

RFP Title: *Drug Treatment Services - Outpatient*
RFP Number: *SC 012/028*

REQUEST FOR PROPOSALS

***SUPERIOR COURT OF CALIFORNIA, COUNTY OF
ALAMEDA***

REQUEST FOR PROPOSALS

DRUG TREATMENT SERVICES – OUTPATIENT

PROPOSALS DUE:
AUGUST 22 2012 NO LATER THAN 3:00 P.M. PACIFIC TIME

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1.0 BACKGROUND INFORMATION

The Parolee Reentry Court Program (PRCP) is a collaborative effort between the Superior Court of California, County of Alameda, the Alameda County District Attorney and Public Defender, the State of California Division of Adult Parole Operations, and local community based organizations. The PRCP provides intensive case management combined with community based treatment services for parolees reentering the community from incarceration or for parolees at risk of having their parole revoked. The resulting goals of the PRCP are to reduce recidivism, assist the parolees to become independent and responsible members of the community, and protect the safety, health and property of the surrounding community. In response to the large number of parolees who are living with substance abuse issues, the PRCP is seeking qualified vendors to treat chemical dependency. Parolees who are “actively addicted” (meaning they have used within the 90 day period preceding their latest assessment) will be court mandated to an outpatient treatment program.

2.0 DESCRIPTION OF SERVICES AND DELIVERABLES

The objective of the Parolee Reentry Court, with regard to chemically dependent participants, is to provide a balanced program of individual and group treatment services. The outpatient programs should take into consideration specialized programming for parolees and ethnic minorities. This request for proposal is part of the PRCP’s effort to create an outpatient service of continuum of quality substance abuse treatment which are cost effective and responsive to the parolee’s needs.

The general purpose of the Outpatient Treatment Program is to provide up to six (6) months of outpatient treatment to promote and maintain sobriety. The services in the Outpatient Treatment Program will include group counseling, individual counseling, relapse prevention, and living/coping skills. The Court will contract with agencies that have a well developed program including intake, treatment planning, and monitoring progress toward the achievement of sobriety.

3.0 ELIGIBILITY

The Court is seeking multiple vendors to provide outpatient services to chemically dependent parolees. Case Managers will assess the participants and refer them to appropriate treatment provider based on the individual circumstances of the participant.

The submittal of proposals is open to all agencies licensed by the State of California with at least two years experience in the operation of substance abuse outpatient treatment programs.

Prospective vendors must provide services within the County of Alameda County. Prospective vendors must be willing to have participants for a period not to exceed six (6) months.

Vendors must be willing to provide progress reports to the Court’s Case Managers at least monthly - reporting on attendance and the parolee’s level of participation. If random urinalysis testing is conducted, the vendor must provide the Court’s Case Manager with information on positive tests within five (5) days of discovery.

4.0 CONTRACTING PERIOD AND FUNDING

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Proposals selected for funding will be eligible for a one-year services contract from September 1, 2012 through September 30, 2013. Funds announced in this Request for Proposal (RFP) are estimated at \$100,000 for this contracting period.

5.0 TIMELINE FOR THIS RFP

The Court has developed the following list of key events related to this RFP. All dates are subject to change at the discretion of the Court.

6.0

| EVENT | DATE |
|--|---------------------------|
| RFP issued | August 8, 2012 |
| Deadline for questions | August 17, 2012 |
| Questions and answers posted | August 20, 2012 |
| Latest date and time proposal may be submitted | August 22, 2012 by 3:00PM |
| Evaluation of proposals | August 24, 2012 |
| Notice of Intent to Award | August 27, 2012 |
| Negotiations and execution of contract | August 29, 2012 |
| Contract start date | September 1, 2012 |

RFP ATTACHMENTS

The following attachments are included as part of this RFP:

| ATTACHMENT | DESCRIPTION |
|---|---|
| Attachment 1: Administrative Rules Governing RFPs (Non-IT Services) | These rules govern this solicitation. |
| Attachment 2: Court Standard Terms and Conditions | If selected, the person or entity submitting a proposal (the "Proposer") must sign the Court Standard Form agreement |
| Attachment 3: Proposer's Acceptance of Terms and Conditions | On this form, the Proposer must indicate acceptance of the Terms and Conditions or identify exceptions to the Terms and Conditions. |

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| | |
|--|---|
| Attachment 4: Darfur Contracting Act Certification | If Proposer has had business activities or other operations outside of the United States within the previous three years, Proposer must complete the Darfur Contracting Act Certification and submit the completed certification with its proposal. |
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7.0 SUBMISSIONS OF PROPOSALS

- 7.1 Proposals should provide straightforward, concise information that satisfies the requirements of the “Proposal Contents” section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the RFP’s instructions and requirements, and completeness and clarity of content.
- 7.2 The Proposer must submit its proposal in two parts, the technical proposal and the cost proposal.
- a. The Proposer must submit **one (1) original and three (3) copies** of the technical proposal. The original must be signed by an authorized representative of the Proposer. The Proposer must write the RFP title and number on the outside of the sealed envelope.
 - b. The Proposer must submit **one (1) original and three (3) copies** of the cost proposal. The original must be signed by an authorized representative of the Proposer. The original cost proposal (and the copies thereof) must be submitted to the Court in a single sealed envelope, separate from the technical proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.
- 7.3 Proposals must be delivered by the date and time listed to:
- Irma Stephens
Fiscal Assistant II
Superior Court, County of Alameda
1225 Fallon Street Room 210
Oakland, CA 94612
- 7.4 Late proposals will not be accepted.
- 7.5 Only written proposals will be accepted. Proposals must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered by hand. Proposals may not be transmitted by fax or email.

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8.0 PROPOSAL CONTENTS

8.1 Technical Proposal. The following information must be included in the technical proposal. A proposal lacking any of the following information may be deemed non-responsive.

- a. Proposer's name, address, telephone and fax numbers, and federal tax identification number. Note that if Proposer is a sole proprietor using his or her social security number, the social security number will be required before finalizing a contract.
- b. For each key staff member, a resume describing the individual's background and experience, as well as the individual's ability and experience in providing outpatient treatment services. List licensure and credentials.
- c. Describe your agency's past experience and results in delivering comprehensive chemical dependency treatment, the usual length of treatment and the outcome goals.
- d. Describe your outpatient treatment program. The narrative should include a description of services and treatment, the frequency of group counseling (i.e. number of sessions per week), the length of each group counseling session., and the frequency of individual counseling (if available).
- e. Describe how your treatment program monitors substance use -i.e. random urinalysis, attendance at community support group meetings (NA, AA), etc.
- f. Describe how staffing is related to client services, and how many clients are seen per group counseling session (include a staff to client ratio).
- g. Acceptance of the Terms and Conditions.
 - i. The Proposer must either indicate acceptance of the Terms and Conditions or clearly identify exceptions to the Terms and Conditions. An "exception" includes any addition, deletion, qualification, limitation, or other change.
 - ii. If exceptions are identified, the Proposer must also submit a red-lined version of the Terms and Conditions that clearly tracks proposed changes, and a written explanation or rationale for each exception and/or proposed change.
- h. Certifications, Attachments, and other requirements.
 - i. Proposer must include the following certification in its proposal:

Proposer 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.
 - ii. If Proposer is a corporation, proof that Proposer is in good standing and qualified to conduct business in California.

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- iii. Copies of current business licenses, professional certifications, or other credentials as applicable under this RFP.
- iv. Domestic Violence Counseling training experience. Certification in this area is preferred.
- v. Evidence of experience in counseling formerly incarcerated individuals is required under this RFP.

8.2 Cost. Provide the cost and frequency for each group counseling session – on a per person basis. Include in your estimate the amount of time required to provide the Court’s case managers with a monthly progress report on each individual. Provide the cost and frequency of individual counseling sessions (if offered by your agency) – on a per person basis. Provide the cost and estimate the frequency of each urinalysis test – on a per person bases.

9.0 OFFER PERIOD

A Proposer's proposal is an irrevocable offer for ninety (90) 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.

10.0 EVALUATION OF PROPOSALS

At the time proposals are opened, each proposal will be checked for the presence or absence of the required proposal contents.

The Court will evaluate the proposals on a 100 point scale using the criteria set forth in the table below. Award, if made, will be to the highest scored proposal.

| CRITERION | MAXIMUM NUMBER OF POINTS |
|--|---------------------------------|
| <i>Overall quality of responses to technical proposal</i> | 20 |
| <i>Summary of Services</i> | 10 |
| <i>Experience working with parolees</i> | 10 |
| <i>Cost</i> | 35 |
| <i>Credentials of staff to be assigned to the project</i> | 15 |
| <i>Demonstrate competence in managing outpatient treatment</i> | 10 |

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11.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

One 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 (see www.courtinfo.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_500).

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 PROTESTS

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 Proposer 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 a solicitation specifications protest is August 20, 2012. Protests should be sent to:

Linda Salcido
Procurement Manager
Superior Court, County of Alameda
1225 Fallon Street Room 209
Oakland, CA 94612

ATTACHMENT 1
ADMINISTRATIVE RULES GOVERNING RFPS

Comment [TT1]: These are sample rules. The Court should feel free to substitute its own administrative rules, so long as those rules are compatible with the JBCM requirements for RFPS.

The Court should ensure that its administrative rules reflect the actual practices to be used by the Court.

1. COMMUNICATIONS WITH COURT REGARDING THE RFP

Except as specifically addressed elsewhere in the RFP, Proposers must send any communications regarding the RFP to bidquestions@alameda.courts.ca.gov (the "Solicitations Mailbox"). Proposers must include the RFP Number in subject line of any communication.

2. QUESTIONS REGARDING THE RFP

- A. If a Proposer's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the Proposer may submit the question via email to the Solicitations Mailbox, conspicuously marking it as "CONFIDENTIAL." With the question, the Proposer 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 Proposer will be notified.
- B. Proposers interested in responding to the RFP may submit questions via email to the Solicitations Mailbox on procedural matters related to the RFP or requests for clarification or modification of the RFP no later than the deadline for questions listed in the timeline of the RFP. If the Proposer is requesting a change, the request must set forth the recommended change and the Proposer's reasons for proposing the change. Questions or requests submitted after the deadline for questions will not be answered. Without disclosing the source of the question or request, a copy of the questions and the Court's responses will be made available.

3. ERRORS IN THE RFP

- A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer must immediately notify the Court via email to the Solicitations Mailbox 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.
- B. 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 timeline of the RFP, Proposer shall propose at its own risk. Furthermore, if Proposer is awarded the agreement, Proposer 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 RFP before the proposal due date and time listed in the timeline of the RFP by issuing an addendum. It is each Proposer's responsibility to inform itself of any addendum prior to its submission of a proposal.
- B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the Court via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

Comment [TT2]: If the Court will post addenda online, the Court should consider including relevant information here.

5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS

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

6. ERRORS IN THE PROPOSAL

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

7. RIGHT TO REJECT PROPOSALS

- A. Before the proposal due date and time listed in the timeline of the RFP, the Court may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, the Court may reject all proposals and cancel the RFP if the Court determines that: (i) the proposals received are not really competitive; (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 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

Comment [TT3]: This is taken from JBCM chapter 4 section 4.4.B.

in the AOC's best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.

- C. 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.
- D. 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.

8. EVALUATION PROCESS

- A. An evaluation team will review all proposals that are received by the appropriate deadline to determine the extent to which they comply with RFP requirements.
- B. Proposals that contain false or misleading statements may be rejected if in the Court's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP.
- C. Cost proposals will be checked only if a technical proposal is determined to be responsive. All figures entered on the cost proposal must be clearly legible.
- D. During the evaluation process, the Court may require a Proposer's representative to answer questions with regard to the Proposer's proposal. Failure of a Proposer to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.
- E. **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.
- F. During the evaluation process, the Court may perform certain checks to determine if a Proposer is deemed ineligible for contract award. For example, Proposer must be qualified to do business in California and in good standing, and must not be in violation of the Recycled Content Plastic Trash Bag Law.
- G. If a contract will be awarded, the Court will post an intent to award notice on its website, at www.alameda.courts.ca.gov.

Comment [TT4]: JBCM Chapter 4, section 4.2.B states:

JBEs should include a tiebreaker provision in the Solicitation Document to address how the contract award will be made in the event of a tie. Examples of permissible tiebreakers are a coin toss or other similar objective method. The event must be observed by witnesses, and the affected Bidders should be invited to observe.

9. DISPOSITION OF MATERIALS

All materials submitted in response to the RFP will become the property of the Court and will be returned only at the Court's option and at the expense of the Proposer submitting the proposal.

10. PAYMENT

- A. Payment terms will be specified in any agreement that may ensue as a result of the RFP.
- B. **THE COURT DOES NOT MAKE ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as provided in the agreement 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 agreement between the Court and the selected Proposer.

11. AWARD AND EXECUTION OF AGREEMENT

- A. 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.
- B. A Proposer submitting a proposal must be prepared to use a standard Court contract form rather than its own contract form.
- C. 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 a Proposer may delay execution of a contract.
- D. Upon award of the agreement, the agreement shall be signed by the 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 agreement form or prior to the end of June if award is at fiscal year-end. Agreements are not effective until executed by both parties and approved by the appropriate Court officials. Any work performed before receipt of a fully-executed agreement shall be at Proposer's own risk.

12. FAILURE TO EXECUTE THE AGREEMENT

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

13. 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 Executive Officer.

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14. ANTI-TRUST CLAIMS

Comment [TT5]: This language is required by GC 4552 - 4554 and JBCM chapter 4, section 4.2.B.

- A. In submitting a proposal to the Court, the 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.)
- B. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Proposer shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid.
- C. Upon demand in writing by the Proposer, the Court shall, within one year from such demand, reassign the cause of action assigned under this section if the Proposer has been or may have been injured by the violation of law for which the cause of action arose and (a) the 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.)

ATTACHMENT 2

Standard Terms and Conditions

1. Contractor Certification Clauses

1.1 Representations and Warranties. Contractor certifies that the following representations and warranties are true:

- (A) *Authority.* Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and in good standing in the State of California.
- (B) *Not an Expatriate Corporation.* Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the JBE.
- (C) *Sales and Use Tax Collection.* Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.
- (D) *No Gratuities.* Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- (E) *No Conflict of Interest.* Contractor 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.
- (F) *No Interference with Other Contracts.* To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- (G) *No Litigation.* No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse affect on Contractor's

business, the validity or enforceability of this Agreement, or Contractor's ability to perform this Agreement.

- (H) *Compliance with Laws Generally.* Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.
- (I) *Work Eligibility.* All personnel assigned to perform this Agreement are able to work legally in the United States and possess valid proof of work eligibility.
- (J) *Drug Free Workplace.* Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.
- (K) *No Harassment.* Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- (L) *Non-discrimination.* Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.
- (M) *Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination.* If this Agreement provides for total Compensation of more than \$100,000, Contractor is in compliance with Public Contract Code section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.
- (N) *Special Provisions regarding Compliance with National Labor Relations Board Orders.* If this Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within

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the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

(O) *Special Provisions regarding Compliance with the Sweatfree Code of Conduct.* If this Agreement provides for furnishing equipment, materials, or supplies other than public works, or for the laundering of apparel, garments or corresponding accessories:

- (1) No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108. This declaration is made under penalty of perjury.
- (2) Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a) and shall provide the same rights of access to the JBE.

(P) *Special Provisions regarding Compliance with the Child Support Compliance Act.* If Contractor is a private entity, and this Agreement provides for Compensation of \$100,000 or more:

- (1) Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- (2) Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

(Q) *Special Provisions regarding Discharge Violations.* If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control

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district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

(R) *Electronic Waste Recycling Act.* If this Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code sections 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.

(S) *Use of Postconsumer Material.* If this Agreement provides for the purchase and sale of Goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of the Contractor's postconsumer material in these Goods can not be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or vendor website:

- (1) Contractor has delivered a declaration to the JBE specifying the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200 in Goods offered or sold to the JBE, regardless of whether the Goods meet the requirements of Public Contract Code section 12209.1.
- (2) Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of a the current declaration to the JBE, in which case the current declaration as amended will be true and correct; and
- (3) If Contractor sells under this Agreement any printer or duplication cartridges that comply with Public Contract Code section 12209, Contractor has so specified in the declaration required under this section.

(T) *Jury Duty.* For actual jury service, Contractor's regular employees receive the amount of their regular pay and benefits for no fewer than five days annually, except to the extent Contractor's policies on jury service provide for that amount to be reduced (i) by any juror fees and costs actually reimbursed, and (ii) pro rata for employees who work less than on a full-time basis.

1.2 Covenant as to Representations and Warranties. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JBE if any representation and warranty becomes untrue.

2. Indemnity

Contractor shall indemnify and defend (with counsel satisfactory to the JBE Office of the General Counsel) Judicial Branch Entities and Judicial Branch Personnel against all claims,

damages, losses, and expenses, including attorney fees and costs, founded upon (i) Contractor's performance of, or failure to perform, the Services or Contractor's other duties under this Agreement, or (ii) any other breach by Contractor of this Agreement. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

3. Insurance

3.1 Basic Coverage. Contractor shall provide and maintain at Contractor's expense the following insurance during the Term:

- A. *Workers Compensation and Employer's Liability.* The policy is required only if Contractor have employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;
- B. *Commercial General Liability.* The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract , personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit; and
- C. *Professional Liability.* The policy must cover liability resulting from errors or omissions committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1 million per claim.
- D. *Commercial Automobile Liability.* The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

3.2 "Claims Made" Coverage. If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the JBE's acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Services commence under this Agreement.

3.3 Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.

3.4 Aggregate Limits of Liability. The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must

be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

- 3.5 Deductibles and Self-Insured Retentions.** Contractor shall declare to the JBE all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the JBE's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- 3.6 Additional Insured Status.** Contractor shall require Contractor's commercial general liability insurer, Contractor's commercial automobile liability insurer, and, if applicable, Contractor's commercial umbrella liability insurer to name Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liability arising out of Contractor's Services under this Agreement.
- 3.7 Certificates of Insurance.** Before Contractor begin performing Services, Contractor shall give the JBE certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days' prior written notice to the JBE. Any replacement certificates of insurance are subject to the approval of the JBE, and, without prejudice to the JBE, Contractor shall not perform work before the JBE approves the certificates.
- 3.8 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 3.9 Required Policy Provisions.** Each policy must provide, as follows:
- A. *Insurance Primary; Waiver of Subrogation.* The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; and
 - B. *Separation of Insureds.* The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.
- 3.10 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
- A. *Separate.* Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
 - B. *Joint.* Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

3.11 Consequences of Lapse. If required insurance lapses during the Term, the JBE is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

4. Default and Remedies

4.1 Default. A default exists under this Agreement if:

- A. Contractor fails or is unable to meet or perform any of Contractor's duties under this Agreement, and this failure is not cured within 10 days' following notice of default or is not capable of being cured within this cure period;
- B. Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business;
- C. Contractor makes or has made under this Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading;
- D. Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this Agreement admissible when required is not fulfilled or performed.

4.2 Notice. Contractor shall notify the JBE immediately if Contractor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

4.3 Remedies.

- A. *Available Remedies.* The JBE may do any of the following:
 - (1) Withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor;
 - (2) Require Contractor to enter into non-binding mediation;
 - (3) Exercise, following notice, the JBE's right of early termination of this Agreement as provided below; and
 - (4) Seek any other remedy available at law or in equity.
- B. *Remedies Cumulative.* All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

5. Termination and Cancellation; Effect of Expiration or Termination

5.1 Early Termination and Cancellation Rights.

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- A. The JBE may terminate this entire Agreement immediately “for cause” if Contractor is in default;
- B. The JBE may also cancel delivery immediately of all or any portion of unshipped Goods or limit Contractor’s Services, and, proportionately, Contractor’s compensation except to reimburse Contractor for its actual costs incurred before expenses arising out of early termination by the JBE, and any direct and indirect expenses incurred by cancellation of Goods in process that are custom made for the JBE), if:
 - (1) the JBE determines that having Contractor provide the Services has become infeasible due to changes in applicable laws or regulations; or
 - (2) expected or actual funding to compensate Contractor is withdrawn, reduced, or limited.
- C. The JBE may terminate this entire Agreement, with or without cause, by giving Contractor 30 days’ notice.
- D. This entire Agreement will terminate immediately without further action of the parties upon the death, or temporary or permanent incapacity, of a natural person who is a party to this Agreement or a general partner of a partnership that is a party to this Agreement.

5.2 Effect of Expiration and Early Termination; Survival.

- A. Upon the Termination Date:
 - (1) The JBE shall be released from compensating Contractor for Services, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs.
 - (2) Without prejudice to the JBE, Contractor shall be released from performing Services.
- B. All provisions of this Appendix C will survive the expiration or termination of this Agreement, except for section 1 and promises regarding the maintenance of insurance in section 3 (other than section 3.2, which will also survive).

6. Assignment and Subcontracting; Successors

6.1 Permitted Assignments and Subcontracts.

- A. Neither party may assign or subcontract its rights or duties under this Agreement, except as follows:
 - (1) The JBE may assign the JBE’s rights and duties to any Judicial Branch Entity. The JBE shall notify Contractor in writing within 30 days following the assignment.

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(2) Either party may assign its rights and duties or subcontract portions of this Agreement to a third party if the non-assigning party gives advance written consent to the assigning party. Consent may be withheld for any reason or no reason. If a non-assigning party does consent, the consent will take effect only if there is a written agreement between the assigning or subcontracting party and all assignees and subcontractors, stating the assignees and subcontractors:

(a) are jointly and severally liable to the non-assigning party for performing the duties in this Agreement of the assigning/subcontracting party;

(b) affirm the rights granted in this Agreement to the non-assigning party;

(c) make the representations and warranties made by the assigning/subcontracting party in this Agreement; and

(d) appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.

B. No assignment or subcontract will release either party of its duties under this Agreement.

6.2 Successors. This Agreement binds the parties as well as their heirs, successors, and assignees.

7. Notices

Notices under this Agreement must be in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to a party's project manager, if one is designated in Appendix A; otherwise, notices must be addressed to the individual(s) in the signature block of this Agreement. Either party may change its address for receipt of notice by entering a different recipient and address below or by giving notice at any time to the other party in the manner permitted by this paragraph.

If to the JBE:

If to Contractor:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

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Phone: _____ Phone: _____
E-mail: _____ E-mail: _____

8. Miscellaneous Provisions; Interpretation

- 8.1 Independent Contractor.** Contractor is an independent contractor to the JBE. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBE.
- 8.2 Special Provisions for Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions.** As required under Government Code sections 16645-16649, if this Agreement provides for total Compensation of \$50,000 or more to Contractor, then the covenants in this section apply to Contractor's activities. Contractor shall not:
- A. Assist, promote, or deter union organizing by employees performing work under state or judicial branch contracts;
 - B. Use the state's or JBE's funds received under this Agreement to assist, promote or deter union organizing; or
 - C. For any business conducted under this Agreement, use any property of the state or JBE to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.

If Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, Contractor shall maintain records sufficient to show that no reimbursement from the state's and JBE's funds has been sought for these costs, and provide those records to the Attorney General upon request.

- 8.3 Special Provisions regarding DVBE Participation Certification.** If Contractor made a commitment to achieve disabled veterans business enterprise participation, Contractor shall within 60 days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the JBE: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of any disabled veterans business enterprises (DVBE) that participated in the performance of this Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under this Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

8.4 Audit and Records

- A. *Audit.* Contractor shall allow the JBE's designees and the JBE to review and audit Contractor's documents and records relating to this Agreement, subject only to a

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lawyer's duty of confidentiality owed to a represented party. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit.

- B. Ownership.* The JBE is the exclusive owner of all materials collected and produced in connection with the Services. Upon the Termination Date (subject to any mutually agreed period of continuation of Services), or upon the JBE's notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the JBE or to another party at the JBE's direction. Contractor shall maintain all other materials in an accessible location and condition for a period of not less than four years after the later of:
- (1) Contractor's receipt of final payment under this Agreement; and
 - (2) The JBE's resolution with Contractor of the findings of any final audit.
- C. Copies.* Contractor may retain copies of any original documents Contractor provides to the JBE.

8.5 Special Provisions regarding Ownership of Results.

- A. Special Provisions regarding Grant Funds.* If this Agreement provides Compensation to Contractor for a project funded through a grant, at the conclusion of the Project, title to all expendable and non-expendable personal property with a value of \$500 or more purchased with JBE funds shall vest, automatically and without further action of the parties, with the JBE. If Contractor provides written certification to the JBE that the property will continue to be used for grant-related purposes and the JBE approves such certification in writing, the JBE may permit title to all such property to remain with Contractor in accordance with the JBE's written instructions. Contractor must await specific written instructions from the Project Manager regarding any transfer of title or disposition.
- B. Special Provisions regarding Ownership of Certain Equipment.* If Compensation under this Agreement is not through grant funding and this Agreement provides for the provision of equipment purchased or built with JBE funds, title to any equipment purchased or built with JBE funds shall vest in the JBE immediately upon payment of the purchase price. Before delivery to the JBE, Contractor is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Contractor or its directors, officers, employees, or agents, and Contractor shall make all necessary or appropriate repairs and adjustments.

8.6 Confidential Information; Publicity.

- A. Confidential Information.* Contractor agrees to hold in confidence the following confidential information Contractor receives in connection with this Agreement:
- (1) All written information that is marked confidential;

- (2) All non-public information in electronic form to which Contractor has access;
and
- (3) All verbal information the JBE later confirms in writing is confidential.

The JBE owns the confidential information, and the JBE authorizes Contractor to use it only for purposes of performing this Agreement. For example, Contractor may give confidential information on a “need-to-know” basis to Contractor’s professional services providers, employees and subcontractors who have also executed confidentiality agreements that protect the JBE’s confidential information to the same extent as this section 8.6. Contractor may also disclose the JBE’s confidential information to the extent necessary to comply with law, provided Contractor gives the JBE advance notice.

- B. Publicity.* Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the JBE’s Business Services Manager.
- C. Specific Performance.* Contractor understands a default under this section 8.6(C) will result in irreparable damage for which no adequate remedy will be available. Accordingly, injunctive or other equitable relief is a remedy that the JBE will be entitled to seek.

8.7 Special Provisions Applicable to Competitively Bid Contracts; Antitrust Claims.

If Services or Goods under this Agreement were obtained by means of a competitive bid, Contractor shall comply with the requirements of Government Code sections set out below.

- A.* Contractor shall assign to the JBE 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 Contractor for sale to the JBE pursuant to the bid. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Contractor. (GC 4552)
- B.* If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)
- C.* Upon demand in writing by the Contractor, the JBE shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the

cause of action arose and (1) the JBE has not been injured thereby, or (2) the JBE declines to file a court action for the cause of action. (GC 4554)

- 8.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. Jurisdiction for any legal action arising from this agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 8.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code §1654.
- 8.10 Amendment and Waiver.** No amendment to this Agreement will be effective unless in writing. A party's waiver of enforcement of any of this Agreement's terms or conditions is effective only if in writing. A party's specific waiver does not constitute a waiver by that party of any earlier, concurrent, or later breach or default.
- 8.11 Authority and Binding Effect.** Each party warrants it has the authority to enter into this Agreement, it may perform the services provided for in this Agreement, and its representative who signs this Agreement has the authority to do so. Each party warrants this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms.
- 8.12 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 8.13 Headings.** All headings are for reference purposes only and do not affect the interpretation of this Agreement.
- 8.14 Time of the Essence.** Time is of the essence of the Contractor's performance of Services under this Agreement.
- 8.15 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

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**ATTACHMENT 3
PROPOSER'S ACCEPTANCE OF TERMS AND CONDITIONS**

Instructions: Mark the appropriate choice below and sign this attachment.

_____ Proposer accepts Attachment 2: Court Standard Terms and Conditions ("Attachment 2") without exception.

OR

_____ Proposer proposes exceptions or modifications to Attachment 2. Proposer must also submit (i) a red-lined version of Attachment 2 that clearly tracks proposed modifications, and (ii) a written explanation or rationale for each exception or proposed modification.

| |
|--|
| BY (Authorized Signature)  |
| PRINTED NAME OF PERSON SIGNING |
| TITLE OF PERSON SIGNING |

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ATTACHMENT 4
DARFUR CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a “scrutinized company” as defined in PCC 10476, or (ii) receive written permission from the AOC to submit a bid or proposal.

To submit a bid or proposal to the AOC, you must complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

OR

2. We are a “scrutinized company” as defined in PCC 10476, but we have received written permission from the AOC to submit a bid or proposal pursuant to PCC 10477(b). *A copy of the written permission from the AOC is included with our bid or proposal.*

OR

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a “scrutinized company” as defined in PCC 10476.

CERTIFICATION FOR PARAGRAPH 3:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer/bidder to the clause in paragraph 3. This certification is made under the laws of the State of California.

| | |
|---|--|
| <i>Company Name (Printed)</i> | <i>Federal ID Number</i> |
| <i>By (Authorized Signature)</i> | |
| <i>Printed Name and Title of Person Signing</i> | |
| <i>Date Executed</i> | <i>Executed in the County of _____ in the State of _____</i> |