

REQUEST FOR PROPOSALS/QUALIFICATIONS
(RFP/Q)
Rev. 6/9/16

The Administrative Office of the Courts, Twentieth Judicial Circuit, State of Florida is accepting **sealed** Proposals/Qualifications for the following:

**CONTRACT FOR
TRANSCRIPTION SERVICES FOR
THE TWENTIETH JUDICIAL CIRCUIT
SPECIFICALLY IN CHARLOTTE, COLLIER, GLADES,
HENDRY AND LEE COUNTIES**

Copy of RFP/Q:

A copy of the Request for Proposals/Qualifications may be obtained from the Administrative Office of the Courts, Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL., telephone (239) 533-1700, or from the Administrative Office of the Courts' website at <http://www.ca.cjis20.org>.

Proposal Deadline:

All Proposals/Qualifications must be received and date/time stamped by the Administrative Office of the Courts no later than June 20, 2016. Proposals received after this deadline will not be accepted. If mailed, the Administrative Office of the Courts accepts no responsibility for ensuring that the proposal is date/time stamped prior to the Proposal Deadline.

Submission: All Proposals/Qualifications must be delivered or mailed/e-mailed to:

Administrative Office of the Courts
Twentieth Judicial Circuit
Lee County Justice Center
Attn: Eric Fishbeck
1700 Monroe Street, Room 1213
Fort Myers, Florida 33901
Email: efishbeck@ca.cjis20.org

Please submit an original and one copy.
FACSIMILIES WILL NOT BE ACCEPTED.
ENVELOPES MUST BE IDENTIFIED WITH THE NOTATION:
RFP/Q #16-002

REQUEST FOR PROPOSALS/QUALIFICATIONS
FOR
TRANSCRIPTION SERVICES
TWENTIETH JUDICIAL CIRCUIT OF FLORIDA
CHARLOTTE, COLLIER, GLADES, HENDRY AND LEE COUNTIES
#16-002

PART A: NOTICE TO PROPOSERS

NOTICE IS HEREBY GIVEN that sealed proposals marked **RFP/Q #16-002** shall be received at the Administrative Office of the Courts, Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901 (239) 533-1700 no later than June 20, 2016 for the following services:

1. **SCOPE OF SERVICES:**

The Administrative Office of the Courts (hereinafter "AOC") plan to enter into a contract or contracts with one or more qualified vendors to provide transcription services to the Courts in the Twentieth Judicial Circuit in Charlotte, Collier, Glades, Hendry, and Lee Counties in criminal, juvenile delinquency and dependency proceedings and in other proceedings as needed or as required by law or the Courts. Proposer shall provide transcription services on an as needed basis and in accordance with law and Administrative Order 2.2 (revised 02/22/06).

This RFP/Q is solicited by the Administrative Office of the Courts. The AOC will contract with one or more proposers as needed to ensure coverage of circuit wide court transcribing on an as needed basis.

2. **TERM OF CONTRACT**

The initial period of the contract will be for twelve (12) months beginning July 1, 2016 through June 30, 2017, with potential for three (3) one-year extensions.

3. **BILLING**

Transcription services requested by any other entity (such as the SAO, PD or a private party) will be billed directly to the requesting party.

4. **AVAILABILITY OF DOCUMENTS:**

The Proposal documents are available from the Administrative Office of the Courts, Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, and telephone (239) 533-1700, or from the Administrative Office of the Courts' website at <http://www.ca.cjis20.org>

5. **AOC REPRESENTATIVE:**

The AOC Representative who will coordinate the solicitation, evaluation and award of this RFP and serve as the AOC's Contract Administrator is:

Administrative Office of the Courts
Attn: Eric Fishbeck
Lee County Justice Center
1700 Monroe Street, Room 1213
Fort Myers, Florida 33901
Phone: (239) 533-1700
Email: efishbeck@ca.cjis20.org

Questions regarding the specifications and requirements of the RFP/Q should be made IN WRITING to the AOC Representative no later than June 17, 2016.

6. **LOBBYING**

Proposers are hereby advised that they are not to lobby for a contract with ANY Court Administration personnel, Judge or Judicial Assistant. Violation of this provision may result in a Proposer's disqualification.

7. **PRE-PROPOSAL CONFERENCE:**

A pre-proposal conference will be held on June 17, 2016 at 10:00 a.m. at the Administrative Office of the Courts, Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, to answer questions regarding the specifications and requirements of this RFP/Q. Prospective vendors may request to attend.

AOC will post on the 20th Judicial Circuit website the answers to questions raised during the pre-proposal conference and received in writing on June 17, 2016.

PART B: INSTRUCTIONS TO PROPOSERS

1. **DEFINITIONS**

- (A) "AOC" is defined as the Administrative Office of the Courts for the Twentieth Judicial Circuit or its duly authorized representative at the following address: Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901.
- (B) "Proposal Deadline" is defined as the date and time specified at the beginning of Part A as to the date and time when these documents must be submitted.
- (C) "Proposal Documents" or "Contract Documents" shall include:

Part A: *Notice to Proposers*
Part B: *Instructions to Proposers*
Part C: *Specifications*
Part D: *Estimated Coverage*
Part E: *Evaluations of Proposals*

Part F: *Proposal submitted by the Proposer*

Also included are the *Contract* and all *Addenda* and/or *Contract Amendments* issued by the AOC.

Titles, Subtitles, and/or Headings are used merely for convenience purposes.

- (D) “Proposer” is defined as one who submits a Proposal to the AOC in response to this solicitation, prior to the Proposal Deadline.
- (E) “A.O. 2.2” shall be defined as the Twentieth Judicial Circuit’s Administrative Order No. 2.2 entitled *Court Reporting Services Plan*
- (F) “Successful Proposer” is defined as the most qualified, responsive, and responsible Proposer(s) to whom the AOC makes a written award, based upon evaluation criteria contained herein.

2. **PREPARATION OF PROPOSALS**

Proposals shall comply with the following to be valid. Failure to comply shall result in **AUTOMATIC DISQUALIFICATION**.

- (A) The proposal shall be legibly and manually signed by an authorized representative. Where applicable, corporate and/or notary seals shall be attached. If a corporation, the corporate address and state of incorporation shall be shown. If a partnership, the Proposal shall be signed by an individual authorized to legally contract on behalf of the partnership, and his/her title shall appear under the signature.
- (B) An original and one (1) copy of the Proposal shall be submitted in a sealed package, and clearly marked outside as **RFP/Q #16-002** for Court Transcription Services.
- (C) The Proposal shall be delivered to the AOC prior to the Proposal Deadline. The deadline shall be strictly observed. The proper and timely delivery of a Proposal is solely the responsibility of each Proposer. The AOC shall not bear responsibility for delays caused by any occurrence. Proposals received after the Proposal Deadline shall be returned, unopened.
- (D) **DISCRIMINATION:** An entity or affiliate who has been placed on the State of Florida discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

3. **PROPOSAL EXPENSES**

Proposer shall be solely responsible for any expenses incurred in the preparation of its Proposal. Under no circumstances shall AOC be responsible for any such expenses.

4. **PROPOSER EXAMINATION**

Proposer shall carefully make all necessary investigations in order to be thoroughly informed as to all aspects of the services to be rendered pursuant to the requirements hereof. No pleas of ignorance or mistake as to conditions or difficulties that may be encountered in the services to be rendered hereunder will be accepted. Neither will they be accepted as a basis for any claims whatsoever for extra compensation. The Proposer is solely responsible for reading and completely understanding the requirements of this Request for Proposals/Qualifications and making all necessary investigations. The Contract Documents attached specify the proposed terms of the Agreement and should be carefully reviewed for detailed requirements. A successful Proposer shall be required to execute an Agreement substantially in the form as set forth in Attachment B.

5. **PROPOSAL ERRORS**

Where Proposals have erasures or corrections, each correction must be in ink and initialed in ink by the authorized agent of the Proposer. Any blank spaces, qualifying notes, exceptions, counteroffers, and/or lack of required submittals may cause Proposer to be declared non-responsive.

6. **WITHDRAWAL, TRANSFER OR MODIFICATION OF PROPOSAL**

- (A) Proposals may be withdrawn in a written and signed request received by the AOC prior to the Proposal Deadline.
- (B) All proposals shall remain in full force and effect for a period of fourteen (14) calendar days after the Proposals are opened and shall not be revoked, withdrawn, or canceled within that time frame. The award of a contract shall not nullify this requirement.
- (C) Proposer may not assign or otherwise transfer its Proposal prior to or after the Proposal Deadline.
- (D) Proposer shall not modify its Proposal after the Proposal Deadline for any reason, unless such modifications are the result of negotiations in the scope of the awarding of this Contract.

7. **PROPOSAL OPENING**

Every Proposal which has been properly delivered prior to the Proposal Deadline shall be opened immediately following the Deadline barring unforeseen circumstances. Proposers and other interested persons may be present in person or by representative.

8. AWARD OF CONTRACT/REJECTION OF PROPOSALS

- (A) At the conclusion of negotiations, the AOC will award a contract(s) to the most responsive and responsible Proposer(s) that AOC deems will be in the best interest of the AOC. The AOC reserves the right to reject any and all Proposals, to waive any and all formalities, the right to disregard all nonconforming, non-responsive, or conditional Proposals and the right to make modifications to the proposed contract. The AOC reserves the right to reject the Proposal of any Proposer if the AOC believes it would not be in the best interests of the Twentieth Judicial Circuit.
- (B) Nothing contained herein shall require the AOC to reject Proposals or award a contract based upon anything other than its sole discretion as described herein. By submitting a Proposal, the Proposer recognizes and accepts that the AOC may reject the Proposal based upon the exercise of its sole discretion. Proposer agrees to waive any claim it may have for damages or other relief resulting directly or indirectly from the rejection of its Proposal based upon these grounds including the disclosure of any pertinent information relating to the reasons for rejection of the Proposal.
- (C) The Successful Proposer shall sign a written Agreement (substantially similar to the one which is included in the Proposal Documents as Attachment B) within seven (7) calendar days of Notice of Award. In the event that it fails to do so, the award may be withdrawn by the AOC, and the AOC may award the Contract to any other Proposer in its sole discretion.

PART C: SPECIFICATIONS

1. QUALITY ASSURANCE

Submission of a Proposal assuring quality, professionalism, and timeliness of service will be required from all Proposers.

(A) Proposers Ability to Perform

Proposer should have been engaged in court transcription services, which may include civil or criminal depositions, courtroom work, or administrative proceedings, for the last two (2) years. Proposals will be considered from those regularly and currently engaged in providing and performing the services specified. At the start of the contract, Proposer shall have in place organization, facilities, equipment and trained personnel to ensure prompt and efficient service.

Proposer shall submit a brief written description of Proposer's qualifications specifically identifying:

- Length of time in business;

- Future five-year business plan;
- Detailed description of the transcription services offered, including but not limited to:
 - Work force projections necessary to cover this contract;
 - Number of transcriptions available to provide services in each of the five counties;
 - Education and qualifications of each transcriptionist;
 - Plan for scheduling and assigning transcriptionists; include whether transcriptionists will be pooled or assigned to a specific judge or courtroom;
- Proposer’s method of safeguarding the record and ensuring compliance with statutory requirements for record storage and retrieval.

(B) **Court Transcriptionist Certification**

Proposer shall provide written certification of any transcriptionist whose services will be used under the contract and who will have been certified by **July 1, 2016**, by the National Court Reporter Association as a Registered Professional Reporter, Registered Merit Reporter, Registered Diplomate Reporter, Certified Realtime Reporter, certification by American Association of Electronic Reporters and Transcribers (AAERT) or any other related certification.

(C) **Notification Time**

Transcription services may be scheduled and unscheduled. Proposer should indicate the maximum notification time needed to guarantee the service of a transcriptionist and any means to be employed to ensure ability to provide coverage on short notice.

(D) **References**

Proposer shall submit a list of at least two (2) professional references in the format provided in “Part F: Proposal Detailing Qualifications.”

(E) **Technology**

Proposer shall detail technology currently used and describes its plan for implementing new technology.

2. **STATEWIDE COMPENSATION RATES**

Based on HB 5001, the General Appropriations Act for fiscal year 2016/17 (effective date: July 1, 2016), the following court reporting fees have been adopted statewide:

FEE SCHEDULE

The maximum to be paid for court reporting and transcribing costs at public expense are as follows:

1. Appearance fees:

Depositions:	1st hour:	\$75.00
	Each hour thereafter:	\$25.00/hour
Courtroom:	1 st hour:	\$50.00
	Each hour thereafter:	\$40.00 (to be billed in .5 hr increments)
	Additional rate of \$10.00/hour applies after 5 p.m.	

2. Deposition transcript fee (Original & one copy):

10 business day delivery:	\$4.00/page
5 business day delivery:	\$5.50/page
24 hours delivery:	\$7.50/page
Additional copies:	\$0.50/page

3. Appellate/hearing/trial transcript fee (Original & all copies needed with minimum of 2 copies):

10 business day delivery:	\$5.00/page
5 business day delivery:	\$6.50/page
24 hours delivery:	\$8.50/page
Copies (when original previously ordered):	\$0.50/page

4. Transcription from tapes or audio recordings (other than depositions or hearings):

Either \$35.00/hour listening fee or \$3.00/page, whichever is greater.

5. Video Services:

\$100 per hour per location with two-hour minimum.

3. **ADDITIONAL CONTRACTURAL TERMS AND CONDITIONS**

A. Contract Term

The initial period of the contract will be for twelve (12) months beginning **July 1, 2016**, through **June 30, 2017**, with potential for three (3) one-year extensions.

B. Billing

Any court transcribing services requested by the SAO, PD or a private party will be billed directly to that agency or party under this contract.

C. Laws and Regulations

All applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

1. **Applicable Law/Compliance with All Laws/Venue**

a. **Applicable Law**

The contract shall be governed as to all matters whether of validity, interpretations, obligations, performance, or otherwise exclusively by the laws of the State of Florida, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of whether actually delivered and accepted, the contract shall be deemed to have been delivered and accepted by the parties in the State of Florida.

b. **Compliance with All Laws**

Successful Proposer shall comply with all federal, state, and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance of the scope of work set forth herein. The Proposer represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this contract prior to the initiation of work.

c. **Venue**

Any and all suits for any claims or from any and every breach or dispute arising out of this contract shall be maintained in the appropriate court of competent jurisdiction in Lee County, Florida.

d. **Non-assignment**

Successful Proposer shall not assign its rights and duties under this contract without the prior written consent of the AOC.

e. **Subcontractors**

The use of subcontractors and the work they are to perform shall receive prior written approval of the AOC. The Successful Proposer shall be solely responsible for all work performed and materials provided by subcontractors. The Successful Proposer shall be responsible for the liability of subcontractors for the types and limits required of the Successful Proposer.

f. **Termination With Cause/Default/Cancellation**

In the event that the Successful Proposer shall for any reason or through any cause be in default of the terms of the contract, the AOC may give the Successful Proposer written notice of such default by certified mail/return receipt requested. Unless otherwise provided, the Successful Proposer shall have ten (10) days from the date such notice is received to cure the default. Upon failure to cure the default, the AOC may immediately cancel and terminate its contract as of the mailing date of the default notice.

Upon termination, the Successful Proposer shall cease performance of any further work under the contract with that Requestor, and turn over to that Requestor any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, the AOC may immediately cancel and terminated its contract with the Successful Proposer by the AOC and provisions herein with respect to opportunity to cure default shall not be applicable.

g. **Termination Without Cause**

The AOC may at any time, and for any reason, terminate the contract by written notice to the Successful Proposer specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to the Successful Proposer by certified mail/return receipt requested.

In the event of such termination, the Successful Proposer shall be paid such amount as shall compensate the Successful Proposer for work satisfactorily completed, and accepted by the AOC at the time of termination.

If the AOC terminates the contract, the Successful Proposer shall cease performance of any further work under the contract, and turn over to the AOC any work completed or in process for which payment has been made.

h. **Non-Appropriation**

The AOC shall be bound, hereunder, only to the extent that funds shall have been appropriated and budgeted or are otherwise available for the purpose of their contract. In the event that no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable by any means whatsoever in any fiscal period of payments due under this contract, the AOC shall immediately notify the Successful Proposer of such occurrence and their contract shall terminate the last day of the fiscal period for which appropriations

were received without penalty or expense to the AOC of any kind, whatsoever.

i. **Maintenance of Licenses and Insurance Coverage**

Successful Proposer shall maintain all such licenses as are required to do business in the State of Florida and in Charlotte, Collier, Glades, Hendry and Lee Counties, Florida including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the services provided and performed by Successful Proposer.

Successful Proposer shall obtain and maintain such insurance as will protect Successful Proposer from claims under Workers' Compensation Laws. Successful Proposer shall obtain and maintain professional liability and comprehensive general liability insurance, including bodily injury liability coverage with a minimum amount of \$100,000.00 per person and \$300,000.00 per occurrence and property damage liability with a minimum amount of \$50,000 per occurrence.

j. **Hold Harmless – Indemnification**

If Successful Proposer, or any person performing services on behalf of Successful Proposer, acts negligently or in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, or acts outside the scope of this Agreement, Successful Proposer shall indemnify and hold harmless the State of Florida, Judges, the AOC and all of their employees from all suits, actions, or claims arising from such acts.

PART D: ESTIMATED COVERAGE

1. **Caseload Estimates**

In order to provide a general knowledge about the number of proceedings conducted in the Twentieth Judicial Circuit, caseload estimates of criminal filings in the circuit by county are listed below. Please note that criminal felony trial proceedings represent the cases most likely to require transcription services. However, the criminal caseload figures provided are intended as general indicators only.

Criminal Filings	2014	2015
Lee	6,653	6,211
Collier	2,519	2,527
Charlotte	2,487	2,095
Hendry	523	640
Glades	184	112

2. **No Guarantees**

The criminal case figures and judicial assignments are not guarantees of past, present or future workloads, or of future appearances, transcripts, revenue or otherwise. No guarantees as to the number of hours or transcript pages are expressed, implied or inferred for work performed under this RFP/Q. The proper and efficient administration of justice may dictate that additional or fewer proceedings, without significant prior notice, whether regularly scheduled, impromptu, or temporary, may be requested to be covered by a court reporter under the scope of this contract.

PART E: EVALUATION OF PROPOSALS

1. **OVERVIEW**

All criteria for evaluation are set forth in this RFP/Q document. Only these criteria will be used to determine the best proposal. Oral presentation(s) may be requested of some or all Proposers for purposes of clarification after all proposals are opened. AOC reserves the right, in its sole discretion, to determine a Proposer's ability to perform in accordance with the specifications, terms and conditions of the RFP/Q #16-002.

2. **EVALUATION CRITERIA**

The following criteria shall be used as the basis for award of this proposal:

- A. Ability to deliver all transcription services requested by the AOC and to respond timely to their needs and requirements
- B. Ability to deliver high quality service
- C. Qualifications of proposer/firm
- D. Responsiveness of the proposal to this RFP
- E. Quality of the technology plan

PART F: PROPOSAL SUBMISSIONS

1. **General Instructions:**

A. **Number of copies**

Submit the original and one signed copy of your proposal.

B. **Proposal format**

Proposers are to respond in detail to the information requested in sections 1 through 10 below. Proposers are encouraged to use each section and subsection header.

2. **Coverage:**

Indicate below the counties within the Twentieth Judicial Circuit that you are submitting a proposal to cover:

- Lee
- Collier

- Charlotte
- Hendry
- Glades

3. **PROPOSER BACKGROUND**

- (A) Proposer’s business address.

Name of Firm: _____
 Name(s) of partners or shareholders: _____
 Street address: _____
 City: _____ State: _____ Zip Code: _____
 Telephone Number: _____
 E-Mail Address: _____
 Fax Number: _____

*Attach copies of all licenses you are required to hold for the conduct of your business.

- (B) Describe your firm’s qualifications to provide transcription services:
- (C) Length of time your firm has been in business and providing transcription service:
- (D) Number of transcriptionists employed; attrition history; ability to provide the necessary transcriptionists during the term of this contract and any renewals:
- (E) Services offered:
- (F) Type of equipment used (stenography, mask, electronic, etc.):
- Year(s) purchased:

4. **NUMBER OF TRANSCRIPTIONISTS TO COVER PROCEEDINGS**

- (A) Identify work force projections to cover the proceedings, including backup:

- (B) Can your firm provide transcription coverage to multiple counties **SIMULTANEOUSLY** including backups?

Describe your plan in detail.

- (C) Describe how you will ensure transcript delivery for (1) expedited, (2) overnight, (3) same day, and (4) appeal transcript requests.

5. **EDUCATION/EXPERIENCE/CERTIFICATION**

(A) List each transcriptionist who would be providing service to the AOC under your proposal, the reporter's education, experience and certification by the National Court Reporter's Association, or American Association of Electronic Reporters and Transcribers (AAERT), if any.

(B) Describe your plan to ensure transcriptionists used for this contract maintain the required proficiencies.

6. GRIEVANCE PLAN

(A) Describe your proposal for handling reporter or firm complaints (i.e., complaints about the proficiency, professionalism or tardiness of a reporter or costs charges, errors, discipline, late transcripts, etc.):

7. REFERENCES

(A) List two references who have utilized your services. Do not include the AOC:

1. Individual's Name: _____
Title: _____
Business: _____
Address: _____
Telephone: _____
Date of service(s): _____
Volume of service(s): _____

Description of service(s) provided to reference:

2. Individual's Name: _____
Title: _____
Business: _____
Address: _____
Telephone: _____
Date of service(s): _____
Volume of service(s): _____

Description of service(s) provided to reference:

8. PUBLIC ENTITY CRIMES STATEMENT

The Proposer shall submit the Sworn Statement Under Section 287.133(3)(A) Florida Statutes (Attachment.) If Proposer is a corporation or partnership, the Statement shall be sworn by a duly authorized agent.

ATTACHMENTS:

- 1. Attachment A: *SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES.*
- 2. Attachment B: *SAMPLE AGREEMENT (CONTRACT).*

ATTACHMENT A

***SWORN STATEMENT UNDER SECTION 287.133(3)(A),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES***

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to the Administrative Office of the Courts by _____ (print individual's name and title) for _____ (print name of entity submitting sworn statement) whose business address is _____ and (if applicable) its Federal Employer Identification Number (FEIN) is _____ (If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.)
2. I understand that a "public entity crime" as defined in paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid, proposal, reply or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in paragraph 287.133(1)(a), Florida Statutes, means:
 1. A predecessor or successor of a person convicted of public entity crime; or,
 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate"; includes those officers, directors, executives, partners, shareholders, employees, members and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in paragraph 287.133(1)(e), Florida Statute, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to

bid on contracts for the provision of goods or services let by public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement I have marked below is true in relation to the entity submitting this sworn statement (indicate which statement applies).

_____ Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer by the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of the final order).

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1(ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

Signature

Sworn to and subscribed before me this _____ day of _____, 2016.
Personally known to me or who has produced _____ as identification.

Notary Public

Type or Print Name
My Commission expires:

**THE UNDERSIGNED PROPOSER, BY THE SIGNATURE BELOW,
REPRESENTS THAT THE INFORMATION SUBMITTED IN ITS RESPONSE
TO THIS RFP IS TRUE AND CORRECT.**

**IN WITNESS WHEREOF, this Response to Request for Proposal/Qualifications
#16-002 is hereby signed as of the _____ day of _____, 2016.**

ATTEST:

Witness

Printed Name of Corporation or
Individual (Party)

Witness

Signature of Authorized Corporate
Officer, Partner, or Individual

ATTACHMENT B

CONTRACT # _____

AGREEMENT

Between

**Administrative Office of the Courts
Twentieth Judicial Circuit**

And

For

Court Transcription Services in the Twentieth Judicial Circuit

This Agreement, entered this _____ day of _____, 2016, effective **July 1, 2016**, through **June 30, 2017**, is by and between the Twentieth Judicial Circuit of the State of Florida, the Administrative Office of the Courts (hereinafter "AOC") and _____ (hereinafter "TRANSCRIPTIONIST"), a Corporation duly incorporated under the laws of the State of Florida.

WHEREAS, the Supreme Court of the State of Florida has determined that it is in the public interest to allow each Judicial Circuit in the State of Florida to enter into agreements for the provision of various Court Reporting and Transcription Services to said Circuit; and

WHEREAS, the cost and expense for Court Reporting Services is a proper and lawful charge to the State of Florida; and

WHEREAS, _____ has the authority to enter into contracts on behalf of the TRANSCRIPTIONIST; and

WHEREAS, the parties desire to define their respective responsibilities and obligations and to express their desire to cooperate together to accomplish the purposes and expectations of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

**ARTICLE 1
SCOPE OF SERVICES**

- 1.01 General Requirements.** TRANSCRIPTIONIST shall provide transcription services within the Twentieth Judicial Circuit when requested by the AOC, on an as-needed basis. TRANSCRIPTIONIST understands and acknowledges that this is a non-exclusive Agreement, and no minimum number of assignments are guaranteed, and that the volume of assignments during the course of the contract may vary.
- 1.02 Specific Requirements.** In compliance with the Florida Rules of Judicial Administration, the Florida Rules of Appellate Procedure, local Administrative Order 2.2 dated February 22, 2006, a copy of which may be viewed at http://www.ca.cjis20.org/pdf/ao/ao_2_2.pdf, incorporated herein as if fully attached and subject to revision by the Chief Judge, and the Manual of Transcript Procedures (Rev. 11/22/04) (**Attachment B**), which is subject to revision by the Trial Court Administrator, AOC, or Court Reporting Services Manager, TRANSCRIPTIONIST shall, as requested or needed, provide the AOC with transcription services as it relates to electronically recorded proceedings.

**ARTICLE 2
TERM OF AGREEMENT**

- 2.01** **Initial Term.** The term of this Agreement shall commence on **July 1, 2016**, and shall continue through **June 30, 2017**, unless terminated prior thereto in accordance with other provisions of this Agreement. The parties acknowledge that the TRANSCRIPTIONIST may have performed services during the term of this Agreement, but prior to the full execution of this Agreement, and agree that the TRANSCRIPTIONIST will be paid for all services performed during the term of this Agreement in accordance with Article 4, Compensation.
- 2.02** **Contract Extension.** This Agreement may be continued, extended, or renewed upon written agreement of the parties for two additional one-year terms.

**ARTICLE 3
SPECIFIC CONTRACTUAL TERMS AND CONDITIONS**

- 3.01** **Transcripts.** The TRANSCRIPTIONIST shall provide and prepare all transcripts in compliance with the Florida Rules of Judicial Administration and the Florida Rules of Appellate Procedure, and as further delineated in the *Manuel of Transcript Procedures (Attachment B)*. TRANSCRIPTIONIST shall certify all transcripts as being full, true, and correct. TRANSCRIPTIONIST will use all means available to accommodate any request for expedited transcripts no later than the due date specified by the AOC. Upon request by the AOC, TRANSCRIPTIONIST will provide a copy of any completed transcripts, requested by any person or entity, in an electronic format as approved by the AOC. When a request for transcription is made by any person not a party to this Agreement, and the AOC has supplied a certified copy of the electronic recording, TRANSCRIPTIONIST will follow all applicable statutory procedures and rules. When a request for transcription is made by any person or entity other than the AOC, TRANSCRIPTIONIST will make every possible effort to contact and advise all parties involved in the proceeding of the request for transcription.
- 3.02** **Request Procedures.** A person or entity may submit a written request for a certified electronic recording of the proceeding to the AOC's Electronic Court Recording Office utilizing the Request Form required by the AOC, specifically identifying: the party making the request; the case number; the case name; the name of the judicial official; the date and time of proceedings, the location of proceedings; the type of case; and all other information as requested on the Request Form. That person or entity shall also attach to the Request Form, if applicable and appropriate, a copy of all Witness Lists and Jury Lists that would be necessary to assist TRANSCRIPTIONIST in preparing a complete and accurate transcript of the recorded proceedings. Incomplete or inaccurate Request Forms will be returned to the person or entity. Upon receipt of a complete and accurate Request Form, the AOC will provide the person or entity with a certified copy of the electronic recording of the proceeding. Upon receipt of a certified electronic recording from the AOC, it shall be the responsibility of the person or entity: (a) to verify that the certified electronic recording is of the actual proceeding intended or requested to be transcribed prior to providing the certified electronic recording for transcription; (b) to provide the certified electronic recording and a copy of the Request Form, with all attachments, to TRANSCRIPTIONIST, or a Transcriptionist of their choosing, for transcription with, if applicable, a copy of the "Designation to Court Reporter" form; and (c) to ensure that payment is made for transcription services rendered.

If the request is being made by the AOC on behalf of the Court or a Judge, it shall be the responsibility of the AOC: (a) to verify that the certified electronic recording is of the actual proceeding intended or requested by the Court or Judge to be transcribed prior to providing the certified electronic recording for transcription; (b) to provide the certified electronic recording and a copy of the Request Form, with all attachments, to TRANSCRIPTIONIST for transcription; and (c) to ensure that TRANSCRIPTIONIST is paid for services rendered.

- 3.03** **"Designation to Court Reporter" Form.** TRANSCRIPTIONIST shall be responsible for completing the "Reporter's Acknowledgment" portion of the "Designation to Court Reporter" form. When requesting transcription pursuant to the Florida Rules of Appellate Procedure, and upon submitting a certified

electronic recording to TRANSCRIPTIONIST, a person or entity shall also submit to TRANSCRIPTIONIST a copy of the “Designation to Court Reporter” as provided for by the Florida Rules of Appellate Procedure. The person or entity shall provide accurate information on all “Designation to Court Reporter” forms, including contact name, physical address, and phone and fax numbers for each involved party to be acknowledged, so that TRANSCRIPTIONIST may appropriately fulfill its obligation to complete the “Reporter’s Acknowledgment” within the required time frame.

- 3.04 Transcript Delivery.** TRANSCRIPTIONIST shall deliver a complete transcript no later than the due date specified, or within the time period specified by Court order. The transcription rates for expedited requests are as established by the fee schedule incorporated herein as *Attachment A*.
- 3.05 Performance – Time Frames.** The time frames applicable to the performance of services by TRANSCRIPTIONIST shall begin upon receipt by TRANSCRIPTIONIST of a complete and accurate Request Form with all necessary attachments, and upon receipt of a certified electronic recording of the proceedings that are the subject of the Request Form. Any questions involving the request shall be resolved between TRANSCRIPTIONIST and the person or entity requesting the transcript.
- 3.06 Transcript Acceptance.** Within 25 calendar days after receipt of the completed transcript, the AOC will review the transcript to determine whether the quality of the finished product complies with the requirements of this Agreement and is acceptable. The AOC may accept a transcript without review if TRANSCRIPTIONIST’s prior work has consistently met the standards of the *Manual of Transcript Procedures (Attachment B)*.
- 3.07 Transcript Rejection.** If the AOC determines a transcript is unacceptable, the AOC will promptly notify TRANSCRIPTIONIST, and the transcript and invoice will be returned to TRANSCRIPTIONIST. TRANSCRIPTIONIST must correct all transcription errors and format errors identified. A corrected transcript must be resubmitted within five (5) business days from the date the corrections were requested, or within the time period specified by Court order. Upon receipt of the corrected transcript, the AOC will verify the corrections which may include a review of the full transcript. If the corrected transcript is unacceptable, the transcript will be rejected. TRANSCRIPTIONIST will not be paid unless the transcript is accepted. Two rejected transcripts may result in termination of this Agreement. Under exceptional circumstances, the AOC may authorize a longer period of time for completion of the corrected transcript. Such authorization must be in writing.
- This section applies only to technical and format errors and does not apply to situations where a party disputes the accuracy of the transcription or disputes whether the transcript truly discloses what occurred. Any such disputes shall be resolved by the trial court pursuant to Administrative Order 2.2, or, if applicable, by the appellate court.
- 3.08 Facilities.** The AOC are not responsible for provision of space or facilities (including any and all utilities) or for the storage of TRANSCRIPTIONIST’s equipment and supplies. Only reporting of actual proceedings conducted in courtrooms or a judge’s chambers/hearing room, or depositions in criminal and juvenile proceedings, subject to the availability of deposition rooms, shall be conducted on the court’s premises. The use of court facilities may be utilized for the purposes of fulfilling this contract only. The taking of civil depositions will occur off court premises at an attorney’s office, the court reporting office or some other site.
- 3.09 Standards of Professional Service.** TRANSCRIPTIONIST agrees to provide and perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with all codes of professional conduct and ethics applicable to the services to be provided. Specifically, TRANSCRIPTIONIST shall at all times comply with the Code of Professional Ethics and the Guidelines of Professional Practice of the National TRANSCRIPTIONIST’s Association and ensure that anyone whose services are provided through it also complies therewith.
- 3.10 Protection of Confidential Information.** The TRANSCRIPTIONIST agrees to protect the confidentiality of all privileged and other confidential information.
- 3.11 Compliance with and Knowledge of the Law.** The TRANSCRIPTIONIST warrants and represents that it complies with and will continue to comply with all federal, state and local laws, statutes, ordinances, codes,

rules, administrative orders and regulations governing the services to be provided by the TRANSCRIPTIONIST. In addition, the TRANSCRIPTIONIST expressly warrants and represents that it has knowledge of the requirements of all such laws, statutes, ordinances, codes, rules, administrative orders and regulations.

- 3.12 Maintenance of Licenses and Insurance Coverage.** TRANSCRIPTIONIST shall maintain all such licenses as are required to do business in the State of Florida and in all applicable counties in the Twentieth Judicial circuit, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the services provided and performed by TRANSCRIPTIONIST. TRANSCRIPTIONIST shall obtain and maintain such insurance as will protect TRANSCRIPTIONIST from claims under Workers' Compensation laws. TRANSCRIPTIONIST shall obtain and maintain professional liability insurance and comprehensive general liability insurance, including bodily injury liability coverage with a minimum amount of \$100,000.00 per person and \$300,000.00 per occurrence and property damage liability with a minimum amount of \$50,000.00 per occurrence. TRANSCRIPTIONIST shall provide the AOC with a copy of such policies within fifteen (15) days of signing this Agreement.
- 3.13 Record Keeping.** TRANSCRIPTIONIST agrees to maintain proper records to enable the AOC to establish the costs of recording and transcription as to all categories of Court proceedings, and shall make them or other information requested available to the AOC upon request. The AOC may audit or inspect TRANSCRIPTIONIST'S books, statements, ledgers and/or other financial records relating to services rendered hereunder for five (5) years from the termination of this Agreement or until all federal/state audits are complete for the relevant fiscal year, whichever is later. All financial records shall be made available at TRANSCRIPTIONIST'S principal place of business within this Circuit.
- 3.14 Ownership and Safekeeping of Records.** All stenotype notes, disks and electronic records of proceedings produced under this Agreement are the property of the AOC. TRANSCRIPTIONIST shall be the custodian of all stenotype notes, computer disks, electronic records, and Reporter's dictionaries produced by or through TRANSCRIPTIONIST, and shall ensure the safekeeping of all such records, regardless of whether produced by employees or subcontractors of TRANSCRIPTIONIST. TRANSCRIPTIONIST acknowledges that by delegating this responsibility of safekeeping records to the individual employees or subcontractors, TRANSCRIPTIONIST cannot ensure that records will not be lost, destroyed, or removed from the State of Florida, and, accordingly, agrees to not delegate this responsibility to individual employees or subcontractors. TRANSCRIPTIONIST shall provide the AOC with its plan, in writing, for the safekeeping of all such stenotype notes, disks, electronic records, and dictionaries within fifteen (15) days of signing this Agreement, and the AOC may, in its sole discretion, reject any plan deemed inadequate to ensure safekeeping. Failure of TRANSCRIPTIONIST to provide a written plan acceptable to the AOC may constitute a breach of contract justifying immediate termination of the Agreement by the AOC. Upon request by the AOC, TRANSCRIPTIONIST shall produce for audit or inspection all notes, disks and other records of proceedings produced pursuant to this Agreement. Upon request, TRANSCRIPTIONIST shall provide an electronic version of the transcript in a format approved by the AOC.
- 3.15 No Employee Benefits.** The parties agree that neither the TRANSCRIPTIONIST, nor any person whose services are provided by or through the TRANSCRIPTIONIST, shall be entitled to any rights or privileges of employees of the State of Florida, any County within the Twentieth Judicial Circuit, or the AOC for any reason.
- 3.16 Independent Contractors.** Nothing in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the TRANSCRIPTIONIST (or any person or entity providing services hereunder through the TRANSCRIPTIONIST) as the agent, representative, or employee of the AOC for any purposes or in any manner whatsoever. The TRANSCRIPTIONIST is to be and shall remain an independent contractor with respect to all services performed under this Agreement. The TRANSCRIPTIONIST represents it has or will secure at its own expense all personnel required in performing services under this Agreement, and shall ensure that all persons authorized to provide services pursuant to this Agreement fully meet and comply with the qualifications and quality standards set forth in this Agreement. Any and all personnel of the TRANSCRIPTIONIST or other persons while engaged in the performance of any work or services required by the TRANSCRIPTIONIST under this Agreement shall have no contractual relationship with the AOC, and shall not be considered employees of the AOC.

- 3.17 Non-Discrimination.** TRANSCRIPTIONIST hereby warrants and represents that anyone providing services pursuant to this Agreement will be treated equally by TRANSCRIPTIONIST without regard to race, creed, color, physical handicap, sex, age, national origin, and/or veteran's status. TRANSCRIPTIONIST further warrants that all of his/her employees or subcontractors utilized pursuant to this Agreement will be in full compliance with the requirements of the Fair Labor Standards Act.
- 3.18 Indemnification and Hold Harmless.** TRANSCRIPTIONIST shall be fully liable for its own actions and all actions of its agents, employees, partners, or subcontractors, and shall fully indemnify, defend, and hold harmless the State of Florida, AOC, Judges, Court Administrator, and all court personnel, employees, officers, and agents, from all suits, actions, damages, and costs, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by TRANSCRIPTIONIST, its agents, employees, partners, or subcontractors; provided, however, that TRANSCRIPTIONIST shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the AOC.

ARTICLE 4 COMPENSATION

- 4.01 Schedule of Payment.** The AOC agrees to pay TRANSCRIPTIONIST, as compensation for all services and work provided for hereunder, in accordance with the Rate Schedule, a copy of which is attached as *Attachment A* and hereby incorporated by reference. TRANSCRIPTIONIST acknowledges that Legislative changes or changes made by the Chief Judge of the Twentieth Judicial Circuit, during the term of this Agreement may result in a change in the fee schedule.
- 4.02 Costs Included.** The parties acknowledge that the compensation listed on *Attachment A* includes payment for all out-of-pocket expenses incurred by TRANSCRIPTIONIST hereunder, including, but not limited to, parking fees, office supplies, materials, equipment, rent, postage, copying expenses, office overhead, operating expenses, and travel reimbursement, except travel expenses approved in writing by the Court Administrator before travel is incurred. However, on a case-by-case basis, specific other costs may be reimbursed. Any request by TRANSCRIPTIONIST for reimbursement of such other costs must be approved in writing by the AOC prior to such costs being incurred. Nothing herein contained shall be construed as approval thereof. If mileage or out-of-town travel is approved, such expenses will be paid pursuant to the provisions of Fla. Stat. §112.061, as amended.
- 4.05 Compensation To Employees or Subcontractors Included.** The parties acknowledge that TRANSCRIPTIONIST may utilize the services of employees and/or subcontractors to fulfill its obligations hereunder. TRANSCRIPTIONIST shall ensure that its employees and subcontractors meet and comply with the qualifications and quality standards set forth in this Agreement. The compensation listed on *Attachment A* includes payment for all such services provided by or through TRANSCRIPTIONIST. The AOC shall not be responsible for payment of any monies to any employees or subcontractors providing services through this Agreement and/or through TRANSCRIPTIONIST.
- 4.06 Method of Payment.** TRANSCRIPTIONIST shall submit a detailed invoice to the AOC, in a form acceptable to the AOC, for each individual service requested and rendered. The AOC shall review the invoice(s) and shall have the ability to request additional documentation in its sole discretion. Following approval of the invoice(s), the AOC shall immediately initiate payment procedures, and payment will be made pursuant to Fla. Stat. §215.422. The AOC shall not be held responsible for payment for services requested by another agency.

ARTICLE 5 TERMINATION; BREACH; REMEDIES

- 5.01 Termination Without Cause.** The AOC reserves the exclusive right to terminate this Agreement without cause, upon thirty (30) days written notice to TRANSCRIPTIONIST.
- 5.02 Termination For Cause.** The AOC may immediately terminate its participation in this Agreement upon

written notice for a breach by TRANSCRIPTIONIST of any material provision(s) hereof. TRANSCRIPTIONIST may immediately terminate its contractual relationship with the AOC upon written notice for a breach of any material provision(s) hereof. For purposes of this paragraph, material breach shall consist of:

- A. failure of TRANSCRIPTIONIST to produce transcripts in a timely manner, including but not limited to appellate transcripts;
- B. failure of TRANSCRIPTIONIST to provide accurate transcripts as defined in the *Manual for Transcript Procedures*, a copy of which is attached as **Attachment B**;
- C. fraud (by commission or omission) or other illegal act committed to procure this Agreement or any extension thereof;
- D. institution of disciplinary proceedings against and/or criminal prosecution of TRANSCRIPTIONIST (or anyone whose services are provided by TRANSCRIPTIONIST hereunder) in any court or administrative body, inside or outside the State of Florida;
- E. violation of any material provision hereof.

TRANSCRIPTIONIST shall be paid for services rendered prior to the breach on a pro-rata basis. Such payment shall not be construed as a waiver of any cause of action the AOC may have against TRANSCRIPTIONIST for such breach.

- 5.03 **Remedies Upon Breach.** Any party may exercise any rights available under law or equity in the event of breach by any other party. No waiver by any party of any default shall be construed as waiving rights in the event of any subsequent default.
- 5.04 **Non-Appropriation—Availability of Funds.** The parties agree that the AOC shall be bound and obligated hereunder only to the extent that funds, or sufficient funds, shall have been appropriated and budgeted for the purpose of this Agreement. In the event funds, or sufficient funds, are not appropriated and budgeted in any fiscal year for payments due under this Agreement, the AOC shall immediately notify TRANSCRIPTIONIST of such occurrence and this Agreement shall terminate as it relates to that party on the date specified in the notice of termination, without penalty or expense to the AOC of any kind whatsoever. The AOC reserves the right to allocate available funds based on operational necessity.

ARTICLE 6 GENERAL CONTRACTUAL TERMS AND CONDITIONS

- 6.01 **Ability to Contract.** The TRANSCRIPTIONIST expressly warrants and represents that TRANSCRIPTIONIST and TRANSCRIPTIONIST'S principals, employees, and subcontractors, are not and have not been involved in a any contractual arrangements, agreements, or relationships, including, but not limited to, any non-compete agreements with any former employers, partners, or contractors, which would or might preclude or prohibit TRANSCRIPTIONIST from entering into this Agreement.
- 6.02 **Mergers and Modification.** It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. This Agreement constitutes the only agreement between the parties and terminates any and all such prior agreements with regard to the provision of Court Reporting and Transcription services. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement and signed by the parties hereto.
- 6.03 **Assignment of Agreement.** Neither party may assign its rights, duties, or obligations hereunder without the other party's express, written prior consent. In the event that TRANSCRIPTIONIST assigns its rights under this Agreement with the AOC's written prior consent, the Assignee shall accept full responsibility for TRANSCRIPTIONIST's duty to perform.

6.04 **Cumulative Rights.** All rights of the parties hereunder are cumulative, not alternative, and are in addition to any other rights given by law or equity.

6.05 **Enforceability.** If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the parties agree that the invalidity of such provision shall not affect the other provisions of this Agreement, and all other provisions of this Agreement shall remain in full force and effect.

6.06 **Applicable Law.** This Agreement shall be deemed to be a Florida contract and shall be governed exclusively by the laws of the State of Florida and any applicable sections of the United States Code. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the State of Florida.

6.07 **Litigation and Venue.** All claims or disputes regarding the subject matter hereof shall be decided by a court of competent jurisdiction and shall not be the subject of arbitration or mediation. Venue in the event of such litigation shall be in Lee County, Florida. The prevailing party shall be entitled to attorney fees and costs of such litigation.

6.08 **Notice.** Any notice or demand, which must be given by a party hereto under the terms of this Agreement or any statute or ordinance shall be in writing, and shall be sent by certified mail, return receipt requested.

The address of AOC for this purpose is:

Lee County Justice Center, 1700 Monroe Street, Fort Myers, FL 33901 Attn: Suzanne Ederr, General Counsel

The address of TRANSCRIPTIONIST for this purpose is:

6.09 **Convicted, Discriminatory, or Suspended Vendor Lists.** TRANSCRIPTIONIST represents and warrants that pursuant to Fla. Stat. §287.133, *Public Entity Crime*, and Fla. Stat. §287.134, *Discrimination*, it has never been placed and is not currently on the State's Convicted Vendor List or the State's Discriminatory Vendor List. TRANSCRIPTIONIST further represents and warrants that it has never been removed from the State's Vendor list pursuant to Florida Administrative Code 60A-1.006. Copies of Sections 287.133 and 287.134, Florida Statutes, are attached and incorporated herein as **Attachment C**, and TRANSCRIPTIONIST expressly acknowledges being informed by attachment hereto of the provisions of Sections 187.133(2)(a) and 287.134(2)(a), Florida Statutes.

6.10 **General Contract Conditions of the Florida State Court System.** In addition to the terms set forth in this Agreement, the parties further agree to be bound by the General Contract Conditions of the Florida State Court System, a copy of which is affixed as **Attachment D**, and which can also be found at: http://www.flcourts.org/courts/crtadmin/general_contract_conditions.shtml The terms and conditions described in the General Contract Conditions of the Florida State Court System are incorporated herein as if fully recited in this Agreement, except to the extent that any of those terms or conditions are in conflict with this Agreement, in which case the terms and conditions of this Agreement shall prevail.

(Remainder of Page left blank intentionally)

Having read this entire Agreement and agreeing to be bound by the provisions set forth herein, the parties hereby affix their signatures below:

**ADMINISTRATIVE OFFICE OF THE COURTS
TWENTIETH JUDICIAL CIRCUIT**

SCOTT A. WILSKER
COURT ADMINISTRATOR

Date: _____

WITNESS (signature)

Printed Name

CONTRACTOR

_____ Date: _____

WITNESS (signature)

Printed Name

FEDERAL ID

Attachment A

FEE SCHEDULE

The maximum to be paid for transcription costs at public expense are as follows:

1. Appellate/hearing/trial transcript fee (Original & all copies needed):

10 business day delivery:	\$5.00/page
5 business day delivery:	\$6.50/page
24 hours delivery:	\$8.50/page
Copies (when original previously ordered):	\$0.50/page

2. Transcription from tapes or audio recordings (other than depositions or hearings):

Either \$35.00/hour listening fee or \$3.00/page, whichever is greater.

Attachment B
MANUAL OF TRANSCRIPT PROCEDURES

- Page left blank intentionally -

Twentieth Judicial Circuit Court
Manual of Transcript Procedures
Rev. 11/22/04

**PROVIDED TO CONTRACTOR BY SEPARATE ATTACHMENT
AND FULLY INCORPORATED HEREIN AS IF ATTACHED**

TWENTIETH JUDICIAL CIRCUIT COURT

MANUAL OF TRANSCRIPT PROCEDURES

Lee County

Collier County

Charlotte County

Hendry County

Glades County

MANUAL OF TRANSCRIPT PROCEDURES

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I. Introduction

A. Uniformity of Transcripts Required

All transcripts of judicial proceedings, including depositions, shall be uniform as to format; transcribing procedures; paper size, color, and quality; ink color; and transcript covers for all Twentieth Judicial Circuit Courts in Lee, Collier, Charlotte, Hendry, and Glade Counties.

B. Why Transcript Uniformity is Important

1 Non-Disparate Treatment of Parties

The transcript format prescribed in these procedures will ensure that each party is treated equally. It is essential that the format requirements be followed because minor changes in transcript formatting requirements may result in significant monetary losses to parties.

2 Transcriptionist Payment

The per-page transcript rates are based on strict adherence to the Manual of Transcript Procedures prescribed herein.

C. Disclaimer

Deviation from the standards hereinafter set forth shall not constitute grounds for limiting the use of transcripts in the trial or appellate courts.

D. Subject to Change

This manual is subject to change and will be updated as necessary.

II. Transcriber Duties

A. Provision of Transcripts to the Court

Proceedings or depositions electronically recorded at public expense and pursuant to Administrative Order 2.2 will be transcribed by court personnel employed by the Administrative Office of the Courts within the Electronic Court Recording Office or by independent contract transcriptionists at the discretion of the Court Administrator or the Court Administrator's designee.

Transcription firm or transcriber shall submit an original transcript, clearly stamped ORIGINAL at the top of the title page, and invoice to the requesting party by the specified due date. If extra copies are ordered, each extra copy shall also be clearly stamped COPY at the top of the title page and shall be billed to the requesting party. Transcription firm or transcriber shall also provide the transcript on a CD-ROM or diskette (CD-ROM is preferred) upon request. Transcription firm or transcriber shall return to the requesting party all materials provided for use in preparation of the transcript.

B. Transcriber Qualifications

All persons transcribing electronically recorded proceedings or depositions, whether court personnel or independent contract transcriptionists, shall meet the qualifications established by the Chief Judge or the Court Administrator or the Court Administrator's designee to ensure the person's ability to transcribe the proceedings and to certify the correctness of the transcripts.

C. Transcriber Certification

All persons transcribing electronic or digital recordings, whether court personnel or independent contract transcriptionists, shall certify the transcript as a true and accurate text of the electronic or digital recording of the proceeding or deposition (see Appendices C and D for samples).

III. Materials

A. Paper

Paper size is to be 8-1/2 by 11 inches. Paper color is to be white. Paper weight is to be 20 pound (copy paper) for both originals and copies. Paper content is to be of chemical wood or better quality. Transcript paper shall be three-hole punched in the left margin, with the holes being 4-1/4-inch center to center, and the middle hole to be centered vertically in the left margin of the page.

B. Ink Color

Black ink is to be used for both original transcripts and copies.

C. Transcript Covers and Accessories

Transcription firm shall provide, at no additional charge, a transcript cover, consisting of both front and back covers, for both original transcripts and copies. Transcription firm may use no-tang covers with separate fasteners, or covers can be purchased with pre-sized fasteners. Fasteners shall be of adequate quality to securely bind the transcript. Covers shall be of good quality, consisting of black back covers, 140-pound index paper, #1 sulphite paper and heavyweight transparent plastic front covers, or similar material as approved by the court.

IV. Transcript Format Guidelines

A. Transcript Format

The transcript shall be prepared in accordance with the following Transcript Format Guidelines:

1 Preprinted Marginal Lines

The use of preprinted solid left and right marginal lines is required. The use of preprinted top and bottom marginal lines is optional. All preprinted lines must be placed on the page so that text actually begins 1-3/4 inches from the left side of the page and 3/8 inches from the right side of the page.

2 Line Numbers

Each page of transcription shall contain double-spaced line numbers from 1 through 25 that shall correspond to the lines of text in the body of the transcript.

3 Title/Appearance Page

Title Page

Each transcript is to include a title page indicating:

- Court name.
- Circuit
- City and state
- Case name
- Civil or criminal docket case number
- Name and title of judge or other judicial officer presiding.
- Type of proceeding.
- Date and time of proceeding.
- Volume number (if multi-volume).
- Original transcript shall be clearly stamped ORIGINAL at the top of the title page, and copy shall be clearly stamped COPY at the top of the title page. Extra copies shall be clearly stamped COPY at the top of the title page.

Appearances

Beginning on the title page, the court reporter is to include the complete record of appearances.

- Name, address, and phone number of each attorney and party represented.
- Name, address, and phone number of court reporter/court recorder and/or transcription firm.

Recording/Reporting of Proceedings and Transcript Preparation Methods

The method by which the proceedings were recorded and the method by which the transcript was produced shall be noted. Examples:

- Proceedings recorded by digital sound recording; transcript produced by transcription service.
- Proceedings recorded by electronic sound recording; transcript produced by transcription service.
- Proceedings recorded by mechanical stenography; transcript produced by computer.
- Proceedings recorded by mechanical stenography; transcript produced by note reading.
- Proceedings recorded by shorthand/stenomask; transcript produced from dictation.

Cost

The court reporter may charge for each page of the title page as a full page of transcript.

4 Table of Contents

Each transcript that has witness testimony and/or exhibits is to contain a Table of Contents. Each volume of a multi-volume proceeding shall contain an individual Table of Contents. Each page of the Table of Contents shall be numbered using small Roman numerals at the right margin of the header line of each page. The Table of Contents shall be placed after the title page and before the first page of transcript. The court reporter/recorder may charge for each page of the Table of Contents as a full page of transcript.

The Table of Contents shall indicate the pages at which the direct examination, cross-examination, redirect examination, recross examination, further redirect examination, further recross examination, continued examination, voir dire examination, proffered examination, and the recall of each witness begins. The Table of Contents shall also

indicate on behalf of whom the witness or witnesses were called, such as "Plaintiff's Witness," "Defendant's Witness," "Petitioner's Witness," "Respondent's Witness." A separate section in the Table of Contents shall indicate the page at which any exhibit was marked for identification and received in evidence.

In a protracted case (i.e., a transcript of one thousand (1,000) pages or more), in addition to the individual Table of Contents for each volume, a master Table of Contents shall be prepared which will be set forth in its own separate volume, consisting of a compilation of all of the individual Tables of Contents and entitled Master Table of Contents.

5 Volumes

Individual volumes of transcripts, including depositions, shall be no more than 200 pages in length, inclusive of the Table of Contents

6 Page/Volume Numbering

The pages of a transcript are to be numbered in a single series of consecutive numbers for each proceeding, regardless of the number of days and/or volumes involved. The page number shall be placed in the top right corner of each page, flush with the right margin or one space away from it, in a header or at least one double-space above the first line of transcription. Multi-volume transcripts should be numbered as follows: The title page should contain the volume number centered above the type of proceeding line on the page (see sample title pages, Appendices A and A-1). Each page of transcript shall be numbered with the volume number followed by a hyphen and the page number, i.e.: 1-21 in the upper right corner of each page. Pages are to be numbered consecutively throughout the entirety of a multi-volume transcript, i.e.: V-532 would be Volume 5, page 532.

B. Page Formatting

1 Font

The font size is to be 10 characters per inch. Font shall be Times New Roman or Courier New, with no less than 56 characters per line, margin to margin. Type must be letter quality.

2 Margins

Typing is to begin on each page at the 1-3/4-inch left margin and continue to the 3/8-inch right margin, with no less than 56 characters per line.

3 Alignment

Page alignment is to be left justified (ragged right).

4 Line Spacing

Transcript proceedings shall be double-spaced. Transcript title pages, Table of

Contents, and court reporter's certification shall be single-spaced.

5 Number of Lines Per Page

Each page of transcript shall contain 25 double-spaced lines of text per page, with lines numbered 1 through 25, respectively. The last page may contain fewer lines if it is less than a full page of transcription. Page numbers, headers, and notations cannot be considered part of the 25 lines of text.

6 Punctuation and Spelling

Punctuation and spelling shall be appropriate standard usage. For example, if a question in Q&A is indeed a question, it should be followed by a question mark. If the Q is a statement, it should be followed by a period. Word processing spell checkers should be turned on, or a spell check run on the entire document once the transcript is completed. Appropriate dictionaries should be used when needed.

7 Upper/Lowercase Text

Appropriate upper and lowercase text shall be used. Transcripts will not be accepted and will be returned for correction if typed in all uppercase text.

8 Word Usage

Phonetic

If the correct spelling of a word or name cannot be ascertained from available resource material, type the word as it sounds phonetically followed with (phonetic). Use the (phonetic) each time the word or name is transcribed.

Sic

If a non-existent word is used, type the non-existent word with the word (sic) in parentheses immediately after the word. If a word is used that obviously has the wrong meaning for the context of the sentence, use the word (sic) in parentheses immediately after the misused word. If a sentence does not make sense, use the word (sic) in parentheses at the end of the sentence. NOTE: Do not confuse the use of (sic) with the proper use of a dash (two hyphens) if a speaker changes thought in mid-sentence.

Incorrect Term

Should a speaker use a term that is known to be incorrect, type the term as spoken followed by the word (sic) in parentheses.

Colloquialisms

The following is a brief list of colloquial terms frequently heard on record. They are typed as follows:

Yeah	Mm hm
Uh-huh	Hm mm
Uh-uh	Hmm
Huh, hum – Interrogative sounds	Uh, um

9 Capitalization

To simplify format uniformity, capitalization is limited as closely as possible to names, dates, addresses, direct personal titles, company names, countries, states, races and nationalities, and acronyms (initials instead of organization names) such as FBI, CIA.

10 Hyphenation/Word Division

Commonly accepted rules for proper hyphenation are to be followed. Required hyphens are to be used when words or names are spelled out (twenty-one) so that if the word falls at the end of the line, it will not break at the hyphen, but the entire word will drop down to the next line. Do NOT use hyphens for word division (turn it off in your word processing program). Words are NOT to be hyphenated at the end of a line.

11 Typing Numbers

Numbers written out are the figures one through nine, fractions less than one (e.g., two-thirds, three-quarters) numbers at the beginning of a sentence, except those listed below. All numbers 10 and above are to be written in figures (e. g., 10, 11, 12). If a speaker says the word *number* preceding one through nine, type *number 1*, *number 2*. Use required spaces so that the word number (or other word preceding a number, that goes with the number) is not split from the number so that the word *number* is at the end of one line and the number 1 starts at the beginning of a new line. The following numbers are written in figures even at the beginning of a sentence:

- Exhibit numbers, e.g., "4 is admitted."
- Legal citations, e.g.: F.S. 28.35.030(a)(3); So.2d.
- Counts in an indictment are Roman numerals, e.g., Count I, Count II, Count III.
- Time: With o'clock, use a required space and figures, i.e., 3 o'clock, 12 noon, 12 midnight. To express hours and minutes with o'clock, use this style: half past 4 o'clock, 20 minutes to 4 o'clock, or 10 o'clock in the morning. Without a.m./p.m. or o'clock, type times as 20 minutes to four, five after six, a quarter to five, 9:42, 7:30, etc. Times with a.m. and p.m. are typed 7 a.m., 10 p.m., using a required space between the number and a.m. or p.m.
- Dates and years, e.g., January 1, 1997.
- Case numbers, e.g., 03-009554 DR-A.
- Addresses, e.g., 2303 Hendry Street.
- Money, e.g., \$1.95 or \$100.
- Height and weight, e.g., 5'6" and 4.6 pounds.
- Caliber, e.g., .22 Winchester automatic, .357, .44 Magnum, 30-06 (spoken "30-ought-6").

12 Paragraphing

The purpose of paragraphing is to make reading easier, clearer, and smoother.

Indentations of no more than 10 spaces may be used for paragraphs, and all spaces on a line as herein provided shall be used unless the text of the speaker ends short of marginal requirements. One-sentence paragraphs are undesirable and are to be avoided when possible. There is to be a new paragraph for each new speaker.

13 Legibility

The original transcript and each copy are to be legible, without any interlineations materially defacing the transcript.

C. Tabs and Indentations

1 Colloquy

Speaker identification in colloquy shall begin on the tenth space from the left margin followed directly by a colon (:). Colloquy shall begin on the third space after the colon. Carry-over lines of colloquy shall begin on the fifth space from the left margin.

2 Testimony (Q & A)

Each question and answer shall begin on a separate line on the fifth space from the left margin. The text following the Q and A shall begin on the fifth space from the Q or A. There is no period after the Q and A. Carry-over question and answer lines shall return to the left margin.

3 Parentheticals

One-line parentheticals may begin at any indentation. Parenthetical notations are marked by parentheses. Parentheticals exceeding one line shall begin no more than 10 spaces from the left margin, with carry-over lines being returned to the left margin.

4 Quotations

Quoted material shall begin 10 spaces from the left margin with carry-over lines beginning 10 spaces from the left margin. Use quotation marks only if the quoted material is available to verify a direct quotation. In long quotations, the quotation marks are placed at the start of each paragraph of the quoted material, and the quotation concludes with an ending quotation mark at the end of the last paragraph of the quoted material. Example:

MR. DOE: Your Honor, may I cite from Schultz again?

"If there is any fixed star in our constitutional firmament, it is this: No official, exalted or petty, may ordain what citizens must think or believe.

"Accordingly, we find Robards overstepped his administrative authority in suspending Schultz.

"Judgment for plaintiff Schultz affirmed."

5 Depositions Read During Court Proceedings

Since depositions read during court proceedings have the same effect as oral testimony, the indentations for Q&A should be the same as described in paragraph IV(C)(2) above. In the transcript, each question and answer should be preceded by a quotation mark. At the conclusion of the reading, a closing quotation mark should be used. Examples:

Q "How old are you?"
A "I am 21 years old."
Q "Where were you born?"
A "I was born in Germany."

D. Court Proceedings

1 Speaker Identification

All speakers must be properly identified throughout the transcript, initially (on the title page) by their full name, and thereafter by the following designations or courtesy titles, which shall be typed in capital letters beginning on the tenth space from the left margin:

<u>Speaker</u>	<u>Identification</u>
the judge	THE COURT
attorney	MR. SMITH or MS. JONES
witness (in colloquy)	THE WITNESS
interpreter (in colloquy)	THE INTERPRETER
defendant (in criminal cases)	THE DEFENDANT
the clerk	THE CLERK
the bailiff	THE BAILIFF
the marshal	THE MARSHAL (-> ONE L)
the sheriff	THE SHERIFF

2 Event Identification

References to events that occur throughout the proceedings should be properly noted in capital letters and centered on the appropriate line:

OPENING STATEMENT FOR THE PLAINTIFF

OPENING STATEMENT FOR THE DEFENDANT

DIRECT EXAMINATION

CROSS-EXAMINATION
(**ALWAYS** hyphenated)

REDIRECT EXAMINATION

RECROSS EXAMINATION

FURTHER RECROSS EXAMINATION

CONTINUED CROSS-EXAMINATION

VOIR DIRE EXAMINATION

PROFFERED TESTIMONY

FURTHER REDIRECT EXAMINATION

CONTINUED DIRECT EXAMINATION

PLAINTIFF RESTS

PETITIONER RESTS

DEFENDANT RESTS

RESPONDENT RESTS

CLOSING ARGUMENT FOR THE PETITIONER

CLOSING ARGUMENT FOR THE RESPONDENT

JURY INSTRUCTIONS

3 Testimony (Q & A) Setup

During examination of a juror or a witness under oath, the juror or witness is identified only as A. The attorney who is conducting the questioning is identified only as Q.

There is no punctuation following Q or A. You type the clerk's instruction to please stand and raise your right hand, but you do not type the administering of the oath. You do type the witness' response if you hear it. If you do not hear the witness' response, type nothing; the witness may have indicated by nodding his/her head. When a witness testifies, the witness setup is as follows:

MR. SMITH: Your Honor, I would call John Doe to the stand.

THE CLERK: Please raise your right hand.

JOHN DOE, PLAINTIFF'S WITNESS, SWORN – OR –

JOHN DOE, DEFENDANT, SWORN

THE WITNESS: Yes, I do.

THE CLERK: Please state your name for the record.

THE WITNESS: John Doe.

THE CLERK: Thank you.

THE COURT: Counsel, you may proceed.

MR. SMITH: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Doe, how old are you?

A I'm 29 years old. Actually, I was born in 1974, and my birthday is in May, so I will be 30 years old on May 15th.

4 Types of Examination

Direct Examination

Direct examination is questioning by the attorney who has called the witness. Usually a witness is questioned only once on direct examination during proceedings of the same nature. Exceptions:

- If there is more than one attorney representing a party, or if two attorneys are questioning on the same type of examination, only the attorney introduction line is shown. (BY MS. SMITH: / BY MR. JONES: -- both attorneys are on the same side, plaintiff/petitioner or defendant/respondent.)
- If a witness is called a second time on behalf of the opposing party.
- During an offer of proof (proffered testimony). However, an offer of proof is only used in a transcript when it is so stated on record.

Cross-Examination

Cross-examination (ALWAYS use a required hyphen in cross-examination) is questioning by the opposing attorney. A witness is usually questioned only once on cross-examination with the same exceptions as noted for direct examination.

Redirect Examination

Redirect examination is questioning again by the first attorney re-examining the witness on matters raised on cross-examination.

Recross Examination

Recross examination is questioning by the opposing attorney re-examining the witness on matters raised on redirect. Attorneys may question in turn several times on redirect and recross. If this occurs, the centered heading in all caps for the examination should be FURTHER REDIRECT EXAMIINATION or FURTHER RECROSS EXAMINATION.

Voir Dire Examination

Voir dire examination is used during jury selection when a prospective juror is questioned as to their qualifications as a juror. In this instance, the words VOIR DIRE EXAMINATION OF MARY SMITH, PROSPECTIVE JUROR, are to be centered and in caps. The next line is the attorney identification line as in any examination. When the second attorney questions the juror, only the attorney identification line is shown. Example:

VOIR DIRE EXAMINATION OF MARY SMITH, PROSPECTIVE JUROR

BY MR. ATTORNEY:

Q

A

BY MR. SECOND ATTORNEY:

Q

A

However, voir dire examination of prospective jurors may be set up in colloquy if the attorneys are talking to the jury and asking questions of the prospective jury panel as a whole or randomly amongst the prospective jurors. Example:

MR. SMITH: Now, when the Judge instructs you on the law, the question is, if you do not agree with the law, will you still be able to abide by the law and

follow the Judge's instructions? Is there anyone here who does not think they will be able to do that?

(No audible response)

MR. SMITH: Ms. Lancaster, do you think you will have any problem with that?

PROSPECTIVE JUROR LANCASTER: No, I don't think I'll have a problem with that.

MR. SMITH: Mr. Jones, how about you? Will you be able to follow the Judge's instructions on the law even if you do not agree with them?

PROSPECTIVE JUROR JONES: Yes, I would be able to follow the Judge's instructions even if I don't particularly agree with them.

Voir dire examination is also used when the court questions a witness for one or more pages or when the testimony of a witness is interrupted by an opposing attorney who wishes to question the witness on a particular subject. It is usually referred to as voir dire but not always. The jury may or may not be excused. Example:

MR. SMITH: Your Honor, may I voir dire the witness?

THE COURT: You may.

VOIR DIRE EXAMINATION

BY MR. SMITH:

Q

A

At the conclusion of voir dire examination, the original examination is set up as continued along with the attorney identification line.

DIRECT EXAMINATION (CONTINUED)

BY MS. JONES:

Q

A

Page numbering for the Table of Contents will show the page number of the original examination, a slash bar, and the page number where the original examination is continued after the voir dire examination. Voir dire is shown on the Table of Contents as follows:

VOIR DIRE

WITNESSES:

VOL. DIRECT CROSS REDIRECT RECROSS

For the Petitioner:

Louis Fish

I

59/64

75

99

103

By Mr. Fontelle

Continued Examination

Continued examination is used in the following circumstances. The word (CONTINUED) is included on the examination line when questioning of a witness has been interrupted by one or more pages of argument, voir dire examination, or proffered testimony. The full witness setup need not be repeated except after an offer of proof. The type of continued examination and the attorney's introduction line is included. Example:

THE COURT: Do you want to be heard any further, Mr.

Smith?

MR. SMITH: No, Your Honor.

THE COURT: You may continue with cross.

CROSS-EXAMINATION (CONTINUED)

BY MR. SMITH:

If an attorney has not completed his/her examination of a witness when court recesses for the day, and the examination resumes at the beginning of a new day, or if a witness's testimony has been interrupted by testimony of another witness, the entire witness setup is required, using the words previously sworn in the witness line. Example:

JOHN DOE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION (CONTINUED)

BY MR. SMITH:

Proffered Testimony

Proffered testimony (offer of proof) is testimony through questions and answers of a witness, or through an attorney's own narrative description. It usually occurs outside the presence of the jury. An offer of proof differs from voir dire examination only by the fact that it is referred to as an offer of proof by the judge or one of the attorneys. If an offer of proof comes in through testimony, the witness is set up on direct examination as follows:

JOHN DOE, PROFFERED TESTIMONY
DIRECT EXAMINATION

If the same witness testifies for the first time after the offer of proof, the entire witness setup is required for the regular examination. If the offer of proof interrupted ongoing examination of the same witness, set the witness up in the Table of Contents as follows: The witness's name is to be shown as direct examination on the table of contents with the notation (By Offer of Proof) in parentheses under the witness's name. If the offer of proof has interrupted ongoing testimony, the witness's name would appear twice on the Table of Contents. If the interrupted testimony is continued after the offer of proof, the two page numbers appear on the Table of Contents separated by a slash bar.

Interruption of Witness Examination

Interruption of witness examination by voir dire examination or offer of proof of another witness: If the examination of a witness has been interrupted by the voir dire examination or proffered testimony of another witness and the examination of the original witness is now resuming, the entire setup for the original witness is required, using the phrase *previously sworn*.

JOHN DOE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN
DIRECT EXAMINATION (CONTINUED)

BY MR. SMITH:

Telephonic Testimony

If a witness testifies telephonically, the witness setup is as follows:

JOHN DOE, PLAINTIFF'S TELEPHONIC WITNESS, SWORN
DIRECT EXAMINATION

The phrase (*Telephonic*) shall also be noted in the Table of Contents under the witness' name.

5 Testimony Through an Interpreter

When a witness speaks no English, or only partial English, an interpreter is used whose sole purpose is to literally translate from English to the foreign language and the answers back to English.

Response in English

When interpreters are used, it is assumed that answers are made in a foreign language and interpreted into English unless the parenthetical "(in English)" is used after the witness' response, e.g.:

Q Were you born in Mexico?

A Yes (in English).

The witness answered in English either before or after the interpreter translated the question.

Literal Translation

A literal translation is when the attorney asks questions and the interpreter answers the questions for the witness in the first person. The witness setup is transcribed as shown in the sample below (Q/A):

Q How old are you, sir?

A I'm 29.

The interpreter translated the question from English to Spanish for the witness, waited for the witness' answer in Spanish, and then responded: "I'm 29," giving the witness' response in English.

Non-Literal Translation

At times, an attorney will lapse into third person when asking questions or the interpreter will lapse into the third person when translating a witness's answer. When this occurs, the non-literal translation is transcribed as shown in the sample below (MS. SMITH/INTERPRETER):

MS. SMITH: Would you ask him where he was born?

INTERPRETER: He says Mexico.

The attorney asked the question to the interpreter in the third person, and the interpreter, after putting the question to the witness in Spanish and, receiving the response in Spanish, relayed the answer in English in the third person.

6 Exhibits

Items used as evidence in a trial. When an attorney asks the witness to identify the exhibit, it is "Identified." An attorney may ask that an exhibit be admitted following

identification, and if there are no objections, or over objections, the court orders the exhibit admitted, or it may be denied. The setup for each of these events is as follows:

Q Ms. Smith, what is this item I've just handed you?

A This is a photo of me in my garage.

(Plaintiff's Exhibit No. 1 identified)

MR. SMITH: Your Honor, we'd move the admission of Plaintiff's Exhibit 1.

THE COURT: Any objections?

MS. JONES: Yes, Your Honor. We'd object on the grounds of relevance.

THE COURT: Overruled. Exhibit No. 1 is admitted.

(Plaintiff's Exhibit No. 1 admitted)

Occasionally an exhibit may be admitted with no obvious verbal proof in the oral record, but the clerk will indicate admission in the log notes or tag reports. Show admission of the exhibit in the transcript at whatever point the log notes or tag report indicate.

E. Typing – Verbal

1 Editing of Speech

The transcript should provide an accurate record of words spoken in the course of proceedings. All grammatical errors, changes of thought, contractions, misstatements, and poorly constructed sentences should be transcribed as spoken. In the interest of readability, however, stutters, uhms, ahs, and other verbal tics are not normally included in transcripts, but such verbalizations must be transcribed whenever their exclusion could change the meaning of the statement or question. Phrases such as "going to" and "kind of" should be typed as spoken; however, slang expressions of the same phrases should be typed as spoken, such as:

<u>Type</u>	<u>Not</u>
gonna	going to
kinda	kind of
gotta	got to
'cause	because

With the exception of a judge or an attorney, all speakers are to be transcribed verbatim. If a judge or an attorney repeats words or partial phrases, only the first repeated word or partial phrase need be transcribed. Changes of thought containing whole phrases are transcribed in full. If spoken by a judge or counsel, edit as follows:

- Did you go -- well, let me ask you this." This sentence involves a whole phrase and is transcribed as it is spoken.
- Do not edit stress points. For example, "Only then, only then did he admit he had a problem."
- Did – did – did you know" and "Did you -- did you know" are transcribed as "Did you know" if spoken by a judge or counsel.
- However, if a witness says "Did -- did -- did you know" or "Did you -- did you know," it should be transcribed verbatim as "Did -- did -- did you know" or "Did you -- did you know."

2 Interruptions of Speech and Simultaneous Discussions

Interruptions of speech shall be denoted by the use of a dash at the point of interruption, and again at the point the speaker resumes speaking. At the discretion of the transcriber, simultaneous discussions may also be noted in this manner.

3 Breaks in Speech

Often a speaker will break speech mid-sentence. This is indicated in the transcript with a dash for one of several reasons as described below. A dash is a required hyphen, or two hyphens may be used to form a dash, with a space before and after the dash. If two hyphens are typed together to form the dash, do not allow a split of the two hyphens at the end of a line. A dash is used to show:

Changes of Thought

When the speaker has a change of thought, leaving a sentence unfinished to begin a new one.

Repetition

When a speaker repeats a word or phrase. Mid-word: When a speaker leaves a word unfinished or starts another word.

Incomplete Sentence

The speaker has left a sentence incomplete due to interruption or fadeout. Occasionally a speaker will be interrupted by another speaker before completing the sentence. If the speaker resumes the sentence after the interruption has ended, the dash should be used to denote where the beginning of the resumed sentence. If a speaker fades out before ending a sentence, a dash should be used.

Change of Address

When an attorney who is questioning a witness interrupts a question mid-sentence to address the court or any courtroom participant other than the witness, this is shown by a

dash. When an attorney interrupts witness testimony to address the court or any other courtroom participant, this should be set up in colloquy. Example:

Q Did you say you were going to --

MR. SMITH: Oh, before I forget, Your Honor, I would move to admit Exhibit No. 2 at this time.

4 Indiscernible or Inaudible Speech on Electronic/Digital Sound Recording

Incomplete records of proceedings are unacceptable in a court of law. It is therefore highly undesirable to have any portion of a transcript labeled "indiscernible" or "inaudible." Every effort must be made to produce a complete transcript. Occasionally when transcribing, however, there may be a word or words that cannot be heard or are garbled. Make every effort to transcribe it, but do not guess. If the phrase still cannot be deciphered, use one of the following summary phrases to clearly show the portion not transcribed. The indication "inaudible" or "indiscernible" should be used only when it is impossible to transcribe the record.

Indiscernible

When a word or phrase is unintelligible and cannot be transcribed, it is indicated by the word *indiscernible* in parentheses. If the indiscernible phrase is the first word in a sentence, it should be capitalized. A description may be used for why the word or phrase was indiscernible. Example:

- (Indiscernible - Away from microphone)
- (Indiscernible - Interrupted)
- (Indiscernible - Garbled speech)
- (Indiscernible - Simultaneous speech)

If any sound is heard that may be interpreted as the witness's reply but it is indistinct, type the word (*indiscernible*) in parentheses.

Inaudible Reply

Occasionally a witness may answer by a shake or nod of the head that obviously is not recorded. If a question has clearly been asked but no sound is heard, this is shown as a summary phrase (Inaudible reply.) in parentheses if something is heard indicating that the witness might have responded but there was no audible response, or (No audible reply.) in parentheses if a question was clearly asked and nothing is heard in response.

If a question has been asked and no sound is heard in response but the clerk has indicated in log notes or tag report that the witness nodded or shook his/her head in the affirmative or negative, the following parentheticals may be used:

- (Nods head up and down.)
- (Shakes head from side to side.)
- (Indicating.)

5 Private Communications and Off-the-Record Conversations

Private communications and off-the-record conversations that are inadvertently recorded should not be included in the transcript.

6 Striking of Portions of the Proceeding

Pursuant to the Rules of Judicial Administration 2.070(c) No part of the proceeding shall be omitted from the record unless all of the parties agree to do so and the court approves the agreement. In other words, regardless of an order or instruction to strike, the material ordered stricken must appear in the transcript unless all of the parties agree to omit the material and the court approves the agreement.

7 Non-Verbal Responses and Gestures

It is the responsibility of the attorneys, as well as the judge in some instances, to note for the record any significant nonverbal behavior, i.e., physical gestures, on the part of a witness. If counsel or the court refers to the witness's affirmative or negative gesture, an appropriate parenthetical phrase, as indicated in the paragraph above entitled *Inaudible Reply*, may be used to indicate physical gestures.

8 Pauses

Often there will be a silence of several seconds, or even minutes, during proceedings. These pauses are not indicated in a transcript unless they are very long. If the pause occurs while a person is speaking, type a dash (two hyphens), the word (*pause*) in parentheses on the same line, a dash (two hyphens), and then resume transcribing after the pause. If the pause occurs between speakers, type the word (*Pause*) in parentheses on the tenth space from the margin on a separate line. If the pause occurs because a witness is being summoned, type the appropriate parenthetical on a separate line. Other parentheticals may be used to indicate lengthy pauses and the reason for the pause such as:

- (Pause - Witness summoned)
- (Pause as the jury exits the courtroom)
- (Pause - Witness crying)

- (Pause as the witness composes herself)

9 Read back/Playback

All read backs and/or playbacks, and the party requesting such should be noted parenthetically as follows:

If the question and/or answer requested to be read or played back appears on the same page as the request, the following parenthetical should be used:

- (10:29 a.m.)
- (The last question was read back)
- (10:31 a.m.)

OR

- (2:32 p.m.)
- (The last answer was played back)
- (2:34 p.m.)

If, however, the question and/or answer, or both, appear on a previous page, the court reporter or audio operator should replay or restate the question and/or answer both, in full, with appropriate quotation marks and parentheses. The following parenthetical should be used for playbacks:

- (The record was replayed)

F. Parentheticals

1 Customary Parentheticals

Parentheticals are used to denote customary introductory or explanatory statements, such as (Call to order of the court) or to indicate court recess or adjournment. Parentheticals are also used to indicate non-verbal behavior, pauses, read back/playback, and other events and activities that take place in the court/hearing room. Parenthetical notations are marked by parentheses. One-line parentheticals may begin at any indentation. Parentheticals exceeding one line shall begin on the tenth space from the left margin, with carry-over lines being returned to the left margin. The following parentheticals may be used in transcripts:

Proceedings Started, Recessed, Adjourned

- (Call to order of the court at 8:02 a.m.)
- (In recess at 12:00 noon)
- (On record at 10:11 a.m.)
- (Whereupon, the proceedings adjourned at 4:55 p.m., to be reconvened on Tuesday, January 29, 2004 at 8:00 a.m.)

General Event Parentheticals

- (Pause)
- (Simultaneous speech)
- (Witness excused)

Defendant Present/Not Present

- (Defendant present)
- (Defendant not present)

Jury Parentheticals

- (Prospective jurors enter the courtroom)
- (Prospective juror dismissed)
- (The jury is sworn)
- (Jury in at 8:05 a.m.)
- (Jury out at 12:02 p.m.)
- (Jury panel excused)
- (Jury panel excused for lunch)
- (Alternate juror dismissed)
- (Jury panel dismissed)

Recorded Bench/Side Bar Conferences

This designation should note whether the bench/side bar conference is on or off the record. If all the attorneys in court are not participating in the bench/side bar conference, the parenthetical notation should so indicate.

- (Bench conference on the record at 12:00 p.m.)
- (End of bench conference at 2:34 p.m.)
- (At side bar on the record at 9:39 a.m.)
- (End of discussion at side bar at 9:46 a.m.)

Off the Record Discussions and Unrecorded Bench/Sidebar Conferences

This designation should note where the discussion took place.

- (Bench conference off the record with Mr. Smith, Mrs. Jones, and Mr. Adams at 2:32 p.m.)
- (End of bench conference at 2:34 p.m.)
- (Side bar not recorded at 9:44 a.m.)
- (End of discussion at side bar at 9:46 a.m.)

Chambers Conferences

This designation should note the presence or absence of parties in chambers.

- (Discussion off the record in chambers without defendant present)
- (Discussion on the record in chambers with defendant present)

2 Electronic Court Recorder's Parentheticals

Electronic court recorder operator's parenthetical notations in a transcript are the court reporter's own words, enclosed in parentheses, recording some action or event. Court recorder parenthetical notations should be as short as possible, consistent with clarity and standard word usage in customary parentheticals. Example:

- (10:29 a.m.)
- (This portion not recorded due to technical difficulties)
- (10:44 a.m.)

THE COURT: Well, as I understand it, our court reporter was having some technical difficulties with her recording equipment, but she has indicated to me that she has resolved the problem. So let's proceed. We were discussing the change of venue motion of the defendants.

3 Excerpts

Sometimes only a portion of a proceeding will be ordered. In this case, the title page must indicate "EXCERPT," and the portion requested may be indicated as well, "Testimony of John Smith," or "Closing Arguments" (see sample).

Requested/Not Requested Portions

If a transcript request indicates a portion of a proceeding is NOT requested, transcribe the requested portion, indicating the beginning of the requested portion with the log time (if not requested from the beginning of the proceedings, and indicate the ending of the requested portion with the log time (unless the requested portion goes to the end of the proceedings) as follows:

EXAMPLE: The portion being requested is the testimony of Joe Smith, which starts at 10:05 a.m. and ends at 11:32 a.m.

- (This portion not requested)

(10:05 a.m.) Joe Smith's testimony begins

JOE SMITH, DEFENDANT'S WITNESS, SWORN
<Type Joe Smith's testimony here>
- (11:32 a.m.) Joe Smith's testimony ends

(This portion not requested)

Previously Transcribed Portions

Occasionally a transcript request may include a portion that has previously been transcribed. When this occurs, type the words (This portion previously transcribed) as a parenthetical:

Transcribing from the beginning point DOWN to the previously transcribed portion:

<START TYPING HERE>

- (10:05 a.m.) Ending time

(This portion previously transcribed)

Starting after the previously transcribed portion to the ending point:

- (This portion previously transcribed)

(10:05 a.m.) Starting time

<START TYPING HERE>

Interrupted Proceedings

If a proceeding in a case is continued to a time later the same day, indicate off record, in recess, court recessed to take up other matters, at whatever time a.m./p.m. etc., and then indicate on record at whatever a.m./p.m.

- (Off record at 3:39 p.m.)
- (In recess at 3:39 p.m.)
- (On record at 4:30 p.m.)
- (Court recessed to take up other matters at 10:39 a.m.)
- (On record at 1:02 p.m.)

G. Certification

Each transcript prepared for the Twentieth Judicial Circuit Court System must be certified by the person who transcribed it and bear an original signature. The certificate may not be in condensed form and may not be duplexed.

In completing the certificate, the page numbers of the foregoing pages are from the first page of the title page through the last page of proceedings, and the certificate page is not numbered. Each transcript of a multi-transcript proceeding shall contain a certificate page. The certification must state that the transcriptionist is not counsel to, employed by, or related to any of the parties involved in the proceedings and has no interest, financial or otherwise, in the proceedings.

The court reporter or transcriber is to authenticate the original transcript and each copy with a certification on the last page. No additional fee is to be charged for the authentication and the certification. The certification is to appear as the last page of each volume of transcript.

The contents of the title page should not be repeated as part of the certification. The certification is not included in the Table of Contents.

The owner, manager, supervisor, or other employee of a transcription firm may provide the transcript certification for employees or contractors of the transcription firm as follows:

I, SUE SMITH, do hereby certify that the foregoing pages numbered 1-100 contain a full, true, and correct transcript of proceedings in the above-entitled matter, transcribed by me, or at my direction and supervision, to the best of my knowledge and ability.

If more than one court reporter or transcriber is involved in the production of the transcript being certified, then the certification of each court reporter or transcriber involved shall be required at the end of each volume. Examples:

Digital (Electronic) Sound Recording.

I, SUE SMITH and JILL JONES, court approved transcribers, do hereby certify that the foregoing is a correct transcript from the official digital (electronic) sound recording of the proceedings in the above-entitled matter.

Signature of Court Reporter/Transcriber

Date

Type or print name here

Signature of Court Reporter/Transcriber

Date

Type or print name here

Stenography/Stenomask.

I, SUE SMITH, do hereby certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Signature of Court Reporter/Transcriber

Date

Type or print name here

Transcriber's Certification for Another's Notes.

I, SUE SMITH and JANE DOE, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by <the court name(s)>, of the proceedings taken on the date and time previously stated in the above matter. I further certify that I am not counsel for, related to, or employed by any of the parties to the action in which this hearing was taken, and further, that I am not financially or otherwise interested in the outcome of the above-entitled action.

Signature of Court Reporter/Transcriber

Date

Type or print name here

Signature of Court Reporter/Transcriber

Date

Type or print name here

See Appendices C and D for sample transcriber and principle certifications.

V. Use of Real-Time Court Reporters

A. Real-Time Court Reporting Services in Capital Cases

In all trials in which the State seeks the death penalty, and in capital post-conviction proceedings, all measures necessary to expedite the preparation of the transcript will be used, including but not limited to the following:

- Where available, a court reporter will be used who has the capacity to provide real-time transcription of the proceedings.
- If Real-time transcription services are not available, a computer-aided transcription qualified court reporter may be used.
- Scopists, text editors, alternating court reporters, or other means necessary to expedite the finalization of the certified transcript may be used.
- Reasonable restrictions on work assignments of employee or contract court reporters may be imposed to ensure that transcript production in capital cases is given priority.

B. Real-Time Unedited Transcripts

Real-time unedited transcripts sold on computer disk may be in ASCII format or any other format requested by the ordering party and agreed to by the court reporter. It should include any notations made to the electronic file by the ordering party during proceedings. Disks may not contain any protection or programming codes that would prevent copying, printing, or transferring the data. The Manual of Transcript Procedures guidelines prescribed by the Twentieth Judicial Circuit apply to real-time unedited transcripts with the following exceptions:

- Real-time unedited transcripts must be clearly marked as such with a header or footer at the top or bottom of each page of transcript stating: "Real-Time Unedited Transcript Only."
- The real-time unedited transcript should not include a title page, table of contents or certification.
- The disk label may be of a different color than that used on disks containing the text of certified transcripts and must be hand-stamped with the words "Real-Time Unedited Transcript Only."

VI. Court Records

A. Definition of "Court Records"

Pursuant to Rule 2.075, "Court Records" is defined as follows:

"Court Records" means the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, and electronic records, video tapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes or stenographic tapes of court proceedings.

Transcription contractors will be provided copies of electronic or digital recordings for the purpose of preparing the transcript. Other materials, including but not limited to a Case Information Record, copies of docket sheets, and spelling lists, that will be helpful in preparing the transcript will also be provided.

B. Possession of Court Records

Pursuant to Rule 2.072, Possession of Court Records, no person other than judges and authorized court employees shall remove court records as defined in Rule 2.075 from the clerk's office except by order of the chief judge or chief justice upon a showing of good cause.

C. Retention of Court Records

Pursuant to Rule 2.075, Retention of Court Records, (f) Court Reporters' Notes, court reporters/recorders or persons acting as court reporters/ recorders for judicial or discovery proceedings shall retain the original notes and/or electronic or digital records of court proceedings and depositions until the times specified below:

- Two (2) years from the date of preparing the transcript for judicial proceedings, arbitration hearings, and discovery proceedings when an original transcript has been prepared.
- Ten (10) years for judicial proceedings in felony cases when a transcript has NOT been prepared.
- Five (5) years for all other judicial proceedings, arbitration hearings, and discovery proceedings when an original transcript has NOT been prepared.

Pursuant to Rule 2.075(k), Sealed Records:

- No record which has been sealed from public examination by order of court shall be destroyed without hearing after such notice as the court shall require.

VII. Acceptance of Transcripts

A. Time Period for Court Acceptance of Transcript

Acceptance of the transcript will be determined by the Electronic Court Recording (ECR) Department or the Requesting Party within twenty-five (25) days of receipt of the completed transcript. A random check of the transcript may be made to assure that the finished product is at an acceptable level of quality.

B. Random Sample

A random sample will be made of not less than 3% of the total transcript by checking the transcript against the media (digital or electronic sound recording). ECR staff may choose to mark all errors in the random sample, and all errors marked must be corrected. However, only major errors will be counted in determining the accuracy rate of the transcript.

C. Acceptance of Transcript

If the sample is at least 95% accurate, ECR staff or the Requesting Party will accept the transcript as is, provided that there are no format errors. Court Administration or its designee may accept a transcript without review if the contractor's prior work has consistently met the court's standards.

D. Unacceptable Transcript

If a transcript is unacceptable, ECR staff or the Requesting Party will promptly notify the contractor, and the transcript, invoice, media, and other materials will be returned to the contractor. The contractor must correct all major transcribing and format errors, as well as any other marked errors, and resubmit a corrected transcript within five working days. A transcript is considered returned to the contractor on the date the contractor is notified that the transcript is unacceptable and is available to be picked up for correction. If a transcript is returned to the contractor for correction, the contractor must pay any costs associated with the correction of the transcript and resubmitting the corrected transcript to the court.

Upon receipt of the corrected transcript, ECR staff or the Requesting Party will verify the corrections and make another random check of the total transcript. If the sample does not meet the 95% accuracy rate, the transcript will be rejected and the contractor will not be paid.

Two rejected transcripts within a one-year period may result in termination of the use of contractor's services.

E. Major Errors

These standards were developed to explain what the court system regards as minor errors that can be overlooked and what it regards as major errors that compromise the quality of the transcript. Transcripts prepared for the court system must be at least 95% free of any major errors. A major error is any error that alters the meaning of the record.

1 Format Errors

Contractors shall follow the format requirements set out in this manual including all amendments thereto. A transcript that contains any of the following format errors will be returned for correction:

- Information on the title page, including appearances and the recording/reporting of proceedings and transcript preparation methods, is inaccurate.
- Table of Contents not provided when required.
- Table of Contents does not contain all required information or contains inaccurate information (e.g., incorrect page numbers, etc.).
- Page numbering does not comply with the manual or with special instructions given by the Court Administrator, Electronic Court Recording Supervisor, Requesting Party or designee.
- On/Off record times in the transcript are omitted or are in error.
- Any errors contained in the certificate.
- Any other significant departures from the format required by the manual.

2 Verbatim Errors

The Manual of Transcript Procedures requires that a transcript contain all words and other verbal expressions uttered during the course of the proceeding, except for the limited exceptions referred to earlier in this manual. Major verbatim errors are counted when determining the accuracy rate of a transcript. Major verbatim errors are defined as follows:

- Omission of a spoken word that DOES affect the meaning of the sentence.
- Omission of uh- or huh-uh when used as an expression of assent or in response to a question is a major verbatim error. However, omission of uh-huh when used by someone who is merely following what another person is saying is a minor verbatim error. Example:

- Q And then you went into the store –
- A Uh-huh.
- Q -- and you saw the man with the gun –
- A Uh-huh.
- Q -- and the ski mask --
- A Uh-huh.
- Q -- and he points the gun at you.
- A Uh-huh.

3 Punctuation Errors

Transcribers shall use commonly accepted rules for punctuation. In determining the accuracy rate of a transcript, the court system only counts punctuation errors that alter the meaning of the record as a major error. A punctuation error that affects the meaning of the sentence will be counted as a major error.

4 Spelling Errors

A transcript that has an average of more than two spelling errors per page will be returned for correction. A word phonetically spelled will not be classified as a misspelled word. A typographical error will be classified as a misspelled word. Transcribers shall use the spell check feature on computer software. Correct spelling of homonyms is required. Transcribers shall refer to specialty dictionaries such as medical, legal, etc., and to use other reference material such as a phone book, atlas, etc., when necessary to achieve correct spelling.

5 Indiscernibles

Transcribers shall tune in to individual channels on transcribing equipment to assist in clarifying indiscernibles. In determining the accuracy rate of a transcript, the court system counts as a major error an indiscernible that is discernible to the ECR staff person, the Requesting Party, or another court employee when listening to the same recording used by the transcriber, except in the circumstances listed below:

Bench Conferences

If the recording quality of a bench conference is poor, transcribers are only required to transcribe what is discernible to them after all reasonable attempts to discern the speech have been exhausted. Transcripts will not be rejected because of indiscernibles in a bench conference unless the transcriber failed to transcribe speech that was easily discernible to court staff after listening to the recording for no more than one minute.

Speech Away from a Microphone and Telephone Speech

Transcribers must attempt to transcribe what is said by people who have stepped away from a microphone and by people who are participating telephonically. However, if after a reasonable time the transcriber cannot discern what was said, the transcriber must type a summary phrase in parentheses (*Indiscernible - away from microphone*) or (*Indiscernible - telephonic speech*). Transcripts will not be rejected because of indiscernibles that are marked in this manner unless the transcriber failed to transcribe speech that was easily discernible to court staff after listening to that portion of the recording for no more than one minute.

Except as noted in the two paragraphs above, an indiscernible that is discernible to the ECR staff or the Requesting Party when listening to the same recording as used by the contractor will be counted as a major error.

6 Examples

The following are examples of major errors:

Inclusion or exclusion of a negative or affirmative that is not in the electronic record

Recorded: I did not commit the murder.
Transcribed: I did commit the murder.

Recorded: I wouldn't care if you did.
Transcribed: I would care if you did.

Omission of a spoken word or phrase that affects the meaning of the sentence

Recorded: Mr. Smith possessed a handgun.
Transcribed: Mr. Smith knowingly possessed a handgun.

Recorded: Do you think you understand what you're being charged with?
Transcribed: Do you think you're being charged with?

Incorrect word that affects the meaning of the sentence or whose usage is obviously wrong to a person familiar with legal terms and proceedings

Recorded: A small package was simulating marijuana.
Transcribed: A small package was assumably marijuana.

Recorded: The officer observed illegal conduct.

Transcribed: The officer was served illegal conduct.

Recorded: Your Honor, it's my motion.

Transcribed: Your Honor, it's my mission.

Recorded: They are excused from their subpoenas.

Transcribed: They are excused from these proceedings.

Recorded: Anything in the wallet or concealed anywhere.

Transcribed: Anything in the wallet or sealed anywhere.

Recorded: In reference to our motion for judgment of acquittal on Counts I, II, and III....

Transcribed: In reference to our motion for judgment and put them on Count I, II, and III....

Failure to recognize legal terms or phrases

Recorded: ...motion in limine filed by the defense.

Transcribed: ...motion to eliminate a file by the defense.

Recorded: That would justify the warrantless search.

Transcribed: That would justify the warrant was searched.

Recorded: The plain touch doctrine is being adopted.

Transcribed: The plain and touch doctrine is being adopted.

Wrong dates, days of weeks, years, times, exhibit numbers

Recorded: It was Monday, February 5, 1996.

Transcribed: It was Tuesday, March 4, 1995.

Recorded: It was at 10:30 in the morning.

Transcribed: It was at 11:30 in the morning.

Recorded: Exhibit D is admitted.

Transcribed: Exhibit B is admitted.

Incorrect speaker

Recorded: MR. SMITH: Yes, Your Honor.

Transcribed: MR. JONES: Yes, Your Honor.

If the transcriber is uncertain who is speaking after listening to the recording a reasonable amount of time, the transcriber should type the words *UNIDENTIFIED MALE SPEAKER* or *UNIDENTIFIED FEMALE SPEAKER*.

F. Minor Errors

The Manual of Transcript Procedures requires that a transcript contain all words and other verbal expressions uttered during the course of the proceeding. Limited exceptions to this requirement are listed in VII(E) of this manual. Minor verbatim errors are defined as follows:

1 Omission of a Spoken Word

Omission of a spoken word that DOES NOT affect the meaning of the sentence. The following minor verbatim errors are tolerable and will not be counted when determining the accuracy rate of a transcript:

Recorded: Okay. I saw the man.
Transcribed: I saw the man.

Recorded: All right. And then what?
Transcribed: And then what.

Recorded: And I saw the man.
Transcribed: I saw the man.

Recorded: I would move for the introduction.
Transcribed: I would move for introduction.

Recorded: He thought that he had been there.
Transcribed: He thought he had been there.

Recorded: That's all I have, Your Honor. Thank you.
Transcribed: That's all I have, Your Honor.

2 Omission of uh-huh

Omission of *uh-huh* when used by someone who is merely following what another person is saying. However, omission of *uh-huh* when used as an expression of assent or in response to a question is a major verbatim error.

G. Confidentiality

Transcribers must agree to comply with confidentiality guidelines on any transcripts of confidential court proceedings. Transcribers must exercise discretion when discussing court cases or court work with anyone.

H. Timeliness Required

Transcripts must be submitted within the specified deadlines. A contractor will be paid

for a late transcript if it is otherwise acceptable; however, the late transcript will be treated as a rejection. Two rejected transcripts within a one-year period may result in termination of the contract.

I. Deadlines for Transcript Completion

Orders with a 30-day turnaround are due within thirty (30) calendar days and orders with a 7-day turnaround are due within seven (7) calendar days. These deadlines are measured from the date the transcript is assigned to the contractor or the date the electronic recording, log notes or tag reports, or other materials are mailed to the contractor, whichever is later. A transcript is assigned on the date the contractor is notified that an order is ready for pick-up and the contractor accepts the assignment. If the contractor does not pick up the assignment until the following day, the date of notification of and acceptance by the contractor is the assignment date. ECR staff or the Requesting Party may determine that an exception to this rule will be made when the contractor is notified too late in the workday to be able to pick up the assignment from the court.

A transcript is timely if the completed transcript is delivered to the court or the Requesting Party, if applicable, on or before the due date or if mailed to the address specified no later than three calendar days before the due date. The postmark date will be treated as the date of mailing. If the due date falls on a weekend or court system holiday, the transcript is due the next business day. Otherwise, no additional time will be allowed for holidays.

To take an extension under this section, the contractor must contact the ECR Department or the Requesting Party before the date the transcript is due and schedule a new due date for the transcript. Otherwise, the transcript will be treated as late. As stated above, a late transcript is treated as a rejection.

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APPENDIX A

1 IN THE COUNTY COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
2 IN AND FOR LEE COUNTY, FLORIDA

3 SARAH JOHNSTON-RICHARDS,) Case No. 03-008253 DR-B
4)
5 Petitioner,)
6) Lee County Justice Center
7 vs.) 1700 Monroe Street
8) Fort Myers, Florida 33901
9 DAVID RICHARDS and)
10 DORIS BEACHAM-MILLER,)
11)
12 Respondents.) Monday, January 12, 2004
13) 9:00 a.m.
14)
15 _____)

16 VOLUME 1

17 **DOMESTIC VIOLENCE HEARING**

18 BEFORE THE HONORABLE JOHN R. DURYEYEA, JR.
19 County Judge

20 APPEARANCES:

21 For the Petitioner: MARY R. KENNELLY, ESQ.
22 Sheridan & Fox, S.C.
23 49 East Midland Street, Suite 7
24 Naples, FL 34102
25 (239) 258-9625

For the Respondents: MICHAEL P. FONTELLE, ESQ.
State Attorney General's Office
Lee County Justice Center
1700 Monroe Street, Room 3200
Fort Myers, FL 33901
(239) 479-9500

Also Present: LUPE DELASHMET
Interpreter

Transcription Service: ABC TRANSCRIPTION SERVICE
319 Lake Drive
Fort Myers, FL 33916
(239) 555-2222

APPENDIX A-1

IN THE COUNTY COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR COLLIER COUNTY, FLORIDA

1
2 STATE OF FLORIDA,) Case No. 04-4121-MMA
3)
4 Plaintiff,) Collier County Courthouse
5) 3301 East Tamiami Trail
6 vs.) Naples, Florida 34112
7)
8 RAMON L. NIEVES,) Monday, May 24, 2004
9) 1:08 p.m. - 1:54 p.m.
10 Defendant.)
11)
12)
13)
14)
15)
16)
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20)
21)
22)
23)
24)
25)

TRIAL/SENTENCING
BEFORE THE HONORABLE EUGENE TURNER,
County Court Judge

APPEARANCES:

For the Plaintiff: NEIL SNYDER, ESQ.
CHRISTOPHER KLINK, ESQ.
Office of the State Attorney
Collier County Courthouse
Administrative Bldg. F, 6th Floor
3301 East Tamiami Trail
Naples, FL 34112-
(239) 774-8470

For the Defendant: LAURA FARRELL, ESQ.
Office of the Public Defender
Collier County Courthouse
Administrative Bldg. L, 4th Floor
3301 Tamiami Trail East
Naples, FL 34112-4975
(239) 774-8397

Transcription Service: Transcription Service
111 Del Prado Boulevard
Cape Coral, FL 33990
(239) 555-1212

Proceedings recorded by digital sound recording; transcript produced by transcription service.

APPENDIX B

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APPENDIX C

1 STATE OF FLORIDA)
2 TWENTIETH JUDICIAL CIRCUIT)
_____)

4 I, SUE SMITH, do hereby certify that:

5 (1) The foregoing pages numbered 1-100 contain a full, true, and
6 correct transcript of proceedings in the above-entitled matter, transcribed by me to the
7 best of my knowledge and ability from the digital recording provided by the court.
8

9 (2) I am not counsel for, related to, or employed by any of the parties in
10 the above-entitled cause.

11 (3) I am not financially or otherwise interested in the outcome of this
12 case.

13 (4) I am an approved transcriber for the Twentieth Judicial Circuit
14 Court.

15
16 SIGNED AND CERTIFIED:

17
18 _____
19 (Type your name here) Sue Smith, CERT
Court-Approved Transcriber*

_____ Date

20
21 * or Certified Transcriber, if certified by a recognized court reporting association
22
23
24
25

APPENDIX D

1 STATE OF FLORIDA)
 2 TWENTIETH JUDICIAL CIRCUIT)
 _____)

3
4 I, SUE SMITH, do hereby certify that:

5 (1) The foregoing pages numbered 1-100 contain a full, true, and
6 correct transcript of proceedings in the above-entitled matter, transcribed by me, or at
7 my direction and supervision, to the best of my knowledge and ability from the digital
8 recording provided by the court.

9 (2) I am not counsel for, related to, or employed by any of the parties in
10 the above-entitled cause.

11 (3) I am not financially or otherwise interested in the outcome of this
12 case.

13 (4) I am an approved transcriber for the Twentieth Judicial Circuit
14 Court.
15

16
17 SIGNED AND CERTIFIED:

18
19 _____
20 (Type your name here) Sue Smith, CERT
Court-Approved Transcriber*

_____ Date

21 * or Certified Transcriber, if certified by a recognized court reporting association
22
23
24
25

Attachment C

Fla. Stat. §287.133 (2005) and Fla. Stat. §287.134 (2005)

287.133 Public entity crime; denial or revocation of the right to transact business with public entities.

(1) As used in this section:

(a) "Affiliate" means:

1. A predecessor or successor of a person convicted of a public entity crime; or

2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

(b) "Convicted" or "conviction" means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

(c) "Convicted vendor list" means the list required to be kept by the department pursuant to paragraph (3)(d).

(d) "Department" means the Department of Management Services.

(e) "Person" means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

(f) "Public entity" means the State of Florida, any of its departments or agencies, or any political subdivision.

(g) "Public entity crime" means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

(2)(a) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or CONTRACTOR under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. [287.017](#) for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

(b) A public entity may not accept any bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. [287.017](#) for CATEGORY TWO with any person or affiliate on the convicted vendor list for a period of 36 months following the date that person or affiliate was placed on the convicted vendor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with a person at the time of the commission of a public entity crime resulting in that person being placed on the convicted vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted vendor list so long as that person's name appears on the convicted vendor list.

(3)(a) All invitations to bid, requests for proposals, and invitations to negotiate, as defined in s. [287.012](#), and any contract document described by s. [287.058](#) shall contain a statement informing persons of the provisions of paragraph (2)(a).

(b) Any person must notify the department within 30 days after a conviction of a public entity crime applicable to that person or to an affiliate of that person. Any public entity which receives information that a person has been convicted of a public entity crime shall transmit that information to the department in writing within 10 days.

(c) If the department has reason to believe that a person or an affiliate has been convicted of a public entity crime, the department may issue a written demand upon that person or affiliate, concerning any such conviction or affiliation, to appear and be examined under oath, to answer interrogatories under oath, or to produce documents or other tangible evidence for inspection and copying. The department shall conduct any such inquiry in accord with applicable provisions of the Florida Rules of Civil Procedure.

(d) The department shall maintain a list of the names and addresses of those who have been disqualified from the public contracting and purchasing process under this section. The department shall publish an initial list on January 1, 1990, and shall publish an updated version of the list quarterly thereafter. The revised quarterly lists shall be electronically posted. Notwithstanding this paragraph, a person or affiliate disqualified from the public contracting and purchasing process pursuant to this section shall be disqualified as of the date the final order is entered.

(e)1. Upon receiving reasonable information from any source that a person has been convicted, the department shall investigate the information and determine whether good cause exists to place that person or an affiliate of that person on the convicted vendor list. If good cause exists, the department shall notify the person or affiliate in writing of its intent to place the name of that person or affiliate on the convicted vendor list, and of the person's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the person or affiliate does not request a hearing, the department shall enter a final order placing the name of the person or affiliate on the convicted vendor list. No person or affiliate may be placed on the convicted vendor list without receiving an individual notice of intent from the department.

2. Within 21 days of receipt of the notice of intent, the person or affiliate may file a petition for a formal hearing pursuant to ss. [120.569](#) and [120.57\(1\)](#) to determine whether it is in the public interest for that person or affiliate to be placed on the convicted vendor list. A person or affiliate may not file a petition for an informal hearing under s. [120.57\(2\)](#). The procedures of chapter 120 shall apply to any formal hearing under this section except where they are in conflict with the following provisions:

- a. The petition shall be filed with the department. The department shall be a party to the proceeding for all purposes.
- b. Within 5 days after the filing of the petition, the department shall notify the Division of Administrative Hearings of the request for a formal hearing. The director of the Division of Administrative Hearings shall, within 5 days after receipt of notice from the department, assign an administrative law judge to preside over the proceeding. The administrative law judge, upon request by a party, may consolidate related proceedings.
- c. The administrative law judge shall conduct the formal hearing within 30 days after being assigned, unless otherwise stipulated by the parties.
- d. Within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. Such final order shall place or not place the person or affiliate on the convicted vendor list.
- e. The final order of the administrative law judge shall be final agency action for purposes of s. [120.68](#).
- f. At any time after the filing of the petition, informal disposition may be made pursuant to s. [120.57\(4\)](#). In that event, the administrative law judge shall enter a final order adopting the stipulation, agreed settlement, or consent order.

3. In determining whether it is in the public interest to place a person or affiliate on the convicted vendor list, the administrative law judge shall consider the following factors:

- a. Whether the person or affiliate committed a public entity crime.
- b. The nature and details of the public entity crime.
- c. The degree of culpability of the person or affiliate proposed to be placed on the convicted vendor list.
- d. Prompt or voluntary payment of any damages or penalty as a result of the conviction.
- e. Cooperation with state or federal investigation or prosecution of any public entity crime, provided that a good faith exercise of any constitutional, statutory, or other right during any portion of the investigation or prosecution of any public entity crime shall not be considered a lack of cooperation.
- f. Disassociation from any other persons or affiliates convicted of the public entity crime.
- g. Prior or future self-policing by the person or affiliate to prevent public entity crimes.
- h. Reinstatement or clemency in any jurisdiction in relation to the public entity crime at issue in the proceeding.
- i. Compliance by the person or affiliate with the notification provisions of paragraph (b).
- j. The needs of public entities for additional competition in the procurement of goods and services in their respective markets.
- k. Mitigation based upon any demonstration of good citizenship by the person or affiliate.

4. In any proceeding under this section, the department shall be required to prove that it is in the public interest for the person to whom it has given notice under this section to be placed on the convicted vendor list. Proof of a conviction of the person or that one is an affiliate of such person shall constitute a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the convicted vendor list. Prompt payment of damages or posting of a bond, cooperation with investigation, and termination of the employment or other relationship with the employee or other natural person responsible for the public entity crime shall create a rebuttable presumption that it is not in the public interest to place a person or affiliate on the convicted vendor list. Status as an affiliate must be proven by clear and convincing evidence. If the administrative law judge determines that the person was not convicted or is not an affiliate of such person, that person or affiliate shall not be placed on the convicted vendor list.

5. Any person or affiliate who has been notified by the department of its intent to place his or her name on the convicted vendor list may offer evidence on any relevant issue. An affidavit alone shall not constitute competent substantial evidence that the person has not been convicted or is not an affiliate of a person so convicted. Upon establishment of a prima facie case that it is in the public interest for the person or affiliate to whom the department has given notice to be put on the convicted vendor list, that person or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put him or her on the convicted vendor list, based upon evidence addressing the factors in subparagraph 3.

(f)1. A person on the convicted vendor list may petition for removal from the list no sooner than 6 months from the date a final order is entered disqualifying that person from the public purchasing and contracting process pursuant to this section, but may petition for removal at any time if the petition is based upon a reversal of the conviction on appellate review or pardon. The petition shall be filed with the department, and the proceeding shall be conducted pursuant to the procedures and requirements of this subsection.

2. A person may be removed from the convicted vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge shall give consideration to any relevant factors, including, but not limited to, the factors identified in subparagraph (e)3. Upon proof that a person's conviction has been reversed on appellate review or that he or she has been pardoned, the administrative law judge shall determine that removal of the person or an affiliate of that person from the convicted vendor list is in the public interest.

3. If a petition for removal is denied, the person or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial, unless the petition is based upon a reversal of the conviction on appellate review or a pardon. The department may petition for removal prior to the expiration of such period if, in its discretion, it determines that removal would be in the public interest.

(4) The conviction of a person for a public entity crime, or placement on the convicted vendor list, shall not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such conviction or placement on the convicted vendor list. However, the administrative law judge in a proceeding instituted under this section may declare voidable any specific contract, franchise, or other binding agreement entered into after July 1, 1989, by a person placed on the convicted vendor list and a public entity, but only if the administrative law judge finds as fact that the person to be placed on the list has not satisfied the criteria set forth in sub-subparagraphs (3)(e)3.d., f., and g.

(5) The provisions of this section do not apply to any activities regulated by the Florida Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under chapter 946, or from any accredited nonprofit workshop certified under ss. [413.032](#)-413.037.

History.—s. 2, ch. 89-114; s. 1, ch. 90-33; s. 32, ch. 90-268; s. 259, ch. 92-279; s. 55, ch. 92-326; s. 217, ch. 95-148; s. 33, ch. 95-196; s. 4, ch. 95-420; s. 62, ch. 96-410; s. 58, ch. 99-13; s. 29, ch. 2002-207.

287.134 Discrimination; denial or revocation of the right to transact business with public entities.

(1) As used in this section:

(a) "Affiliate" means:

1. A predecessor or successor of an entity that discriminated; or

2. An entity under the control of any natural person or entity that is active in the management of the entity that discriminated. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one entity of shares constituting a controlling interest in another entity, or a pooling of equipment or income among entities when not for fair market value under an arm's length agreement, shall be a prima facie case that one entity controls another entity.

(b) "Discrimination" or "discriminated" means a determination of liability by a state circuit court or federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity; if an appeal is made, the determination of liability does not occur until the completion of any appeals to a higher tribunal.

(c) "Discriminatory vendor list" means the list required to be kept by the department pursuant to paragraph (3)(d).

(d) "Department" means the Department of Management Services.

(e) "Entity" means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity.

(f) "Public entity" means this state and any department or agency of this state.

(g) "Senior management" includes chief executive officers; assistant chief executive officers, including, but not limited to, assistant presidents, vice presidents, or assistant treasurers; chief financial officers; chief personnel officers; or any employee of an entity performing similar functions.

(2)(a) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or CONTRACTOR under a contract with any public entity; and may not transact business with any public entity.

(b) A public entity may not accept any bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory vendor list for a period of 36 months following the date that entity or affiliate was placed on the discriminatory vendor list unless that entity or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with an entity at the time of the discrimination resulting in that entity being placed on the discriminatory vendor list may not accept any bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the same, or substantially the same, control as the entity whose name appears on the discriminatory vendor list so long as that entity's name appears on the discriminatory vendor list.

(3)(a) All invitations to bid, requests for proposals, and invitations to negotiate, as defined by s. [287.012](#), and any written contract document of the state must contain a statement informing entities of the provisions of paragraph (2)(a).

(b) An entity must notify the department within 30 days after a final determination of discrimination. Any public entity which receives information that an entity has discriminated shall transmit that information to the department in writing within 10 days. Before entering into any contract with the state, all entities shall disclose to the department whether they have been found liable, in a state circuit court or federal court, for violation of any state or federal law prohibiting discrimination based on race, gender, national origin, disability, or religion.

(c) The department shall maintain a list of the names and addresses of any entity which has been disqualified from the public contracting and purchasing process under this section. The department shall publish an initial list on January 1, 2001, and shall publish an updated version of the list quarterly thereafter. The revised quarterly lists shall be electronically posted. Notwithstanding this paragraph, an entity or affiliate disqualified from the public contracting and purchasing process pursuant to this section shall be disqualified as of the date the final order is entered.

(d)1. Upon receiving reasonable information from any source that an entity has discriminated, the department shall investigate the information and determine whether good cause exists to place that entity or an affiliate of that entity on the discriminatory vendor list. If good cause exists, the department shall notify the entity or affiliate in writing of its intent to place the name of that entity or affiliate on the discriminatory vendor list, and of the entity's or affiliate's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the entity or affiliate does not request a hearing, the department shall enter a final order placing the name of the entity or affiliate on the discriminatory vendor list. No entity or affiliate may be placed on the discriminatory vendor list without receiving an individual notice of intent from the department.

2. Within 21 days after receipt of the notice of intent, the entity or affiliate may file a petition for a formal hearing pursuant to ss. [120.569](#) and [120.57](#)(1) to determine whether it is in the public interest for that entity or affiliate to be placed on the discriminatory vendor list. An entity or affiliate may not file a petition for an informal hearing under s. [120.57](#)(2). The procedures of chapter 120 shall apply to any formal hearing under this section except where they are in conflict with the following provisions:

a. The petition shall be filed with the department. The department shall be a party to the proceeding for all purposes.

- b. Within 5 days after the filing of the petition, the department shall notify the Division of Administrative Hearings of the request for a formal hearing. The director of the Division of Administrative Hearings shall, within 5 days after receipt of notice from the department, assign an administrative law judge to preside over the proceeding. The administrative law judge, upon request by a party, may consolidate related proceedings.
- c. The administrative law judge shall conduct the formal hearing within 30 days after being assigned, unless otherwise stipulated by the parties.
- d. Within 30 days after the formal hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. Such final order shall place or not place the entity or affiliate on the discriminatory vendor list.
- e. The final order of the administrative law judge shall be final agency action for purposes of s. [120.68](#).
- f. At any time after the filing of the petition, informal disposition may be made pursuant to s. [120.57](#)(4). In that event, the administrative law judge shall enter a final order adopting the stipulation, agreed settlement, or consent order.
3. It shall not be in the public interest to place an entity or affiliate on the discriminatory vendor list if:
- Discrimination did not occur;
 - The discrimination was committed by an employee of the entity or affiliate other than senior management; or
 - The member of senior management responsible for the discrimination is no longer an employee of the entity or affiliate.
4. In determining whether it is in the public interest to place an entity or affiliate on the discriminatory vendor list, the administrative law judge shall consider the following factors:
- The nature and details of the discrimination.
 - The degree of culpability of the entity or affiliate proposed to be placed on the discriminatory vendor list.
 - The prompt or voluntary payment of any damages or penalty as a result of the discrimination.
 - Prior or future self-policing by the entity or affiliate to prevent discrimination.
 - Compliance by the entity or affiliate with the notification provisions of paragraph (b).
 - The needs of public entities for additional competition in the procurement of goods and services in their respective markets.
 - Mitigation based upon any demonstration of good citizenship by the entity or affiliate.
5. In any proceeding under this section, the department shall be required to prove by clear and convincing evidence that it is in the public interest for the entity to which the department has given notice under this section to be placed on the discriminatory vendor list. Proof of discrimination by the entity or a person or entity which is an affiliate of such entity shall constitute a prima facie case that it is in the public interest for the entity or affiliate to which the department has given notice to be put on the discriminatory vendor list. Status as an affiliate must be proven by clear and convincing evidence.
6. Any entity or affiliate which has been notified by the department of the department's intent to place the entity's or affiliate's name on the discriminatory vendor list may offer evidence on any relevant issue. Upon establishment of a prima facie case that it is in the public interest for the entity or affiliate to which the department has given notice to be put on the discriminatory vendor list, that entity or affiliate may prove by a preponderance of the evidence that it would not be in the public interest to put such entity on the discriminatory vendor list, based upon evidence addressing the factors in subparagraphs 3. and 4.
- (e)1. An entity on the discriminatory vendor list may petition for removal from the list no sooner than 6 months from the date a final order is entered disqualifying that entity from the public purchasing and contracting process pursuant to this section. The petition shall be filed with the department and the proceeding shall be conducted pursuant to the procedures and requirements of this subsection.
2. An entity may be removed from the discriminatory vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal would be in the public interest, the administrative law judge shall give consideration to any relevant factors, including, but not limited to, the factors identified in subparagraphs 3. and 4.
3. If a petition for removal is denied, the entity or affiliate may not petition for another hearing on removal for a period of 9 months after the date of denial. The department may petition for removal prior to the expiration of such period if, in the department's discretion, the department determines that removal would be in the public interest.
- (4) Placement on the discriminatory vendor list shall not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such conviction or placement on the discriminatory vendor list.
- (5) The provisions of this section do not apply to any activities regulated by the Florida Public Service Commission or to the purchase of goods or services made by any public entity from the Department of Corrections, from the nonprofit corporation organized under chapter 946, or from any accredited nonprofit workshop certified under ss. [413.032](#)-[413.037](#).

History.—s. 6, ch. 2000-286; s. 30, ch. 2002-207.

Attachment D

Florida State Court System

General Contract Conditions for Services

1. Definitions. The State Court System Purchasing Directives govern Procurement within the Judicial Branch. The following additional terms are also defined: (a) "Contract" means the enforceable agreement that results from a successful solicitation or other procurement. The parties to the Contract will be the Court and Contractor. (b) "Court" means a State Courts System entity that will procure services directly from the Contractor under the Contract.

2. Invoicing and Payment. Invoices must contain the Contract number and the appropriate vendor identification number. The Court may require any other information from the Contractor that the Court deems necessary to verify any deliverable under the Contract. Payment will be made in accordance with section 215.422, Florida Statutes, which governs time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors may result in a delay in payment. Contractors may call (850) 488-3730 Monday through Friday to inquire about the status of payments by the Court. The Court is responsible for all payments under the Contract. The Court's failure to pay, or any delay in payment, will not constitute a breach of the Contract and will not relieve the Contractor of its obligations to the Court.

3. Lobbying and Integrity. The Contractor must not, in the performance of duties required under this Contract use funds provided by this Contract to lobby the legislature or any state agency. The Contractor must not, in connection with this or any other agreement with the Court, directly or indirectly, (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any Court officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any Court officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits, of money, services, employment, or contracts of any kind. Upon request of the Court's Inspector General, or other authorized Court official, the Contractor must provide any type of information deemed relevant to the Contractor's integrity or responsibility. Such information may include, but may not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor must retain such records in accordance with Rule 2.440, Rules of Judicial Administration, or five years after the expiration of the Contract, whichever is longer. The Contractor agrees to reimburse the Court for the reasonable cost of investigation incurred by the Inspector General or other authorized Court official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Court which results in the suspension or debarment of the Contractor. Such costs include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor will not be responsible for any cost of investigations that do not result in the Contractor's suspension or debarment.

4. Indemnification. The Contractor will be fully liable for all actions of its agents, employees, partners, or subcontractors and must fully indemnify, defend, and hold harmless the Court and its officers, agents, and employees, from suits, actions, damages, and cost of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors; provided, however, that the Contractor will not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the Court. Further, the Contractor must fully indemnify, defend, and hold harmless the Court from any suits, actions, damages, and costs of every name and description, including attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided that the Court will give the Contractor (1) written notice of any such action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor will not be liable for any cost, expense, or compromise incurred or made by the Court in an infringement action without the Contractor's prior written consent, which will not be unreasonably withheld. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense become non-fringing. If the Contractor is not reasonably able to modify or otherwise secure the Court the right to continue using the product, the Contractor must remove the product and refund the Court the amounts paid in excess of a reasonable rental for past use. The Court will not be liable for any royalties. Unless otherwise specifically enumerated in the Contract or in the purchase order, no party will be liable to another for special, indirect, or consequential damages, including lost data or records (unless the purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party will be liable for lost profits, lost revenue, or lost institutional operating savings. The Court may, in addition to other remedies available to it at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The first ten dollars paid on the awarded contract for an integrated digital court reporting system will constitute the specific consideration for the Contractor's indemnification of the Court.

5. Limitation of Liability. For all claims by the Court against the Contractor regardless of the basis on which the claim is made, the Contractor's liability for direct damages will be limited to the greater of \$100,000, the dollar amount of the Contract, or two times the charges rendered by the Contractor. This limitation will not apply to claims arising under the Indemnification paragraph contained in this agreement. Unless otherwise specifically enumerated in the Contract, no party will be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the purchase requires the Contractor to backup data or records), even if the party has been advised that such damages are possible. No party will be liable for lost profits, lost revenue, or institutional operating savings. The Court may, in addition to other remedies available to it at law or equity and upon notice to the Contractor, retain such monies from the amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, cost and the like asserted by or against it. The Court may set off any liability or other obligation of the Contractor or its affiliates to the Court against any payments due the Contractor under any contract with the State.

6. Suspension of Work. The Court may in its sole discretion suspend any or all activities under the Contract, at any time, when in the best interests of the State Courts System to do so. The Court will provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor must comply with the notice and must not accept any purchase or work orders. Within ninety days, or any longer period agreed to by the Contractor, the Court will either (1) issue a notice authorizing resumption of work, at which time activity will resume, or (2) terminate the Contract. Suspension of work will not entitle the Contractor to any additional compensation except for work performed.

7. Termination for Convenience. The Court, by written notice to the Contractor, may terminate the Contract in whole or in part when the Court determines in its sole discretion that it is in the Court's interest to do so. The Contractor must not furnish any continued portion of the Contract, if any. The Contractor will not be entitled to recover any cancellation charges or lost profits.

8. Termination for Cause. The Court may terminate the Contract upon 14 days written notice if the Contractor fails to abide by any of the terms or conditions of the contract or if the Contractor fails to maintain adequate progress, thus endangering performance of the Contract. The Contractor will have 7 days after being notified of the Court's intent to terminate, to cure the breach identified by the Court. Except for defaults of subcontractors at any tier, the Contractor will not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor will not be liable for any excess costs for failure to perform, unless the subcontracted deliverables were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. The rights and remedies of the Court in this clause are in addition to any other rights and remedies provided by the law or under the Contract.

9. Public Records Requirement. The Court may terminate a Contract if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received by the contractor in conjunction with the Contract, unless the records are exempt from 2.420 Rule of Judicial Administration.

10. Force Majeure, Notice of Delay, and No Damages for Delay. The Contractor will not be responsible for the delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor must notify the Court in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could not reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. THE FOREGOING WILL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, will be asserted against the Court. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Court for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Court determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the Court, in which case the Court may (1) accept allocated performance or deliverables from the Contractor, provided that the Contractor grants preferential treatment to Courts with respect to deliverables subject to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the deliverables that are subject of the delay, which may be deducted from the Contract total, or (3) terminate the Contract in whole or in part.

11. Scope Changes. The Court may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Court may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which must not be unreasonably withheld.

12. Renewal. Upon mutual agreement, the Court and the Contractor may renew the contract, in whole or part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal will specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.

13. Advertising. The Contractor must not publicly disseminate any information concerning the Contract without prior written approval from the Court, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Court or otherwise linking the Contractor's name and either a description of the Contract or the Court in any material published, either in print or electronically, to any entity that is not a party to Contract.

14. Assignment. The Contractor will not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Court. In the event of any assignment, the Contractor remains secondarily liable for performance of the Contract, unless the Court expressly waives such secondary liability. The Court may assign the Contract with prior written notice to Contractor of its intent to do so.

15. Antitrust Assignment. The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

16. Dispute Resolution. Any dispute concerning performance of the Contract will be decided by Court Administration, or other designated Court employee, who will reduce the decision to writing and serve a copy on the Contractor. The exclusive venue of any legal or equitable action that arises out of or relates to the Contract will be the appropriate state court in the county of contract execution; in any such action, Florida law will apply and the parties waive any right to jury trial.

17. Employees, Subcontractors, and Agents. All Contractor employees, subcontractors, or agents performing work under the Contract must be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor will furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Court. The Court may conduct, and the Contractor must cooperate in, a security background check on any employee, subcontractor, or agent furnished by the Contractor. The Court may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualification, quality of work, change in security status, or non-compliance with a Court's security or other requirements. Such approval will not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The Court may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

18. Security and Confidentiality. The Contractor must comply fully with all security requirements and procedures of the Court in performance of the Contract. The Contractor must not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers, or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the Court. The Contractor will not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the Court's confidential information, or material that is otherwise obtainable under State law as a public record. The Contractor must take appropriate steps with its personnel, agents, and subcontractors to insure confidentiality. The warranties of this paragraph will survive the Contract.

19. Contractor Employees, Subcontractors, and other Agents. The Contractor, its employees, subcontractors and agents are not employees or agents of the Court.

20. Insurance Requirements. During the Contract term, the Contractor at its sole expense must provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor will provide a certificate of insurance. The limits of coverage under each policy maintained by the Contractor will not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies must be through insurers authorized or eligible to write policies in Florida.

21. Warranty of Authority. Each person signing the Contract must warrant that he or she is duly authorized to do so and to bind the respective party to the Contract.

22. Warranty of Ability to Perform. The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133, Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor must immediately notify the Court in writing if its ability to perform is compromised in any manner during the term of the Contract.

23. Notices. All notices required under the Contract must be delivered by certified mail, return receipt requested, by reputable air courier service, by personal delivery to the Court, or as otherwise specified in the solicitation or Agreement. Notices to the Contractor will be delivered to the person who signs the Contract at the address provided on the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

24. Modification of Terms. The Contract contains all the terms and conditions agreed upon by the parties. The Contract may only be modified or amended upon mutual written agreement of the Court and the Contractor. No alteration or modification of the Contract terms, including substitution of deliverables, will be valid or binding against the Court.

25. Cooperative Purchasing. Other entities of the State Courts System may be allowed to procure goods or services from this Contract or solicitation, at the terms, conditions and prices noted herein, unless the Contract provides an express provision that does not allow for cooperative purchasing. Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Court purchases are independent of the agreement between Court and Contractor, and the Court will not be a party to any transaction between the Contractor and any other purchaser.

26. Waiver. The delay or failure by the Court to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Court's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

27. Annual Appropriations. This Contract is subject to the availability of state funds. If the Legislature fails to appropriate sufficient funds or fails to authorize the spending of sufficient funds for the state courts system or demands a spending reduction in state budgets, the Court will have no obligation to pay or perform under this agreement. The Court's performance and obligation to pay under this contract are also contingent upon final spending approval from the Chief Justice of the Supreme Court of Florida.

28. Execution in Counterparts. The contract may be executed in counterparts, each of which will be an original and all of which will constitute but one and the same instrument.

29. Severability. If a court deems any provision of the Contract void or unenforceable, that provision will be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions will remain in full force and effect.

30. Travel. Travel expenses, if allowed, will be paid in accordance with s.112.061, Florida Statutes. The Court may establish rates lower than the maximum provided in s. 112.061.

31. Right to Audit. Records of expenses pertaining to all services must be kept in accordance with generally accepted accounting principles and procedures. The Vendor must keep all records relating to this contract in such a way as to permit their inspection pursuant to Florida Rules of Judicial Administration 2.420. The Court and the State of Florida reserve the right to audit such records.

32. Rule of Interpretation. All specific conditions will prevail over a general condition on the same subject.

33. Real-Time Transcription or Reporting Services for Persons who are Deaf or Hard of Hearing. Vendors that provide real-time court reporting or transcription services in court proceedings to ensure effective communication by a participant who is deaf or hearing impaired and entitled to auxiliary aids or services pursuant to Title II of the Americans with Disabilities Act of 1990, should be informed that they must comply with the Supreme Court Policy on Court Real-Time Transcription Services for Persons Who are Deaf or Hard of Hearing. The policy is available in Appendix F of the State Courts System Title II Guidelines located at <http://www.flcourts.org/administration-funding/court-administration/adainformation.stml>.

34. Compliance with Federal and State Anti-Discrimination Legislation. In providing, or contracting to provide, services, programs or activities, maintaining facilities, and/or otherwise performing obligations under this Contract, the Contractor will comply with the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, the Civil Rights Act of 1964, as amended, the Florida Civil Rights Act of 1992, part three of Chapter 282, Florida Statutes, and any other federal or state law that prohibits discrimination on the basis of race, color, national origin, religion, sex, age, marital status, or disability.

35. Changes. The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which will not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.