



INVITATION FOR BIDS

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

**IFB TITLE:
CRIMINAL FILE MOVING SERVICES**

**IFB NUMBER:
35065428**

**ISSUE DATE:
APRIL 5, 2013**

BID WALK: FROM APRIL 8-11, 2013. **CALL OR EMAIL IMMEDIATELY
FOR APPOINTMENT.**

BIDS DUE:
April 23, 2013 NO LATER THAN 2:00 P.M. PACIFIC TIME

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1.0 BACKGROUND INFORMATION

- 1.1 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>.

2.0 DESCRIPTION OF SERVICES

The Superior Court of California, County of San Diego (“Court”) is soliciting bids from qualified moving companies (“Bidder”) to provide moving services at the Central Courthouse, 220 West Broadway, San Diego, CA 92101. Work to be completed during normal work hours, after hours, and/or on weekends beginning each day at 8:30 a.m. until work is complete.

- 2.1 The Awarded Bidder will provide all necessary labor and equipment to complete the following services:

Relocate approximately 2761 linear feet of files by pulling files from shelves (see chart on page 4) and placing onto moving carts for transport. The Criminal Felony and Misdemeanor files will move from the 2nd floor, room 2005 and the Mezzanine floor (between 1st and 2nd floors) to Rooms 042 and 044 in the basement and the Mental Health files will move from the basement to the Mezzanine floor. Court will hold bid walk-through (see Section 6.0 on page 7). Bid pricing must account for and include the following:

- a. There is one (1) flight of stairs between Mezzanine floor and 2nd floor and one (1) flight of stairs between Mezzanine floor and 1st floor.
- b. Files on Mezzanine floor must be hauled either up the stairs to 2nd floor or down the stairs to the 1st floor in route to the basement. Bidders can determine best move route at bid walk.
- c. Files from the basement must be hauled either up one (1) flight of stairs from the 1st floor or down one (1) flight stairs from the 2nd floor, to get to the Mezzanine floor. Bidders can determine best move route at bid walk.
- d. Public elevators must be used for transport from 1st and 2nd floor to basement and vice versa.

Court to provide case number sequence and files are to be kept in that sequence. Court staff is to provide guidance.

Total No. of Shelving Units with files:

SHELVING UNIT TYPE	TOTAL NO.	APPROX. LINEAR FOOTAGE*
7 packs	63 ½	1333.5
8 packs	59 ½	1,428

*Based on 3 linear feet per shelf

Files to be Moved:

CASE TYPE	NO. OF SHELVING UNITS TO MOVE	FROM	TO	APPROX. DATE
Felonies	19 7 packs	Room 2005	Room 042	M-F 5/6/13 – 5/10/13
Felonies	3 8 packs	Room 2005	Room 042	
Misd.	13 7 packs	Room 2005	Room 042	
Misd.	13 7 packs	Mezzanine	Room 044	Saturdays 5/11/13 & 5/18/13
Misd.	36 8 packs	Mezzanine	Room 044	
Misd.	5 7 packs	Room 2005	Room 044	M-F 5/20/13 – 5/24/13 & Tuesday 5/28/13
Misd.	20 ½ 8 packs	Room 2005	Room 044	
Mental Health	13 ½ 7 packs	Room 044 (Basement)	Mezzanine	

2.2 Project Work Rules.

- a. Awarded Bidder will manage their sub-contractors/workers and provide all necessary oversight and coordination related to work schedule, work quality and all other job-related tasks.
- b. Awarded Bidder will keep the job site clean and clear of any debris. No construction dumpster will be provided by the Court. Fire paths (fire lanes, fire corridors, fire exit paths, etc.) are to be kept clean and be clear of any debris, tools etc. at all times.
- c. Awarded Bidder will protect the building walls by covering with plastic sheeting or other industry-standard protective material.

3.0 TIME LINE 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	April 5, 2013
Bid Walk-Through	From April 8-11, 2013 Email or call (619) 450-7182 immediately for appointment.
Deadline for questions	April 16, 2013 2:00 p.m. (PT)
Questions and answers posted	April 18, 2013
Bid due date (Latest date and time bids may be submitted) (Bids to be publically opened after 2 p.m. deadline)	April 23, 2013 2:00 p.m. (PT)
Notice of Intent to Award (<i>estimate only</i>)	April 25, 2013
Execution of contract (<i>estimate only</i>)	May 3, 2013
Contract Start Date (<i>estimate only</i>)	May 6, 2013
Contract End Date (<i>estimate only</i>)	May 28, 2013

4.0 IFB ATTACHMENTS

The following attachments are included as part of this IFB:

ATTACHMENT	DESCRIPTION
Attachment 1: Administrative Rules Governing IFBs	These rules govern this solicitation.
Attachment 2: Court General Terms & Conditions	If selected, the person or entity submitting a bid (“Bidder”) may be issued a Court Standard Purchase Order (PO) containing these terms and conditions (the “Terms and Conditions”).
Attachment 3: Bidder’s Acceptance of Terms and Conditions	On this form, the Bidder must indicate acceptance of the Terms and Conditions. Note: An exception to the Terms and Conditions will render a bid non-responsive.
Attachment 4: No Conflict of Interest Certification	Bidders must complete certification form and submit it with its bid.

Attachment 5: Darfur Contracting Act Certification	Bidders must complete the Darfur Contracting Act Certification and submit the completed certification with its bid.
Attachment 6: IFB Pricing Schedule	Bidders must submit bid pricing on this document.
Attachment 7: Request for Contractor's Information	Bidders must submit completed form with its bid.
Attachment 8: 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 8A: DVBE Incentive Qualification Declaration Instructions	Instructions on how to complete Attachment 8 above. DO NOT SUBMIT WITH YOUR BID.
Attachment 9: 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 9A: DVBE Status Declaration Instructions	Instructions on how to complete Attachment 9 above. DO NOT SUBMIT WITH YOUR BID.
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.

5.0 SUBMISSIONS OF BIDS

5.1 Only written bids will be accepted. Bids must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered in person. Bids must be delivered 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

5.2 Emailed and faxed bids will not be accepted.

5.3 Late bids will not be accepted or returned.

6.0 BID WALK-THROUGH

The Court will hold a bid walk-through by appointment only during the week identified in Section 3.0 – Time Line for This IFB. The bid walk will be held at the address below.

Superior Court of California, County of San Diego
Central Courthouse
220 W. Broadway
San Diego, CA 92101

Bidders are to meet in the lobby on the first (1st) floor after passage through Sheriff's weapons screening.

Court staff will walk Bidders through the floors where work is to occur. Attendance at the bid walk is **highly recommended**. Each Bidder should check in and sign the Bid Walk-Through sign-in sheet.

7.0 BID CONTENTS

7.1 Bid Information. Bidders must use the Court supplied bid document (see Attachment 6) to submit bid pricing.

a. Acceptance of the Terms and Conditions.

i. On Attachment 3, the Bidder must indicate acceptance of the Terms and Conditions and submit the completed form with its bid.

ii. **Note: An exception to the Terms and Conditions will render a bid non-responsive.**

- b. Certifications, Attachments, and other requirements.
 - i. Bidder must include the following certification in its bid:

Bidder 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 (Attachment 4).
 - ii. Bidder must complete the Darfur Contracting Act Certification (Attachment 5) and submit the completed certification with its bid.
 - iii. 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 in good standing and qualified to conduct business in California is required. Bidders may confirm their status on the following State of California website, <http://kepler.sos.ca.gov/>
 - iv. Bidder must submit copies of current business license(s) with its bid.

7.2 Bid Cost Information. The following must be included in the IFB Pricing Schedule (Attachment 6).

- i. Total Cost to complete the job.
- ii. ***(For Court information only*)***: Itemization of hourly labor rates valid during the moves. They include rate per installer, supervisor, laborer and equipment and energy surcharges required.
- iii. ***(For Court information only*)***: Indicate the total man hours to complete the entire job.

****Itemized hourly rates and total man hours involved (items ii and iii above) will not be included in bid award calculation.***

NOTE: It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

8.0 OFFER PERIOD

A Bidder's bid is an irrevocable offer for sixty (60) 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.

9.0 EVALUATION OF BIDS

The bids will be publicly opened on **Tuesday, April 23, 2013 at 2:00 p.m.** at 330 W. Broadway, Room 357, San Diego, CA 92101.

The Court will evaluate the bids as described in the Administrative Rules (Attachment 1, Section 8).

10.0 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.

11.0 DISABLED VETERAN BUSINESS ENTERPRISE INCENTIVE

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. 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:

1. Bidder must complete and submit with its bid the DVBE Incentive Qualification Declaration (Attachment 8). Bidder must submit with the DVBE Incentive Qualification Declaration all materials required in the DVBE Incentive Qualification Declaration.
2. Bidder must submit with its bid a DVBE Status Declaration (Attachment 9) 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 Attachments 8 and 9 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 a DVBE Post-Contract Certification 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 MISREPRETATION 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.

12.0 PROTESTS

All protests will be handled in accordance with San Diego Superior Court's *Procurement Protest Policy* (SDSC Form #ADM-244) available on the court website at <http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/GENERALINFORMATION/FORMS/ADMINFORMS/ADM244.PDF>. Failure of a Proposer to comply with the protest procedures set forth in the JBCM and court's policy will render a protest inadequate and non-responsive, and will result in rejection of the protest.

Protests must be sent or hand delivered to:
Superior Court of California, County of San Diego
Administrative Services Division
330 W. Broadway, Room 357
San Diego, CA 92101

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.

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. It is each Bidder's responsibility to inform itself of any addendum prior to its submission of a bid. Any addendum will be posted to the Court website, <http://www.sdcourt.ca.gov>.
- 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 price schedule 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 perform services as described in IFB Section 2.0 Description of Services and that has the lowest bid price.

A Bidder's signature on IFB Pricing Schedule (Attachment 6) certifies that Bidder has the manpower, equipment and hardware to perform the services as described in IFB Section 2.0 Description of Services.

- 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 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. Services rendered shall be accompanied by a priced invoice and/or packing list or documentation itemizing all services and that contains at the least:

Name of successful Bidder, purchase order number, date of order, description of services rendered and service locations.

er

Successful Bidder is required to obtain a signature from the court's project manager indicating receipt and acceptance of 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.
- D. Any work performed before receipt of a Court PO shall be at Bidder's own risk.

12. 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.

13. 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.)

14. 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. **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.
3. **Certifications and Representations.** Bidder's signature on the IFB Pricing Schedule – Attachment 6 shall also serve as certification for the following paragraphs, A-E.
 - 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, sexual orientation, or any other legally protected status. 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. **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.”

4. 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 IFB 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.

5. 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.

6. Conflict of Interest; Prohibition Against Gratuities

A. **Conflict of Interest.**

A.1 Contractor covenants that it and its Subcontractors and employees 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, and to require that its Subcontractors and employees submit such 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, or provide services under this Agreement relating to cases pending in this 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 or cases.

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.

A.4 Contractor agrees to require each of its Subcontractors and employees to immediately report to his or her supervisor, who in turn shall immediately thereafter provide Notice to the Court of any pending or newly initiated cases filed in the Court involving that Subcontractor or employee, his or her "relative," or any person or entity with whom the Subcontractor or employee has a personal or professional tie. This includes any matter filed in the Court in which the Subcontractor or employee, their "relative," or a person or entity with whom the Subcontractor or employee has a personal or professional tie, is a party, is an alleged victim or witness, or has a financial interest. For purposes of this section, the term "relative" includes the employee's spouse, life or romantic partner, ex-spouse, children, parents, siblings, nieces, nephews, grandparents, grandchildren, first cousins, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchildren, stepparents, and stepsiblings.

B. Prohibition Against Gratuities.

B.1 Bidder/Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Bidder/Contractor or any agent, director, or representative of Bidder/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.

B2. For any breach or violation of this covenant, Court has the right to terminate the Agreement for cause, either in 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.

7. **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 6 (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.

8. 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 IFB Description of Services, 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 IFB Description of Services, and will not be subjected to Court's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement.

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.

9. Dispute Resolution

Court and Contractor will attempt, in good faith, to resolve any disputes informally. Contractor will meet with Court's Procurement staff 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 (15) days of the effective date of the Notice.

A.2 If the matter is not resolved as set forth in section 9.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 (15) 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.

10. 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.

11. 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.

- 12. 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.
- 13. 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 IFB Description of Services.
- 14. 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.
- 15. Statement of Work; Acceptance**
A. **Statement of Work.** Contractor will perform and complete all Work described in IFB Description of Services, in compliance with the requirements of this Agreement, and to the satisfaction of Court.
- 16. 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 s 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 16 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.

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 furnish replacement personnel acceptable to the Court within a reasonable time, 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.

17. 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.

18. 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 thirty (30)-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.

19. Time is of the Essence. Time of performance is of the essence in the performance of services by Contractor under this Agreement. The acceptance by Court of late performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by the contractor.

20. 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.

21. 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.

22. Insurance. Before commencement of the work, contractor shall upon request by the Court, submit Certificates of Insurance evidencing that contractor has obtained for the period of the contract, from generally recognized responsible insurer, insurance in the following forms of coverage and minimum amounts specified:

A. A policy of Worker's Compensation in statutory amounts.

B. Commercial General Liability insurance written on an "occurrence" basis and in an amount of not less than \$1,000,000 each occurrence.

C. Automobile Liability Insurance covering owned, non-owned and hired automobiles in an amount not less than \$1,000,000 combined single limit.

D. The policies (except for Workers' Compensation) shall name the Superior Court of California, County of San Diego as additional insured.

E. Each policy of insurance shall contain the following clause:

"It is agreed that these policies shall not be cancelled nor the coverage reduced until thirty (30) days after the Court shall have received written notice of such cancellation or reduction. The notice shall be deemed effective the date delivered to Court, as evidenced by properly validated return receipt."

F. The Court shall retain the right at any time to review the coverage form and amount of insurance required herein and may require contractor to obtain insurance sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exist at the time a change in insurance is required. The Court's requirement shall be reasonable.

23. Disabled Veteran Business Enterprise Participation Certification. If

Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement, its failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Court approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report

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to the Court: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

END OF ATTACHMENT 2