



REQUEST FOR PROPOSALS

RFP # 2-17-2010 RESIDENTIAL FORECLOSURE PROGRAM MANAGER SERVICES

**Sixth Judicial Circuit
Pasco & Pinellas Counties, Florida**

Issued: February 17, 2010

**Response to Request for Proposals Submission Deadline:
1:00 p.m., April 5, 2010**

A. PURPOSE

The Sixth Judicial Circuit seeks sealed proposals from qualified Vendors to serve as a Program Manager to implement and manage a mediation program for residential foreclosure cases. The services are to be provided in accordance with Administrative Order AOSC09-54 adopted by the Chief Justice of the Florida Supreme Court on December 28, 2009, and provided as further defined herein. The services will include but are not limited to providing a comprehensive response to homestead residential mortgage foreclosure cases by fully managing the mediation process from referral through reporting on the completed mediation process, including: recruitment and training of Florida Supreme Court Certified Civil Mediators; pre-mediation referral to approved foreclosure counselors; referral to reduced fee, pro bono, and free legal services; facilitating the exchange of documents and information between the parties; and satisfying other requirements as described in AOSC09-54 and in Section C, Scope of Services, below.

The point of contact in the Sixth Judicial Circuit for the Program Manager will be Trial Courts Administrator, Gay Inskeep, or her designee. The Sixth Judicial Circuit will select the qualified Vendor whose competitive proposal is responsive to this RFP and that best meets the needs of the Circuit. The Sixth Circuit is using the RFP process to select a Program Manager, because it has been determined a "best practice" to issue this RFP, not because the State Courts System Purchasing Directives specifically require it. The Sixth Judicial Circuit reserves the right to accept or reject any and all proposals, in whole or in part, or to waive any informality, and to base all conclusions, decisions, and actions on what is deemed to be in the best interest of the Sixth Judicial Circuit and the State Courts System. It is anticipated that services will begin June 1, 2010, and continue until June 30, 2011, with the possibility of renewal for three (3), one-year periods. Compensation will be provided by the parties, and must not exceed \$400 for pre-mediation services and \$350 for mediation services. No state or county funds will be provided to the Program Manager.

B. BACKGROUND

The Sixth Judicial Circuit consists of two (2) counties, Pasco and Pinellas. Both of these counties have been significantly impacted by the housing slump and economic downturn, one symptom of which is the approximately 34,000 pending mortgage foreclosure cases in this circuit. To help address the backlog of pending foreclosure cases as well as the influx of new filings, then Chief Judge Robert J. Morris, Jr., entered an administrative order that took effect in January 2008 requiring compliance with streamlined procedures in mortgage foreclosure cases. In October 2009, Chief Judge J. Thomas McGrady revised the administrative order to, among other things, emphasize the referral of cases involving owner-occupied homestead properties to mediation. See Sixth Circuit Administrative Order 2009-065. Since that time, the Chief Justice of the Florida Supreme Court has issued an administrative order specifically directing how circuits are to manage all referrals to mediation in mortgage foreclosure cases. See AOSC09-54. As a result, the Sixth Judicial Circuit is issuing this request for proposals seeking a Program Manager.

Research of court files and public records, including property appraiser records, was conducted on mortgage foreclosure cases filed during the month of July 2008. That research revealed that approximately 248 mortgage foreclosure actions were filed in July 2008 in this circuit in which the property at issue was homestead property, was owner-occupied, and in which the Borrower filed an answer. Other data was extrapolated from the July 2008 research which revealed there were another approximately 474 cases filed in the circuit each month in which the property in question was likely homestead property and owner-occupied but in which no responsive pleading was filed.

It is unknown whether the mortgage foreclosure cases that are currently being filed will reflect these same results. It is also unknown in how many of these cases a Program Manager

might be successful in contacting a Borrower, and of those successful contacts, how many Borrowers are in a position to participate in mediation with a Lender.

In addition, it is unknown how many of the Borrowers in the 34,000 pending foreclosure cases might be eligible to opt in to the Managed Mediation Program. It is also unknown how many of the parties will participate in pre-suit mediation with another entity and thus not be required to participate in the Managed Mediation Program.

The statistics provided here are estimates and projections of the potential volume of eligible cases to a Managed Mediation Program. The statistics are based on past filings that are not necessarily predictive of future filings or trends, and are vulnerable to subjective factors over which the court has no control.

C. SCOPE OF SERVICES

1. General

The Program Manager will deliver managed mediation services in residential mortgage foreclosure cases for the Sixth Judicial Circuit in accordance with Supreme Court Administrative Order No. AOSC09-54 and as more fully detailed herein. All services specified in Supreme Court Administrative Order AOSC09-54 must be provided whether or not specifically addressed in this RFP. The Program Manager must meet the characteristics of a program manager and provide all services described in Exhibit 13 of AOSC09-54, as may be further clarified in this RFP. The Sixth Judicial Circuit is soliciting for one entity to provide program manager services in all circuit civil sections in Pasco and Pinellas Counties.

All services must be provided in accordance with Florida Rules of Procedure, including but not limited to Rules of Civil Procedure, Rules for Certified and Court Appointed Mediators, Sixth Judicial Circuit Administrative Orders, and relevant law.

DEFINITIONS – as used in this RFP—

- **“AOC”** means the Administrative Office of the Courts in the Sixth Judicial Circuit.
- **“Homestead”** or **“homesteaded”** refers to residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.
- **“Managed Mediation Program”** refers to the services that are sought by this RFP and that the Program Manager will provide under contract with the Sixth Judicial Circuit.
- **“Program Manager”** and **“Mediation Manager”** mean the entity that is independent of the State Courts System that provides the Managed Mediation Program services under contract with the Sixth Judicial Circuit.
- **“Sixth Judicial Circuit”** refers to the State courts that serve Pasco and Pinellas Counties, Florida.

All references to Forms and Exhibits are to the same form or exhibit as lettered or numbered in Florida Supreme Court Administrative Order No. AOSC09-54.

2. Services required in individual foreclosure cases

a. Referral to Program Manager

The Program Manager must:

1. Confirm that Form A has been filed in all residential mortgage foreclosure actions that are filed on or after June 1, 2010. (A-14) Contact the Lender in each residential mortgage foreclosure action where Form A was not filed and inform the Plaintiff of the requirement to file Form A.

2. Electronically receive from the Plaintiff a copy of Form A which will be filed in all residential mortgage foreclosure actions and keep a record of such forms.

3. Promptly review each Form A to confirm that the action is automatically referred to mediation by verifying that

- A. the original note and mortgage are subject to the provisions of the federal Truth In Lending Act, Regulation Z;
- B. the property is homestead property;
- C. the parties have not already conducted and completed qualified pre-suit mediation;
- D. at the time the action is filed, the Plaintiff and Borrower have not agreed in writing to opt out of the program; and
- E. the property is currently owner occupied.

If the Program Manager determines that an action is not subject to managed mediation, the Program Manager must file a notice with the Clerk of the Circuit Court that the case is not eligible for managed mediation. All notices based on paragraphs A, B, C, or D, above, must be filed with the Clerk within ten (10) days of receipt of the Form A. All notices based on ineligibility as provided in paragraph E above, and for any other reason not specified, must be filed with the Clerk within ten (10) days of determining that the case is ineligible for managed mediation.

4. Receive payment from the Lender for pre-mediation services of eligible cases, not to exceed \$400 or such lesser amount as agreed to by the Program Manager and the Sixth Circuit. Refund the fee paid by the Lender on a case that is not eligible for the Managed Mediation Program due to reasons specified in paragraphs A, B, C, or D, above, less any processing fee.

b. Reaching out to Borrowers

The duty to reach out to the Borrower as defined in this paragraph applies whether or not the Borrower files an answer to the foreclosure action. The Program Manager must:

1. Contact the Borrower and:

- A. Determine whether the Borrower resides in the property. If the Borrower does not reside in the property, file Exhibit 4, Notice of Borrower Nonparticipation with Managed Mediation Program (A-27), with the Clerk and send a copy to the parties.
- B. Explain the Managed Mediation Program to the Borrower, including the requirement to file financial information and participate in foreclosure counseling. Explain that financial information necessary for managed mediation should not be filed with the Clerk of the Circuit Court.
- C. If the Borrower does not have an attorney, notify the Borrower of his or her right to consult with an attorney. Advise the Borrower about pro bono, lawyer referral, and legal aid services. If the Borrower has an attorney, provide the attorney with an outline of the Managed Mediation Program including foreclosure counseling, mediation, the financial information required from the Borrower before participation in mediation, and the Borrower's ability to opt out of the program. If the Borrower does not opt out of the program, the Borrower is considered to have waived any right to have communications proceed exclusively through the attorney. Thereafter the Program Manager must provide to counsel a copy of any written communications including requests for information that it gives to the Borrower.
- D. Determine whether the Borrower will participate in or opt out of the program. If the Borrower opts out of the program, file Exhibit 4, Notice of Borrower Nonparticipation with Managed Mediation Program (A-27), with the Clerk and send a copy to the parties.

2. If not successful in contacting the Borrower within sixty (60) days, file Exhibit 4, Notice of Borrower Nonparticipation with Managed Mediation Program (A-27) with the Clerk, and send a copy to the parties.

3. If the Borrower cannot be located or chooses not to participate in the Managed Mediation Program, refund the portion of the pre-mediation services fee attributed to foreclosure counseling. (A-13)

c. Participation in Managed Mediation

1. Defendant/Borrower Foreclosure Counseling: Refer each Borrower to an approved foreclosure counselor on a rotation basis prior to scheduling mediation. Instruct the Borrower to meet with the foreclosure counselor. Inform the Borrower that failure to participate in foreclosure counseling will result in the case being removed from the Managed Mediation Program.

2. Defendant/Borrower and Plaintiff/Lender Disclosures:

A. Receive Exhibit 5, Borrower's Financial Disclosure for Mediation (Loan Modification (A-29), Short Sale (A-38), or Deed in Lieu of Foreclosure (A-40)), and transmit it to the Plaintiff at least thirty (30) days before mediation. (A-8)

B. Advise the Borrower of the right to receive information from the Plaintiff prior to mediation. If the Borrower desires such information, the Program Manager must:

- i. Advise the Borrower to complete Exhibit 6, Notice of Borrower's Request for Plaintiff's Disclosure for Mediation (A-42), and to deliver a copy to the Program Manager at least twenty-five (25) days before the mediation; (A-6)
- ii. Promptly electronically transmit completed Exhibit 6 to the Plaintiff; (A-7)
- iii. Obtain from the Plaintiff the information requested in Exhibit 6 at least five (5) days before the mediation. The Program Manager must immediately deliver that information to the Borrower. (A-7)

3. Scheduling and providing mediation: For each case in which the parties are participating in the Managed Mediation Program, provide mediation sessions at a suitable, ADA accessible location and at a date, time, and place convenient to the parties. When a mediation session is scheduled, the Program Manager must file a notice of mediation session with the Clerk and send a copy to the parties (A-8).

A. Scheduling. Unless otherwise agreed by the parties, the mediation must be scheduled:

- No earlier than sixty (60) days after suit is filed but no later than 120 days after suit is filed;
- At least thirty (30) days after the Borrower's Financial Disclosure for Mediation is transmitted to the Lender; and
- Not before the Borrower has met with the foreclosure counselor. (A-8)

B. Conduct. Each mediation session shall be:

- Started with the Program Manager, in the presence of the mediator, taking a written roll call of all parties present as described in paragraph 13 of the Model Administrative Order appended to AOSC09-54. If Plaintiff's representative does not have full authority to settle, or if a party does not appear, the Program Manager will report the nonparticipation of the party to the court (A-9);
- Conducted by a qualified mediator who is assigned by the Program Manager;
- Completed within 120 days after suit is filed;

- Completed within forty-five (45) days of the first mediation conference as provided in Rule of Civil Procedure 1.710(a); and
- Reported by filing Exhibit 9, "Mediation Report" (A-48), with the Clerk and sending a copy to the parties.

d. Notification of Noncompliance or Nonparticipation by a Party

The Program Manager must track the status of each residential mortgage foreclosure action. Each instance of noncompliance or nonparticipation by a party must be promptly reported to the trial court by filing an appropriate notice or other document with the Clerk.

1. If the Plaintiff/Lender fails to participate or comply for any reason listed below, the Program Manager must first contact the Plaintiff/Lender in an effort to achieve compliance. If the Plaintiff/Lender does not comply, the Program Manager must file an appropriate notice with the Clerk and the parties, and provide a copy to the assigned judge on a periodic basis as requested but no less frequently than monthly. The notice must document the Program Manager's efforts to obtain compliance.

- A. Failure to file Form A.
- B. Failure to electronically submit Form A to the Program Manager.
- C. Failure to pay the pre-mediation services portion of the Program fees payable at the time suit is filed.
- D. Failure to pay the mediation services portion of the Program fees payable within 10 days after the notice of the mediation conference is filed.
- E. Failure to electronically submit the case number and contact information of the Borrower to the Program Manager.
- F. Failure of Plaintiff's counsel to attend mediation.
- G. Failure of Plaintiff's representative designated in the most recent Form A filed in the court file to attend mediation.
- H. Failure of Plaintiff's representative with full authority to sign a settlement agreement to attend mediation.
- I. Failure of Plaintiff's representative to attend by telephone at all times during the mediation session.
- J. Failure of Plaintiff's representative to file within five (5) days, the certification of attendance at mediation by telephone when mediation resulted in an impasse. (Exhibit 8, Plaintiff's Certification Regarding Attendance at Mediation Though the Use of Electronic Equipment) (A-46).
- K. For any other instance of noncompliance or nonparticipation, the Program Manager may file a written motion stating with particularity the grounds for the motion and the relief or order sought.

2. If the Defendant/Borrower fails to participate or comply for any reason listed below, the Program Manager must first contact the Defendant/Borrower in an effort to achieve compliance. If the Defendant/Borrower does not comply, the Program Manager must file Exhibit 4, Notice of Borrower's Nonparticipation (A-27) with the Clerk and send a copy to the parties.

- A. Failure to file financial information.
- B. Failure to meet with a foreclosure counselor within ninety (90) days after the action was filed.
- C. Failure to participate in mediation within 120 days after the suit is filed.
- D. For any other instance of noncompliance or nonparticipation, the Program Manager may file a written motion stating with particularity the grounds for the motion and the relief or order sought.

3. Program Services Required

The Program Manager is also required to provide the services or perform the duties listed below.

a. Pre-suit Mediation. Provide a program of pre-suit managed mediation services that offers substantially the same services described in this RFP for any party desiring pre-suit mediation of a residential mortgage foreclosure action. Keep a record of the status of these services in sufficient detail to provide the reports required by paragraph C.3.h of this RFP.

b. Mediation Referred by Presiding Judge. Accept any other residential foreclosure action referred to the Program Manager by a presiding judge and provide the services specified in subsection C.2 for those cases. This includes cases that are not eligible for automatic referral to mediation and cases that are pending on June 1, 2010. Keep a record of the status of these cases in sufficient detail to provide the reports required by paragraph C.3.h of this RFP.

c. Develop Forms, Procedures, and Performance Standards. Develop any forms and other documents, and procedures necessary to provide the services as described in this RFP and Exhibit 13 to AOSC09-54. These include, but are not limited to:

- i. written performance standards for all staff and mediators;
- ii. internal procedures for addressing and resolving grievances and complaints by any party against the Program Manager's staff, foreclosure counselors, and mediators used under this program;
- iii. forms to track the status of cases; and
- iv. forms to report noncompliance with the program.

d. Foreclosure Counselors.

1. Maintain a list of foreclosure counselors who are trained in advising persons of options available when facing a mortgage foreclosure. Each counselor must not have a criminal history of committing a felony or a crime of dishonesty, and be certified by the United States Department of Housing and Urban Development (HUD) or National Foreclosure Mitigation Counseling Program (NFMC) as a counselor experienced in mortgage delinquency and default resolution counseling. Before placing a foreclosure counselor on its list of service providers, the Program Manager must ensure that HUD or another government agency has determined that the certified counselor meets the above criminal history criteria, or the Program Manager must have a criminal history background check performed by the Florida Department of Law Enforcement or other law enforcement agency to ensure that the above criteria are satisfied.

2. Refer Borrowers to a foreclosure counselor on a rotation basis unless the Program Manager proposes another basis for referral to foreclosure counselors in its response to this RFP, which is agreed to by the Sixth Judicial Circuit.

3. Ensure that the foreclosure counselor assists Borrowers in completing Exhibit 5, Borrower's Financial Disclosure for Mediation (Loan Modification (A-29), Short Sale (A-38), or Deed in Lieu of Foreclosure (A-40)).

e. Mediator Qualifications and Potential Conflicts.

1. Assign Florida Supreme Court-certified circuit civil mediators who are specially trained in residential mortgage foreclosure matters in accordance with the criteria contained in Exhibit 12 to AOSC09-54.

2. Ensure that all mediators maintain certification including required Continuing Mediator Education.

3. Post on its website the list of mediators it uses in the Managed Mediation Program in this circuit. Assign mediators on a rotation basis that fairly spreads work throughout the pool of

mediators working in the Managed Mediation Program, unless the parties mutually agree on a specific mediator from the list of mediators provided by the Program Manager.

4. Provide and implement a means to ensure that each mediator assigned to a case does not have a conflict pursuant to the Florida Rules for Certified and Court Appointed Mediators, Rule 10.340.

5. Notify the Chief Judge of any mediator grievance filed against a mediator employed by, under contract with, or used by the Program Manager where the mediator has agreed to accept sanctions or where probable cause was found.

6. Establish a system for resolving complaints against mediators and other persons involved in the Managed Mediation Program.

f. Information Transmission and Confidentiality.

1. Ensure that all transmissions of information between Plaintiff/Lenders, Defendant/Borrowers, foreclosure counselors, and mediators are done by a secure dedicated email address or uploaded to a web-enabled information platform with XML data elements. A secure, encrypted, web-enabled information platform is preferred. The Program Manager must maintain the confidentiality of and protect all information in accordance with Florida and federal law.

2. Maintain the confidentiality of all mediation communications occurring as a result of the parties' participation in the Managed Mediation Program in accordance with Chapter 44, Florida Statutes, the Florida Rules of Civil Procedure, and the Florida Rules for Certified and Court-Appointed Mediators, unless otherwise provided for by law. This includes participant information provided to the Program Manager that is not filed with the court. (A-11)

3. Allow the Florida Courts Technology Commission to monitor the method of electronic information exchange.

g. Financial Books and Records.

1. Maintain financial books and records to ensure transparency and accuracy of receipts and expenditures and maintain such records in accordance with generally acceptable accounting principles. Maintain financial books and records in accordance with Rule of Judicial Administration 2.420 and 2.430 including providing public access to all records generated pursuant to the Agreement with the Sixth Judicial Circuit unless exempt from public disclosure.

2. Prepare financial statements and financial and performance reports as required in the following paragraph.

h. Reports.

For the first four months, submit monthly reports to the Trial Courts Administrator and thereafter submit quarterly reports that contain the following information:

1. Total number of cases referred (via Form A)
2. Number of cases deemed ineligible
3. Number of cases where the Borrower was contacted successfully
4. Number of cases mediated, broken down by
 - a. Number settled – full or partial
 - b. Number that resulted in impasse
 - c. Number of cases that settled after mediation
5. Cases Managed But Not Mediated:
 - a. Number due to the Borrower's failure to appear at mediation
 - b. Number due to other non-participation by the Borrower

- c. Number due to Plaintiff's failure to appear at mediation, including not having full authority to settle
 - d. Number due to other non-compliance by the Plaintiff
 - e. Number of cases settled prior to mediation
- 6. Number of cases opting into the Managed Mediation Program that involve the following:
 - a. Cases with non-owner occupied properties
 - b. Potential cases not yet filed
 - c. Owner occupied properties where suit was filed prior to effective date of the Managed Mediation Program
- 7. Financial Data – Comprehensive Revenue and Expense Report, which details:
 - a. Fees collected
 - b. Fees paid to financial counselors
 - c. Fees paid to mediators
 - d. Administrative expenses
 - e. Processing fees for ineligible cases
 - f. Foreclosure counseling fees refunded to Lenders
 - g. Mediation fees refunded to Lenders
- 8. Satisfaction Survey Results
- 9. Such additional information as may be required to comply with requests for information from the Office of the State Courts Administrator.

i. Americans with Disabilities Act. Arrange and pay for interpreters for deaf and hearing impaired participants and provide other accommodations as required under the Americans with Disabilities Act of 1990. Provide suitable ADA accessible locations for mediation sessions.

j. Foreign Language Interpreters. Explain to a party who needs a foreign language interpreter to communicate effectively with a foreclosure counselor and a mediator that the party must bring a foreign language interpreter at his or her expense foreclosure counseling and to the mediation or he or she will be deemed to have failed to participate in the program. See form notice in Appendix B to AOSC09-54.

k. Conflict of Interest

1. Disclose any direct or indirect financial ties to Lenders or mortgage loan servicers by the Program Manager, its officers or directors, and key personnel. Such relationships must be disclosed using the standards in the Code of Judicial Conduct for judicial disclosure. Relationships of family members, as defined in the Code of Judicial Conduct, must also be disclosed. Such relationships, whether current or within the past three years, must be disclosed in the Vendor's proposal. The Program Manager has a continuing obligation to disclose any such relationships that arise during the term of the Agreement with the Court and may result in termination or modification of the Agreement.

2. Oversee the disclosure by mediators assigned to a case of any direct or indirect ties to the parties by a mediator and the mediator's family members. Use the standards and definitions in the Code of Judicial Conduct to determine whether disclosure is required. Establish procedures for disqualifying and replacing mediators who have ethical or other conflicts.

D. CONTRACTUAL RELATIONSHIP

The Vendor selected to be the Program Manager will provide services strictly under a contractual relationship with the Sixth Judicial Circuit and is not and shall not be construed to be an employee, agent, partner, or joint venturer of the Sixth Judicial Circuit or the State of Florida. As an independent contractor, the Vendor must pay any and all applicable taxes required by law; comply with all pertinent Federal, State, and local laws including the Fair Labor Standards Act, Americans with Disabilities Act, Federal Civil Rights Act, and all relevant employment laws.

As an independent contractor, the Vendor hires, compensates, supervises, and terminates members of its work force. It directs and controls the manner in which work is performed. It must set the hours of work for members of its work force in accordance with the Court's needs. The Vendor is also responsible for providing work space for managed mediation services and for conducting mediations. The Sixth Judicial Circuit will not provide any work space or space for conducting mediations.

A Vendor who elects to subcontract any part of this project will be fully accountable for the subcontractor's responsibilities and deliverables. Vendor must identify a subcontractor's scope of work, if any.

Prior to commencing work the successful Vendor will be required to sign a written Agreement incorporating the specifications and terms of this Request for Proposals and the Vendor's proposal. The Agreement will be substantially the same as the draft Agreement in Appendix A to this RFP and will include the State Courts System General Contract Conditions for Services, which may be found online at: <http://www.flcourts.org/courts/crtadmin/generalcontractconditions.shtml>. Persons interested in submitting a proposal in response to this RFP should review the draft contract to ensure that they are able to meet all contractual requirements.

The Chief Judge or Trial Courts Administrator must execute a contract before services may begin. A contract is not formed by the issuance of a notice of award. Services will begin June 1, 2010, for a period of thirteen (13) months through June 30, 2011. The contract may be renewed for three (3), one-year periods, upon the written mutual consent of the Vendor and the Sixth Circuit. The renewal option will be exercised only if all original contract terms, conditions, and prices remain the same.

To ensure that services may timely continue in the event the successful Vendor becomes unable to, or fails to perform under the Agreement, the successful Vendor will be required to post a performance bond of \$100,000.

As an independent contractor, the Vendor will be required to procure, pay for, and maintain appropriate insurance during the duration of any contract awarded under this RFP. The insurance must include general liability coverage, including bodily injury and property damage liability in the minimum amount of \$500,000 combined single limit, each occurrence and as further described in the draft Agreement in Appendix A. The Program Manager must furnish a copy of the policies or insurance described above.

The Vendor may provide mediation and management services to other private and public entities, provided such services do not interfere with the Vendor's ability to perform under its Agreement with the Sixth Judicial Circuit.

E. OTHER PROVISIONS

1. Cost of Proposal Preparation

All costs associated with the development and submission of a proposal, Vendor question(s), transmittal letter, and delivery are fully the responsibility of the Vendor. The Sixth Circuit will not be liable in any way for costs incurred in the preparation and delivery of responses to the RFP or for any expenses associated with subsequent discussions.

2. Independent Price Determination

A Vendor must not collude, consult, communicate, or agree with any other Vendor regarding this RFP on any matter relating to the Vendor's cost of proposal. This requirement should not be construed to limit or restrict one or more entities from collaborating on a joint proposal.

3. Prohibited Vendors

a. In accordance with § 287.133, Florida Statutes, 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 be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with a public entity for a period of 36 months following the date of being placed on the convicted Vendor list. Accordingly, each Vendor must certify that he or she has read and understands the provisions of § 287.133, Florida Statutes, and that the Vendor is not prohibited from submitting a proposal or from contracting with the Sixth Judicial Circuit to provide these services.

b. In accordance with § 287.134, Florida Statutes, an entity or affiliate placed on the discriminatory Vendor list may not submit a bid on a contract to provide any goods or services to a public entity; submit a bid on a contract with a public entity for the construction or repair of a public building or public work; submit bids on leases of real property to a public entity; be awarded or perform work as a Vendor, supplier, sub-Vendor, or consultant under a contract with any public entity; or transact business with any public entity. Accordingly, each Vendor must certify that he or she has read and understands the provisions of § 287.134, Florida Statutes, and that the Vendor is not prohibited from submitting a proposal or from contracting with the Sixth Judicial Circuit to provide these services.

4. Vendor's Representation and Authorization

In submitting a proposal, each Vendor understands, represents, and acknowledges the following (if the Vendor cannot so certify to any of following, the Vendor must submit with its proposal a written explanation of why it cannot do so).

- The Vendor is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the Vendor, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.
- To the best of the knowledge of the person signing the response, the Vendor has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other Vendor or potential Vendor; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The Vendor has fully informed the Court in writing of all convictions of the firm, its affiliates (as defined in section 287.133 (1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.

- Neither the Vendor nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
 - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting, to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The services offered by the Vendor will conform to the specifications in this RFP.
- If an award is made to the Vendor, the Vendor agrees that it intends to be legally bound to the Contract that is formed with the Sixth Judicial Circuit.
- The Vendor has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the proposal.
- The Vendor shall indemnify, defend, and hold harmless the Sixth Judicial Circuit and State of Florida and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the Vendor's preparation of its proposal.
- All information provided by, and representations made by, the Vendor are material and important and will be relied upon by the Court in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Court of the true facts relating to submission of the proposal. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

F. COMPENSATION

The Program Manager will be compensated solely by the parties participating in the Managed Mediation Program. All program fees will be paid directly to the Program Manager. No public funds will be provided to the Program Manager by the Sixth Judicial Circuit.

The Program Manager may collect up to \$750.00 per case for all services, including the mediators' fees and costs; the cost for the Borrower to attend a foreclosure counseling session with an approved mortgage foreclosure counselor; and the cost to the Program Manager for administration of the Managed Mediation Program which includes but is not limited to providing neutral meeting and caucus space, scheduling, telephone lines and instruments, infrastructure to support a web-enabled information platform, a secure dedicated email address or other secure system for information transmittal, and other related expenses incurred in managing the foreclosure mediation program. Each proposal submitted in response to this RFP must detail the specific fees that the entity will charge and where applicable, refund within the parameters below.

1. For pre-mediation services of the program, including outreach to the Borrower and foreclosure counseling: Up to \$400.00 paid by Plaintiff at the time suit is filed.
2. For mediation services: Up to \$350.00 paid by Plaintiff within ten (10) days after notice of the mediation conference is filed.
3. The fee structure for the Managed Mediation Program is based on the assumption that a successful mediation can be accomplished with one mediation session. If more than one mediation session is needed, the total program fee stated above must also cover

a second mediation session. However, if an additional mediation session is needed after the second session, the Plaintiff is responsible for the payment of the program fees for such additional mediation sessions, unless the parties agree to share the costs. The program fees for the third and each subsequent mediation session may be up to \$350.00 per session.

4. If the Plaintiff/Lender submits a Form A and pays the pre-mediation fee for a case that is not eligible for the Managed Mediation Program, the pre-mediation fee must be refunded to the Plaintiff/Lender minus a processing fee. The proposal must state the amount of the processing fee.

5. If the Borrower cannot be located, chooses not to participate in the Managed Mediation Program, or if the Borrower does not participate in foreclosure counseling, the Plaintiff is entitled to a refund of the portion of the pre-mediation fees attributable to foreclosure counseling. The proposal must state the amount that will be refunded to the Plaintiff in this situation.

6. If mediation is scheduled and the Borrower announces an intention not to participate further in the Managed Mediation Program prior to the mediation session, or if the case settles and the Program Manager has notice of the settlement at least five (5) days prior to the mediation session, the Plaintiff is entitled to a refund of the mediation fees. The proposal must state the amount attributable to mediation services that would be refunded to the Plaintiff in this situation.

7. If notice of settlement is not received by the Program Manager at least five (5) days prior to the scheduled mediation session, the Plaintiff is not entitled to a refund of mediation fees.

G. DEADLINES

<u>Date</u>	<u>Task</u>
February 17, 2010	RFP issued.
March 5, 2010, 1:00 p.m.	Deadline to receive written questions about the RFP to be addressed at the bidder's conference.
March 10, 2010, 10:00 a.m.	Bidders' conference (not mandatory).
March 17, 2010, 1:00 p.m.	Deadline to receive any other written questions.
March 22, 2010	All questions and answers posted on www.jud6.org.
April 5, 2010, 1:00 p.m.	DEADLINE for receipt of proposals.
April 16, 2010	Posting of intent to award.
May 3, 2010	Contract executed.
June 1, 2010	Services begin.

H. EVALUATION OF PROPOSALS

A review committee comprised of the Chief Judge, three circuit judges, and the Trial Courts Administrator will evaluate each proposal. The committee reserves the right to seek clarification, request any information deemed necessary for a proper evaluation of proposals, and request face to face interviews with any or all proposers if necessary to achieve a fair and equitable evaluation of a proposal. The Sixth Judicial Circuit intends to award a contract to the one Vendor that can provide the required services circuit-wide and that has the highest ranking using the evaluation points in section I below. In the event that there is no one Vendor that appears able to provide the required services, the Chief Judge may award contracts to more than

one Vendor, re-solicit for proposals, or take other action including rejecting any and all bids as deemed appropriate in his discretion to meet the needs of the Circuit. The Court reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Court determines that doing so will serve the State's best interests.

A proposal that includes a disclosure of direct or indirect financial ties with Lenders or mortgage loan servicers will not be considered if the Chief Judge determines that the ties would result in inefficient operation of the Managed Mediation Program by repeated disqualifications of the Program Manager.

Proposals must not exceed twenty-five (25) pages excluding required forms and attachments such as certifications of staff and mediators. Each proposal should show how the Vendor's experience and qualifications match the services sought in this RFP.

The outline of information in section I below is the preferred format for the order of information within a proposal. If this format is not used, a table of contents must be included. All of the categories of information outlined below must be addressed in a proposal. All proposals will be first reviewed for completeness; if a proposal is determined non-responsive to the RFP, it will not be evaluated further.

I. PROPOSAL CONTENT

EVALUATION POINTS

1. Ability to deliver the required services

30

- a. Information on the Vendor including:
 - i. Vendor's official business name, address (both mailing and physical), telephone and fax numbers, type of business such as sole proprietorship, partnership or corporation, including the state of incorporation. Indicate whether the firm is a non-profit entity or an entity associated with a reputable organization of proven competence that is autonomous and independent of the judicial branch.
 - ii. Name of owner(s).
 - iii. Length of time in business.
 - iv. Location(s) of business operations.
 - v. Names of corporate officer(s) and key personnel.
- b. A statement indicating an understanding of the project requirements.
- c. A description of the Vendor's qualifications to provide managed mediation services as described in this RFP. At a minimum, each proposal should:
 - i. Describe the Vendor's experience, if any, with providing mediation services including mediation of foreclosure cases.
 - ii. Describe the Vendor's knowledge of alternative dispute resolution principles as promulgated by the Supreme Court, and knowledge of such statutes and rules.
 - iii. Describe the Vendor's experience with coordinating the delivery of required services between the courts, Plaintiffs/Lenders, Defendants/Borrowers, and legal services. If the Vendor has no such experience, describe similar experience.
 - iv. Describe the Vendor's experience with mortgage foreclosure procedures, and knowledge and understanding of mortgage workout options.

v. Explain the Vendor's experience and ability to provide the required mediation services within the designated timeframes for the expected number of mandatory/automatic referrals and other referrals opting into the program, including:

- the number of Supreme Court-certified circuit civil mediators specially trained in residential mortgage foreclosure matters affiliated with the Vendor,
- office space for conducting mediation, including at least one location in Pasco County and one location in Pinellas County,
- office infrastructure to manage and coordinate the provision of the required services,
- support staff, and
- information technology systems.

d. A Technology Plan with a description of the Vendor's existing information technology system or its plan to develop and implement a system that is capable of providing secure transmissions of large amounts of information between many parties, either through a secure dedicated email address or through uploading to a web-enabled information platform with XML data elements. A secure, encrypted web-enabled information platform is preferred. Describe how the system ensures the confidentiality of and protection of all information in accordance with Florida and federal law.

e. A disclosure of any direct or indirect financial ties to Lenders or mortgage loan servicers by the Program Manager, its officers or directors, and key personnel. Such relationships must be disclosed using the standards in the Code of Judicial Conduct for judicial disclosure. Relationships of family members as defined in the Code of Judicial Conduct must also be disclosed. Such relationships whether current or within the past three years must be disclosed in the Vendor's proposal. If the Vendor has no such ties, disclose the absence of such ties. Describe procedures for meeting the continuing obligation to disclose to the Chief Judge such ties with Lenders or servicers that might arise in the future.

f. A plan for providing interpreters for hearing-impaired participants and other ADA accommodations.

g. Procedures for verifying compliance with the model administrative order contained in AOSC09-54, and the procedures for collecting and supplying the reports described above in Scope of Services.

2. Mediator and staff qualifications

EVALUATION POINTS

20

a. List the names of the mediators that the Program Manager intends to use and their qualifications. Indicate whether the mediator has already received required mortgage foreclosure training.

b. Describe the extent to which local mediators will be used. The use of mediators who reside in or whose primary office is located in the Sixth or Thirteenth Judicial Circuits is preferred.

c. Describe procedures that will be used for rotating the appointment of mediators.

d. Describe procedures to identify and avoid ethical and confidentiality breaches.

e. Describe procedures for disclosing any direct or indirect financial ties to the Plaintiff/lending institution by a mediator and the mediator's

immediate family members. Describe procedures for disqualifying and replacing mediators who have ethical or other conflicts.

f. Describe the office staff and their qualifications.

3. Financial stability and transparency

EVALUATION POINTS

20

a. Describe how the Vendor will be able to provide the required services without fiscal impact on the Sixth Judicial Circuit during the term of the contract and any extensions.

b. Describe the financial stability of the Vendor. Provide the Vendor's audited financial statement, including profit and loss statements for the previous three years, or provide other business records demonstrating financial stability.

c. Provide such financial reports on the Vendor's partners and proposed major sub-contractors, i.e., expected to perform more than five percent (5%) of the Contract.

d. Describe the Vendor's commitment to fiscal transparency and accountability, including its understanding of the need for making fiscal information related to these services public.

e. Provide the value of a current line of credit (or other resources) available to the Vendor for start-up costs of this program.

f. Provide proof of an ability to obtain a performance bond in at least the amount of \$100,000. A performance bond in excess of the required \$100,000 will be weighted in the evaluation of a proposal.

g. Provide proof of required liability insurance or the ability to obtain such insurance as provided in section D, above.

4. Costs of services

15

a. State the fees that will be charged for pre-mediation services.

b. State the amount of the processing fee that will be charged to the Plaintiff/Lender for cases that are ineligible for the Managed Mediation Program.

c. State the amount of the pre-mediation fee attributed to foreclosure counseling which fee will be refunded to the Plaintiff/Lender if the Defendant/Borrower does not participate in foreclosure counseling or cannot be located.

d. State the fees that will be charged for the first and second mediation sessions.

e. State the fees that will be charged for mediation sessions in addition to two mediation sessions.

f. State the mediation fees that will be refunded to the Plaintiff/Lender if, after mediation is already scheduled, the Defendant/Borrower announces an intention not to participate further in the Managed Mediation Program or the case settles and the Program Manager has notice at least five (5) days prior to the mediation session.

g. State the fees that will be charged for pre-suit mediation.

5. Other information required with Response to Proposal

10

These evaluation points will be awarded based upon overall compliance with the required elements of the proposal including:

- a. A statement that the Vendor is willing to enter a contract that is substantially similar to that attached at Appendix A. A statement the Vendor has read, understands, and agrees to the contract conditions, including the indemnification provisions, in the Florida State Courts System General Contract Conditions for Services referenced in Appendix A.
- b. A certification concerning “public entity crime” as described above in subsection E3.
- c. A certification concerning “discriminatory Vendors” as described below in subsection E3.
- d. A certification concerning the Vendor’s Representation and Authorization as described below in subsection E4.
- d. A disclosure of the names(s) of any employee or officer of the State of Florida who owns, directly or indirectly, an interest of five percent (5%) or more in the entity. A disclosure of the name(s) of any officer, director, employee, or other agent who is also an employee or officer of the State of Florida.
- e. The names of each proposed subcontractor and a description of the extent and role of the subcontractor(s).
- f. A Grievance Plan with a description of how complaints will be handled by the Vendor. The types of complaints that should be addressed include, but are not limited to those concerning exchanges of information via the Program Manager’s secure system; mediation services; complaints against individual mediators and support staff; foreclosure counseling services; the time of delivery of services, and tracking cases referred to the Managed Mediation Program.
- g. A Quality Assurance Plan with a description of the firm’s quality assurance procedures.

6. References

EVALUATION POINTS

5

Provide the name, address, and telephone number of a least three (3) clients for whom similar services are being provided or have recently been provided.

TOTAL POSSIBLE POINTS

100

J. PROPOSAL SUBMISSION

Proposals must be on white, letter-size paper, and each element of the RFP addressed in a clear, concise manner. One (1) original marked “ORIGINAL,” and seven (7) copies, each marked “COPY,” are required. The envelope containing the proposal and the seven copies must be sealed and clearly marked on the outside of the package with:

**“RFP # 2-17-2010 RESIDENTIAL FORECLOSURE PROGRAM
MANAGER SERVICES” – Sixth Judicial Circuit. Due: 1:00 p.m., Monday,
April 5, 2010.”**

The proposal must be mailed or delivered in sufficient time to arrive by 1:00 p.m., Monday, April 5, 2010, to:

Gay Inskeep, Trial Courts Administrator
Sixth Judicial Circuit
501 First Avenue North, Suite 645
St. Petersburg, Florida 33701

Any proposal received after the advertised deadline will not be considered. The consultant is responsible for all risks for delays associated with delivery or U.S. Mail.

If a Vendor believes that its proposal contains information that is exempt from public disclosure under Rule of Judicial Administration 2.420 and that such information should not be provided in response to a public records request, the Vendor must clearly identify, segregate and mark the information with the word "Confidential" and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific rule or statutory citation for such exemption.

Once a proposal is submitted, the Sixth Judicial Circuit will not accept a request to correct errors or omissions in any calculations or the price submitted.

The Court may make an award within sixty (60) days after the date of the opening during which period proposals remain firm and cannot be withdrawn. If an award is not made within sixty (60) days, the response will remain firm until either the Court awards the Contract or the Court receives from the Vendor written notice that the proposal is withdrawn. Any response that expresses a shorter duration may, in the Court's sole discretion, be accepted or rejected.

K. INQUIRIES

Any questions or requests for additional information regarding this RFP must be in writing via fax, mail, or electronic mail and received no later than 1:00 p.m., March 5, 2010, to be addressed at the bidders' conference, or received not later than March 17, 2010, to have the answer posted on www.jud6.org. All questions or requests for additional information must include Vendor name, address and phone number. Telephone inquiries **will not** be accepted.

Mail or fax inquiries must be addressed as follows:

Gay Inskeep, Trial Courts Administrator

Sixth Judicial Circuit

501 First Avenue North, Room 645

St. Petersburg, Florida 33701

Re: Residential Foreclosure – Program Manager, RFP # 2-17-2010 Question

Fax: (727) 582-7479

Email inquiries must include the subject line "Residential Foreclosure Program Manager Services – RFP # 2-17-2010 QUESTION" and be sent to: ginskeep@jud6.org.

All answers to inquiries will be posted to the court's website www.jud6.org, but individual responses will not be provided.

Potential Vendors must not communicate with any Sixth Judicial Circuit personnel, including judges on the selection committee, concerning this RFP, except for the contact person identified above. Violation of this requirement may result in rejection of a proposal from the Vendor making the communication.

L. ADDENDUM

Any clarification or additional information that may substantially affect the outcome of this RFP will be provided in the form of a written addendum. Any addendum will be posted on the Sixth Judicial Circuit website at: <http://www.jud6.org/LegalCommunity/CourtAppointedOthers.html> under the tabs "Legal Community"/ "Court Appointed Others"/ "Managed Mediation Program."

M. POSTING

The Vendor selected for award will be listed for a period of at least seventy-two (72) hours on the Sixth Judicial Circuit Court website at <http://www.jud6.org/LegalCommunity/CourtAppointedOthers.html> under the tabs "Legal Community"/ "Court Appointed Others"/ "Managed Mediation Program." Any protest concerning this solicitation must be made in accordance with section 6.10 of the State Courts System Purchasing Directives.

APPENDIX A – PROPOSED CONTRACT

IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO AND PINELLAS COUNTIES, FLORIDA

AGREEMENT FOR RESIDENTIAL FORECLOSURE PROGRAM MANAGER SERVICES

This agreement is entered into by and between the Sixth Judicial Circuit Court, in and for Pasco and Pinellas Counties, Florida, (Court) and _____, (Program Manager).

W I T N E S S E T H:

In consideration of the mutual covenants and provisions contained herein, in order to implement a foreclosure case management and mediation program for the Sixth Judicial Circuit in accord with Supreme Court Administrative Order No. AOSC09-54, In Re: Final Report and Recommendations on Residential Mortgage Foreclosure Cases (December 28, 2009) the Court and Program Manager agree as follows:

1. TERM OF AGREEMENT: Services under this agreement shall be begin on June 1, 2010, or when signed by both parties, whichever is later and shall terminate on June 30, 2011, unless canceled or terminated as provided herein. This contract may be renewed at the sole discretion of the Chief Judge for up to three (3), one-year periods after the initial contract period. The renewal option shall be exercised only if all prices, terms and conditions remain the same, and approval is granted by the Court.

2. INDEPENDENT CONTRACTOR, SUBCONTRACTING: Program Manager is and shall perform under this agreement as an independent contractor, and nothing contained herein shall in any way be construed to imply that Program Manager or Program Manager's employees or subcontractors are agents, employees, partners, or joint-venturers of the Court or the State of Florida. Program Manager is responsible for reviewing and complying with all pertinent State, federal, county, and city laws and ordinances including, but not limited to, state and local taxes, the Fair Labor Standards Act, the Americans with Disabilities Act of 1990, Title II of the 1964 Civil Rights Act, and all other applicable state and federal employment laws. Violation of this provision by the Program Manager will be grounds for termination of the agreement by Court without liability.

No interest under the agreement may be assigned, nor duties hereunder subcontracted, without prior written consent of the Court. The Program Manager is responsible to ensure that any subcontractor meets the requirements of this agreement.

3. SCOPE OF SERVICES & QUALIFICATIONS OF PROGRAM MANAGER: The Program Manager will deliver all program manager services and maintain all program manager characteristics described in the RFP, which is incorporated herein. The Program Manager will perform all services described in its response to the RFP and accepted by the Court.

4. BILLING/PAYMENT: The Sixth Judicial Circuit and the State of Florida will not provide any public funds to the Program Manager. The Program Manager will be compensated solely by the parties participating in the managed mediation program. All program fees will be paid directly to the Program Manager. The Program Manager may collect compensation for pre-

mediation and mediation services at the rates stated by the Program Manager in its bid submitted in response to the RFP.

5. INSURANCE: Program Manager shall procure, pay for, and maintain insurance prior to commencing any work or services under this agreement. The insurance shall contain at a minimum the following coverage, policy limits of liability, and provisions:

A. At a minimum, coverage shall provide:

1) Worker's Compensation in at least the limits as required by law; Employers' Liability Insurance of not less than \$100,000 for each accident.

2) Comprehensive General Liability Insurance including, but not limited to, Independent, Contractor, Contractual, Premises/Operations, Products/Completed Operation and Personal Injury covering the liability assumed under indemnification provisions of this Contract, with limits of liability for personal injury and/or bodily injury, including death, of not less than \$500,000, each occurrence; and property damage of not less than \$100,000, each occurrence. (Combined Single Limits of not less than \$500,000, each occurrence, will be acceptable unless otherwise stated). Coverage shall be on an "occurrence" basis, and the policy shall include Broad Form Property Damage coverage, and Fire Legal Liability of not less than \$50,000 per occurrence, unless otherwise stated by exception herein.

3) Comprehensive Automobile and Truck Liability covering owned, hired and non-owned vehicles with minimum limits of \$500,000 each occurrence, for bodily injury including death, and property damage of not less than \$100,000, each occurrence. (Combined Single Limits of not less than \$500,000, each occurrence, will be acceptable unless otherwise stated). Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards.

B. The insurance shall be evidenced by delivery to the Sixth Judicial Circuit of:

1) Certificates of insurance executed by the insurers listing coverage and limits, expiration dates and terms of policies and all endorsements whether or not required by the Sixth Judicial Circuit, and listing all carriers issuing said policies; and

2) A certified copy of each policy, including all endorsements. The insurance requirements shall remain in effect throughout the term of the contract and any contract-extensions.

C. Each insurance policy shall include the following conditions by endorsement to the policy:

1) Each policy shall require that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage or limits, a notice thereof shall be given to the Sixth Judicial Circuit by certified mail to: Court Counsel, Sixth Judicial Circuit, 501 First Avenue North, Suite 1000, St. Petersburg, Florida 33701. Program Manager shall also notify the Sixth Judicial Circuit, in a like manner, within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, non-renewal or material change in coverage received by the Program Manager from its insurer; and nothing contained herein shall absolve Program Manager of this requirement to provide notice.

2) Companies issuing the insurance policy, or policies, shall have no recourse against the Sixth Judicial Circuit for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Program Manager.

3) The term "Court" or "Sixth Judicial Circuit" shall include all judges, departments, and other entities of the Sixth Judicial Circuit, Pasco and Pinellas Counties, and individual members,

and employees thereof in their official capacities, or while acting on behalf of the Sixth Judicial Circuit.

4) The Sixth Judicial Circuit, in and for Pasco and Pinellas Counties, shall be endorsed to the required policy or policies as an additional insured. The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by the Sixth Judicial Circuit, to any such future coverage, or to self insurance of the Sixth Judicial Circuit or the State Courts System.

D. The Program Manager hereby waives subrogation rights for loss or damage against the Sixth Judicial Circuit.

E. The Program Manager shall ensure that any subcontractors maintain the same level of insurance coverage as the Program Manager.

F. The certificate of coverage for the above-required insurance is incorporated by reference into this agreement. A copy is attached as Attachment D.

6. OFFICE SPACE, SUPPLIES, AND EQUIPMENT: Program Manager is responsible for supplying and maintaining its own equipment, supplies, and office space, including the offices necessary for conducting foreclosure mediation, equipment and licenses for Internet access and web pages, hardware and software licenses, and any other office space, supplies, and equipment of any nature, that is necessary to provide residential foreclosure program manager services under this agreement with no costs to the Court or the State of Florida.

7. RECORDS: Program Manager is responsible for ensuring compliance with Rule 2.420 and Rule 2.440 of the Florida Rules of Judicial Administration, and with the procedures for record retention and safekeeping, if any, set forth by the Administrative Office of the Courts. Program Manager will also maintain all records made or received in conjunction with the obligations imposed by this agreement and in accordance with Rule 2.420, Florida Rules of Judicial Administration. Program Manager shall retain all other records pertaining to this contract for five (5) years after the date of termination of the contract. This includes records necessary to evaluate and substantiate payments made under this contract made by plaintiffs, lenders, and borrowers. Violation of this provision will be grounds for immediate termination of this agreement.

8. CANCELLATION OF AGREEMENT: The Court reserves the right to cancel this contract with cause if at any time Program Manager fails to fulfill or abide by any of the terms or conditions specified. In addition to all other legal remedies available, the Court reserves the right to cancel and obtain from another source, any items which have not been delivered within the period of time stated in the proposal, or if no such time is stated, within a reasonable period of time as determined by the Court. The delay or failure by the Court to exercise or enforce any of its rights under this agreement 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. The Court also reserves the right to cancel this contract as specified in Attachment C, General Contract Conditions for Services found at http://www.flcourts.org/courts/crtadmin/general_contract_conditions.shtml.

9. PERFORMANCE BOND: Program Manager agrees to supply a performance and labor & materials payment bond payable to the Sixth Judicial Circuit or the State of Florida in the amount of \$100,000.00 to ensure fulfillment of this contract. The surety company issuing the bond must meet the requirements of § 287.0935 Florida Statutes (2009). The bond is incorporated by

