



*First Judicial District of Pennsylvania  
Procurement Unit  
368 City Hall  
Philadelphia, Pennsylvania 19107  
(215) 683-7940  
Fax: (215)683-7942  
<http://courts.phila.gov>*

Marc Flood, Esquire  
Deputy Court Administrator

May 8, 2018

Dear Prospective Vendor:

You are invited to submit a bid for drug testing instrument and supplies, related peripherals and/or any applicable services in accordance with the enclosed Invitation to Bid (ITB).

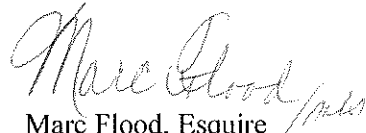
All bids must be submitted in five (5) copies to the First Judicial District of Pennsylvania, Procurement Unit, Attention: Drug Testing Instrument and Supplies ITB, 368 City Hall, Philadelphia, Pennsylvania 19107.

Bids must be received in a sealed envelope at the above address no later than **3:00 P.M., Friday, June 8, 2018**. Late Bids will not be considered regardless of the reason.

All questions must be submitted in writing no later than 3:00 p.m., *Wednesday, May 23, 2018*, and submitted either via facsimile: (215) 683-7942 or electronically to [Stephanie.rigterink@courts.phila.gov](mailto:Stephanie.rigterink@courts.phila.gov).

It is anticipated that evaluation of all bids received and selection of the Vendor will be completed as soon as possible; all Vendors will be notified accordingly.

Sincerely,

  
Marc Flood, Esquire  
Deputy Court Administrator

Enclosures

*First Judicial District of Pennsylvania*

*Procurement Unit*

**INVITATION TO BID / QUOTE**

<p><b>DELIVERY POINT(s):</b></p> <p>Unless determined otherwise at a later date, all equipment deliveries will be to Philadelphia Family Court, 1501 Arch Street, 9<sup>th</sup> Floor Philadelphia PA 19102 Attn: Substance Analysis Unit – Eric Smith</p>	<p><u>Questions must be submitted in writing no later than 3:00 p.m., Wednesday, May 23, 2018</u></p> <p><b>Bids must be received no later than 3:00 p.m., Friday, June 8, 2018</b></p> <p>addressed to:                      First Judicial District of Pennsylvania                      Procurement Unit                      368 City Hall                      Philadelphia, Pennsylvania 19107                      Attn: Drug Testing Instrument and Supplies ITB                      Phone No.: (215) 683-7940 FAX: (215) 683-7942                      Email: Stephanie.rigterink@courts.phila.gov</p>
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ALL PRICES FOR SERVICES/ITEMS MUST BE F.O.B. TO ABOVE DELIVERY POINT(S);  
 PRICES MUST BE IN EFFECT FOR A MINIMUM OF NINETY (90) DAYS; AND  
 PRICES MUST BE NET, EXCLUSIVE OF ANY FEDERAL, EXCISE, OR PENNSYLVANIA SALES TAX.

ITEM NO.	DESCRIPTION	QTY	U/M	LOT PRICE
	Family Court, Juvenile Drug and Alcohol Testing System per the attached specifications inclusive of any/all applicable services, supplies, products, specific tasks, deliverables, peripherals, warranty(ies), and short and long term support for said system.			

Signature <i>(Authorized Vendor Representative)</i>	Reference No.	Date of Bid	Delivery Time	Discount Terms
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Vendor's Address	Contact Name/Phone No.
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**First Judicial District  
of the  
Commonwealth of Pennsylvania**

Invitation to Bid  
*For a*  
Drug Testing Instrument and Supply System  
For  
Philadelphia Family Court's Juvenile Division,  
1501 Arch Street, Philadelphia, PA 19102

*May 8, 2018*

**1. Purpose**

The First Judicial District of the Commonwealth of Pennsylvania, hereinafter known as the “FJD”, issues this Invitation to Bid (“ITB”) for qualified vendors to provide a bid response to supply a Drug Testing Instrument and Screening Supplies to the FJD’s Family Court Juvenile Division for drug and alcohol testing. Services shall include, but may not be limited to, all specific services and/or tasks, deliverables, peripherals, and warranty(ies)/support (short and long term) for said system.

**2. Scope of Task, Specifications & Requirements**

The FJD desires to engage a Vendor to provide the requisite equipment, testing products, and maintenance services for the installation of a new drug testing system to be operated by FJD employees within Family Court’s Substance Analysis Unit (SAU) located at 1501 Arch Street, Philadelphia, Pennsylvania.

The present FJD lab environment consists of a total of 5 FJD staff members (3 male and 2 female) currently on site, who handle the overall operation; specimen collection, drug screening/testing and instrument maintenance along with maintaining supply inventories. The lab operates Monday to Friday from 8:15 AM to 4:45 PM.

The average specimen collection for urine is 2,075 per month. Offsite machinery is not applicable to this ITB, but rather, it is the intention of the FJD to run drug testing machines on site.

Necessary testing products may include requisite reagent/test strips/calibrators/cartridges/cartridge verification kits and user maintenance parts necessary to operate the machinery.

The FJD desires to select a Vendor who can provide training to FJD staff on site or within a 50 mile perimeter of center city, Philadelphia.

**2.1 Drugs to Be Screened For**

- (1) Juvenile (5 panel)- approx. 46 % urine specimen collections  
Opiates, Cocaine, Benzodiazepines, Cannabinoids (THC), Phencyclidine (PCP)
- (2) Adult (8 - panel) – approx. 54% urine specimen collections  
Opiates, Cocaine, Benzodiazepines, Cannabinoids (THC), Phencyclidine (PCP)  
Amphetamines, Ethanol, Barbiturates

**2.2 Support and Maintenance**

The FJD is requesting the selected Vendor provide the following support and maintenance including, but not limited to, live technical telephone support; on-site service whenever necessary to keep the machine in good working order; on-site service coverage Monday – Friday, 9 a.m. – 5 p.m.; next day response on requests made within on-site coverage hours of the previous day; 98% up time guarantee (meaning that the equipment will be operational and able to produce accurate outputs); and preventative maintenance.

**2.3 Service Provider**

If the service provider is other than the selected vendor, please state the name of the company which will be delivering service and on-site support for this equipment. If service has been outsourced to another firm, how long has this relationship been in effect?

**2.4 Product History**

Please provide a detailed history of the equipment's performance and efficacy.

Please provide a list of policies on equipment updates for the proposed machines. How often are changes released? How is the customer notified about changes? How are they applied?

**3. Budget & Estimated Pricing**

All vendors must submit a cost breakdown for the implementation of their equipment as described in this ITB. The vendor understands and agrees to keep these prices valid for a minimum of ninety (90) days.

**Suggested Cost Categories:**

**Hardware:** List, describe, and record the cost of each piece of hardware that is required.

**Licensing:** List, describe, and record the licensing, implementation, maintenance, support, and training fees associated with your proposed solution.

**Installation:** Describe any labor, equipment, supplies, or other costs associated with installing your proposed solution.

**Maintenance:** Describe and cost out any other ongoing costs associated with the operation and maintenance of your proposed solution.

**Documentation & Training:** If there are fees associated with your user or technical documentation, list them here.

**Project Management:** If there are project management fees associated with your proposed solution, list and describe them here.

**Miscellaneous:** List and describe any other costs associated with your proposed solution.

**4. Vendor's Qualifications**

The Vendor must show its proven ability to meet all requirements of this ITB; this also includes the vendor's financial ability to undertake the project.

**5. Preparation of Bid**

Bids must be written in ink or typewritten, shall be signed and placed in a sealed envelope or carton. The bid must be signed by the owner if a sole proprietor or by a general partner if the bidder is a partnership. If the bidder is a corporation, the bid must be signed by the president or vice-president and attested to by the secretary, treasurer or assistant secretary or treasurer, and must bear the corporate seal.

**5.1** No bid will be considered if not received at the designated office by the time specified in this ITB. Timely delivery shall be judged by the date of **actual receipt**.

**5.2** No bid shall be withdrawn for **60 days** from the date of the deadline specified for submission of bids, except as otherwise provided herein. Bidders may be given permission to withdraw a bid before opening upon receipt of written notification or by personal request of the bidder of which the request must be submitted no later than forty-eight (48) hours before the time fixed for the opening and consideration of Bids.

**5.3** No changes in prices, terms and conditions will be considered after the deadline for submission of bids.

**6. Additional Conditions Governing the Procurement Process**

The following additional conditions govern this procurement:

**6.1 Rights Reserved**

Upon determination that its best interests would be served, the FJD shall have the right to:

- Cancel the procurement at any time prior to the contract award;
- Amend this solicitation at any time prior to bid closing time and date;

- Refuse to consider Bids which do not conform to solicitation requirements. One copy of any proposal which is returned as nonconforming will be retained by the FJD for documentation purposes.
- Require bidders, at their expense, to submit written clarification of Bids in any manner or format that the FJD may require.
- Require that all Bids submitted in response to this solicitation, upon receipt by the FJD, become the property of the FJD.
- Invite some bidders, but not necessarily all, to make an oral presentation or a demonstration of their proposed system to assist the FJD in its determination of award. The FJD reserves the right to limit the number of bidders invited to make such a presentation or demonstration.
- Allow no additions or changes to the original proposal after the due date specified herein, except as may affect all bidders.
- Award in part or reject any and all Bids in whole or in part.
- Waive technical defects, irregularities and omissions.
- Reject the proposal of any bidder in default of any prior contract or for misrepresentation of material(s) presented.
- Request a "best and final" proposal of one or more bidders.
- Allow a bidder to remedy in writing any deficiency which is not material.

## 7. **Nondiscrimination**

During the term of any subsequent contract, vendors agree to the following:

- 7.1** Vendor shall not discriminate nor permit discrimination against any employee, applicant for employment, independent contractor, or any other person because of race, color, religious creed, ancestry, national origin, age, sex or disability in the performance of services under this procurement. Vendor shall comply with all federal and state laws prohibiting discrimination.
- 7.2** Pursuant to federal regulations promulgated under the authority of *The Americans with Disabilities Act, 28 C.F.R. §35.101 et seq.*, Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this procurement or from activities provided for under this procurement. As a condition of accepting and executing any subsequent contract, Contractor agrees to comply with the *General Prohibitions Against Discrimination, 28 C.F.R. §35.130*, and all other regulations promulgated under *Title II of the Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania, the City of Philadelphia, and/or the FJD, through contracts with outside contractors.
- 7.3** Vendor shall take steps to insure that applicants are employed, and that employees or agents are treated during employment without regard to their race, color, religious creed, ancestry, national origin, age, sex, or disability in the performance of this procurement. Such nondiscrimination shall include, but is not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training.
- 7.4** Vendor shall, in advertisements or requests for employment placed by or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, ancestry, national origin, age, sex, or disability.
- 7.5** Vendor shall include the provisions of this nondiscrimination clause in every subcontract pertaining to the performance of this procurement so that such provisions will be binding upon each subcontractor. In the event of a violation of subcontractors, Vendor shall promptly notify Marc Flood, Esquire, Deputy Court Administrator, Procurement Unit, First Judicial District of Pennsylvania, in writing.

- 7.6 In the event of Vendor's noncompliance with the nondiscrimination clause of this procurement or with any such laws governing nondiscrimination, Vendor shall take all steps necessary to come in compliance with this nondiscrimination clause. Further, in the event of Vendor's noncompliance with the nondiscrimination clause of this procurement or with any such laws governing nondiscrimination, any subsequent contract may be terminated or suspended, in whole or in part, whereupon all obligations on this procurement shall cease, save only the obligation to pay to Vendor the sums due for goods and services already provided prior to the date of termination. In the event of continued refusal by Vendor to comply with this nondiscrimination clause, Vendor may be declared temporarily ineligible for further FJD contracts and other sanctions may be imposed and remedies invoked.
- 7.7 It shall be no defense to a finding of noncompliance with this nondiscrimination clause that Vendor has delegated some of its employment practices.
- 7.8 Vendor shall furnish all necessary employment documents and records to, and permit access to its books, records and accounts by, the contracting agency for purposes of investigation to ascertain compliance with the provisions of this nondiscrimination clause.
- 7.9 Vendor's obligations under this clause are limited to the Vendor's facilities within Pennsylvania or, where the contract is for purchase of goods manufactured outside of Pennsylvania, the facilities at which such goods are actually manufactured, produced, assembled, or delivered.
- 7.10 Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania, the City of Philadelphia, and/or the FJD, from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania, City of Philadelphia, and/or the FJD, as a result of the Contractor's failure to comply with this nondiscrimination provision.
- 7.11 Vendor agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of Contract entitling the FJD to all rights and remedies provided in the Contract or otherwise available in law or equity.

**8. Public Disclosure**

All materials submitted in response to this ITB become the property of the FJD, and thereby, become part of the public record and may be subject to public review. As a general rule, the FJD does not disclose any personally or professionally identifiable information collected or obtained through normal FJD business practices and/or procedures except where permission has been obtained or where the information is classified as public information under the State of Pennsylvania's Right to Know Act (65 P.S., §67.101 et seq.), Pennsylvania's General Assembly's Act 3 of 2008, or any other applicable laws. Any/all participating Parties should be aware that information collected or obtained by the FJD through a solicitation and/or business relationship may be subject to examination and inspection if such information is a public record and not otherwise protected from disclosure. Furthermore, no public agency, official, employee, and/or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, official, employee, and/or custodian acted in good faith in attempting to comply with the provisions of said Acts and/or applicable laws.

**9. Terms and Conditions of Contract**

The formal contract to be entered into with the successful bidder shall contain, at a minimum, the terms and conditions set forth in this Section. *The terms and conditions expressed herein are not subject to bidder negotiation.*

**9.1 Type of Contract**

The contract resulting from this procurement will be a firm, fixed price contract pursuant to Vendor's quote in coordination with the requirements detailed herein.

**9.2 Terms of the Contract**

(1) The contract shall begin on the first day after it has been fully executed by the parties, and shall expire, unless earlier terminated otherwise pursuant to the Agreement, at the completion of all specified tasks and delivery of all contracted products, goods, and services as defined in said contract including the performance of any maintenance and/or warranty periods. **The contract, if awarded at the FJD's discretion, shall likely extend for a one year (1) initial term, with three (3) one-year renewal terms thereafter. Vendors shall quote according to that term outline.**

(2) The order of documents in the contract shall be:

- Contract, including written riders or addenda
- Amendments to ITB and written answers to questions, if applicable
- ITB
- Vendor's Bid

(3) No amendment or modification changing the contract's scope or terms has any force or effect unless it is in writing and signed by all parties to the contract. The subsequent contract shall be binding upon the parties and their respective successors and officers.

The parties agree that the provision of services to the FJD by the Vendor is not an exclusive arrangement and that the Vendor may be engaged or employed in other businesses, trades, professions or other activities; provided, however, that such other activities do not create a conflict of interest with the FJD.

**9.3 Contract Administrator**

Upon execution of a contract, the FJD shall designate a Contract Administrator. The Contract Administrator shall be the single authority to act for the FJD under the contract. Whenever the FJD is required by terms of the contract to provide written notice to the Vendor, such notice must be signed by the Contract Administrator, or in that individual's absence or inability to act such notice shall be signed by the Contract Administrator's designee.

**9.4 Vendor's Responsibilities**

The selected Vendor will be required to assume sole responsibility for all services offered and products to be delivered as stated in its proposal whether or not the Vendor is the manufacturer or producer of said services. The FJD will consider the selected Vendor to be the sole point of contact with regard to all contractual matters.

**9.5 Independent Capacity of the Vendor**

The selected Vendor is not an employee of the Court or City of Philadelphia, but is an independent contractor and is thus not entitled to the benefits and protections otherwise provided to employees of the Court or City of Philadelphia, including Worker's Compensation or work-related disability leave or benefits, which are only available to employees of the Court and/or City of Philadelphia, and representation and indemnification from any claims which may be filed against employees by any party in connection with the performance of their duties. The Agreement resulting from this procurement shall not be construed to create any association, partnership, joint venture, employee or agency relationship between the Vendor and the Court for any purpose. The Vendor has no authority (and shall not hold itself as having any authority) to bind the Court and the Vendor shall not make any agreements or representations on the Court's behalf.



**9.6 Subcontracting**

Except as provided in the Vendor's proposal, no contract shall be made by the Vendor with any other party for furnishing any of the work or services herein contracted for without the consent and written approval of the Contract Administrator. This provision will not require the approval of contracts of employment between the Vendor and personnel assigned for services thereunder.

**9.7 Disputes**

In the event that any dispute arises between the parties under the contract, the Contract Administrator shall make a determination in writing and shall send the same to the Vendor. The Vendor shall thereafter, in good faith and with due diligence, render such performance as the Contract Administrator has determined is required. If the Vendor believes the decision of the Contract Administrator to be in error, the Vendor's sole remedy is to make such claims as it may desire to the Board of Claims pursuant to the Act of May 20, 1937, P.L. 728, No. 193, as Amended. (72 P.S. §4651-1 et seq.) Pending a final judicial resolution of any such claim filed with the said Board, the Vendor shall proceed diligently and in good faith with the performance of the Agreement as interpreted by the FJD, and the FJD shall compensate the Vendor pursuant to the determination of the Contract Administrator.

**9.8 Early Termination**

The performance of work under any contract may be terminated, without penalty, by the FJD for any reason upon ten (10) days notice, whenever the Contract Administrator shall determine that such termination is in the best interest of the FJD. Any such termination shall be effected by delivery to the Vendor of a notice of termination specifying the extent to which performance of the work under the contract is terminated and the date on which termination becomes effective. In the event of such termination, the Vendor will be compensated for all work performed for which payment has been met and deliverables accepted prior to the termination date and for all reasonable costs to which the Vendor has, out of necessity, obligated itself as a result of the contract. In no event, however, shall the Vendor be paid for loss of anticipated profits. Title to any equipment or hardware provided and accepted by the FJD prior to the date of termination, and for which payment is made, shall pass to the FJD.

**9.9 Default**

**(1) Termination by FJD**

The FJD may terminate the contract without penalty in any one of the following circumstances after mailing written notice of default to the Vendor specifying such failure:

- i.** If any hardware, software or equipment which is required to meet the standard of performance as and when called for under any contract fails to do so; or
- ii.** If the Vendor fails to perform any of the other provisions of the contract, or so fails to make progress as to endanger performance of the contract in accordance with its terms. FJD, at its discretion, may give the Vendor thirty (30) days (or a longer period as the Contract Administrator may authorize in writing) to cure such failure to default.

**(2) FJD's Options at Termination**

In the event the FJD terminates the contract, the FJD may, at its sole option:

- i.** Retain such hardware, equipment, software, and documentation as has been provided, obtaining clear title to the same.
- ii.** Return, as is, all hardware, equipment, software, and documentation to Vendor at Vendor's expense in which instance the Vendor must return all monies previously paid by the FJD within five (5) business days of receipt of such hardware, equipment, software, and documentation.

iii. Payment for materials delivered to and accepted by the FJD and for the preservation and protection of property shall be in an amount agreed upon by the Vendor and FJD. The FJD may withhold from amounts otherwise due the Vendor for said completed materials such amounts determined by the FJD to be necessary to protect it against losses because of outstanding claims. The Vendor shall, upon direction of the FJD, protect and preserve property in possession of the Vendor in which the FJD has an interest.

(3) **Vendor's Liability in FJD Termination**

In addition to the remedies provided above, the FJD may hold the Vendor liable for actual, incidental and consequential damages arising or resulting from the termination of the contract due to a breach by Vendor. In the alternative, the FJD may, in addition to the remedies specified herein, impose liquidated damages as set forth below.

(4) **Vendor's Freedom from Liability**

The Vendor shall not be liable for any damages if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Vendor. Such causes may include, but are not restricted to acts of God, acts of the FJD solely in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of either the Vendor or its subcontractor(s). When such a cause arises, the Vendor shall notify the FJD immediately, in writing, of its failure to perform describing the cause of failure and how it affects performance and the anticipated duration of the inability to perform. The FJD shall review the information provided and may at its sole option rescind the contract.

(5) **FJD's Rights and Remedies**

The rights and remedies of the FJD provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract. The failure of the FJD to insist on strict performance shall not constitute a waiver of any of the provisions of the contract or any remedy provided by law.

(6) **Default by FJD**

The FJD shall be in default under the contract when the FJD fails to pay any amount when due or fails to comply with any other material term or condition of the contract, and the Vendor has provided the FJD with thirty (30) days advance written notice that it will take action hereunder. Upon the FJD's default, any unpaid amounts shall, at Vendor's option, become due and payable.

(7) **FJD Recovery**

In the event the FJD is required to undertake any legal action to enforce its rights and remedies under the contract, the FJD shall be entitled to recover reasonable attorney fees and costs.

**9.10 Payment Provisions**

Final delivery and acceptance of all products, services, and deliverables which are defined in this ITB and the subsequent contract resulting therefrom will be recognized for the purposes of payment to the Vendor.

As an independent contractor, the selected Vendor is entitled only to the payments provided for under the Agreement resulting from this procurement and, under no circumstances, shall be entitled to additional or premium payments, whether referred to as overtime pay, holiday pay, sick pay, vacation pay or the like. The selected Vendor is permitted to determine the days (or portions thereof) when the Vendor shall be available for work under an Agreement in his sole discretion and shall not be required to give advance notice of his absence.

**9.11 Vendor's Liability; Hold Harmless; Insurance**

- (1) Vendor shall purchase and maintain, at its expense, the following types of insurance issued by companies acceptable to the FJD: (1) workers' compensation insurance sufficient to cover all of the employees working to fulfill the contract; (2) comprehensive general liability insurance, property damage insurance, and automobile liability insurance in such amounts as the FJD shall deem sufficient which shall not exceed \$1,000,000 for injury to or death of one person in a single occurrence and \$3,000,000 for injury to or death of more than one person in a single occurrence, and \$5,000,000 for a single occurrence of property damage.
- (2) Such policies shall name the FJD as an additional insured. Prior to commencement of work under the contract, Vendor must provide the FJD with current certificates of insurance. These certificates shall contain a provision that coverage afforded under the policies shall not be canceled or changed until at least 30 days prior written notice has been given to the FJD.
- (3) Vendor shall be responsible for and agrees to indemnify and hold harmless the FJD, their agents, servants and employees, from damage to property or injuries (including death) to any person(s) and any other losses, damages, expenses, claims, demands, suits and actions by any party against the FJD, their agents, servants and employees, in connection with work performed by the Vendor, its agents, servants and employees under the contract.

**9.12 Patent, Copyright and Other Proprietary Rights; Indemnification**

- (1) Vendor warrants that all equipment, software, supplies and other products provided hereunder and all services do not, and will not, infringe upon or violate any patent, copyright, trade secret or any other proprietary right of any third party. In the event of any claim by a third party against the FJD, the FJD shall promptly notify Vendor and Vendor shall defend such claim at Vendor's expense and shall indemnify the FJD against any loss, cost, expense or liability arising out of such claim including reasonable attorney's fees.
- (2) The Vendor, at its own expense, shall defend and hold harmless the FJD for any suit which may be brought against the FJD or its agents and employees for the alleged infringement of any U.S. patents, copyrights, or trade secrets by the products furnished under the contract and, in any such suit, will satisfy any final award for such infringement. The FJD shall give prompt notice of such a suit or proceeding and all information and all cooperation to conduct the defense of same. If principles of government or public law are involved, the FJD may participate in the defense of any such action.
- (3) If, in Vendor's opinion, products furnished under the contract are likely to, or do become the subject of a claim or infringement, then without diminishing the Vendor's obligation to satisfy a final award, Vendor may at its option substitute for the alleged infringing products, other equally suitable equipment, software, or products, satisfactory to the FJD, or at the Vendor's option and expense, obtain the rights for the FJD to continue the use of such products. If the use of such products by the FJD shall be prevented by permanent injunction, Vendor shall, at its own expense and at its option, and subject to approval by the FJD either procure the rights to continued use of such products, replace them with non-infringing products, or modify them so that they are no longer infringing. If the Vendor is unable to do any of the preceding, the Vendor agrees to pay the FJD any amounts paid by the FJD towards the purchase of the products.
- (4) The obligations of the Vendor under this paragraph continue without time limit.

**9.13 Employment Practices**

The Vendor must comply with the Nondiscrimination Clause.

**9.14 Taxes**

As an independent contractor, Consultant is solely responsible for reporting, filing and taking all required measures to pay the appropriate United States, Pennsylvania and City of Philadelphia business, income and employment taxes attributable to the amounts paid to him by the Court under this Agreement.

**9.15 Prevailing Wage**

Historically, the FJD does not require any vendor to hire/employ unionized personnel, however, the FJD does require the selected vendor to compensate any personnel and/or subcontractors performing the requisite services of this solicitation at the current prevailing wage levels for similar type work/services; wages, as used herein, shall include all fringe benefits. During the course of a subsequent agreement to this solicitation, any increases in pay granted to organized labor by employers shall also be paid to non-organized personnel doing similar work.

**9.16 Assignment**

The Vendor shall not assign nor transfer any interest in the contract without prior written approval of the Contract Administrator. This shall not be construed as limiting the Vendor's rights to subcontract as provided herein.

**9.17 Compliance with Laws**

The Vendor is duly licensed, qualified and in good standing in the Commonwealth of Pennsylvania for all matters relating to the performance of services under any resulting Agreement. This Agreement is the legal, valid and binding obligation of the Vendor, enforceable against the Vendor in accordance with its terms and the Vendor shall be required to comply with all federal, state and local laws applicable to its work. The Vendor possesses, and at all times during the term of this Agreement shall possess, all licenses, certifications, qualifications or other credentials required in connection with applicable law and the terms of an Agreement to perform the services negotiated. The Vendor shall provide the FJD with copies of all licenses, credentials and certifications required under an Agreement within five (5) business days following a request, in writing, by the FJD. Neither the Vendor nor any individual acting on the Vendor's behalf are under suspension or debarment from doing business with the Court, the Commonwealth of Pennsylvania or the City of Philadelphia or any Department, agency or political subdivision of the foregoing.

**9.18 Governing Law**

This contract and performance hereunder will be governed by and construed in accordance with the laws of Pennsylvania.

**9.19 Waiver**

No term or provision hereof shall be deemed waived and no breach excused by the FJD unless such waiver of consent shall be in writing. Any consent by the FJD to, or waiver of, a breach by the Vendor, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.

**9.20 Severability**

If any provision of the procurement of the contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations under that provision. In such event, the Contract Administrator shall determine the extent to which the remainder of the contract may require termination. Pending such determination, performance under the terms of the contract shall continue.

**9.21 Most Favored Nation Clause**

All of the prices, terms and warranties granted by Vendor herein are comparable to, or better than, those rates offered by Vendor to any present customer. If Vendor shall, during the term of the contract, enter into comparable arrangements with any other customer providing better prices, terms and warranties, the contract shall thereupon be deemed amended to provide the same to the FJD. Vendor must inform the FJD promptly of better prices, terms and warranties being made available to customers with comparable arrangements.

**9.22 Right to Reject Vendor's Employees**

The FJD shall retain the right to reject any of the Vendor's employees or subcontractor(s)' employees as permitted under the contract, whose qualifications, in the FJD's judgment, are insufficient. In considering the Vendor's employees' qualifications, the FJD will act in good faith and not unreasonably.

**9.23 Confidentiality**

The Vendor shall not disclose to others any confidential information gained by virtue of this procurement and/or resulting contract. On the termination date (as that date is determined in an Agreement), the Vendor shall deliver to the FJD all hardware, software, and other materials provided for its use by the FJD, all tangible documents and other materials (and all copies) containing, reflecting, incorporating or based upon any confidential information obtained by virtue of the services provided under an Agreement and permanently erase all confidential information obtained by virtue of the services provided under an Agreement from your computer systems or other electronic storage facilities or services.

**9.24 Funding Appropriation**

The FJD's obligations under the contract are contingent upon the appropriation and availability of government funds for contract purposes. If said government funds are not appropriated, such event will not constitute a default. The FJD agrees to notify the Vendor in writing of such non-appropriation at the earliest possible time.