



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO**

REQUEST FOR PROPOSAL

ALTERNATIVE DISPUTE RESOLUTION EVALUATION SERVICES

RFP NUMBER 48000000-20

**PROPOSALS DUE BY
February 25, 2010 by 4:00 P.M.**

INTRODUCTION – SUMMARY OF THE INTENDED PROCUREMENT

1. **The Court intends to award a contract to a vendor that is able to evaluate Alternative Dispute Resolution (ADR) Programs, as further described in Section 4 of this RFP. However, the Court reserves the right to reject any or all proposals, in whole or in part, submitted in response to this RFP. The Court further reserves the right to make no award and to modify or cancel, in whole or in part, this RFP.**

1.2 Posting of RFP

The RFP and any addenda that may be issued will be available on the Court's website: www.solano.courts.ca.gov

2. PROCUREMENT AND EVALUATION PROCESS

2.1 Procurement Schedule and General Instructions

The Court has developed the following list of key events from the issuance of the RFP through notice to contract award.

All deadlines are subject to change at the Court's discretion.

No.	EVENTS	Key Dates
1	Issue RFP	January 7, 2010
2	Proposal Closing Time	February 25, 2010; 4:00 P.M.
3	Potential Interviews	March 11 and 12, 2010
4	Notice of Award (estimated)	March 19, 2010
5	Enter into contract	March 26, 2010

2.2 Contact List

Submittal Contact:

Averi Lowe
Procurement Technician
Superior Court of California, County of Solano
600 Union Avenue
Fairfield, CA 94533
Office (707) 207-7468

Project Manager:

Grace Andres
Court Program Manager
Superior Court of California, County of Solano
600 Union Avenue, 3rd Floor
Fairfield, CA 94533
Office (707) 207-7440

Contracting Officer:

Brian K. Taylor
Court Executive Officer
Superior Court of California, County of Solano
600 Union Avenue
Fairfield, CA 94533
Office (707) 207-7475

Court Executive Officer:

Brian K. Taylor
Court Executive Officer
Superior Court of California, County of Solano
600 Union Avenue
Fairfield, CA 94533
Office (707) 207-7475

2.3 Submission of Proposal

The following must be received no later than the Proposal Due Date and time specified in Section 2.1. (The “Proposal Closing Time”) at the address listed in Section 2.2 for the Submittal Contact:

- One (1) unbound original of the technical and a separate unbound original of the cost proposal;
- Five (5) bound hard copies of the technical proposal; and
- One (1) electronic copy of the technical proposal in MS Document or PDF format and one (1) electronic copy of the cost proposal in Excel sent to: allowe@solano.courts.ca.gov

All proposals must be submitted in double envelopes that are sealed. The outside envelope must be clearly marked with the RFP Number, Project Title, the Proposal Due Date, and the proposer’s name. **The cost proposal must be included in the proposal in a separately sealed envelope and should be marked as “Cost Proposal” with the proposer’s name.**

The hard copies and electronic copies of the technical proposal must not include any pricing information.

Proposals received prior to the Proposal Closing Time and are marked properly will be securely kept, unopened until the Proposal Closing Time. Late proposals will not be considered.

All proposals must be delivered via U.S. Mail, common carrier, or hand-delivery. A receipt should be requested for hand-delivered material.

The proposer is solely responsible for ensuring that the full proposal is received by the Court in accordance with the solicitation requirements, prior to the date and time specified in the solicitation, and at the place specified. The Court will not be responsible for any delays in mail or by common carriers or by transmission errors or delays or missed delivery.

2.4 Contact with Court

Questions regarding this RFP must be in writing and directed to the Court’s Submittal Contact (Section 2.2). Proposers are specifically directed NOT to contact any other Court personnel regarding this RFP at any time prior to the RFP award. Unauthorized contact with any Court personnel may be cause for rejection of the proposer’s proposal.

2.5 Reservation of Rights

The Court reserves the right to reject any or all proposals and quotes, in whole or in part, and may or may not waive a deviation or defect in a proposal. The Court’s waiver of a deviation or defect will in no way modify the solicitation document or excuse a proposer from full compliance with other solicitation document specifications. The Court reserves the right to seek clarification or additional information from any proposer throughout the solicitation process.

The Court reserves the right to negotiate with proposers, who have presented, in the opinion of the Court, the best proposal in an attempt to reach a contract. If no contract is reached, the Court can negotiate with other proposers or make no award under this RFP. At any time, the Court can reject all proposals and make no award under this RFP. Proposals 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 RFP.

2.6 RFP Addenda

The Court may modify this solicitation document prior to the submission due date by providing notice to potential proposers. If any potential proposer determines that an addendum unnecessarily restricts its ability to propose, it must notify the Court no later than three (3) business days following the date the addendum was provided. Pricing will reflect all addenda issued by the Court. Failure to do so will permit the Court to interpret the proposal to include all addenda issued in any resulting contract.

2.7 Knowledge of Requirements

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

Proposers shall be responsible for knowledge of all items and conditions contained in their proposals and in this RFP, including any Court issued clarifications, modifications, amendments, or addenda. The Court will provide notice to prospective proposers and post addenda or clarifications on the Court website (Section 1.2); however, it is the proposer’s responsibility to ascertain that the proposal includes all addenda issued prior to the proposal due date.

2.8 Proposal Preparation Costs

Proposers submitting proposals do so entirely at their expense. There is no express or implied obligation by the Court to reimburse a proposer for any costs incurred in preparing or submitting proposals, providing additional information when requested by the Court, participating in any selection interviews, or participating in this procurement.

2.9 Interviews

The Court reserves the right to require, and each proposer must be prepared to conduct, oral presentations and other discussions (written or verbal) on the content of its proposal. The Court requires that the proposed Evaluator be present during the interviews. The Court reserves the right to interview one or more proposers, or none. Proposers will be responsible for all costs related to the interview, which, at the Court's sole discretion, may be in person and/or by teleconference.

2.10 Confidential or Proprietary Information

All materials submitted in response to this solicitation will become the property of the Court. Any information that a proposer considers as confidential but does not meet the disclosure exemption requirements of the California Public Records Act should not be included in the proposer's proposal as it may be made available to the public.

2.11 Error in Submitted Proposal

If an error is discovered in a proposer's proposal, the Court may at its sole discretion retain the proposal and allow the proposer to submit certain arithmetic corrections. In determining if a correction will be allowed, the Court will consider the conformance of the proposal to the format and content required by the solicitation, the significance, and magnitude of the correction, and any unusual complexity of the format and content required by the solicitation.

If prior to an award, a proposer discovers a mistake in their proposal that renders the proposer unwilling to perform under any resulting contract, the proposer must immediately notify the Court in writing and request to withdraw the proposal.

2.12 Authorized Signatures, Validity Period of Proposals

Proposals must include the vendor name address, telephone and facsimile numbers, and federal tax identification number. The proposal must be signed by a duly authorized officer or employee of the vendor and include the name, title, address, and telephone number of the individual who is the proposer's designated representative.

Proposals will be valid for ninety (90) days after the proposal due date specified in Section 2.1. In the event a final contract has not been awarded by the date specified in Section 2.1, the Court reserves the right to negotiate extensions to the proposal validity date.

2.13 Amendment or Withdrawal of Proposals

A vendor may amend its proposal prior to the RFP proposal closing time. All amendments must be in writing and received by the Court Submittal Contact (Section 2.2) prior to the RFP proposal closing time.

A proposer may withdraw its proposal at any time prior to the RFP closing time by notifying the Court Submittal Contact (Section 2.2) in writing of its withdrawal. Amendments or withdrawals offered in any other manner than described above will not be considered.

2.14 Covenant Against Gratuities

Proposer warrants by signing its proposal that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by the proposer or any agent, director, or representative of the proposer, to any officer, official, agent, or employee of the Court with a view toward securing award of or securing favorable treatment with respect to any determination concerning the performance of any resulting contract. **For breach or violation of this warranty, the Court will have the right to terminate any resulting contract in whole or in part.** The right and remedies of the Court provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the resulting contract.

2.15 Evaluation Criteria

The Court will conduct a comprehensive, fair, and impartial evaluation of all proposals received in response to this RFP. Proposals will be evaluated to determine the proposal or proposals that offer the best value to the Court. The evaluation will be based upon the following criteria, listed in order of descending priority. Although some factors are weighed more than others, all are considered necessary, and a proposal must be technically acceptable in each area to be eligible for the award. With regard to cost, the Court reserves the right, in its sole discretion, to reject any proposal whose price is outside of the competitive range.

- A. Experience on similar assignment;
- B. Ability to meet timing requirements to complete the project;

- C. Cost/pricing factors;
- D. Implementation plan;
- E. Interview; and
- F. References.

3. PROPOSAL FORMAT AND CONTENT

Proposals should provide straightforward, concise information that satisfies the requirements of this solicitation. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the Court's instructions, requirements of this solicitation, and the completeness and clarity of content. Proposals must include a Table of Contents, Executive Summary, Company Background Information, Prior Experience and References, Description of Work, and Cost Proposal (Cost proposals are submitted separately per Section 2.3). Proposals will be double-sided and in Times New Roman 12 font.

3.1 Executive Summary Content

The proposer must provide an Executive Summary of its proposal. The Executive Summary should be a "high-level", general overview of how the Proposer proposes to accomplish the requirements of this RFP. The Executive Summary should demonstrate the proposer's understanding of the RFP requirements and include the vendor information, validity period, and authorized signature, as required in Section 2.12.

3.2 Company Background Information

The Court requires the vendor to be reputable, of strong financial standing, and experienced in providing Alternative Dispute Resolution Program Evaluation Services. The vendor's proposal must provide the information requested below. If the proposer is a joint venture, information about the subcontractor(s) must be submitted separately. The vendor will provide the following information as follows:

- A. Complete name and address;
- B. Federal tax identification number;
- C. If incorporated, provide which state the vendor is incorporated;
- D. Total number of years in business;
- E. Number of years providing consulting services similar in size and scope to those requested in this RFP;
- F. Significant transactional events in the past five (5) years such as: bankruptcies, mergers, acquisitions, initial public offerings (IPO's);
- G. Annual contract value of the vendor's three (3) largest contracts for similar products and services in the past three (3) years; and
- H. If subcontractors are proposed for this RFP, describe the vendor's contract management process for subcontractors included in the vendor's proposal and provide copies of signed formal contracts (e.g., teaming contracts or any other legally binding document), if any exist, between the vendor and each proposed subcontractor.

3.3 Prior Experience and References

The Court requires the vendor and its subcontractors to have prior experience in all aspects of the services described in this RFP for customers similar to or with relevance in the size, complexity and scope of this RFP. The vendor shall:

Describe the vendor's experience as it pertains to providing services similar in size, complexity and scope as those required under this RFP and in the manner required pursuant to this RFP.

The vendor will provide one (1) Alternative Dispute Resolution evaluation report from the past 24 months which the vendor created for another customer. The vendor will include a brief description of the scope of services provided to the customer and the duration of the contract. The Court may contact the customer to discuss the evaluation report that the vendor submitted.

3.4 Description of Work

The proposer will describe how they will meet the requirements described in Section 4, (The Statement of Work).

3.5 Cost Proposal

The proposer will submit a cost proposal as outlined in Section 2.3 of this RFP.

4. STATEMENT OF WORK

4.1 Background

The Court has received grant funds to hire a professional evaluator to assess newly implemented programs within its Alternative Dispute Resolution (ADR) Programs.

4.2 Summary of Work

The proposer will:

- a. Work with the Court Project Manager;
- b. Provide the Court Project Manager monthly updates of the evaluation progress;
- c. Review current and proposed ADR programs;
- d. Evaluate Straus Training;
- e. Evaluate each ADR program's strengths, weakness, overall success and deficiencies;
- f. Assess whether the ADR programs achieved their goals and objectives;
- g. Gather and analyze statistical data;
- h. Gather, and analyze surveys;
- i. Provide written reports, which include findings and recommendations; and
- j. Provide an oral report to the Alternative Dispute Resolution Committee regarding findings and recommendations from the final written report.

4.3 The Court's Responsibilities

The Court Project Manager will:

- a. Provide information on current and proposed ADR programs; and
- b. Provide statistical data;
- c. Provide surveys.

4.4 Project Schedule

The proposer will complete and submit the work pursuant to the following schedule:

Task	Description / Deliverables	Project Schedule
1	Meet with the Court Project Manager regarding ADR programs for evaluation.	March 26, 2010
2	Review/Analyze current and proposed ADR programs.	April 1-December 31, 2010
3	Collect and review/analyze ADR programs statistical data.	April 1-December 31, 2010
4	Submit mid-year written report to the Court Project Manager.	July 30, 2010
5	Submit final written report to the Court Project Manager.	January 10, 2011
6	In person, present to the Alternative Dispute Resolution Committee the findings and recommendations in the final written report.	January 28, 2011
7	Completion date with invoice.	January 31, 2011

End of Section 4

5. GENERAL TERMS AND CONDITIONS-CONSULTING

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. 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 California in any legal action concerning or relating to this Agreement.

5. Certifications and Representations

Contractor's signature on the Executive Summary shall also serve as certification for the following paragraphs, A-F.

A. **ADA Compliance.** Contractor certifies that it and its Subcontractors comply 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.

B. **FEHA Compliance.** Contractor certifies that it and its Subcontractors comply with all applicable provisions of the Fair Employment and Housing Act, Calif. Gov. Code, § 12990 *et seq.*, and all applicable regulations promulgated under Calif. Code of Regulations, title 2, § 7285 *et seq.*

Contractor certifies that it and its Subcontractors will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, disability, marital status, age (over 40), sex, or sexual orientation. Contractor will ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

Contractor certifies that it and its Subcontractors will not unlawfully harass, including sexually harass, any persons with whom Contractor or its Subcontractors interact in the performance of this Work. Contractor and its Subcontractors will take all reasonable steps to prevent such harassment.

- C. **Drug-free Workplace.** Contractor certifies that it and its Subcontractors will provide a drug-free workplace as required by Calif. Gov. Code, § 8355-8357.
- D. **Labor/Collective Bargaining.** Contractor certifies that it and its Subcontractors will provide notice of their obligations under the foregoing provisions to labor organizations with which it or they have collective bargaining agreements, prior to execution of this Agreement.
- E. **National Labor Relations Board (NLRB) Certification.** Contractor certifies that, within the immediately preceding two-year period, no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor because of Contractor's failure to comply with an order of the National Labor Relations Board.
- F. **Prohibition Against Hiring Court Employees.** Contractor certifies and will require all Subcontractors to certify to the following:

"Former Court employees will not be offered employment position for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy-making position in the same general subject area as the proposed Agreement, within the prior twelve-month period of Court employment."

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 the Statement of Work, which may include additions, deletions, or modifications to the Work, or changes 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 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 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 22 (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 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. 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.

8. Conflict of Interest; Prohibition Against Gratuities

A. Conflict of Interest.

- A.1. Contractor covenants that it and its Subcontractors presently have no interest, and will acquire no interest, which would directly or indirectly conflict in any manner or to any degree, with the full and complete performance required under this Agreement. Contractor further agrees to submit full disclosure statements, if required by law to do so, pursuant to the requirements of the California Fair Political Practices Act or any other applicable federal or state law, regulation, or conflict of interest code.
- A.2. Contractor and its Subcontractors and employees will not participate in proceedings that involve the use of Court funds or that are sponsored by Court if the Contractor, its Subcontractors, or their employees, principals, partners, family members, or organizations have a financial interest in the outcome of the proceedings.
- A.3. Contractor and its Subcontractors and employees will not engage in actions resulting in, or creating the appearance of:
 - a) use of an official position with the government for private gain;
 - b) preferential treatment to any particular person associated with this Work or Agreement;
 - c) impairment of Court's independence or impartiality;
 - d) a decision made outside official channels; or

e) adverse effects on the confidence of the public in the integrity of Court.

B. Prohibition Against Gratuities.

- B.1 Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, or representative of Contractor, to any officer, official, agent, or employee of Court, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement.
- B.2 For any breach or violation of this covenant, Court has the right to terminate the Agreement for cause, whether whole or in part. Any loss or damage sustained by Court in procuring, on the open market, replacement goods or services that Contractor agreed to provide, will be borne and paid for by Contractor. Court's rights and remedies under this provision are in addition to any other rights and remedies provided by law or 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.

- 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. **Subcontracting.**
- E.1 Contractor will not engage a Subcontractor to perform any portion of this Work, without the express written consent of Court. Any subcontracting without Court's written consent is a material breach of this Agreement.
- E.2 Contractor warrants and represents that all Subcontractors will be subject to the same terms and

conditions applicable to Contractor under this Agreement. Contractor will incorporate this Agreement as the prime agreement in any subcontracting relationship. Contractor will be liable for all Subcontractor acts or omissions, including indemnity obligations.

- F. **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 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. Indemnification

- A. **To the fullest extent permitted by law, Contractor will indemnify, hold harmless, and defend (with counsel satisfactory to the Court) Court and its agents, officers, and employees from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorneys' fees, arising or resulting from, or in connection with, the performance or breach of this Agreement by Contractor or its officers, employees, agents, representatives, or Subcontractors. Such indemnification will not include loss, damage, or expense arising from the sole negligence or willful misconduct of Court or its agents, officers, and employees.**
- B. For Contractor's acts, errors, or omissions which are covered by Contractor's Professional Liability insurance, Contractor will provide the above indemnification for that proportion of damages, costs, and liabilities that are attributed to Contractor, or any of its Subcontractors, but not for Court's proportionate share of liability.
- C. Contractor's obligation to defend, indemnify, and hold Court and its agents, officers, and employees harmless is not limited to, or restricted by, any requirement in this Agreement that Contractor procure and maintain a policy of insurance.

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, 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.
4. Business Automobile Liability Insurance with minimum limits of **\$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.
5. 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. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, Court. The deductible and/or self-insured retentions will not limit or apply to Contractor's liability to Court and will be the sole responsibility of Contractor.

D. Endorsements; Additional Insureds.

The General Liability policy will contain, or be endorsed to contain, the following provisions:

1. Court, its officers, officials, employees and agents will be covered as additional insureds for liability arising out of activities performed by, or on behalf of, Contractor;
2. To the extent of Contractor's negligence, Contractor's insurance coverage will be primary insurance as respects Court, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by Court, its officers,

officials, employees or agents will not contribute with the insurance, or benefit Contractor in any way;

3. Contractor's insurance will 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;
4. Contractor will provide Court certificates of insurance satisfactory to Court, evidencing all required coverages before Contractor begins any Work, and complete copies of each policy upon Court's request;
5. If at any time, the foregoing policies become unsatisfactory to Court, as to form or substance, or if a company issuing any such policy becomes unsatisfactory to Court, Contractor will, upon Notice from Court, promptly obtain a new policy, and submit the same to Court, with the appropriate certificates and endorsements, for approval;
6. All of Contractor's policies will be endorsed to provide Notice to Court of cancellation, nonrenewal, and reduction in coverage, within fifteen days, mailed to the Court's representative for Notices named on the Contract Cover Sheet. Such notice will reference the relevant project, and contract number.

E. Waiver of subrogation.

Contractor and its insurance carrier waive any and all rights of subrogation against the Judicial Branch Entities. This waiver will be reflected on the Certificate of Insurance, provided by Contractor. If Contractor fails to obtain the appropriate waivers of subrogation, additional insured status, or certificates of insurance from carrier, Contractor will indemnify Court from all costs and liability caused by Contractor's breach.

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. Public Contract Code References

References to the Public Contract Code are provided for convenience only. The Public Contract Code does not apply to Court, but is referenced to clarify Contractor's obligations, if specific code sections are cited.

19. Scope of Work; Acceptance

- A. **Scope 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 Project Manager shall use the Acceptance and Sign-off Form to notify the Contractor of acceptance or non-acceptance.
 - B.3 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 18 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. **Prior Work.** Prior work, performed by Contractor pursuant to Court's authorization, but before execution of this Agreement, will be considered as having been performed subject to the provisions of this Agreement.
- D. **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.

20. 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 is and will be 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 19 commence after Work has been approved and accepted by 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.

21. Survival.

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.

22. Termination

- A. **Termination for Cause.** Court may terminate this Agreement, in whole or in part, and be relieved of any payments, if Contractor fails to perform the requirements of this Agreement at the time and in the manner agreed. Court may proceed with the Work in any manner deemed proper. All costs to Court arising from Contractor's default, including costs to complete or correct the Work, will be deducted from any sum due Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Work.
- B. **Termination for Convenience.**
- B.1 Court may terminate this Agreement, in whole or in part, at any time and for any reason, upon at least ten days Notice to Contractor. Upon receipt of the termination Notice, Contractor will promptly discontinue Work as specified in the Notice.
- B.2 If Court terminates all or part of this Agreement other than for cause; the Court will pay Contractor for the Work satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Work.
- C. **Termination due to Fund Appropriation and Availability.**
- C.1 Court's obligations under this Agreement are subject to the availability of funds authorized for this Work. 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.
- C.2 Upon Notice, Court may terminate this Agreement in whole or in part, without prejudice to any right or remedy of Court, for lack of appropriation of funds.

Upon termination, Court will pay Contractor for the fair value of Work satisfactorily performed prior to the termination, not to exceed the total Agreement amount.

D. Effect of Termination.

- D.1 Upon any expiration or termination, Court will have the right to take possession of any materials, equipment, Deliverables, and other Work including partially completed Work. Contractor will immediately assign to Court all of Contractor's right, title, and interest in and to such Work and related materials and work product, and any and all intellectual property rights.
- D.2 Upon termination of any kind, Court may withhold from payment any sum that Court determines to be owed to Court by Contractor, or necessary to protect Court against loss due to outstanding liens or claims of former lien holders.

23. **Time is of the Essence.** Time of performance is of the essence in the performance of services by Contractor under this Agreement.

24. 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.

25. 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.

6. ATTACHMENTS

Attachment A Vendor Certification Form

Attachment B Pricing Sheets

**ATTACHMENT A
VENDOR CERTIFICATION FORM**

I certify that neither _____ (Proposer) nor any of its proposed subcontractors are currently under suspension or debarment by any state or federal government agency, and that neither Proposer nor any of its proposed subcontractors are tax delinquent with the State of California.

I acknowledge that if Proposer or any of its subcontractors subsequently are placed under suspension or debarment by a local, state or federal government entity, or if Proposer or any of its subcontractors subsequently become delinquent in California taxes, our Proposal may be disqualified.

Signature

Printed Name

Title

Date

**ATTACHMENT B
PRICING SHEETS**