



# 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 BIDDERS

**FROM:** Administrative Office of the Courts  
Finance Division

**DATE:** April 1, 2004

**SUBJECT/PURPOSE OF MEMO:** REQUEST FOR PROPOSALS  
To provide consulting services to the Effective Practices in Criminal Caseflow Management Project, which will conduct regional meetings to review accepted caseflow management principles, identify effective practices in California criminal caseflow management, identify potential consulting experts among the attendees, and develop an implementation plan for the dissemination of effective practices.

**ACTION REQUIRED:** You are invited to review and respond to the attached Request for Proposals (“RFP”):

Project Title: Effective Practices in Criminal Caseflow Management

RFP Number: RFP NO. EOP32404FM

**PROPOSAL DUE DATE:** **Proposals must be received by 1:00 p.m. on Tuesday, April 20, 2004**

**SUBMISSION OF PROPOSAL:** Proposals should be sent to:  
**Judicial Council of California**  
**Administrative Office of the Courts**  
**Attn: Nadine McFadden**  
**455 Golden Gate Avenue**  
**San Francisco, CA 94102**

**CONTACT FOR FURTHER INFORMATION:**

<b>NAME:</b>	<b>TEL:</b>	<b>E-MAIL:</b>
<b>Fred Miller</b>	<b>415-865-7709</b>	<b>fred.miller@jud.ca.gov</b>
<b>Senior Manager</b>		
<b>Court Consulting Services</b>		

## **1 GENERAL INFORMATION**

### **1.1 Background on Requesting Agency**

The Judicial Council (Council), chaired by the Chief Justice, 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 must adopt rules for court administration, practice, and procedure, not inconsistent with statute, and perform 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. Additional information about the AOC's programs and services, the structure of California's court system and activities in the local trial courts can be found at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).

### **1.2 Background on Court Consulting Services (CCS)**

Based in the AOC's Bay Area/Northern Coastal Regional Office, CCS is responsible for assisting the AOC and the trial courts in the identification of internal and external experts in a variety of areas of court operations. CCS seeks to facilitate the selection of the most effective consulting services, while supplementing these services with judicial branch internal subject matter experts.

## **2 PURPOSE**

The *2003 Court Statistics Report* for the period from 1992–1993 through 2001–2002 shows that the California trial courts have had 2,469,819 felonies filed and only 2,058,518 felonies disposed—an 83 % disposition rate. The disposition rate for 2000–2001 was 81% and for 2001–2002 it was **77%**. It is not surprising, therefore, that in a survey conducted by CCS, trial courts identified criminal caseflow management as an area of court operations where technical assistance is needed. This RFP responds to that need and is the means for prospective service providers to submit their qualifications to the AOC and request selection as a consultant.

The consultant will lead four two-day training/focus group sessions in criminal caseflow management as outlined in section 3, below (referred to as “regional meetings”). There will be two regional meetings in Sacramento at the AOC's Northern/Central Region which includes 32 trial courts, one in Burbank for the Southern Region's 10 courts, and one in San Francisco for the Bay Area/Northern Coastal Region's 16 courts.

### **3 PROPOSED CONSULTANT SERVICES**

- 3.1 The proposed consultant services identified below are expected to be performed between May 15, 2004 and December 31, 2004, for an amount not to exceed \$80,000.
- 3.2 The consultant will be asked to:
  - 3.2.1 Prepare a working paper on the current status of the trial court criminal caseload. The consultant will be expected to use only available data from sources such as the *2004 Court Statistics Report* for this working paper and not to solicit significant additional data from the trial courts prior to the regional meetings. This working paper will be used to assist the consultant and AOC project team in the development of the regional meetings and the assessment of effective practices identified at the regional meetings.
  - 3.2.2 Meet with AOC and trial court staff in San Francisco to present a final project workplan, which will contain a draft agenda for regional meetings and follow-up tasks to be conducted pursuant to 3.2.3 through 3.2.8, below. Consultant services in 3.2.1 and 3.2.2 are to be completed by June 30, 2004.
  - 3.2.3 Conduct regional meetings to review accepted caseflow management principles, identify effective practices in California criminal caseflow management, and identify potential consulting experts among the attendees. Two meetings will be held in Sacramento, one in Burbank, and one in San Francisco.
  - 3.2.4 Following these meetings, contact courts to obtain additional information on issues/practices discussed in the meetings.
  - 3.2.5 Prepare an effective practices report with emphasis on those practices that can be replicated in additional courts, including implementation strategies.
  - 3.2.6 Work with AOC staff to post effective practices in criminal caseflow management on the Serranus "Promising Practices" Web site.
  - 3.2.7 Complete an implementation plan that will enable communication of information about effective practices and how they might be implemented.

- 3.2.8 Co-facilitate with internal experts one follow-up “Effective Practices of Criminal Caseflow Management in California Trial Courts” one-day seminar in each region (Sacramento, Burbank, and San Francisco) or similar training/implementation program as agreed upon by the AOC and the consultant.

## **4 SPECIFICS OF RESPONSE**

### **4.1 Bidder Information**

- 4.1.1 Contact Information: Provide consultant name, address, telephone number(s), e-mail address, and social security or tax identification number.
- 4.1.2 Project Staff: Provide resumes describing the background and experience of key staff, as well as each individual’s ability and experience in conducting the proposed activities.
- 4.1.3 Experience: Provide a list and description of projects completed during the past five years that were similar in scope, complexity, content, and time frames to that identified in this RFP. Documentation of these projects should include: 1) project title; 2) description of work performed; 3) dates for work performed; 4) organization for whom the work was performed; and 5) name, address, title and telephone number of each organization’s project manager.
- 4.1.4 References: Names, addresses, and telephone numbers of a minimum of five (5) clients for whom the consultant has provided similar services. The AOC may check references listed by the consultant.

### **4.2 Proposal Format**

#### **4.2.1 Format**

All proposals must be submitted with an original and seven copies, on standard white paper, 8 ½ inches by 11 inches in size, typed, font size 12 or greater, double-spaced, one-inch margins, with each page clearly and consecutively numbered.

#### **4.2.2 Signature**

The proposal must be submitted in the legal entity name of the Bidder. The Bidder, a corporate officer, or an authorized agent of the Bidder MUST sign the proposal. Signature Facsimile Stamps will not be accepted.

#### 4.2.3 Table of Contents

A Table of Contents **MUST** be provided which identifies all major sections of the proposal by page number. All exhibits and attachments must also be identified and referenced by page number.

Responses should provide straightforward, concise information that will satisfy the requirements of the solicitation document. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the AOC's instructions, responsiveness to the solicitation document requirements, and completeness and clarity of content.

#### 4.2.4 Timelines

Proposals should include an overall plan with time estimates for completion of all work required by December 31, 2004.

#### 4.2.5 Project Approach and Methodology

Provide a detailed work plan outlining major project tasks/segments and approach, including methods to be used to complete each task outlined in section 3.

Describe how you will work with AOC and trial court project staff to meet project objectives.

Describe support/resources you will need from the Administrative Office of the Courts.

#### 4.2.6 Cost Proposal

Submit a detailed line item cost proposal showing total cost of services to be performed. Fully explain and justify all cost items in a narrative entitled "Cost Justification" which is to include at a minimum:

- Total number of hours required to complete this project
- Estimated number of hours to be spent on each RFP task/segment
- Hourly rate for consulting fees
- Operating and Expenses costs including all incidentals
- Detailed travel costs for any trips that must be made to the AOC offices in San Francisco, Sacramento, and Burbank including expected airfares (if applicable), car mileage, local transportation costs, lodging and meals.

The total cost for consultant services will not exceed \$80,000 inclusive of personnel, materials, computer support, travel, lodging, per diem, and overhead rates. The method of payment to the contractor will be cost reimbursement.

## **5 RIGHTS**

The AOC reserves the right to reject any and all proposals, in whole or in part, as well as the right to conduct or not conduct a similar proposal in the future. This RFP is in no way an agreement, obligation, or contract and in no way is the AOC responsible for the cost of response preparation. One copy of a submitted proposal will be retained for official files and become a public record. The consultant selected will be required to sign a completed State of California Standard Agreement Form. Special terms and conditions, as appropriate, will be included in the agreement, a sample of which are included as Attachment B to this RFP.

## **6 FORM OF SUBMISSION**

Only written responses will be accepted. Oral and/or facsimile responses will not be accepted. The original proposal and seven copies should be sent by mail or by hand delivery to the Nadine McFadden, identified on the first page. Additionally, one electronic copy of the response must be included with the proposal.

## **7 EVALUATION OF PROPOSAL**

The proposal will be evaluated by AOC staff according to the following criteria, in descending order of precedence:

- Quality of work plan submitted
- Credentials of staff to be assigned to the project
- Experience on similar assignments
- Ability to meet timing requirements to complete the project
- Reasonableness of cost projections

## **8 ADDITIONAL REQUIREMENTS**

It may be necessary to interview prospective service providers to clarify aspects of their submittal. If conducted, interviews will likely be conducted by teleconference. The AOC will notify prospective service providers regarding any interview arrangements. Any expenses incurred by the prospective service provider to participate in such interviews are

**9 ATTACHMENTS**

- 9.1 Attachment A, Administrative Rules Governing Requests for Proposals
- 9.2 Attachment B, Terms and Conditions

**10 CONFIDENTIAL OR PROPRIETARY INFORMATION**

- 10.1 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.

**Attachment A**

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

**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 bidding procedures as they relate to the procurement of goods and services. A vendor's proposal is an irrevocable offer for 30 days following the deadline for its submission.
2. A nondiscrimination clause will be included in any contract that ensues from this solicitation document.
3. In addition to explaining the AOC's requirements, the solicitation document includes instructions that prescribe the format and content of proposals.

**B. Errors in the solicitation document**

1. If a vendor submitting a proposal discovers any ambiguity, conflict, discrepancy, omission, or other error in this solicitation document, the vendor shall immediately provide the AOC with written notice of the problem and request that the solicitation document be clarified or modified. Without disclosing the source of the request, the AOC may modify the solicitation document prior to the date fixed for submission of proposals by issuing an addendum to all vendors to whom the solicitation document was sent.
2. If prior to the date fixed for submission of proposals a vendor submitting a proposal knows of or should have known of an error in the solicitation document but fails to notify the AOC of the error, the vendor shall bid at its own risk, and if the vendor is awarded the contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

**C. Questions regarding the solicitation document**

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 in writing, 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. If a vendor submitting a proposal believes that one or more of the solicitation document's requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, the vendor may submit a written request that the solicitation document be changed. The request must set forth the recommended change and vendor's reasons for proposing the change. Any such request must be submitted to Grant Walker at the Administrative Office of the Courts by 5 p.m. on April 9, 2004.

**D. Addenda**

1. The AOC may modify the solicitation document prior to the date fixed for submission of proposals by faxing an addendum to the vendors to whom the solicitation document was sent. If any vendor determines that an addendum unnecessarily restricts its ability to bid, it must notify Grant Walker at the Administrative Office of the Courts no later than one day following the receipt of the addendum.

**E. Withdrawal and resubmission/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 Administrative Office of the Courts no later than 1:00 p.m., April 20, 2004. Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after 1:00 p.m. April 20, 2004.

**F. 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 bid 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.
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.

**G. Rejection of bids**

1. The AOC may reject any or all proposals, in whole or in part, and may or may not waive an immaterial deviation or defect in a bid. 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 government.

**H. Award of contract**

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.

**I. 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 Grant Walker, Administrative Office of the Courts, 455 Golden Gate Ave., San Francisco, CA 94102.

**J. Execution of contracts**

1. The AOC will make a reasonable effort to execute any contract based on this solicitation document within 30 days of selecting a proposal that best meets its requirements.

2. A vendor submitting a proposal must be prepared to use a standard state contract form rather than its own contract form.

**K. Protest procedure**

1. The Administrative Office of the Courts intends to be completely open and fair to all vendors in selecting the best possible system within budgetary and other constraints described in the solicitation document. In applying evaluation criteria and making the selection, members of the evaluation team will exercise their best judgment.
2. A vendor submitting a proposal may protest the award if it meets all 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 AOC's administrative requirements and technical requirements, proposes items of proven quality and performance, and offers a competitive cost to the AOC; and
  - c. The vendor believes that the AOC has incorrectly selected another vendor submitting a proposal for an award.
3. A vendor submitting a proposal who is qualified to protest should contact the Contract Officer at the Administrative Office of the Courts at the address given below.

Contracts Officer  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660

4. If the Contract Officer is unable to resolve the protest to the vendor's satisfaction, the vendor should file a written protest within five working days of the contract award notification. The written protest must state the facts surrounding the issue and the reasons the vendor believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

Grant Walker  
Business Services Manager  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660

A receipt should be requested for hand-delivered material.

**L. News releases**

1. News releases pertaining to the award of a contract may not be made without prior written approval of the Director of the Administrative Office of the Courts.

**M. 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. However, any confidential material submitted by a vendor that was clearly marked as such will be returned upon request.

**N. 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 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.

**Attachment B**

**TERMS AND CONDITIONS**

**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

The State may terminate this Agreement and be relieved of the payment of any consideration to the Contractor if the Contractor fails to perform the provisions of this Agreement at the time and in the manner provided. If the Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost to the State to perform this Agreement shall be deducted from any sum due the Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to the Contractor upon demand.

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.

### SPECIAL PROVISIONS

1. Definitions

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

- A. "**Administrative Director**" refers to that individual, or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- B. "**Amendment**" means a written document issued by the State and signed by the Contractor which alters the Contract Documents and identifies the following: (1) a change in the Work; (2) a change in Contract Amount; (3) a change in time allotted for performance; and/or (4) an adjustment to the Agreement terms.
- C. "**Confidential Information**" means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State's business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- D. 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.**”

- E. “**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.
- F. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the State to do the Contract Work. The Contractor is one of the parties to this Agreement.
- G. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- H. “**Day**” means calendar day, unless otherwise specified.
- I. “**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.
- J. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither the Contractor nor the State are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God or the public enemy;
  - ii. Acts or omissions of any government entity;
  - iii. Fire or other casualty for which a party is not responsible;
  - iv. Quarantine or epidemic;
  - v. Strike or defensive lockout; and,
  - vi. Unusually severe weather conditions.
- K. “**Material**” means all types of tangible personal property, including but not limited to goods, supplies, equipment, commodities, and information and telecommunication technology.
- L. “**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.

- M. “**Project**” refers to all activity relative to this Agreement including activity of the Contractor, its Subcontractors, the State and the State’s representatives.
- N. The “**State**” refers to the Judicial Council of California / Administrative Office of the Courts (“**AOC**”). The State is one of the parties to this Agreement. The term “State” shall also include any individual designated to perform technical and/or administrative functions, as set forth herein.
- O. “**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**.”
- P. “**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement. When the State refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, suppliers, and materialmen.
- Q. “**Task(s)**” means one or more functions, if specified in the Contract Documents, to be performed by the Contractor for the State.
- R. “**Third Party**” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the State or the Contractor, which is not a party to this Agreement.
- S. “**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. Termination Other Than for Cause

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

4. State's Obligation Subject to Availability of Funds

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

5. Agreement Administration/Communication

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

Fred Miller, Project Manager  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102-3660

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

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6. 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.

7. Changes and Amendments

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

8. Accounting System Requirement

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

9. 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 three (3) 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.

10. 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 three (3) years after final payment under this Agreement.

11. Insurance Requirements

A. General. The Contractor shall obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, the State shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. For full coverage, each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.

B. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage and limits no less than the following:

- i. Workers' Compensation at statutory requirements of the State of residency.
- ii. Employers' Liability with limits not less than **\$1,000,000.00** for each accident.
- iii. Commercial General Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence, Combined Single Limit Bodily Injury and Property Damage.
- iv. Business 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 policy required in this Agreement is to contain, or be endorsed to contain, the following provisions:
- v. 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.
  - vi. 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,
  - vii. 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. If at any time the foregoing policies shall be or become unsatisfactory to the State, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the State, the Contractor shall, upon Notice to that effect from the State, promptly obtain a new policy, and shall submit the same to the State, with the appropriate certificates and endorsements, for approval.
- G. All of the Contractor's policies shall be endorsed to provide advanced written Notice to the State of cancellation, nonrenewal, and reduction in coverage, within fifteen (15) Days, mailed to the following address: Judicial Council, Administrative Office of the Courts, Business Services Manager, 455 Golden Gate Ave., 7<sup>th</sup> Floor, San Francisco, CA 94104.

## 12. Services Warranty

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

successors, assigns, customer agencies, and any other recipients of the services provided hereunder.

13. Copyrights and Rights in Data

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

14. Confidentiality

A. Both the State and the Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to the Contractor.

B. The Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Contractor may disclose the State's Confidential Information on a "need to know" basis to the Contractor's employees and 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.

15. 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 (1) use of an official position with the government for private gain; (2) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (3) loss of independence or impartiality; (4) a decision made outside official channels; or (5) 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.**

16. 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.

17. 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.

18. Drug-Free Workplace

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

19. 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.

20. 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.

21. California Law

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

22. 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.

23. 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.

24. Signature Authority

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

25. 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.

26. 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.