMENT INFORMATION

The Court will pay the awarded contractor annually, following the provision of a properly submitted invoice for commission shortfall. Expenses, including travel expenses, will not be reimbursed.

## 7.0 SUBMISSIONS OF PROPOSALS

7.1 Proposals should provide straightforward, concise information that satisfies the requirements of the "Proposal Contents" section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the RFP's instructions and requirements, and completeness and clarity of content.

7.2 The Proposer must submit its proposal in two parts, the technical proposal and the cost proposal. The proposal must be submitted in **electronic version** via email, on USB memory stick, or flash drive, in two

separate files. The files must be in PDF, Microsoft Word, or Excel formats.

- 7.3 Proposals must be delivered by the date and time listed on the coversheet of this RFP to:

ATTN: Solicitations  
Fresno Superior Court  
1100 Van Ness Avenue  
Fresno CA 93724-0002

OR [solicitations@fresno.courts.ca.gov](mailto:solicitations@fresno.courts.ca.gov)

- 7.4 Late proposals will not be accepted.

## 8.0 PROPOSAL CONTENTS

- 8.1 Technical Proposal. The following information must be included in the technical proposal. A proposal lacking any of the following information may be deemed non-responsive.

- a. The Proposer's name, address, telephone and fax numbers, and federal tax identification number. Note that if the Proposer is a sole proprietor using his or her social security number, the social security number will be required before finalizing a contract.
- b. Name, title, address, telephone number, and email address of the individual who will act as the Proposer's designated representative for purposes of this RFP.
- c. For each key staff member: a resume describing the individual's background and experience; the individual's ability and experience in conducting the proposed activities; and the size of all pertinent employee groups with which each key staff member works.
- d. Names, addresses, and telephone numbers of a minimum of five clients for whom the Proposer has conducted similar services. The Court may check references listed by the Proposer.
- e. Specific responses regarding the Proposer's ability to provide each service listed in section 2.1 of this document. If the Proposer cannot provide any of those services, it must be indicated.
- f. Acceptance of the Terms and Conditions.
  - i. On Attachment 3, the Proposer must check the appropriate box and sign the form. If the Proposer marks the second box, it must provide the required additional materials. An "exception" includes any addition, deletion, or other modification.



- ii. If exceptions are identified, the Proposer must also submit (i) a red-lined version of the Terms and Conditions that implements all proposed changes, and (ii) a written explanation or rationale for each exception and/or proposed change.
- g. Certifications, Attachments, and other requirements.
  - i. The Proposer must complete the General Certifications Form (Attachment 4) and submit the completed form with its proposal.
  - ii. The Proposer must complete the Darfur Contracting Act Certification (Attachment 5) and submit the completed certification with its proposal.
  - iii. The Proposer must complete the Unruh Civil Rights Act and California Fair Employment and Housing Act Certification (Attachment 6) and submit the completed certification with its bid.
  - iv. If Contractor is a California corporation, limited liability company ("LLC"), limited partnership ("LP"), or limited liability partnership ("LLP"), proof that Contractor is in good standing in California. If Contractor is a foreign corporation, LLC, LP, or LLP, and Contractor conducts or will conduct (if awarded the contract) intrastate business in California, proof that Contractor is qualified to do business and in good standing in California. If Contractor is a foreign corporation, LLC, LP, or LLP, and Contractor does not (and will not if awarded the contract) conduct intrastate business in California, proof that Contractor is in good standing in its home jurisdiction.
  - v. Copies of the Proposer's (and any subcontractors') current business licenses, professional certifications, or other credentials.
- 8.2 Cost Proposal. The following information must be included in the cost proposal.
  - a. The Court recognizes that a Broker of record would normally derive their compensation from the insurance provider based on a percentage of the overall account value. To objectively compare the proposals from the bidders for purposes of selecting how the Court will pursue its goal of achieving the best value in health benefits for its employees, we request that bidders identify their total compensation package for services rendered and how it will be derived (e.g., direct payments from the Court or insurance companies, percentage of the total insurance premium paid, direct commissions, or any other form of quantifiable compensation expected by the respondent). Also advise how the Court

will be charged for services within the scope of this contract and the rate for any additional consulting services requested.

- b. It is expected that all vendors responding to this solicitation will offer the vendor's government or most favorable comparable rates.
- c. The prices proposed in the vendor's response will be valid for a minimum of ninety days after any resulting contract is signed.

**9.0 OFFER PERIOD**

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

**10.0 EVALUATION OF PROPOSALS**

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

The Court will evaluate the proposals on a 100 point scale using the criteria set forth in the table below. Following initial scoring of the bids, the Court may clarify or negotiate contract terms and conditions with one or more of the bidders based on the bidders' preliminary rankings.

Award, if made, will be to the highest-scored proposal and the Court will post an intent to award notice at [www.fresno.courts.ca.gov/general-information/procurement](http://www.fresno.courts.ca.gov/general-information/procurement).

<b>CRITERION</b>	<b>MAXIMUM NUMBER OF POINTS</b>
<i>Technical ability and capability of the bidder to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, client references, demonstrated success in projects with similar requirements</i>	<i>35 points</i>
<i>Qualifications and Experience</i>	<i>15 points</i>
<i>Acceptance of Court's Requirements</i>	<i>15 points</i>
<i>Cost</i>	<i>35 points</i>

## 11.0 INTERVIEWS

Following the initial screening of proposals, the Court reserves the right to require, and each proposer must be prepared to conduct, oral presentations and other discussions (written or verbal) on the content of its proposal. If the Court determines that interviews or presentations are required, selected proposers will be notified in writing of the date, place, time and format of the interview or presentation. Proposers will be responsible for all costs related to the presentation which will be held at the Court's offices. Failure to participate in such presentations shall result in a proposer's disqualification from further consideration.

## 12.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

**PROPOSALS ARE SUBJECT TO DISCLOSURE PURSUANT TO APPLICABLE PROVISIONS OF THE CALIFORNIA PUBLIC CONTRACT CODE AND RULE 10.500 OF THE CALIFORNIA RULES OF COURT.** The Court will not disclose (i) social security numbers, or (ii) balance sheets or income statements submitted by a Proposer that is not a publicly-traded corporation. All other information in proposals will be disclosed in response to applicable public records requests. Such disclosure will be made regardless of whether the proposal (or portions thereof) is marked "confidential," "proprietary," or otherwise, and regardless of any statement in the proposal (a) purporting to limit the Court's right to disclose information in the proposal, or (b) requiring the Court to inform or obtain the consent of the Proposer prior to the disclosure of the proposal (or portions thereof). Any proposal that is password protected, or contains portions that are password protected, may be rejected. Proposers are accordingly cautioned not to include confidential, proprietary, or privileged information in proposals.

## 13.0 DISABLED VETERAN BUSINESS ENTERPRISE ("DVBE") INCENTIVE

The Court has waived the DVBE incentive in this solicitation.

## 14.0 PROTESTS

Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contracting Manual (see [www.courts.ca.gov/documents/jbcl-manual.pdf](http://www.courts.ca.gov/documents/jbcl-manual.pdf)). Failure of a Proposer to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the Court to receive a solicitation specifications protest is **May 4, 2022**. Protests must be sent to:

[solicitations@fresno.courts.ca.gov](mailto:solicitations@fresno.courts.ca.gov)

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

**1. Communications with the Court Regarding the RFP**

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

**2. Questions Regarding the RFP**

Proposers interested in responding to the RFP may submit questions via email to the Solicitations Mailbox on procedural matters related to the RFP or requests for clarification or modification of the RFP no later than the deadline for questions listed in the timeline of the RFP. Once submitted, questions become part of the procurement file and are subject to disclosure; Proposers are accordingly cautioned not to include any proprietary or confidential information in questions. If the Proposer is requesting a change, the request must set forth the recommended change and the Proposer's reasons for proposing the change. Questions or requests submitted after the deadline for questions will not be answered. Without disclosing the source of the question or request, a copy of the questions and the Court's responses will be made available prior to the proposal due date and time.

**3. Knowledge of Requirements**

The vendor shall carefully review all documents referenced and made a part of the solicitation document to ensure that all information required to properly respond has been submitted or made available and all requirements are priced in the proposal. Failure to examine any document, drawing, specification, or instruction will be at the vendor's sole risk.

Vendors shall be responsible for knowledge of all items and conditions contained in their proposals and in this RFP, including any Court issued clarifications, modifications, amendments, or addenda. The Court will provide notice to perspective vendors by posting addenda and clarifications to the Court website; however, it is the vendor's responsibility to ascertain that the proposal includes all addenda issued prior to the Proposal Due Date.

**4. Errors in the RFP**

A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer must immediately notify the Court via email to the Solicitations Mailbox and request modification or clarification of the RFP. Without disclosing the source of the request, the Court may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.

- B. If a Proposer fails to notify the Court of an error in the RFP known to the Proposer, or an error that reasonably should have been known to the Proposer, before the proposal due date and time listed in the timeline of the RFP, the Proposer shall propose at its own risk. Furthermore, if the Proposer is awarded the agreement, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

## **5. Addenda**

- A. The Court may modify the RFP before the proposal due date and time listed in the timeline of the RFP by issuing an addendum which will be posted on the Court's website (<https://www.fresno.courts.ca.gov/general-information/procurement>). It is each Proposer's responsibility to inform itself of any addendum.
- B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the Court via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

## **6. Withdrawal and Resubmission/Modification of Proposals**

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

## **7. Errors in the Proposal**

If errors are found in a proposal, the Court may reject the proposal; however, the Court may, at its sole option, correct arithmetic or transposition errors or both on the basis that the lowest level of detail will prevail in any discrepancy. If these corrections result in significant changes in the amount of money to be paid to the Proposer (if selected for the award of the agreement), the Proposer will be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the proposal.

## **8. Right to Reject Proposals**

Before the proposal due date and time listed in the timeline of the RFP, the Court may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, the Court may reject all proposals and cancel the RFP if the Court determines that: (i) the proposals received do not reflect effective competition; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the Court.

The Court may or may not waive an immaterial deviation or defect in a proposal. The Court's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a Proposer from full compliance with RFP specifications. Until a contract resulting from this RFP is signed, the Court reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual Proposers if it is deemed in the Court's best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.

The Court reserves the right to issue similar RFPs in the future. The RFP is in no way an agreement, obligation, or contract and in no way is the Court or the State of California responsible for the cost of preparing the proposal.

Proposers are specifically directed **NOT** to contact any Court personnel or consultants for meetings, conferences, or discussions that are related to the RFP at any time between release of the RFP and any award and execution of a contract. Unauthorized contact with any Court personnel or consultants may be cause for rejection of the Proposer's proposal.

## 9. Evaluation Process

- A. An evaluation team will review all proposals that are received by the appropriate deadline to determine the extent to which they comply with RFP requirements.
- B. Proposals that contain false or misleading statements may be rejected if in the Court's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP.
- C. During the evaluation process, the Court may require a Proposer's representative to answer questions with regard to the Proposer's proposal. Failure of a Proposer to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.
- D. In the event of a tie, the contract will be awarded to the winner of a single coin toss. The coin toss will be witnessed by two Court employees. The Court will provide notice of the date and time of the coin toss to the affected Proposers, who may attend the coin toss at their own expense.

## 10. Disposition of Materials

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

## 11. Payment

- A. Payment terms will be specified in any agreement that may ensue as a result of the RFP.
- B. **The Court does not make advance payment for services.** Payment is normally made based upon completion of tasks as provided in the

agreement between the Court and the selected Proposer. The Court may withhold ten percent of each invoice until receipt and acceptance of the final deliverable. The amount of the withhold may depend upon the length of the project and the payment schedule provided in the agreement between the Court and the selected Proposer.

## **12. Award and Execution of Agreement**

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

## **13. Failure to Execute the Agreement**

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

## **14. News Releases**

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of the Court Public Services and Media Coordinator.

## **15. Anti-trust Claims**

- A. In submitting a proposal to the Court, the Proposer offers and agrees that if the proposal is accepted, the Proposer will assign to the Court all rights, title, and interest in and to all causes of action it may have under Section 4 of

the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the Court pursuant to the proposal. Such assignment shall be made and become effective at the time the Court tenders final payment to the Proposer. (See Government Code section 4552.)

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

#### **16. Americans with Disabilities Act**

The Court complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to the solicitations mailbox ([solicitations@fresno.courts.ca.gov](mailto:solicitations@fresno.courts.ca.gov)) with "RFP Accommodation Request" in the subject line of the email.



## ATTACHMENT 2

### COURT'S STANDARD TERMS AND CONDITIONS

#### 1. Provisions Applicable to Services

- 1.1 Qualifications.** Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the Court is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.
- 1.2 Turnover.** Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.
- 1.3 Background Checks.** Contractor shall cooperate with the Court if the Court wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Court may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the Court of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Court and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the Court: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the Court, the Court advises are unacceptable to the Court.

#### 2. Contractor Certification Clauses.

Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the Court if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

- 2.1 Authority.** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.
- 2.2 Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Court.
- 2.3 No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- 2.4 No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which

restrict employees and former employees from contracting with Judicial Branch Entities.

- 2.5 No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- 2.6 No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.
- 2.7 Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.
- 2.8 Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
- 2.9 No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- 2.10 Non-Infringement.** The Goods, Services, Deliverables, and Contractor's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Non-discrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final un-appealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

### 3. Insurance

**3.1 Basic Coverage.** Contractor shall provide and maintain at the Court's discretion and Contractor's expense the following insurance during the Term:

- A. Commercial General Liability. The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
- B. Workers Compensation and Employer's Liability. The policy is required only if Contractor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
- C. Automobile Liability. This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
- D. Professional Liability. This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.

**3.2 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.

**3.3 Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

**3.4 Deductibles and Self-Insured Retentions.** Contractor shall declare to the Court all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed

\$100,000 per occurrence are subject to the Court's approval. Deductibles and self-insured retentions do not limit Contractor's liability.

- 3.5 Additional Insured Endorsements.** Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Superior Court of California, County of Fresno, the State of California, the Judicial Council of California, the Administrative Office of the Courts, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.
- 3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the Court certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days' prior written notice to the Court.
- 3.7 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and non-contributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Superior Court of California, County of Fresno, the State of California, the Judicial Council of California, the Administrative Office of the Courts, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.

- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the Court or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any Goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Court's prior written consent, which consent shall not be unreasonably withheld; and the Court shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.
- 5. Option Term.** Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the Court may, at its sole option, extend this Agreement for up to five consecutive one-year terms, at the end of which Option Terms this Agreement shall expire. In order to exercise an Option Term, the Court must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term (or the then current term). The exercise of an Option Term will be effective without Contractor's signature.
- 6. Tax Delinquency.** Contractor must provide notice to the Court immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Court may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.
- 7. Termination**

  - 7.1 Termination for Convenience.** The Court may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Court, Contractor shall immediately: (a) stop Services as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.
  - 7.2 Termination for Cause.** The Court may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the Court, is not capable of being cured within this cure period); (ii) Contractor or Contractor's

creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.

**7.3 Termination for Changes in Budget or Law.** The Court's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Court may terminate this Agreement or limit Contractor's Services (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the Court if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Court determines that Contractor's performance under this Agreement has become infeasible due to changes in applicable laws.

**7.4 Rights and Remedies of the Court.**

- A. Nonexclusive Remedies. All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the Court immediately if Contractor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Contractor is in default, the Court may do any of the following: (i) withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor; (ii) require Contractor to enter into non-binding mediation; (iii) exercise, following Notice, the Court's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.
- B. Replacement. If the Court terminates this Agreement in whole or in part for cause, the Court may acquire from third parties, under the terms and in the manner the Court considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the Court for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Court for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Court. Contractor shall continue any Services not terminated hereunder.
- C. Delivery of Materials. In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the Court with all originals and copies of the Deliverables, including any partially-completed

Deliverables-related work product or materials, and any Court-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the Court shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the Court's termination is not for cause, the Court shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the Court's termination Notice.

**7.5 Survival.** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

**8. Assignment and Subcontracting.** Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Court. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

**9. Notices.** Notices must be sent to the following address and recipient:

If to the Court:	If to Contractor:
Dawn Annino, Director of Human Resources 1100 Van Ness Avenue Fresno CA 93724-0002  <a href="mailto:dannino@fresno.courts.ca.gov">dannino@fresno.courts.ca.gov</a>	[name, title, _address

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

**10. Provisions Applicable to Certain Agreements.** The provisions in this section are **applicable only to the types of orders specified in the first sentence of each subsection**. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

**10.1 Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no Court funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter

union organizing, Contractor will maintain records sufficient to show that no Court funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

**10.2 Domestic Partners, Spouses, and Gender Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with, PCC 10295.3 which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status.

**10.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**10.4 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

**10.5 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Court. Such assignment shall be made and become effective at the time the Court tenders final payment to Contractor. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the Court shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the Court has not been injured thereby, or (b) the Court declines to file a court action for the cause of action.

**10.6 Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in*



*California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.

## **11. Miscellaneous Provisions.**

- 11.1 Independent Contractor.** Contractor is an independent contractor to the Court. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the Court. Contractor has no authority to bind or incur any obligation on behalf of the Court. If any governmental entity concludes that Contractor is not an independent contractor, the Court may terminate this Agreement immediately upon Notice.
- 11.2 GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Contractor must allow the Court or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the Court five percent (5%) or more during the time period subject to audit, Contractor must reimburse the Court in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
- 11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services or the delivery of the Goods. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.
- 11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Court's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor

protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Court owns all right, title and interest in the Confidential Information. Contractor will notify the Court promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Court to protect such Confidential Information. Upon the Court's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the Court or, if so directed by the Court, destroy all Confidential Information (in every form and medium), and (b) certify to the Court in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Court shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the Court ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the Court.
- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Court.
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Court. A waiver of enforcement of any of this Agreement's terms or conditions by the Court is effective only if expressly agreed in writing by a duly authorized officer of the Court. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

- 11.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 11.12 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 11.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.14 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word “including” means “including, without limitation.” Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 11.15 Time of the Essence.** Time is of the essence in Contractor’s performance under this Agreement.
- 11.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.


**ATTACHMENT 3  
BIDDER'S ACCEPTANCE OF TERMS AND CONDITIONS**

**Instructions:** Mark the appropriate choice below and sign this attachment.

1. Bidder accepts Attachment 2: Court Standard Terms and Conditions ("Attachment 2") without exception.

**OR**

2. Bidder proposes exceptions or modifications to Attachment 2. Bidder must also submit (i) a red-lined version of Attachment 2 that clearly tracks proposed modifications, and (ii) a written explanation or rationale for each exception or proposed modification.


BY ( <i>Authorized Signature</i> ) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**ATTACHMENT 4  
GENERAL CERTIFICATIONS FORM**

Check the box below, if agreed, and sign this attachment. Please note that the Court will reject a proposal from a Proposer that does not indicate acceptance of these clauses.

- **Conflict of Interest.** Proposer has no interest that would constitute a conflict of interest under California Public Contract Code (PCC) sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with judicial branch entities.
- **Suspension or Debarment.** Proposer certifies that neither Proposer nor any of Proposer's intended subcontractors is on the California Department of General Services' list of firms and persons that have been suspended or debarred from contracting with the state because of a violation of PCC 10115.10, regarding disabled veteran business enterprises.
- **Tax Delinquency.** Proposer certifies that it is not on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts.

Check box to indicate acceptance of the clauses above.

BY (Authorized Signature) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**ATTACHMENT 5  
 DARFUR CONTRACTING ACT CERTIFICATION**

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

To submit a proposal to the Court, the proposer/bidder must insert its company name and Federal ID Number below and complete **ONLY ONE** of the following three paragraphs. To complete **paragraph 1 or 2**, simply check the corresponding box in paragraph 1 or 2. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>Printed Name and Title of Person Checking Box (for paragraph 1 or 2 below)</i>	

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

**OR**

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

**OR**

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

**CERTIFICATION FOR PARAGRAPH 3:**

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

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

**ATTACHMENT 6**  
**UNRUH CIVIL RIGHTS ACT AND CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**  
**CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the Court for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the Court for the purchase of goods or services of \$100,000 or more.

**CERTIFICATIONS:**

1. We are in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. We are in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);
3. We do not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); **and**
4. Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the proposer/bidder/vendor to certifications made in this document.

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