



STATE OF TENNESSEE JUDICIARY

SOLICITATION: RFS for AOC

PROFESSIONAL SERVICE SOLICITATION FOR LEGAL SERVICES

1. INTRODUCTION

The state intends to award a contract for legal representation of indigent persons facing contempt of court charges for failure to pay court-ordered child support in Davidson County Juvenile Court.

2. SCOPE OF SERVICE, CONTRACT PERIOD, TERMS AND CONDITIONS

The *Pro Forma* Contract (Attachment 1) represents the contract document that the contractor selected by the state must sign. It specifically details the state's required: Scope of Services and Deliverables (section A); Contract Period (section B); Payment Terms (section C); and Terms and Conditions (sections D & E).

3. PROCUREMENT SCHEDULE

The state reserves the right, at its sole discretion, to adjust the procurement schedule as necessary. The following table represents the best estimate of the schedule that will be followed.

EVENT TIME (central time) DATE		
1. State Issues Solicitation		May 24, 2012
2. Procurement Conference	9:30 a.m.	May 30, 2012
3. Written Questions Due	4:30 p.m.	May 30, 2012
4. Response to Written Questions	4:30 p.m.	May 31, 2012
5. RESPONSE DEADLINE	2:00 p.m.	June 8, 2012
6. State Identifies Responsive & Responsible Solicitation Responses	3:00 p.m.	June 8, 2012
7. State Identifies the Best, Responsive & Responsible Cost Offer and Determines Rank for Other Cost Offers Received		June 8, 2012
8. State Releases Award Notification and Obtains agreements for Cost Modifications to proposals	10:00 a.m.	June 11, 2012
9. Contract Signing		June 20, 2012
10. Contractor Signature Deadline	2:00 p.m.	June 29, 2012
The state reserves the right, at its sole discretion, to amend or cancel this solicitation at any time.		

4. RESPONSE REQUIREMENTS An offer in response to this solicitation must consist of two parts, *Qualifications Evidence* (including any supporting documentation) and *Cost Offer*, exactly as specified below.

4.1. Qualifications Evidence. The Qualification Evidence and supporting documentation must detail responses or provide documentation as required to address each of the following requirements (of the potential contractor or potential contractor's employees as applicable):

a. Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the contact person regarding the offer.

b. Submit a *Statement of Certifications and Assurances* document (Attachment 2) completed and signed by each attorney proposing to provide services pursuant to this solicitation and any resulting contract. The document must be signed without exception or qualification.

c. Provide a statement, based upon reasonable inquiry, of whether the Offeror or any individual who shall perform work under a contract resulting from this solicitation has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict.

d. Provide a statement demonstrating that each attorney has previous experience in handling child support enforcement actions,

4.2. Cost Offer. The Cost Offer must be in the form of a completed, exact copy of the *Cost Offer* document (Attachment 3).

NOTICE: The Cost Offer must incorporate ALL costs for services under the contract for the total contract period, and it must record the proposed price of the subject service exactly as required by the Cost Offer document and must NOT record any other rates, amounts, or information.

5. RESPONSE SUBMISSION FORMAT AND DELIVERY

5.1 Submission Format.

5.1.1. The Qualifications Evidence outlined above in items 4.1.a-c. must be submitted to the State in the following form:

One (1) original and three (3) copies, appropriately labeled as "Original" and "Copy 1 of 3," "Copy 2 of 3," etc., must be placed in one sealed envelope labeled "Qualifications Evidence—RFS for AOC" and stating the legal name of the entity submitting the solicitation response. **Do not include the hard copy Cost Offer or any cost information.**

5.1.2. One (1) completed, exact copy of the Cost Offer must be submitted in a **separate sealed envelope** labeled "Cost Offer—RFS for AOC" and stating the legal name of the entity submitting the solicitation response.

5.1.3 Any information in addition to that which is explicitly required in 4.1. and 4.2. above will be considered extraneous and not reviewed or evaluated.

5.2. Delivery. No later than the response deadline detailed in procurement schedule above, a potential contractor must deliver to the state ALL documentation required for both the *Qualifications Evidence* and the *Cost Offer* components of an offer in response to this solicitation, It must be delivered to:

David Haines, General Counsel
Administrative Office of the Courts
511 Union Street Suite 600
Nashville, TN 37219
Phone: 615-741-2687

A Solicitation Response may not be submitted via e-mail or facsimile transmission.

6. EVALUATION PROCESS

- 6.1. A team of at least two procuring agency employees and two members of the Davidson County Juvenile Court will review the Qualifications Evidence and any supporting documentation submitted with each offer.
- 6.2. For an offer to be acceptable and eligible for contract award, the evaluators must determine that it documents that the Offeror meets minimum qualifications and requirements specified by the *Solicitation* and is, at least, minimally acceptable as a contractor for the subject services. The evaluators will document, in writing, any determination (and the specific reasons therefor) that an offer failed to adequately document that the Offeror meets minimum qualifications and requirements and is acceptable for contract award.
- 6.3. The procurement coordinator will open and review the *Cost Offer* submitted by each Offeror deemed acceptable for contract award by state evaluators to assess whether each complies, without qualification, with *Solicitation* instructions. The procurement coordinator will document, in writing, any determination (and the specific reasons therefor) that a *Cost Offer* is non-compliant with requirements such that the Offeror is non-responsive to the *Solicitation*.
- 6.4. The procurement coordinator will identify the responsive, responsible *Cost Offer* indicating the lowest cost to the state, and will rank all other responsive, responsible *Cost Offers* submitted from lowest cost to highest cost.
- 6.5. In the event that two or more *Cost Offers* indicate the same cost to the state, the procurement coordinator may request a best and final *Cost Offer* from the tied Offerors. Should a second tie result, between the initially tied Offerors, or between other Offerors, the ranking of the tied Offerors shall be decided by chance.
- 6.6. Because it is anticipated that a single Offeror will not have sufficient capacity to meet the State's needs, the procuring agency will award contracts (drafted in accordance with the *Solicitation* and relevant Model Policy) to one or more entities, in order of lowest to highest *Cost Offer* amount, and at a uniform rate equal to the average of the five (5) lowest cost offers until the State's service needs are satisfied.

1 GENERAL INFORMATION

- 7.1. **Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a contract pursuant to this solicitation or in the employment practices of the contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The contractor pursuant to this solicitation shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- 7.2. **Conflict of Interest.** For the purposes of applying these requirements, the state will deem an individual to be an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid. This solicitation shall not result in a contract with:
 - an individual who is, or within the past six months has been, an employee or official of the State of Tennessee; a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this will not apply either to financial interests that have been placed into a "blind trust" arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than

2% of the total outstanding amount of the stocks or bonds of the issuing entity); or, a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person.

- 7.3. **Disclosure of Response Contents.** All materials submitted to the state in response to this solicitation become the property of the State of Tennessee. Selection for award does not affect this right. Upon completion of evaluations, indicated by the award notification (refer to the Procurement Schedule), the full contents and associated documents submitted in response to this solicitation will be open for review by the public. By submitting a response to this solicitation, a potential contractor acknowledges and accepts that the full contents and associated documents submitted in response to this solicitation will become open to public inspection.
- 7.4. **Communication.** Any communication regarding this *Professional Service Solicitation for Legal Services* must be directed in writing to the procurement coordinator via e-mail at: dhaines@tncourts.gov and reference RFS for AOC in the subject line.
- 7.5. **Procurement Conference.** Entities interested in submitting a response to this *Professional Service Solicitation* are invited to attend a Procurement Conference. This conference will be held on Tuesday, May 30, 2010 at 9:30 a.m. in the Davidson County Juvenile Justice Center, 100 Woodland Street, Nashville, TN 37213.
- 7.6. **Question and Answer Period.** In the interest of providing respondents with sufficient information to prepare their cost offers, the State will facilitate a question and answer period. Questions must be submitted in writing via e-mail to dhaines@tncourts.gov in accordance with the Procurement Schedule outlined in item # 3 above. The State, at its sole discretion, will prepare responses to the questions and e-mail them to each entity solicited, in accordance with the Procurement Schedule outlined in item # 3 above. Said responses will be uniform and will include all questions posed and all responses given, regardless of the Offeror submitting the question(s).

SOLICITATION # _____ ATTACHMENT 1 –PRO FORMA CONTRACT

BETWEEN THE STATE OF TENNESSEE, STATE AGENCY NAME AND CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and CONTRACTOR LEGAL ENTITY NAME, hereinafter referred to as the "Contractor," is for the provision of legal assistant services, as further defined in the "SCOPE OF SERVICES."

The Contractor is A/AN INDIVIDUAL, FOR-PROFIT CORPORATION, NON-PROFIT CORPORATION, SPECIAL PURPOSE CORPORATION OR ASSOCIATION, PARTNERSHIP, JOINT VENTURE, OR LIMITED LIABILITY COMPANY. Contractor Federal Employer Identification or Social Security Number: ID NUMBER Contractor Place of Incorporation or Organization: LOCATION

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall, on an as needed basis at the request of the State, provide professional services to the State to represent indigent persons facing contempt of court charges for failure to pay court-ordered child support in Davidson County Juvenile Court. The Contractor agrees to provide, and the State agrees to pay for, competent, zealous representation to its clients as required by the Tennessee Rules of Professional Conduct. Contractor agrees that each attorney providing services pursuant to this contract shall maintain caseloads which allow for the delivery of this quality of representation at all times. The Contractor agrees to cooperate with other Contractors to provide at least one attorney per 10 cases scheduled on a single arraignment docket.
- A.3. The Contractor may determine the means by which support staff is provided. The use of interns or volunteers is acceptable, as long as all necessary supervision and training is provided to insure that support services do not fall below prevailing standards for quality of such services in this jurisdiction.
- A.4. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. The Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases assigned in this Contract. Nothing in this section shall prohibit the Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment. Representation pursuant to this contract is concluded when proceedings in Juvenile Court are concluded. Any appeals to a higher court are outside the scope of services and shall be compensated in accordance with Supreme Court Rule 13.
- A.5. For audit purposes, each attorney providing services pursuant to this contract shall maintain contemporaneous time records of activities conducted on behalf of one client which the attorney is appointed to represent each calendar quarter. These time records shall be submitted with the Contractor's final invoice.

B. CONTRACT TERM:

- B.1. This Contract shall be effective for the period commencing on July 1, 2012 and ending on

June 30, 2013. The State shall have no obligation for services rendered by the Contractor on cases which were not assigned to Contractor during the specified period. Payment for cases assigned on or before June 30, 2013 will be made upon completion of the case.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed _____. The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Amount
(per compensable increment)

Legal Representation \$ _____ per CASE

c. The Contractor shall not be compensated for travel time to the primary location of service provision.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices monthly, with all necessary supporting documentation, to:

Pam Hancock, Director of Fiscal Services 511 Union St., 6th Floor Nashville, TN 37219

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: AOC Contract Pilot Project
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed cases invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
Amount Due by Service; and
Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

c. Notwithstanding the provisions of section C. 3. B., if a case is deemed complex or extended, an amount in excess of the contract price, subject to a maximum of \$500 per case, may be sought by filing a motion in the court in which representation is provided. The motion shall include specific factual allegations demonstrating that the case is complex or extended. The court shall enter an order which evidences the action taken on the motion. The following, while neither controlling nor exclusive, indicate the character of reasons that may support a complex or extended certification:

- (A) The case involved complex scientific evidence and/or expert testimony;
- (B) The case involved multiple defendants and/or numerous witnesses;
- (C) The case involved multiple protracted hearings;
- (D) The case involved novel and complex legal issues.

(E) If the motion is granted, an order shall be forwarded to the director of the AOC certifying the case as complex or extended. The order shall either recite the specific facts supporting the finding and shall NOT simply incorporate by reference the motion in support of the finding. All payments under this subsection must be submitted to the director for approval. The determination of the director shall be final.,

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an

approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semiannually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

David Haines, General Counsel
Tennessee Administrative Office of the Courts
511 Union Street, 6th Floor
Nashville, TN 37219
dhaines@tncourts.gov
Telephone #: 615-741-2687 Fax #: 615-741-6285

The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON CONTRACTOR NAME ADDRESS
EMAIL ADDRESS Telephone # NUMBER FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Non-exclusivity of Services. The Contractor understands and agrees that the State is not required to use its services exclusively and that other legal service employment agencies may be used by the State at its discretion.

E.6. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

E.10. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions

(federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

E.11. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons for performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions. E.12. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.13. Limitation of Liability. The parties agree that the total liability of the Contractor for breach of this Contract shall not exceed two (2) times the value of this Contract. The value shall be established by the Contract Maximum Liability in Section C.1 and increased by subsequent amendments if any. The foregoing provision shall not limit the Contractor's liability for intentional torts, criminal acts or fraudulent conduct.

E.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof

and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

E.15. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

failure to perform in accordance with any term or provision of the Contract;
partial performance of any term or provision of the Contract;
any act prohibited or restricted by the Contract, or
violation of any applicable standard of care.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

(1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.

(2) Partial Default—In the event of a Breach, the State may declare a Partial Default. In such case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(3) Opportunity to Cure—

(a) At the State's option, the Contractor shall have the opportunity to cure a breach of contract resulting in failure to perform. The request for a cure period must be submitted in writing within three (3) business days of Contractor being notified of, or becoming aware of, a failure to perform the services as outlined within this Contract.

(b) The cure period granted under subsection (a) shall not exceed fifteen

(15) business days. The Contractor may submit a written request for a cure period longer than fifteen (15) days, setting forth the reasons for such request.

(c) This opportunity to cure shall not be available in circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, if a cure period would unreasonably delay completion of the Contract, or if State operations dependent on the Contract would be adversely impacted.

(4) Contract Termination— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall

cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.16. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.

b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.

c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.17. Incorporation of Additional Documents: Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Solicitation Response
- c. The Professional Service Solicitation and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Solicitation Response

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

IN WITNESS WHEREOF, CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above) TENNESSEE

ADMINISTRATIVE OFFICE OF THE COURTS:

COMMISSIONER DATE

APPROVED:

COMMISSIONER OF FINANCE & ADMINISTRATION DATE

COMPTROLLER OF THE TREASURY DATE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

SOLICITATION # _____ ATTACHMENT 2 – STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Offeror does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Offeror will provide all services as defined in the of the solicitation's *pro forma* contract scope of services for the total contract period.
2. The Offeror accepts and agrees to all terms and conditions set out in the solicitation's *pro forma* contract.
3. The Offeror acknowledges and agrees that a contract resulting from the solicitation may incorporate, by reference, all information provided in response to the solicitation as a part of the contract.
4. The Offeror will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
5. To the knowledge of the undersigned, the information detailed within the information submitted in response to the solicitation is accurate.
6. The information submitted in response to the solicitation was independently prepared, without collusion, under penalty of perjury.
7. No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Offeror in connection with the solicitation or any resulting contract.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the Offeror to any contract awarded pursuant to the solicitation. If the signatory is not the Offeror (if an individual) or the Offeror's President or Chief Executive Officer, this document must attach evidence showing the individual's authority to bind the Offeror.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE INDIVIDUAL OR ENTITY MAKING AN OFFER IN RESPONSE TO THE SUBJECT SOLICITATION

OFFEROR SIGNATURE:

PRINTED NAME & TITLE:

DATE:

OFFEROR LEGAL ENTITY NAME:

OFFEROR FEDERAL EMPLOYER IDENTIFICATION NUMBER (or SSN):

SOLICITATION #
ATTACHMENT 3- COST
OFFER

OFFEROR SIGNATURE:		
PRINTED NAME & TITLE:		
DATE:		
OFFEROR LEGAL ENTITY NAME:		
NOTE: This document must be signed, in the space above, by an individual empowered to bind the Offeror to the provisions of any contract awarded pursuant to this solicitation.		
Cost Item Description Offered Cost State Use Only		
Per Case Rate for Legal Services	\$	
The state will use this sum to determine the Cost Offer reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point. Evaluation Cost Amount: (sum of all cost amounts above)		
State Use – Procurement Coordinator Signature, Printed Name and Date:		

NOTICE: This Cost Offer *MUST* be completed *EXACTLY* as required.

\The Cost Offer, detailed below, shall indicate the proposed price for providing all services as defined in the *Pro Forma* Contract Scope of Services for the total contract period.