



Office of the Administrative Director – Financial Services Division

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December 5, 2011

MEMORANDUM

TO WHOM IT MAY CONCERN

FROM: Janell Kim
Financial Services Administrator

SUBJECT: **ADDENDUM NO. 5, INVITATION FOR BIDS NO. J12195**
TO PROVIDE LONG DISTANCE TELEPHONE SERVICES
FOR THE JUDICIARY, STATE OF HAWAII

Transmitted herewith is a copy of ADDENDUM NO. 5 for the subject IFB. This Addendum may also be accessed through our website at www.courts.state.hi.us under "General Information / Business with the Judiciary".

Questions relating to the technical aspects of this Addendum may be directed to Richard Murakami, the Contract Administrator for this project in the Judiciary Information Technology & Communications Division at (808) 538-5314 or email richard.h.murakami@courts.hawaii.gov. Other IFB or contract questions may be directed to Jonathan Wong in the Judiciary Contracts & Purchasing Office at (808) 538-5805 or email jonathan.h.wong@courts.hawaii.gov. Thank you.

**ADDENDUM NO. 5
INVITATION FOR BIDS NO. J12195
TO PROVIDE LONG DISTANCE TELEPHONE SERVICES
FOR THE JUDICIARY, STATE OF HAWAII**

The following ADDENDUM NO. 5 is transmitted for the IFB to Provide Long Distance Telephone Services For The Judiciary, State of Hawaii.

1. The Bid Opening Date scheduled for December 6, 2011, has changed. The new **BID OPENING DATE** is hereby amended to **Friday, December 9, 2011, 2:00 p.m. HST.**
2. **Section 4.2, EXTENSION** on page 17 is amended to extend the prior notification to 6 months, and shall read as follows:

“EXTENSION. The Contractor will be notified in writing by the Judiciary that it will be exercising each twelve (12) month extension period at least **six (6) months prior to the start of the period.**“

3. **Section 4.18, LIQUIDATED DAMAGES** on page 19 is hereby amended to reduce the amount from \$500 to \$100, and shall read as follows:

“LIQUIDATED DAMAGES. Failure to complete the services described in the contract within the time proposed will cause damage to the Judiciary. The amount of said damages shall be fixed at the sum of **ONE HUNDRED DOLLARS (\$100.00)** for each and every calendar day the Contractor delays in the completion of the installation and services required at the start of the contract after the required date of said completion. If the Contractor has multiple installation phases, each phase shall be subject to delay damages. Liquidated damages can be avoided where the Judiciary and the Contractor mutually agree to a revision in the schedule.

4. **Section 4.21, GOVERNING LAW: COST OF LITIGATION** on page 19 is amended by adding the last paragraph, and shall read as follows:

“GOVERNING LAW: COST OF LITIGATION. The validity of this contract and any of its terms or provisions, as well as the rights and duties of the parties to this contract, shall be governed by the laws of the State of Hawaii. Any action at law or equity to enforce or interpret the provisions of this contract shall be brought in a state court or competent jurisdiction in Honolulu, Hawaii.

In case the Judiciary shall, without any fault on its part, be made a part to any litigation commenced by or against the Contractor in connection with this contract,

the Contractor, shall pay all costs and expenses incurred by or imposed on the Judiciary, including attorneys' fees.

This provision shall not be applicable to costs and expenses incurred by or imposed on the JUDICIARY, including attorneys' fees, relating to litigation between CONTRACTOR and the JUDICIARY."

5. **Section 4.24, SUBCONTRACTING** on page 20 is amended by adding clarifying paragraphs 2 and 3, and shall read as follows:

SUBCONTRACTING. No work or services shall be subcontracted or assigned without the prior written approval of the Judiciary. No subcontract shall under any circumstances relieve the Contractor of his/her obligations and liability under this contract with the Judiciary. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.

The JUDICIARY expressly consents to CONTRACTOR's use of the subcontractors specifically identified in CONTRACTOR's Proposal. Approval of subcontractor's by the Judiciary shall not be unreasonably withheld, conditioned or delayed.

As additional clarification, CONTRACTOR does not consider local exchange carriers to be CONTRACTOR subcontractors and will not be responsible for the actions or inactions of access providers. In addition, CONTRACTOR does not consider the Judiciary's subcontractor approval rights or other subcontractor requirements set forth in the IFB or any resulting contract to be applicable to any agreements, subcontracts or other business arrangements between CONTRACTOR and its Affiliates, roaming partners, suppliers, subcontractors or any third-parties relating to the provision of any Products or Services purchased or used by the Judiciary (collectively, "General Supply & Support Agreements") where such General Supply and Support Agreements were entered into for the purpose of providing Products and Services to CONTRACTOR customers generally (as opposed to specifically for the Judiciary)."

6. **Section 4.27, WAIVER** on page 20, is amended by including "Contractor", and shall read as follows.

WAIVER. The failure of the Judiciary or Contractor to insist upon the strict compliance with any term, provision or condition of this contract shall not constitute or be deemed to constitute a waiver or relinquishment of the Judiciary's or Contractor's right to enforce the same in accordance with this contract.

7. **SECTION FIVE, ATTACHMENTS** shall be clarified to list the following documents, including the documents per Section 4.1, as amended:

“JUDICIARY DIALING PLAN: Exhibit 1;

BID FORMS: Pages OF-01 through OF-8;

JUDICIARY GENERAL CONDITIONS DATED FEBRUARY 2001; and

JUDICIARY PROCEDURAL REQUIREMENTS DATED MAY 2003.”

8. **PROCEDURAL REQUIREMENTS, Section 3.1, Competency of Offeror**, on page PR-3 shall add the following clarification at the end of the section, regarding site visits by Judiciary:

“NOTE: For CONTRACTORS which own and/or operate various facilities at numerous locations nationwide to provide digital mobile wireless telecommunications services throughout the United States, CONTRACTOR may or may not be a manufacturer of any equipment and therefore, it may be unclear to CONTRACTOR what facilities JUDICIARY contemplates inspecting pursuant to this provision. Accordingly, upon request by JUDICIARY, CONTRACTOR shall comply by making its facilities available for inspection at reasonable times in the ordinary course of business subject to the following: (a) JUDICIARY shall identify the facilities that may be subject to inspection under the contract; (b) such inspections shall be reasonably limited in geographic scope and shall only pertain to facilities which are directly related to CONTRACTOR’s performance of this contract; (c) JUDICIARY shall provide reasonable prior written notice of any inspections; and (d) CONTRACTOR reserves the right to pre-approve and require any designees or representatives who are not employees of JUDICIARY to enter into a confidentiality agreement as a condition of access to and inspection of such facilities.”

9. **GENERAL CONDITIONS, Section 1, Administration of Contract by “the Judiciary,”** on page GC-1 shall add the following clarification at the end of the section:

“NOTE: This provision shall not be deemed a waiver of any of CONTRACTOR’s remedies available at law or equity or pursuant to the contract documents.”

10. **GENERAL CONDITIONS, Section 5, Subcontracts, Assignments, and Successors in Interest**, on page GC-3 shall add the following clarification at the end of the section:

“NOTE: The JUDICIARY expressly consents to CONTRACTOR’s use of the subcontractors specifically identified in CONTRACTOR’s Proposal. Approval of subcontractors by the Judiciary shall not be unreasonably withheld, conditioned or delayed.

- As additional clarification, CONTRACTOR does not consider local exchange carriers to be CONTRACTOR subcontractors and will not be responsible for the actions or inactions of access providers. In addition, CONTRACTOR does not consider the Judiciary’s subcontractor approval rights or other subcontractor requirements set forth in the IFB or any resulting contract to be applicable to any agreements, subcontracts or other business arrangements between CONTRACTOR and its Affiliates, roaming partners, suppliers, subcontractors or any third-parties relating to the provision of any Products or Services purchased or used by the Judiciary (collectively, “General Supply & Support Agreements”) where such General Supply and Support Agreements were entered into for the purpose of providing Products and Services to CONTRACTOR customers generally (as opposed to specifically for the Judiciary).

- JUDICIARY’s Approval and/or consent to assignment by CONTRACTOR shall not be unreasonably withheld, conditioned or delayed.”

11. **GENERAL CONDITIONS, Section 6, Conflicts of Interest**, on page GC-3 shall add the following clarification at the end of the section:

“NOTE: CONTRACTOR makes this representation to the best of its actual knowledge.”

12. **GENERAL CONDITIONS, Section 9.1(c) of Notice of Suspension**, on page GC-5 shall add the phrase “as applicable” and shall read as follows:

“(c) Terminate the contract as provided in the termination for default provision or the termination for convenience provision of this document, covered in paragraphs 10 and 11, below, as applicable.”

13. **GENERAL CONDITIONS, Section 13.1, Right to Goods and Work Product**, on page GC-8 shall be **deleted in its entirety**.

14. **GENERAL CONDITIONS, Section 14, Indemnification and Defense**, on page GC-9 is amended and shall read as follows:

“Indemnification and Defense. CONTRACTOR will indemnify and defend JUDICIARY, its directors, officers, employees, agents and their successors against all third party claims for damages, losses, liabilities, or expenses, including reasonable attorney’s fees, arising directly from performance of

this Agreement and relating to personal injury, death, or damage to tangible personal property that is alleged to have resulted, in whole or in part, from the negligence or willful misconduct of CONTRACTOR or its subcontractors, directors, officers, employees or authorized agents.

To be indemnified, JUDICIARY must (A) give CONTRACTOR prompt written notice of the claim, (B) give CONTRACTOR full and complete authority, information and assistance for the claim's defense and settlement, and (C) not, by any act including but not limited to any admission or acknowledgement, materially prejudice CONTRACTOR's ability to satisfactorily defend or settle the claim. CONTRACTOR will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. JUDICIARY will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but CONTRACTOR will retain sole control of the claim's settlement or defense."

- 15. GENERAL CONDITIONS, Section 18, Disputes, on page GC-9 shall add the following clarification at the end of the section:**

"NOTE: In the event that the JUDICIARY ceases making undisputed payments to CONTRACTOR for a period of 60 days or longer, CONTRACTOR shall not be required to continue with its responsibilities until such time as all undisputed amounts are paid to CONTRACTOR."

- 16. GENERAL CONDITIONS, Section 19, Confidentiality of Material, on page GC-10 shall add the following clarification at the end of the section:**

"NOTE: The foregoing restrictions on use and disclosure of confidential or proprietary information do not apply to information that: (a) is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (b) is or becomes publicly known, through no wrongful act or omission of the receiving party; (c) is received without restriction from a third party free to disclose it without obligation to the disclosing party; (d) is developed independently by the receiving party without reference to the confidential or proprietary information; or (e) is require to be disclosed by law, regulation, or court or government order."

- 17. GENERAL CONDITIONS, Section 20, Ownership Rights and Copyright, on page GC-10 shall be ~~deleted~~ in its entirety.**

18. **GENERAL CONDITIONS, Section 21, Patented Article**, on page GC-10 is amended and shall read as follows:

“Patented Article. CONTRACTOR will defend and pay all court awarded damages for claims enforceable in the United States alleging that Services as provided infringe any third party United States patent or copyright or contain misappropriated third party trade secrets. CONTRACTOR’s obligations under this Section do not apply to the extent that the alleged or actual infringement or violation is caused by functional or other specifications that were provided by or requested by JUDICIARY, JUDICIARY’s continued use of infringing Services after CONTRACTOR provides reasonable notice to JUDICIARY of the infringement, or JUDICIARY’s use of the Services in a manner that causes JUDICIARY and CONTRACTOR to come into competition for third parties seeking to purchase Services. For any third party claim that CONTRACTOR receives, or to minimize the potential for a claim, CONTRACTOR may, at its sole option and expense, either procure the right for JUDICIARY to continue using the Services, replace or modify the Services with comparable Services, or Judiciary shall have the right to terminate the contract and recover costs paid on the infringing product.

To be indemnified, JUDICIARY must (A) give CONTRACTOR prompt written notice of the claim, (B) give CONTRACTOR full and complete authority, information and assistance for the claim’s defense and settlement, and (C) not, by any act including but not limited to any admission or acknowledgement, materially prejudice CONTRACTOR’s ability to satisfactorily defend or settle the claim. CONTRACTOR will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. JUDICIARY will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but CONTRACTOR will retain sole control of the claim’s settlement or defense.”

19. **GENERAL CONDITIONS, Section 26, Federal Funds**, on page GC-11 shall be **“Not Applicable”** to this IFB.
20. **GENERAL CONDITIONS, Section 28, Notices**, on page GC-11 shall add the following clarification at the end of the section:

“NOTE: Overnight delivery is an acceptable form of notification.”

END OF ADDENDUM NO. 5