

ATTACHMENT 1
Administrative Rules Governing SOLICITATIONS
Request For Quote (RFQ), Invitation To Bid (IFB) or Request For Proposal (RFP)

Please read carefully

1. COMMUNICATION WITH THE COURT REGARDING THE SOLICITATION

Except as specifically addressed elsewhere in the RFQ, IFB or RFP (hereinafter referred to as “solicitation”), an entity who wish to submit a quote, quote, bid or proposal (hereinafter referred to as “Bidder” or “Bidders”) must send any communications regarding the solicitation to purchasing@sb-court.org (the “Solicitations Mailbox”). Bidders must include the solicitation number in subject line of any communication.

For information about current or previous contracts, please visit <http://www.sb-court.org/forms-and-rules/administrative-records-request>.

2. QUESTIONS REGARDING THE SOLICITATION

- A. Bidders interested in responding to the solicitation may submit questions via email to the Solicitations Mailbox on procedural matters related to the solicitation or requests for clarification or modification of the solicitation no later than the deadline for questions listed in the timeline of the solicitation. Once submitted, questions become part of the procurement file and are subject to disclosure excepting questions the Court concurs would expose proprietary information if disclosed to competitors pursuant to Section 2.B below. Bidders are accordingly cautioned not to include any confidential information in questions and to submit questions relating to proprietary aspects of its quote, bid or proposal as directed in Section 2.B below.
- B. If a Bidder’s question relates to a proprietary aspect of its quote, bid or proposal 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.
- C. If the Bidder is requesting a change, the request must set forth the recommended change and the Bidder’s reasons for requesting the change.
- D. Questions or requests submitted after the deadline for questions listed in the timeline of the solicitation will not be answered.
- E. Without disclosing the source of the question or request, a copy of the questions and the Court’s responses will be made available in accordance with the timeline of the solicitation.

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3. ERRORS IN THE SOLICITATION

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

4. ADDENDA

- A.** The Court may modify the solicitation before the submission due date and time listed in the timeline of the solicitation by issuing an addendum. It is each Bidder's responsibility to inform itself of any addendum prior to submitting its quote, bid or proposal.
- B.** If any Bidder determines that an addendum unnecessarily restricts its ability to quote, bid or propose, the Bidder shall immediately notify the Court via an email to the Solicitations Mailbox no later than one day following the issuance of the addendum.

5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF QUOTE, BID OR PROPOSAL

A Bidder may withdraw its quote, bid or proposal at any time before the submission due date and time listed in the timeline of the solicitation 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 quote, bid or proposal, provided that it is received at the Court no later than the submission due date and time listed in timeline of the solicitation. Modifications offered in any other manner, oral or written, will not be considered. Solicitations cannot be changed or withdrawn after the submission due date and time listed in the timeline of the solicitation.

6. ERRORS IN THE QUOTE, BID OR PROPOSAL

If errors are found in a quote, bid or proposal, the Court may reject the quote, bid or proposal; however, the Court may, at its sole option, correct arithmetic or transposition errors or both. 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 how they were corrected, and given the option to abide by the corrected amount or withdraw its quote, bid or proposal.

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7. RIGHT TO REJECT BIDS OR PROPOSALS

- A.** Before the submission due date and time listed in the timeline of the solicitation, the Court may cancel the solicitation for any or no reason. After the submission due date and time listed in the timeline of the solicitation, the Court may reject all bids or proposals and cancel the solicitation if the Court determines that: (i) the solicitations 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 quote, bid or proposal. The Court's waiver of an immaterial deviation or defect shall in no way modify the solicitation or excuse a Bidder from full compliance with solicitation specifications. Until a contract resulting from this solicitation is signed, the Court reserves the right to accept or reject any or all of the items in the solicitation, 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 solicitations in the future. The solicitation 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 Bidder's quote, bid or proposal.
- D.** Bidders are specifically directed **NOT** to contact any Court personnel or consultants for meetings, conferences, or conversations that are related to the solicitation at any time between the release of the solicitation 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 quote, bid or proposal.

8. EVALUATION PROCESS

- A.** FOR RFQs FOR NON-IT OR IT GOODS:
 - i.** All bids correctly delivered by the submission date and time listed in the timeline of the solicitation will be publically opened on the date and time listed in the timeline of the solicitation and a Court evaluation team will review each proposal to determine the extent to which it complies with the solicitation requirements.
 - ii.** Bids that comply with the solicitation requirements will be eligible for award, if made.
- B.** FOR RFQs FOR IT GOODS AND SERVICES, IT SERVICES:
 - i.** All quotes correctly delivered by the submission date and time listed in the timeline of the solicitation will be opened and a Court evaluation team will review each quote to determine the extent to which it complies with the RFQ requirements.
 - ii.** Quotes that comply with the solicitation requirements will be scored by the Court's evaluation team using the criteria specified in the solicitation and be eligible for award, if made.

C. FOR IFBs FOR NON-IT GOODS AND SERVICES, IT GOODS:

- i.** All bids correctly delivered by the submission date and time listed in the timeline of the solicitation will be publically opened on the date and time listed in the timeline of the solicitation and a Court evaluation team will review each proposal to determine the extent to which it complies with the solicitation requirements.
- ii.** Bids that comply with the solicitation requirements will be eligible for award, if made.

D. FOR RFPs FOR NON-IT SERVICES:

- i.** All proposals correctly delivered by the submission date and time listed in the timeline of the solicitation will be opened and a Court evaluation team will review each proposal to determine the extent to which it complies with the solicitation requirements.
- ii.** Proposals that comply with the solicitation requirements will be scored by the Court's evaluation team using the criteria specified in the solicitation and be eligible for award, if made.

E. FOR RFPs FOR IT GOODS AND SERVICES:

- i.** All proposals correctly delivered by the submission date and time listed in the timeline of the solicitation will be eligible to have the non-cost portion opened. A Court evaluation team will review each non-cost portion to determine the extent to which it complies with the solicitation requirements.
- ii.** Non-cost portions that comply with the solicitation requirements will be scored by the Court's evaluation team using the criteria specified in the solicitation and the composite scores published in accordance with the timeline of the solicitation.
- iii.** After the non-cost evaluation scores have been published, the cost portion of the scored proposals will be publically opened on the date and time listed in the timeline of the solicitation. A Court evaluation team will review each cost proposal to determine the extent to which it complies with the solicitation requirements.
- iv.** Cost portions that comply with the solicitation requirements will be assigned cost points according to a pre-set formula and will be eligible for award, if made.

F. Bids or proposals that contain false 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 solicitation.

G. During the evaluation process, the Court may require Bidder's representative to answer questions with regard to the Bidder's quote, bid or proposal. Failure of a Bidder to demonstrate that the claims made in its quote, bid or proposal are in fact true may be sufficient cause for deeming a quote, bid or proposal non-responsive.

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- H. SPECIAL NEGOTIATION PROCESS.** The Court may, at its sole discretion enter into negotiations with all the responsive bidders in accordance with the Judicial Branch Contracting Manual (JBCM) 2.1.G.4 to ensure that, *“the Judicial Branch Entity (JBE) is receiving the best value or most cost-effective goods, services, information technology, or telecommunications”*. These negotiations may be in form of a Best and Final Offer (BAFO) or a methodology that establishes a competitive range based on Bidder’s rankings following bid evaluations.

9. DISPOSITION OF MATERIALS

All materials submitted in response to the solicitation 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 quote, bid or proposal.

10. PAYMENT

- A.** Payment terms will be specified in any contract that may ensue as a result of the solicitation.
- B. THE COURT DOES NOT MAKE ADVANCE PAYMENT.** Payment is made based upon delivery of goods or deliverables, and performance of obligations under the contract between the Court and the selected Bidder.
- C.** If the contract between the Court and the selected Bidder specifies payment for deliverables, 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 said contract. Deliverables must be tied to a measureable and useable work product as determined solely by the Court.
- D.** *For RFPs that include IT Goods:* Upon a Bidder’s timely request, the Court may consider a Bidder’s “best financing alternative” (including lease or purchase alternatives). If the RFP is posted more than 30 days before the proposal due date and time listed in the timeline of the RFP, the Bidder’s request must be received by the Court at least 30 days before the proposal due date and time. If the RFP is posted less than 30 days before the proposal due date and time, the Proposer’s request must be received by the Court by the day that is halfway between the posting date and the proposal due date. The Court may determine that a specific financing alternative should not be considered.

11. AWARD AND EXECUTION OF CONTRACT

- A.** A Bidder submitting a quote, bid or proposal must be prepared to use a standard Court contract form rather than its own contract form. Said form may also be called an “Agreement”.
- B. FOR RFQs**
- i.** Award of contract, if made, will be in accordance with the solicitation:

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- a. If “Lowest Responsible Bidder” basis: to the Responsible Bidder that submits the lowest Responsive Bid after application of any preference, incentives, or discounts, if applicable. In the event of a tie, the contract will be awarded to the Bidder who most closely accepted the Court’s standard terms and conditions in the sole opinion of the Court. If there is still 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.
 - b. If “Highest Scored Bid” basis: to the Responsible Bidder that submits a Responsive Bid who is given the highest score by the evaluation team after application of any preference, incentives, or discounts, if applicable. In the event of a tie, the contract will be awarded to the lowest Responsive Bid among the tied proposals.
- ii. No notice of intent to award will be made or posted.

C. FOR IFB_s

- i. Award of contract, if made, will be in accordance with the solicitation to the Responsible Bidder that submits the lowest Responsive Bid after application of any preference, incentives, or discounts, if applicable. In the event of a tie, the contract will be awarded to the Bidder who most closely accepted the Court's standard terms and conditions in the sole opinion of the Court. If there is still 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.
- ii. If award of contract is made, notice of intent to award shall be posted on the Court's website or in a public place consistent with the solicitation, for 24-hours before contract is awarded if solicitation is for non-IT goods or for five (5) working days before the contract is awarded if solicitation is for non-IT services or IT goods and/or services.

D. FOR RFPs

- i.** Award of contract, if made, will be in accordance with the solicitation to the Responsible Bidder that submits a Responsive Bid who is given the highest score by the evaluation team after application of any preference, incentives, or discounts, if applicable. In the event of a tie, the contract will be awarded to the lowest Responsive Bid among the tied proposals.
- ii.** If award of contract is made, notice of intent to award shall be posted on the Court's website or in a public place consistent with the solicitation for five (5) working days before the contract is awarded.

E. Responsible Bidder means a Bidder that possesses the required experience, facilities, and financial resources and is fully capable of performing the relevant contract.

- F.** Responsive Bid means a quote, bid or proposal that complies with the requirements of the solicitation and the terms and conditions of the proposed contract without material deviation.
- G.** The Court will make a reasonable effort to execute any contract based on the solicitation within forty-five (45) days posting the notice of intent to award. However, exceptions taken by a Bidder may delay execution of a contract.
- H.** After award of the contract, at least one original contract shall be signed by the Bidder and returned, along with the required attachments, to the Court no later than ten (10) business days of receipt of contract form or prior to the end of June if award is at fiscal year-end. 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 Bidder's own risk.

12. AWARD PROTESTS

- A.** Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contract Manual (see www.courts.ca.gov/documents/jbcl-manual.pdf). Failure of a Bidder to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the Court to receive an award protest is as follows:
 - i.** Non-IT Goods – the Court must receive the award protest within twenty-four (24) hours after the Notice of Intent to Award is posted.
 - ii.** Non-IT Services or IT Goods and Services – the Court must receive the award protest within five (5) court days after the Notice of Intent to Award is posted.

Bidder is solely responsible for ensuring that an award protest is received by the Court by the applicable due date. The failure of a Bidder to submit a timely award protest constitutes a waiver of the Bidder's right to protest the award.

Protests should be sent to: Superior Court of California, County of San Bernardino
Attn: Steve Pascover, Advisory Attorney
247 West Third Street, 11th Floor
San Bernardino, CA 92415-0302

- B.** Throughout the review process, the court has no obligation to delay or otherwise postpone an award of contract based on a Bidder protest. In all cases, the court reserves the right to make an award when it is determined to be in the best interest of the court to do so.

13. FAILURE TO EXECUTE THE CONTRACT

The period for execution set forth in Section 11.H ("Award and Execution of Contract") may only be changed by mutual agreement of the parties. Failure to execute the contract within the time frame identified above constitutes sufficient cause for voiding the award. Failure to comply with other requirements within the set time constitutes failure to execute the contract. If the successful Bidder refuses or fails to execute the contract, the Court may award the contract to the next qualified Bidder.

14. CONTRACT TERMINATION

If the Court terminates a contract resulting from this solicitation within six (6) months of issuance of the solicitation, the Court may award a new contract to the next qualified Bidder if the pricing submitted by said Bidder remains unchanged.

15. NEWS RELEASES

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of Mr. Robert E. Fleshman, Deputy Court Executive Officer – Finance, Communications, and Public Affairs.

16. ANTI-TRUST CLAIMS

- A.** In submitting a quote, bid or proposal to the Court, the Bidder offers and agrees that if the quote, bid or proposal is accepted, the 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 quote, bid or proposal. 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.)

17. AMERICAN WITH DISABILITIES ACT

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

Superior Court of California, County of San Bernardino
Sharon Bragg, Administrative Services Supervisor
247 West Third Street, 1st Floor
San Bernardino, CA 92415-0244

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18. FEASIBILITY STUDIES AND ACQUISITION RECOMMENDATIONS

Solicitations in response to procurements for assistance in the preparation of feasibility studies or the development of recommendations for the acquisition of IT goods and services must disclose any financial interests (e.g., service contracts, original equipment manufacturer (OEM) agreements, remarketing agreements) that may foreseeably allow the Bidder to benefit materially from the Court's adoption of a course of action recommended in the feasibility study or of the acquisition recommendations.

19. FOLLOW-ON CONTRACTING

A contractor may, as part of consulting services provided to the Court, recommend or suggest the purchase of certain goods or services. No contractor (or subsidiary thereof) that makes such a recommendation may submit a quote, bid or proposal, or be awarded a contract to provide those goods or services to the Court. In addition, no contractor may be paid out of Court funds for developing recommendations on the acquisition of IT goods or services or assisting in the preparation of a feasibility study, if that contractor is to be a source of such acquisition or would otherwise directly and/or materially benefit from the Court's adoption of such recommendations or the course of action recommended in the feasibility study. This "follow-on" prohibition does not extend to contractors that were awarded a subcontract of the original consulting services contract that amounted to no more than ten (10) percent of the total monetary value of the consulting services contract.