



INVITATION FOR BIDS

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

**NEW COPIERS/MULTI-FUNCTION DEVICES
AND MAINTENANCE & SUPPLY AGREEMENT**

IFB NUMBER: YR3867-13

**IT IS UNLAWFUL TO PROHIBIT A PRINTER OR DUPLICATION
CARTRIDGE THAT IS SOLD TO THE COURT FROM BEING
RECYCLED OR REMANUFACTURED, EXCEPT AS SPECIFIED IN
PCC 12156(B).**

ISSUE DATE: JUNE 5, 2013

BIDS DUE:

JUNE 19, 2013 NO LATER THAN 2:00 P.M. PACIFIC TIME

Public Bid Opening immediately following bid time deadline above

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1.0 BACKGROUND INFORMATION

This IFB, associated documents, and/or all addenda that may be issued will be available on the following website, referred to individually and collectively as “Court website”:
<http://www.sdcourt.ca.gov>.

The Superior Court of California, County of San Diego (Court) is soliciting bids from qualified firms to supply, install and network new copiers/multi-function devices (MFD) , provide maintenance and supplies and remove and dispose of old MFDs. It is anticipated that an award will be made on or before June 30, 2013.

The Court currently outright owns its fleet of Toshiba MFDs. All new copiers purchased and installed under this IFB will have full service maintenance and supply agreement included.

2.0 SPECIFICATIONS AND REQUIREMENTS

2.1 EQUIPMENT SPECIFICATIONS

New Equipment shall include and be delivered with the following features and supplies:

- a. 50-Sheet Multi-position stapler finisher
- b. 50-Sheet Reversing Automatic Document Feeder
- c. Automatic Duplexing
- d. 100-Sheet stack bypass tray
- e. Reduction/Enlargement
- f. Page Numbering
- g. Print and Scan Enabled
- h. Security: Hard Drive (HDD) encryption = No Data saved on the MFD hard drive.
- i. Original/Copy Paper Size: Statement-R to Ledger
- j. 50 PPM or less MFD to have Total Paper Supply at least 3,200 sheets
- k. 51 PPM & faster MFD to have Total Paper Supply at least 7,100 sheets
- l. 2-3 Hole Punch
- m. Stand-alone unit
- n. Energy-star rated
- o. One (1) Toner cartridge
- p. One (1) Toner collection bag
- q. Power Filter or Surge Protector, manufacturer recommended

2.2 DELIVERY AND CONTRACT REQUIREMENTS

- a. Contractor will provide inside delivery and installation to various court locations shown below.

San Diego Superior Court Hall of Justice (HOJ) 330 W Broadway San Diego, CA 92101	San Diego Superior Court Courthouse Loading Dock (CH) 225 W "B" Street San Diego, CA 92101	San Diego Superior Court Kearny Mesa Facility (KMF) 8950 Clairemont Mesa Bl. San Diego, CA 92123
San Diego Superior Court Juvenile Court (JUV) 2851 Meadowlark Drive San Diego, CA 92123	San Diego Superior Court Madge Bradley Building (MB) 1409 4 th Ave San Diego, CA 92101	San Diego Superior Court Family Court (FC) 1555 6 th Avenue San Diego, CA 92101
San Diego Superior Court East County Division (EC) 250 E Main St. El Cajon, CA 92020	San Diego Superior Court South County Division (SC) 500 3 rd Ave Chula Vista, CA 91910	San Diego Superior Court North County Division (NC) 325 S Melrose Dr. Vista, CA 92081

- b. Contractor shall provide networking assistance to disconnect and connect required equipment to court network as needed. Contractor shall contact Court Information Technology Support Center (ITSC) to schedule the work at (619) 450-7000.
- c. Contractor will support ITSC during networking process on site and remotely as needed.
- d. Contractor will de-install, remove and properly dispose of old equipment. All hard drives shall be removed and given to the Court Property Unit staff prior to removal of equipment.

2.3 DESCRIPTION OF SERVICES

- a. Full Service Equipment maintenance and supply agreement (EMA) on all newly installed copiers shall include all repairs, preventative maintenance, technical inspections, adjustments, cleaning and lubricating, all parts, labor, travel time, parking expenses and all consumable supplies, except staples and paper. The EMA shall also include emergency toner and toner bag deliveries and the training of Court staff on the operation of copier, as needed.
- b. Contractor will provide IT Technical Support for networked copiers on site and remotely as needed.
- c. Service calls shall be made between 8:00 a.m. - 3:30 p.m., Monday through Friday, excluding Court holidays and/or closures, unless otherwise authorized.
- d. Contractor must have a four (4) business hours response time to all service calls. Response time is defined as a service technician beginning service on the copier within four (4) business hours from receipt of service call. Contractor shall communicate by phone with authorized Court employee placing the call within

90 minutes of receipt of call.

- e. Contractor will remove copier from Court site to complete repairs, if equipment is inoperable for more than two (2) business days. A loaner copier of equal or better speed and features shall be installed as a replacement at the Court location at no extra charge. A signature is required from a Court employee who is responsible for the copier prior to removing any court copier from Court property.
- f. Contractor shall have a standard two (2) business day supply delivery time after receipt of order. Emergency supply shipments shall be delivered within one (1) business day after receipt of order at no additional charge.

2.4 DELIVERABLES

- a. Monthly service history report that includes all copiers that have had three (3) or more service calls within the prior 30-day period. The report is due by the 10th of the following month via email: yvonne.roper@sdcourt.ca.gov.
- b. Proof of Delivery for all shipments to the Court that includes a signature, delivery date, and time.

3.0 TIMELINE FOR THIS IFB

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

EVENT	DATE
IFB issued	June 5, 2013
Deadline for questions	June 10, 2013 2:00 p.m. (PT)
Questions and answers posted (<i>estimate only</i>)	June 11, 2013
Latest date and time bids may be submitted	June 19, 2013 2:00 p.m. (PT)
Bids publicly opened	June 19, 2013 2:05 p.m. (PT)
Notice of Intent to Award (<i>estimate only</i>)	June 21, 2013
Execution of contract (<i>estimate only</i>)	TBD

4.0 IFB ATTACHMENTS

The following attachments are included as part of this IFB:

ATTACHMENT	DESCRIPTION
Attachment 1: Administrative Rules	These rules govern this solicitation.
Attachment 2: General Terms & Conditions	If selected, the person or entity submitting a bid (“Bidder”) may be issued a Court Purchase Order (PO) containing these terms and conditions (the “Terms and Conditions”).
Attachment 3: Bidder’s Acceptance of Terms and Conditions	<p>On this form, the Bidder must indicate acceptance of the Terms and Conditions.</p> <p>Note: A material exception to the Terms and Conditions (addition, deletion, or other modification) will render a bid non-responsive.</p>
Attachment 4: No Conflict of Interest Certification	Bidders must complete certification form and submit it with its bid.
Attachment 5: Darfur Contracting Act Certification	Bidder must complete the Darfur Contracting Act Certification and submit the completed certification with its bid.
Attachment 6: DVBE Incentive Qualification Declaration	If Bidder wishes to claim the DVBE incentive associated with this solicitation, Bidder must submit completed declaration form with its bid.
Attachment 6A: DVBE Incentive Qualification Declaration Instructions	<p>Instructions on how to complete Attachment 6 above.</p> <p>DO <u>NOT</u> SUBMIT WITH YOUR BID.</p>
Attachment 7: DVBE Status Declaration	If Bidder wishes to claim the DVBE incentive where a DVBE incentive is offered, Bidder must submit this status declaration form completed by each DVBE that will provide goods and/or services in connection with its bid. If Bidder is itself a DVBE, Bidder must complete the DVBE Status Declaration form itself. If Bidder will use one or more DVBE subcontractors, each DVBE subcontractor must complete a DVBE Status Declaration form.
Attachment 7A: DVBE Status Declaration Instructions	<p>Instructions on how to complete Attachment 7 above.</p> <p>DO <u>NOT</u> SUBMIT WITH YOUR BID.</p>
Attachment 8: DVBE Post-Contract Certification	If the Contractor used DVBE subcontractors, the Contractor must complete and submit to the Court, within sixty (60) days of receiving final payment under the contract, a Post-Contract Certification Form to verify that each DVBE subcontract was completed as promised. This certification form is required only when DVBE subcontractors are used.
Attachment 9: Pricing Schedule	Bidder must submit pricing on this document.
Attachment 10: Bidder’s Total Bid Offer and Signature Page	Bidder must submit completed form with its bid.

5.0 SUBMISSIONS OF BIDS

- 5.1 Bids should provide straightforward, concise information that satisfies the requirements of the “Bid Contents” section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the IFB’s instructions and requirements, and completeness and clarity of content.
- 5.2 The Bidder must submit its bid in two parts, the non-cost information and the cost information. (See Section 12.0 – Bid Content Checklist). Bids not submitted under sealed envelope may be rejected.
- a. The Bidder must submit **one (1) original** of the non-cost information. The original must be signed by an authorized representative of the Bidder. The non-cost information must be submitted to the Court in a single sealed envelope, separate from the cost information. The Bidder must write the IFB title and number on the outside of the sealed envelope.
 - b. The Bidder must submit **one (1) original** of the cost information. The original must be signed by an authorized representative of the Bidder. The cost information must be submitted to the Court in a single sealed envelope, separate from the non-cost information. The sealed cost information envelope must be plainly marked with the IFB title and number, must show your firm’s name and address, and must be marked with “DO NOT OPEN”, as shown in the following example:

IFB Title: New Copiers/MFDs & EMA
IFB Number: YR3867-13
[Bidder’s name and address]
DO NOT OPEN

- 5.3 Bids may be sent by registered or certified mail, courier service (e.g. FedEx), or delivered in person. All bids must be submitted under **sealed** envelope by the bid due date and time identified in Section 3.0 – Time Line for this IFB to:

Superior Court of California, County of San Diego
Administrative Services Division
330 W. Broadway, Room 357
San Diego, CA 92101

- 5.4 Only written bids will be accepted. Emailed and faxed bids will not be accepted.
- 5.5 Late bids will not be accepted or returned.

6.0 BID CONTENTS

- 6.1 Non-Cost Information. The following must be included in the non-cost information. A bid lacking any of the following may be deemed non-responsive.
- a. Bidder’s Acceptance of Terms and Conditions – Attachment 3
 - i. On Attachment 3, the Bidder must indicate acceptance the Terms and Conditions.

- ii. **Note: A material exception to the Terms and Conditions (addition, deletion, or other modification) will render a bid non-responsive.**

Certifications, Attachments, and other requirements. Bidder must include the following certifications in its bid:

- b. No Conflict of Interest Certification – Attachment 4

Bidder certifies that it has no interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or rule 10.103 or rule 10.104 of the California Rules of Court, which restrict employees and former employees from contracting with judicial branch entities.

- c. Darfur Contracting Act Certification – Attachment 5

- i. Bidder must complete the Darfur Contracting Act Certification and submit the completed certification with its bid.

- ii. Bidder certifies that either (i) it is not a scrutinized company as defined in PCC 10490(b), or (ii) the goods or services the Bidder would provide to the Court are not related to products or services that are the reason the Bidder must comply with Section 13(p) of the Securities Exchange Act of 1934. (Note: PCC 10490(b) defines a “scrutinized company” as “a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement.”)

- d. California Seller’s Permit or a Certificate of Registration

Bidder must submit with its bid, for itself and each of its affiliates that make sales for delivery into California, a copy of either (a) a California seller's permit issued under Revenue and Taxation Code section 6066 et seq. or (b) a certificate of registration issued under Revenue and Taxation Code section 6226.

- e. If (i) Bidder is a corporation, limited liability company, or limited partnership, and (ii) the agreement resulting from this IFB will be performed in California, proof that Bidder is and will remain in good standing and qualified to conduct business in California. Bidders may obtain proof of status on the following State of California website, <http://kepler.sos.ca.gov/>.

- f. Bidder must submit with its bid copies of current business licenses, professional certifications, dealer authorizations or other credentials.

- 6.2 Bid Cost Information. Bidder must use the attachments provided by the Court to submit cost information. All allowable costs must be shown on the Pricing Schedule (Attachment 9) and Bidder’s Total Bid Offer and Signature Page (Attachment 10). Bidder must insert the brand name and model number of product bid and enter unit prices in highlighted area on Attachment 9. The spreadsheet formula will

calculate extended prices and grand totals. All costs of any kind must be included, including but not limited to, (1) all labor costs for work performed, whether done during court business hours, after hours, on overtime, on weekends, or where a shift differential is paid; and (2) all costs for overhead, profit, and any and all incidental costs associated with work preparation, work performed or supplied goods and services.

7.0 OFFER PERIOD

A Bidder's bid is an irrevocable offer for ninety (90) days following the bid 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.

8.0 EVALUATION OF BIDS

The bids will be publicly opened on **Wednesday, June 19, 2013 at 2:00 p.m.** at 330 West Broadway, Room 357, San Diego, CA 92101.

The Court will evaluate the bids as described in the Administrative Rules. Award, if made, will be to the lowest responsible bidder meeting specifications.

The Court may evaluate bids in response to this solicitation without discussions and a contract will be awarded, if at all, to the responsible Bidder that submits the lowest responsive bid after application of any preference, incentive, or discount, if applicable, to the lowest responsive bid.

8.1 The Court may conduct interviews with Bidders to clarify aspects of their bids. The interviews may be conducted in person or by phone. If conducted in person, interviews will likely be held at the Court's offices. The Court will not reimburse Bidders for any costs incurred in traveling to or from the interview location. The Court will notify eligible Bidders regarding interview arrangements.

8.2 If a contract will be awarded, the Court will post a Notice of Intent to Award on the Court website, www.sdcourt.ca.gov. If all bids are rejected or the IFB is cancelled, the Court will post Notice of IFB Cancellation/Rejection of All Bids.

9.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

One copy of each bid will be retained by the Court for official files and will become a public record. The Public Contract Code requires that bids be publicly opened and made available for public inspection. Accordingly, Bidder should not include confidential or proprietary information in its bid.

10.0 DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOALS

Bidder will receive a Disabled Veteran Business Enterprise (“DVBE”) incentive if, in the Court’s sole determination, Bidder has met all applicable requirements. If Bidder receives the DVBE incentive, the dollar amount of its bid will be reduced (for evaluation purposes only) by an amount equal to 3% of the lowest responsible bid, not to exceed \$100,000.

DVBE incentive qualification is not mandatory. Failure to qualify for the DVBE incentive will not render a bid non-responsive.

To receive the DVBE incentive, at least 3% of the contract goods and/or services must be provided by a DVBE performing a commercially useful function. Or, for solicitations of non-IT goods and IT goods and services, Bidder may have an approved Business Utilization Plan (“BUP”) on file with the California Department of General Services (“DGS”).

If Bidder wishes to seek the DVBE incentive:

- a. Bidder must complete and submit with its bid the Disabled Veteran Business Enterprise (DVBE) Incentive Qualification Declaration (Attachment 6). Bidder must submit with the DVBE Incentive Qualification Declaration all materials required in the Bidder Declaration.
- b. Bidder must submit with its bid a Disabled Veteran Business Enterprise (DVBE) Status Declaration (Attachment 7) completed and signed by each DVBE that will provide goods and/or services in connection with the contract. If Bidder is itself a DVBE, it must complete and sign the DVBE Status Declaration. If Bidder will use DVBE subcontractors, each DVBE subcontractor must complete and sign a DVBE Status Declaration. **NOTE:** The DVBE Status Declaration is not required if Bidder will qualify for the DVBE incentive using a BUP on file with DGS.

Failure to complete and submit these forms as required will result in Bidder not receiving the DVBE incentive. In addition, the Court may request additional written clarifying information. Failure to provide this information as requested will result in Bidder not receiving the DVBE incentive.

If Bidder receives the DVBE incentive: (i) Bidder will be required to complete the Disabled Veteran Business Enterprise (DVBE) Post-Contract Certification (Attachment 8) if DVBE subcontractors are used; (ii) Bidder must use any DVBE subcontractor(s) identified in its bid unless the Court approves in writing the substitution of another DVBE; and (iii) failure to meet the DVBE commitment set forth in its bid will constitute a breach of contract.

FRAUDULENT MISREPRESENTATION IN CONNECTION WITH THE DVBE INCENTIVE IS A MISDEMEANOR AND IS PUNISHABLE BY IMPRISONMENT OR FINE, AND VIOLATORS ARE LIABLE FOR CIVIL PENALTIES. SEE MVC

999.9.

11.0 PROTESTS

All protests will be handled in accordance with the San Diego Superior Court's *Procurement Protest Policy* (SDSC Form #ADM-244) available on the Court's website at www.sdcourt.ca.gov. All solicitation specifications and award protests must be submitted in accordance with the procedures set forth in this policy. Failure to comply with these protest procedures 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 no later than 2:00 p.m. on the bid closing date (see timeline in section 3.0 of this IFB). Award protests must be filed in accordance with the timelines specified in the court's *Procurement Protest Policy* (SDSC Form #ADM-244).

Protests must be sent or hand-delivered to:

Superior Court of California, County of San Diego
Administrative Services Department
330 W. Broadway, Room 357
San Diego, CA 92101

12.0 BID CONTENT CHECKLIST

a. Non-Cost Information (**Required**):

- Attachment 3: Bidder's Acceptance of Terms and Conditions
- Attachment 4: No Conflict of Interest Certification
- Attachment 5: Darfur Contracting Act Certification
- California Seller's Permit or a Certificate of Registration
- Proof of good standing and qualification to conduct business in California (for corporations, limited liability companies, or limited partnerships)
- Copies of current business licenses, professional certifications, dealer authorizations or other credentials

- Attachment 6: Disabled Veteran Business Enterprise (DVBE) Bidder Declaration (**Optional**)
- Attachment 7: Disabled Veteran Business Enterprise (DVBE) Declaration (**Optional**)
- Attachment 8: Disabled Veteran Business Enterprise (DVBE) Post-Contract Certification (**Required if Contractor receives the DVBE incentive**)

b. Bid-Cost Information (**Required**):

- Attachment 9: Pricing Schedule
- Attachment 10: Bidder's Total Bid Offer and Signature Page

ATTACHMENT 1 ADMINISTRATIVE RULES GOVERNING IFBS

1. COMMUNICATIONS WITH COURT REGARDING THE IFB

Except as specifically addressed elsewhere in the IFB, Bidders must send any communications regarding the IFB to Yvonne Roper, Buyer at yvonne.roper@sdcourt.ca.gov (the "Solicitations Mailbox"). Bidders must include the IFB Number in subject line of any communication.

2. QUESTIONS REGARDING THE IFB

- A. If a Bidder's question relates to a proprietary aspect of its bid and the question would expose proprietary information if disclosed to competitors, the Bidder may submit the question via email to the Solicitations Mailbox, conspicuously marking it as "CONFIDENTIAL." With the question, the Bidder must submit a statement explaining why the question is sensitive. If the Court 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 Court does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the Bidder will be notified.
- B. Bidders interested in responding to the IFB may submit questions via email to the Solicitations Mailbox on procedural matters related to the IFB or requests for clarification or modification of the IFB no later than the deadline for questions listed in the timeline of the IFB. If the Bidder is requesting a change, the request must set forth the recommended change and the Bidder'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 by posting on the Court website.

3. ERRORS IN THE IFB

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

- C. If a Bidder has submitted a bid and discovers an error in the IFB after the bid due date and time listed in the timeline of the IFB but before the award of the contract, the Bidder may be allowed to withdraw its bid if the Bidder can demonstrate to the Court's satisfaction: (i) an error exists in the IFB, (ii) the error materially affected the Bidder's bid, and (iii) the Bidder did not discover the error prior to submission of its bid.

4. ADDENDA

- A. The Court may modify the IFB before the bid due date and time listed in the timeline of the IFB by issuing an addendum. Any addendum will be posted to the Court website, <http://www.sdcourt.ca.gov>. It is each Bidder's responsibility to inform itself of any addendum prior to its submission of a bid.
- B. If any Bidder determines that an addendum unnecessarily restricts its ability to bid, the Bidder shall immediately notify the Court via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF BIDS

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

6. ERRORS IN THE BID

If errors are found in a bid, the Court may reject the bid; 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 Bidder (if selected for the award of the contract), the Bidder will be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the bid.

7. RIGHT TO REJECT BIDS

- A. Before the bid due date and time listed in the timeline of the IFB, the Court may cancel the IFB for any or no reason. After the bid due date and time listed in the timeline of the IFB, the Court may reject all bids and cancel the IFB if the Court determines that: (i) the bids 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.
- B. The Court may or may not waive an immaterial deviation or defect in a bid. The Court's waiver of an immaterial deviation or defect shall in no way modify the

IFB or excuse a Bidder from full compliance with IFB specifications. Until a contract resulting from this IFB is signed, the Court reserves the right to accept or reject any or all of the items in the bid, to award the contract in whole or in part and/or negotiate any or all items with individual Bidders 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 Bidder.

- C. The Court reserves the right to issue similar IFBs in the future. The IFB is in no way an agreement, obligation, or contract and in no way is the Court responsible for the cost of preparing the bid.
- D. Bidders are specifically directed **NOT** to contact any Court personnel or consultants for meetings, conferences, or discussions that are related to the IFB at any time between release of the IFB and any award and execution of a contract. Unauthorized contact with any Court personnel or consultants may be cause for rejection of the Bidder's bid.

8. EVALUATION PROCESS

- A. All bids that are received by the bid due date will be reviewed to determine the extent to which they comply with IFB requirements.
- B. Bids that contain false or misleading statements may be rejected if in the Court's opinion the information was intended to mislead the Court regarding a requirement of the IFB.
- C. All figures entered on the cost information must be clearly legible.
- D. During the evaluation process, the Court may require a Bidder's representative to answer questions with regard to the Bidder's bid. Failure of a Bidder to demonstrate that the claims made in its bid are in fact true may be sufficient cause for deeming a bid non-responsive.
- E. During the evaluation process, the Court may perform certain checks to determine if a Bidder is deemed ineligible for contract award. For example, Bidder must be qualified to do business in California and in good standing, and must not be in violation of the Darfur Contracting Act.
- F. Award, if made, will be to the responsible bidder who certifies they can deliver and perform services as described in IFB Section 2.0 Specifications and Requirements and that has the lowest bid price. A Bidder's signature on Bidder's Total Bid Offer & Signature Page (Attachment 10) certifies that Bidder possesses the equipment, manpower and required experience and is fully capable of performing the relevant contract.

- G. 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 Bidders, who may attend the coin toss at their own expense.
- H. If a contract will be awarded, the Court will post a notice of intent to award on the Court website, <http://www.sdcourt.ca.gov>.

9. DISPOSITION OF MATERIALS

All materials submitted in response to the IFB will become the property of the Court and will be returned only at the Court's option and at the expense of the Bidder submitting the bid.

10. PAYMENT

- A. Payment terms will be specified in any contract that may ensue as a result of the IFB. Court standard payment terms are Net 30 Days.
- B. **THE COURT DOES NOT MAKE ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon delivery of goods and completion of tasks as provided in the contract between the Court and the selected Bidder.

11. AWARD AND EXECUTION OF CONTRACT

- A. Award of contract, if made, will be in accordance with the IFB to a responsible Bidder submitting a bid compliant with all the requirements of the IFB and any addenda thereto (including any administrative or technical requirements), except for such immaterial defects as may be waived by the Court.
- B. A purchase order (PO) may be awarded to the successful Bidder. Goods delivered and services rendered shall be accompanied by a priced invoice and/or packing list or documentation itemizing all goods and services and that contains at the least:

Name of successful Bidder, purchase order number, date of order, description of goods delivered and services rendered and delivery locations.

Successful Bidder is required to obtain a signature from court staff indicating receipt and acceptance of goods delivered and services rendered.

- C. The Court will make a reasonable effort to execute any contract based on the IFB directly after selecting a bid that best meets its requirements. It is anticipated that execution of said contract will occur on or before June 30, 2013.
- D. Any work performed before receipt of a Court PO shall be at Bidder's own risk.

12. FAILURE TO EXECUTE THE CONTRACT

The period for execution set forth in Section 11 (“Award and Execution of Contract”) may only be changed by mutual agreement of the parties. Failure to execute the contract 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 contract. If the successful Bidder refuses or fails to execute the contract, the Court may award the contract to the next qualified Bidder.

13. NEWS RELEASES

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of Michael Roddy, Executive Officer.

14. ANTI-TRUST CLAIMS

- A. In submitting a bid to the Court, the Bidder offers and agrees that if the bid is accepted, Bidder 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 Bidder for sale to the Court pursuant to the bid. Such assignment shall be made and become effective at the time the Court tenders final payment to the Bidder. (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 Bidder 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 Bidder, the Court shall, within one year from such demand, reassign the cause of action assigned under this section if the Bidder 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.)

15. AMERICANS WITH DISABILITIES ACT

The Court complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities should be directed to the Court’s ADA Coordinator at ada.coordinator@sdcourt.ca.gov.

END OF ATTACHMENT 1

ATTACHMENT 2 General Terms and Conditions

1. **Accounting.** Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (U.S. GAAP).
2. **Audit; Retention of Records**
 - A. **Audit.** Upon reasonable notice, Contractor will provide to Court, to any federal or state entity with monitoring or reviewing authority, or to Court's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under this Agreement, and, as necessary, to determine compliance with relevant federal, state, and local statutes, rules, and regulations. Contractor agrees to provide Court with all relevant information requested, and will permit access to its premises at reasonable times, for the purpose of interviewing employees and inspecting and copying any relevant records.
 - B. **Retention of Records.** Contractor will 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. The minimum retention period will be four years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.
3. **Assignment.** Contractor will not assign its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of Court, in the form of an Amendment.
4. **Certifications and Representations.** 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:
 - A. **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.
 - B. **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.
 - C. **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Court Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
 - D. **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 Court.

- E. 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.
- F. Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.
- G. 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.
- H. Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.
- I. 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.
- J. 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.
- K. 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.
- L. National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
- M. 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.

- N. **Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the Court.
- O. **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.
- P. **Choice of Law; Jurisdiction and Venue**
 - A. **Choice of Law.** This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions.
 - B. **Jurisdiction and Venue.** Contractor irrevocably consents to the exclusive jurisdiction and venue of the state and federal Courts located in San Diego, California in any legal action concerning or relating to this Agreement.

5. **Statement of Work; Acceptance**

- A. **Statement of Work.** Contractor will perform and complete all Work described in the Statement of Work, in compliance with the requirements of this Agreement, and to the satisfaction of Court.
- B. **Acceptance.**
 - B.1 All Work provided by Contractor under this Agreement is subject to written acknowledgement and acceptance by Court's Project Manager. The Court's Project Manager will apply the acceptance criteria set forth in the Statement of Work, (including timeliness, completeness, technical accuracy and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the Work.
 - B.2 If the Work is not acceptable, Project Manager shall detail its failure to meet the acceptance criteria. Contractor shall have ten business days from receipt of Acceptance and Sign-Off Form to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the Work and the Project Manager shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this Section 5 until Contractor's receipt of Court's written acceptance of such corrected Work; provided, however, that if Court rejects any Work on at least two (2) occasions, Court may terminate that portion of this Agreement which relates to the rejected Work at no expense to Court.
- C. **Non-Exclusivity.** This is a non-exclusive agreement. Court reserves the right to perform, or have others perform the Work of this Agreement. Court reserves the right to bid the Work to others or procure the Work by other means.

6. Changes in Work; Stop Work

A. Changes in Work.

A.1. Court reserves the right to require Contractor to make changes in the Work, as set forth in Description of Services, which may include additions, deletions, or modifications to the Work, like changes in the number of pieces moved, or in the timing or level of effort for the Work.

A.2. For any change proposed by Court or Contractor, Contractor will submit in writing:

- a) a description of the proposed change and the reasons for the change;
- b) a summary of the total compensation to be paid Contractor with a breakdown of tasks and costs, including any reduction in work or costs resulting from the change; and
- c) a statement of the expected impact on schedule.

A.3. If Court and Contractor agree on a change, Court will issue an Amendment documenting the change, for the parties' execution.

A.4. If the parties cannot agree to the terms of a change, Contractor will proceed diligently with Work unless otherwise directed by Court, and any continuing disagreement will follow the process set forth in the provisions entitled "Dispute Resolution." Contractor should not proceed with any change prior to receiving a written directive or Amendment from Court. All costs for changes performed by Contractor without Court's prior written approval will be at Contractor's sole risk and expense.

B. Stop Work.

B.1. Court may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work, for ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree.

B.2. Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to Court during the applicable Stop Work period. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, Court will either cancel the Stop Work Order or terminate the Work, as provided in Section 18 (Termination).

B.3. If a Stop Work Order is cancelled, or the period of the Stop Work Order or any extension thereof expires, Contractor will resume Work. Court may make an equitable adjustment in the delivery schedule, the Contract Amount, or both, if (a) the Stop Work Order increases Contractor's costs or the time required for performance; and (b) Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the applicable Stop Work period.

B.4. If a Stop Work Order is not canceled and the Work covered by the Stop Work Order is terminated other than for cause, Court may allow reasonable costs resulting from the Stop Work Order.

B.5. Court will not be liable to Contractor for loss of profits because of any Stop Work Order.

7. Standard of Performance; Warranties

- A. **Standard of Performance.** Contractor will perform all Work with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Contractor understands that Court relies on the accuracy, competence, and completeness of Contractor's services.
- B. **Warranties.**
- B.1 Contractor warrants and represents that the Work and all Deliverables furnished will conform to the requirements of this Agreement and such Work and Deliverables will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship, and, to the extent not manufactured pursuant to detailed designs furnished by Court, free from defects in design. Court's approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.
- B.2 **Non-Infringement.** Contractor represents and warrants to Court that it does and will either own, or be authorized to use for its own and the Court's benefit, all intellectual property rights used and to be used in connection with providing and/or performing the Work.
- B.3 All warranties will inure to Court, its successors, assigns, customer agencies, and users of the Work provided hereunder.
- B.4 Unless otherwise specified, the warranties set forth in this Section 7 commence after Work has been approved and accepted by the Court.
- C. **Personnel Requirements.**
- C.1 Contractor will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Work. For continuity, Contractor will endeavor to retain the same individuals during the performance of Work.
- C.2 Court reserves the right to disapprove Contractor's personnel, if dissatisfied with their performance. Upon receipt of such Notice, Contractor will immediately assign replacement personnel, with equivalent or greater experience and skills, who are acceptable to the Project Manager.
- C.3 Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Work. If Contractor does not promptly furnish replacement personnel acceptable to the Project Manager, Court may terminate this Agreement for cause.
- D. **Background Checks.** For Contractor's employees, Subcontractors, or agents performing work, and with access to Court's systems (on-site or remotely) in the performance of their Work under this Agreement, Court will have the right, but not the obligation, to request or conduct a background check, before granting access to Court's premises or systems or at any other time. Contractor will cooperate with Court in performing any background checks, will provide prompt Notice to Court of (i) any person refusing to undergo such background check, and will immediately remove such person from the project, and (ii) the results of any

background check as requested by Court. Contractor will obtain all releases, waivers, or permissions required for the release of such information to Court. Any additional costs will be borne by Contractor.

8. Confidential Information

- A. **Requirements of Strict Confidence.** While performing Work under this Agreement, Contractor and its Subcontractors may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to Court, its personnel, Court users, or other government entity. Neither Contractor nor its Subcontractors acquires any right or title to the Confidential Information, and Contractor and its Subcontractors agree not to disclose any Confidential Information to any Third Party. All Confidential Information disclosed to Contractor or its Subcontractor will be held in strict confidence and used only in performance of Work under this Agreement. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide Notice to Court, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.
- B. **Permissible Disclosures.** Contractor may disclose Court's Confidential Information on a "need to know" basis to Contractor's employees and Subcontractors and any representatives of Court that are working on the project. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to (i) comply with any applicable law, rule, regulation, or ruling; (ii) respond to any enforceable summons or subpoena; or (iii) enforce its rights under this Agreement.

9. Consideration. The consideration paid to Contractor is the entire compensation for all Work performed under this Agreement, including all of Contractor's expenses incurred, such as travel and per diem expenses, unless otherwise expressly provided, as set forth in Attachment 9 - Pricing Schedule.

- A. **Payment Does Not Imply Acceptance of Work.** Court's payment will not relieve Contractor from its obligation to replace unsatisfactory Work, even if the unsatisfactory character of such Work may have been apparent or detected at the time such payment was made. Work, Data, or components that do not conform to requirements of this Agreement will be rejected, and will be replaced by Contractor, without delay or additional cost to Court.
- B. **Disallowance.** If Contractor receives payment from Court for a service or reimbursement that is later disallowed or rejected by the Court, Contractor will promptly refund the disallowed amount to Court upon Court's request. At its option, Court may offset the amount disallowed from any payment due to Contractor, under this Agreement or any other agreement.

10. Contractor Status

- A. **Independent Contractor.**
- A.1 Contractor, Subcontractors, and their officers, agents, employees, and all others acting on behalf of Contractor for this Work, act as independent

contractors and not as Court agents, officers or employees. Contractor has no authority to bind or incur any obligation on behalf of Court. Except as expressly provided in the Statement of Work, Contractor has no authority or responsibility to exercise any rights or power vested in Court.

- A.2 This Agreement will not be considered under any circumstance to create a joint-venture relationship.
- A.3 If any governmental entity concludes that Contractor is not an independent contractor, Court may terminate this Agreement immediately upon Notice. Alternatively, Contractor may agree to a reduction in Court's financial liability, so that Court's total costs under this Agreement do not exceed the originally contemplated amount.

B. Contractor's Employees.

- B.1 Contractor's employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor.
- B.2 Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent contractors.
- B.3 If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor's independent status with respect to Court, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) Court will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.
- B.4 Contractor will indemnify and hold Court harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between Court and any Contractor or Subcontractor personnel.

- C. Exclusive Control of Means and Method of Performance.** Contractor will determine the method, details, and means of performing or supplying the Work under this Agreement. Contractor will be responsible to Court only for the requirements and results specified in this Agreement and more particularly as set forth in the Statement of Work, and will not be subjected to Court's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor will have the "right to control" and bear the sole responsibility for the job site conditions and safety.

D. Permits, Laws, and Regulations.

- D.1 Contractor must observe and comply with all applicable laws, rules, and regulations affecting the Work. During the term of this Agreement, Contractor will obtain and keep in full force and effect, all permits and

licenses necessary to accomplish the Work. Such permits and licenses will be made available to Court, upon request.

- D.2 Contractor will promptly provide Notice to Court of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Work in question without resolution of the conflict, Contractor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

- E. **Signature Authority.** Contractor has all requisite power and authority to conduct its business, and to execute and perform the Agreement.

- 11. Dispute Resolution.** Court and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor will meet with Court's Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

A. **Escalation.**

- A.1 If a dispute remains unresolved following Notice by either party, each party's Chief Executive Officer ("CEO") or designated representative will meet to exchange information and attempt resolution within fifteen days of the effective date of the Notice.
- A.2 If the matter is not resolved as set forth in previous section 11.A.1, the aggrieved party will submit a second Notice which will:
- a) provide detailed factual information;
 - b) identify the specific provisions in this Agreement on which any demand is based;
 - c) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and
 - d) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly reflects the necessary adjustment. Notice will be signed by an authorized representative of the aggrieved party.
- A.3 Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen days after receipt of a written request, unless otherwise agreed.

B. **Confidentiality During Dispute Resolution.**

- B.1 All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.
- B.2 Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Work, including Work associated with the dispute, unless otherwise directed by Court. Contractor's failure

to diligently proceed in accordance with Court's instructions will be considered a material breach of the Agreement.

12. Force Majeure

- A. Force Majeure events include, but are not limited to:
1. catastrophic acts of nature, or public enemy;
 2. civil disorder;
 3. fire or other casualty for which a party is not responsible; and
 4. quarantine or epidemic.

The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event.

B. Any assertion of a Force Majeure event by Subcontractors will be attributed to Contractor.

- 13. Indemnity.** Contractor will defend (with counsel satisfactory to the Court or its designee), indemnify and hold harmless the Court and the Court 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.

14. Insurance

- A. **General Insurance Requirements.** Contractor will obtain and maintain the minimum insurance set forth in subparagraph B, below. By requiring such minimum insurance, Court will not be deemed or construed to have assessed the risks applicable to Contractor. Contractor will 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, Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, for three years from the date of completion of the Work.

B. Minimum Scope & Limits of Coverage.

Contractor will maintain the following coverages:

1. Workers' Compensation at statutory requirements of the state of residency.
2. Employers' Liability with minimum limits of **\$1,000,000.00** for each accident.
3. Commercial General Liability Insurance with minimum limits of **\$1,000,000.00** for each occurrence.
4. Combined Single Bodily Injury and Property Damage and Personal Injury. If coverage is subject to an aggregate limit, that aggregate limit will be twice the occurrence limit.
5. Business Automobile Liability Insurance with minimum limits of **\$1,000,000.00** for each occurrence.
6. Excess coverage, at the same limits specified for Comprehensive General Liability: Contractual Liability, Independent Contractor, Broadform Property Damage, Personal Injury, Product, and Completed Operation coverage.

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

D. 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.

E. Endorsements; Additional Insureds. 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 San Diego, 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.

F. 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.

G. 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.

H. 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 Court and Court Personnel, and the basic coverage insurer waives any and all rights of subrogation against Court and Court 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 San Diego, 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.

- I. 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.
- J. 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.
- 15. Limitation of Liability.** Court will not be liable to Contractor, its officers, employees, Subcontractors, or Third Parties for any indirect, special, or consequential damages, including lost profits or revenue, arising from or relating to this Agreement, regardless whether Court was advised of the possibility of such loss or damage. In no event will Court's liability for direct damages arising from or related to this Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by Court under this Agreement.
- 16. Modification.** No modification or change to this Agreement will be valid without written approval by Court, in the form of an Amendment, including any changes to the Statement of Work.
- 17. Prohibited Bids for End Product of this Agreement.** No person, firm, or subsidiary thereof which has been awarded a consulting services agreement may submit a bid for, or be awarded an agreement for, the provision of services, procurement of Materials or Data, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of this Agreement. This provision will not apply to any person, firm, or subsidiary thereof, which is awarded a subcontract under this Agreement in an amount no more than ten percent of the total monetary value of this Agreement.
- 18. Termination**

 - A. 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.

- B. 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.
- C. 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.
- D. Rights and Remedies of the Court.**
- D1. **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 Court 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.
- D2. **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.

D3. **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.

19. **Union Activities Restrictions.** 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.
20. **Domestic Partners, Spouses, and Gender Discrimination.** 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.
21. **Child Support Compliance Act.** 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.
22. **Priority Hiring.** 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.
23. **Loss Leader Prohibition.** Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.
24. **Sweatshop Labor.** Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial

Relations website located at www.dir.ca.gov, and PCC 6108. Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the Court.

25. **Antitrust Claims.** 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.
26. **Time is of the Essence.** Time of performance is of the essence in the performance of services by Contractor under this Agreement.
27. **Waiver; Severability**
- A. **Waiver of Rights.** Court's action, inaction, or failure to enforce any right or provision of this Agreement is not a waiver of its rights, and will not prevent Court from enforcing such rights on any future occasion.
- B. **Severability.** The provisions of this Agreement will be effective in all cases, unless otherwise prohibited by applicable state or federal law. The provisions of this Agreement are separate and severable. The invalidity of any sentence, paragraph, provision, section, or portion of this Agreement will not affect the validity of the remainder of this Agreement.
28. **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. Terms that will survive termination or expiration of this Agreement include, but are not limited to: Assignment, Audit Rights and Retention of Records, Confidentiality, Indemnification, Limitation of Liability, Warranties.
29. **Entire Agreement**
- A. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and will not be used to interpret or determine the validity of this Agreement.

- B. This Agreement was negotiated between the parties, and neither party “prepared” this Agreement for purposes of California Civil Code §1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.
- C. This Agreement constitutes the entire and final understanding of the parties regarding this matter, and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, offers, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to the this matter.

END OF ATTACHMENT 2