

# REQUEST FOR PROPOSALS TO PERFORM EXAMINATION SERVICES

REQUISITION #212-5-0663/ CLASS & ITEM 924-20

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# REQUEST FOR PROPOSALS TO PERFORM EXAMINATION ADMINISTRATION AND GRADING SERVICES

## REQUISITION #212-5-0663/ CLASS & ITEM 924-20

### SECTION I GENERAL

#### 1.1 **SCOPE.**

The Office of Court Administration (OCA) on behalf of the Judicial Branch Certification Commission (JBCC) seeks proposals for examination administration and scoring services for the written and oral examination for licensing language interpreters for court proceedings in accordance with the specifications contained in this Request for Proposal (RFP). The examination is developed by the National Center for State Courts (NCSC), therefore examination development is not within the scope of this RFP.

The JBCC also seeks proposals for the administration and scoring of the examination to obtain certification as a guardian. The guardianship certification examination is a written examination which is developed and maintained by the JBCC. The administration of the guardianship examination is not subject to requirements or procedures of the NCSC or any other national organization.

Respondents may submit proposals to render examination services for all or any combination of the following components of the Request for Proposals:

- (a) Administration and scoring services for the licensed language interpreters written examination;
- (b) Administration of the licensed language interpreters oral examination;
- (c) Rating (through a certified rater) of the licensed language interpreters oral examination;
- (d) Administration and scoring services for the written guardianship certification examination.

#### 1.2 **SERVICES PERIOD.**

The services requested shall begin on September 1, 2015, or the last signature date on the purchase order, whichever is later, and shall end no later than August 31, 2017. By written agreement of the parties, the contract term may be extended for one two-year period.

#### 1.3 **COMPENSATION.**

The selected Contractor will receive a fee for each licensed interpreter examination administered and scored, and if applicable, each oral exam rated, in accordance with the contract in an amount not to exceed \$100 per written examination and not to exceed \$300 per oral examination. The Contractor selected to administer the guardianship certification examination will receive a fee for each guardianship certification examination administered and graded in an amount not to exceed \$75.

#### 1.4 **OVERVIEW OF JBCC and OCA.**

The JBCC was created within the judicial branch of Texas state government to oversee the regulation of court-related functions assigned to it by law and the Supreme Court of Texas. Pursuant to Chapter 152 of the Texas Government Code, the JBCC is appointed by the Supreme Court and is administratively attached to the Office of Court Administration (OCA). Section 152.103, Texas Government Code. The OCA Director and staff administers and enforces JBCC programs. Among the functions of the JBCC is the oversight and administration of a program to license court interpreters for individuals who do not comprehend or communicate in English. The licensing program includes the preparation

and administration of an examination to test the knowledge, skill and efficiency of applicants to interpret a language in to English.

The JBCC also administers the guardianship certification program to ensure the competence and qualification of persons, other than volunteers, attorneys, and corporate fiduciaries, who act as private professional guardians or who provide guardianship services to a ward of a guardianship program or a ward of the Department of Aging and Disability Services. The JBCC guardian certification process includes the requirement that applicants take and pass a written certification examination. The examination tests an applicant's knowledge of Texas laws and rules relating to guardianship.

Further information regarding the Judicial Branch Certification Commission and its operations, including the Licensed Court Interpreter program and Guardian Certification program can be found at OCA's Web site: <http://www.txcourts.gov/jbcc.aspx>.

## **SECTION II STATEMENT OF WORK**

### **2.1 SERVICE REQUIREMENTS.**

Services shall include, without limitation, those specified in this RFP. Services set forth that include the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception. Services set forth that include the words "may" or "can" allow Respondents to offer alternatives to the manner in which the services are provided.

The licensed court interpreter examination has two components: written and oral. The licensed court interpreter examination given in Texas is managed and maintained by the National Center for State Courts (NCSC). Pursuant to agreement with NCSC, Texas must adhere to certain policies, standards, and protocols for test security and administration. Under the agreement OCA is also required to include certain confidentiality and security requirements in any contract for assistance with administration of the examination. Accordingly, the selected Contractor, acting on behalf of the JBCC, must strictly adhere to these policies, standards, and protocols for test security and administration.

Contractor is responsible for ensuring the security of test materials and complying will all requirements for the transportation and communication of test materials. If test materials are exposed or compromised, Contractor may be liable for all or part of the cost of developing replacement materials. Contractor is responsible for ensuring the security of test facilities, maintaining at least two persons in the test room at all times to monitor the examination, and ensuring that no unauthorized materials are brought into or out of the test site. Contractor must maintain strict compliance with security requirements specified in the *NCSC State Court Interpreter Testing Desk Reference Manual*.

Respondents may propose an efficient process for administering the licensed court interpreter examinations in a manner which complies with the *NCSC State Court Interpreter Testing Desk Reference Manual*. The current process for administering the examination and processing examination results is as follows:

- OCA receives and processes applications to take the written examination, assigns a unique ID number to eligible candidates, and sends the candidate information to selected Contractor via a secure FTP site.
- The contractor captures the candidate information, loads it to a database, and sends notice of eligibility for the written examination to the candidate.
- The candidate is then able to schedule the written exam.

- Contractor sends the candidate's test results to OCA each time the candidate takes the written examination.
- Once the candidate passes the written examination, OCA sends the candidate's eligibility for the oral examination to Contractor.
- Contractor notifies the candidate he or she is eligible for the oral exam.
- Contractor schedules all available candidates for the oral examination.
- Contractor sends a spreadsheet to OCA with the list of candidates who are scheduled to take the oral examination.
- OCA forwards the spreadsheet to NCSC.
- NCSC fills in the examination type column in the spreadsheet to indicate which examination should be delivered to the Contractor for each candidate.
- NCSC emails the spreadsheet to OCA with the examination type and, if necessary, sends oral examination materials via secure platform.
- OCA burns CDs with the oral examination materials, makes copies of all scripts, and mails the CDs and scripts via Express mail (e.g., Federal Express, Lone Star, etc.) to the Contractor examination site(s).
- Contractor administers the oral examination pursuant to NCSC policies, standards, and protocols.
- Contractor sends the oral examinations to NCSC-approved raters to be rated (graded) pursuant to contract between Contractor and raters.
- Contractor sends results of oral examinations along with copies of the grade report to OCA and examination candidates.
- Rater provides all examination materials to Contractor who sends them to NCSC for archiving. Rater ensures all security protocols are followed in receiving and sending examination materials.

Upon a candidate's request to re-take the oral exam to upgrade to a Master license after a Basic license has been issued, OCA sends another eligibility notification to Contractor for the oral examination and Contractor would follow the above process for administering oral examinations.

Respondent may propose an efficient process for the administration of the guardianship certification examination which will yield valid examination results and ensure the security of the examination. The current process for administering the guardianship certification examination is as follows:

- JBCC and selected Contractor agrees to dates, times and locations for the administration of the examinations;
- JBCC receives and processes applications to take the examinations, including examination fees paid by applicants;
- JBCC notifies Contractor of the identity of each applicant who will take an examination at each agreed-upon location;
- Contractor ensures the identity of each applicant prior to administering examination;
- JBCC delivers the examinations to the testing location;
- Contractor ensures the security of the examination before, during and after the examination;
- Contractor administers the examination in a quiet, well-lit room which has adequate space to discourage cheating;
- Contractor proctors the examination and ensures at least one proctor is present in the room at all times during the examination;
- Contractor scores the examination within 15 days of the examination date;
- Contractor reports the score to JBCC and the applicant by regular first class mail and

- by electronic mail no later than 30 days after the examination date;
- Contractor ensures the confidentiality of examination results;
- Contractor records each applicant's contact information, site registration, response sheet, score, date of notification and payment of fees in a confidential database and provide this data to JBCC in an electronic format acceptable to JBCC.
- Contractor performs post-administration analysis after each administration of the examination to determine the validity and difficulty of the examination and report the results of the analysis to JBCC.

## 2.2 **SERVICE DELIVERABLES.**

The selected Contractor shall provide examination services to OCA consisting of one or more of the following deliverables: "Examination Administration-Written," "Examination Administration-Oral" and "Oral Examination Rating or Grading." Respondent may submit a proposal for one or more of the deliverables. The policies, standards and protocols are found in the *NCSC State Court Interpreter Testing Desk Reference Manual* that is available at: [www.ncsc.org](http://www.ncsc.org). The following is a brief description of the three deliverables.

### (a) **Licensed Court Interpreter Examination Administration - Written**

The Contractor will receive an electronic file via FTP site that will provide information regarding eligible candidates. The Contractor will contact each eligible candidate to set up a date for testing. Typically the Contractor will set aside one day every few months to hold examinations. OCA will confirm the identity and eligibility of each examination candidate. The Contractor will provide a list of all scheduled candidates to the OCA together with the respective date and location for each candidate's examination.

The OCA will provide the Contractor a set of examinations on CD for each testing site. The examinations are multiple choice. Contractors will compile test packets, including each examination sealed in an envelope, answer sheets, and an Agreement and Oath. The Contractor will provide a quiet room large enough to accommodate the examinees, ensuring enough space to discourage cheating. The Contractor will provide Test Administrators, Proctors, and, if the test is administered to more than 10 examinees, a Test Registration Clerk. Test Administrators and Proctors are required to safeguard all aspects of test security, to conduct the testing efficiently and quietly, to ensure examine candidates are not disturbed, and to account for all test materials.

Examination candidates who have disabilities may seek reasonable accommodations on forms which will be provided by NCSC. Contractor is responsible for providing reasonable accommodations and notifying JBCC of any requests made and the nature of any accommodations.

Contractor will collect the answer sheets and examinations, render grading services, and return all materials to OCA for recording, destruction, and notice to examine candidates of examination results.

For more detail regarding the requirements for examination security, administration, and mandatory destruction of all hard copy and electronic or digital copies of examinations, see *NCSC State Court Interpreter Testing Desk Reference Manual*.

### (b) **Licensed Court Interpreter Examination Administration - Oral**

Examination candidates must pass the written examination prior to taking the oral examination. Examination candidates apply to OCA to take the examination. OCA provides Contractor a list of candidates who are eligible to take the examination. The Contractor will contact each eligible candidate to set up a date and location for testing. Typically the Contractor will set aside one day every few months to hold examinations. The Contractor will provide OCA a list of the names of all candidates scheduled to take an examination and the respective date and location of the examination **at least 28 days before administration**. OCA will confirm the identity and eligibility of each examination candidate and notify NCSC personnel no later than 21 days before administration. NCSC personnel checks each candidate's examination history in order to assign the appropriate version of the examination and an identification number for each candidate. NCSC will download the appropriate version of the examination to the folder for Texas on the secured NCSC Sharepoint FTP site. . OCA will download materials and tests from the Sharepoint FTP site and relay them to Contractor. Two copies of audio recordings for each examinee will be burned into CDs and distributed to Contractor. The examination consists of three parts:

- i. **Sight Interpretation** – Examination candidate translates a document from English into another language and translates a document in another language into English
- ii. **Consecutive Interpretation** -- Examination candidate is played a recording and, during pauses, translates from English into another language and from another language into English
- iii. **Simultaneous Interpretation** – Examination candidate translates a recording from English into another language as the candidate hears the recording

Contractor will provide Proctors who have received formal Proctor training (by NCSC or its designee) to administer the oral examination. Contractor will provide an adequate facility for the administration of the oral examination including equipment to play recorded stimuli for translation, headphones, and equipment to record either on tape cassette or digitally (preferred) each candidate's oral translation. Contractor must provide back-up equipment at each testing facility.

If Contractor is not also providing oral examination rating services, Contractor will arrange in advance of the examination for the secure transfer of oral examination materials to OCA for rating.

Examination candidates who have disabilities may seek reasonable accommodations on forms which will be provided by NCSC. Contractor is responsible for providing reasonable accommodations and notifying JBCC of any requests made and the nature of any accommodations.

For more detail regarding the requirements for the administration, materials, and equipment, see *NCSC State Court Interpreter Testing Desk Reference Manual*.

**(c) Licensed Court Interpreter Oral Examination Rating or Grading**

The oral examination must be rated by a Rater from a list of Raters certified by NCSC. Two Raters, one of whom must be an Approved Lead Rater designated by NCSC, must evaluate each candidate's performance. Contractor, not OCA, will contract with Raters and ensure Raters will adhere to security standards. Contractor will obtain an executed, written promise to comply with security standards from each retained Rater and will convey it to OCA and NCSC. Pursuant to contract with Contractor, all Raters will return testing materials to JBCC via a secure FTP site. Contractor is subject to all other requirements and procedures regarding the rating of the oral examination specified in the *NCSC*

**(d) Guardianship Certification Examination Administration**

Contractor will reach agreement with JBCC regarding locations, dates and times for administering the examination. JBCC will deliver the examinations. Contractor will administer the examinations at facilities which are quiet, safe, well –lit and reasonably comfortable and appropriate for the administration of a professional examination. Contractor will ensure the security of the examination and examination results. Contractor will grade the examinations and report the scores via first class mail and electronic mail to the applicants and JBCC no later than 30 days after examination administration. Contractor will perform examination analysis of each examination and report the results of the analysis to JBCC no later than 30 days after the date of the examination.

**2.3 ON-LINE RESOURCES.**

The following documents will be posted on OCA's Contracting & Procurements Web page (<http://www.txcourts.gov/oca/contracting-procurements.aspx>) and Electronic State Business Daily (ESBD) <http://esbd.cpa.state.tx.us/> to assist in evaluating the service requirements for this proposal:

- *NCSC State Court Interpreter Testing Desk Reference Manual*
- OCA Statutes and Rules regarding the State Court Interpreter Program

**2.4 REQUIREMENTS AND STANDARDS.**

The services shall comply with the requirements of Government Code Chapter 157 and, for language interpreter examination services, the *NCSC State Court Interpreter Testing Desk Reference Manual*.

**2.5 QUALIFICATIONS.**

Professional certification and development requirements are as follows:

- Examination Raters for the oral language interpreter examination must be listed on the NCSC Approved Expert List.

**2.6 SUBCONTRACTORS.**

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Respondent, except that an examination Rater must be an NCSC approved Rater. No subcontract under the Contract shall relieve Respondent of responsibility for ensuring the requested services are provided. Respondents may not subcontract any portion of the work to be performed without the prior written approval of OCA. In accordance with Texas Government Code Section 2161.252, Respondents shall submit a HUB Subcontracting Plan (HSP) for contracts of \$100,000 or more. For contracts of less than \$100,000, Respondent shall submit an HSP for any potential HUB Subcontracting opportunities.

**2.7 PERFORMANCE TRACKING.**

OCA will monitor the performance of the Contract issued under this RFP. The administration of the language interpreter examinations will be under the oversight of a Texas Administration Supervisor in accordance with the procedures specified in the *NCSC State Court Interpreter Testing Desk Reference Manual*. The administration and grading of the guardianship examination is subject to supervision by staff of JBCC. All services under the Contract shall be performed at an acceptable quality level and in a manner consistent with acceptable standards and protocols of NCSC and are subject to supervision and audit.

**SECTION III  
PROPOSAL INFORMATION**

**3.1 SCHEDULE OF EVENTS.**

The solicitation process for this RFP will proceed according to the following schedule:

EVENT	DATE	TIME
Issue RFP	7/20//2015	n/a
Pre-proposal Conference, if requested	N/A	various
Deadline for submission of questions	7/31/2015	3:00 p.m.
Deadline for submission of answers to questions	8/7/2015	3:00 p.m.
Deadline for submission of proposals	8/17/2015	3:00 p.m.
Bid opening	08/17/2015	3:30 p.m.
Oral presentations, if requested		various
Expected Award of Contract	09/10/2015	n/a
Expected Contract Start Date	09/15/2015	n/a

**3.2 REVISIONS TO SCHEDULE.** OCA reserves the right to change the dates in the Schedule of Events by posting them on OCA's Contracting & Procurements Web page as an Addendum at <http://www.txcourts.gov/oca/contracting-procurements.aspx> and Electronic State Business Daily (ESBD) <http://esbd.cpa.state.tx.us/>.

**3.3 PRE-PROPOSAL CONFERENCE.** OCA may choose to schedule a pre-proposal conference for potential Respondents, which OCA would post on its Contracting & Procurements Web page at <http://www.txcourts.gov/oca/contracting-procurements.aspx> and Electronic State Business Daily (ESBD) <http://esbd.cpa.state.tx.us/>. The pre-proposal conference is located at 205 W. 14<sup>th</sup> Street, Sixth Floor, Austin, Texas 78701 in the Tom C. Clark building. Attendance by Respondents is optional.

**3.4 PROPOSAL REQUIREMENTS.**

(a) (a) **Submissions.** Respondents shall submit one electronic copy of the Proposal. The electronic copy must be formatted as searchable PDF files and stored on a standard USB drive, CD, or DVD. The electronic copy may not contain video or use embedded fonts. Submission pages must be numbered and contain an organized, paginated table of contents corresponding to the section of the Statement of Work. Respondent shall provide a detail narrative response to show how the Respondent intends to meet the requirements of the project. If the Respondent responds with "comply" to a specification, then supporting information is required to explain how the Respondent will comply with each requirement. Respondents shall include all required information to be returned with its response as specified in the individual section numbers.

(b) **Costs.** Respondents to this RFP are responsible for all costs of Proposal preparation.

(c) **No copyrights.** OCA will not consider any Proposal that bears a copyright. Proposals may be subject to disclosure under Rule 12 of the Texas Rules of Judicial Administration. This disclosure may only occur after evaluation of all Proposals and an award has been made.

(d) **Contents.** Listed below is a summary of information required to be included in a Proposal responding to this RFP. OCA reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.

1. **Respondent Information.** Include the following information related to the responding business entity: formal name and all assumed names used by the business entity; structure of business entity (i.e. sole proprietorship, partnership, corporation, etc.); state in which business entity was formed or incorporated; physical address and mailing address; principal place of business; whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes; and name, title, address, telephone number, facsimile number, and e-mail address of Respondent's primary contact.

2. **Project Plan for Contract Deliverables.** Provide a detailed project plan that includes how often and where the examinations described in Sec. 2.2 of this RFP will be administered, how Respondent will comply with the Examination Rating or Grading component of the deliverable, if applicable, and how Respondent will ensure the security of test materials in accordance with *NCSC State Court Interpreter Testing Desk Reference Manual*, if applicable.

If applicable, the plan must include an estimated examination schedule for administration of the guardianship certification examination which must include at least four examinations per year at geographically-diverse locations in Texas. The plan must also specify proposed controls to ensure accuracy and security of the examination, grading, reporting, and evaluation. Respondents are encouraged to include technologically innovative exam options as part of the plan.

3. **Experience and Qualifications.** Complete and provide the **Respondent Questionnaire** included as an Attachment to this RFP. The questionnaire solicits information about Respondent's contracts, references, previous contract terminations, experience, and personnel (including employees and subcontractors). In addition to the Respondent Questionnaire, Respondents must provide information about the experience and qualifications of employees and contractors who will furnish services under this Contract.

4. **Financial Solvency and Insurance Information.** Include Respondent's most recent annual financial report or year-end financial statements, and proof of professional liability insurance and workers compensation coverage.

5. **Statement of Objectivity.** No OCA employee may have a direct interest in the proceeds of a contract resulting from this RFP or be related within the second degree of consanguinity or affinity to anyone having a direct interest in those proceeds. Under Section 2155.004, Government Code, the respondent certifies that the individual or business entity named in a Proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

6. **Antitrust Certification** – Each respondent will certify on the attached form compliance with the antitrust laws codified in Chapter 15, Business & Commerce Code and that the respondent did not disclose to contents of the response to a competitor in the same line of business.

7. **Ineligibility for Certain Federal Offenses arising from Contracts for Disaster Relief** – Under Section 2155.006,, Government Code, the respondent certifies that the individual or business entity named in a Proposal is not ineligible to be awarded the contract and acknowledges that the contract, if awarded, may be terminated and payment withheld if this certification is inaccurate.

8. **Historically Underutilized Businesses (HUB) Subcontracting Plan (HSP).** In accordance with Texas Government Code Section 2161.252, Respondents shall submit an HSP (included as an attachment to this RFP) for contracts of \$100,000 or more. Failure to complete and return a required HSP with the submitted Proposal will result in rejection of the Proposal. For contracts of less than \$100,000, Respondent shall submit an HSP for any potential HUB subcontracting opportunities.

9. **Execution of Proposal.** OCA will reject proposals without an Execution of Proposal (included as an attachment to this RFP) signed by a person with authority to bind the Respondent to a contract.

**(e) Compensation and Fees.** OCA will pay selected Contractor a per person fee for each person who sits for the written and oral language interpreter exams and the guardianship certification examinations. Respondent should provide a per person cost for each test to be administered and graded. (The proposed cost may not exceed \$100 per written interpreter examination, \$300 per oral examination (including the cost for the services of the NCSC certified rater), and \$75 per guardianship examination. Respondent's pricing should not include state sales tax and federal excise tax in the compensation and fees Proposal.

### 3.5 **INQUIRIES.**

(a) Any inquiries shall be submitted in writing to Jeff Rinard at [Jeff.Rinard@txcourts.gov](mailto:Jeff.Rinard@txcourts.gov), with a carbon copy (cc:) to Veronica M. Strong, CTPM at [vstrong@txcourts.gov](mailto:vstrong@txcourts.gov) by 3:00 p.m. CDT on July , 2015, as specified in Section 3.1 above.

(b) OCA will post written responses to inquiries on its Contracts & Procurements Web page at <http://www.txcourts.gov/oca/contracting-procurements.aspx> and the ESBD (Electronic State Business Daily) at <http://esbd.cpa.state.tx.us/> no later than July , 2015. If a Respondent does not have Internet access, a copy of all written responses may be obtained through the point of contact listed above.

(c) Except as otherwise provided in this Section, upon issuance of this RFP, other employees and representatives of OCA will not answer questions or otherwise discuss the contents of the RFP with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions unrelated to this RFP.

### 3.6 **PROPOSAL SUBMISSION.**

(a) All Proposals shall be received at OCA prior to August 17, 2015, at 3:00 p.m. CDT, as specified in the Schedule of Events in Section 3.1. Respondent should obtain a time-stamp on proposals received on the deadline date. OCA will reject late submittals.

(b) Proposals should be placed in a separate envelope or package and be clearly marked "**RFP 212-5-0663 Examination Administration/Rating Proposal,**" and "**Attention: Veronica M. Strong, CTPM.**" It is Respondent's responsibility to appropriately mark and deliver the Proposal to OCA by the specified date.

(c) Telephone, facsimile, or e-mail proposals will not be accepted.

**3.7 DELIVERY OF PROPOSALS.**

Proposals shall be submitted to OCA by one of the following methods:

U.S. Postal Service	Overnight/Express Mail	Hand Delivery
Office of Court Administration Attn: <u>Veronica M. Strong, CTPM</u> PO Box 12066 Austin, TX 78711-2066	Office of Court Administration Attn: <u>Veronica M. Strong, CTPM</u> 205 W. 14 <sup>th</sup> Street, Suite 600 Austin, TX 78701	Office of Court Administration Attn: <u>Veronica M. Strong, CTPM</u> 205 W. 14 <sup>th</sup> Street, Suite 600 Austin, TX 78701  Hours: 8:00 a.m. to 5:00 p.m. CDT

**3.8 PROPOSAL OPENING.**

Proposals will be opened at the Office of Court Administration, 205 W. 14<sup>th</sup> Street, Austin, Texas. All submitted Proposals become the property of OCA after submission. Submitted proposals shall constitute an offer to contract for a period of ninety (90) days or until OCA makes a selection, whichever occurs earlier.

**3.9 PROPOSAL EVALUATION AND AWARD.**

In accordance with Texas Government Code, Section \_2155.063, 2155.074 and 2155.075, governing the procurement of goods and services OCA shall select a Contractor and award a contract on the basis of the best value for the state.

The evaluation committee will determine best value by applying the following criteria and assigned weighted values:

- (1) Experience administering professional licensing examinations; 18%
- (2) The quality and suitability of Contractor’s facilities for administering examinations, including approved digital recorders, sound equipment, computers, monitors, and hardware to administer an examination and create audible recordings; 18%
- (3) The size and professional credentials of personnel on staff of the Contractor; 18%
- (4) Experience in maintaining the security of examination materials and examination results; 18%
- (5) Contractor resources and procedures for consistently and reliably conveying examination to an examination rater (grader), the OCA and the NCSC in accordance with deadlines and security procedures; and 18%
- (6) Financial stability and record of personnel retention. 10%

The evaluation committee will determine whether Best and Final Offers are necessary. Award of a contract may be made without Best and Final Offers. OCA may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their Proposals. A request for a Best and Final Offer is at the sole discretion of OCA and will be extended in writing

In evaluating Proposals to determine the best value for the State, OCA may consider information related to past contract performance of a Respondent, including, but not limited to, Texas Building and Procurement Commission’s Contractor Performance Tracking System (available at <http://www.tbpc.state.tx.us/stpurch/venvpts.html>).

**3.9 RESERVATION OF RIGHTS.**

OCA reserves the right to reject any and all proposals, or to re-solicit or cancel this RFP, if such action is deemed in the best interests of the State of Texas and OCA.

**SECTION IV  
GENERAL TERMS AND CONDITIONS**

**4.1 OFFER AND ACCEPTANCE**

A proposal submitted in response to this RFP is an offer to contract based upon the terms, conditions, and specifications contained herein. The offer is accepted by OCA and becomes a contract when a purchase order is executed. The selected Respondent shall be referred to as the Contractor.

**4.2 CONTRACT DOCUMENTS.**

The contract documents will consist of the following:

- (a) The executed purchase order
- (b) Any written Addenda or Amendments
- (c) The RFP, (including the General Terms and Conditions, attachments, appendices, and exhibits);
- (d) Respondents response
- (e) Any Best and Final Offer (BAFO) submitted by the Contractor;
- (f) *The NCSC State Court Interpreter Testing Desk Reference Manual, if services include language interpreter written or oral exam administration and rating;*

The contract documents are incorporated in the Contract for all purposes and contain the entire agreement between the Contractor and OCA. In the event of a conflict between the documents listed in this paragraph, the documents will control in the order of precedence listed above beginning with (a), then (b), then (c), then (d), then (e), then (f). In the event and to the extent any provisions in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded the earlier provisions. Any modification, alteration, or waiver of any term, covenant, or condition of the Contract and any attachments must be in writing and executed by OCA and the Contractor.

**4.3 STANDARDS OF SERVICES.**

Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of a Contractor providing examination administration, proctoring, and rating services. Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

**4.4 PROGRAM MANAGER.**

OCA will designate a Program Manager to serve as the point of contact between the OCA and Contractor and to coordinate and organize testing. OCA's Program Manager shall serve as the Test Administration Supervisor for language interpreter examinations unless that function is fulfilled by National Center for State Courts Language Access Services Section personnel in accordance with the *NCSC State Court Interpreter Testing Desk Reference Manual*. The Program Manager will review and audit language interpreter exam materials received from raters to ensure there are no mathematical or other errors. The Program Manager has no express or implied authority to vary the terms of the Contract,

amend the Contract in any way or waive strict performance of the terms or conditions of the Contract.

**4.5 PERSONNEL.**

Contractor shall assign only qualified personnel to this Contract, including subcontractors. OCA's program manager shall authorize the key personnel designated in the Proposal to provide services under this Contract prior to the execution of the purchase order. Contractor may substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are equally qualified and skilled in the tasks necessary to accomplish the tasks and services required, but any substituted personnel also must be approved by OCA's program manager. Contractor shall provide to OCA prior written notice of any proposed change in key personnel involved in providing services under this Contract.

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor and their personnel shall be subject to the same approval process. No subcontract shall relieve Contractor of responsibility for ensuring the requested services are provided, and Contractor shall be the sole contact for OCA.

**4.6 INVOICES.**

Contractor shall provide invoices to Office of Court Administration, Accounts Payable for contract services upon completion and acceptance of examinations. No payment shall be made under this contract without the prior submission of examination results for eligible testers. Contractor shall submit invoices monthly.

**4.7 PAYMENTS.**

OCA will pay the Contractor 30 days after the later of: the date the performance and acceptance of the services under this contract are complete; or the date OCA receives Contractor's invoice.

**4.8 TERM AND TERMINATION.**

The Contract shall become effective on the purchase order execution date and shall expire on August 31, 2017, unless otherwise sooner terminated as provided in this RFP. Provisions herein regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of the Contract. By providing thirty (30) days' written notice to Contractor by certified mail, return receipt requested or by facsimile, OCA may terminate the contract within OCA's sole discretion.

**4.9 PUBLIC ACCESS TO RECORDS.**

Although OCA is not subject to the Texas Public Information Act, all RFP and contract documents and information, and any report, analysis or data generated as a result of the contract services may be subject to public disclosure under Rule 12 of the Texas Rules of Judicial Administration. OCA will notify Contractor of any request received by OCA for records that Contractor has identified as confidential in its response to this RFP. Contractor will notify OCA's Program Manager within twenty-four (24) hours after receiving a third-party's request for information relating to the administration, rating of any part of the examination or any other information obtained or arising from the work on the Contract. Contractor agrees to maintain the security of the examination and agrees to refrain from releasing any information arising from the contract without the knowledge and consent of OCA.

**4.10 CONFIDENTIALITY.**

Contractor agrees to maintain and shall execute a confidentiality agreement safeguarding the confidentiality of information received from the State of Texas during the performance of this Contract, including but not limited to personal information such as social security numbers. If administering language interpreter examinations, Contractor agrees to execute the oath to maintain security of the examination materials as described in the *NCSC State Court Interpreter Testing Desk Reference Manual*.

**4.11 INSURANCE AND OTHER SECURITY.**

Within five (5) business days after executing the contract, Contractor must provide OCA with current certificates of insurance or other proof acceptable to OCA of Standard Workers Compensation Insurance and Commercial General Liability Insurance.

All such coverage shall be with companies licensed in the state of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. All policies shall contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to OCA. Contractor shall maintain the above insurance coverage during the term of this Contract, and shall provide OCA with an executed copy of the policies immediately upon request.

**4.12 INDEMNIFICATION.**

Contractor shall defend, indemnify, and hold harmless the State of Texas and its officers and employees, and OCA and its officers, employees and contractors from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution or performance of the Contract. Contractor shall coordinate its defense with the Texas Attorney General's office as requested by OCA.

**This paragraph is not intended to and shall not be construed to require contractor to indemnify or hold harmless the State or OCA for any claims or liability resulting from the negligent acts or omissions of OCA or its employees.**

**4.13 DISPUTE RESOLUTION.**

The dispute resolution process provided for in Texas Government Code Chapter 2260 shall be used by OCA and Contractor to resolve any dispute arising under the Contract.

**4.14 AMENDMENTS.**

The Contract may be amended only upon written agreement between OCA and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void *ab initio*.

**4.15 APPLICABLE LAW; VENUE.**

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

**4.16 STRICT COMPLIANCE.**

Time is of the essence in the performance of the Contract. Contractor shall strictly comply with all of the contract deadlines, requirements, and Standards of Performance.

**4.17 ASSIGNMENTS.**

Without the prior written consent of OCA, Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

**4.18 PARTIALLY-COMPLETED WORK.**

Within one calendar day after termination of this Contract, or at OCA's request, Contractor shall deliver to OCA all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver

such work or any and all documentation or other products and results of the services shall be considered a material breach of the Contract.

**4.19 FEDERAL, STATE, AND LOCAL REQUIREMENTS.**

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common-law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard worker's compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

**4.20 SEVERABILITY CLAUSE.**

In the event that any provision of the Contract is later determined to be invalid, void, or unenforceable, then its remaining terms, provisions, covenants, and conditions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

**4.21 APPLICABLE LAW AND CONFORMING AMENDMENTS.**

Contractor must comply with all current and amended laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas throughout the term of the Contract. OCA reserves the right, in its sole discretion, to unilaterally amend the Contract throughout its term to incorporate any modifications necessary for OCA's or Contractor's compliance with all applicable State and federal laws and regulations.

**4.22 NO WAIVER.**

Nothing in the Contract shall be construed as a waiver of the state's sovereign immunity. The Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. OCA does not waive any privileges, rights, defenses, or immunities available to OCA by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

**4.23 NO LIABILITY UPON TERMINATION.**

If the Contract is terminated for any reason, OCA and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code Chapter 2260.

**4.24 INDEPENDENT CONTRACTOR.**

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing services under this Contract and shall be responsible for its business expenses. Contractor's or Contractor's employees, representatives, agents and any subcontractors shall not be employees or agents of the State of Texas and shall not be entitled to benefits of state employment such as retirement or leave benefits. Should Contractor subcontract any of the services required in this Contract, OCA and JBCC are in no manner liable to any subcontract(s) of Contractor.

**4.25 LIMITATION ON AUTHORITY.**

Contractor shall have no authority to act for or on behalf of OCA, JBCC or the State of Texas except as expressly provided for in this Contract; no other authority, power or use

is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas or OCA.

**4.26 INTELLECTUAL PROPERTY CLAIMS.**

Contractor shall indemnify, save and hold harmless the State of Texas and OCA from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's, OCA's, or Contractor's use of any services, software, or other items provided to the State of Texas or OCA by Contractor or otherwise to which the State of Texas or OCA has access as a result of Contractor's performance under this Contract, provided that OCA shall notify Contractor of any such claim within a reasonable time of receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify OCA of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without OCA's prior written approval. Contractor shall reimburse the State of Texas and OCA for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arriving from any such claim. Contract shall pay all reasonable costs of the State's and OCA's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contract represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits. In the event that Contractor loses the right to allow the state to use any technology under this indemnification, then Contractor shall repay the State all monies paid under this Contract.

**4.27 SUPPORTING DOCUMENTS.**

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under the Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in Section 4.33 of this RFP. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit.

**4.28 ACCESS TO RECORDS.**

Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of the Contract and shall authorize OCA and the State of Texas to immediately assess appropriate damages for such failure. The acceptance of funds by Contractor or any other entity or person directly under the Contract, or indirectly through a subcontract under the Contract, shall constitute acceptance of the authority of the State Auditor, Comptroller or other agency of the State of Texas to conduct an audit or investigation in connection with those funds. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

**4.29 FELONY CRIMINAL CONVICTIONS.**

Contractor shall fully advise OCA as to the facts and circumstances surrounding conviction of a felony criminal offense of Contractor or any of its employees that are assigned to or associated with this project.

**4.30 NOTICES.**

Any written notices required under this Contract will be by either hand delivery or by U.S. Mail, certified, return receipt requested, and is effective on receipt by the affected party. The address for Contractor will be the address on the Proposal. The address for OCA will be that specified in Section III of this RFP. Either party may change its designated notice address by written notification to the other party.

**4.31 DEBTS OR DELINQUENCIES TO STATE.**

The Comptroller is prohibited from issuing any payment to a person or entity reported to have an indebtedness or delinquency to the State. To the extent that Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes is paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

**4.32 CONTRACTS FOR SERVICES.**

In accordance with Government Code Section 2155.4441, the Contractor shall purchase products and materials produced in the State of Texas, when available at a price and time comparable to products and materials produced outside the State.

**4.33 WORK MADE FOR HIRE.**

"Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced, or generated in connection with the Contract. All work performed pursuant to the Contract is made the exclusive property of OCA. All rights, title and interest in and to said property shall vest in OCA upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to the Contract. To the extent that title to any such work may not, by operation of law, vest in OCA, or such work may not be considered a work made for hire, then all rights, title and interest therein are hereby irrevocably assigned to OCA. OCA shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give OCA and the State of Texas, and their designees, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for services rendered under the Contract.

**4.34 TECHNOLOGY ACCESS CLAUSE.**

In the event that Contractor's Work includes the provision of an automated information system as defined by Government Code Section 2157.001(1), then state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor shall provide OCA technology that is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar

state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

**4.35 POLICY COMPLIANCE.**

Contractor's employees and agents (including subcontractors and their employees and agents) identified by OCA management as having sufficient presence on OCA premises shall be required to adhere to applicable OCA human resources, information services, and finance and operations policies and shall be required to attend one or more policy orientation sessions. Those employees and agents identified as having access to State of Texas information resources and information resources technologies may be subject to periodic criminal history record investigations.

**4.36 FORCE MAJEURE.**

Neither Contractor nor OCA shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

**4.37 DEFAULT.**

If Contractor is in default on the Contract, OCA may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed. In the event of abandonment or default, Contractor shall pay damages to OCA including but not limited to re-procurement costs, and any consequential damages to the State of Texas or OCA resulting from Contractor's non-performance.

**4.38 NO CONFLICTS.**

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under the Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

**4.39 FALSE STATEMENTS / BREACH OF REPRESENTATIONS.**

Any false statements by Contractor in the Contract documents or violation by Contractor of any of the representations, warranties, guarantees, certifications or affirmations included in the Contract shall constitute default by Contractor, and OCA may terminate or void the Contract for cause and pursue other remedies available to OCA under the Contract or applicable law.