

THE JUDICIARY,
STATE OF HAWAII

REQUEST FOR PROPOSALS
NO. J19245

ONLINE DISPUTE RESOLUTION SYSTEM
THE JUDICIARY, STATE OF HAWAII

APRIL 2019

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This solicitation is provided for information purposes. If interested in responding to this solicitation, you may choose to submit your offer on the downloaded document provided. **You must register** your company by fax or e-mail for this specific solicitation. If you do not register your company, you will not receive addenda, if any, and your proposal **may be** rejected and not considered for award.

Registration

Submit FAX or E-MAIL to: FAX No.: (808) 538-5802
E-mail Address: Tritia.L.Cruz@courts.hawaii.gov

Provide the following information:

Name of Company	Mailing Address	Name of Contact Person
Telephone Number	FAX number	E-mail Address
Solicitation Number	FedEx (or equivalent) account number (document will be sent by U.S. Postal Service first class mail if this is not provided).	

THE JUDICIARY, STATE OF HAWAII
HONOLULU, HAWAII

REQUEST FOR PROPOSALS (RFP) NO. J19245

Competitive sealed proposals for the **ONLINE DISPUTE RESOLUTION THE JUDICIARY, STATE OF HAWAII** will be received at:

The Judiciary, State of Hawaii
Financial Services Department
Kauikeaouli Hale
1111 Alakea Street, 6th Floor
Honolulu, Hawaii 96813-2807
Attn: Ms. Tritia Cruz

up to May 3, 2019, 4:00 P.M. HAWAII STANDARD TIME (H.S.T)

Proposals received after the date and time specified above or at a location other than the location specified above will not be considered. All proposals must be made on forms obtainable at the aforesaid place or from our web site at <http://www.courts.state.hi.us> under "General Information" and "Business with the Judiciary" and must be in accordance with the accompanying instructions.

Questions relating to the technical aspects of this Request for Proposal may be directed to Ms. Michelle Acosta, Special Assistant to the Administrative Director at (808) 539-4852, email Michelle.D.Acosta@courts.hawaii.gov ; other questions may be directed to Ms. Tritia Cruz in the Contracts & Purchasing Office, at (808) 538-5805, FAX (808) 538-5802, email Tritia.L.Cruz@courts.hawaii.gov.

Terri Gearon
Financial Services Director

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SECTION 1

INTRODUCTION AND BACKGROUND

SECTION 1 – INTRODUCTION AND BACKGROUND

1.0 BACKGROUND INFORMATION

The Hawai'i State Judiciary (Judiciary), a unified court system is divided into four circuits, First, Second, Third and Fifth. The Chief Justice of the Hawai'i Supreme Court serves as the administrative head of the Judiciary. The Administrative Director of the Courts assists the Chief Justice with the management of Judiciary operations.

The District Courts are located throughout the islands of Kaua'i, Maui, O'ahu, Moloka'i, Lāna'i and the Island of Hawai'i. Further information on the Judiciary may be found at <http://www.courts.state.hi.us>.

The Judiciary, seeks to implement a new statewide Online Dispute Resolution System (ODR System) that will address the informational and procedural needs of self-represented litigants (SRL). The ODR System will initially be limited to Small Claims, and if successful will expand to non-criminal Traffic and other civil case types. The Judiciary wishes to adopt the necessary technologies to achieve its strategic business goals: increase access to the courts, improve the delivery of service to the public, and maximize efficiency of court business processes.

1.1 PURPOSE

To meet the Judiciary's vision for greater access to justice, the Chief Justice established the Committee on Innovations, Technology and Self-Represented Litigants. This committee is charged with planning and implementing the ODR System that would allow the public with little or no legal experience to initiate cases and manage them to conclusion in a seamless, convenient and effective way. The ODR System will create a statewide business model for deploying district court functions using information technology.

This Request for Proposal (RFP) seeks proposals from qualified vendors to implement a cost-effective, technologically sound, scalable and court-user centered ODR System. The ODR System must have the following components: instructional and learning base content; interactive fillable court forms and templates; document management to allow for electronic submission with a work queue engine; electronic payment processing; online dispute resolution platform; and data reporting and analytics. The ODR System shall be highly configurable to allow the Judiciary to improve its current business processes.

This requested ODR System would not be the system of record. Case data would be integrated with the main case tracking system and current system of record, the Judiciary Information System (JIMS). This integration will not take place until after civil

cases are migrated to JIMS, and subject to availability of funds. As of the issuance of this RFP, civil cases are still residing in the legacy mainframe system HAJIS and are scheduled to be migrated to JIMS in October 2019. The ODR System should also be capable of supporting different electronic payment processors if the Judiciary needs to change the payment processor.

1.2 OBJECTIVES

The objectives of this RFP are to obtain a comprehensive system that will accomplish the following:

- Provide increased access to the judicial system through online tools
- Provide easily consumable instructional content generated by the Judiciary
- Provide step-by-step workflow to simplify the legal process
- Allow SRLs to easily fill and submit forms and other documents electronically
- Allow online payment processing and fee waivers
- Allow court staff to easily track and manage online submissions
- Allow SRLs and court staff to communicate online to resolve issues
- Allow mediators to participate online in the issue resolution
- Simplify legal processing and document management
- Provide better user experience with minimalist navigation structure
- Ensure self-represented litigants are provided knowledge and procedural tools to actively engage in the legal process
- Allow the Judiciary to manage and purge data in the system
- Be expandable to other case types.
- Allow future integration with other Judiciary systems
- Allow the Judiciary to produce statistics and reports to measure the performance of the system

1.3 ENVISIONED ODR SYSTEM

The ODR System will be implemented statewide as a Small Claims project for an initial one (1) year period. **After evaluation and assessment, a second RFP may be issued to expand to other civil case types to include non-criminal Traffic.** The ODR System will be mandatory for the following civil cases:

- A. Where the amount claimed is no more than \$5,000, and where the counterclaim is no more than \$40,000.
- B. Disagreement over a security deposit between landlord and tenant involving a residential landlord and tenant relationship.

The goal for the ODR System is to provide a seamless and navigable journey for SRLs in the initiation and resolution of their small claims cases. The ODR System will provide procedural guidance to the SRL from start to finish. This includes case initiation, service of process, negotiations and settlement, and if necessary trial.

As a first step, SRLs will be directed to a landing page which provides information about their legal issue and the Small Claims ODR process. SRLs may be directed to this landing page by court staff, an Internet search or through guided pathways. Some of these guided pathways include the Judiciary website, Judiciary Mobile App, the Legal Navigator Portal, the Access to Justice Community Navigators and Hawai'i based legal service providers. Once on the landing page, SRLs will be informed that they may opt-out of the ODR process if they have a language barrier or are unable to access or use technology.

SRLs who are ready to proceed with initiating a claim, or who must respond to a claim will be directed to the interactive fillable court forms component of the ODR System. This component will allow SRLs to fully and accurately complete forms through guided interviews. Defendants responding to a claim will be instructed via the summons to register with the ODR System or opt-out based on established criteria. This component must be readily accessible to both claimants and defendants during and after court business hours.

Upon completion of the required court forms, SRLs will be directed to the electronic submission component. Here, SRLs may undergo an ability to pay assessment to qualifying for a fee waiver. Court staff will be notified through the ODR System that a document has been submitted. A work queue dashboard would allow court staff to route and assign documents for processing. Ideally, the routing would be an automated process. Court staff will manually upload completed and approved documents to the Judiciary case management system, JIMS and assign a trial date. SRLs will then be notified once documents have been accepted and will either notified be of a fee waiver approval, or if denied, be directed to the electronic payment processor. Documents which have been accepted and filed in JIMS will be manually routed to the litigants by court staff and through the ODR System. Litigants will receive electronic communication informing them of the filing status and a filed copy of their document. The Judiciary desires to automate the manual processing of documents as described here through an eventual integration with JIMS.

Once the defendant is served and registers with the ODR System, both parties will be directed to the negotiation/mediation platform where parties are to negotiate between themselves first and if needed, with a mediator. The ODR System will provide notices to the court if the negotiation is pending, successful or unsuccessful. If mediation is successful, the ODR System will allow the parties to inform the court of their agreement and to dismiss the case. If mediation is not successful, the ODR System will direct the parties to attend an in-court trial on their pre-scheduled date. Alternatively, litigants may by agreement, request the court to make a judgment on the record and resolve the

case online. A survey will be provided to ODR participants at the conclusion of the process to help assess the effectiveness of the System.

The Judiciary intends to work with its community mediation centers to provide online mediation services through the ODR System on a pilot basis. The selected mediation center will recruit, train and coordinate volunteers to mediate ODR small claims cases. The mediation center will be provided a dashboard to access court referred ODR small claims cases. The ODR System will be enabled to provide a Settlement Agreement template. Parties will be able to electronically sign the agreement.

SECTION 2

SIGNIFICANT DATES

SECTION 2 – SIGNIFICANT DATES

The contract term and key dates schedule setout herein represents a best estimate of the schedule that will be followed. If a component of this schedule, such as the opening date is delayed, the rest of the schedule may shift accordingly. Delays may include, and are not limited to funding, and/or Judiciary or Hawai'i State government restrictions.

The contract key dates are as follow:

Advertisement	April 2, 2019
Deadline for Questions	April 12, 2019 4:00 P.M. Hawaii Standard Time (H.S.T.) Emailed to: Tritia.L.Cruz@courts.hawaii.gov
Response to Written Questions	April 22, 2019
Proposals Due	May 3, 2019 4:00 P.M. H.S.T
Tentative Notice of Award	May 22, 2019
Tentative Notice to Proceed	June 29, 2019

SECTION 3

SPECIFICATIONS

SECTION 3- SPECIFICATIONS

3.1 SCOPE OF WORK

The Vendor Shall:

- Provide, install and configure the ODR System described in this RFP;
- Provide a project team to work with Judiciary staff to understand the existing business processes and work flow for small claims and to configure the System to follow the envisioned workflow, and where appropriate reengineer the workflow to improve the user experience and efficiency;
- Provide ongoing web hosting, including but not limited to maintenance, technical support services;
- Provide all of the technical services and resources associated with assisting the Judiciary, where applicable, in implementing the software system;
- Provide all of the technical services and resources necessary for the delivery of the training required to prepare Judiciary employees for properly operating and managing the software system solution; and
- Provide all the training and documentation necessary for mediation service providers to access and conduct online mediation.

The Judiciary is seeking services and Commercial-Off-The Shelf (COTS) System to meet business and technical requirements for the implementation of a Small Claims ODR System. The ODR System shall be easily expanded to other case types through configuration and with minimal vendor programming. That is, the Judiciary is seeking a configurable COTS system and will adjust business processes to the system rather than a custom design and build. The selected and contracted Offeror must provide software with: a learning content; functions for document creation, and eSubmission; document management with a work queue; electronic payment and processing; ability to pay determination for fee waiver; and an online dispute resolution platform. The ODR System must be enabled to conduct user survey, capture data and generate standard and configurable reports. These requirements are more fully described below in Sections 3.2 General Requirements and 3.3 Business and Functional Requirements.

For purposes of this RFP, eFiling is defined as the process of electronic filing of documents to create cases or add to cases in the Judiciary case management system JIMS, and where the documents are immediately accepted into the system of record and file stamped. eSubmission is defined as the process by which SRLs submit documents to the courts for eFiling. eSubmissions are vetted by the court staff prior to eFiling into the system of record.

The Offeror shall identify which features or functionality are or are not included in their core COTS package in their proposal and how required features would be added. The services provided by the selected and contracted Offeror must also meet a set of technical requirements, which are more fully described below in section 3.4 Technical Requirements.

The scope for this project will include all of the activities and professional services required to successfully complete the implementation of the selected COTS solution and bring it into a stable production operating mode.

In addition to supplying the selected software system, the selected provider will also be responsible for providing the Judiciary with overall systems implementation and training including professional services and resources.

The Judiciary will be responsible for providing the successful Offeror with the following:

- Judiciary project leader who will be the software provider's main point of contact during the course of the project and who will coordinate with the software provider project manager on all Judiciary resources and associated project activities.
- Reasonable access to the Judiciary's business unit subject matter experts (SME), as required during the course of the project.
- Reasonable access to the Judiciary's computer services and facilities required to perform implementation and training services.
- For the initial phase, the Judiciary will not provide any access to JIMS expertise as the ODR will function completely independently from the Judiciary case management system JIMS. After stabilization and successful deployment to SRLs of the Small Claims with the ODR system, the Judiciary will move forward with the integration with the Judiciary's Case Management System (JIMS) and expansion to other case types pending the availability of funds.

3.2 GENERAL REQUIREMENTS

The envisioned ODR System will meet the following general requirements:

- The ODR System must be hosted in the cloud and available to users via the Internet
- The ODR System must be mobile-friendly
- Proposed web platform must be easy to navigate and be user friendly for public users
- The ODR System must be intuitive and minimize the number of clicks per activity
- Provide identity and access management (IAM) – allowing users to establish a consistent profile with the court, recover user IDs and passwords, and allow users to save partially completed work.

- The IAM solution must enable users to register with the online platform and should authenticate users using the central registry or federated identity providers (e.g. Google, Facebook, Twitter, etc.)
- The ODR System must have audit capabilities. Specifically, to identify internal users of the system. Also should demonstrate activities by the customer that are tracked and stored in the system.
- The ODR System shall provide notifications to public users via text or email regarding case activity
- Provide an electronic and automated chat box based on an existing FAQ repository. Recommend and develop an interaction that encourages users to click on automated help.
- The proposed web platform must be in compliance with current ADA web accessibility standards.
- The ODR System must include security features that allow for the protection of confidential information such as Social Security Numbers, Bank Account Information, and HIPAA information.

3.3 BUSINESS AND FUNCTIONAL REQUIREMENTS

The Hawaii State Judiciary is seeking a COTS solution with configuration, implementation and training services and ongoing support and technical assistance to meet statewide business requirements for the following components:

- 3.3.1 Learning Content
- 3.3.2 Interactive Fillable Court Forms
- 3.3.3 Document Management and Workflow Engine
- 3.3.4 Electronic Payment
- 3.3.5 Online dispute resolution platform

The business and functional requirements for each of these components are provided below:

3.3.1 Learning Content
<p>Provide a hosted web platform upon which to deliver instructional content and help the public user determine whether the case is eligible for Small Claims ODR. This platform will provide the public user information regarding the small claims process, and help provide procedural guidance. This may include informational and instructional videos.</p> <p>The Judiciary's Guide to the Small Claims Court brochure may be found here: https://www.courts.state.hi.us/docs/self_help_docs/small_claims_brochure.pdf</p> <p>Information regarding resources for legal assistance shall be made available. This</p>

will include but not be limited to referrals to the Hawaii State Bar Association, non-profit legal service providers, and the anticipated Legal Navigator Portal. The Judiciary shall have sole and exclusive ownership rights to all developed content and materials. A public user should be able to bypass this step if ready and eligible for Small Claims ODR.	
3.3.1.1	In coordination with Judicial Staff, configure an easy layout to navigate and user friendly public interface.
3.3.1.2	Provide role-based content authoring and a workflow function for approvals and final publishing for the Judiciary staff.
3.3.1.3	Enable delivery of all site content on mobile devices; tablets; and phones.
	Provide an electronic and automated chat box based on an existing FAQ repository. Recommend and implement an interaction that encourages users to click on automated help.

3.3.2 Interactive Fillable Court Forms

Provide interactive fillable court forms that would allow self-represented litigants with little or no legal experience or training to complete and eSubmit. The proposed ODR System must provide an easy to use system to allow the assembly of court acceptable forms.

Current Small Claims Forms may be found here:

<https://www.courts.state.hi.us/self-help/courts/forms/oahu/district-court-forms> (Statement of Claim/Notice – General/Security Deposit; Counter-claim, Proof of Service, Dismissal by Stipulation,

Current Interactive Small Claims Forms may be found here:

<https://www.lawhelp.org/hi/self-help-forms?page=3>

3.3.2.1	Provide role-based content authoring and a workflow function for approvals and final publishing.
3.3.2.2	All final form and template outputs must have the following functionality: save, clear, print, and download.
3.3.2.3	Deliver an interactive decision-tree intake form or questionnaire to determine whether 1) the user needs any type of accommodation (i.e. interpreter services) or 2) the user qualifies for a court filing fee waiver.
3.3.2.4	Enable electronic signature on completed forms. Current rules allow for electronic signatures in the form of a type written name preceded by a “/s/”.

3.3.2 Document Management and Workflow Engine

<p>Provide a web-based repository to facilitate public access as well as enable Judiciary staff to receive, review and process completed forms prior to staff manually processing the document into the Judiciary's case management system (JIMS).</p> <p>This component would also provide the Judiciary an automated transaction and audit log of all electronically submitted documents. In addition, the system would allow for court filed documents to be electronically transmitted back to the public user.</p>	
3.3.2.1	Proposed system must provide, options to import documents from PCs, Smartphones, or tablet devices, including the option to drag and drop from a browser.
3.3.2.5	Must allow the direct import of common electronic document types (such as, but not limited to: PDF, JPG, Microsoft Office standard formats).
3.3.2.6	System must provide APIs and be able to use APIs to integrate with the Judiciary system of record (JIMS) and other payment systems.
3.3.2.7	Provide public users access to the system through common web browsers on PCs or mobile devices such as SmartPhones and tablets
3.3.2.8	Enable automated workflows pursuant to logical rules.
3.3.2.9	Proposed system shall provide work assignment user interface for administrators to assign and route submitted documents.
3.3.2.10	Create an audit trail or log of activities related to workflow
3.3.2.11	Ability to define custom retention schedules
3.3.2.12	Proposed system must provide annotation which permits redaction of sensitive information such as SSN
3.3.2.13	Proposed system must provide audit stamps such as time and date received, the user that made the addition or change, etc.
3.3.2.14	Proposed solution must provide a timeline/breadcrumbs reflecting where the user is in the court process, e.g form pending review; fee waiver pending; etc.)
3.3.2.15	Solution must provide electronic messaging to court user (e.g. confirmed registration; submission contains error; filing acceptance etc.) using text messaging or email.
3.3.2.16	Solution must enable Judiciary staff to transmit filed documents back to litigants. Solution must enable litigants to receive electronic notice by text message or email of, and electronic receipt of filed documents. Notice should include information regarding next steps (i.e. defendant must be served with the certified filed copy of the claim via registered mail etc.)

3.3.3 Electronic Payment	
The ODR System shall provide a mechanism for the collection of court fees to be paid to the court.	
3.3.3.1	Proposed payment solution must conform to the Judiciary's financial standards.
3.3.3.2	Proposed solution must support distribution of payment into separate circuit accounts.
3.3.3.3	Proposed solution shall enable Judiciary staff to see payments received and posted on the account once the transaction has been completed.
3.3.3.4	Proposed solution must comply with all current Payment Card Industry (PCI) standards.
3.3.3.5	Proposed solution should provide notification to Judiciary for payment failure, i.e. insufficient funds, canceled payment, etc.
3.3.3.6	Enable Judiciary staff to obtain automated reports and to customize reports and check on payment status.
3.3.3.7	Proposed solution must provide electronic payment receipts, reminders for payment due, and confirmation of payment processing.
3.3.3.8	Proposed solution shall resolve refunds and charge backs directly with paying party.

3.3.4 Online Dispute Resolution Platform	
Provide an integrated negotiation space where parties can settle a dispute independently or through a mediator. Mediators must be provided user access and ability to communicate with litigants separately or in a group on a confidential platform.	
3.3.4.1	Provide asynchronous communication accessible 365 days of the year, 24 hours per day, for all seven days of the week (365x24x7), leave messages for other parties, and be notified of responses.
3.3.4.2	In coordination with Judicial Staff and mediation partners, design and deliver an easy to navigate and user friendly public interface.
3.3.4.3	Enable electronic signature on completed forms (i.e. settlement agreement). Current rules allow for electronic signatures in the form of a type written name preceded by a "/s/".
3.3.4.4	Ability to refer cases to various mediation providers.
3.3.4.5	System must allow Judiciary to configure mediation process, including but not limited to assignable resources, timeliness, etc.
3.3.4.6	System must capture mediation outcomes and produce reports (i.e.

	number of referrals, number of mediation number of agreements, number of no agreements)
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3.4 TECHNICAL REQUIREMENTS

3.4.1 Integration	
All modules of the proposed system must be fully integrated and operate as if they are one system. All duplicate data entry should be eliminated.	
3.4.1.1	The proposed solution must provide application programming interfaces (APIs) for future integration to include JIMS and the Legal Navigator Portal. The Offeror shall describe the APIs.
3.4.1.2	The proposed solution should comply with the Court Component model.
3.4.1.3	The solution must be capable of sharing and exchanging electronic information with members of the justice community in Hawaii, to include the anticipated Legal Navigator Portal.
3.4.1.4	This RFP is not seeking proposals for e-filing services, however, the proposed system must be able to accommodate e-filing integration.
3.4.1.5	The proposed system must be able to collect and reconcile court filing fees to include the option to assess convenience fees as the Judiciary deems appropriate.
3.4.1.6	System must have the ability to automate role-based workflows from configurable business rules. Offeror should describe the system's ability to distribute data, e.g. email, queues, notifications, etc.
3.4.1.7	System must accommodate financial management integration. Offeror must describe the proposed system's financial management integration features and capabilities.

3.4.2 Scalability and Performance	
The Judiciary requires a system that meets and enhances court operations and customer service.	
3.4.2.1	System shall provide 365x24x7 uptime at 99.99%
3.4.2.2	System must initially support up to 2,500 small claims cases annually.
3.4.2.3	System should be scalable to support an additional 50,000 non-criminal written Traffic statement annually
3.4.2.4	System should be scalable to support additional civil case types
3.4.2.5	System enhancements or maintenance should be transparent to the Judiciary requiring minimal downtime or impact to the Judiciary.

3.4.3 Product Support

The Judiciary requires ongoing services in support of the solutions and their usage after implementation. The proposed system must comply with industry standards, be reliable and protect against catastrophic failures.	
3.4.3.1	System shall provide ongoing support services after implementation to include: warranties on software and deliverables; availability of a help desk; provision of corrective maintenance; software enhancements.
3.4.3.2	Offeror shall provide a help desk service that will allow for ticket submission, tracking and access 365x24x7. The help desk will be available telephone or chat supporting during the work hours of the Judiciary (Monday to Friday, excluding Federal and State holidays), 7:30 am to 4:45 pm HST.
3.4.3.3	Offeror shall provide an a process for identifying the severity and/or priority of reported incidents and an escalation process to ensure that items which are critical are resolved properly and timely.
3.4.3.4	System shall be highly reliable for daily operations. The system should have the capability to recover quickly and limit impact on operations in case of a system failure.

3.4.4 Statistical Reporting	
The Judiciary requires the proposed system to produce reports and data analytics.	
3.4.4.1	System shall provide automated and scheduled reports.
3.4.4.2	System shall enable ad-hoc reporting and user defined report generation schedules.
3.4.4.3	System shall include special role-based permissions for users who view
3.4.4.4	System shall provide complete statistical and analytical reports including time to disposition and/or resolution, number of documents uploaded, number of referrals to mediation, stage/s in which public users disengage, number of “opt-outs”, number of fee waivers granted, etc.

3.4.5 System Architecture	
Offeror to provide description of any dependencies or limitations while running the proposed solution/s on a workstation or with other applications.	
3.4.5.1	Offeror shall provide a list of its proposed system’s internal and external components. Provide a functional description of each

	component and identify whether the component is critical for core functionality.
3.4.5.2	Offeror shall describe Judiciary's ownership and licensing rights to proposed software solution/s.
3.4.5.3	System shall include access controls over functions as well as ensuring confidentiality of sensitive and private information.
3.4.5.4	System shall have authentication capabilities. Offeror shall describe the authentication method and protocols.
3.4.5.5	System shall provide role based protection of data. Vendor will provide industry standard protection of payment information including credit card numbers.

3.4.6 Data Security	
Offeror must comply with the most current industry standards and best practices.	
3.4.6.1	Offeror must provide a description of its Network Security infrastructure and process (firewalls, anti-virus, IPS approach/type, etc.)
3.4.6.2	Offeror must at all times provide, maintain and support software application security to secure the software from vulnerabilities.
3.4.6.3	Offeror must undergo an annual independent third party penetration testing and vulnerability assessment. The assessment should be shared with the Judiciary.
3.4.6.4	Offeror shall encrypt all data at rest and in transit using modern encryption technology that at minimum complies with the Federal Information Processing Standards (FIPS 140-2) and use Secure File Transfer Protocol or any other method supporting SSL/TLS encryption. All data transmission must be encrypted.
3.4.6.5	Offeror shall conduct background checks on individuals authorized to access Judiciary data upon award. Offeror shall further provide the Judiciary a list of individuals who have access to Judiciary data. The list shall be updated as new individuals are granted access.
3.4.7.6	Security data breach notification shall be provided to the Judiciary within 24 hours of discovery.
3.4.7.7	All data exchanged shall be expressly and solely used for the purposes of the requested ODR System. Data shall not be distributed, repurposed or shared with any third party without the Judiciary's consent and agreement.
3.4.7.8	All Judiciary data shall be purged based on established policies and procedures. Offer shall describe process of erasing and/or destroying data.

3.4.7.9	Upon termination of the contract, Offeror shall release all data to the Judiciary and erase, destroy, and render unrecoverable all Judiciary data retained in the Offeror's database.
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3.5 SILENCE OF SPECIFICATION

The apparent silence of the specifications as to any detail or the apparent omission from any specification of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices shall prevail. All interpretations of the specifications shall be made on the basis of this statement.

3.6 IMPLIED REQUIREMENTS

Products and services not specifically requested in this RFP, but deemed necessary to provide the functional capabilities proposed by the Offeror, shall be included in the offer except as specified herein.

SECTION 4

SPECIAL PROVISIONS

SECTION 4 – SPECIAL PROVISIONS

4.1 SCOPE

The contract for the Small Claims Online Dispute Resolution system as specified herein shall be in accordance with these Special Provisions, Specifications, General Conditions, and the Contract Addendum for Security of Personal Information.

4.2 TERM OF CONTRACT

The tentative term of the contract will be awarded for an initial term of one (1) year commencing June 29, 2019 to June 30, 2020.

Unless terminated, and subject to the availability of funds, the contract may be extended by the Judiciary for three (3) additional twelve-month periods without re-soliciting and upon mutual agreement in writing at least thirty (30) days prior to expiration. The Implementation Fee shall not be payable for any extended term. Only the Per Case Transaction Fee will be subject to any adjustment each extended term. See Section 4.10 Pricing Information and Adjustments.

The Judiciary may terminate the contract at any time upon thirty (30) days prior to written notice.

4.3 OFFER PREPARATION

All responses must be typewritten on the offer forms provided and on any additional sheets required to meet the detailed responses as stated in the Specifications and/or Special Provisions and must be in accordance with the terms and conditions stated herein. All costs associated with this offer preparation are the sole responsibility of the Offeror. Any offer stating terms and/or conditions contradictory to those included herein may be rejected without further consideration.

4.3.1 Offer Form. Offeror is requested to submit its offer using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable. Failure to do so may delay proper execution of the contract.

4.3.2 Quotation. Prices offered shall be based on delivery of products and services to Judiciary and shall include all applicable costs and taxes including

the Hawaii General Excise Tax. If there is a discrepancy in the prices submitted, the unit price submitted will prevail.

- 4.3.3 Proposal Guaranty. A Proposal Guaranty is NOT required for this Request for Proposals.
- 4.3.4 Tax Liability. Work to be performed under this solicitation is a business activity taxable under Chapter 237, Hawaii Revised Statutes (H.R.S.), and vendors are advised that they are liable for the Hawaii General Excise Tax (GET) at the current 4.5% rate. If, however, an Offeror is a person exempt by the H.R.S. from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the H.R.S. chapter or section allowing the exemption.
- 4.3.5 Joint Contractors. Offeror may subcontract portions of this project. Provide names and addresses of Joint Contractors/Subcontractor's, of References, and of Local Representatives. Offeror shall be the Primary Contractor and is liable for all work performed under this project.
- 4.3.6 Wage Certification. Offeror shall complete and submit the attached Wage Certificate by which the Offerors certify that the services required will be performed pursuant to Section 103-55, H.R.S. Offerors are advised that Section 103-55, H.R.S., provides that the services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Offerors are further advised that in the event of an increase in wage rates to public employees performing similar work during the contract period, the Contractor shall be obliged to increase their wage rates accordingly.

4.4 WRITTEN INQUIRIES

Questions regarding this RFP are to be directed by email only to the following person with "ODR System RFP – Question" in the subject line.

Ms. Tritia Cruz
Tritia.L.Cruz@courts.hawaii.gov

The deadline to submit question is April 12, 2019 before 4:00 p.m. Hawaii Standard Time. A written Question and Answers listing all the questions received and answers provided will be posted on the State of Hawaii procurement website at: <https://hands.ehawaii.gov/hands/>. A copy will be emailed to the registered Offerors

4.5 SUBMISSION OF OFFERS

Offerors shall submit four (4) copies (1 original, 3 copies) of their proposal no later than the date and time indicated in Section 2, Significant Dates, to:

The Judiciary, State of Hawaii
Financial Services Division
1111 Alakea Street, 6th Floor
Honolulu, HI 96813 -2807
Attention: Ms. Tritia Cruz

Email: Tritia.L.Cruz@courts.hawaii.gov

FAX: (808) 538-5802

PROPOSALS RECEIVED AFTER THE DATE AND TIME SPECIFIED SHALL NOT BE ACCEPTED AND SHALL BE RETURNED TO THE VENDOR UNOPENED.

4.6 ODR SYSTEM EXPERIENCE AND REFERENCES

- 4.6.1 Experience: Offeror and subcontractors shall have a minimum of one (1) year technical experience with the design, configuration and implementation of the ODR System components as described in this RFP.
- 4.6.2 References For each of the references, the Offeror shall identify the location of the site and the name, address and phone number of a responsible representative of the client organization who can be contacted by the Judiciary's evaluation committee.

4.7 AWARD

- 4.7.1 Method of Award. Award, if any will be made to the responsive and responsible Offeror whose proposal is determined to be the most advantageous and of best value to the Judiciary based on the evaluation criteria.
- 4.7.2 Responsibility of Contractor. To be eligible for award, the apparent responsive low bidder recommended for contract award, if any, will be contacted to submit copies of the documents listed below to demonstrate compliance with the requirements of § 103D-310(c), HRS:
1. Chapter 237, tax clearance;
 2. Chapter 383, unemployment insurance;
 3. Chapter 386, worker's compensation;
 4. Chapter 392, temporary disability insurance;
 5. Chapter 393, prepaid health care; and

6. Chapter 103D-310(C), Certificate in Good Standing (COGS) for entities doing business in the State of Hawaii.

The Contractor may choose to use the Hawaii Compliance Express (HCE) which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance". The HCE provides current compliance status as of the issuance date. In order to meet compliance, the certificate must indicate "COMPLIANT". This certificate shall be accepted for both contracting purposes and final payment. There is an annual fee to the Hawaii Information Consortium, LLC. If the Contractor chooses not to enroll in HCE, paper certificates are required.

- 4.7.3 Timely Submission of all Certificates. The above certificates should be applied for and submitted to the Judiciary upon award of contract. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

- 4.7.4 **Insurance.** The CONTRACTOR shall at his own expense maintain insurance in full force and effect during the life of this contract. The policy or policies of insurance maintained by Contractor shall provide the following limits and coverage:

- a) Commercial General Liability Insurance (occurrence form) of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

- b) Automobile Insurance in the amount of \$1,000,000.00 bodily injury per person, \$1,000,000 bodily injury per accident, and \$1,000,000.00 property damage per accident.

- c) Workers' Compensation and Employer's Liability. Part A – Statutory. Part B, Employers Liability \$100,000.00 each accident/\$100,000.00 disease each employee/\$500,000.00 disease policy limit.

The Contractor will immediately provide written notice to the contracting department or agency should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration. Furthermore, The Judiciary shall be added as an additional insured as respects to operations performed for The Judiciary, State of Hawaii, and it is agreed that any insurance maintained by The Judiciary, State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy.

Failure of the contractor to provide and keep in force such insurance shall be regarded as material default under this contract, entitling the Judiciary to exercise any or all of the remedies provided in this contract for a default of the contractor.

Prior to execution of the contract, the successful offeror shall provide proof of coverage of insurance requirements set forth under this section.

4.8 CONTRACT EXECUTION AND EXTENSION

4.8.1 Execution

Successful Offeror receiving award shall enter into a formal written contract. No performance or payment bond is required for this contract. Upon execution of the contract, the Judiciary shall issue a Notice to Proceed, specifying the contract commencement date.

No work shall be undertaken by the Contractor prior to the commencement date specified on the Notice to Proceed. the Judiciary is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor arising prior to the official starting date.

4.8.2 Extension

If option to extend for an additional period is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract. Any contract extension must be executed by the Contractor no less than thirty (30) days prior to the scheduled date of termination, otherwise the contract must be re-solicited. All contract extensions are subject to the availability of funds.

4.9 PERMITS, CERTIFICATES, AND LICENSES

The Contractor shall obtain and pay for all permits, certificates, and licenses required and necessary for the performance of the work specified herein, shall post all notices required by law, and shall comply with all laws, ordinances, and regulations bearing on the conduct of work specified.

4.10 PRICING INFORMATION AND ADJUSTMENTS

4.10.1 No price increase will be allowed during the initial one (1) year period of the contract. However, in the event of a general price decline, the Judiciary will be entitled to reductions given to similar customers.

4.10.2 Price escalation, if any, during the extended period shall not be more than five (5) percent for each of the previous years' contract price or is negotiated as set forth in the following provision:

4.10.3 Rate increases that are approved for the same services provided to other government agencies may be negotiated with the Judiciary for consideration.

4.11 INVOICING

Contractor shall submit, the original and three (3) copies of the invoice to the fiscal office at the address listed below:

The Judiciary, State of Hawaii
Office of the Administrative Director
Administration Fiscal Office
1111 Alakea Street, 6th Floor
Honolulu, Hawaii 96813

4.12 PAYMENT

Section 103-10, H.R.S., provides that the Judiciary shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods & services to make payment. For this reason, the Judiciary will reject any offer submitted with a condition requiring payment within a shorter period. Further, the Judiciary will reject any offer submitted with a condition requiring interest payments greater than that allowed by Section 103-10, H.R.S., as amended.

The Judiciary will not recognize any requirement established by the Offeror and communicated to the Judiciary after award of the contract which requires payment within a shorter period or interest payment not in conformance with statute.

4.13 BACKGROUND CHECKS

All employees, agents, or representatives of an Offeror or Offeror's subcontractors who will be performing work on any phase of the contract arising out of this RFP are subject to a criminal history background check by the Judiciary.

4.14 CONFIDENTIALITY OF JUDICIARY INFORMATION

During the performance of services under the contract, the Offeror may gain access to and use Judiciary information, records, files, documents or reports, which shall all be considered extremely confidential and shall be handled accordingly. A violation by Offeror, its employees, contractors and agents shall be a material violation of the contract.

4.15 TERMINATION FOR CAUSE

If the Contractor:

1. Fails to begin the work or services under the contract within or by the time specified.
2. Performs the work or services negligently, or neglects or refuses to remove materials or to perform anew, such work or services that may be rejected as unacceptable.
3. Discontinues the prosecution of the work or services.
4. Otherwise breaches any term of the contract.
5. Becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency.
6. Makes an assignment for the benefit of creditors.
7. For any other cause whatsoever, fails to carry out the work or services in an acceptable manner, the Judiciary will give notice to the Contractor of such delay, neglect, or default. If the Contractor within a period of ten (10) days after the date of such notice, shall not proceed in accordance therewith, then the Judiciary will have full power and authorize, without violating the contract, to take the prosecution of the work or services out of the hands of the Contractor, and to use such methods are deemed necessary to complete the contract in an acceptable manner.

All costs and charges incurred by the Judiciary, together with the cost of completing the work or services under the contract, will be offset from any monies due or which would or might have become due to the Contractor had the Contractor completed the work under the contract. If such expense exceeds the sum which would have been payable under the contract, the Contractor shall be liable and shall pay to the Judiciary the amount of such excess within ten (10) days after demand therefore.

4.16 LIQUIDATED DAMAGES

Failure to complete delivery of any item in the contract within the time proposed will cause damage to the Judiciary. The amounts of said damages being difficult, if not impossible to ascertain, shall be estimated, agreed upon and fixed at the sum of FIVE HUNDRED DOLLARS (\$500.00) for each and every calendar day the Contractor delays in completing any item of the contract after the required date of said completion. Completion dates will be specified in the SOWs. The total sum due for such delay shall be deducted from any payments due or to become due to the Contractor.

4.17 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS

Contractors are hereby notified of the applicability of Section 11-205.5, H.R.S., which states that campaign contributions are prohibited from specified State or County government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body.

4.18 INTERPRETATION OF PROVISIONS

Notwithstanding any other provisions, if there is any doubt as to the interpretation of any of the provisions of this agreement, the interpretation given and made by the Special Assistance to the Administrative Director with the approval of the Financial Services Director, or the interpretation made by the Financial Services Director, shall govern and control. In addition, the parties hereto agree that said Financial Services Director, shall have the sole power to decide and resolve matters which may come up in the future and which are not covered by this agreement.

4.19 CONFLICTS AND VARIATIONS

In the event of any conflict or variation between the provisions of this document entitled Special Provisions and the General Conditions, as referred to in Attachment 1, the provisions of the document entitled Special Provisions shall control.

SECTION 5

PROPOSAL REQUIREMENTS

SECTION 5 – PROPOSAL REQUIREMENTS

5.1 INTRODUCTION

In order to effectively and efficiently analyze responses to this RFP, Offerors shall prepare their proposals in accordance with the requirements outlined in this Section 5, using the proposal template provided in Attachment 11. The evaluation procedure and points are described in Section 6. Any proposal that significantly deviates from the requirements of Section 5, 6 or Attachment 11 may be considered non-responsive and may be disqualified by the Judiciary.

5.2 CONTENTS OF PROPOSAL

Because the Judiciary end-users are part of the evaluation committee, proposals shall be written in simple, straightforward, and concise language, free of technical jargon. All sections, pages, tables, exhibits, and appendices shall be separately numbered and clearly labeled. The Offeror shall organize their proposal into the sections shown in the table below and include as prescribed in the sections below.

Table 1 Proposal Sections

Proposal Sections	This Section
Title Page	5.2.1
Table of Contents	5.2.2
Offeror Form	5.2.3
Notification of Any Potential Conflicts with State Code of Ethics	5.2.4
Wage Certificate	5.2.5
Project Management Plan	5.2.6
Proposed Solution	5.2.7
Project Methodology and Implementation	5.2.8
Training Plan	5.2.9
Risk Management	5.2.10
Warranty Terms and Conditions	5.2.11
Service Level Agreements and Support	5.2.12

Proposal Sections	This Section
Offeror Qualifications	5.2.13
Financial Stability	5.2.14
ODR System Experience and References	5.2.15
Price Proposal	5.2.16
Additional Materials	5.2.17

5.2.1 Title Page

The proposal will start with a simple title page, with the name of the company submitting the proposal, the RFP title and number, and submittal date.

5.2.2 Table of Contents

The proposal shall include a table of contents with page numbers that at a minimum include the sections shown in Table 1 Proposal Sections in Section 5.2. Although not required, any hardcopy proposal with tabs to separate and identify the different sections would be helpful.

5.2.3 Offeror Form

The Offeror shall submit an Offeror Form using the Offeror's official letterhead. The Offeror Form shall be signed by an individual authorized to legally bind the Offeror and shall contain the complete name and address of the Offeror's firm, as well as the name, title or position, mailing address, e-mail address, telephone number, and facsimile number of the person the Judiciary should contact regarding the Offeror's proposal. The Offeror Form shall indicate whether the Offeror is an individual, partnership, or corporation, and if the Offeror is a partnership or corporation, the state of its formation or incorporation. If an Offeror is a partnership formed under the laws of any other jurisdiction, it shall certify that it either has or will file with the office of the Hawaii Department of Commerce and Consumer Affairs the registration and annual statements required by H.R.S. §425-1 (Supp. 2000). If the Offeror is a foreign corporation, it shall certify that it either has or will obtain from the Department of Commerce and Consumer Affairs a certificate of authority to transact business in Hawai'i, as required by H.R.S. §414-431 (Supp. 2000).

5.2.4 Notification of Any Potential Conflicts with State Code of Ethics

The Offeror shall notify the Judiciary of any potential conflicts with the State Code of Ethics (H.R.S. Chapter 84) in the submission of this proposal. For example, an Offeror should notify the Judiciary if it has an employee or officer whose spouse, child, parent, or sibling is a Judiciary employee. Additionally, an Offeror who employs or is assisted by a former Judiciary employee should alert the Judiciary of that fact. Potential conflicts may require consultation with State ethics. If selected as the Contractor, the Offeror shall be required to sign a Standards of Conduct Declaration.

5.2.5 Wage Certificate

The Offeror shall submit the wage certificate.

5.2.6 Project Management Plan

In this section, the Offeror shall describe the methodology and approach to managing the project. Offeror's response should address the following:

5.2.6.1 Project Management Experience: Describe the scope of your project management services and experience in managing a project of similar scale.

5.2.6.2 Communication Plan: Describe how project status will be tracked, communicated and managed.

5.2.6.3 Change Management: Describe the approach to change management, not only regarding software product(s) but also in regards to the entire project implementation.

5.2.6.4 Risk/Issue Management: Describe your process for managing and resolving project issues and risks.

5.2.6.5 Budget Management: Describe your process for managing the project budget, expenditures and costs.

5.2.6.6 Project Documentation: Describe your project documentation approach to ensure project tasks, decisions and issues are appropriately documented.

5.2.7 Proposed Solution

The first part of the Proposed Solution must be an executive summary that summarizes the Offeror's approach in a brief narrative format. This narrative must address how the Offeror will complete the integrated components by the Judiciary's desired date of December 31, 2019. The project plan must provide time-based representation of the proposed approach and strategy. If the Offeror's project schedule does not meet the December 31, 2019 end date, the Offeror should provide reason why this date cannot be met.

The second part of the Proposed Solution shall provide a project schedule for implementation. The Offeror's project and implementation schedule must meet the Judiciary's delivery date of December 31, 2019. Offerors must propose a timeframe that is realistic and achievable, and ideally within this timeframe. If the Offeror's project schedule for the implementation does not meet the December 31, 2019 date, the Offeror should provide a reason why this date cannot be met. The Offeror should include in its response details regarding how long similar projects have taken in other jurisdictions.

The third part of the Proposed ODR System shall provide a comprehensive narrative statement that sets out the Offeror's proposed solution for meeting the Judiciary's requirements outlined in **Sections 3.2, 3.3 and 3.4** of this RFP. The Offeror shall use the numbering format provided in this document for ease of identification of the requirement and to add explanatory details as necessary. Offeror must respond to each functional and technical specification and indicate whether the proposed solution is one of the following:

- Supported currently (fully or configurable).
- Supported as an upgrade in future release. Provide a scheduled release date.
- Third Party supported – List the vendor and version/release number.
- Customization required to provide the functionality. – Costs for enhancements should be separated in the Implementation Fee
- Not proposed- Customization or enhancement recommended for subsequent phase of this contract.

The Offeror shall assume that they will not replace the existing CMS, but instead integrate with the existing system at a designated time. Preference will be given to those Offerors who are able to meet the functional

specification as part of the proposed solution. However, the Judiciary understands that some of this request may require customization. The Judiciary seeks to minimize the amount of customization as part of this implementation and will review each of the functional specifications that require customization to determine if the specification is essential. A final determination of which customization elements will be requested and/or implemented will be determined as part of the gap/fit analysis process of the project.

5.2.8 Project Methodology and Implementation

The Offeror shall describe its approach to analyzing the existing capabilities within the Judiciary's business process and/or practices. In the response, address the following:

5.2.8.1 Describe the process to understand the Judiciary's current business processes and practices and how these could be either addressed in the proposed solution or how Offeror would facilitate consideration of business process and/or practice changes.

5.2.8.2 Describe the process to understand and identify functional and statutory requirements.

5.2.8.3 Describe the process to identify, document and address any gaps in capability with the proposed solution.

5.2.8.4 Describe the process to identify, configure and enhance the Offeror's product to address the Judiciary's unique requirements.

5.2.8.5 Describe the structure and approach that Offeror will use to determine the appropriate rollout strategy and pilot installation. Offeror should include its preferred rollout strategies based on experience and success with other courts.

5.2.8.6 Describe the level of support Offeror will provide during the initial days and weeks of the rollout to include technical and functional support resources. Describe the Judicial resources that may be required to execute your proposed rollout strategy. Describe how this process would be implemented.

5.2.8.7 Hardware, Software, Tools and Capabilities to Complete the Project

If the Offeror proposes additional hardware, software, or tools in addition to what the Judiciary currently owns, the Offeror shall discuss the added value and include any costs in its implementation cost proposal.

5.2.8.8 Test Plan

The purpose of this section is for the Offeror to explain its approach to performing the necessary quality assurance testing to ensure that the solution is working error-free and in accordance with the expectations of the Judiciary.

5.2.9 Training Plan

The Offeror's proposal shall describe both a comprehensive training and a "train-the-trainer" approach. The proposal must also include the following:

- Method of training
- Length of training
- Scope of training
- A list of training materials
- Help desk/end-user support training
- Offeror's ability to integrate the Judiciary's court/business rules
- Specific training regarding report creation and generation using proposed training tools

5.2.10 Risk Management

The purpose of this section is to have the Offeror highlight major risks associated with the overall project, schedule, cost, or proposal in general. The Offeror shall describe, at minimum, the impact, probability, and alternatives for mitigating each factor.

5.2.11 Warranty Terms and Conditions

This section shall document the Offeror's warranty period, terms and conditions. The minimum period is one hundred twenty days (120) days from implementation.

5.2.12 Service Level Agreements and Support

This section shall document the Offeror's service level agreements and support plans available to the Judiciary.

5.2.12.1 Describe the levels of support and what is included for each level.

5.2.12.2 Describe the support delivery channels (e.g. manuals, phone, e-mail, chat, etc.)

5.2.12.3 Describe the support response times, to include break/fix response processes

5.2.12.4 Describe the method of notice to customers for new features, support issues, etc.

5.2.12.5 Describe any user groups available that the Judiciary could be a part of.

5.2.13 Offeror Qualifications

Offeror shall provide the following information so that the Judiciary can evaluate the Offeror's stability, experience, and ability to fulfill the commitments required by this RFP.

5.2.13.1 Company History

In this section, the Offeror shall provide a general history of the company and any subcontractors. Information shall include a description of the core business, number of offices, number of locations, number of years in business, type of business (corporation, partnership, etc.), principal owners, number of years providing the type of services requested by this RFP, the total number of employees, and the breakdown of its employees by job category (e.g., clerical, sales, project management, professional services, help desk, training, etc.) and locations.

5.2.13.2 Project Team

Describe the proposed project team, its structure, and individual responsibilities, to include the number of personnel that will be assigned to the project full-time or part-time. Project Management and Technical Lead(s) must be clearly identified and their experience noted. For the duration of this project, identified Project Management and Technical Leads(s) cannot be reassigned, replaced or removed from the project unless specifically requested and/or approved by the Judiciary.

5.2.13.3 Qualifications of Personnel

Provide resumes for employees who will be managing and/or directly providing services under the contract. For positions that are not

filled, a position description (including requisite qualifications/experience) should be provided.

5.2.13.4 Subcontractors

Describe the extent to which subcontractors, if any, will be used to comply with the contract requirements. Describe the sub-contractor entity, relationship to the Offeror, services and/or products. Include each subcontractor position providing service, and provide a detailed description of how the subcontractors are anticipated to be involved under the contract. Include a description of how the Offeror will ensure that all subcontractors and their employees will meet all Business and Technical requirements.

A statement that the subcontractor is willing and able to perform the work indicated shall be executed by an individual authorized to legally bind the subcontractor and shall be included in this section. One such statement is required for each subcontractor that Offeror intends to utilize.

The Judiciary reserves the right to approve all proposed subcontractors in advance. The selected Offeror will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the sub-contract, and will be responsible for all services, whether or not the selected Offeror performs them or delegates them to their contractors.

All individuals who will be working on the ODR System and has access to confidential Judiciary information or computer systems will have a security and background check done by the Judiciary. All information, records, files, documents or reports contained in any format and provided to the Offeror by the Judiciary shall be considered extremely confidential.

5.2.14 Financial Stability

The Offeror must provide proof of financial stability to ensure that not reasonably foreseeable circumstances could lead to financial problems affecting the ability of the Offeror to perform satisfactorily under a contract arising out of this RFP.

The Offeror shall provide the following evidence of its financial stability and capability to complete the work specified in this RFP so that the Judiciary can evaluate its financial strength and stability. In this connection, the Offeror shall:

- Submit audited financial statements of the Offeror for the three (3) most recent fiscal years;
- Provide a breakdown of its revenues and expenditures for each of the past three (3) years.

In addition, the Offeror shall provide the following items that are deemed risks to the financial stability:

- List any lawsuits that have been filed against it in the past three (3) years, with a brief description of the nature and status of these lawsuits, the amount of damages sought, and whether insurance coverage exists to cover potential losses arising from the lawsuits;
- List any unasserted claims and assessments, including threatened litigation, that have been made against it;
- List any contingent liabilities that the Offeror has incurred; and
- List all contracts that the Offeror has entered into or is about to enter into to provide services similar to those required by this RFP, with a brief description of the status of the contract, expected completion date, and the number of employees committed to the contract.

5.2.15 ODR System Experience and References

In this section, the Offeror shall document experience with at least one (1) completed projects similar in size and scope as the project in this RFP. The Offeror shall provide project descriptions in sufficient detail to demonstrate the similarity with the project in this RFP.

These descriptions shall include an overall summary of the project, the size and type of the organization involved, discussion of major obstacles faced and how they were overcome. If the reference project case type is other than for a court system, the description shall include a narrative explaining how the project is similar to the project in this RFP. The descriptions should also include initial and final project cost and where final project cost exceeded the initial contracted amount, including the reason for the cost overrun. Include the starting and completion dates and if the contract was completed late and

the reason for the late completion. Finally, complete the description with the level of effort required to complete the project.

For each of the references, the Offeror shall identify the location of the site and the name, address and phone number of a responsible representative of the client organization who can be contacted by the Judiciary's evaluation committee.

5.2.16 Price Proposal

This section shall describe the costs required to provide the services under this RFP. Prices shall include any applicable taxes, including Hawaii general excise or use taxes.

5.2.16.1 Price Per Software

The Offeror shall provide the Judiciary with a costing table based on each software solution proposed with this RFP. The costing table will provide:

- A fixed price implementation fee
- A per case transaction fee

5.2.16.2 Travel Cost Proposal

The Offeror shall include any travel cost assumptions if the Offeror anticipates these costs to be passed onto the Judiciary. Travel costs should be included in the fixed price implementation fee proposal.

5.2.17 Additional Materials

Offerors may submit additional materials included pre-printed marketing materials with their proposals. However, the Offerors are advised that such brochures normally do not address the needs of the evaluation committee with respect to the technical evaluation process and the specific responses which have been requested of the Offeror.

SECTION 6

EVALUATION OF PROPOSALS

SECTION 6 - EVALUATION OF PROPOSALS

6.1 OVERVIEW OF THE EVALUATION PROCESS

The Procedural Requirements governing RFPs is provided as Attachment 2.

Offerors shall note that any award of a contract pursuant to this RFP will not be based on lowest price. The award, if any, will be made to the responsive and responsible Offeror whose proposal is determined to be most advantageous to the Judiciary, based on the evaluation criteria tabulated in this section and described in Section 5. In addition, the Judiciary reserves the right not to award the contract should it be determined that none of the proposals can meet the requirements of the RFP, none of the Offerors are responsible or responsive, contract negotiations fail to arrive at a mutually acceptable agreement, or any other reason.

6.2 EVALUATION

A core evaluation team consisting of Judiciary employees will review all timely written proposals for completeness, compliance with RFP instructions, and responsiveness to the RFP requirements. Proposals that are incomplete or non-responsive will be considered unacceptable and will not be evaluated further.

The evaluation team will review all acceptable written proposals. The team will also conduct reference checks and telephone interviews to assist in determining an Offeror's experience, qualifications, capability, financial strength and stability to perform a contract arising out of this proposal.

Evaluation criteria for this phase shall be as follows:

Criteria	Section	Max. Points
Title Page	5.2.1	0.0
Table of Contents	5.2.2	0.0
Offeror Form	5.2.3	0.0
Notification of Any Potential Conflicts with State Code of Ethics	5.2.4	0.0
Wage Certificate	5.2.5	0.0

Project Management Plan	5.2.6	10.0
Proposed Solution	5.2.7	50.0
Project Methodology and Implementation	5.2.8	15.0
Training Plan	5.2.9	5.0
Risk Management	5.2.10	5.0
Warranty Terms and Conditions	5.2.11	5.0
Service Level Agreements and Support	5.2.12	10.0
Offeror Qualifications	5.2.13	25.0
Financial Stability	5.2.14	25.0
ODR System Experience and References	5.2.15	25.0
Price Proposal	5.2.16	25.0
Additional Materials	5.2.17	0.00
Total		200.00

SECTION 7

ATTACHMENTS

- ATTACHMENT 1 – WRITTEN PROPOSAL FORMAT
- GENERAL CONDITIONS
- PROCEDURAL REQUIREMENTS
- JUDICIARY DISCRIMINATION HARASSMENT-FREE WORKPLACE POLICY

ATTACHMENT 1

WRITTEN PROPOSAL FORMAT

INTRODUCTION

This section provides, the headings, forms, and tables for the offeror to follow and complete and creating their written proposal. The offeror must follow this format along with directions provided in section 5 – Proposal Requirements.

Please refer to Section 3.4.1 of the Procedural Requirements attachment regarding designated confidential data.

1. TITLE PAGE

Company Name
Proposal

Online Dispute Resolution System, The Judiciary,
State of Hawaii

April 2019

In response to Request for Proposals
No. J19245

2. TABLE OF CONTENTS

The written proposal shall include a table of contents with at minimum the contents shown in the follow table. The proposal must use the following section numbering.

Proposal Section	Section #
Title Page	5.2.1
Table of Contents	5.2.2
Offer Form	5.2.3
Notification of Any Potential Conflicts with State Code of Ethics	5.2.4
Wage Certificate	5.2.5
Project Management Plan	5.2.6
Proposed Solution	5.2.7
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Price Proposal	5.2.16
Additional Materials	5.2.17

3. OFFER FORM

Offerors must complete the following offer form using their company letter head. A scanned “authorized signature” is acceptable.

**OFFER FORM FOR
REQUEST FOR PROPOSALS NO. J19245
REGARDING:**

**ONLINE DISPUTE RESOLUTION SYSTEM, THE JUDICIARY, STATE OF
HAWAII**

Offeror: _____

_____,
City State
_____, 2019

Financial Services Director
The Judiciary, State of Hawaii
Kauikeaouli Hale
1111 Alakea Street, 6th Floor
Honolulu, Hawaii 96813

Dear Financial Services Director:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications and Special Provisions attached hereto, and in the General Conditions dated _____ by reference made a part hereof and available upon request; and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was (were) independently arrived at without collusion.

The undersigned hereby proposes to provide solutions for the Judiciary, State of Hawaii's Small Claims Online Dispute Resolution System.

The undersigned represents: **(Check one only)**

☐ A **Hawaii Business** incorporated or organized under the State of Hawaii; **OR**

☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii and has a separate branch or division in the State that is capable of fully performing under the contract.

State of incorporation _____

Offeror is:

☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture

☐ Other _____

Federal I.D. No. _____

Hawaii General Excise Tax License I.D. No. _____

Payment address (other than street address below): _____

City, State, Zip Code _____

Business address: _____

City, State, Zip Code _____

Date: _____

Respectfully Submitted,

Phone No.: _____

(x) _____

Authorized Signature

Fax No.: _____

Name and Title (Please Type or Print)

Email Address: _____

*

Exact Legal Name of Company (Offeror)

* If Offeror is a "dba" or a "division" of a corporation, please furnish the exact legal name of the corporation under which the contract, if awarded, will be executed:

- 4. NOTIFICATION OF ANY POTENTIAL CONFLICTS WITH STATE CODE OF ETHICS**
- 5. WAGE CERTIFICATE**

WAGE CERTIFICATE

Subject: REQUEST FOR PROPOSALS NO. J19245
Project Description: ONLINE DISPUTE RESOLUTION SYSTEM, THE JUDICIARY,
STATE OF HAWAII

Pursuant to Section 103-55, Hawaii Revised Statutes, I hereby certify that if awarded the contract in excess of \$25,000.00, the services to be performed will be performed under the following conditions:

1. The services to be rendered shall be performed by employees paid at wages or salaries not less than wages paid to public officers and employees for similar work.
2. All applicable laws of the Federal and State governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

I understand that failure to comply with the above conditions during the period of the contract shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Payment in the final settlement of the contract or the release of bonds if applicable, or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected; and

I further understand that all payments required by Federal and State laws to be made by employers for the benefit of their employees are to be paid in addition to the base wages required by Section 103-55, Hawaii Revised Statutes.

Offeror: _____

Signature: _____

Name: _____

Title: _____

Date: _____

- 6. PROJECT MANAGEMENT PLAN**
- 7. PROPOSED SOLUTION**
- 8. PROJECT METHODOLOGY AND IMPLEMENTATION**
- 9. TRAINING PLAN**
- 10. RISK MANAGEMENT**
- 11. WARRANTY TERMS AND CONDITIONS**

In this section, Offeror will provide a copy and description of the warranties associated with the proposed equipment/hardware and software.

Provide a complete description of the warranties, on-going maintenance services provided applicable to this RFP.

- 12. SERVICE LEVEL AGREEMENTS AND SUPPORT**
- 13. OFFEROR QUALIFICATIONS**
- 14. FINANCIAL STABILITY**
- 15. ODR SYSTEM EXPERIENCE AND REFERENCES**

16. PRICE PROPOSAL

All prices must include the Hawaii General Excise Tax, if applicable.

16.1. PRICE PER COMPONENT

COMPONENT #1: (Learning Content)	Per Case Unit Rate	Estimated # of Small Claim Cases	Initial Term Annual Cost
A1. Implementation Fee			\$ _____
B1. Transaction Fee		2,500	\$ _____
COMPONENT #2: (Interactive Fillable Court Forms)			Initial Term Annual Cost
A2. Implementation Fee			\$ _____
B2. Transaction Fee		2,500	\$ _____
COMPONENT #3 (Document Management and Workflow Engine)			Initial Term Annual Cost
A3. Implementation Fee			\$ _____
B3. Transaction Fee		2,500	\$ _____
COMPONENT #4: (Electronic Payment)			Initial Term Annual Cost
A4. Implementation Fee			\$ _____
B4. Transaction Fee		2,500	\$ _____
COMPONENT #5: (Online Dispute Resolution Platform)			Initial Term Annual Cost
A5. Implementation Fee			\$ _____
B5. Transaction Fee		2,500	\$ _____
TOTAL IMPLEMENTATION FEE (A1+A2+A3+A4+A5)			\$ _____
TOTAL TRANSACTION FEE (B1+B2+B3+B4+B5)			\$ _____

17. ADDITIONAL MATERIALS

GENERAL CONDITIONS
GOVERNING CONTRACTS WITH THE JUDICIARY,
STATE OF HAWAII FOR GOODS AND SERVICES
February 2001

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GENERAL CONDITIONS
GOVERNING AGREEMENTS WITH THE JUDICIARY,
STATE OF HAWAII, FOR GOODS AND SERVICES

1. Administration of Contract by "the Judiciary." The Administrative Director of the Courts or designee (hereinafter "Judiciary") shall coordinate all services to be performed under the contract, and decide all questions which may arise as to: performance of this contract; interpretation of any term, condition, or provision of the contract; applicability and interpretation of any law or rule that may affect performance under the contract; and compensation. Any questions regarding performance of the contract shall be directed to the Judiciary for resolution.
2. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - 2.1 In the performance of services required under this contract, Contractor is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this contract; however, Judiciary shall have a general right to inspect work and services in progress to determine whether, in Judiciary's opinion, the work and services are being performed by Contractor in compliance with this contract. Unless otherwise provided by special provision, it is understood that Judiciary does not agree to use Contractor exclusively, and that Contractor is free to contract its services to other individuals or entities while under contract with Judiciary.
 - 2.2 Contractor and Contractor's employees and agents are not by reason of this contract, agents or employees of Judiciary for any purpose, and neither Contractor nor Contractor's employees and agents shall be entitled to claim or receive from Judiciary any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to Judiciary employees.
 - 2.3 Contractor shall be responsible for the accuracy, completeness, and adequacy of its performance under this contract. Contractor intentionally, voluntarily, and knowingly assumes the sole and entire liability to Contractor's employees and agents, and to any individual not a party to this contract, for all loss, damage, or injury caused by Contractor, or Contractor's employees or agents in the course of their employment or agency.
 - 2.4 Contractor shall pay all applicable federal, state, and county taxes and fees which may become due and owing by Contractor by reason of this contract, including but not limited to (i) income taxes, (ii) employment-related fees, assessments, and taxes, (iii) general excise taxes and (iv) use taxes.
 - 2.5 Contractor shall obtain and keep in force all licenses, permits, and certificates required by reason of this contract.

2.6 If required by chapter 237, Hawai'i Revised Statutes (HRS), Contractor shall obtain a general excise tax license from the Department of Taxation, State of Hawai'i, and shall comply with all requirements thereof. Pursuant to section 103D-328, HRS, no contracts of \$25,000 or more shall be binding or effective until Contractor secures and Judiciary receives a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, showing that all tax returns due have been filed, and all taxes, interest, and penalties levied against Contractor or accrued under the tax laws of the State of Hawai'i and the Internal Revenue Code have been paid. Contractor shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under section 103D-328, HRS, and paragraph 25.3 of these General Conditions.

2.7 Contractor shall secure and retain all employee-related insurance coverage for Contractor and Contractor's employees and agents that is required by law.

3. Personnel Requirements.

3.1 Contractor shall secure, at Contractor's expense, all personnel required to perform the services required by this contract.

3.2 Contractor shall ensure that Contractor's employees or agents are experienced and fully qualified to engage in the activities and services required under this contract. Contractor and Contractor's employees or agents shall comply with all applicable licensing and operating requirements required by federal, state, or county law, and shall meet accreditation and other generally accepted standards of quality in the applicable field of activity.

4. Nondiscrimination. Persons performing work under this contract, including Contractor's employees, agents, or subcontractors, shall not violate any federal, state, or county anti-discrimination law, including but not limited to:

(a) Chapter 378, HRS (prohibits employment discrimination based on race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record);

(b) Title VII of the Civil Rights Act of 1964 (Title VII) (prohibits employment discrimination based on race, color, religion, sex, or national origin);

(c) The Equal Pay Act of 1963 (EPA) (protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination);

(d) The Age Discrimination in Employment Act of 1967 (ADEA) (protects individuals who are 40 years of age or older); and

- (e) Title I of the Americans with Disabilities Act of 1990 (ADA) (prohibits employment discrimination against qualified individuals with disabilities in the private and public sectors).

- 5. Subcontracts, Assignments, and Successors in Interest. Contractor shall not assign or subcontract any of Contractor's duties, obligations, or interests under this Agreement without Judiciary's prior written consent. No assignment shall be effective for procurements of \$25,000 or more unless Contractor's assignee submits to Judiciary bulk sales certificate, if required by section 273-43, HRS, or if a bulk sales certificate is not required, a tax clearance certificate from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, showing that all tax returns due have been filed, and all taxes, interest, and penalties levied against Contractor's assignee or accrued under the tax laws of the State of Hawai'i and the Internal Revenue Code have been paid. No assignment by Contractor of its right to compensation under this contract shall be effective unless and until the assignment is approved by Judiciary.

When in the best interest of Judiciary, a successor in interest may be recognized in an assignment agreement in which Judiciary, Contractor and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (a) The Assignee assumes all of Contractor's obligations;
- (b) Contractor remains liable for all obligations under this contract and waives all rights under this contract against Judiciary upon the effective date of the assignment; and
- (c) Contractor continues to furnish, and the Assignee also furnishes, all required bonds.

- 6. Conflicts of Interest. Contractor represents that neither Contractor, nor any employee, agent, or immediate family member of Contractor, presently has any direct or indirect "financial" or "controlling interest," as those terms are defined in section 84-3, HRS, that would or might violate the provisions of section 84-15, HRS with respect to Contractor's performance under this contract. Furthermore, no such interest shall be acquired while Contractor is a party to this contract.

- 7. Contract Modifications.

- 7.1 In writing. No modification, alteration, amendment, change, or extension of any term, provision, or condition of this contract shall be made without written amendment to this contract, signed by both Contractor and Judiciary.
- 7.2 Change of name. If Contractor desires to change the name in which it holds this contract with Judiciary, Judiciary, upon receipt of an acceptable document indicating the change of name (for example, a certified file-marked copy of an amendment to Contractor's articles of incorporation), may enter into an amendment to this contract with Contractor to effect this change of name. The

amendment to this contract changing the Contractor's name shall specifically indicate that no other terms and conditions of this contract are thereby changed and that the bond, if any, will remain in effect under the changed name. Further, such amendment must be approved by the surety company that issued the bond.

- 7.3 Adjustments of price or time for performance. If agreed-upon modifications to the contract increase or decrease Contractor's cost of, or the time required for, performance of any of the work under this contract, an adjustment shall be made and the contract shall be modified in writing to reflect that adjustment. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this contract (see paragraph 8 below) or as negotiated between Judiciary and Contractor.
- 7.4 Claim barred after final payment. No claim by Contractor for an adjustment under the contract shall be considered unless a written agreement of modification was made prior to final payment under this contract.
- 7.5 Tax clearance. If modification, alteration, amendment, or change causes the contract price to exceed \$25,000, Judiciary may, at its discretion, require Contractor to submit, at the time it requests modification, alteration, amendment, change, or extension of any term, provision, or condition of this contract, a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, showing that all tax returns due have been filed, and all taxes, interest, and penalties levied against Contractor or accrued under the tax laws of the State of Hawai'i and the Internal Revenue Code have been paid.

8. Price Adjustment.

- 8.1 Price adjustment. Any adjustment in the contract price pursuant to a provision in this contract shall be made in one or more of the following ways:
- (a) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (b) By unit prices specified in this contract or subsequently agreed upon;
 - (c) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in this contract or subsequently agreed upon;
 - (d) In such other manner as the parties may mutually agree; or in the absence of agreement between the parties, by a unilateral determination by Judiciary of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by Judiciary in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, Hawai'i Administrative Rules (HAR).

- 8.2. Submission of cost or pricing data. Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of subchapter 15, chapter 3-122, HAR.

9. Suspension of Contract.

- 9.1 Notice of suspension. Judiciary reserves the right at any time and for any reason to suspend all or part of this contract, for a reasonable period, not to exceed sixty days, unless the parties agree to a longer period. Judiciary shall provide Contractor with written notice of the suspension order, which shall set forth the date upon which the suspension shall take effect, the date of its expiration, and all applicable instructions. Upon receipt of said order, Contractor shall immediately comply with the order and suspend all work under this contract as specified in the order. Contractor shall take all reasonable steps to mitigate costs and adverse impact to the work specified in this contract during the suspension period. Before the order expires, Judiciary shall either:

- (a) Cancel the suspension order;
- (b) Extend the suspension order for a specific time period not to exceed thirty (30) days; or
- (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.

- 9.2 Cancellation or expiration of the order. Contractor shall resume performance once a suspension order issued under this section is canceled or expires. If, as a result of the suspension of performance, there is a financial or schedule impact upon this contract, an appropriate adjustment may be made. Any adjustment shall be set forth in writing (see paragraph 7.3, above). After a suspension order has been canceled or expires, Contractor shall provide any request for adjustment to Judiciary within thirty (30) days after resuming work performance.

10. Termination for Default.

- 10.1 Notice of termination for default; obligations of parties in the event of termination. If, for any reason, Contractor breaches this contract by failing to satisfactorily fulfill or perform any obligations, promises, terms, or conditions, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by Judiciary, Judiciary may terminate this contract, in whole or in part, by giving written notice to Contractor specifying the date for termination. Judiciary shall endeavor to provide such notice at least seven (7) calendar days before the effective date of termination. In the event of termination in whole or in part, Judiciary may procure similar goods or services in a manner and upon terms it deems appropriate, and Contractor shall be liable for excess costs incurred by Judiciary in procuring similar goods or services as a result

of Contractor's default. Contractor shall continue to perform those parts of this contract, if any, that have not been terminated, and shall take timely and necessary action to protect and preserve property in the possession of Contractor in which Judiciary has an interest.

- 10.2 Compensation. Payment for completed goods delivered and accepted by Judiciary shall be at the agreement price. Payment for the protection and preservation of property shall be in an amount agreed upon by Contractor and Judiciary; if the parties fail to agree, Judiciary shall set an amount subject to Contractor's rights under chapter 3-126, HAR. Judiciary may withhold from amounts due Contractor such sums as Judiciary deems to be necessary to protect Judiciary from loss because of outstanding liens or claims of former lien holders and to reimburse Judiciary for the excess costs incurred in procuring similar goods and services.
- 10.3 Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this contract.
- 10.4 Nonperformance or delayed performance for unforeseeable reasons beyond Contractor's control. Contractor shall not be in default if it can demonstrate that each of the following have occurred:
- (a) Contractor could not perform either the terms of or according to the schedule set forth in this contract for reasons such as: acts of God; acts of a public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather; and
 - (b) Upon occurrence of events similar to those set forth above, Contractor notified Judiciary within ten (10) calendar days of the triggering event(s); and
 - (c) Upon determining that it would not be able to perform either the terms of or according to the schedule set forth in this contract, Contractor promptly notified Judiciary, and requested reasonable modification of the contract terms or schedule pursuant to Judiciary's modification provision, set forth in paragraph 7, above.
 - (d) If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements.

11. Termination for Convenience.

11.1 Notice. Judiciary may terminate this contract in whole or in part without statement of cause at any time by giving written notice to Contractor of such termination at least thirty (30) calendar days before the effective date of such termination. The notice shall specify the part(s) of this contract being terminated and the effective termination date.

11.2 Compensation. Within thirty (30) calendar days of the effective date of the termination of this contract Contractor shall compile and submit to Judiciary an accounting of the work performed up to the date of termination. Judiciary may consider the following claims in determining reasonable compensation owed to Contractor for work performed up to the date of termination:

- (a) Contract prices for goods or services accepted under this contract;
- (b) Costs incurred in preparing to perform and performing the terminated portion of the work under this contract plus a five (5) percent markup on the actual direct cost of the terminated portion of the work. Such markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided that if it appears that Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.
- (c) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph 13.4, below;
- (d) Reasonable administrative (e.g., accounting, legal and clerical) costs incurred by Contractor for preparing settlement claims and supporting data needed for terminating subcontracts pursuant to the terminated portion of this contract.
- (e) Reasonable storage, transportation, and other costs associated with protecting or disposing of property allocable to the terminated portions of this contract.

The total sum to be paid to Contractor shall not exceed the total contract price, less any payments previously made to Contractor, the proceeds from any sales of goods or manufacturing materials, and the contract price for work not terminated.

12. Termination for Lack of Funds. Pursuant to section 103D-309, HRS, except in certain instances, no contract entered into between Judiciary and Contractor shall be binding unless the Judiciary Fiscal & Support Services Administrator certifies that there is an available unexpended appropriation or balance of any appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

If this contract calls for performance or payment in more than one fiscal year, the fiscal year

being July 1 to June 30, the Judiciary Fiscal & Support Services Administrator may certify only that portion of the total funds required for this contract that is available in the current fiscal year. In the event that sufficient funds are not appropriated to cover payments due in future fiscal years, Judiciary shall not be obligated to pay the net remainder of the payments remaining unpaid beyond the end of the current fiscal year. All contracts partially funded shall be enforceable only to the extent to which funds have been certified as available. Judiciary agrees to notify Contractor of such non-allocation at the earliest possible time. No penalty shall accrue to Judiciary in the event this provision is exercised. This provision shall not be construed so as to permit Judiciary to terminate this contract in order to acquire similar goods or services from a third party.

13. Contractor's Obligations in the Event of Termination.

13.1 Right to goods and work product. If this contract is terminated for any reason, or expires pursuant to its terms, Contractor may be required to transfer and deliver to Judiciary in the manner and to the extent directed by Judiciary:

- (a) All finished or unfinished material prepared by Contractor; and
- (b) All material, if any, provided to Contractor by Judiciary.

For purposes of this contract, "material" shall include, but is not limited to, goods, parts, tools, dies, jigs, fixtures, information, data, reports, summaries, tables, maps, charts, photographs, films, graphs, studies, recommendations, program concepts, titles, scripts, working papers, files, models, audiotapes, videotapes, computer tapes, cassettes, diskettes, documents, and records developed, prepared, or conceived by Contractor in connection with this contract, or furnished to Contractor by Judiciary. The term does not include material owned by Contractor solely for Contractor's own use and which have only an ancillary relationship to the services provided through this contract.

13.2 Preservation of Judiciary property. Contractor shall, upon Judiciary's direction, protect and preserve property in Contractor's possession in which Judiciary has an interest. If Judiciary does not exercise this right, Contractor shall use best efforts to sell such goods and manufacturing materials. Contractor shall immediately remit the proceeds and corresponding documentation of such sales to Judiciary.

13.3 Contractor liability. If this contract is terminated for cause, Contractor shall not be relieved of liability to Judiciary for damages sustained because of any breach by Contractor of this contract. In such event, Judiciary may retain any amounts which may be due and owing to Contractor until such time as the exact amount of damages due Judiciary from Contractor has been determined. Judiciary may also set off any damages so determined against the amounts retained.

13.4 Performance termination. Upon termination of this contract, Contractor shall stop performance on the date specified, terminate any outstanding orders and subcontracts applicable to the terminated portion of this contract, and shall incur no

further commitments or obligations in connection with the terminated performance. Contractor shall settle all liabilities and claims arising out of the termination of subcontracts and orders generating from the terminated performance. Judiciary may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to Judiciary or a third party. Contractor shall continue to comply with those aspects of this contract not terminated.

14. Indemnification and Defense. Contractor shall defend, indemnify, and hold harmless Judiciary and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands arising out of or resulting from the acts or omissions of Contractor or Contractor's employees, officers, agents, or subcontractors under this contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this contract.
15. Compliance with Laws. Contractor shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect Contractor's performance of this contract.
16. Liquidated Damages. When it is difficult to determine with reasonable accuracy the amount of damage Judiciary will sustain due to delays caused by Contractor's late or nonperformance, this paragraph may apply.

When Contractor is given notice of delay or nonperformance as specified in paragraph 10.1 of these General Conditions, and fails to cure in the time specified, Contractor shall pay Judiciary the amount, if any, of liquidated damages set forth in the special provisions of this contract per calendar day, from the date set for cure until (i) Judiciary obtains similar goods or services, or both, if the contract is terminated for default, or (ii) Contractor provides the goods or services, or both, if the contract is not terminated for default (i.e., the contract is not terminated but has been suspended for non-performance.) If Contractor's delay or nonperformance is based upon the provisions set forth in paragraph 10.4 of these General Conditions, Contractor shall not be assessed liquidated damages.

17. Judiciary's Right of Offset. For any contract over \$25,000, Judiciary may offset against any monies Judiciary owes Contractor under the contract, any amount owed to Judiciary by Contractor under this contract, any other contracts, or any law. Judiciary shall notify Contractor in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed by Contractor to Judiciary shall not include debts or obligations which have been liquidated, agreed to by Contractor, and are covered by an installment payment or other settlement plan approved by Judiciary, provided, however, that Contractor shall be entitled to such exclusion only to the extent that Contractor is current with, and not delinquent on, any payments or obligations owed to Judiciary under such payment or other settlement plan.
18. Disputes. All disputes arising under this contract shall be resolved in the manner set forth in section 103D-703, HRS and chapter 126, HAR. Contractor shall not sue Judiciary concerning any disputes arising under this contract until after Judiciary rejects Contractor's written request seeking informal resolution of the dispute, or until ninety (90) days after

Judiciary's receipt of the written request, whichever comes first. Contractor shall not suspend performance while Judiciary reviews Contractor's written request, unless directed to do so in writing by Judiciary.

19. Confidentiality of Material.

19.1 All material given to or made available to Contractor by virtue of this contract, which is identified as proprietary or confidential information, shall be safeguarded by Contractor and shall not be disclosed to any individual or organization without Judiciary's prior written approval.

19.2 All information, data, or other material provided by Contractor to Judiciary shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.

20. Ownership Rights and Copyright. Unless otherwise specified in the special provisions of this contract, Judiciary shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by Contractor pursuant to this contract, and all such material shall be considered "works made for hire." All such material shall be delivered to Judiciary upon expiration or termination of this contract. Judiciary, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by Contractor pursuant to this contract.

21. Patented Article. Contractor shall defend and hold Judiciary harmless against all demands, claims, actions, or liabilities arising from the use of any patented article, patented process, or patented appliance used in connection with this contract. Any royalties due or becoming due for the use of any patented article, process, or appliance shall be paid by Contractor and shall be deemed to be included within the proposal amount and contract price.

22. Publicity. Contractor shall not, in any of its brochures, advertisements, or other publicity, refer to Judiciary, or any office, or officer thereof, or to the services provided pursuant to this contract in any way that creates an appearance that Judiciary endorses Contractor. All media contacts with Contractor about this contract shall be referred to Judiciary.

23. Liens and Warranties. Goods purchased under this contract shall be provided free of all liens and include all applicable warranties, including any warranties described in this contract.

24. Travel Costs and Expenses. Any travel costs and expenses reasonably and necessarily incurred by Contractor and its employees, agents, and subcontractors in the performance of this contract which Judiciary is obligated to directly pay or reimburse Contractor for under this contract shall be subject to the following requirements:

24.1 Any air travel shall be at coach class air fare, unless travel at a higher class will result in an overall cost-savings to Judiciary;

24.2 Ground transportation costs shall not exceed the cost of renting an intermediate-

sized vehicle;

24.3 Subsistence allowance (e.g., lodging, meals, etc.) shall not exceed the applicable daily authorized rate for interisland or out-of-state travel, as set forth in the Judiciary's Financial Administration Manual;

24.4 If travel is undertaken by Contractor for more than one customer or client, Contractor shall charge Judiciary for only Judiciary's proportionate share of all subsistence and transportation costs.

25. Payment Procedures; Final Payment; Tax Clearance.

25.1 Original invoices required. All payments under this contract shall be made only upon submission by Contractor of original invoices in triplicate (1 original plus 2 copies) specifying the amount due and certifying that services requested under this contract have been performed by Contractor according to this contract. Remuneration shall be made in accordance with section 103-10, HRS.

25.2 Subject to available funds. Payments to Contractor are subject to availability of funds. All payments shall be made in accordance with and subject to chapter 40, HRS.

25.3 Final payment. Final payment under this contract shall be subject to section 103D-328, HRS, which requires for procurements of \$25,000 or more, a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, showing that all tax returns due have been filed, and all taxes, interest, and penalties levied against Contractor or accrued under state or federal law have been paid.

26. Federal Funds. If this contract is payable in whole or in part from federal funds, Contractor agrees that, as to the portion of the compensation under this contract to be payable from federal funds, Contractor shall be paid only from such federal funds received from the federal government, and shall not be paid from any other funds.

27. Governing Law. 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 Hawai'i. Any action at law or in equity to enforce or interpret the provisions of this contract shall be brought in a court of competent jurisdiction in Hawai'i.

28. Notices. Any written notice required to be given by a party to this contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to the Judiciary Contract & Purchasing Branch, 1111 Alakea Street, 6th Floor, Kauikeaouli Hale, Honolulu, Hawai'i 96813, or to Contractor at Contractor's address as indicated in this contract. A notice shall be deemed to have been received by the recipient three (3) days after mailing or at the time of actual receipt, whichever is earlier. Contractor is responsible for notifying Judiciary in writing of any change of address.

29. Severability. In the event that any provision of this contract is declared invalid or

unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this contract.

30. Waiver. The failure of Judiciary to insist upon strict compliance with any term, provision or condition of this contract shall not be deemed to constitute a waiver or relinquishment of Judiciary's right to enforce the same in accordance with this contract.
31. Managed Process Review. Any contract for goods, services, or construction entered into after July 20, 1998 and prior to July 1, 2001 with an expiration date beyond June 30, 2001, shall, during its term, be subject to a single review by the State, or county, where applicable, pursuant to the managed process in Part III, section 6 of Act 230, Session Laws of Hawai'i, 1998. Pursuant to the managed process review, this contract may be canceled, renegotiated, continued, or extended by the State or county, where applicable. This contract shall continue to be exempt from civil service laws, merit principles, and collective bargaining laws for the duration of the contract even if a managed process is not implemented.

PROCEDURAL REQUIREMENTS
GOVERNING REQUESTS FOR PROPOSALS (RFPs)
AND INVITATIONS FOR BIDS (IFBs)
THE JUDICIARY, STATE OF HAWAII
May, 2003

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SECTION ONE - DEFINITIONS

- 1.1 **Addenda.** Additions or supplements to an RFP or IFB.
- 1.2 **Administrative Director of the Courts.** Person appointed by the Chief Justice, responsible for overseeing and directing the administrative operations of the Judiciary.
- 1.3 **Bid.** An offer submitted in competitive sealed bidding or in the second phase of multi-step bidding.
- 1.4 **Contract Bond.** The approved form of security furnished by Contractor or Contractor's surety or sureties or by Contractor alone, to ensure completion and satisfactory performance of the contract in accordance with the terms of the contract and to guarantee full payment of all claims for labor, materials and supplies furnished, used or incorporated in the work.
- 1.5 **Contractor.** Any individual, firm, corporation, joint venture, or other legal entity, acting directly or through its or their agents, employees or subcontractors, entering into a contract with the Judiciary.
- 1.6 **Days.** Calendar days, unless otherwise specified.
- 1.7 **Fiscal & Support Services Administrator.** The Fiscal & Support Services Administrator (FSSA) of the Judiciary, or the FSSA's designee, who is in charge of the financial affairs of the Judiciary, including procurement, contracts and solicitations, and is responsible for supervising the activities of the Contract and Purchasing Branch, which handles the procurement activities of the Judiciary.
- 1.8 **General Conditions.** The "General Conditions Governing Contracts with the Judiciary, State of Hawai'i, for Goods and Services."
- 1.9 **Goods.** All property, including but not limited to: equipment, equipment leases, materials, supplies, printing, insurance; and processes, including computer systems and software, but excluding land or a permanent interest in land, leases of real property, and office rentals.
- 1.10 **Hawai'i Administrative Rules (HAR).** The compilation of rules promulgated by various state boards, commissions, departments, agencies, or officers authorized by law to make rules or adjudicate contested cases, except those in the legislative or judicial branches.
- 1.11 **Hawai'i Revised Statutes (HRS).** The codified collection of general and permanent laws of the State of Hawai'i, including any supplements thereto.
- 1.12 **Invitation for Bids (IFB).** All documents, whether attached or incorporated by

reference, utilized for soliciting bids under the competitive sealed bidding source selection process described in HRS § 103D-302.

- 1.13 **Judiciary.** Hawai'i State Judiciary, including the Administrative Director of the Courts (ADC) or ADC's designee.
- 1.14 **Offer.** A bid submitted in response to an IFB or proposal submitted in response to an RFP.
- 1.15 **Offeror.** An individual, partnership, firm, corporation, joint venture or other legal entity, submitting directly or through a duly authorized representative or agent, an offer for the work or services contemplated in response to an RFP or IFB.
- 1.16 **Officer-In-Charge.** The person(s) designated by the Judiciary to oversee that the goods or services provided by Contractor comply with the Specifications, Special Provisions, General Conditions, Procedural Requirements, and any addenda thereto.
- 1.17 **Priority-Listed Offerors.** The three or more responsive and responsible offerors who submit the highest ranked proposals in response to an RFP.
- 1.18 **Procedural Requirements.** These "Procedural Requirements Governing Requests for Proposals (RFPs) and Invitations for Bids (IFBs)."
- 1.19 **Proposal.** The executed document submitted by an Offeror in response to an RFP.
- 1.20 **Purchase Description.** The words used in the solicitation to describe the goods or services to be purchased, and includes specifications attached to, or made a part of, the solicitation.
- 1.21 **Request for Proposals (RFP).** All documents, whether attached or incorporated by reference, utilized for soliciting proposals under the competitive sealed proposal source selection process described in HRS § 103D-303.
- 1.22 **Responsible Offer.** An offer submitted by a person or entity that has the capability in all respects to fully perform the requirements of an IFB or RFP, and the integrity and reliability to assure good faith performance.
- 1.23 **Responsive Offer.** An offer that conforms in all material respects to the IFB or RFP.
- 1.24 **Scope of Work.** The scope of work, also known as the work statement, statement of work, or statement of service, is a description of the services to be delivered. The term is sometimes used to refer to a complete RFP document. (See also Specifications.)
- 1.25 **Services.** The furnishing of labor, time, or effort by a Contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the

required performance.

- 1.26 **Solicitation.** An IFB used in the competitive sealed bidding process or an RFP used in the competitive sealed proposal process, for the purpose of obtaining offers to perform a Judiciary contract.
- 1.27 **Special Provisions.** The terms and conditions pertaining to the specific solicitation in which they are contained, setting forth particular conditions or requirements applicable to the particular project or contract under consideration. If any special provisions conflict with the general conditions or these procedural requirements, the special provisions shall take precedent.
- 1.28 **Specifications.** Any description of the physical or functional characteristics, nature, quantity and quality of the goods or services to be furnished under the contract. Specifications include descriptions of the method and manner of performing services under the contract, as well as directions and requirements for inspecting, testing, or preparing goods for delivery or installation. (See also Scope of work.)

SECTION TWO - PRE-OFFER CONFERENCES

Pre-offer conferences may be conducted to explain RFP or IFB procurement requirements. Judiciary shall inform prospective offerors of the conference(s) either in the solicitation itself or by written notice. If attendance at the conference is mandatory, that condition shall be stated prominently in the solicitation.

If Judiciary's decision to hold a pre-offer conference is made after the issuance of the solicitation, the conference shall be announced through an addendum to the solicitation. The conference is intended to clarify the solicitation requirements. Nothing stated at the pre-offer conference(s) shall change the solicitation unless a change is made by written addendum as provided in section 3.3 below. A summary of the conference, as well as any addendum issued as a result of the conference, shall be supplied to all those prospective offerors known to have received a solicitation.

SECTION THREE - OFFER REQUIREMENTS AND CONDITIONS

- 3.1 **Competency of Offeror.** A prospective offeror must be capable of performing the work for which offers are being solicited. Either before or after the deadline for an offer, Judiciary may require offeror to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to offeror's ability to satisfactorily furnish the goods or services being solicited by the Judiciary. Any such inquiries shall be made and response provided in writing; responses shall be submitted over the signature of the person who signs the offer. Any offer submitted by an offeror who refuses to answer such inquiries shall be considered non-responsive. All answers to such questions shall be handled by Judiciary on a confidential basis and shall be returned after they have served their purpose.

In order to facilitate evaluation of offeror's performance capabilities, Judiciary has the right to visit an offeror's place of business to inspect offeror's facilities and equipment and to observe offeror's methods of operation. Judiciary also has the right to visit or communicate with a place of business where offeror has performed services similar to that being solicited by Judiciary.

3.2 **Examination of General Conditions, Procedural Requirements, Special Provisions, Specifications, Site of Work, etc.**

Offeror shall carefully examine the site of the contemplated work, the solicitation, General Conditions, Procedural Requirements, Specifications, Special Provisions, addenda, required contract and bond forms, etc. before submitting offers. The submission of an offer shall be considered as a warranty that offeror has made such careful examination and is satisfied with the existing conditions for performing the work and with the requirements of the solicitation, General Conditions, Procedural Requirements, Specifications, Special Provisions, addenda, amendments, and required contract and bond forms.

If offeror is awarded a contract following its offer in response to a solicitation, no extra compensation shall be given by reason of offeror's misunderstanding or lack of knowledge of the requirements of the work to be accomplished or the conditions to be encountered in performing the work.

3.3 **Questions by Offeror; Clarification of Solicitation Requirements; Addenda.**

Questions or requests for clarification by offeror regarding discrepancies, omissions, or the meaning of the General Conditions, Procedural Requirements, Specifications or Special Provisions should be communicated in writing to and received by the FSSA no later than five (5) calendar days prior to the date fixed for opening of offers, or such other date as may be specified in the solicitation. Any clarification or interpretation, if made, and any supplemental instructions, if any, will be in the form of written addenda to the solicitation, which will be either mailed or sent by facsimile or electronic mail to, or made available for pick-up by, or made available for downloading off of the Judiciary website (www.hawaii.state.hi.us/jud) by all prospective offerors, prior to the date fixed for opening of offers. It shall be presumed that any addenda so issued have been received by an offeror, and such addenda shall become a part of the contract documents.

3.4 **Preparation and Submission of Offers.**

3.4.1 Proposals submitted in response to an RFP shall be in the format described by the RFP.

All bids submitted in response to an IFB must be prepared in ink or typed and made on the offer form furnished by Judiciary in the solicitation IFB, or an exact copy thereof, in full accordance with the instructions given. A bid that contains any omission, erasure, alteration, addition not called for, conditional bid, or irregularity of any kind, may be rejected.

An offer submitted in response to a solicitation shall be signed in ink in the space provided on the bid or proposal page by (1) the owner of a sole proprietorship, (2) one or more members of a partnership, (3) one or more members or officers of each firm representing a joint venture, (4) one or more officers of a corporation, or (5) an agent of the offeror duly authorized to submit offers on behalf of the offeror.

A signed offer, together with an offer guaranty, if required, and any other certificates required to be submitted by offeror, shall be submitted in a sealed envelope plainly identifying the bid or proposal number, the item or items to which the offer relates, and offeror's business address and telephone number. Offers shall be received until the hour and date set in the solicitation and shall be received by Judiciary no later than the time indicated, whether mailed or hand-delivered.

The General Conditions, Procedural Requirements, Specifications, Special Provisions, other documents referenced in or attached to the solicitation, as clarified or amended by any addenda issued prior to the due date for submission of offers, shall be considered a part of an offer, whether attached to the offer or not at the time of its submission. Such documents, as clarified or amended in the addenda, shall not be altered in any way when an offer is submitted and any alterations or exceptions made by offeror to the terms, conditions, or requirements contained in said documents may result in rejection of the offer.

Offeror shall request in writing nondisclosure of trade secrets or other proprietary data designated as confidential. Offerors shall ensure that data designated as confidential shall be readily separable from the offers in order to facilitate eventual public inspection of the nonconfidential portion of the offer.

3.4.2 Where an IFB involves the furnishing and delivery of goods, the price shall include the cost of delivery to the specified destination, at which point acceptance of said goods shall be made by duly authorized personnel. The bid price shall be all-inclusive. In case of error in the extension of the unit prices,

the unit price shall govern.

All prices shall include applicable Federal, state and local taxes. Any illegible or otherwise unrecognizable price offer shall cause automatic rejection of the offer.

- 3.4.3 Only one bid in response to an IFB for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name shall be accepted. If more than one bid is offered for the same work, the lowest priced bid may be considered; all others will be automatically rejected.

Competing subsidiary or jointly-owned companies may submit bids or proposals that may be accepted for evaluation and award only if accompanied by a certificate of non-collusion, sworn to before a notary, acknowledging that the bid or proposal is submitted without collusion.

3.5 **Use of Facsimiles.**

- 3.5.1 Offers transmitted by offerors via facsimile machine shall be permitted only if the offer is under \$25,000, only if a facsimile transmission is specifically authorized in the solicitation, and only if the following requirements are met: (1) the facsimile offer is received in hand at the designated office by the time and date set for receipt of offers; (2) the complete original offer with the bond, if required, is received within forty-eight hours or two working days from the date and time set for receipt of offers; (3) the facsimile offer contains: the identification number of the IFB or RFP; the time; the quantity; the price for the offer; all pages of the offer requiring an original signature; and a signed statement that offeror agrees to all terms, conditions and provisions of the IFB or RFP.

- 3.5.2 Modification or withdrawal of an offer may be by facsimile transmission pursuant to section 3.9 below.

3.6 **Offer Guaranty.** Unless required by the Special Provisions, an offer guaranty is not required for any offer for goods or services.

If an offer guaranty is required by the Special Provisions, an acceptable offer guaranty shall be an amount equal to at least five percent (5%) of the amount offered and shall be limited to: a bond in a form satisfactory to Judiciary, underwritten by a company licensed to issue bonds in this State; legal tender; or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. A certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, official check, or certified check may be utilized only to a maximum of \$100,000, provided however, if the required security or bond amount totals over \$100,000, more

than one instrument not exceeding \$100,000 each and issued by different financial institutions, may be submitted.

If an offer does not comply with the security requirements, the offer shall be rejected as non-responsive, unless the failure to comply is determined by the Administrative Director, FSSA, or their designee to be non-substantial pursuant to section 3-122-223, Hawai'i Administrative Rules (HAR).

- 3.7 **Tax Clearance.** No contracts of \$25,000 or more shall be binding or effective until Contractor secures and Judiciary receives a tax clearance from the Director of Taxation, State of Hawai'i, and the Internal Revenue Service, showing that all tax returns due have been filed, and all taxes, interest, and penalties levied against Contractor or accrued under Title 14, HRS, relating to taxation that are administered by the Department of Taxation and under the Internal Revenue Service have been paid. The tax clearance shall be obtained on the two-part "TAX CLEARANCE APPLICATION", Form A-6, that combines Department of Taxation and Internal Revenue Service clearances.
- 3.8 **Certification by Offeror of Services in Excess of \$25,000 Concerning Wages Hours, and Working Conditions of Offeror's Employees.** Before any offeror enters into a contract to perform services in excess of \$25,000, the offeror shall comply with section 103-55, HRS, and any amendments thereto, which presently provides¹:

§ 103-55. Wages, hours, and working conditions of employees of contractors performing services. (a) Before any offeror enters into a contract to perform services in excess of \$25,000 for any governmental agency, the offeror shall certify that the services to be performed will be performed under the following conditions:

Wages. The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

(b) No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of contract to perform services shall result in cancellation of the contract, unless such noncompliance is corrected within a reasonable period as determined by the procurement officer. Final payment of a contract or release of bonds or both shall not be made unless the procurement officer has determined that the noncompliance has been corrected.

It shall be the duty of the governmental contracting agency awarding the

¹ Offeror should check the statute to make sure there are no amendments.

contract to perform services in excess of \$25,000 to enforce this section.

(c) This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 78-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77.
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.

3.9 Modification or Withdrawal of Offers.

- 3.9.1 Offers may only be modified or withdrawn prior to the deadline for submission of offers, and only with Judiciary's consent.

Any offer, notice of withdrawal of offer, or modification of offer received by Judiciary after the deadline set for opening of offers shall not be considered and shall be returned to offeror unopened, as soon as practicable, with a letter explaining the reason for the return. However, an offeror may request in writing withdrawal of an offer that contains an obvious error, provided such request is received by Judiciary prior to acceptance of the offer by Judiciary. After acceptance of the offer, no request for withdrawal shall be considered.

- 3.9.2 Modification of offers shall be made by written notice, signed by offeror or a duly authorized representative and submitted to the office designated in the solicitation, explaining that a modification to the original offer is being made and providing the actual modification. If offeror wishes to provide written notice of modification by facsimile, the facsimile shall explain that a modification is being made and provide the actual modification; additionally, the originally signed written notice and modification shall be submitted to the office designated in the solicitation within forty-eight hours or two working days of receipt of the facsimile by the office.
- 3.9.3 Withdrawal of offers shall be made by made by submission to the office designated in the solicitation of a written notice of withdrawal, signed by offeror or a duly authorized representative. Pursuant to section 3-122-9, HAR, written notice of withdrawal may be sent by facsimile machine; however, the originally signed withdrawal notice shall be submitted to the office designated in the solicitation within forty-eight hours or two working days of receipt of the

facsimile notice by the office. The withdrawal of an offer shall not prejudice the right of an offeror to submit a new, timely received, offer.

- 3.10 **Receipt and Opening of Bids.** For IFBs, all bidders are invited to attend the opening of bids. The FSSA shall open all bids at the time and place stated in the IFB and in the presence of all bidders who attend. Bids may be inspected by those present, provided that only one bid is inspected at a time and except that trade secrets or other proprietary data designated as confidential by a bidder pursuant to section 3.4.1 and readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid, may not be reviewable.

A Judiciary representative(s) shall examine the bids to determine the validity of any bidder's written request for nondisclosure of designated trade secrets and other proprietary data. If a bidder's request for nondisclosure of data is challenged, the Judiciary representative shall inform the bidders present at the bid opening that the material designated for nondisclosure shall be subject to written determination by the staff attorney for confidentiality. If the staff attorney determines in writing that the material so designated as confidential is subject to disclosure, the bidder submitting the material under review and other bidders present at the bid opening shall be so notified in writing and the material shall be open to public inspection unless the bidder files a protest pursuant to section 3-126-3, HAR.

Prices, makes, models, and catalogue numbers of items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. No bid leaves the bid opening room, no award decision shall be made, and no discussion shall be allowed at a bid opening.

- 3.11 **Receipt and Registration of Proposals.** Proposals or modifications submitted in response to RFPs shall NOT be opened publicly, but shall be opened in the presence of two or more procurement officials. A register of proposals shall be prepared and shall include: the name of each offeror; the number of modifications received, if any; and a description sufficient to identify the good or service item offered. Offerors shall ensure that data designated as confidential shall be readily separable from the proposals in order to facilitate eventual public inspection of the nonconfidential portion of the proposal. Proposals shall be available for public inspection after the contract is signed by all parties.
- 3.12 **Disqualification of Offerors.** An offeror shall be disqualified and the offer automatically rejected for any one or more of the following reasons: proof of collusion, in which case all proposals involved in the collusive action shall be rejected and any participant to such collusion shall be barred from future solicitations until reinstated; offeror's lack of responsibility and cooperation as shown by past work or services; offeror's being in arrears on existing contracts with any branch, department, agency, or board of the State of Hawai'i or having defaulted on previous contracts; offeror having being debarred or suspended; offeror's lack of proper equipment and/or sufficient

experience to perform the work contemplated; offeror's lack of proper license to cover the type of work contemplated, if required; offeror's delivery of the proposal after the deadline specified in the public notice calling for proposals, or as amended, except as allowed in section 3-122-29 (1), HAR; offeror's failure to pay, or satisfactorily settle, all bills overdue for labor and material on former State contracts at the time of issuance of the solicitation; or offer not accompanied by proposal guaranty, as required.

SECTION FOUR - EVALUATION OF OFFERS

4.1. Competitive Sealed Bidding

4.1.1 Evaluation of Bids Submitted in Response to an IFB. The award shall be made to the lowest responsive, responsible bidder and shall be based on the criteria set forth in the IFB. Only objectively measurable criteria which are set forth in the IFB shall be applied in determining the lowest bidder. Special adjustments and preferences, as established by law, may affect the evaluation of the bid price, including the following:

- (A) Taxpayer Preference, sections 103D-1001, 103D-1001.5, 103D-1008, HRS;
- (B) Preference for Hawai'i Products, sections 103D-1001, 103D-1002, HRS;
- (C) Printing, Binding and Stationery Work Preference, sections 103D-1001, 103D-1001.5, 103D-1003 HRS;
- (D) Reciprocal Preference, sections 103D-1001, 103D-1001.5, 103D-1004, HRS;
- (E) Recycled Products Preference, sections 103D-1001, 103D-1001.5, 103D-1005, HRS;
- (F) Software Development Businesses Preference, sections 103D-1001, 103D-1001.5, 103D-1006, HRS.
- (G) Preference to Bidders on State Agency Contracts for Public Works Projects, sections 103D-1007, HRS.
- (H) Preference for Qualified Community Rehabilitation Programs, sections 103D-1001, 103D-1001.5, 103D-1009, 103D-1010, 103D-1011, HRS.

4.1.2 Low Tie Bids. Low tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the IFB. At Judiciary's discretion, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:

- (a) Award of the contract to a business providing goods produced or manufactured in this state or to a business that otherwise maintains a place of business in this state;
- (b) Award of the contract to the bidder offering a low tie bid who received the previous award; and
- (c) If no permissible method will be effective in resolving tie bids and a written determination by Judiciary so stating is made, award may be made by drawing lots.

4.1.3 **Mistakes in Bids.** A bidder may correct a mistake if the mistake is discovered before the time and date set for bid opening by withdrawing or correcting the bid, as provided in section 3.9, above. Correction or withdrawal of a bid after the time and date set for bid opening because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible if it is not contrary to Judiciary's interest or the fair treatment of other bidders.

Correction or withdrawal of a bid because of an obvious mistake in the bid is permissible if Judiciary deems that it is not contrary to its best interests, or to the fair treatment of other bidders. Mistakes shall not be corrected after award of the contract.

4.2 **Competitive Sealed Proposals.**

4.2.1 **Evaluation of Offers Submitted in Response to an RFP.** The FSSA, or an evaluation committee selected in writing by the Administrative Director of the Courts, shall evaluate proposals. A copy of the document identifying any committee members and any subsequent changes thereto shall be placed in the contract file. Numerical rating systems may be used, but are not required. When used, the evaluation shall be based only on the evaluation factors set out in the RFP. The relative priority to be applied to each evaluation factor shall also be set out in the RFP. If numerical rating systems are not used, the FSSA or each member of the evaluation committee, as applicable, shall explain his or her ranking determination in writing, which shall then be placed in the procurement file. Evaluation factors not specified in the RFP shall not be considered. The written ranking evaluations or explanations shall be available for public inspection after the contract is signed by all parties.

When applicable, cost shall be an evaluation factor. The proposal with the lowest cost factor shall receive the highest available rating allocated to cost. Each proposal that has a higher cost factor than the lowest must have a lower

rating for cost. If a numerical rating system is used to evaluate the cost factor, the points allocated to higher-priced proposals shall be equal to the lowest proposal price multiplied by the maximum points available for price, divided by the higher proposal price. An evaluation factor shall be included that takes into consideration whether an offeror qualifies for any applicable procurement preferences.

A proposal from a debarred or suspended offeror shall be rejected.

Evaluation meetings may be held by an evaluation committee to discuss the RFP, the evaluation process, the weighing of evaluation factors, and proposals received, before evaluations.

- 4.2.2 **Discussions with Offerors.** Before conducting discussions, a “priority list” shall be generated by the FSSA or evaluation committee. In order to generate a priority list, proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable. All responsible offerors who submit acceptable or potentially acceptable proposals are eligible for the priority list. If numerous acceptable and potentially acceptable proposals have been submitted, the FSSA or the evaluation committee may rank the proposals and limit the priority list to at least three responsible offerors who submitted the highest-ranked proposals. Those responsible offerors who are selected for the priority list are referred to as the “priority-listed offerors.” Discussions shall be limited to only “priority-listed offerors” and are held to:

- (a) Promote understanding of Judiciary’s requirements and priority-listed offerors’ proposals; and
- (b) Facilitate arriving at a contract that will be most advantageous to Judiciary, taking into consideration the evaluation factors set forth in the RFP.

The FSSA shall establish procedures and schedules for conducting discussions and keep a record of the date, place, purpose of meetings and those attending.

Proposals may be accepted on evaluation without discussion. Priority-listed offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals.

Any substantial oral clarification of a proposal shall be reduced to writing by the priority-listed offeror. If during discussions there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate the clarification or change. Addenda to the RFP shall be distributed only to priority-listed offerors. Priority-listed offerors shall be permitted to submit new proposals or to amend those submitted.

If in the FSSA's or the evaluation committee's opinion, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled and a new RFP issued.

During the discussion and negotiation process, the contents of any proposal shall not be disclosed to competing offerors.

- 4.2.3 **"Best and Final Offers" in Response to RFPs.** When "best and final offers" are solicited, Judiciary shall establish a date and time for the priority-listed offerors to submit their "best and final offers" in response to an RFP. "Best and final offers" shall be submitted only once unless the Administrative Director or the FSSA determines in writing that it is in Judiciary's best interest to conduct additional discussions or change Judiciary's requirements and require another submission of best and final offers; otherwise, no discussion of or changes to the "best and final offers" shall be allowed prior to award.

Priority-listed offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous proposal shall be construed as their best and final offer.

After best and final offers are received, final evaluations will be conducted for an award pursuant to section 3-122-57, HAR.

- 4.2.4 **Mistakes in Proposals.** If the FSSA knows or has reason to conclude before award of a contract that a mistake has been made in a proposal, the FSSA shall request that offeror confirm the proposal. If offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section. Mistakes shall not be corrected after award of the contract.

If discussions are commenced with, or after best and final offers are requested from, priority-listed offerors, any priority-listed offeror may freely correct any mistake in a proposal by modifying or withdrawing the proposal up until the time and date set for receipt of best and final offers. If discussions are not held with priority-listed offerors, or if best and final offers upon which the award will be made have been received and the date and time that best and final offers are due has passed, mistakes shall be corrected to the intended correct proposals only when the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

If discussions with priority-listed offerors are not held, or if the best and final offers upon which award will be made have been received beyond the date and time that best and final offers are due, an offeror alleging a material mistake of fact which makes a proposal nonresponsive may be permitted to withdraw the proposal if:

- (a) The mistake is clearly evident on the face of the proposal but the intended correct proposal is not; or
- (b) The offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

Judiciary shall review offeror's request for correction or withdrawal of a proposal, and shall prepare a written decision granting or denying offeror's request. Technical irregularities that are matters of form rather than substance evident from the proposal document, or insignificant mistakes may be waived or corrected if they are without prejudice to other offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final proposals upon which award shall be made have been received by the date and time due, Judiciary may waive such irregularities or allow offeror to correct them if Judiciary deems that it is not contrary to its best interests, or to the fair treatment of other offerors, and the correction involved has no effect on price, quality, or quantity. Examples of situations where waiver of irregularities may be in Judiciary's best interest include the failure of an offeror to:

- (a) return the number of signed proposals required by the RFP;
- (b) sign the proposal, but only if the unsigned proposal is accompanied by other material indicating offeror's intent to be bound; or
- (c) acknowledge receipt of an amendment to the RFP, but only if it is clear from the proposal that offeror received the amendment and intended to be bound by its terms.

SECTION FIVE - ACCEPTANCE OF OFFERS AND AWARD AND EXECUTION OF CONTRACT

5.1 Acceptance and Award:

5.1.1 **Acceptance and Award of an IFB.** Acceptance of an offer in response to an IFB, if any, shall be made with reasonable promptness to the lowest responsive, responsible bidder whose bid meets the requirements and criteria set forth in the IFB. In determining the responsive and responsible offeror, offers shall be evaluated not only on the amounts thereof, but on all factors relating to the satisfactory performance of the contract. Products must be of a quality and nature that will meet the needs and purposes of Judiciary, as specified in the solicitation. Offeror must have the ability to perform as called for in the contract terms. Judiciary shall be the sole judge of product or offeror capability. The successful offeror shall be notified by letter that the offer has been accepted and that offeror is being awarded the contract.

If the offer is rejected or if offeror to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, if applicable, Judiciary may, at its discretion, award the contract to the next lowest or remaining responsible offeror or may publish another call for offers; provided in the case of only one remaining responsible offeror, Judiciary may negotiate with such offeror to reduce the scope of work, if available funds are exceeded, and to award the contract at a price reflecting the reduction in the scope of work.

Judiciary further reserves the right to cancel the contract award at any time prior to execution of said contract by all parties, without any liability to the awardee and to any other offeror.

5.2 **Availability of Funds.** An award shall be contingent upon the availability of funds, and any contract awarded shall be subject to cancellation by Judiciary at any time, if funds are unavailable.

5.3 Execution of Contract by the Selected Offeror.

5.3.1 This section shall not apply to any contract in which the total amount payable to the Contractor cannot be accurately estimated at the time the contract is to be awarded.

5.3.2 Judiciary shall forward a contract to the successful offeror for execution. The contract shall be signed by the successful offeror and returned, together with a satisfactory contract bond if required, and other supporting documents, within ten (10) days following receipt of the contract by offeror or within such further time as the FSSA may allow.

- 5.4 **Return of Offer Guaranty.** All offer guaranties except surety bonds (if submitted as required) shall be returned immediately after execution of the contract. If a contract is not executed, the offer guaranties, except surety bonds, shall be returned after the FSSA decides to publish another call for offers.
- 5.5 **Failure to Execute and Return Contract.** If offeror to whom a contract is awarded fails to enter into a contract and to furnish satisfactory security (as required) within ten (10) days after such award or within such further time as the FSSA may allow, the FSSA shall pay the amount of offeror's proposal guaranty, if any, into the State Treasury as a government realization of the State. The FSSA may then award the contract to the next lowest responsive and responsible offeror or may publish another call for offers, whichever method the FSSA deems to be in Judiciary's best interest.
- 5.6 **Non-Performance of Contract.** In the event Contractor fails to perform the work in accordance with each requirement of the General Conditions, Procedural Requirements, Specifications, Special Provisions, addenda, and other provisions forming a part of this contract, Judiciary, in addition to any other recourse, reserves the right to suspend Contractor from submitting offers on any or all of Judiciary's purchases for such period of time as it deems appropriate.

SECTION SIX - LEGAL RELATIONS AND RESPONSIBILITY

- 6.1 **Statutes and Rules to be Observed.** Contractor shall at all times observe and comply with all applicable federal, state and local laws, ordinances, rules, and regulations which in any manner affect those engaged or employed in the performance of the work under this contract, the goods required under this contract, or the conduct of the work being contracted for. Contractor shall also comply with all orders and decrees of bodies or tribunals having any jurisdiction or authority over the work.
- 6.2 **Incorporation of Statutes and Rules.** The applicable provisions of chapters 103 and 103D, HRS, as amended, provisions of Hawai'i and federal law, and the rules promulgated by the State Procurement Policy Board, Title 3, HAR, as amended, shall be deemed to be a part of the contract as though fully set forth therein. If any provision of the IFB, RFP, or contract is inconsistent with the statutes or rules, the provision is void and of no effect. However, any void provision shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of the IFB, RFP, and contract are severable.

SECTION SEVEN - LEGAL AND CONTRACTUAL REMEDIES

7.1 **Authority to Resolve Protested Solicitations and Awards.**

- 7.1.1 Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to Judiciary or a designee as specified in the solicitation. A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five (5) working days after the posting of award of the contract either under section 103D-302 or 103D-303, HRS, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.
- 7.1.2 Judiciary, or its designee, prior to the commencement of an administrative proceeding under section 103D-709, HRS, or an action in court pursuant to section 103D-710, HRS, may settle and resolve a protest concerning the solicitation or award of a contract. This authority shall be exercised in accordance with Title 3, chapter 126, subchapter 3, HAR.
- 7.1.3 If the protest is not resolved by mutual agreement, Judiciary or its designee shall promptly issue a decision in writing to uphold or deny the protest. The decision shall:
 - (a) State the reasons for the action taken; and
 - (b) Inform the protestor of the protestor's right to an administrative proceeding as provided in this part, if applicable.
- 7.1.4 A copy of the decision under paragraph 7.1.3 shall be mailed or otherwise furnished immediately to the protestor and any other intervening party.
- 7.1.5 A decision under paragraph 7.1.3 shall be final and conclusive, unless any person adversely affected by the decision commences an administrative proceeding under section 103D-709, HRS.
- 7.1.6 In the event of a timely protest under paragraph 7.1.1, no further action shall be taken on the solicitation or the award of the contract until Judiciary issues a written determination that the award of the contract without delay is necessary to protect substantial interests of Judiciary.
- 7.1.7 In addition to any other relief, when a protest is sustained and the protestor should have been awarded the contract under the solicitation but was not, the protestor shall be entitled to the actual costs reasonably incurred in connection with the solicitation, including bid or proposal preparation costs, but not attorney's fees.

CERTIFICATION FOR TAX CLEARANCE

I certify that I submitted a State and IRS tax clearance application (Form A-6) by mail on _____ and have not received an original or certified copy at the time I submitted this offer.

Upon receipt of a tax clearance, I will immediately send an original or certified copy by mail or by facsimile to your office:

The Judiciary, State of Hawai'i
Fiscal and Support Services Division
1111 Alakea Street, 6th Floor
Honolulu, Hawai'i 96813

Attn: Contract & Purchasing Branch

IFB/RFP No.: _____

or

Facsimile No. 808-538-5802

If sent by facsimile, I will provide the original or certified copy should I be given a Notice of Award.

Signature: _____

Printed Name : _____

Title: _____

Company Name: _____

Date: _____

HAWAI'I JUDICIARY POLICY DISCRIMINATION/HARASSMENT-FREE WORKPLACE

I. Authority and Background

The Judiciary is committed to promoting and maintaining a productive work environment free of any form of discrimination and harassment. The Judiciary does not tolerate workplace discrimination or harassment. The Judiciary will take appropriate action when discrimination or harassment is based on a person's "protected class." The Judiciary will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action.

II. Zero Tolerance Policy

Judiciary employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this policy. The Judiciary will take appropriate action when discrimination or harassment is based on a person's race, color, sex, including gender identity or expression,¹ sexual orientation, condition of pregnancy, act of breastfeeding or expressing milk, religion, national origin, ancestry, age, disability, genetic information,² marital status, arrest and court record, income assignment for child support, national guard absence, uniformed service, veteran status, citizenship, credit history or credit report unless directly related to a bona fide occupational qualification, or domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status (*protected class discrimination*).

¹ "Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity (including transgender), gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex assigned at birth. "Transgender" refers to a person whose sex assigned at birth is different from their self-identified gender (e.g. a person whose sex assigned at birth is male who identifies as female and/or a person whose sex assigned at birth is female who identifies as male). A transgender person does not have to have undergone medical treatment or surgical procedures to be protected under the Policy. An individual's self-declaration of gender is sufficient to be provided protection under the Policy.

² "Genetic information" includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e., an individual's family medical history). Family medical history is included in the definition of "genetic information" because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

A. Scope of Policy

This policy applies to all employees, justices and judges, volunteers, applicants for employment, and persons or entities providing services to the Judiciary, whether on a contract, per diem, full or part-time basis. This policy covers all interactions with staff, clients, and the public.

All Judiciary employees are responsible for ensuring that work in the courts and court-related programs is conducted in an atmosphere that respects the dignity of every Judiciary employee, and people with whom the Judiciary conducts business.

B. Examples of Prohibited Conduct

1. It is a violation of this policy to engage in protected class discrimination.
2. Discrimination or harassment prohibited under this policy includes, but is not limited to, oral, written, physical or visual behavior, that offends, demeans, or intimidates, or refusing to provide services and/or denying access to Judiciary facilities and/or programs, based on a person's status in a protected class.
3. Protected class characteristics may not be used as a basis for taking employment action or making an employment decision that results in an adverse change in benefits, or terms and conditions of employment.
4. Other harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this policy, and includes, but is not limited to:
 - a. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, or brushing against a person's clothing or body, pinching, or hitting;
 - b. Sexual advances, requests for sexual favors, repeated and unwanted attempts at a romantic relationship, sexually explicit questions, comments about physical attributes;
 - c. Lewd comments, sexual jokes, pressure for sexual activity, such as repeated requests for dates, and threats for refusing a sexual advance;
 - d. Displays of demeaning, insulting, or sexually suggestive objects, pictures, or photographs;

- e. Demeaning, insulting, intimidating, or sexually suggestive, written, recorded, or electronically transmitted messages (such as e-mail, voicemail, and Internet materials);
 - f. Offensive comments, slurs, jokes, profanity, anecdotes, offensive and/or inappropriate questions or statements to, about or regarding any protected class;
 - g. Refusal to address a person by their preferred name, provided that such name shall not be used when deemed to be inappropriate for a business setting; and
 - h. Disregarding a person's preferences based on his or her self-identified gender. This may include, but is not limited to, failing to address a person by his or her preferred name and/or pronoun, not allowing a person to use the restroom and/or locker room of his or her self-identified gender or limiting a person to using facilities that are an unreasonable distance or travel time from the worksite or Judiciary program location because the individual is transgender, requiring a transgender person to follow procedures that conflict with the person's self-identified gender, refusing to provide services and/or denying access to Judiciary facilities and/or programs based on the person's self-identified gender and/or being transgender.
5. Retaliation: The Judiciary encourages reporting of incidents of discrimination, harassment or retaliation. Retaliation against an individual who makes a complaint, participates in an investigation, or provides information, is prohibited. A person who experiences retaliatory action after taking the following actions should report the matter to the investigator in charge of the complaint or the Equal Employment Opportunity (EEO) Officer:
- a. Making a complaint of harassment or discrimination;
 - b. Making a disability related request for reasonable accommodation; or
 - c. Participating in a complaint investigation.

C. Reporting Procedures

The Judiciary encourages employees to report discrimination and/or harassment before it becomes severe or pervasive so that steps may be taken to stop the harassment before it rises to the level of unlawful behavior.

Anyone who observes or experiences discrimination or harassment prohibited

under this policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. The incidents should also be reported to an immediate supervisor, other supervisory personnel, a program or court administrator, or the EEO Officer who after reviewing the complaint will determine the appropriate follow-up. Employees are not required to report a complaint to their immediate supervisor or to make a complaint to the offender.

While this section describes the general procedures for reporting complaints of discrimination, harassment or retaliation in the workplace, more specific procedural information is attached to this policy as Attachment 1 and describes, in detail, how to report a complaint, including how to report a complaint to an external agency. Regardless of how the complaint is made, all complaints will be taken seriously and investigated promptly.

D. Limited Confidentiality

The Judiciary shall, to the extent possible, protect the confidentiality of substantiated and unsubstantiated discrimination, harassment and retaliation reports and investigations. Information regarding reports and investigations shall be shared with appropriate individuals and agencies on a "need to know" basis, with due consideration for safety, security, and other interests.

III. Responsibility for Implementing Policy

Judges, chief court administrators and department heads shall ensure that this policy is implemented and enforced within their own courtrooms and programs.

A violation of this policy may result in disciplinary action, up to and including discharge.

IV. Review of Policy

This policy was established in 1998 and amended in 2000, 2007, 2012, and 2017.

Approved: 
Rodney A. Maile
Administrative Director of the Courts

Date: MAY 20 2017

Attachment 1

PROCEDURES FOR REPORTING DISCRIMINATION, HARASSMENT, OR RETALIATION IN THE WORKPLACE

I. Procedures

The Judiciary urges the reporting of any incidents of discrimination, harassment, or retaliation, regardless of the identity of the alleged offender. Anyone who observes or experiences discrimination or harassment prohibited under the Discrimination/Harassment-Free Workplace Policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. Conduct that violates the Discrimination/Harassment-Free Workplace Policy should also be reported to an immediate supervisor, other supervisory personnel, a program or court administrator, or the Equal Employment Opportunity (EEO) Officer at 539-4336.

Employees are not required to report a complaint to their immediate supervisor or to make a complaint to the offender.

A complaint or report may be made either orally or in writing (a complaint form is available through the EEO Officer). A complaint or report, whether oral or written, should include: name of the alleged offender(s), including position and department, if known, a summary of the offensive acts, with the dates, times and places of the incidents, the names of witnesses to the events, and copies of documents, if any, that support the complaint or report.

II. Limited Confidentiality

The Judiciary shall, to the extent possible, protect the confidentiality of substantiated and unsubstantiated discrimination, harassment and retaliation reports and investigations. Information regarding reports and investigations shall be shared with appropriate individuals and agencies on a "need to know" basis, with due consideration for safety, security, and other interests.

III. Action Taken on Complaints

All complaints will be investigated promptly. The Judiciary may take appropriate interim action while an investigation is pending, including placing the accused person on leave or temporary assignment.

If the Judiciary finds that an employee violated the Discrimination/Harassment-Free Workplace Policy, the Judiciary will take appropriate corrective action, up to and including discharge of the employee. If an investigation shows that a justice or judge violated the Discrimination/Harassment-Free Workplace Policy, the matter shall be referred to the Commission on Judicial Conduct, which has exclusive authority to take disciplinary action against justices and judges. If the person found to have violated the policy is not employed

by the Judiciary, other appropriate action shall be taken, including notice to the employer. If the person found to have violated the policy is a lawyer, the findings shall also be reported to the Office of Disciplinary Counsel.

IV. Referring Complaints to External Agencies

In addition to the procedures described above, complaints about discrimination, harassment, or retaliation in the workplace may also be reported to other appropriate agencies, including but not limited to, the federal Equal Employment Opportunity Commission, the Hawai'i Civil Rights Commission, and labor unions. Conduct by a justice or judge that violates the Discrimination/Harassment-Free Workplace Policy shall be reported to the Commission on Judicial Conduct and the Judicial Selection Commission.

Agencies may have time limitations for filing complaints. For example, complaints of unlawful discriminatory practices must be filed with the Hawai'i Civil Rights Commission no later than one hundred eighty (180) days, or with the Equal Employment Opportunity Commission no later than three hundred (300) days from the date of: (1) the alleged unlawful discriminatory act; or (2) the last occurrence of discrimination in a pattern of ongoing discriminatory conduct.

Persons wishing to file complaints with other agencies should contact that agency to obtain information on their specific procedures and should not wait for resolution of a complaint made to the employer, including the Judiciary. Contact information for other agencies are as follows:

Equal Employment Opportunity Commission
300 Ala Moana Boulevard, Room 7-127
P.O. Box 50082
Honolulu, Hawai'i 96850-0051
Telephone: 1-800-669-4000 info@eeoc.gov

Hawai'i Civil Rights Commission
830 Punchbowl Street, Room 411
Honolulu, Hawai'i 96813
Telephone: (808) 586-8636 DLIR.HCRC.INFO@hawaii.gov

Hawai'i Government Employees Association Headquarters
888 Mililani Street, Suite 401
Honolulu, Hawai'i 96813-2991
Telephone: (808) 536-2351 oahudiv@hgea.org

United Public Workers Headquarters
1426 North School Street
Honolulu, Hawai'i 96817
Telephone: (808) 847-2631

Office of Disciplinary Counsel
201 Merchant Street, Suite 1600
Honolulu, Hawai'i 96813
Telephone: (808) 521-4591

Commission on Judicial Conduct
426 Queen Street, Room 118
Honolulu, Hawai'i 96813-2914
Telephone: (808) 539-4790
judconduct.c.comm@courts.hawaii.gov

Judicial Selection Commission
417 South King Street
Honolulu, Hawai'i 96813-2902
Telephone: (808) 538-5200