



ARIZONA SUPREME COURT

Administrative Office of the Courts
1501 West Washington, Suite 105
Phoenix, Arizona 85007

Request for Qualification

RFQ 18-04

Psychological Evaluation Services
May 3, 2018

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SECTION 1 INTRODUCTION

1. Introduction

The Arizona Supreme Court (hereinafter referred to as the Court) is issuing this Request for Qualification (RFQ) in order to qualify individuals trained and experienced in Psychological Test Interpretation and Law Enforcement Psychological Techniques.

This Request for Qualification (RFQ) is being issued solely for the procurement of contracts in which no warranty, express or implied, is made to the contractor(s) by the Court that any services will be purchased during the term of the contract. Any contract(s) awarded pursuant to this RFQ shall state that the services will be purchased only on an "as needed" basis.

This RFQ allows for a continuing qualification period. Qualified vendors may submit their response to the Arizona State Supreme Court, Administrative Office of the Courts Procurement Officer at any time after the initial response due date throughout the term of the contract after the initial evaluation and award. The Procurement Officer may add qualified respondents (contracts) at any time during the contract term or an authorized extension. The respondent(s) will be qualified accordingly to the evaluation criteria outlined in this RFQ and expected to follow the instructions set forth herein.

The Court intends to award a firm-fixed price Contract or Contracts, unless otherwise indicated, resulting from this RFQ, for a one-year period with the option to extend for an additional four years, aggregate five years, pending availability of funds and satisfactory contractor performance. Multiple Contracts may be awarded.

Based on the review of the RFQ responses the Court intends to enter into a Contract(s) for provision of the services described in Section 3.

Awarded Contract(s) will be open for use by any Arizona county probation department (hereinafter referred to as Department) and use shall be transacted by work order or purchase order between the Department and Qualified Vendor.

Vendors who wish to submit a sealed proposal based upon the specifications and conditions in this document shall submit it by **4:00 PM, Arizona Time, May 23, 2018**, in accordance with the schedule below.

The public opening will be conducted on May 23, 2018, 3:00 PM, Arizona Time, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 230, Phoenix, Arizona.

2. Proposers' Conference

No proposer's conference will be held.

3. **Proposal Schedule**

Activity	Date
A. Request for Qualification (RFQ) Published	May 3, 2018
B. Deadline to Submit Written Questions	May 10, 2018
C. Response to Written Questions/RFQ Amendments	May 15, 2018
D. Proposal Due Date	May 23, 2018

The Court reserves the right to deviate from this schedule.

Proposals received after 4:00pm, Arizona Time, May 23, 2018, will not be opened and will not be taken into consideration in the initial evaluation of proposals.

4. **Proposal Evaluation**

Proposals will be evaluated based upon the criteria outlined in Section 4 of this document. The contract(s) shall be entered into with the responsible bidder(s) whose proposal is determined in writing to be the most advantageous to the Court taking into consideration the evaluation factors set forth in the RFQ. The Court reserves the right (prior to contract award) in its discretion, to inspect a vendor's facilities, contact individual references, and to consider other sources of information to determine evaluation scores. The Court intends to award a firm-fixed price contract, unless otherwise indicated, resulting from this solicitation to the responsible bidder(s) whose proposal is determined in writing to be the most advantageous to the Court. The Court may reject any or all proposals and/or cancel this procurement and re-solicit, if such action is in the Court's best interest.

The Court may waive informalities and minor irregularities on proposals received.

No other factors or criteria may be used in the evaluation. The amount of any applicable transaction privilege or use tax of a political subdivision of this state is not a factor in determining the most advantageous proposal if a competing bidder located outside of this state is not subject to a transaction privilege or use tax of a political subdivision of this state.

If there are no bidders who adequately meet the Court's specifications and/or budget, the Court reserves the right to reject any or all proposals or parts thereof. This RFQ does not commit the Court to award any contract or to pay any costs incurred in the preparation of proposals. The Court reserves the right to accept or reject, in whole or in part, all proposals submitted and/or to cancel this RFQ.

5. **Proposal Discussions**

The bidder's initial proposal should contain the bidder's best terms from a price or cost and technical standpoint. The Court reserves the right to conduct discussions (negotiations) if the procurement officer determines them to be necessary.

Discussions may be conducted with responsive, responsible bidders who submit proposals determined to be reasonably susceptible to permit a contractual agreement

for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. These bidders shall be accorded fair treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and before finalization of a contract for the purpose of obtaining best and final offers. If discussions are conducted, the Court shall issue a written request for best and final offers. Award may be made without discussions, therefore, offers shall be submitted complete and on most favorable terms. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing bidders. If the procurement officer determines that the number of proposals that would be reasonably susceptible to contract award exceeds the number at which an efficient competition can be conducted, the procurement officer may limit the number of proposals for discussions to the greatest number that will permit an efficient competition among the most highly rated proposals.

6. Americans with Disabilities Act

Individuals with disabilities may request special accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Requests should be made as early as possible to allow time to arrange the accommodation.

If special accommodations are required, please call (602) 452-3329 or text telephone (TDD) 452-3545.

7. Responsibility, Responsiveness and Susceptibility

In accordance with the Judicial Branch Procurement Rules, Arizona Code of Judicial Administration, §1-402: Procurement Code for the Judicial Branch, the following criteria shall be used in determining Offeror's responsibility, as well, as the proposals responsiveness and susceptibility for contract award.

- A. Whether the Offeror has had a contract within the last five (5) years that was terminated for cause due to breach or similar failure to comply with the terms of the contract;
- B. Whether the Offeror's record of performance includes factual evidence of failure to satisfy the terms of the Offeror's agreements with any party to a contract. Factual evidence may consist of documented vendor performance reports, customer complaints and/or negative references;
- C. Whether the Offeror is legally qualified to contract with the Arizona Supreme Court, Administrative Office of the Courts and the Offeror's financial, business, personnel, or other resources, including subcontractors,
 - 1) Legally qualified includes if the vendor or if key personnel have been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body.

- D. Whether the Offeror promptly supplied all requested information concerning its responsibility;
- E. Whether the Offer was sufficient to permit evaluation by the Arizona Supreme Court, Administrative Office of the Courts, in accordance with the evaluation criteria identified in this Solicitation or other necessary offer components. Necessary offer components include: attachments, documents, or forms to be submitted with the offer, an indication of the intent to be bound, reasonable or acceptable approach to perform the Statement of Work, acknowledged Solicitation Amendments, references to include experience verification, adequacy of financial/business/personal or other resources to include a performance bond and stability including subcontractors and any other data specifically requested in the Solicitation;
- F. Whether the Offer was in conformance with the requirements contained in the Statement of Work, Terms and Conditions, and Instruction for the Solicitation including its Amendments and all documents incorporated by reference;
- G. Whether the Offer limits the rights of the Arizona Supreme Court, Administrative Office of the Courts;
- H. Whether the Offer includes or is subject to unreasonable conditions, to include conditions upon the Arizona Supreme Court, Administrative Office of the Courts necessary for successful contract performance. The Arizona Supreme Court, Administrative Office of the Courts shall be the sole determiner as to the reasonableness of a condition;
- I. Whether the Offer materially changes the contents set forth in the Solicitation, which includes the Statement of Work, Terms and Conditions, or Instructions;
- J. Whether the Offeror provides misleading or inaccurate information; and
- K. Whether the Offeror meets all the mandatory requirements set in Section 4.

SECTION 2 INSTRUCTIONS AND PROCEDURES

1. Necessary Documents

Vendors who wish to submit proposals for RFQ 18-04 shall complete all necessary documentation as identified in Section 5 of this Request for Qualification.

2. Specifications

The specifications included in this package provide adequate information as to whether vendors can meet the needs of the Court. Significant deviations from the specifications may be grounds for disqualification of the proposal.

3. Procurement Rules

The Rules Prescribing Procurement Policies and Procedures for the Judicial Branch (hereafter referred to as the Judicial Procurement Rules) adopted by the Arizona Supreme Court are incorporated by reference herein and are made a part of this document as if they are fully set forth herein. Copies of these rules can be obtained from the Procurement Officer, Arizona Supreme Court, at the address referenced on the cover page or at:

<http://www.azcourts.gov/adminservices/Procurement>

4. Subcontractors

No direct service rights or obligations shall be assigned, delegated, or subcontracted in whole or in part, without the prior written approval of the Court.

The vendor has sole responsibility for any contracts or agreements made with any subcontractors in relationship to this RFQ, and shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities in the Proposal.

5. Vendor Certification

By submission of a proposal, the vendor certifies that:

- A. The vendor has not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of the contract.
- B. The prices in the proposal have been arrived at independently without consultation, communication, or agreement, for the purpose of restricting competition as to any matter relating to such prices with any other vendor.

6. Preparation of the Proposal

- A. Vendors are expected to examine all rules, documents, forms, specifications, standard provisions, instructions, and seek clarification in writing (inquiries) and examine its proposal for accuracy before submitting the proposal: These materials can be made available in alternative formats upon request. Failure to do so will be at the vendor's risk.

- B. Each vendor shall furnish all information required by the RFQ. The vendor should refer to Appendix A which contains the proposal submittal checklist, to ensure all required materials have been enclosed.

7. Definitions

- A. Contract: Means a written contract executed by the Court and a Qualified Vendor;
- B. Court: Means Arizona Supreme Court, State of Arizona, Administrative Office of the Courts;
- C. May: Denotes the permissive.
- D. Qualified Vendor means a Respondent who is either an individual, or who is a company having one or more individuals, possessing the qualifications in Psychological Test Interpretation and Law Enforcement Psychological Techniques described in this RFQ that has satisfied any conditions set by the Court for entering into a Contract;
- E. Response means a statement of qualifications for an individual submitted in reply to this RFQ;
- F. RFQ or Request for Qualification means the process described in this document;
- G. Shall or Will: Denotes the imperative.
- H. Time if states as number of days, will be calendar days.

8. Explanation to Bidders

Any inquiries/questions related to this RFQ are to be directed in writing to the contact person below. Any verbal or written inquiries directed to anyone other than the contact person specified below will not be considered. All questions must be submitted by May 10, 2018 by 5:00PM, Arizona Time to:

Brett Watson, Procurement Officer
 Arizona Supreme Court
 1501 West Washington, Suite 105
 Phoenix, Arizona 85007-3231
 Email: bwatson@courts.az.gov
 Fax: (602) 452-3959

Any explanations or clarifications provided, will be posted on the Arizona Judicial Branch procurement site. Any responses or amendments posted on the website will be considered added to the specifications. Interested parties must check the website at:

<http://www.azcourts.gov/adminservices/Procurement.aspx>

9. Submission of Proposal

- A. Sealed proposals are due on or before 4:00PM, Arizona Time, May 23, 2018, to Brett Watson, Procurement Officer, Arizona Supreme Court, 1501 West Washington, Suite 105, Phoenix, Arizona 85007-3231. Proposals must be in the actual possession of the Court on or prior to the exact time and date indicated. Late proposals will not be considered under any circumstances.
- B. **Proposals must be submitted in a sealed envelope with the RFQ number and the vendor's name and address clearly indicated on the outside of the package.** All proposals must be completed in ink or be typewritten.
- C. The vendor must submit one (1) original and one (1) electronic copy of each proposal.
- D. Vendors submitting a proposal shall indicate the vendor's name and the RFQ number on each page of the document.
- E. Erasures, interlineations, or other modifications in the proposal must be initialed by a person authorized to sign the proposal and contract.
- F. All responses and accompanying documentation will become the property of the Court at the time the proposals are opened.

10. Public Opening

A public opening of proposals shall be held at 4:00PM, Arizona Time, May 23, 2018, at the Arizona State Courts Building, 1501 W. Washington, Conference Room 345A. At that time, the name of each vendor shall be publicly read and recorded. All other information contained in the proposal shall be confidential so as to avoid disclosure of contents prejudicial to competing vendors during the process of negotiation. This record shall be open for public inspection after a contract is entered into. However, where the vendor designates, and the court concurs, trade secrets or other proprietary data contained in the proposal documents shall remain confidential.

11. Contract

As set forth in this RFQ, the contract shall be entered into with the responsible vendor(s) whose proposal is determined in writing to be the most advantageous to the Court taking into consideration the evaluation factors set forth in the RFQ.

SECTION 3 SPECIFICATIONS

1. Specifications Introduction and Overview

The Arizona Supreme Court (hereinafter referred to as the Court) is issuing this Request for Qualification (RFQ) in order to qualify individuals trained and experienced in Psychological Test Interpretation and Law Enforcement Psychological Techniques. The following sub-section lists specifications and details of the type of psychological test interpretation and law enforcement psychological techniques that the Court requires.

2. Evaluation Types

Preference will be given to those who demonstrate training and experience in all three:

- A. Pre-employment – Any officer for a safety sensitive position or an officer applicant who will perform safety sensitive duties to determine suitability to perform the responsibilities of the position, which may include carrying a firearm;
- B. Authorization to Carry a Firearm – For current officers that are now requesting firearm authorization or prior to reassignment to a position designated as requiring arming; and
- C. Fitness for Duty – For current officers to determine their psychological fitness.

3. Service Tasks / Deliverables

- A. To provide comprehensive psychological evaluations for pre-employment, authorization to carry a firearm, and /or fitness for duty confirmation, that includes a semi-structured clinical interview;
- B. Prepare and provide written reports to the referring Department within five business days of evaluation;
- C. Report “no shows” to the referring Department, within one business day; and
- D. Complete monthly billing invoices accurately, completely, and in a timely manner.

4. Vendor Qualifications

- A. Except as allowed or permitted by law, only licensed psychologists trained and experienced in psychological test interpretation and law enforcement psychological assessment techniques shall conduct psychological examinations.
- B. Before conducting examinations, vendors shall be familiar with the research literature available on psychological testing for public safety positions, as well as the state and federal laws relevant to this area of practice, including the American’s with Disabilities Act. At minimum, vendors shall provide documentation of the following
 - 1) Completion of an American Psychological Association (APA) approved psychological training program in pre-employment, arming and fitness for duty evaluations and
 - 2) Three years experience conducting pre-employment, arming, and fitness for duty evaluations;

- C. Vendors must provide and maintain an active license in good standing, issued by the Arizona State Board of Psychologist Examiners;
 - D. Vendors shall adhere to the established code of ethics, standards, and practices of the APA and Arizona Psychological Association (AzPA); and
 - E. Vendors shall conduct all evaluations in a manner that is consistent with reasonably accepted standards of practice in the clinical psychology community.
5. **Testing.** As provided by the Arizona Code of Judicial Administration, [§6-106: Personnel Practices \(K\)](#), the testing standards for conducting psychological evaluations are provided below.
- A. Vendors shall use a battery of objective, job-related and validated psychological testing instruments and a semi-structured clinical interview in the analysis of a candidate for a safety sensitive position or a candidate for assignment to safety sensitive duties;
 - B. The Department may proctor the psychological test pursuant to the directions of the evaluator scoring the test. Psychological testing shall include, at a minimum, testing across the following areas:
 - 1) A measure of psychopathology, for example, the MMPI-2, PAI or Millon-3.
 - 2) A measure of normal personality functioning, for example, the 16PF, LEADER or Inwald Personality Inventory.
 - C. Vendor will be provided with the following prior to the semi-structured clinical interview:
 - 1) Information for pre-employment evaluation:
 - a) The employment application;
 - b) Questionnaire provided by the evaluator, completed by the applicant; and
 - c) Any background information gathered through the employment application process that may be useful in the evaluation of the applicant.
 - 2) Information for firearm authorization or fitness for duty evaluation. The chief probation officer, director of juvenile court services, or designee of the referring Department may be asked to complete a questionnaire provided by the evaluator that includes:
 - a) Information regarding any disciplinary actions or behavior problems;
 - b) Job performance evaluation; and
 - c) Current issues that may affect job performance or safety.
 - 3) Vendor agrees that psychological testing materials will be current and in accordance with acceptable psychological testing standards; and
 - D. Vendor shall maintain an effective quality control process that allows for independent review of all documentation, psychological test results and reports by reviewers selected by the Court.

6. Reporting Requirements

- A. Vendor shall provide in writing, within five days of the evaluation, the results of the evaluation directly to the chief probation officer / director of juvenile court services, or the designee of the referring Department;
- B. The written evaluation shall assess the suitability of:
 - 1) The applicant for the position;
 - 2) An existing officer's request for authorization to carry a firearm; or
 - 3) An existing officer's fitness for duty.
- C. Vendor's report to the Department shall contain:
 - 1) A recommendation for employment, firearm authorization, or fitness for duty;
 - 2) Justification for the recommendation; and
 - 3) Any clinical observations that the psychologist might have regarding the validity or reliability of the results.

7. Credential Certification

- A. Vendor must submit copies of resume, certificates of training / expertise, licensure, and college degrees for all personnel providing direct services.
- B. The Court may require Vendor and individuals working in judicial facilities or having access to judicial information to provide identifying information for the purposes of conducting a criminal history records check for security purposes. Vendor agrees to cooperate with such requests and understands that the Court may terminate contract if the results of the criminal history records check would disqualify the Vendor or individual and there is no acceptable alternative.
- C. Vendor will alert the Court if any employee provides direct services to the Court have allegations or disciplinary actions from the Arizona State Board of Psychologist Examiners.

8. Informed Consent

Vendor will ensure the candidates rights to privacy and informed consent are protected in compliance will all applicable federal and state laws including, but not limited to the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) (HIPPA) and the regulations promulgated there under.

9. Other Specifications

- A. Cost of evaluations proposed should include: administrative tasks, candidate interview, administering psychometrics, analysis, and written report.
- B. Clear disclaimers should be made so that the reports evaluating current emotional and behavioral traits or suitability for a public safety position will not be deemed valid after a specific period of time.
- C. When a fitness for duty evaluation is known to be in the context of litigation, arbitration, or another adjudicative process, the vendor should have particular

- training and experience in forensic psychological or psychiatric assessment. In such cases, the vendor should be prepared by training and experience to qualify as an expert in any related adjudicative proceeding. While some examinations are specifically in the context of litigation, arbitration, or another adjudicative process, the vendor may be called upon to provide expert testimony regarding the examination performed without specific anticipation of litigation. In such cases, the vendor should be prepared by training and experience to qualify as an expert in any related adjudicative proceeding.
- D. The client of all examinations is the court/department, not the candidate being evaluated, and this fact should be communicated to all involved parties at the outset of the evaluation. Nevertheless, the vendor owes an ethical duty to both parties to be fair and impartial and to honor their respective legal rights and interests. Other legal duties also may be owed to the candidate as a result of statutory or case law unique to the department's or the vendor's jurisdiction.
 - E. Vendors should decline to accept a referral when personal, professional, legal, financial, or other interests or relationships could reasonably be expected to (a) impair their objectivity, competence, or effectiveness in performing their functions or (b) expose the person or agency with whom the professional relationship exists to harm or exploitation (e.g., conducting an evaluation on a candidate who had previously been a confidential counseling or therapy client, evaluating a candidate with whom there has been a business or significant social relationship). Similarly, vendors should be mindful of potential conflicts of interest related to recommendations or the provision of services following the evaluation (e.g., referring a candidate to oneself for subsequent treatment). If such conflicts are unavoidable or deemed to be of minimal impact, the vendor should nevertheless disclose the potential conflict to all affected parties.
 - F. Decisions concerning whether and how the findings and opinions resulting from the evaluations are to be communicated to the candidate should be disclosed to all parties in advance of the examination whenever possible. Such decisions should be governed by standards of professional ethics, clinical considerations, statutory and case law, and any prior agreements with the court/department and candidate.

10. Pricing / Cost

In accord with the RFQ announcement and specifications contained herein, the Court seeks pricing for the following:

Type of Evaluation	Average Time per Evaluation	Price per Evaluation*
Pre-Employment	_____ Hour(s)	\$ _____
Firearm Authorization	_____ Hour(s)	\$ _____
Fitness for Duty	_____ Hour(s)	\$ _____

* Court reserves the right to negotiate proposed pricing.

The vendor must use the cost format provided above. Any errors are solely the responsibility of the vendor. Please note any additional cost(s) proposed in conjunction with direct service delivery outlined above. These additional costs proposed may be added to the contract at the sole discretion of the Court.

SECTION 4 PROPOSAL EVALUATION CRITERIA

Proposals will be evaluated in two phases:

1. An initial review to determine the responsiveness of the proposal to the requirements for the RFQ. Proposals may not be considered responsive if they do not contain information sufficient to evaluate the proposal in accordance with the factors identified in the solicitation or other necessary proposal components. Necessary components include: an indication of the proposer's intent to be bound, price proposal, solicitation amendments, bond and reference data as required. For a proposal to be considered responsive, it must meet the following mandatory requirements:
 - A. A sealed original (1) copy and one (1) electronic copy must be physically in the possession of the Arizona Supreme Court, 1501 W. Washington, Suite 105, no later than 4:00PM, Arizona Time, May 23, 2018.
 - B. The proposal must include all required items, in substantially the same structure, listed on the Proposal Submittal Documents (see page 16).
 - C. The original proposal must be in ink or typewritten.
 - D. The response must be in English and must not be sent by facsimile or email.
 - E. The Court may waive informalities and minor irregularities on proposals received.
2. Vendor(s) will be qualified based upon response(s) and the following requirements:

Documentation must be included
A. Approved psychological training program
a. Pre-Employment
b. Firearm
c. Fitness for Duty
B. 3 years or more experience
C. Active license in good standing
D. Testing Methodology

SECTION 5
PROPOSAL SUBMITTAL DOCUMENTS

The following materials must be submitted as part of a vendor response:

1. Proposal Submittal Letter (Appendix A, page 17);
2. Vendor Profile, must include financial documentation (see page 18);
3. A 1-2 page information overview of the Respondent, e.g., types of services offered, length of time in business, and accomplishments;
4. Proposal Business References. (see page 19);
5. Copies of resume, certificates of training / expertise and licensure for each person conducting evaluations;
6. Proposed costs as outlined in Section 3, Number 10 (see page 14);
7. A description of exceptions (if any) to the sample contract terms provided in Appendix B Sample Contract. Any exceptions to the sample contract terms must be noted in the vendor response.

APPENDIX A
PROPOSAL SUBMITTAL LETTER
(Use as page 1 of proposal)

Brett Watson, Procurement Officer
Arizona Supreme Court
Administrative Office of the Courts
1501 W. Washington, Suite 105
Phoenix, Arizona 85007-3231

Dear Mr. Watson:

In response to your RFQ number 18-04, the following response is submitted

In submitting this proposal, I hereby certify that:

1. the RFQ has been read and understood;
2. my company will comply with the requirements set forth in the RFQ;
3. the materials requested by the RFQ are enclosed;
4. all information provided is true, accurate, and complete to the best of my knowledge;
5. this proposal is submitted by, or on behalf of, the party that will be legally responsible for service delivery should a contract be awarded.

Signature of Authorized Official

Date

Name of Signatory: _____

Company: _____

Title: _____ Phone: _____

Address: _____

Federal Employer ID# or SSN#: _____

VENDOR PROFILE

(Information can be on a separate sheet)

What is the physical address, mailing address, and fax number of your company's main office?

Who in your company will be our primary point of contact during the proposal evaluation process? (Please provide name, title, direct phone number, e-mail address, fax number, and mailing address).

Who in your company is authorized to negotiate a contract with us? (Please provide name, title, direct phone number, fax number, and mailing address).

Provide a brief history of your company.

Indicate the total number of employees in your company and their distribution by function.

Provide most recent annual report and financial statement.

Comment on any partnership(s) with other vendors.

PROPOSAL BUSINESS REFERENCES**(Use as page 2 of proposal)**

Vendors shall provide at least three (3) references. Please provide the following information for each reference:

BUSINESS OR AGENCY

NAME: Identify the name of the business or agency as appropriate.

CONTACT NAME: Identify who the point of contact at the client or site should be.

CONTACT INFORMATION: Provide the address and telephone number where the client or contact can be reached.

PROJECT DESCRIPTIONS: Attach brief descriptions of projects performed for the references provided.

	<u>Business/Agency</u>	<u>Contact</u>	<u>Contact Information</u>
1.	_____	_____	_____
	_____	_____	_____
2.	_____	_____	_____
	_____	_____	_____
3.	_____	_____	_____
	_____	_____	_____

APPENDIX C**SAMPLE SERVICE CONTRACT**

Arizona Supreme Court
Administrative Office of the Courts

Solicitation Number: RFQ 18-04

Vendor: _____

This contract is between the ARIZONA SUPREME COURT, ADMINISTRATIVE OFFICE OF THE COURTS ("Court"), located at 1501 W. Washington, Phoenix, Arizona 85007, and _____, ("Contractor") at _____ [address].

Recitals

- A. The Arizona Supreme Court, through the Administrative Office of the Courts, is responsible for the overall administration of the adult and juvenile probation programs statewide. The Court establishes personnel qualifications and hiring standards as well as rules and procedures for holding office. Additionally, the Court administers the Officer Safety Program. In order to assist in establishing a system to conduct psychological examinations for (1) pre-employment for safety sensitive positions, (2) firearm authorization and (3) fitness for duty, the Court issued a Request for Proposals, Number 07-04, for Psychological Evaluation Services on June 1, 2007. After expiration of contract extensions a subsequent Request for Proposals, Number 12-03, for Psychological Evaluation Services was issued May 3, 2012. In order to obtain multiple vendors a Request for Qualifications, Number 13-01 was issued May 2, 2013. To maintain multiple vendor selections for probation departments across the state, a Request for Qualifications, Number 18-04 was issued May 3, 2018.
- B. The Contractor is a licensed psychologist, trained and experienced in psychological test interpretation and law enforcement psychological assessment techniques and can perform the work specified in this Contract within the time limits established by the Court.
- C. The Court desires to enter into contract with the Contractor to perform the psychological evaluations described in Request for Qualifications, Number 18-04.

Certification

By execution of this Contract, Contractor certifies:

- A. The submission of the offer did not involve collusion or other anti-competitive practices.
- B. Contractor shall comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration, non-discrimination, including the Americans with Disabilities Act, and affirmative action. Contractor shall include a clause to this effect in all subcontracts related to this Contract.
- C. The Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or

service to a public servant in connection with this Contract. Signing this Contract with a false statement shall void the Contract and may be subject to all legal remedies provided by law.

- D. The Contractor agrees to promote and offer to agencies eligible to purchase under this Contract only those materials and/or services as stated in and allowed for under this Contract as Court contract items.
- E. No individual or agent has been employed or retained to solicit or secure this Contract for a commission, percentage, brokerage or contingent fee, except a bona fide employee maintained by Contractor to secure business. This paragraph does not apply to payment of fees for assistance in marketing, installation, and support or for any other purpose in performance of this Contract.

Now, therefore, in consideration of the mutual promises set forth in this Contract, the parties agree as follows:

Terms and Conditions

1. **Duration of Contract.** This Contract shall begin upon execution and shall terminate on June 30, 2019.
2. **Extension of Term.** The Contract may be extended beyond the basic term by mutual agreement of the parties up to (4) four additional years for an aggregate of (5) five years. To extend the term, the Court shall provide written notice to the Contractor of its desire to extend the Contract not less than 60 days prior to the expiration of the Contract term or any subsequent extension. If both parties agree, any extension shall be effected by an amendment to the Contract signed by both parties. Contract extensions are subject to the availability of funds.
3. **Description of Services.** Contractor shall perform psychological evaluations for probation, surveillance, and detention officers in the following situations: (1) pre-employment for safety sensitive positions, (2) firearm authorization and (3) fitness for duty and provide the services described in the attached proposal RFQ 18-04, which is incorporated herein by reference. Additional, required specifications:
 - A. Contractor shall not limit the number of exams to be conducted on any given trip.
 - B. Contractor is responsible for providing in writing, within five days, the results of examinations to the Chief Probation Officer / Director of Juvenile Court Services or designee of referring Department.
 - C. In counties outside Contractors established place of business, Departments will provide office space in which to hold exams.
 - D. Mileage, lodging, and per diem expenses shall not exceed allowable limits for state employees on travel status, as published in the Arizona Accounting Manual.
 - E. All projected travel expenses must be approved by the Chief Probation Officer/Director of Juvenile Services or designee of the referring department prior to travel.
4. **Gratuities.** The Court may, by written notice to the Contractor, terminate the Contract if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Court or the state with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such Contract. In the event this Contract is canceled by the Court pursuant to

this provision, the Court shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible customers shall not be prohibited by this paragraph. The Court, in addition to any other rights or remedies shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the Contractor.

5. **Payment for Services.** A separate invoice shall be issued for each service performed, and no payment shall be issued prior to service delivery and correct invoice. Payment shall be subject to the provisions of ARS Title 35. Court will provide the Contractor with a contract number and the Contractor will reference the number on all invoices. The Court will make every effort to process payment for services within (30) calendar days after receipt services and a correct invoice of amount due, unless a good faith dispute exists as to any obligation to pay all or a portion of the account. Any amount that is due after (30) calendar days will be considered past due.

The Court shall pay the Contractor the total sum of:

- A. Pre-employment \$_____ per evaluation
- B. Fitness for duty \$_____ per evaluation
- C. Firearm Authorization \$_____ per evaluation
- D. Other/Travel \$_____ per trip/etc.

As set forth in the attached proposal, which is incorporated herein by reference. Payment shall be made upon completion of all work and upon submission of an invoice by the Contractor. Court will provide the Contractor with a contract number and the contractor will reference the number on all invoices.

6. **Availability of Funds.** Payments for contractual obligations are contingent on funds for that purpose being appropriated, budgeted, and otherwise made available, and the provisions of the Contract shall be effective only when funds appropriated for the purpose of compensating Contractor are available to the Court for disbursement. The Administrative Director of the Courts shall be the sole judge and authority in determining the availability of funds under the Contract and shall keep the Contractor informed as to the availability of funds. The Court shall not be liable for any purchases or subcontracts entered by Contractor in anticipation of funding.

7. **Assignments and Subcontracts.** No direct service rights or obligations shall be assigned, delegated, or subcontracted in whole or in part, without the prior written approval of the Court.

8. **Other Contracts.** The Court may perform additional work related to this Contract or award other contracts for such work. The Contractor shall cooperate fully with such other contractors or state employees in the scheduling of and coordination of its own work with such additional work.

9. **Applicable Law.** The laws and regulations of the State of Arizona shall govern the rights of the parties, the performance of this Contract and any dispute thereunder. Any action relating to this Contract shall be brought in an Arizona Court in Maricopa County. Any changes in the governing laws, rules and regulations during the term of this Contract shall apply and do not require an amendment to this Contract.

10. **Arizona Procurement Code.** The Arizona Supreme Court Rules prescribing Procurement Policies and Procedures for the Administrative Office of the Courts (AO 2013-87) are incorporated as a part of this document as if fully set forth herein.

11. **Entire Agreement and Interpretation.** This Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement and shall prevail over all previous agreements, contracts, proposals, negotiations, purchase orders or master agreements in any form. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object. Whenever a term defined by the Judicial Branch Procurement Code is used in the Contract, the definition contained in the Code shall control with the provisions of the Judicial Branch Procurement Code governing in the case of conflicting terms.

12. **Amendments and Waivers.** Amendments to the Contract shall be in writing and shall be signed by all parties to the Contract. To the extent that any amendments to the Contract are in conflict with the basic terms and conditions of the Contract, the amendments shall control the interpretation of the Contract. No condition or requirement contained in or made a part of the Contract shall be waived or modified without written amendment to the Contract.

13. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

14. **Conflicts of Interest.**

A. The Court may cancel this Contract without penalty or further obligation pursuant to ARS §38-511, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the Court is or becomes at any time, while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party to the Contract with respect to the subject matter of the Contract. Cancellation shall be effective when written notice from the Court is received by all parties to the Contract unless the notice specifies a later time.

B. Contractor represents and warrants the following:

1. No current or prior conflict of interest. Contractor has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement.
2. Notice of potential conflict. If any such actual or potential conflict of interest arises under this Agreement, Contractor shall immediately inform the Court in writing of such conflict.
3. Termination for material conflict. If, in the reasonable judgement of the Court, such conflict poses a material conflict to and with the performance of Contractor's obligations under this Agreement, then the Court may terminate the Agreement immediately upon written notice to the Contractor; such termination of the Agreement shall be effective upon the receipt of such notice by Contractor.

15. **Severability.** If any provision of the Contract is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law.

16. **Relationship of the Parties.** It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Contractor is an independent contractor in the performance of work and the provision of services under this Contract, and taxes or Social Security payments shall not be withheld from a Court payment issued hereunder.

17. **Interpretation.** This Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object. Whenever a term defined by the Arizona procurement code or the Judicial Branch Procurement Rules is used in this Contract, the definition contained in this code or these rules shall control with the provisions of the Judicial Branch Procurement Rules governing in the case of conflicting terms.

18. **Rights and Remedies.** Rights and the remedies of the Court under this Contract are not exclusive. No provision in this document or in the Contractor's offer shall be construed, expressly or by implication as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release either party from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

19. **Disputes.**

A. Contract Administrator Procedure. If any dispute arising under this Contract is not disposed of by agreement between the parties within 30 days, then the Court contract administrator identified in this Contract shall decide the dispute in writing and send a copy of the decision to Contractor.

B. Appeals. If the Court contract administrator's decision is not acceptable to Contractor, the dispute shall be resolved in accordance with the procedures set forth in Supreme Court Administrative Policy 7.04.

C. Continued Performance. The Court and the Contractor agree that the existence of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Contract that are not affected by the dispute.

20. **Warranties.** Contractor warrants that all services delivered under this Contract shall conform to the specifications of this Contract. Mere receipt of service specified and any inspection incidental thereto by the Court shall not alter or affect the obligations of the Contractor or the rights of the Court under the foregoing warranties. Additional warranty requirements may be set forth in this document.

21. **Overcharges by Antitrust Violations.** The Court maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Contractor hereby assigns to the Court any and all claims for such overcharges as to the goods or services used to fulfill the Contract.

22. **Force Majeure.**

A. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God, acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts, or failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence. The force majeure shall be deemed to commence when the party declaring force majeure notifies the other party of the existence of the force majeure and shall be deemed to continue as long as the results or effects of the force majeure prevent the party from resuming performance in accordance with this agreement.

B. Force majeure shall not include late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

C. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practical, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be hand delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by contract modification for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

23. **Right to Assurance.** Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

24. **Records.** Pursuant to provisions of Title 35, Chapter 1, Article 6 Arizona Revised Statutes §35-214 and §35-215 each Contractor shall retain, and shall contractually require each subcontractor to retain, all books, accounts, reports, files and other records relating to the acquisition and performance of the Contract for a period of five (5) years after the completion of the Contract. All such documents shall be subject to inspection and audit at reasonable times. Upon request, a legible copy of any or all such documents shall be produced at the offices of the Auditor General, the Attorney General, the Supreme Court or any agency doing business under this Contract. This paragraph does not apply to confidential information or trade secrets, such as product costing data, research and development data, and the like.

25. **Advertising.** Contractor shall not advertise or publish information concerning this Contract, without prior written consent of the Court. The Court shall not unreasonably withhold permission.

26. **Right to Inspect Plant.** The Court may, at reasonable times, and at the Court's expense, inspect the place of business of a Contractor or subcontractor which is related to the performance of any contract as awarded or to be awarded, in accordance with the Judicial Branch Procurement Code.

27. **Acceptance.** All services are subject to acceptance by the Court. Service or failing to conform to the specifications of this Contract shall be held at Contractor's risk and may be returned to the Contractor. If so returned, all costs are the responsibility of the Contractor. Compliance shall conform to the termination clause set forth in this document.

28. **Exclusive Possession.** All services, information, computer program elements, reports and other deliverables which may be created under this Contract are the sole property of the Court and shall not be used or released by the Contractor or any other person except with prior written permission of the Court.

29. **Indemnification.** Contractor shall indemnify, defend, and save harmless the Court from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any reasonable attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by the Court on account of loss of or damage to any property or for injuries to or death of any person, caused by, arising out of, or contributed to, in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of the Contractor, its employees, agents, representatives, or subcontractors, their employees, agents or representatives in connection with or incidental to the performance of this Agreement, or arising out of worker's compensation claims, unemployment compensation claims, or unemployment disability compensation claims of employees of Contractor and/or its subcontractors or claims under similar such laws or obligations. Contractor's obligation under this Section shall not extend to any liability caused by the negligence of the Court, or its employees.

30. **Licenses and Permits.** Contractor shall maintain in current status all Federal, State, and local licenses and permits required for the practice of the profession and the operation of the business conducted by the Contractor as applicable to this Contract.

31. **Insurance Requirements.** Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor and subcontractors, their agents, representatives, and employees.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The Court in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. **Minimum Scope and Limits of Insurance:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• General Aggregate	\$ 2,000,000
• Products – Completed Operations Aggregate	\$ 1,000,000
• Personal and Advertising Injury	\$ 1,000,000
• Damage to Rented Premises	\$ 50,000
• Each Occurrence	\$ 1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The Arizona Supreme Court, the State of Arizona, and their agencies, boards, commissions, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor."

b. The policy shall contain a waiver of subrogation endorsement, as required by the written agreement, in favor of the Arizona Supreme Court, the State of Arizona, and their agencies, boards, commissions, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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d. The policy shall be endorsed to include the following additional insured language: "The Arizona Supreme Court, the State of Arizona, and agencies, boards, commissions, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."

e. The policy shall contain a waiver of subrogation endorsement, as required by the written agreement, in favor of the Arizona Supreme Court, the State of Arizona, and their agencies, boards, commissions, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

3. Worker's Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
o Each Accident	\$1,000,000
o Disease – Each Employee	\$1,000,000
o Disease – Policy Limit	\$1,000,000

a. The policy shall contain a waiver of subrogation endorsement, as required by the written agreement, in favor of the Arizona Supreme Court, the State of Arizona, and their agencies, boards, commissions, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. This coverage shall not apply to a contractor or subcontractor exempt under A.R.S. §23-901 when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

4. Professional Liability (Errors and Omissions Liability)

• Each Claim	\$2,000,000
• Annual Aggregate	\$2,000,000

a. In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under

the policy shall precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of two (2) years beginning at the time work under this Contract is completed.

b. The policy shall cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

B. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

1. The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Court, its agents, officials, employees or the State of Arizona Shall be excess and not contributory insurance, as provided by A.R.S. §41-621 (E).
2. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
3. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
4. All policies shall contain a waiver of subrogation against the Arizona Supreme Court, the State of Arizona, and their agencies, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

C. Notice of Cancellation: Applicable to all insurance policies required within the Insurance Requirements of this contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the Court. Within two (2) business days of receipt, Contractor must provide notice to the Court if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Adult Probation Services Division office and shall be mailed, emailed, hand delivered or sent by facsimile transmission to:

Shanda Breed
 Program Services Manager
 Arizona Supreme Court
 Administrative Office of the Courts
 1501 West Washington
 Phoenix, AZ 85007

D. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The Court in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. Verification of Coverage: Contractor shall furnish the Court with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

1. All certificates and endorsements are to be received and approved by the Court before work commences. The Court's receipt of any certificates of insurance or policy endorsements that do not comply with this agreement shall not waive or otherwise affect the requirements of this agreement.

2. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

3. All certificates required by this Contract shall be sent directly to the Court's representative. The Court contract number and project description shall be noted on the certificate of insurance. The Court reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**

F. Subcontractors: Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the Court separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. Approval and Modifications. The Court, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

H. Exceptions. In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

32. **Confidentiality of Records.** The Contractor shall establish and maintain procedures and controls that are acceptable to the Court for the purpose of assuring that no information contained in its records or obtained from the Court or from others in carrying out its functions under the Contract shall be used or disclosed by it, its agents, officers, or employees, except as required to efficiently perform duties under the Contract. Persons requesting such information should be referred to the Court. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under the Contract, unless otherwise agreed to in writing by the Court.

33. **Patents and Copyrights.** The Contractor will, at its expense, defend the Court against any claim that any item furnished under this Contract infringes a patent or copyright in the United States or Puerto Rico. The Contractor will pay all costs, damages, and attorney's fees that a court finally awards as a result of such claim. To qualify for such defense and payment, the Court will give the Contractor prompt written notice of any such claim and allow the Contractor to control, and fully cooperate with the Contractor in, the defense and all related settlement negotiations.

If the use of any item furnished under this Contract becomes, or the Contractor believes is likely to become, the subject of such a claim, the Court will permit the Contractor, at the Contractor's option and expense, either to secure the right for the Court to continue using the item or to replace it or modify it so that it becomes non-infringing so long as the item continues to meet the specifications of the original Contract. However, if neither of the foregoing alternatives is available on terms which are reasonable in the Contractor's judgment, the Court will return the item upon the Contractor's written request. The Contractor will grant the Court a credit for returned items in the full amount of the purchase price.

The Contractor shall have no obligation with respect to any such claim based upon the State's modification of the item or its combination, operation or use with apparatus not furnished by the Contractor.

This paragraph states the Contractor's entire obligation to the Court regarding infringement or the like.

34. **Taxes.** The Arizona Supreme Court is exempt from Federal Excise Tax, including the Federal Transportation Tax. The Court will pay all applicable taxes resulting from this Contract or activities hereunder exclusive of taxes based on Contractor's net income. Sales tax, as required, shall be indicated as a separate item on all invoices.

35. **Termination.**

A. The Court reserves the right to terminate the whole or any part of this Contract due to failure by the Contractor to carry out any material obligation, term or condition of the Contract. The Court will issue written notice to Contractor for acting or failing to act as in any of the following:

1. The Contractor provides material that does not meet the specifications of the Contract;
2. The Contractor fails to adequately perform the services set forth in the specifications of the Contract;
3. The Contractor fails to complete the work required or to furnish the materials required within the time stipulated in the Contract;
4. The Contractor fails to make progress in the performance of the Contract and/or gives the Court reason to believe that the Contractor will not or cannot perform to the requirements of the Contract.

B. Upon receipt of the written notice of concern, the Contractor shall have ten (10) days to provide a satisfactory response. During the ten-day period, the parties will have an opportunity to address the concern. If the response is considered unsatisfactory, the Court will so indicate and participate in continued discussion toward resolving the concern. This process will continue during the ten-day period until the concern is adequately addressed. Failure on the part of the Contractor to satisfactorily address all issues of concern by the end of the ten-day period may result in the Court resorting to any single or combination of the following remedies:

1. Cancel the Contract;
2. Reserve all rights or claims to damage for breach of any covenants of the Contract;
3. Perform any test or analysis on materials for compliance with the specifications of the Contract. If the results of any test or analysis confirms a material noncompliance with the specifications, any reasonable expense of testing shall be borne by the Contractor;
4. In case of default, the Court reserves the right to purchase materials, or to complete the required work in accordance with the Judicial Branch Procurement Code. The Court may recover any reasonable actual excess costs up to the greater of \$100,000 or the purchase price of the equipment or services that are the subject matter of, or directly related to, the cause of action, from the Contractor by:
 - a. Deduction from an unpaid balance;
 - b. Collection against any bid and/or performance bond, or;
 - c. Any combination of the above or any other remedies as provided by law.

36. **Price Reduction.** A price reduction adjustment may be offered at any time during the term of this Contract and shall become effective upon notice.

37. **Statewide Purchasing.** If authorized in a particular solicitation, any Arizona court or any political subdivision on behalf of a court may procure material or services described in this Contract for use by Arizona courts or judicial branch units. Where so authorized, Contractor agrees to provide such materials or services to other courts at the Contract prices and under the Contract terms. Any attempt to represent any material and/or service as being under contract with the Court which is not a subject of or addition to this Contract is a violation of the Contract and the Judicial Branch Procurement Rules. Any such action is subject to the legal and contractual remedies available to the Court inclusive of, but not limited to, Contract cancellation, suspension and/or debarment of the Contractor.

38. **Public Record.** This Contract is a public record, available for review, as required by state law.

40. **Criminal History Check.** The Court may require Contractor to provide identifying information for Contractor and any individuals working in judicial facilities or having access to judicial information for the purposes of conducting a criminal history records check for security purposes. Contractor agrees to cooperate with such requests and understands that the Court may terminate this Agreement if the results of the criminal history records check would disqualify the Contractor or individual and there is no acceptable alternative.

41. **Compliance with the Arizona Legal Workers Act, A.R.S. §41-4401.**

A. Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with A.R.S. §23-214(A). (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program."). If this compliance requirement disqualifies any of Contractor's key personnel or individuals working at the direction of Contractor and no acceptable alternative is provided the Court may terminate this contract.

B. A breach of a warranty regarding compliance under subparagraph A shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contract.

C. The Court retains the legal right to audit and inspect the papers of any of Contractor's employee or subcontractor's employee who works on the contract to ensure that Contractor's personnel and any person working at the direction of Contractor is complying with the warranty under subparagraph A.

42. **Non-Discrimination.** The parties agree to comply with all applicable court, state and federal laws, rules, regulations and executive orders governing nondiscrimination, including the Americans with Disabilities Act, equal employment opportunity, immigration, and affirmative action. Contractor shall include a clause to this effect in all subcontracts related to this Contract.

43. **Notices.** Notice required pursuant to the terms of this Contract shall be in writing and shall be directed to the Court's contract administrator and Contractor's representative at the addresses specified immediately below or to such other persons or addresses as either party may designate to the other party by written notice. Notice shall be delivered in person or by certified mail, return receipt requested.

Notice to the Court:

Shanda Breed, Program Services Manager
Arizona Supreme Court
Administrative Office of the Courts
Adult Probation Services Division
1501 West Washington, Suite 338
Phoenix, AZ 85007

Notice to the Contractor:

ARIZONA SUPREME COURT
Administrative Office of the Courts

[CONTRACTOR'S NAME]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Social Security or Federal
Employer Identification
No. _____