

ATTACHMENT 1
ADMINISTRATIVE RULES GOVERNING RFPS
(NON-IT SERVICES – MASTER AGREEMENT)

1. COMMUNICATIONS REGARDING THE RFP

Except as specifically addressed elsewhere in the RFP, parties interested in submitting a proposal in response to this RFP (“Proposers”) must send any communications regarding the RFP to the Judicial Council staff at TCSolicitation@jud.ca.gov (the “Solicitations Mailbox”). Proposers must include the RFP Number in subject line of any communication.

2. QUESTIONS REGARDING THE RFP

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

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 JBE 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 JBE 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.

3. ERRORS IN THE RFP

- A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer must immediately notify the Judicial Council staff via email to the Solicitations Mailbox and request modification or clarification of the RFP. Without disclosing the source of the request, Judicial Council staff may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.
- B. If a Proposer fails to notify Judicial Council staff of an error in the RFP known to the Proposer, or an error that reasonably should have been known to the Proposer, before the proposal due date and time listed in the timeline of the RFP, the Proposer

shall propose at its own risk. Furthermore, if the Proposer is awarded a master agreement, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

If a Bidder has submitted a bid and discovers an error in the RFP after the bid due date and time listed in the timeline of the RFP but before the award of the contract, the Bidder may be allowed to withdraw its bid if the Bidder can demonstrate to the JBE's satisfaction: (i) an error exists in the RFP, (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. Judicial Council staff may modify the RFP before the proposal due date and time listed in the timeline of the RFP by issuing an addendum. It is each Proposer's responsibility to inform itself of any addendum prior to its submission of a proposal.
- B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the Judicial Council staff via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS

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

6. ERRORS IN THE PROPOSAL

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

7. RIGHT TO REJECT PROPOSALS

- A. Before the proposal due date and time listed in the timeline of the RFP, Judicial Council staff may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, Judicial Council staff may reject all proposals and cancel the RFP if the Judicial Council staff determines that: (i) the

proposals received do not reflect effective competition; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the Judicial Council or the Superior Courts of California.

- B. Judicial Council staff, in their sole discretion, may waive an immaterial deviation or defect in a proposal. The Judicial Council staff's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a Proposer from full compliance with RFP specifications. Until a contract resulting from this RFP is signed, Judicial Council staff reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual Proposers if it is deemed in the best interest of the Judicial Council or the Superior Courts of California. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.
- C. The Judicial Council and the Superior Courts of California reserve the right to issue similar RFPs in the future. The RFP is in no way an agreement, obligation, or contract and in no way are the Judicial Council, the Superior Courts of California, or the State of California responsible for the cost of preparing the proposal.
- D. Proposers are specifically directed **NOT** to contact any judicial branch personnel or consultants for meetings, conferences, or discussions that are related to the RFP at any time between release of the RFP and any award and execution of a contract. Unauthorized contact with any judicial branch personnel or consultants may cause for rejection of the Proposer's proposal.

8. EVALUATION PROCESS

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

9. DISPOSITION OF MATERIALS

All materials submitted in response to the RFP will become the property of the Judicial Council and will be returned only at the option of the Judicial Council staff and at the expense of the Proposer submitting the proposal.

10. PAYMENT

- A. Payment terms will be specified in any master agreement that may ensue as a result of the RFP.
- B. **NEITHER THE SUPERIOR COURTS OF CALIFORNIA NOR THE JUDICIAL COUNCIL OF CALIFORNIA MAKES ADVANCE PAYMENT FOR SERVICES.** Payment will be made in accordance with the terms and conditions of the master agreement that is awarded as a result of this RFP.

11. AWARD AND EXECUTION OF A MASTER AGREEMENT

- A. Award of a master agreement, if made, will be in accordance with the RFP to a responsible Proposer submitting a proposal compliant with all the requirements of the RFP and any addenda thereto (including any administrative or technical requirements), except for such immaterial defects as may be waived by Judicial Council staff.
- B. A Proposer submitting a proposal must be prepared to use a standard Judicial Council contract form rather than its own contract form.
- C. Judicial Council staff will make a reasonable effort to execute any master agreement based on the RFP within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by a Proposer may delay execution of the master agreement.
- D. Upon award of a master agreement, the master agreement shall be signed by the Proposer in two original contract counterparts and returned, along with the required attachments, to the Judicial Council staff no later than ten (10) business days of receipt of agreement form or prior to the end of June if award is at fiscal year-end. Master agreements are not effective until executed by both parties. Any work performed before receipt of a fully-executed agreement shall be at the Proposer's own risk.

12. FAILURE TO EXECUTE THE MASTER AGREEMENT

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

13. DECISION

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

14. PROTEST PROCEDURE

- A. General. Failure of a Proposer to comply with the protest procedures set forth in this section 14 – Protest Procedures, will render a protest inadequate and non-responsive, and will result in rejection of the protest.
- B. Prior to Submission of Proposal. An interested party that is an actual or prospective proposer with a direct economic interest in the procurement may file a protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal. Such protest must be received prior to the due date and time for submittal of proposals, as set forth in the RFP timeline. The protestor shall have exhausted all administrative remedies discussed in this Attachment 1 prior to submitting the protest. Failure to do so may be grounds for denying the protest.

In no event will Judicial Council staff consider a protest if all proposals have been rejected or the solicitation was cancelled for any reason.

- C. After Notice of Intent to Award/Not to Award. A Proposer submitting a proposal may protest the Judicial Council's intent to award based upon allegations of improprieties occurring during the proposal evaluation or selection period if it meets all of the following conditions:
- i. The Proposer has submitted a proposal that it believes to be responsive to the solicitation document;
 - ii. The Proposer believes that its proposal meets the administrative and technical requirements of the solicitation, proposes services of proven quality and performance, and offers a competitive cost; and,
 - iii. The Proposer believes that another Proposer submitting a proposal for an award was incorrectly selected.

Protests must be received no later than twenty-four (24) hours after the Notice of Intent has been posted on the Judicial Council's website.

Protester will have ten (10) calendar days after the protest is received to submit all information required in section D (Form of Protest) below.

In no event will Judicial Council staff consider a protest if all proposals have been rejected or the solicitation was cancelled for any reason.

- D. Form of Protest. A Proposer who is qualified to protest should submit the protest to the individual addressed under Submission of Proposals, as set forth in the RFP cover memo, who will forward the matter to the appropriate Contracting Officer.
- i. The protest must be in writing and sent by certified, or registered mail, or overnight delivery service (with proof of delivery), or delivered personally to the address noted on the RFP cover memo under Submission of Proposals. If the protest is hand-delivered, a receipt must be requested.

- ii. The protest shall include the name, Proposer, physical and electronic addresses, and telephone and facsimile numbers of the party protesting or their representative.
- iii. The title and number of the solicitation document under which the protest is submitted shall be identified.
- iv. A detailed description of the specific legal and factual grounds of protest and any supporting documentation shall be included.
- v. The specific ruling or relief requested must be stated.

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

- E. Determination of Protest Submitted Prior to Submission of a Proposal. Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal, Judicial Council staff will provide a written determination to the protestor prior to the date and time for submittal of proposals, as set forth on the RFP cover memo. If required, Judicial Council staff may extend such proposal due date and time to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and Judicial Council staff, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the contract.
- F. Determination of Protest Submitted After Submission of a Proposal. Upon receipt of a timely and proper protest, Judicial Council staff will investigate the protest and will provide a written response to the Proposer within a reasonable time. If Judicial Council staff requires additional time to review the protest and is not able to provide a response within ten (10) business days, Judicial Council staff will notify the protestor. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below. Judicial Council staff, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied or proceed with the award and implementation of the agreement.
- G. Appeals Process. The Contracting Officer's decision shall be considered the final action by Judicial Council staff unless the protesting party thereafter seeks an appeal of the decision by filing a request for appeal with the Judicial Council's Principal Manager of Procurement, at the same address set forth under Submission of Proposal on the RFP cover memo, within five (5) calendar days of the issuance of the Contracting Officer's decision.

The justification for appeal is specifically limited to:

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

The protester's request for appeal shall include:

- i. Name, protester, physical and electronic addresses, and telephone and facsimile numbers of the proposer filing the appeal or their representative;
- ii. Copy of the Contracting Officer's decision;
- iii. Legal and factual basis for the appeal; and
- iv. Ruling or relief requested. Issues that could have been raised earlier will not be considered on appeal.

Upon receipt of a request for appeal, the Judicial Council's Principal Manager of Procurement will send the appeal to the Judicial Council's legal counsel to review the request and the Contracting Officer's decision. The Judicial Council's Principal Manager of Procurement shall issue a final determination. The decision of the Judicial Council's Principal Manager of Procurement shall constitute the final action of the Judicial Council.

- H. Protest Remedies. If the protest is upheld, the Judicial Council will consider all circumstances surrounding the procurement in its decision for a fair and reasonable remedy, including the seriousness of the procurement deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive procurement system, the good faith efforts of the parties, the extent of performance, the cost to the Judicial Council and the Superior Courts, the urgency of the procurement, and the impact of the recommendation(s) on the Judicial Council and the Superior Courts. The Judicial Council may recommend any combination of the following remedies:
- i. Terminate the contract for convenience;
 - ii. Re-solicit the requirement;
 - iii. Issue a new solicitation;
 - iv. Refrain from exercising options to extend the term under the contract, if applicable;
 - v. Award a contract consistent with statute or regulation; or
 - vi. Other such remedies as may be required to promote compliance.

15. NEWS RELEASES

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of either the supervisor or manager of the Judicial Council Branch Accounting and Procurement – Trial Court Administrative Services office.

16. ANTI-TRUST CLAIMS

- A. In submitting a proposal, the Proposer offers and agrees that if the proposal is accepted, the Proposer will assign to the Judicial Council all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the Judicial Council or the Superior Courts of California pursuant to the proposal. Such assignment shall be made and become effective at the time the judicial branch entity tenders final payment to the Proposer. (See Government Code section 4552.)
- B. If the Judicial Council or one of the Superior Courts of California receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Proposer shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the judicial branch entity any portion of the recovery, including treble damages, attributable to overcharges that were paid.
- C. Upon demand in writing by the Proposer, the judicial branch entity shall, within one year from such demand, reassign the cause of action assigned under this section if the Proposer has been or may have been injured by the violation of law for which the cause of action arose and (a) the judicial branch entity has not been injured thereby, or (b) the judicial branch entity declines to file a court action for the cause of action. (See Government Code section 4554.)

17. AMERICANS WITH DISABILITIES ACT

The Judicial Council complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to the supervisor of the Judicial Council Branch Accounting and Procurement – Trial Court Administrative Services office.