

**Solicitation RFP-12-03**  
**Copier Rental/Lease/Purchase and Service**

**State of California**

## Bid RFP-12-03

### Copier Rental/Lease/Purchase and Service

Bid Number RFP-12-03  
Bid Title Copier Rental/Lease/Purchase and Service  
Expected Expenditure \$1.00 (This price is expected - not guaranteed)

Bid Start Date Sep 4, 2012 12:04:44 PM PDT  
Bid End Date Sep 28, 2012 3:00:00 PM PDT  
Question & Answer End Date Sep 14, 2012 4:30:00 PM PDT

Bid Contact Donna Vanderpool-Silva  
dvanderpool-silva@sb-court.org

Standard Disclaimer The State of California advises that prospective bidders periodically check the websites, including but not limited to Bidsync, and/or other state department links for modifications to bid documents. The State of California is not responsible for a prospective bidder's misunderstanding of the bid solicitation or nonresponsive bid due to failure to check these websites for updates or amendments to bid documents, and/or other information regarding the bid solicitations. Failure to periodically check these websites will be at the bidder's sole risk.  
The information published and/or responded to on these websites is public information. Confidential questions/issues/concerns should be directed to the contact on the ad.

**Description**  
Copier Rental/Lease/Purchase and Service

RFP Title: *Copier Rental/Lease/Purchase and Service*

RFP Number: *12-03*



# REQUEST FOR PROPOSAL

---

***SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN BERNARDINO***

**REGARDING:**

**COPIER RENTAL/LEASE/PURCHASE AND SERVICE**

***RFP 12-03***

**PROPOSALS DUE:**

***Friday September 28, 2012* NO LATER THAN **3:00 PM** PACIFIC TIME**

RFP Title: ***Copier Rental/Lease/Purchase and Service***

RFP Number: ***12-03***

## **1.0 BACKGROUND INFORMATION**

- 1.1 The Superior Court of California, County of San Bernardino (hereinafter referred to as The Court) is seeking a qualified vendor to provide copier rental/lease/purchase, service, and supplies to court locations located within the County. Currently the rental term is 36 months. At the end of the term date vendor to provide new copier model upgrade under the terms and conditions of this agreement. Selected vendor shall not be responsible for removing old existing copiers unless the unit was installed by them.

## **2.0 DESCRIPTION OF SERVICES AND DELIVERABLES**

The Court seeks vendors to provide new copiers of same/similar models or equivalent, model upgrades as appropriate and requested, and to provide on-site services and supplies. The vendor is to provide the most cost effective method of providing this equipment and services to the court by way of rental, lease, or purchase of the equipment and associated services and supplies as per the attached scope of work. In either case whether rental/lease or purchase, vendor must submit purchase information (if available) by which the court may conduct a rental/lease vs. purchase analysis. *It should be noted that the actual number of copiers to be leased/rented/purchase is subject to change based upon current budget constraints and the possibility of closing some Court locations.*

RFP Title: ***Copier Rental/Lease/Purchase and Service***RFP Number: ***12-03*****3.0 TIMELINE FOR THIS RFP**

The Court has developed the following list of key events related to this RFP. All dates are subject to change at the discretion of the Court.

<b>EVENT</b>	<b>DATE</b>
RFP issued	<i>Tuesday September 4, 2012</i>
Deadline for questions	<i>Friday September 14, 2012</i>
Questions and answers posted	<i>Monday September 17, 2012</i>
Latest date and time proposal may be submitted	<i>Friday September 28, 2012 3:00 PM Pacific Time</i>
Evaluation of proposals ( <i>estimate only</i> )	<i>Friday October 12, 2012</i>
Notice of Intent to Award ( <i>estimate only</i> )	<i>Friday October 19, 2012</i>
Negotiations and execution of contract ( <i>estimate only</i> )	<i>Friday November 16, 2012</i>
Contract start date ( <i>estimate only</i> )	<i>Monday December 3, 2012</i>
Contract end date will be based on courts selection of Rental/Lease Pricing or Purchase	<i>TBD</i>

RFP Title: *Copier Rental/Lease/Purchase and Service*RFP Number: *12-03***4.0 RFP ATTACHMENTS**

The following attachments are included as part of this RFP:

<b>ATTACHMENT</b>	<b>DESCRIPTION</b>
Attachment 1:	Scope of work
Attachment 2:	Bid Pricing Sheets
Attachment 3: Terms and Conditions	These terms and conditions will apply to any contract that is issued as the result of this RFP
Attachment 4: Proposer's Acceptance of Terms and Conditions	On this form, the Proposer must indicate acceptance of the Terms and Conditions or identify exceptions to the Terms and Conditions. <b>Note: A material exception to a Minimum Term will render a proposal non-responsive.</b>
Attachment 5: Darfur Contracting Act Certification	If Proposer has had business activities or other operations outside of the United States within the previous three years, Proposer must complete the Darfur Contracting Act Certification and submit the completed certification with its proposal.
Attachment 6: Post-Consumer Content	All businesses shall certify in writing to the contracting officer or his or her representative the minimum percentage, if not exact percentage, of postconsumer recycled-content (PCRC) material in the products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the minimum content requirements specified in law. <b><u>The certification shall be provided regardless of content, even if the product contains no recycled material.</u></b>
Attachment 7: Contractor Certification Clauses	Contractor Representation and Warranties. These clauses will become part of any contract issued as the result of this RFP
Attachment 8: Payment Provisions	Payment Provisions
Attachment 9: Definitions	Standard Business Definitions, Terms and Conditions

**5.0 SUBMISSIONS OF PROPOSALS**

- 5.1 Proposals should provide straight forward, concise information that satisfies the requirements of the "Proposal Contents" section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the RFP's instructions and requirements, and completeness and clarity of content.
- 5.2 The Proposer must submit its proposal in two parts, the technical proposal and the cost proposal.

RFP Title: ***Copier Rental/Lease/Purchase and Service***

RFP Number: ***12-03***

- a. The Proposer must submit **one (1) original and two (2) copies** of the technical proposal. The original must be signed by an authorized representative of the Proposer. The Proposer must write the RFP title and number on the outside of the sealed envelope.
- b. The Proposer must submit **one (1) original and two (2) copies** of the cost proposal. The original must be signed by an authorized representative of the Proposer. The original cost proposal (and the copies thereof) must be submitted to the Court in a single sealed envelope, separate from the technical proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.

- 5.3 Proposals must be delivered by the date and time listed on the coversheet of this RFP to:

USPS Registered

Superior Court of California, County of San Bernardino  
 Financial Services - Purchasing  
 Box 15005  
 San Bernardino, CA 92415-5005

Special Delivery (Fed-Ex, UPS or Hand Delivery)

Superior Court of California, County of San Bernardino  
 Financial Services – Purchasing  
 216 Brookside Ave.  
 Redlands, CA 92373-4606

- 5.4 Late proposals will not be accepted.
- 5.5 Only written proposals will be accepted. Proposals must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered by hand. Proposals may not be transmitted by fax or email.

## **6.0 PROPOSAL CONTENTS**

### 6.1 Instructions for Submitting Proposal

- a. Proposer's name, address, telephone and fax numbers, and federal tax identification number. Note that if Proposer is a sole proprietor using his or her social security number, the social security number will be required before finalizing a contract.

RFP Title: ***Copier Rental/Lease/Purchase and Service***

RFP Number: ***12-03***

- b. Name, title, address, telephone number, and email address of the individual who will act as Proposer's designated representative for purposes of this RFP.
  - c. Acceptance of the Terms and Conditions.
    - i. On Attachment 6, the Proposer must either indicate acceptance of the Terms and Conditions or clearly identify exceptions to the Terms and Conditions. An "exception" includes any addition, deletion, qualification, limitation, or other change.
    - ii. If exceptions are identified, the Proposer must also submit a red-lined version of the Terms and Conditions that clearly tracks proposed changes, and a written explanation or rationale for each exception and/or proposed change. The Court at its sole discretion may determine that an exception or proposed change renders a proposal non-responsive.
  - d. Certifications, Attachments, and other requirements.
    - i. Proposer must include the following certification in its proposal:

Proposer has no interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or rule 10.103 or rule 10.104 of the California Rules of Court, which restrict employees and former employees from contracting with judicial branch entities.
    - ii. If Proposer has had business activities or other operations outside of the United States within the previous three years, Proposer must complete the Darfur Contracting Act Certification (Attachment 3) and submit the completed certification with its proposal.
    - iii. If Proposer is a corporation, proof that Proposer is in good standing and qualified to conduct business in California.
- 6.2 **Cost Proposal.** The following information must be included in the cost proposal. Price sheets are in Excel format. Save documents to your system. Upon completing the pricing on pricing sheets, print the documents and send with your bid hardcopy.
- i. A detailed line item showing Monthly Rental Rate (Do not include tax in monthly rate. Applicable tax will be calculated) for each unit by location.
  - ii. A full explanation of Excess Copy Charges, with number of copies allowed, based on monthly volume with the option for Excess Copy Charge Pool.



RFP Title: ***Copier Rental/Lease/Purchase and Service***

RFP Number: ***12-03***

- iii. A detailed description and pricing for Annual Maintenance Agreement for purchased machines. Indicate cost for supplies, including toner, staples, etc.
- iv. A full explanation of price option for Monthly Rental for unlimited copy usage.

#### Copier Rental Expirations

Estimated number of rental terms expiring for coming years.

Number of copier units	Rental Expiration year
38	2012
22	2013
42	2014

- v. Alternative cost proposal for purchase and repurchase cost/estimated value of sale after 3 years.

**NOTE:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

## **7.0 OFFER PERIOD**

A Proposer's proposal is an irrevocable offer for ninety (90) days following the proposal due date. In the event a final contract has not been awarded within this period, the Court reserves the right to negotiate extensions to this period.

RFP Title: ***Copier Rental/Lease/Purchase and Service***RFP Number: ***12-03*****8.0 EVALUATION OF PROPOSALS/NEGOATIONS**

At the time proposals are opened, each proposal will be checked for the presence or absence of the required proposal contents. The proposals will be evaluated on a 100 point scale using the criteria set forth in the table below. Award, if made, may be based on the highest scored proposal or the Court may enter into negotiations with all or none the responsive bidders in accordance with the Judicial Branch Contracting Manual (JBCM) 2.1.G.4 to ensure that, “*the Judicial Branch Entity (JBE) is receiving the best value or most cost-effective goods, services, information technology, or telecommunications*”. These negotiations may be in form of a request for Best and Final Offer (BAFO) or a methodology that establishes a competitive range based on Bidder’s rankings following bid evaluations.

<b>CRITERION</b>	<b>MAXIMUM NUMBER OF POINTS</b>
<i>Quality of work plan submitted</i>	<i>20</i>
<i>Technical Competency of Bidder’s Personnel</i>	<i>20</i>
<i>Cost</i>	<i>30</i>
<i>Acceptance of the Terms and Conditions</i>	<i>10</i>
<i>Ability to meet timing requirements to complete the project at all Court locations</i>	<i>20</i>

**9.0 INTERVIEWS**

The Court may conduct interviews with Proposers to clarify aspects set forth in their proposals or to assist in finalizing the ranking of top-ranked proposals. The interviews may be conducted in person or by phone. If conducted in person, interviews will likely be held at the Court’s offices. The Court will not reimburse Proposers for any costs incurred in traveling to or from the interview location. The Court will notify eligible Proposers regarding interview arrangements.

RFP Title: ***Copier Rental/Lease/Purchase and Service***

RFP Number: ***12-03***

## **10.0 CONFIDENTIAL OR PROPRIETARY INFORMATION**

One copy of each proposal will be retained by the Court for official files and will become a public record. California judicial branch entities are subject to rule 10.500 of the California Rule of Court, which governs public access to judicial administrative records (see [www.courtinfo.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10\\_500](http://www.courtinfo.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_500)).

If information submitted in a proposal contains material noted or marked as confidential and/or proprietary that, in the Court's sole opinion, meets the disclosure exemption requirements of Rule 10.500, then that information will not be disclosed upon a request for access to such records. If the Court finds or reasonably believes that the material so marked is **not** exempt from disclosure, the Court will disclose the information regardless of the marking or notation seeking confidential treatment.

## **11.0 DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION GOALS**

The Court has waived the inclusion of DVBE participation in this solicitation.

## **12.0 PROTESTS**

Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contract Manual (see [www.courts.ca.gov/documents/jbcl-manual.pdf](http://www.courts.ca.gov/documents/jbcl-manual.pdf)). Failure of a Proposer to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the Court to receive a solicitation specifications protest is Friday September 28, 2012. Protests should be sent to:

Superior Court of California  
County of San Bernardino  
Financial Services – Aileen Yan, Accounting Manager  
Box 15005  
San Bernardino, CA 92415-5005

## **13.0 TIE BID**

In the event of a tie, the contract will be awarded to the winner of a single coin toss. The coin toss will be witnessed by two Court employees. The Court will provide notice of the date and time of the coin toss to the affected Proposers, who may attend the coin toss at their own expense.

RFP Title: ***Copier Rental/Lease/Purchase and Service***

RFP Number: ***12-03***

#### **14.0 CANCELLATION OF SOLICITATION:**

The Court may cancel this solicitation at any time in accordance with the Judicial Branch Contracting Manual (JBCM) 4.4.B, which states in part “*Before a Bid Closing Date, the JBE (Judicial Branch Entity) may cancel a solicitation for any or no reason. After the Bid Closing Date, all bids may be rejected if the JBE determines that:*

- *The Bids received are not really competitive*
- *The cost is unreasonable;*
- *The cost exceeds the amount expected; or*
- *The JBE determines otherwise that awarding the contract is not in the best interest of the JBE*

#### **15.0 PARTICIPATION CLAUSE**

The Court desires those Municipalities and other Tax Exempt Districts within the State of California or County of San Bernardino requiring Security or Weapons Screening Services may, at their option, avail themselves of the contract resulting from this proposal. Upon notice, in writing, the Vendor agrees to the extension of the terms of a resultant contract with such Governmental bodies as though they had been expressly identified in this contract, with the provision that:

- a. Such Governmental body does not have and will not have in force any other contract for like purchases
- b. Such Governmental body does not have under consideration for award any other bids or quotations for like purchases
- c. Such Governmental body shall make purchases and payment directly through the Vendor
- d. The Court will not be liable for any such purchase made between the Vendor and another Governmental body who avail themselves of this contract

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 1  
Scope of Work

## Attachment 1 – Scope of Work

### Full Copier Lease/Rental Service

- Unlimited service calls including travel
- Delivery and Installation of copier
- Needed toner and developer
- Staples as needed (*for those units having this feature*)
- PM Kits as needed
- All repair parts and components
- Annual preventive maintenance inspection
- Unlimited training to Court Staff on operation of copier
- Facilitate meter reading on units (*each court is responsibility for their meter readings*)
- Provide a proposal based on the following criteria for a Rental/Lease based on: 36 month, 48 month, 60 month rental/lease rates

### **RESPONSE TIME FOR SERVICE**

Service calls made are by each court. Calls placed before noon (12:00 *pacific standard time*) vendor to respond to that location on the same business day. Calls received after noon (12:00) shall be next day service.

### **CUSTOMER SUPPORT**

Vendor to designate one contact person for point of contact to resolve any problems, this person will directly contact Court Purchasing Supervisor.

### **SITE INSPECTION**

Selected vendor may inspect copier locations prior to delivery of new unit, this to be coordinated with the Purchasing Department prior to visiting Court site.

### **LOANER PROGRAM**

The Court may have a need for temporary copier. Vendor to provide a loaner copier and deliver same day during business hours at the request of the court, cost for loaner to be on monthly basis plus copy charges.

### **DEFECTIVE EQUIPMENT:**

Copier units that have high rate of service calls and not related to operator error shall be replaced with new copier of equal specifications at the request of the Purchasing Supervisor. Rental term shall continue without interruption.

*RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 1  
Scope of Work*

## **Attachment 1 – Scope of Work**

### **Full Copier Purchase**

- Unlimited service calls including travel
- Delivery and Installation of copier
- Needed toner and developer
- Staples as needed (*for those units having this feature*)
- PM Kits as needed
- All repair parts and components
- Annual preventive maintenance inspection
- Unlimited training to Court Staff on operation of copier
- Facilitate meter reading on units (*each court is responsibility for their meter readings*)
- Pricing to include the following:
  - ü Annual Maintenance/Service Agreement renewable for the service life of the machine (specify term)
  - ü Supplies (toner, developer, staples, etc.)
- Unlimited Training
- Extended Warranty
- Anticipated repurchase cost/estimated value of sale after 3 years

### **RESPONSE TIME FOR SERVICE**

Service calls made are by each court. Calls placed before noon (12:00 *pacific standard time*) vendor to respond to that location on the same business day. Calls received after noon (12:00) shall be next day service.

### **CUSTOMER SUPPORT**

Vendor to designate one contact person for point of contact to resolve any problems, this person will directly contact Court Purchasing Supervisor.

### **SITE INSPECTION**

Selected vendor may inspect copier locations prior to delivery of new unit, this to be coordinated with the Purchasing Department prior to visiting Court site.

### **LOANER PROGRAM**

The Court may have a need for temporary copier. Vendor to provide a loaner copier and deliver same day during business hours at the request of the court, cost for loaner to be on monthly basis plus copy charges

*RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 1  
Scope of Work*

**GENERAL COPIER SPECIFICATIONS EXAMPLE:**

The intent is to provide same functions and features on new model that existed on old copier to be replaced. Vendor to inspect current model to determine functions and features. General manufactures new models have increased copy speed.

Digital Copier with cabinet	
Automatic Document Feeder	Sorting Capability
Finisher	Multi position stapler
Hole Punch	2 and 3 hole
Automatic Duplex	
Paper Drawers	Total paper = 3,600 sheets (4 drawers)
Paper Drawers	Letter and Legal size
Programmable	Copy functions and user code
Copy Speed	Determined by existing copier to be replaced
Copy/Scanner/Fax Features	

**Vendors Qualifications  
Minimum Requirements**

<b>Number of Service technicians dedicated for repairs and service calls</b>	<b>45 Service Technicians.</b>
<b>Current account with customer servicing copiers.</b>	<b>200 Copier Machines with one account</b>
<b>Maintain Inventory of repair parts</b>	<b>Five years</b>
<b>Number of years in business under current company name</b>	<b>8 years</b>
<b>Invoice and Billing</b>	<b>In-house billing and invoice system.</b>

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 1  
Scope of Work

**Vendors Reference / Qualification Form**

**This form must be completed to consider your submission.**

1. Number years in business under current company name : \_\_\_\_\_ Years  
Company Location address: \_\_\_\_\_

2. Number of copier service technicians \_\_\_\_\_

3. Location service technicians respond from: Address: \_\_\_\_\_  
\_\_\_\_\_

4. Do you maintain service repairs parts at your local facility. \_\_\_\_\_ ( Yes/No)  
Estimated inventory value of repair parts: \$ \_\_\_\_\_ at your facility.

5. Provide 3 references of customers you currently provide service for more than 100 copiers:

Agency name	Contact name	# of Copiers
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Indicate if you have in-house billing and accounting system. Give location of your billing department and type of system.

\_\_\_\_\_  
\_\_\_\_\_

Indicate if your company can make some modifications to your existing billing system to accommodate the Court's needs.

\_\_\_\_\_







**GENERAL TERMS AND CONDITIONS – INFORMATION TECHNOLOGY****1. DEFINITIONS**

- a. The Court - Superior Court of California, County of San Bernardino
- b. Contractor - An individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, includes joint ventures, contracting with the Court to do Contract Work.
- c. Buyer - The Court officer or employee who performs day-to-day purchasing and contracting activities.
- d. Deliverables - Goods, materials or services that Contractor shall complete and deliver to The Court specified under the terms of a contract, purchase order or other agreement.

**2. CONTRACT INFORMATION**

This Contract results from a quotation or proposal in response to a solicitation other than those solicitations conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC). Contractor's quotation or proposal is deemed a firm offer and this Contract document is the Court's acceptance of that offer.

**3. COMPLETE INTEGRATION**

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the contract.

**4. SEVERABILITY**

The contractor and the Court agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

**5. INDEPENDENT CONTRACTOR**

Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the Court.

**6. ASSIGNMENT**

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Court. For the purpose of this paragraph, the Court will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.

**7. WAIVER OF RIGHTS**

Any inaction by the Court or the failure of the Court on any occasion to enforce any right or provision of the Contract shall not be construed to be a waiver by the Court of its rights hereunder and shall not prevent the Court from enforcing such provision or right in any future occasion. The rights and remedies of the Court herein are cumulative and are in addition to any other rights or remedies that the Court may have at law or in equity.

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

## **8. CHOICE OF LAW**

Unless otherwise specified in this agreement, California law governs this agreement. Jurisdiction and venue for any legal action arising from the agreement shall exclusively reside in San Bernardino, California, and the parties hereby consent to the jurisdiction and venue of such courts.

## **9. ORDER OF PRECEDENCE**

It is the intention of both parties that all Contract Documents be read and construed as a unified whole whenever possible. However, in the event of a conflict between the terms of the Contract Documents, the following order of precedence shall govern and determine which terms prevail:

1. Standard Agreement Cover Sheet(s);
2. Exhibit B – Statement of Work;
3. Exhibit C – Payment Provisions
4. Exhibit D – General Terms and Conditions
5. Exhibit E – Contractor Certification Clauses
6. Exhibit A – Standard Business Definitions, Terms and Conditions.

Any Amendments to this Agreement, starting with the most recent, shall take precedence over existing Contract Documents. In the event of a conflict between an Amendment and the terms of any other Contract Document, the terms of the Amendment shall prevail.

All Court-issued competitive solicitation and related documents (e.g., the Court's RFP, IFP, Addendum, Questions and Answers), and cost or technical specifications contained in Contractor's bid or proposal submitted in response to the Court's competitive solicitation, may be relied upon for the purpose of clarifying, illustrating, or explaining the intention and understanding of the parties as to the performance of this Agreement.

## **10. NOTICES**

Notices under this agreement must be made in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail. Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to the other party's contract representative as designated in the agreement cover sheet. Either party may change its address for receipt of notice by giving notice at any time to the other party in the manner permitted by this paragraph.

## **11. LOSS LEADER**

Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.

## **12. ANTITRUST CLAIMS**

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

Contractor shall comply with the requirements of Government Code sections set out below.

- a. The Government Code chapter on antitrust claims contains the following definitions:
  - i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the state or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of § 16750 of the Business and Professions Code.
  - ii. "Public purchasing body" means the state or the subdivision or agency making a public purchase. See Government Code § 4550.
- b. Contractor shall assign to the Court all rights, title, and interest in and to all causes of action it may have under § 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, commencing with section 16700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the Court pursuant to the bid. Such assignment shall be made and become effective at the time the Court tenders final payment to the Contractor. See Government Code § 4552.
- c. If the Court receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Court any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the Court as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. See Government Code § 4553.
- d. Upon demand in writing by the Contractor, the Court shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and
  - i. The Court has not been injured thereby, or
  - ii. The Court declines to file a court action for the cause of action. See Government Code § 4554.

### 13. PACKING AND SHIPMENT

- a. All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - i. Show the number of the container and the total number of containers in the shipment; and
  - ii. The number of the container in which the packing sheet has been enclosed.
- b. All shipments by Contractor or its subcontractors must include packing sheets identifying: the Court's Contract number, item number, quantity and unit of measure, part number and description of the Goods shipped, and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c. Shipments must be made as specified in this Contract, as it may be amended.

**14. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES**

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the Court unless expressly included and itemized in the Contract.

- a. Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B), freight terms and routing instructions. The Court may permit the use of an alternate carrier at no additional cost to the Court with advance written authorization of the Buyer.
- b. On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the Court in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on the request of the Court, shall at Contractor's own expense assist the Court in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

**15. DELIVERY**

Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the Court shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the Court at law or in equity.

**16. SUBSTITUTIONS**

Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

**17. INSPECTION, ACCEPTANCE, AND REJECTION**

- a. Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the Court covering Deliverables and services under this Contract and will tender to the Court only those Deliverables that have been inspected and found to conform to this Contract's requirements. Contractor will keep records evidencing inspections and their result, and will make these records available to the Court during Contract performance and for three years after final payment. Contractor shall permit the Court to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- b. All Deliverables may be subject to inspection and test by the Court or its authorized representatives.

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- c. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the Court. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d. All Deliverables may be subject to final inspection, test and acceptance by the Court at destination, notwithstanding any payment or inspection at source.
- e. The Court shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. Unless otherwise specified in the Contract, if the Court does not provide such notice of rejection within thirty (30) days of delivery, such Deliverables and services will be deemed to have been accepted. Acceptance by the Court will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the Court might have at law or by express reservation in this Contract with respect to any nonconformity.

## 18. SAMPLES

- a. Samples of items may be required by the Court for inspection and specification testing and must be furnished free of expense to the Court. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b. Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.

## 19. WARRANTY

- a. Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. Contractor warrants that:
  - i. Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and
  - ii. The Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor will warrant that its Deliverables provide all material functionality required thereby.

In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The Court's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

- b. Contractor warrants that Deliverables furnished hereunder

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- i. Will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and
    - ii. Will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the Court believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor will, upon the Court's request, provide a master copy of the Software for comparison and correction.
  - c. Unless otherwise specified in the Statement of Work:
    - i. Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
    - ii. Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from
      - A. A modification made by the Court, unless such modification is approved or directed by Contractor,
      - B. Use of Software in combination with or on products other than as specified by Contractor, or
      - C. Misuse by the Court.
    - iii. Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor will pass through any such warranties to the Court and will reasonably cooperate in enforcing them. Such warranty pass-through will be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
  - d. All warranties, including special warranties specified elsewhere herein, shall inure to the Court, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
  - e. Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the Court's exclusive remedy and Contractor's sole obligation will be limited to:
    - i. Re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
    - ii. Should the Court in its sole discretion consent, refund of all amounts paid by the Court for the nonconforming Deliverable or service and payment to the Court of any additional amounts necessary to equal the Court's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance.



RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

The payment obligation in subsection (e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."

- f. EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 20. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on Court premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the Court may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

## 21. INSURANCE

- a. **Coverage.** When performing work on property in the care, custody or control of the Court, Contractor shall maintain all applicable insurance requirements as specified below. Court may require Contractor to provide proof of other insurance if appropriate under the scope of the Contract.
- i. **Commercial General Liability.** In addition to any other insurance required under this Agreement, Contractor shall provide and maintain at Contractor's expense Commercial General Liability coverage if this Agreement involves the hazardous activities or as the Court deems necessary. The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit.
  - ii. **Workers Compensation and Employer's Liability.** The policy is required only if Contractor have employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease;
  - iii. **Professional Liability.** The policy must cover liability resulting from errors or omissions committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1 million per claim.
  - iv. **Commercial Automobile Liability.** The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.
- b. **"Claims Made" Coverage.** If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the Court's acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Services commence under this Agreement.

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- c. **Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.
- d. **Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- e. **Deductibles and Self-Insured Retentions.** Contractor shall declare to the Court all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Court's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- f. **Additional Insured Status.** Contractor shall require Contractor's commercial general liability insurer, Contractor's commercial automobile liability insurer, and, if applicable, Contractor's commercial umbrella liability insurer to name Court and Court Personnel as additional insureds with respect to liability arising out of Contractor's Services under this Agreement.
- g. **Certificates of Insurance.** Before Contractor begin performing Services, Contractor shall give the Court certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 15 or more days' prior written notice to the Court. Any replacement certificates of insurance are subject to the approval of the Court, and, without prejudice to the Court, Contractor shall not perform work before the Court approves the certificates. No payments will be made to the Contractor until all required insurance certificates are on file with the Court.
- h. **Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- i. **Required Policy Provisions.** Each policy must provide, as follows:
  - i. Insurance Primary; Waiver of Subrogation. The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by the Court and Court Personnel, and the basic coverage insurer waives any and all rights of subrogation against Court and Court Personnel; and
  - ii. Separation of Insureds. The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.
- j. **Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
  - i. **Separate.** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
  - ii. **Joint.** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- k. **Consequences of Lapse.** If required insurance lapses during the Term, the Court is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

**22. TERMINATION FOR NON-APPROPRIATION OF FUNDS**

- a. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the Court under this Contract, and relieve the Court of any further obligation therefor.
- b. COURT AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, DELIVERABLES SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE COURT, SUBJECT TO NORMAL WEAR AND TEAR. COURT FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

**23. TERMINATION FOR CONVENIENCE OF THE COURT**

- a. The Court may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Presiding Judge, Court Executive Officer or authorized Court staff determines that a termination is in the Court's interest.
- b. After receipt of a Notice of Termination, and except as directed by the Court, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
  - i. Stop work as specified in the Notice of Termination.
  - ii. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
  - iii. Terminate all subcontracts to the extent they relate to the work terminated.
  - iv. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c. Unless otherwise set forth in the Statement of Work, if the Contractor and the Court fail to agree on the amount to be paid because of the termination for convenience, the Court will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
  - i. The Contract price for Deliverables or services accepted by the Court and not previously paid for, adjusted for any savings on freight and other charges; and
  - ii. The total of:

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
  - B. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
  - C. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- d. The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

#### **24. TERMINATION FOR DEFAULT**

- a. The Court may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
  - i. Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
  - ii. Make progress, so that the lack of progress endangers performance of this Contract; or
  - iii. Perform any of the other provisions of this Contract.
- b. The Court's right to terminate this Contract under sub-section a) above, may be exercised if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the Court's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.
- c. If the Court terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the Court for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d. If the Contract is terminated for default, the Court may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the Court, as directed by the Buyer, any:
  - i. Completed Deliverables,
  - ii. Partially completed Deliverables, and,

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- iii. Subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the Court rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the Court has an interest.
- e. The Court shall pay Contract price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the Court for the protection and preservation of the property; provided that where the Contractor has billed the Court for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The Court may withhold from these amounts any sum it determines to be necessary to protect the Court against loss because of outstanding liens or claims of former lien holders.
- f. If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Court.
- g. The rights and remedies of the Court in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

## **25. FORCE MAJEURE**

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a. Acts of God or of the public enemy, and
- b. Acts of the federal or state government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

## **26. RIGHTS AND REMEDIES OF THE COURT FOR DEFAULT**

- a. In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the Court may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the Court, and immediately replace all such rejected items with others conforming to the Contract.

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- b. In addition to any other rights and remedies the Court may have, the Court may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c. In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the Court in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d. The Court reserves the right to offset the reasonable cost of all damages caused to the Court against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

## 27. LIMITATION OF LIABILITY

Unless otherwise stated in the Statement of Work:

- a. Contractor's liability for damages to the Court for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b. The foregoing limitation of liability shall not apply
  - i. To liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights;
  - ii. To claims covered by any specific provision herein calling for liquidated damages;
  - iii. To claims arising under provisions herein calling for indemnification for third party claims against the Court for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or
  - iv. To costs or attorney's fees that the Court becomes entitled to recover as a prevailing party in any action.
- c. The Court's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the Court's sovereign immunity or any other immunity from suit provided by law.
- d. In no event will either the Contractor or the Court be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- i. To the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or
- ii. To the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

**28. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY**

- a. The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the Court, employees of the Court, persons designated by the Court for training, or any other person(s) other than agents or employees of the Contractor, designated by the Court for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the Court's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b. Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

**29. INDEMNIFICATION**

Unless otherwise specified in the Statement of Work, Contractor agrees to indemnify, defend and save harmless the Court, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a. The Court will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
  - i. When substantial principles of government or public law are involved, when litigation might create precedent affecting future Court operations or liability, or when involvement of the Court is otherwise mandated by law, the Court may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
  - ii. The Court will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
  - iii. The Court will reasonably cooperate in the defense and in any related settlement negotiations.

**30. NEWLY MANUFACTURED GOODS**

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

All Goods furnished under this Contract shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless otherwise specified.

### **31. CONTRACT MODIFICATION**

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

### **32. CONFIDENTIALITY OF DATA**

All financial, statistical, personal, technical and other data and information relating to the Court's operation which are designated confidential by the Court and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the Court. The identification of all such confidential data and information as well as the Court's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the Court in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the Court to be adequate for the protection of the Court's confidential information, such methods and procedures may be used, with the written consent of the Court, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

### **33. NEWS RELEASES**

News releases pertaining to this Contract shall not be made without prior written approval of the Presiding Judge, Court Executive Officer or authorized Court staff.

### **34. DOCUMENTATION**

- a. The Contractor agrees to provide to the Court, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the Court in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b. If the Contractor is unable to perform maintenance or the Court desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the Court the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the Court to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the Court may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the Court may have hired to maintain the Equipment to use the above noted Documentation. The Court agrees to



RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

### **35. RIGHTS IN WORK PRODUCT**

- a. All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b. Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- b. The Court will have Government Purpose Rights to the Work Product as Deliverable or delivered to the Court hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the Court for any state government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any state government purpose. Such recipients of the Work Product may include, without limitation, state Contractors, California local governments, the U.S. federal government, and the state and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- c. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the Court may be used by either party without obligation of notice or accounting.
- d. This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the Court pursuant to this Contract.

### **36. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA**

- a. The Court agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the Court's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. Court agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to California Rule of Court 10.500.

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- b. The Court will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c. The Court agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

**37. PATENT, COPYRIGHT, AND TRADE SECRET INDEMNITY**

- a. Contractor will indemnify, defend, and save harmless the Court, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the Court such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the Court with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section 39a). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the Court. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section 39a) will be conditional upon the following:
  - i. The Court will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - ii. Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that
    - A. when substantial principles of government or public law are involved, when litigation might create precedent affecting future Court operations or liability, or when involvement of the Court is otherwise mandated by law, the Court may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability);
    - B. The Court will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and
    - C. The Court will reasonably cooperate in the defense and in any related settlement negotiations.
- b. Contractor may be required to furnish a bond to the Court against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- c. Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the Court shall permit the Contractor at its option and expense either

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

to procure for the Court the right to continue using the Deliverables or Software, or to replace or modify the same so that they become non infringing. If none of these options can reasonably be taken, or if the use of such Deliverables or Software by the Court shall be prevented by injunction, the Contractor agrees to take back such Deliverables or Software and make every reasonable effort to assist the Court in procuring substitute Deliverables or Software. If, in the sole opinion of the Court, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from the Contractor under this Contract impractical, the Court shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables or Software and refund any sums the Court has paid Contractor less any reasonable amount for use or damage.

- e. The Contractor shall have no liability to the Court under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - i. The combination or utilization of Deliverables furnished hereunder with Equipment or devices not made or furnished by the Contractor; or,
  - ii. The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor supplied Operating Software; or
  - iii. The modification by the Court of the Equipment furnished hereunder or of the Software; or
  - iv. The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- e. Contractor certifies that it has appropriate systems and controls in place to ensure that Court funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

### **38. EXAMINATION AND AUDIT**

Contractor agrees that the Court, or its designated representative shall have the right to review and copy any records and supporting Documentation pertaining to performance of this Contract. Contractor agrees to maintain such records for possible audit for a minimum of four (4) years after final payment, unless a longer period of records retention is stipulated. All records are subject to California Rule of Court 10.500. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the Court to audit records and interview staff in any subcontract related to performance of this Contract.

### **39. DISPUTES**

- a. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, Contractor shall submit to the Assistant Court Executive Officer or authorized Court staff a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract, unless the Court, on its own initiative, has already rendered such a final decision. Contractor's written demand shall be fully

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the Court is liable. If the Contractor is not satisfied with the decision of the Assistant Court Executive Officer or Court authorized staff, the Contractor may appeal the decision to the Presiding Judge or the Court Executive Officer.

- b. Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the Court's instructions. Contractor's failure to diligently proceed in accordance with the Court's instructions shall be considered a material breach of this Contract.
- c. Any final decision of the Court shall be expressly identified as such, shall be in writing, and shall be signed by the Assistant Court Executive Officer or authorized Court staff, or the Presiding Judge or Court Executive Officer if an appeal was made. If the Court fails to render a final decision within 90 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The Court's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.

#### **40. STOP WORK**

- a. The Court may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 90 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 90 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Court shall either:
  - i. Cancel the Stop Work Order; or
  - ii. Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b. If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The Court shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
  - i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

- ii. The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the Court decides the facts justify the action, the Court may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the Court, the Court shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- d. The Court shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

#### 41. FOLLOW-ON CONTRACTS

- a. If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
  - i. Will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
  - ii. Will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b. "Technical Consulting and Direction" means services for which the Contractor received compensation from the Court and includes:
  - i. Development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
  - ii. Development or design of test requirements;
  - iii. Evaluation of test data;
  - iv. Direction of or evaluation of another Contractor;
  - v. Provision of formal recommendations regarding the acquisition of Information Technology products or services; or
  - vi. Provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c. To the extent permissible by law, the Presiding Judge, Court Executive Officer, or authorized Court staff may waive the restrictions set forth in this Section by written notice to the Contractor if

RFP 12-03 Copier Rental/Lease/Purchase and Service  
Attachment 3

the Presiding Judge, Court Executive Officer, or authorized Court staff determines their application would not be in the Court's best interest. Except as prohibited by law, the restrictions of this Section will not apply:

- i. To follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
  - ii. Where the Court has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d. The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

#### **42. FOUR-DIGIT DATE COMPLIANCE**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the Court. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

#### **43. COUNTERPARTS**

This agreement may be executed in counterparts, each of which is considered an original.

*End of Attachment 3*

RFP Number: 12-03  
Attachment 4  
Proposer's Acceptance of Terms and Conditions

**ATTACHMENT 4  
PROPOSER'S ACCEPTANCE OF TERMS AND CONDITIONS**

Mark the Appropriate Choice, below:

\_\_\_\_\_ Proposer accepts the Terms and Conditions as outlined in Attachments 3 & 7 without exception.

OR

\_\_\_\_\_ Proposer proposes exceptions/modifications to Attachments 3 or 7. Summarize any and all exceptions to the attachments, below. Enclose both (i) a red-lined version of the attachments, that clearly shows each proposed exception/modification, and (ii) provide a written summary of each change, including the vendor's rationale for proposing each such exception/modification.

---

---

---

---

---

---

---

---

---

---

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

RFP Number: 12-03  
Attachment 5

Pursuant to Public Contract Code section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, please insert your company name and Federal ID Number and complete only one of the following three paragraphs (via initials for Paragraph #1 or Paragraph #2, or via initials and certification for Paragraph #3):

<i>Company/Vendor Name (Printed)</i>	<i>Federal ID Number</i>
<i>Printed Name and Title of Person Initialing (for Options 1 or 2)</i>	

1.     \_\_\_\_\_     We do not currently have, and have not had within the previous  
Initials     three years, business activities or other operations outside of the  
United States.

**OR**

2.     \_\_\_\_\_     We are a scrutinized company as defined in Public Contract Code  
Initials     section 10476, but we have received written permission from the  
Department of General Services (DGS) to submit a bid or proposal  
pursuant to Public Contract Code section 10477(b). A copy of the  
written permission from DGS is included with our bid or proposal.

**OR**

3.     \_\_\_\_\_     We currently have, or we have had within the previous three years,  
Initials     business activities or other operations outside of the United States,  
+ certification     but we certify below that we are not a scrutinized company  
below     as defined in Public Contract Code section 10476.

**CERTIFICATION For # 3.**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in # 3. This certification is made under the laws of the State of California.

<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County and State of</i>



STATE OF CALIFORNIA  
 California Integrated Waste Management Board  
 CIWMB 74 (Revised 4/07 for State Agencies)

To be completed by the State agency	
State Agency:	
Purchasing Agent:	PO #:
Phone:	E-mail:

**Postconsumer-Content Certification**

The State Agency Buy Recycled Campaign (SABRC) is a state mandated program that requires the reporting of all purchases made within 11 specified product categories. All state agencies are required to verify the recycled-content of all products purchased within each of these categories.

All businesses shall certify in writing to the contracting officer or his or her representative the minimum percentage, if not exact percentage, of postconsumer recycled-content (PCRC) material in the products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the minimum content requirements specified in law (see reverse side). The certification shall be furnished under penalty of perjury. The certification shall be provided regardless of content, even if the product contains no recycled material. A State agency may waive the certification requirement if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet website.

Contractor/Company Name \_\_\_\_\_

Address \_\_\_\_\_ Phone \_\_\_\_\_

Purchase Order # RFQ # RFP # IFB # Cal Card Order #	Item #	Product or Services Description	<sup>1</sup> Percent Postconsumer Recycled-Content Material	<sup>2</sup> SABRC Product Category Code	Meets SABRC

Public Contract Code sections 12205 (a) (1), (2), (3) and (b) (1), (2), and (3)

Pursuant to Public Contract Code 12205(a)(1), I certify under penalty of perjury under the laws of the State of California that the above information is true and correct.

\_\_\_\_\_  
 Print Name Signature Title Date

(See footnotes on the back of this page.)

**FOOTNOTES:**

1. "Postconsumer recycled-content material" is defined as products that were bought, used, and recycled by consumers. For example, a newspaper that has been purchased, recycled, and used to make another product would be considered postconsumer material.
2. "Product category" refers to one of the categories listed below, into which the reportable purchase is best placed.
3. If the product does not belong in any of the product categories, enter "N/A." Common "N/A" products include wood products, natural textiles, aggregate, concrete, and electronics such as computers, TV, software on a disk or CD, and telephones.
4. Reused or refurbished products, there is no minimum content requirement. (PCC 12209 (l))

Code	Product Categories	Product Examples <i>Examples are inclusive but are not limited to the individual product.</i>	Minimum Postconsumer Content Requirement
1	Paper Products	Paper janitorial supplies, cartons, wrapping, packaging, file folders, and hanging files, building insulation and panels, corrugated boxes, tissue, and toweling.	30 percent by fiber weight postconsumer fiber.
2	Printing and Writing Papers	Copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications.	30 percent by fiber weight postconsumer fiber.
3	Mulch, Compost, and Co-compost Products	Soil amendments, erosion controls, soil toppings, ground covers, weed suppressants, and organic materials used for water conservation; yard trimmings and wood byproducts that are separated from the municipal solid waste stream or other source of organic materials such as biosolids or other comparable substitutes such as livestock, horse, or other animal manure, food residues or fish processing byproducts; mechanical breakdown of materials.	80 percent recovered material that would otherwise be normally disposed of in a landfill.
4	Glass Products	Windows, test tubes, beakers, laboratory or hospital supplies, fiberglass (insulation), reflective beads, tiles, construction blocks, desktop accessories, flat glass sheets, loose-grain abrasives, deburring media, liquid filter media, and containers.	10 percent postconsumer, by weight.
5	Lubricating Oils	Intended for use in a crankcase, transmission, engine, power steering, gearbox, differential chainsaw, transformer dielectric, fluid, cutting, hydraulic, industrial, or automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.	70 percent re-refined base oil.
6a	Plastic Products	Printer or duplication cartridges, diskette, carpet, office products, plastic lumber, buckets, wastebaskets, containers, benches, tables, fencing, clothing, mats, packaging, signs, posts, binders, sheet, buckets, building products, garden hose, and trays.	10 percent postconsumer, by weight.
6b	Printer or Duplication Cartridges		a. Have 10 percent postconsumer material, or b. Are purchased as remanufactured, or c. Are backed by a vendor-offered program that will take back the printer cartridge after their useful life and ensure that the cartridge is recycled and comply with the definition of recycled as set forth in section Public Contract Code 12156.
7	Paint	Water-based paint, graffiti abatement, interior and exterior, and maintenance.	50 percent postconsumer paint (exceptions when 50 percent postconsumer content is not available or is restricted by a local air quality management district, then 10 percent postconsumer content may be substituted).
8	Antifreeze	Recycled antifreeze, and antifreeze containing a bittering agent or made from polypropylene or other similar non-toxic substance.	70 percent postconsumer material.
9	Tires	Truck and bus tires, and those used on fleet vehicles and passenger cars.	Retreaded: Must use an existing casing that has undergone retreading or recapping process in accordance with Public Resource Code (commencing with section 42400).
10	Tire- Derived Products	Flooring, mats, wheelchair ramps, playground cover, parking bumpers, bullet traps, hoses, bumpers, truck bedliners, pads, walkways, tree ties, road surfacing, wheel chocks, rollers, traffic control products, mudflaps, and posts.	50 percent recycled used tires.
11	Metal	Staplers, paper clips, steel furniture, desks, pedestals, scissors, jacks, rebar, pipe, plumbing fixtures, chairs, ladders, file cabinets, shelving, containers, lockers, sheet metal, girders, building and construction products, bridges, braces, nails, and screws.	10 percent postconsumer material, by weight.

For additional information, please visit [www.ciwm.ca.gov/BuyRecycled/StateAgency/](http://www.ciwm.ca.gov/BuyRecycled/StateAgency/)

RFP Number: 12-03 copier Rental/Lease/Purchase and Service  
Attachment 7  
Contractor Certification Clauses

## CONTRACTOR CERTIFICATION CLAUSES

Contractor certifies that the following representations and warranties are true:

1. **AUTHORITY.** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the Court harmless from and against any loss, cost, liability, and expense (including attorney fees) arising out of any breach of this warranty. The Contractor's signatory has authority to bind Contractor to this agreement. This agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and is in good standing in the State of California.
2. **NOT AN EXPATRIATE CORPORATION.** Contractor hereby declares that it is not an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the Court.
3. **SALES AND USE TAX COLLECTION.** In accordance with PCC Section 10295.1, Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise Court of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
4. **NO GRATUITIES.** The Contractor warrants that no 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 with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the Court shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the Court in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the Court provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
5. **NO CONFLICT OF INTEREST.** Contractor has no interest that would constitute a conflict of interest under Public Contract Code Sections 10365.5, 10410 or 10411; Government Code Sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with the Court or any Judicial Branch Entities.
6. **NO INTERFERENCE WITH OTHER CONTRACTS.** To the best of Contractor's knowledge, this agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
7. **NO LITIGATION.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending, or to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse effect on Contractor's business, the validity of enforceability of this agreement, or Contractor's ability to perform this agreement.

*RFP Number: 12-03 copier Rental/Lease/Purchase and Service  
Attachment 7  
Contractor Certification Clauses*

8. **COMPLIANCE WITH LAWS GENERALLY.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.
9. **WORK ELIGIBILITY.** All personnel assigned to perform this agreement are able to work legally in the United States and possess valid proof of work eligibility.
10. **DRUG-FREE WORKPLACE.** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug free workplace by taking the following actions:
  - a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
  - b. Establish a Drug Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
    - i. The dangers of drug abuse in the workplace;
    - ii. The person's or organization's policy of maintaining a drug free workplace;
    - iii. Any available counseling, rehabilitation and employee assistance programs; and,
    - iv. Penalties that may be imposed upon employees for drug abuse violations.
  - c. Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
    - i. Will receive a copy of the company's drug free policy statement; and,
    - ii. Will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
11. **UNION ACTIVITIES.** As required under Government Code sections 16645-16649, Contractor shall:
  - a. Include with any request for cost reimbursement from the Court's funds a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing;
  - b. Not assist, promote, or deter union organizing by employees performing work under Court contracts;
  - c. Not use the Court's funds received under this agreement to assist, promote, or deter union organizing;
  - d. Not, for any business conducted under this agreement, use any property of the Court to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the Court property is equally available to the general public for holding meetings; and

*RFP Number: 12-03 copier Rental/Lease/Purchase and Service  
Attachment 7  
Contractor Certification Clauses*

- e. If the Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, maintain sufficient records to show that no reimbursement from the Court's funds has been sought for these costs, and provide those records to the Attorney General upon request.

**12. NO HARASSMENT.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.

**13. NON-DISCRIMINATION.**

- a. During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

**14. SPECIAL PROVISIONS REGARDING DOMESTIC PARTNERS, SPOUSES, AND GENDER DISCRIMINATION.** If this agreement provides for total compensation of more than \$100,000, Contractor is in compliance with Public Contract Code Section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

**15. SPECIAL PROVISIONS REGARDING COMPLIANCE WITH NATIONAL LABOR RELATIONS BOARD ORDERS.** If this agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount of less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

RFP Number: 12-03 copier Rental/Lease/Purchase and Service  
Attachment 7  
Contractor Certification Clauses

**16. SPECIAL PROVISIONS REGARDING COMPLIANCE WITH THE SWEATFREE CODE OF CONDUCT.** If this agreement provides for furnishing equipment, materials, or supplies other than public works, or for the laundering of apparel, garments, or corresponding accessories:

- a. No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the Court under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108. This declaration is made under penalty of perjury.
- b. Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a) and shall provide the same rights of access to the Court.

**17. SPECIAL PROVISIONS REGARDING COMPLIANCE WITH THE CHILD SUPPORT COMPLIANCE ACT.** For any contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110 that:

- a. The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b. The Contractor, to the best of its knowledge, is complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**18. SPECIAL PROVISIONS REGARDING DISCHARGE VIOLATIONS.** If Contractor is a private entity, Contractor warrants that it is not in violation of any order of resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violations of water discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

**19. ELECTRONIC WASTE RECYCLING ACT.** If this agreement provides for the purchase or lease of electronics covered under the Electronic Waste Recycling Act of 2003, Public Resources Code Sections 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.

*RFP Number: 12-03 copier Rental/Lease/Purchase and Service  
Attachment 7  
Contractor Certification Clauses*

**20. USE OF POSTCONSUMER MATERIAL.** If this Agreement provides for the purchase and sale of Goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of the Contractor's postconsumer material in these Goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or vendor website:

- a. Contractor has delivered a declaration to the Court specifying the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code section 12200 in Goods offered or sold to the JBE, regardless of whether the Goods meet the requirements of Public Contract Code section 12209. ;
- b. Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of a the current declaration to the Court, in which case the current declaration as amended will be true and correct; and
- c. If Contractor sells under this Agreement any printer or duplication cartridges that comply with Public Contract Code section 12209, Contractor has so specified in the declaration required under this section.

Contractor shall cause its representations and warranties to remain true during the term of this agreement. Contractor shall promptly notify the Court if any representation and warranty becomes true.

**21. EQUIPMENT PURCHASE CONTRACTS**

Contracts providing for the purchase of equipment using Court funds should include a provision in substance as follows:

- a. Title to equipment purchased or built with Court funds vests in the Court upon payment of the purchase price; and
- b. The Court may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from contractor's invoice to the Court, or require contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the Court at no expense to the Court. If a theft occurs, Contractor must file a police report immediately.

**22. EQUIPMENT RENTAL CONTRACTS**

The Court will not agree to:

- a. Indemnify the Contractor
- b. Assume responsibility for matters beyond its control;
- c. Agree to make payments in advance
- d. Accept any other provision creating contingent liability against the Court; or
- e. Agree to obtain insurance to protect the Contractor.

The Court does not have a responsibility for loss or damage to the rented equipment arising from causes beyond the control of the Court. With the exception of any provision obligating the Court to return the equipment in good condition, subject to reasonable wear and tear, the Court shall not be liable for loss or damage arising from causes beyond the control of the Court. The responsibility of the Court is expressly

*RFP Number: 12-03 copier Rental/Lease/Purchase and Service*

*Attachment 7*

*Contractor Certification Clauses*

limited to repairs and liability for damage or loss to that made necessary by or resulting from the negligent act or omission of the Court or its officers, employees or agents.

If the Court does not elect to maintain the equipment;

- a. The Contractor, as lessor is obligated to keep the equipment in good working order and to make all necessary repairs and adjustments without qualification; and
- b. The Court may terminate or cease paying rent should the Contractor fail to maintain the equipment properly.

The Court will not pay personal property taxes with regard to the rental/lease agreement.

*End of Attachment 9*



**ATTACHMENT 8 - PAYMENT PROVISIONS****1. COMPENSATION****2. EXPENSES**

The Court is not responsible for any travel expenses, including but not limited to mileage and lodging, that the Contractor may incur in the performance of this agreement.

**3. INVOICING AND PAYMENT**

- a.** The Court shall have no obligations to pay for any work or product until one original and two copies of a correct, itemized invoice is received by the Court's Financial Services department at the address below:

Superior Court of California, County of San Bernardino  
Financial Services, Accounts Payable  
Box 15005  
San Bernardino, CA 92415-5005

- b.** The Court shall endeavor to remit payment within thirty (30) days from the Court's approval of a correct, itemized invoice. Each invoice shall be printed on Contractor's standard printed bill form and shall include:

- i. The agreement and purchase order number,
- ii. Contractor's name and address,
- iii. The nature of the invoiced charge,
- iv. The total invoiced amount, and
- v. Such detail as is reasonably necessary to permit the Court to evaluate the work performed, including, if applicable, the number of hours worked and the applicable hourly rate.

Upon request from the Court, Contractor shall promptly correct any inaccuracy and resubmit the invoice.

- c.** The Court may withhold payment if the Contractor fails to perform in accordance to the terms of this agreement. In the event an invoice or other demand for payment is disputed, the Court may withhold the disputed portion of the payment. Upon Contractor's request, the Court shall provide a written explanation of the disputed portion.

*End of Attachment 8*

## ATTACHMENT 9 - DEFINITIONS

As used in this Agreement, the following terms have the indicated meanings:

**“Agreement”** means this Standard Agreement as defined on the Coversheet.

**“Bid”** means a response to a competitive solicitation by the Court, regardless of the type of solicitation document (e.g. Request for Quote, Invitation for Bid, Request for Proposal) used.

**“Compensation”** means all remuneration owed to Contractor in respect of Services, including Contractor’s professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.

**“Consulting Services”** refers to the services performed under “Consulting Services Agreements,” which are defined in Public Contract Code section 10335.5, substantially, as contracts that:

- (1) Are of an advisory nature;
- (2) Provide a recommended course of action or personal expertise;
- (3) Have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and
- (4) Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

The end product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

"Consulting Services Agreements" do not include:

- (1) Contracts between a state agency and the federal government; or
- (2) Contracts with local agencies, as defined in Revenue and Taxation Code, section 2211, to subvne federal funds for which no matching state funds are required.

**“Contractor”** means the person or entity defined on the coversheet.

**“Court”** refers to the Superior Court of California, County of San Bernardino

**“Coversheet”** refers to the first sheet of this Agreement.

**“Deliverables”** means goods or services to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.

**“Documentation”** means nonproprietary manuals and other printed materials necessary or useful to the Court in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the Court hereunder constitute Documentation only to the extent that such materials are described in or required by the Statement of Work.

**“DVBE”** is an acronym for “disabled veterans business enterprise”.

**“Effective Date”** has the meaning defined on the coversheet of this Agreement.

**“Expiration Date”** is the last day of the Term, unless the Initial Term is extended by exercise of an option. In that event, the Expiration Date will instead refer to the date specified as the expiration date in the notice of exercise of the option.

**“Goods”** means all types of tangible personal property, including but not limited to materials, supplies, and equipment.

**“Initial Term”** is the period commencing on the Effective Date and expiring on the Expiration Date set forth on the coversheet of this Agreement.

**“Judicial Branch Entity”** means any California superior or appellate court, the Judicial Council of California, the Administrative Office of Courts, and the Habeas Corpus Resource Center; these entities comprise the “Judicial Branch.”

**“Judicial Branch Personnel”** means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

**“Loss,”** as used in the indemnity provisions of this Agreement includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys’ fees.

**“Option Period”** means the period, if any, through which this Agreement may be extended by a party.

**“Services”** means the work to be performed by the Contractor as described in the Statement of Work.

**“Subcontractor”** means a person or business entity that has a contract (as an independent contractor and

not an employee) with Contractor to provide some portion of the Work of this agreement.

**“Term”** comprises the Initial Term and any Option Period.

**“Termination Date”** has the same meaning as “Expiration Date” unless this Agreement is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date this Agreement is validly terminated..

**“Work”** means any or all labor, Goods, Services, Deliverables, equipment, supplies, materials, tasks, and any other items or activities to be furnished under this agreement or are necessary for the performance thereof.

*End of Attachment 9*

## Question and Answers for Bid #RFP-12-03 - Copier Rental/Lease/Purchase and Service

### OVERALL BID QUESTIONS

There are no questions associated with this bid. If you would like to submit a question, please click on the "Create New Question" button below.

Question Deadline: Sep 14, 2012 4:30:00 PM PDT