

## **ATTACHMENT 3**

### **ADMINISTRATIVE RULES GOVERNING RFPs**

*(NON-IT GOODS AND SERVICES)*

#### **1.0 COMMUNICATIONS WITH COURT REGARDING THE RFP**

Except as specifically addressed elsewhere in the RFP, any communications regarding this RFP must be submitted only through the Court's Procurement email address at [sbsolicitation@sbcourts.org](mailto:sbsolicitation@sbcourts.org).

#### **2.0 QUESTIONS REGARDING THE RFP**

Proposers interested in responding to the RFP may submit questions at [sbsolicitation@sbcourts.org](mailto:sbsolicitation@sbcourts.org) 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 Proposer is requesting a change, the request must set forth the recommended change and 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 Court's responses will be made available prior to the proposal due date and time.

#### **3.0 ERRORS IN THE RFP**

- 3.1 If, before the proposal due date and time listed in the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, Proposer must immediately notify the Court by sending an email to the Bid Contact and request modification or clarification of the RFP. Without disclosing the source of the request, the Court may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.
- 3.2 If a Proposer fails to notify the Court of an error in the RFP known to Proposer, or an error that reasonably should have been known to Proposer, before the proposal due date and time listed in the RFP, the Proposer shall propose at its own risk. Furthermore, if Proposer is awarded the contract, Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

#### **4.0 OPTION TO CANCEL, AMEND OR EXTEND RFP**

The Court reserves the right to cancel, amend or extend the RFP, in its sole discretion, at any time prior to the issuance of a contract.

## 5.0 ADDENDA

- 5.1 The Court may modify the RFP before the proposal due date and time listed in the RFP by issuing an addendum on the court website. It is each Proposer's responsibility to inform itself of any addendum prior to its submission of a proposal.
- 5.2 If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the Court by sending an email to [sbsolicitation@sbcourts.org](mailto:sbsolicitation@sbcourts.org) no later than one day following issuance of the addendum.

## 6.0 COURT RESPONSIBILITIES

The Court is responsible only for that which is expressly stated in this solicitation document and any authorized amendment or addenda thereto. Court is not responsible for and shall not be bound by any representations otherwise made by any individual acting or purporting to act on its behalf.

## 7.0 AMENDMENT OR WITHDRAWAL OF PROPOSALS

A Proposer may amend or withdraw its proposal at any time prior to the submission deadline by providing notice to [sbsolicitation@sbcourts.org](mailto:sbsolicitation@sbcourts.org). Proposer may thereafter submit a new or modified proposal, provided that it is submitted prior to the deadline listed in the RFP. Amendments or withdrawals 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 RFP.

## 8.0 ERRORS IN THE PROPOSAL

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

## 9.0 RIGHT TO REJECT PROPOSALS

- 9.1 Before the proposal due date and time listed in the timeline of the RFP, the Court may cancel the RFP for any or no reason. After the proposal due date and time, the Court may, in its sole discretion, reject any or all proposals submitted in response to this RFP. Only one proposal per individual, firm, partnership, or corporation under the same or different names will be considered. If there is

reason to believe that collusion exists among Proposers, none of the participants in such collusion will be considered in this RFP process.

- 9.2 The Court may or may not waive an immaterial deviation or defect in a proposal. The Court'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, the Court 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 Court's best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.
- 9.3 The Court reserves the right to issue similar RFPs in the future. The RFP is in no way an agreement, obligation, or contract and in no way is the Court or the State of California responsible for the cost of preparing the proposal.
- 9.4 Proposers are specifically directed **NOT** to contact any Court 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 Court personnel or consultants may be cause for rejection of the Proposer's proposal.

## 10.0 EVALUATION PROCESS

- 10.1 An initial Pass/Fail review will be made of all proposals submitted to determine their compliance with the RFP format instructions and fulfillment of the minimum mandatory requirements. Failure to comply with any of the minimum mandatory requirements may be cause for disqualifying a proposal from further consideration and review. The Court may, in its sole discretion, reject any or all proposals submitted in response to this RFP. Such review and determination is not subject to appeal, and will be done at the sole discretion of the Court.
- 10.2 Proposals that contain false, incomplete or misleading statements may be rejected if in the Court's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP. A proposal containing conditions or limitations established by Proposer may be deemed irregular and rejected by the Court in its sole discretion.
- 10.3 Upon completion of the initial review, all proposals receiving a "Pass" will be evaluated by the Evaluation Committee. The Evaluation Committee will include representatives of the Court. The Court may utilize the services of appropriate experts to assist in the evaluation process and may request further written clarification from Proposers. The Evaluation Committee, at its sole discretion, may delegate certain functions to one or more subcommittees.
- 10.4 A reasonable inquiry to determine the responsibility of Proposer may be conducted. The unreasonable failure of Proposer to promptly supply information in connection with such inquiry, including but not limited to information regarding

past performance, financial stability, and ability to perform on schedule, may be grounds for a determination of nonresponsibility with respect to such Proposer. By submitting a proposal in response to this RFP, Proposer acknowledges that it gives the Court investigative authority to verify and confirm any and all related information, credentials, resources, and references listed in the proposal.

- 10.5 The Court may conduct oral interviews with Proposers to clarify aspects set forth in their proposals or to assist in finalizing the ranking of top-ranked proposals. Interviews are schedule with Proposers at the discretion of the Court. The interviews may be conducted in person or by phone. The Court will not reimburse Proposers for any costs incurred in traveling to or from the interview location.
- 10.6 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 Proposers, who may attend the coin toss at their own expense.

## **11.0 DISPOSITION OF MATERIALS/CONFIDENTIAL OR PROPRIETARY INFORMATION**

- 11.1 All materials submitted in response to the RFP will become the property of the Court.
- 11.2 A copy of each proposal will be retained by the Court for official files and will become a public record. California judicial branch entities are subject to rule 10.500 of the California Rule of Court, which governs public access to judicial administrative records. For further information go to the following website:  
[www.courtinfo.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10\\_500](http://www.courtinfo.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_500).
- 11.3 If information submitted in a proposal contains material noted or marked as confidential and/or proprietary that, in the Court's sole opinion, meets the disclosure exemption requirements of Rule 10.500, then that information will not be disclosed upon a request for access to such records. If the Court finds or reasonably believes that the material so marked is **not** exempt from disclosure, the Court will disclose the information regardless of the marking or notation seeking confidential treatment.

## **12.0 OFFER PERIOD**

Proposer's proposal is an irrevocable offer for one hundred eighty (180) calendar days following the proposal 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.

## **13.0 PAYMENT TERMS**

- 13.1 Payment terms will be specified in any agreement that may ensue as a result of the RFP.

- 13.2 **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 Proposer. The Court may withhold ten percent of each invoice until receipt and acceptance of the final deliverable. The amount of the withhold may depend upon the length of the project and the payment schedule provided in the contract between the Court and the selected Proposer.

#### **14.0 AWARD OF CONTRACT**

- 14.1 Award of contract, 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 the Court.
- 14.2 If a contract will be awarded, the Court will post an Intent to Award Notice on the court website.

#### **15.0 EXECUTION OF FORMAL AGREEMENT (IF APPLICABLE)**

- 15.1 Proposers are hereby advised that this RFP is a solicitation for proposals only. It is not intended to be, nor is it to be construed as, an offer to enter into any contract or other agreement. Acceptance or recommendation of a proposal does not constitute formation of a contract. A contract can be created only by formal approval and execution by the Court Executive Officer or designee.
- 15.2 Once negotiations have been completed with the selected Contractor, a recommendation for an award of a contract will be made to the Court Executive Officer or designee, who is, and shall remain, the ultimate decision maker for the Court.
- 15.3 A Proposer submitting a proposal must be prepared to use a standard Court contract form rather than its own contract form.
- 15.4 Upon award of the contract, the agreement shall be signed by Proposer in two original contract counterparts and returned, along with the required attachments, to the Court no later than ten (10) business days of receipt of contract form. Contracts are not effective until executed by both parties and approved by the appropriate Court officials. Any work performed before receipt of a fully-executed contract shall be at Proposer's own risk.
- 15.5 The period for execution of the agreement set forth in the RFP may only be changed by mutual agreement of the parties. Failure to execute the contract within the time frame identified above constitutes sufficient cause for voiding the award. Failure to comply with other requirements within the set time constitutes failure to execute the contract. If the successful Proposer refuses or fails to

execute the contract, the Court may award the contract to the next qualified Proposer.

- 15.6 The Court will make a reasonable effort to execute any contract based on the RFP within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by Proposer may delay execution of a contract.

## **16.0 NEWS RELEASES**

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of the Court's designee.

## **17.0 NO CONFLICT OF INTEREST**

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

## **18.0 ANTI-TRUST CLAIMS**

- 18.1 In submitting a proposal to the Court, Proposer offers and agrees that if the proposal is accepted, Proposer 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 Proposer for sale to the Court pursuant to the proposal. Such assignment shall be made and become effective at the time the Court tenders final payment to the Proposer. (See Government Code section 4552.)
- 18.2 If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Proposer 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.
- 18.3 Upon demand in writing by Proposer, the Court shall, within one year from such demand, reassign the cause of action assigned under this section if Proposer 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.)

## **19.0 AMERICANS WITH DISABILITIES ACT**

The Court complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to the Court's designee.

## **20.0 DISABLED VETERANS BUSINESS ENTERPRISE INCENTIVE (IF APPLICABLE)**

- 20.1 Qualification for the Disabled Veterans Business Enterprise (DVBE) incentive is not mandatory. Failure to qualify for the DVBE incentive will not render a proposal non-responsive.
- 20.2 Eligibility for and application of the DVBE incentive is governed by the Court's DVBE Rules and Procedures. Proposer will receive a DVBE incentive if, in the Court's sole determination, Proposer has met all applicable requirements. If Proposer receives the DVBE incentive, the dollar amount of its proposal will be reduced (for evaluation purposes only) by an amount equal to 3% of the lowest responsible proposal, not to exceed \$50,000.
- 20.3 To receive the DVBE incentive, at least 3% of the purchase order 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, Proposer may have an approved Business Utilization Plan ("BUP") on file with the California Department of General Services ("DGS").
- 20.4 If Proposer wishes to seek the DVBE incentive:
  - 20.4.1 Proposer must complete and submit with its proposal, the DVBE Proposer Declaration. Proposer must submit with the DVBE Proposer Declaration all materials required in the DVBE Proposer Declaration.
  - 20.4.2 Proposer must also submit with its proposal, a DVBE Declaration completed and signed by each DVBE that will provide goods and/or services in connection with the contract. If Proposer is itself a DVBE, it must complete and sign the DVBE Declaration. If Proposer will use DVBE subcontractors, each DVBE subcontractor must complete and sign a DVBE Declaration. NOTE: The DVBE Declaration is not required if Proposer will qualify for the DVBE incentive using a BUP on file with DGS.
- 20.5 Failure to complete and submit these forms as required will result in Proposer 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 Proposer not receiving the DVBE incentive.
- 20.6 If this solicitation is for IT goods and services, the application of the DVBE incentive may be affected by application of the small business preference. For additional information, see the Court's Small Business Preference Procedures for the Procurement of Information Technology Goods and Services.

- 20.7 If Proposer receives the DVBE incentive: (i) Proposer will be required to complete a post-purchase order DVBE certification if DVBE subcontractors are used; (ii) Proposer must use any DVBE subcontractor(s) identified in its proposal unless the COURT approves in writing the substitution of another DVBE; and (iii) failure to meet the DVBE commitment set forth in its proposal will constitute a breach of contract.
- 20.8 **Fraudulent misrepresentation in connection with the DVBE incentive is a misdemeanor and is punishable by imprisonment or fine, and violators are liable for civil penalties. See Military & Veterans Code section 999.9.**