

Superior Court of California, County of Inyo

REQUEST FOR PROPOSALS



For
Drug Testing Services and Supplies

Deadline for Submission: [May 31, 2017 by 5:00 p.m.](#)

**Superior Court of California
County of Inyo**

Contact Information:

301 West Line Street, Bishop, CA 93514

Danielle Sexton, Court Finance Manager

danielle.sexton@inyocourt.ca.gov

Phone: 760-872-4730

Fax: 760-873-4589

**NOTICE INVITING BIDS
DRUG TESTING SERVICES AND SUPPLIES**

Superior Court of California, County of Inyo is soliciting bids for:

DRUG TESTING SERVICES AND SUPPLIES

Bid Packages, which include the Notice Inviting Bids, Bid Proposal Forms, Contract, and Special Provisions, may only be obtained from Danielle Sexton, Court Finance Manager, at Inyo Court, 301 W Line Street, Bishop, California / Telephone (760) 872-4730. The Bid packages are available for inspection at the offices from 8:30a.m. to 4:30p.m., Monday through Thursday, or 8:30a.m. to 12:00p.m. on Friday, except for recognized Holidays, closed between 12:00p.m. and 1:00 p.m.

To be considered, **bids must be received by Inyo Court, 301 W Line Street at or before 5:00 P.M. on May 31, 2017.** Bids may be submitted in a sealed envelope clearly marked with the bidder's name and address, the word "BID", and the Project Title: DRUG TESTING SERVICES AND SUPPLIES, or by email to scfiscal@inyocourt.ca.gov with the email containing the bidder's name and address, and the Subject Line: BID - DRUG TESTING SERVICES AND SUPPLIES

TIMELINE:

EVENT	DATE
RFP Issued	04/20/2017
Deadline for Submission of Questions	05/15/2017
Deadline for Submission of Bids (Late proposals cannot be accepted)	05/31/2017
Notice of Intent to Award	May 2017
Contract Execution	May / June 2017
START DATE OF SERVICES	June / July 2017

AWARD OF PROPOSAL:

An award of this Request for Proposal will be on an "all or none" basis. A contract will be issued to one vendor only for Drug Testing Services and Supplies. The contract term will be for a two (2) year period, with options to renew for a third (3rd) and fourth (4th) year.

ATTACHED SHEETS:

Conditions of the Proposal and specifications, requirements, and estimated quantities of the tests to be done for one (1) year. Quantities estimated will be used for basis of award and are based on past year's usage.

Darfur Contracting Act Certification must be returned with submitted bid.

Sample Short Form Agreement with Terms & Conditions: Upon bid award, the vendor will be required to sign an agreement. If the vendor has any objections to the attached terms & conditions, the vendor's proposal must include a red-lined version of the terms & conditions indicating the objections or any additional terms & conditions that may be proposed.

VENDOR TO COMPLETE

Undersigned agrees to furnish the services as stipulated in this Request for Proposal at the prices, terms and conditions stated.

Company: _____ Address: _____

Printed Name: _____ City: _____ State: _____ Zip Code: _____

Signature: _____ Date: _____ Telephone: _____

Title: _____

REQUEST FOR PROPOSAL
GENERAL CONDITIONS

NOTE: To reduce duplicating costs only one (1) copy of the proposal is being mailed to you. Return this copy with your proposal. Please make a copy for your records.

NOTE: FAILURE TO RESPOND TO PROPOSAL MAY CONSTITUTE REMOVAL FROM BIDDER'S LIST. If unable to provide the commodities stated herein, vendor shall return proposal **PRIOR** to closing date stating the reason why unable to provide commodities.

1. PREPARATION OF PROPOSAL

- A. All information requested of the vendor shall be entered in the appropriate space(s) on the form. Failure to do so may disqualify your offer.
- B. All information shall be typewritten or entered in ink. Mistakes may be crossed out and corrections inserted before submission of your proposal. Corrections must be initialed in ink by the person signing the proposal.
- C. Corrections and/or modifications received after the closing time specified will not be accepted.
- D. Proposals will not be accepted unless signed in ink (not typed) in the appropriate space(s) by an authorized officer or employee of the vendor.
- E. Any proposals received after the closing date will be returned unopened to the vendor.
- F. Proposal prices shall remain open and valid subject to acceptance for ninety (90) days after proposal closing date.
- G. Quote separate prices on each individual item in **County's unit of measure** (i.e., ea, dz, pkg, not your standard carton price).
- H. Prices proposed are considered accurate and cannot be withdrawn after the proposal is opened.
- I. Upon submission of proposal documents, all such documents shall become the property of the Court and are confidential until a successful bidder is selected.
- J. Time of delivery shall be stated as the number of calendar days following receipt of the order by the vendor, to the receipt of the goods or services.
- K. Prices will be considered as net if no cash discount is shown.
- L. Provide any other information not specifically requested which may be taken into consideration (Inyo Court is not obligated to consider any information not specifically requested in this request for proposal.)
- M. Inyo Court generally solicits proposals from a wide variety of vendors which may include retailers, wholesalers, suppliers, distributors, etc.

2. TAXES

Unless otherwise definitely specified, the unit price stated herein does not include California State Sales Tax.

3. CASH DISCOUNTS

In connection with any cash discount specified in this proposal, time will be computed from the date of complete delivery of the supplies or equipment as specified, or from date correct invoices are received if the latter date is later than the date of delivery. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the Court warrant or check.

4. USAGE

Usage of materials will be interspersed and periodic during the contract year, and as such will not be subject to shipment of the total estimated requirements at any one time.

5. QUANTITIES

The estimated usages for each item are based on the experience of the past 12 month period or are estimated requirements for one year. It is not expressly implied nor guaranteed, that the quantities shown will be used in the next contract period, and as such, the right is reserved to order decreased or increased amounts from those listed, as may be required. However, it is to be understood that these figures are quite realistic and will be considered in making an award. Actual usage whether lesser or greater than estimated shall not affect the prices as proposed and accepted by the Court.

6. INCLUSION IN THE CONTRACT

The County departments and governmental entities listed are those which will participate in the contract. However, the right is reserved by the Purchasing Agent (Inyo Court), at his discretion, to include any other County department and/or governmental entity in the contract at the accepted prices.

7. RESPONSIBILITY FOR GOVERNMENTAL ENTITIES OTHER THAN THE COURT

Those governmental entities other than the Court who are listed (or who have subsequently been included) have signified their intention to participate in the Court agreement or purchase order resulting from this proposal. Participation will not impose any responsibility for payment.

8. AWARDS

The Court shall evaluate Proposals and Award to that Proposal which would be in the best interest of the Court.

Such evaluation shall be on a best value basis with weight factors as follows:

Service Requirement	<u>35</u>
Fee Schedule	<u>35</u>
Qualifications	<u>30</u>
<u>TOTAL</u>	<u>100</u>

The Court shall be the sole judge in making this determination.

9. QUANTITY & QUALITY OF MATERIALS OR SERVICES

The successful vendor shall furnish and deliver the quantities designated by the Court and/or their designee. Packing slips which clearly identify the merchandise and the Court's purchase order number or agreement number must accompany every delivery. All materials, supplies or services furnished under an agreement or purchase order resulting from this proposal shall be in accordance with the Court's specifications. Materials or supplies, which in the opinion of the Court and/or their designee which are not in compliance with the specifications hereof, which are not as warranted or which are shipped late, shipped in excess or insufficient quantities or substituted for items ordered hereunder may be rejected by Court and/or their designee and returned or held at Vendor's expense and risk. Payment does not constitute an acceptance of the material nor impair Court's right to inspect or any of its remedies.

10. STATUS OF CONTRACTOR

In performing any services herein specified, Contractor shall act as an independent contractor and shall have control of the work and the manner in which it is performed. Contractor shall be responsible for providing legally mandated benefits including, but not limited to, workers' compensation insurance, and to comply with state and federal tax withholding regulations. Court retains the general right of inspection in order to judge whether, in the Court's opinion, the work is being performed by Contractor in accordance with the terms of this agreement. Contractor shall have no authority to act on behalf of Court in any capacity whatsoever as agent, or to bind Court to any obligation.

11. RIGHT TO AUDIT

Vendor must maintain records relating to performance and billing by Vendor under this Order until four years after final payment. During the period of time that Vendor is required to retain such records, Court or its representative may, during normal business hours, inspect and make extracts or copies of such records and other materials for purposes of confirming the accuracy of invoices resulting from this proposal.

12. PRICES

During the period of deliveries under an agreement or purchase orders resulting from this proposal, should there be a decrease in prices on the balance of the deliveries, such decreases shall be made available to the Court for as long as the lower prices are in effect, but at no time shall the prices charged the Court exceed the prices herein quoted.

13. CONTRACT EXCLUSIVE

The provisions of the agreement or purchase order resulting from this proposal shall in no way prohibit the Court from making any incidental purchases from another supplier for the same commodities as herein listed.

14. TERMINATION OF PURCHASE ORDERS OR AGREEMENTS

- A. Purchase orders or agreements which extend into a subsequent fiscal year will automatically cancel if the Court is not appropriated funds for the goods and/or services under the purchase order or agreement.
- B. The Court may, by giving ten (10) days written notice to the successful vendor, terminate the agreement or purchase order resulting from this proposal prior to its expiration for due cause. Due cause for termination shall be, but not limited to, failure to deliver in quantities required within a reasonable time, failure of the product to meet specifications, and/or for reasons of unsatisfactory service.
- C. The Court may, upon giving thirty (30) days prior written notice to the vendor, terminate the agreement or purchase order, with or without cause.

15. VENDOR ASSISTANCE

Successful vendor shall furnish, at no cost to the Court, a representative to assist the Court and/or their designee in determining their service requirements.

16. RENEWAL

A contract will be issued to one vendor only for Drug Testing Services and Supplies. The contract term will be for a two (2) year period, with options to renew for a third (3rd) and fourth (4th) year by mutual written consent.

17. NON-FUNDING CLAUSE

Funds provided for commodities or services under the terms of this proposal are contingent on availability of public funds. Should sufficient funds not be allocated during those terms, this proposal may be modified or terminated at any time by the Court upon thirty (30) day notice. Notice shall be fully given in writing or through service in person or by first class mail.

18. DISABLED VETERAN BUSINESS ENTERPRISE (DVBE)

The DVBE requirement has been waived for this solicitation.

STATE IF COMPANY MEETS THE REQUIREMENTS AS A "LOCAL VENDOR"

___ YES ___ NO

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THE FOLLOWING REQUIREMENTS MUST BE ADDRESSED AND INCLUDED WITH THIS REQUEST FOR PROPOSAL PACKAGE:

A. QUALIFICATIONS OF THE VENDOR

The proposal shall include a description of the vendor's qualifying experience to include the following.

1. A listing of name, address, telephone number and administrator of all institutions where vendor provides, or has provided Drug Testing Services in the last five (5) years; and the length of time that each contract was in effect.
2. A listing of all Professional Organizations, Associations or Accreditations held by the vendor.
3. A declaration of whether or not the vendor undergoes any Proficiency Testing or equivalent qualitative review process. If so, describe the evaluation process and provide information regarding what entity is conducting the testing. As part of this contract, the vendor may be required to provide copies of such proficiency testing upon request.
4. If any part of the work product described in the proposal is to be provided by subcontractor, please provide the following:
 - (a) The corporate or company name and the names of the officers or principles of the companies proposed as subcontractors.
 - (b) A description of each subcontractor's role in the project.
 - (c) A description of previous joint ventures with subcontractor.
 - (d) A listing of name, address, telephone number and administrator of all institutions where subcontractor provides, or has provided Drug Testing Services in the last five (5) years; and the length of time that each contract was in effect.
 - (e) A listing of all Professional Organizations, Associations or Accreditations held by each subcontractor.
 - (f) A declaration of whether or not the subcontractor undergoes any proficiency testing or equivalent review process. If so, describe the evaluation process and provide information regarding what entity is conducting the testing. As part of this contract, any subcontractor utilized by vendor may be required to provide copies of such proficiency testing upon request.

B. LITIGATION AND OTHER ACTIONS AGAINST VENDOR

The proposal shall include a list of all litigation filed within the last five (5) years in which the vendor, subcontractors, and/or employees of the vendor or subcontractors, were named as defendants. In addition, list all actions taken within the last five (5) years by any organization or agency regarding professional certification or licensure of the vendor and any of its employees or contractors.

SCOPE OF SERVICES

The Contractor shall provide all labor, materials, equipment, and incidentals to perform drug testing on samples provided by **the Court and/or their designee** and deliver the test results to the Court **and/or their designee**, if stated, within the timeframe detailed in this RFP. The Contractor's handling and testing of the drug samples shall meet or exceed industry professional standards, federal, state, and local government agency guidelines, laws, regulations, regulations and ordinances and be in accordance with the general specifications outlined above and the terms and conditions under this Agreement.

In addition, the RFP proposal shall include Contractor's approach to providing support services to the Court, when required, by providing litigation package and explanation of selected drug-testing samples and results that are in compliance with accepted medical and legal terminology and discovery. Other related services would include Expert Witness Testimony by a certified toxicologist, provided at rates based on per day cost plus travel and living expenses at cost.

Proposers shall provide complete price methodology with a time allotment to perform the tests and provide the results to the Court **and/or their designee** for each type of sample. This shall form the basis for payment to the successful proposer, as well as for adjustments to the value of contract in the event the scope of work varies from that proposed.

A. In addition to the above listed services, proposals shall at a minimum include, but not be limited to:

- ◆ **LICENSE:** CONTRACTOR shall possess a valid license issued by the State Department of Health to perform the tests referred to the Health and Safety Code, Section 436.51, and all tests performed pursuant to this contract shall be performed in accordance with the California Code of Regulations, Title 17. Loss of License during the term of the contract will result in immediate termination of the contract. Proof of certification and licensure. Substance Abuse and Mental Health Services Administration (SAMHSA) would be one (1) of the licenses or certificates we will accept.

STATE LICENSE NUMBER: _____

- ◆ Cost, if any, to ship testing devices to the Bishop location and method of shipping.
- ◆ Protect and maintain a chain of custody in collecting and processing test samples, including paper record keepings as shall be required by the requesting to appropriately present evidence of any test results in any court or administrative proceeding.
- ◆ Please state whether laboratory is on site, and/or off-site, and/or subcontracted with another Vendor.
- ◆ State what is the minimum quantitative levels/threshold for each item analyzed in the laboratory.
- ◆ Provide individual written reports and interpretation of any and all test results for the performance of such tests. Please state how report will be made available to the Court **and/or their designee** and when results report will be made available after receiving urine sample. Results report must include the levels of each item tested, including creatinine level provided to the authorized employee on the results so the authorized employee knows if the client is producing dilute urine samples. **Please provide a sample copy of a positive (+) test result report and a negative (-) test result report showing all the information that a test report will have on it.**
- ◆ State how and for how long samples with positive test results will be stored and kept, and state how many days Contractor will store urine specimens identified as negative (-).
- ◆ Please provide information on what types of testing devices you can provide. For example, 7 panel testing device that can or cannot be customized, testing device that instantly indicates a positive test result, testing devices that tests for ETG, etc. **Then provide one (1) sample of each testing device with proposal. Sample testing device(s) will not be returned to you.**
- ◆ **County employees** will collect the urine specimen, seal bottle, complete paperwork prepared for pick-up. Clients will be required to state ahead of time what other medications/foods they have ingested so it will explain the drug test outcome. Clients shall be observed while providing sample to avoid false samples. Cost, if any, to pick up urine samples from location-identified above and method of shipping. If pick up at location is not available, please state method of sending test samples to you, for example, drop off location.

- ◆ Collected urine samples will be picked up at the following location:

Inyo County Probation Department
918 N. Main Street
Bishop, CA 93514

- ◆ Please state whether your company offers a random testing program, include details describing what this entails, and of the cost, if any.

B. The following services should be addressed in proposal and RFP pricing.

- ◆ Include separate pricing for drug testing devices (see below).
- ◆ Cost, if any, to provide qualified expert witness and such associated services as may be necessary to testify and confirm results of drug testing with all information regarding the expert witnesses training and education included in bid.
- ◆ Daily cost rate, if any, to provide Expert Witness Testimony.
- ◆ Cost, if any, to provide on-site training and/or on-line internet certified training on how to properly use the testing device.
- ◆ Cost, if any, to provide on-site California Standards and Training for Corrections (STC) certified Drug Abuse Recognition (DAR) training, when needed and requested.

NOTE: Inyo Court will reimburse for hotel at the most economical means possible; meals/incidentals at the General Services Administration (GSA) daily per diem rate and/or a pro-rated amount (see www.gsa.gov); mileage at the IRS standard rate (see www.irs.gov); and, travel (air, rental car, etc.) at the most economical means possible.

- ◆ Requested confirmation test [via gas chromatography/mass spectrometry (GC/MS) or other validated process] including; but not limited to confirmation of rapid drug testing devices.

C. Quantities (Estimated)

The quantities stated below are estimates only of the **Inyo Court Drug Court Program**. Contractor agrees to furnish more or less than the estimates at the unit prices quoted in accordance with availability or funds and actual needs as they occur throughout the contract period:

Approximately 2,100 samples were collected and submitted during the past fiscal year for routine screening. Of those samples, approximately 1,800 were sent in for ETG testing.

Approximately 2,900 testing devices were purchased during the past fiscal year.

LABORATORY TESTING SERVICE

Cost of Service: Provide cost for each test and service as stated herein:

Conduct laboratory drug screening and analyze samples of urine as may be required by **the Inyo Court Drug Court Program** to include, but not necessary be limited to the following and confirmation* of testing device results, as submitted, by gas chromatography/mass spectrometry:

	<u>URINE</u>	<u>ORAL/SALIVA</u>
a. Opiates (morphine, heroin codeine)	\$ _____	\$ _____
b. THC (marijuana)	\$ _____	\$ _____
c. Benzodiazepine (valium)	\$ _____	\$ _____
d. Cocaine	\$ _____	\$ _____
e. Methaqualane	\$ _____	\$ _____
f. Amphetamines and sympathetic amines	\$ _____	\$ _____
g. Propoxyphene (darvon)	\$ _____	\$ _____
h. Methadone	\$ _____	\$ _____
i. Barbituates	\$ _____	\$ _____
j. Phencyclidine	\$ _____	\$ _____
k. ETG	\$ _____	\$ _____
l. Alcohol	\$ _____	\$ _____
m. Ecstasy (MDMA)	\$ _____	\$ _____
n. Panel 7, Urine Drug Screen – 7 (includes Amphetamines, Benzodiazepines, Cocaine metabolite, Opiates, Methamphetamine, THC, and Oxycodone and Adulteration)	\$ _____	\$ _____
o. Panel 9 Urine Drug Screen (Panel 7 plus Proxphene, Methadone and Methaqualone)	\$ _____	\$ _____
p. LSD (Lysergic Acid Diethylamide)	\$ _____	\$ _____
q. Esoteric Drugs (includes Ambien, Soma, Oxycontin, Oxycodone)	\$ _____	\$ _____
r. Substance Identification	\$ _____	\$ _____

* **NOTE:** Presumptive testing will not be conducted or charged on testing device samples. CONFIRMATION ONLY.

TESTING DEVICES
(URINE/ORAL)

1. Price per testing device (1 unit): \$ _____
Specify type of Device: _____
Price per case: \$ _____
Specify quantity in case: _____
Discount if any, please specify: _____

2. Price per testing device (1 unit): \$ _____
Specify type of Device: _____
Price per case: \$ _____
Specify quantity in case: _____
Discount if any, please specify: _____

3. Price per testing device (1 unit): \$ _____
Specify type of Device: _____
Price per case: \$ _____
Specify quantity in case: _____
Discount if any, please specify: _____

4. Price per testing device (1 unit): \$ _____
Specify type of Device: _____
Price per case: \$ _____
Specify quantity in case: _____
Discount if any, please specify: _____

If you provide more than four different devices, please attach additional sheets to this section.

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 Court to submit a bid or proposal.

To submit a bid or proposal to the Court, 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 Court to submit a bid or proposal pursuant to PCC 10477(b). *A copy of the written permission from the Court 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 _____</i> <i>in the State of _____</i>

AGREEMENT NUMBER [Agreement Number]

- In this agreement (the “Agreement”), the term “Contractor” refers to **[Contractor name]**, and the term “Court” refers to the **Superior Court of California, County of Inyo.**
- This Agreement becomes effective as of **[Date]**, (the “Effective Date”) and expires on **[Date]**.
- The maximum amount that the Court may pay Contractor under this Agreement is **[Dollar amount]** (the “Maximum Amount”).
- This Agreement incorporates and the parties agree to the attached provisions labeled “Services—Short Form Agreement Terms.” This Agreement represents the parties’ entire understanding regarding its subject matter.
- Contractor will perform the following services (the “Services”), and deliver the following work product (the “Work Product”):



Services:

Description of Services	[Insert description of Services.]
Completion Date	[Insert completion date; start date can be addressed here too if different from Effective Date, above.]
Acceptance Criteria	[Insert acceptance criteria.]

Work Product:

Description of Work Product	[Insert description of Work Product. If there is no Work Product, insert “None.”]
Delivery Date	[Insert delivery date. If there is no Work Product, insert “None.”]
Acceptance Criteria	[Insert acceptance criteria. If there is no Work Product, insert “None.”]

- The Court’s project manager is: **[Insert project manager’s name.]**
- The Court will pay Contractor as follows: **[Insert payment description.]**

COURT’S SIGNATURE	CONTRACTOR’S SIGNATURE
Superior Court of California, County of Inyo	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</i> [Contractor name]
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING Pamela M. Foster, Court Executive Officer	PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title]
DATE EXECUTED [Date]	DATE EXECUTED [Date]
ADDRESS 301 W. Line Street Bishop, CA 93514	ADDRESS [Address]

SHORT FORM AGREEMENT TERMS & CONDITIONS

- A. PERFORMANCE AND DELIVERY.** Contractor will perform the Services and deliver all Work Product as specified on the coversheet of this Agreement. Time is of the essence in Contractor's performance of the Services and delivery of Work Product. The Maximum Amount listed on the coversheet of this Agreement includes all amounts allowed for expenses, including those related to shipping, handling, traveling, bonding, licensing, maintaining insurance, and obtaining permits.
- B. ACCEPTANCE.** All Services and Work Product are subject to written acceptance by the Court. The Court may reject any Service or Work Product that (i) fails to meet applicable acceptance criteria, (ii) is not as warranted, or (iii) is performed or delivered late. Payment by the Court does not signify acceptance of the Services or Work Product.
- C. INTELLECTUAL PROPERTY.** Contractor irrevocably assigns to the Court all right, title and interest worldwide in and to the Work Product created under this Agreement, and all applicable intellectual property rights related to the Work Product created under this Agreement, including copyrights, trademarks, trade secrets, moral rights, and contract and licensing rights. Contractor grants to the Court a nonexclusive, transferable, sublicenseable (through multiple tiers), worldwide, perpetual, irrevocable, fully-paid and royalty-free license to use, reproduce, make derivative works of, perform, display, and distribute any portion of the Work Product delivered by Contractor but not created under this Agreement. The Court retains all intellectual property rights in any materials it provides to Contractor (the "Court Materials"). Contractor will hold the Court Materials in trust and confidence. Contractor will use the Court Materials solely for performing the Services and creating Work Product created under this Agreement.
- D. INVOICES, PAYMENT AND SETOFF.** After the Court has accepted Services and Work Product, Contractor will send one original of a correct, itemized invoice for the accepted Services and Work Product to "Accounts Payable" at the address shown on the signature block of this Agreement. Contractor will print each invoice on Contractor's standard printed bill form, and each invoice will include at least (i) the Agreement number, (ii) a unique invoice number, (iii) Contractor's name and address, (iv) the nature of the invoiced charge, (v) the total invoiced amount, and (vi) all other details the Court considers reasonably necessary to permit the Court to evaluate the Services performed and the Work Product delivered, including the number of hours worked and the applicable hourly rate. If requested, Contractor will promptly correct any inaccuracy and resubmit the invoice. If the Court rejects any Services or Work Product after payment to Contractor, the Court may exercise all contractual and other legal remedies, including (a) setting off the overpayment against future invoices payable by the Court, (b) setting off the overpayment against any other amount payable for the benefit of Contractor pursuant to this Agreement or otherwise, and (c) requiring Contractor to refund the overpayment within thirty (30) days of the Court's request. Unless Contractor is a governmental entity, the Court will take no action on invoices submitted before Contractor has completed the Court's standard payee data record form, which Contractor may obtain from the Court. Contractor must include with any request for reimbursement from the Court a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the Court was sought for these costs, and Contractor will provide those records to the Attorney General upon request.
- E. WARRANTIES.** Contractor will perform all Services using skilled personnel only, in a good and workmanlike manner, in accordance with industry standards, and in compliance with all applicable laws, rules, and regulations. Contractor warrants that, upon delivery, all Work Product will (i) be free from defects in workmanship, material, and manufacture (including, defects that could create a hazard to life or property), (ii) not infringe any third party's rights, including intellectual property rights, (iii) be of merchantable quality and fit for the purposes intended by the Court, (iv) comply with the requirements of this Agreement, and (v) be in compliance with all applicable laws, rules, and regulations.
- F. CHANGES.** Contractor may not alter, add to, or otherwise modify this Agreement. Contractor's additional or different terms and conditions are expressly excluded from this Agreement. This Agreement may be amended, supplemented, or otherwise modified only in writing and signed by the Court's authorized representative.
- G. AUDIT RIGHTS.** Contractor agrees to maintain records relating to performance and billing by Contractor under this Agreement for a period of four years after final payment. During the time that Contractor is required to retain these records, Contractor will make them available to the Court, the State Auditor, or their representatives during normal business hours for inspection and copying.
- H. INDEMNITY.** CONTRACTOR WILL INDEMNIFY AND HOLD HARMLESS THE COURT, OTHER CALIFORNIA JUDICIAL BRANCH ENTITIES, AND THEIR OFFICERS, AGENTS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, AND EXPENSES, INCLUDING ATTORNEYS' FEES AND COSTS, THAT ARISE OUT OF (I) A DEFECT, WHETHER LATENT OR PATENT, IN THE WORK PRODUCT, (II) AN ACT OR OMISSION OF CONTRACTOR, ITS AGENTS, EMPLOYEES, INDEPENDENT CONTRACTORS, OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT, AND (III) A BREACH OF A REPRESENTATION, WARRANTY, OR OTHER PROVISION OF THIS AGREEMENT. THIS INDEMNITY APPLIES REGARDLESS OF THE THEORY OF LIABILITY ON WHICH A CLAIM IS MADE OR A LOSS OCCURS. THIS INDEMNITY WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT, ACCEPTANCE OF SERVICES, AND DELIVERY AND ACCEPTANCE OF WORK PRODUCT. THIS INDEMNITY DOES NOT COVER CLAIMS, LOSSES OR EXPENSES TO THE EXTENT THEY ARISE OUT OF THE GROSS NEGLIGENCE OF THE COURT.
- I. TERMINATION.** The Court may terminate all or part of this Agreement for convenience at any time by giving notice to Contractor. If the Court terminates this Agreement for convenience, the Court's liability will be the reasonable price for the Services rendered prior to termination, not to exceed the Maximum Amount. If an hourly or other time-based rate for Services is specified on the coversheet of this Agreement, that rate will be used in determining the reasonable price. Upon receipt of a termination notice, Contractor will, unless otherwise directed, cease work. Contractor will follow the Court's directions as to work in progress and the delivery of completed or partially-completed Work Product.
- J. INSURANCE.** Contractor shall be responsible for providing Workers' Compensation, Commercial General Liability, Commercial Automobile Liability, and Property insurance covering Contractor's employees, property, and any obligations assumed under the terms of this Agreement, and paragraph H (Indemnity). Contractor shall waive and shall require its insurers by policy endorsement to waive any right of recovery or subrogation that they may have on account of injury to a Contractor's employee or any damage or destruction to Contractor's property caused by or alleged to have been caused by the State of California, the Judicial Council of California, and the Superior Court of California County of Inyo Contractor's insurance shall be primary and non-contributory to any insurance of self-insurance maintained by the State of California, the Judicial Council of California, and the Superior Court of California County of Inyo Contractor, prior to commencement of the work, shall provide the Court with certificates of insurance providing evidence of workers' compensation insurance, if applicable.
- K. REPRESENTATIONS.** Contractor represents and warrants the following: (i) Contractor complies with all federal, state, city, and local laws, rules, and regulations, including the federal Americans with Disabilities Act of 1990, California's Fair Employment and Housing Act, and Government Code 16645-49; (ii) Contractor does not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, disability (mental or physical, including HIV or AIDS), medical condition (including cancer or genetic characteristics), request for family and medical care leave, marital or domestic partner status, age (over 40), sex (including gender identity) or sexual orientation; (iii) 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; (iv) Contractor will take all reasonable steps to prevent unlawful harassment from occurring; (v) no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within 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 (this representation is made under penalty of perjury); (vi) Contractor has authority to enter into and perform its obligations under this Agreement; (vii) if Contractor is a corporation, limited liability company, or limited partnership and this Agreement will be performed in California, Contractor is qualified to do business and in good standing in California; and (viii) Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code ("PCC") section 10286.1, and is eligible to contract with the Court. Contractor will take all action necessary to ensure that the representations in this section remain true during the performance of this Agreement through final payment by the Court. Contractor must give written notice of its nondiscrimination obligations under this section to labor organizations with which it has a collective bargaining or other agreement.
- L. ANTITRUST.** Contractor shall 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 Contractor for sale to the Court. Such assignment shall be made and become effective at the time the Court tenders final payment to Contractor. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor 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 by Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the Court shall, within one year from such demand, reassign the cause of action assigned under this part if Contractor 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.
- M. MISCELLANEOUS.** Contractor will maintain a system of accounting and internal controls that is sufficient to adhere to Generally Accepted Accounting Principles. Contractor is an independent contractor and Contractor will take all action available to Contractor to prevent Contractor, and its agents and employees, from being treated under the law as agents or employees of the Court. Contractor will not assign, subcontract or delegate its obligations under this Agreement without the prior written consent of the Court, and any attempted assignment, subcontract, or delegation is void. The terms and conditions of this Agreement apply to any assignee, subcontractor, trustee, successor, delegate or heir. California law, without regard to its choice-of-law provisions, governs this Agreement. In this Agreement, "including" means "including but not limited to." The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Contractor irrevocably consents to personal jurisdiction in the courts of the State of California, and any legal action filed by Contractor in connection with a dispute under this Agreement must be filed in Inyo County, California, which will be the sole venue for any such action. If any part of this Agreement is held unenforceable, all other parts remain enforceable. All headings are for reference purposes only and do not affect the interpretation of this Agreement. A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default. Contractor may not make a public announcement, or issue any press release or other writing, related to this Agreement, the Services, or Work Product without first obtaining the Court's prior written approval, which may be denied for any or no reason.