

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for General Office Supplies.

The State Bar is seeking proposals for a contract office stationer for general office supplies and related services. The State Bar intends to award a master contract designating a single source as the preferred supplier for a period of 3 years, with an option to renew for an additional 1-year term.

Please submit 12 copies of your proposal no later than 5 p.m. on April 9, 2010 to:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Attn: Andrew Conover
Procurement
415-538-2207
andrew.conover@calbar.ca.gov

I. INTRODUCTION

The State Bar of California (“the State Bar”), created in 1927 by the Legislature and adopted into the California Constitution in 1960, is a public corporation within the judicial branch of state government. The State Bar is a unified, or integrated bar, and membership is mandatory for all attorneys who are licensed to practice law in the state. In addition to its mandated licensing and disciplinary and certification functions, the State Bar offers a number of other programs designed to assist, educate and protect its members and the public. The State Bar has offices located in Los Angeles, Sacramento and San Francisco. More information about the State Bar can be found at http://calbar.ca.gov/state/calbar/calbar_home_generic.jsp?cid=10102

II. STATEMENT OF WORK

A. General Scope of Services

The State Bar is seeking proposals for delivery of various products and office supplies,

paper stock, media materials, office machines, and other miscellaneous office products. The Successful bidder will provide an online order system capable of identifying State Bar employees, ship-to addresses, department names and locations, and default credit card billing information. Bidder's system will allow for chosen State Bar personnel to be assigned as system administrators to manage user-defined parameters above as well as manage and monitor fixed contract pricing that results from this proposal. The successful bidder will deliver, next day, office supplies to San Francisco, Los Angeles and Sacramento locations and pick-up any designated returns for return-to-stock processing and account crediting.

B. Brand Names

References to brand names and/or numbers in the solicitation are intended to be restrictive, and not merely descriptive, unless otherwise specified. If the specific product cannot be supplied by the bidder, equivalent items meeting the standards of quality specified will be considered. Unless a bidder indicates otherwise, it is understood that the proposer is offering the referenced brand item as specified in the solicitation. The State Bar reserves the right to determine whether a substitute offer is equivalent to and meets the standards of quality indicated by the brand name referenced, and the State Bar may require the supply of additional descriptive material and a sample.

C. Samples

Samples of goods may be required prior to award to determine bidder's responsiveness to the RFP's requirements. If requested, such samples must be provided at no cost and delivered to the address specified within the timeframe identified in the notification. Failure to submit samples as specified may be grounds for rejection of a vendor's proposal. Unless expressly set forth in the solicitation, the sample of goods furnished must be identical in all respects to the product or products being offered. Bidders offering products of a different manufacturer and model number than those specified in the solicitation may be required to submit samples for inspection and specification compliance testing in order for the State Bar to determine if the item offered is equivalent to and meets the minimum standards of quality acceptable to the State Bar. Samples, if not destroyed by tests, may, upon request made by the bidder at the time the sample is furnished, be returned at bidder's expense.

D. Work Plan and Methodology

Vendor shall provide a project plan that describes how the vendor intends to implement the program, including the process to convert the current office supply accounts. The description shall include, but is not limited to, the following:

1. Account team structure and roles (including description of sales contacts, account team support, and periodic account review process)

2. Communication process with the State Bar (employee buyers and Procurement)
3. Customized ordering process and websites or catalogs that reflect Contract Items and Contract Pricing, including distribution of catalogs and capabilities to block ordering on an individual account, product lines, or other basis
4. Training (initial and ongoing)
5. Time schedule
6. Program evaluation

E. Ordering Process

Describe the process to establish an online ordering account for a State Bar employee, including how the individual users would be linked together and identified. Describe the ordering process and the various options available (e.g., Internet access, telephonic, facsimile, etc.) and include the acknowledgement process. The vendor is required to maintain a toll-free number for ordering, inquiries, and customer service. Describe how back-ordered or out-of-stock products are handled during the ordering process.

F. Customer Service

Describe the level of customer service that will be provided, including procedures that will ensure consistency and problem resolution. The description should include, but is not limited to:

1. Customer service organizational structure
2. Contact process (phone, email, fax, etc.)
3. Follow up process
4. Process to handle back ordered or out-of-stock products, including alternate suggestions and pricing policy
5. Internal procedures to track customer service contact and resolution

G. Billing, Invoicing

Vendor shall describe its invoicing control process, including the controls available to restrict purchases to credit card procurement only and the ability of buyers to confirm credit postings to their accounts. All office supply procurement will be charged directly to the employee's State Bar-issued Wells Fargo Visa purchasing card ("Pcard"). No net-

due invoicing will be allowed to post to a master commercial account.

H. Cost Proposal, Pricing and Price Adjustments

Vendors bidding must submit fixed pricing as required by Attachment A: Itemized Cost Proposal. Pricing shall include all anticipated charges, including but not limited to, freight and delivery, cost of materials and product, overhead, profits, and other costs or expenses incidental to the vendor's performance.

All products must be bid using the wholesale distributor item numbering system managed by the National Office Products Association. Vendor may cross-reference these standard industry item numbers to their own SKU numbers, but both identifiers must be used on all bids, reports and subsequent contract core listings.

The vendor shall describe the process used to evaluate purchasing patterns that result in the identification of items that may be eligible to add to the list of Contract Items and opportunities for price reductions to existing Contract Items (or substitutions) during the term of any resulting agreement.

Vendor shall propose a single-rate standard discount from manufacturers' list pricing, for Non-Contract Items that vendor is able to provide and State Bar employees may purchase under the terms of any Master Agreement that results from this RFP. The State Bar will pay for any applicable State of California or local sales or use taxes on the products provided or the services rendered. Taxes shall be included as a separate line item on a vendor's order acknowledgement.

The prices proposed in the bidder's response will be valid for the original three year term after any resulting agreement is signed. The bidder's proposal must describe how future price increases will be minimized and capped and how both increases and decreases will be passed on to the State Bar if the agreement is renewed after the initial term. The bidder must explain the proposed process to implement price changes, including the process to update catalogs and websites. All pricing must be uniform to all three State Bar office locations: Sacramento, San Francisco and Los Angeles.

It is expected that all bidders to this solicitation will offer the bidder's best government or comparable favorable rates.

I. Contract vs. Non-Contract Products

Each of the State Bar offices/departments may individually at their discretion, order office supplies, including Contract Items and Non-Contract Items, by placing an individual order via a bidder's online ordering portal. The term "Contract Item" is defined as any item or replacement item (as agreed to by the State Bar) that is included in Attachment A: Itemized Cost Proposal, or any resulting agreement that may result from this RFP. The term "Non-Contract Item" is defined as any item that vendor is able to provide that is not included with a specific price in Attachment A. The term "Contract

pricing” is defined as the price for a Contract Item that was bid in the vendor’s proposal and reflected in any final agreement that results from this RFP.

Bidders shall demonstrate options for designating Contract items using visual identifiers (online) and/or special State Bar-defined customer catalog product numbers, or other potential item flags.

J. Contract Management

Effective management of the initial core contract product list is crucial to the success of the vendor-customer partnership. It is understood that over the course of the initial contract term, certain products may be discontinued by the manufacturer, or undergo changes in design, color and packaging. The vendor must describe the process used to effectively manage this change.

Products should be maintained at the same unit of measure originally bid. Any products that are discontinued due to manufacturer “repackaging” must be added back to the contract at the equivalent original bid pricing. Notification of products dropped from the contract must occur within 30 days of product discontinuation.

K. Ordering Process

The vendor is required to maintain a toll-free number for ordering, inquiries, and customer service in addition to a 24-hour access website for order placement and delivery tracking. The vendor will provide an immediate acknowledgement of confirmation following any request to place an order. The acknowledgement will be submitted by email, regardless of what method is used to place the order. The vendor shall describe its acknowledgement process.

Order Requirements:

1. Any replacement items are of equal or better quality
2. Buyer must be notified if an item is not available at the time the order is placed and presented with an option of a replacement item or the back-ordered item when it becomes available
3. Estimated delivery dates must be provided for all backordered items
4. If a back-ordered item is not available on the estimated delivery date, the buyer placing the order must be notified prior to the estimated delivery date and given the option of a replacement item or the back-ordered item when it becomes available. If the buyer is not satisfied with the quality of the replacement product, the buyer has the right to return the product. The buyer will not incur any cost for return of the product, including but not limited to shipping and handling.

L. Distribution Network

Vendors shall diagram their distribution network, outlining the process flow from order entry and routing, pulling of stock (including primary warehouses or secondary outsourced operations), back-ordered processing, packaging, loading and delivery. List all sources of supply and delivery methods by name and location(s).

M. Delivery Requirements and Shipping Costs

All deliveries will be made F.O.B. (freight on board) destination as freight pre-paid. Vendors should assume that all deliveries will be inside deliveries to a single drop-off point (Office Services Los Angeles/San Francisco; Lawyer Personal Assistance, Sacramento). A dedicated staff person(s) will be designated to receive entire shipment. Individual orders shall be packaged and labeled to reflect the buyers' name and inside delivery location. Inside delivery to users' workplace will be handled by State Bar Employees only.

Any damage (during initial delivery to single drop-off point) to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the vendor. When damage does occur, it is the responsibility of the vendor to immediately notify the State Bar staff liaison. The vendor shall bear the risk of loss or damage to the ordered goods until the goods are delivered to the place of business indicated on the order.

The vendor shall maintain an overall monthly average of 95% for on-time delivery of products purchased under the Master Agreement. The on-time delivery rate shall be calculated on a quarterly basis by dividing the number of completed on-time deliveries (no partial deliveries) by the total number of deliveries. That is, for orders reported as filled by the order entry system, the shipments shall be received within the times specified when the order is placed at least 95% of the time. The vendor shall propose a remedy, such as an additional discount, if the quarterly average for on-time delivery falls below 95% for three (3) consecutive months.

Vendor shall not invoice the State Bar separately for shipping or delivery costs.

N. Packaging

All products must be new, and must be delivered in the manufacturer's standard package. Prices shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents.

Each shipment shall include a packing slip showing the buyer, ordering date, ordering department, the item number; product description, quantity ordered, all pricing, quantity shipped and backordered items, including the expected ship date.

O. Reports

Vendor shall describe the common user reports that are available. Include the type of report, the information provided in the report, the frequency of the report, the process to request the report, and the process used to deliver the report. Vendors are encouraged to include a sampling of common reports.

In addition, the State Bar management requires quarterly program reports that provide the following information:

1. **Delivery Report:** Delivery information shall include the number of “On-Time Shipments” and the number of “Late Shipments”. On-Time Shipments are defined as complete shipments (no partial deliveries) of goods that meet the delivery time specified in the order. Late Shipments are defined as shipments, including partial shipments that do not meet the delivery time specified in the order.
2. **Back-Ordered/Out-of-Stock Report:** A list of items that were back-ordered or out-of-stock at the time they were initially ordered, including the number of days before the order was filled with an acceptable replacement item or the requested item.
3. **Returned Product Report:** A list of all products returned for credit, including manufacturer/UPC part number, vendor SKU number, product description, unit of measure, number of units returned, date product returned, total amount credited to buyers’ purchasing card and date credit posted to account.
4. **Itemized Usage Report:** A list of all items that were purchased during the quarter, including manufacturer/UPC part number, vendor SKU number, product description, unit of measure, number of units sold, price each unit sold, totals extended, and whether the item is Contract or Non-contract.
5. **Contract Maintenance Report:** a list of any item that has been discontinued, repackaged, been given a new UPC/SKU#, or otherwise been deactivated from the original contract list, including whether a suitable replacement has been substituted and at what price and as of what date.

Quarterly reports must be provided no later than thirty (30) days after the end of each quarter.

P. Rejection of Goods or Acceptance of Service

The vendor will arrange for the return of all miss-ordered, miss-shipped, returned, or damaged items at no cost to the State Bar. There will be no restocking fee for returns of items that are damaged or shipped by the vendor in error. All items returned will be credited to buyers' Pcard account within 14 days of receipt.

Q. Inventory, Estimated Volume

The State Bar has demonstrated an ongoing need for the products indicated in this RFP. These products are based on recent 12-month usage for all office locations and average \$144,000 annually (this average includes procurement through primary supplier only and does not include secondary office suppliers or specialty retailers for toner and paper supplies). As procurement of office supplies is largely decentralized within the organization, there is no guaranteed minimum annual total volume or specific individual product quantity thresholds that will be maintained over the initial contract term.

The vendor awarded a Master Agreement shall maintain access to a reasonable stock of such products on hand for the full term of the Master Agreement. Failure to maintain access to a reasonable stock may result in termination for default of the vendor's Master Agreement. The individual State Bar departments and office locations will be strongly encouraged to order against the Master Agreement, but will not be required to purchase exclusively if vendor's stocking levels are insufficient, lead-times for backordered items too long, or other special needs are warranted.

R. Program Auditing

The successful vendor will provide online query tools, reports and other materials upon request to verify contract compliance throughout the life of the agreement. Bidder will provide a sample blind audit of a current account reference for review during the RFP evaluation process.

III. GENERAL INFORMATION

The submission requirements for this RFP are set forth below. A proposal shall constitute an irrevocable offer for 60 business days following the deadline for its submission. Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

Contact with State Bar personnel in connection with this RFP may not be made other than as specified in this RFP. Unauthorized contact of any State Bar personnel may be cause for rejection of a bid.

A. Submission Requirements

To be considered responsive, a proposal must contain the following, referenced by number and in the order below:

1. A brief description of the history and organization of the bidder's firm, and of any proposed subcontractor, outsourced distribution centers, delivery services, etc.
2. Copies of business licenses, professional certifications or other credentials, together with evidence that bidder, if a corporation, is in good standing and qualified to conduct business in California.
3. The most recent year's annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data. Bidders must also submit Attachment C: Financial Viability Questionnaire electronically in native XL format directly to andrew.conover@calbar.ca.gov by the proposal due date.
4. A description of similar bids successfully awarded within the past three (3) years.
5. Qualifications, background and experience of the project director and other dedicated staff, if any, proposed to work on the project.
6. References with contact information from organizations that have used bidder's services for similar services within the last 12-18 months.
7. A general description of the techniques, approaches and methods to be used in completing the project. Please respond specifically to each item listed in Section II: Statement of Work, referenced in order by letter.
8. A description of the chronology for account set-up, training and launch, including a time line and deadlines for each task.
9. A description of any special incentive programs, annual bonus rewards, rebates, sponsorships, and works of public service available. Provide current live examples of each, if available.
10. Submission of completed Attachment B: Office Supply Questionnaire electronically in native XL format directly to andrew.conover@calbar.ca.gov by the proposal due date.
11. A detailed fixed cost proposal, using Attachment A: Itemized Cost Proposal. Bids must be submitted electronically in native XL format directly to andrew.conover@calbar.ca.gov by the proposal due date. As the State Bar may award a contract based on the initial offer, a bidder should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those bidders falling within a competitive range, and to request revised pricing offers from them and to make an award or conduct negotiations thereafter.

12. A written acknowledgement of the acceptance of the Contracting Requirements set forth in section IV of this RFP. Specific terms may be reserved for future negotiation, but must be clearly identified and reasons given for the reservation.

Proposals which fail to address each of the submission requirements above may be deemed non-responsive and will not be further considered. Note that responses to questions must be specifically answered within the context of the submitted proposal. The State Bar's evaluation team will not refer to a designated web site, brochure, or other location for the requested information. Responses that utilize references to external materials as an answer will be considered non-responsive.

B. Rejection of Proposals

The State Bar reserves the right in its sole discretion to reject any or all proposals in whole or in part, without incurring any cost or liability whatsoever. All proposals will be reviewed for completeness of the submission requirements. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Immaterial deviations may cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect will in no way modify the RFP or excuse a bidder from full compliance with the RFP requirements.

Any proposal may be rejected where it is determined to be not really competitive, or where the cost is not reasonable.

Proposals that contain false or misleading statements may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

C. Evaluation Process and Highest Score Bidder

An evaluation team will review, in detail, all proposals that are received to determine the Highest Score Bidder ("HSB").

Following the initial review and screening of the written Proposals, using the selection criteria described below, several bidders may be invited to participate in the final selection process, which may include participation in an oral interview and/or submission of any additional information as requested by the State Bar.

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal's meeting administrative requirements, technical requirements, the review team's

assessment of the quality and performance of the equipment and services proposed, and cost.

During the evaluation process, the State Bar may require a bidder's representative to answer questions with regard to the proposal and/or require certain bidders to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team. The State Bar may also have discussions with those bidders falling within a competitive range, and request revised pricing offers from such bidders and make an award and/or conduct negotiations thereafter.

This Request for Proposal does not commit the State Bar to awarding a Contract. Bidders shall bear all costs incurred in the preparation of the Proposal and participating in the Proposal evaluation process. The State Bar reserves the right to reject any and all Proposals, to accept the Proposal it considers most favorable in its sole discretion, and to waive minor irregularities. The State Bar further reserves the right to seek new Proposals when such procedure is considered by it to be in the best interest of the State Bar.

1. The following criteria will be used in reviewing and comparing the proposals and in determining the HSB. The weight to be assigned to each criterion appears following each item.
 - a. Responsiveness of the proposal to the submission requirements set forth in the RFP (10%).
 - b. Agreement with the State Bar's contracting requirements (5%).
 - c. The capacity to perform the contract based on responsiveness to issues itemized on Attachment B: Office Supplier Questionnaire, including quality of distribution and delivery systems, client references, and demonstrated success in projects with similar requirements. (25%).
 - d. The technical development and responsiveness of the online user-interface: searching, selection, ordering, tracking (15%).
 - e. Special incentive programs, annual bonus rewards, rebates, sponsorships, and works of public service available (5%).
 - f. The total cost of the proposal solution. If the proposal contains itemized rates, per piece pricing, or commission-based pricing, the State Bar reserves the right to calculate total contracted cost by calculating rates using either previous known usage activity or future projected volume. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the solution over the term of the contract (40%).

2. If a large number of proposals are received, the State Bar reserves the right to review the proposals using a tiered evaluation system. All qualified proposals will be evaluated based on the Submission Requirements and Cost, with the top candidates advancing as finalists and receiving a full evaluation as outlined above.

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSB will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice sent to bidders on or about May 26, 2010 of the Bar's intention to award the contract to the HSB. It is anticipated that final selection of the HSB will be made by June 2, 2010. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements sections below.

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If agreement on the terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any other bidder who submitted timely, responsive and responsible proposals to this RFP.

If, after the State Bar and the HSB agree to terms and execute a contract, that contract is terminated for any reason, the State Bar may, in its sole discretion, either enter into negotiations with the next highest scored bidder, or issue a new RFP and begin the proposal process anew.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing to Andrew Conover, Finance Manager, at andrew.conover@calbar.ca.gov.

Where written notice is required in this RFP, the notice must be sent by U.S. mail and either facsimile or e-mail.

E. Errors in the RFP

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the bidder should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by issuing an addendum to all potential bidders to whom the RFP was sent.

If prior to the date fixed for submissions, a bidder knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the bidder shall bid at its own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

F. Questions Regarding the RFP

Questions regarding the RFP may be addressed writing to Andrew Conover at andrew.conover@calbar.ca.gov. All questions must be submitted no later than 5 days prior to the date for submission of proposals. Questions and answers regarding the RFP may be shared with all bidders known to be interested in submitting a proposal.

If a question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the bidder may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the bidder must submit a statement explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the bidder will be notified.

A bidder who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. The State Bar must receive any such request no later than 5 days before the deadline for submitting proposals.

G. Addenda

The State Bar may modify the RFP prior to the date fixed for submission by posting, mailing, emailing or faxing an addendum to the bidders known to be interested in submitting a proposal. If any bidder determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than 5 days before the deadline for submitting proposals.

H. Withdrawal and Resubmission/Modification of Proposals

A proposal may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by the bidder. The bidder may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline.

Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed after the evaluation process begins.

I. Protest Procedure

A bidder may protest the award if it meets all the following conditions:

1. The bidder has submitted a proposal that it believes is or should have been the HSB, under the criteria set forth above;
2. The bidder believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. The bidder believes that the State Bar has incorrectly selected another bidder.

A bidder qualified to protest should contact Andrew Conover, Finance Manager, (415) 538-2207, to attempt an informal resolution. If this contact is unable to resolve the protest to the bidder's satisfaction, the bidder must file a written protest within 5 days of the notice of intention to award the contract. The written protest must state the facts surrounding the issue and the reasons the bidder believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

Attention: Peggy Van Horn, Chief Financial Officer

Protests will be reviewed and decided by the State Bar's Award Protest Team within 30 days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

J. News Releases

News releases pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

K. Disposition of Materials

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the bidder. One copy of each proposal will be retained for the State Bar's official files and become a public record. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. The entire proposal cannot be deemed confidential. The bidder's consent will be requested before release of such confidential pages to non-State Bar personnel. By submitting a proposal, a

bidder agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

IV. CONTRACTING REQUIREMENTS

Upon selection of a vendor, the terms set forth in this RFP are to be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually acceptable.

The State Bar contemplates that, in addition to the terms described above in this RFP, final agreement between the State Bar and the selected vendor will include, without limitation, the following terms. Submission of a proposal shall constitute agreement to contract on these terms, except for any term specifically reserved in the proposal for future negotiation.

A. Time of Essence

Time is of the essence with respect to Vendor's performance of the services and equipment to be provided in the final agreement.

B. Warranties and Representations

Vendor warrants and represents that it possesses such expertise, experience and resources to perform the scope of services required in a diligent, timely and professional manner consistent with the standards of the industry. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work. Vendor will provide a contact person available and authorized to remedy any non-conformity with this warranty.

C. Equipment, Tools, Supplies

The Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. The Vendor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

D. Indemnity Obligations of Vendor

Vendor will indemnify and defend the State Bar (including its Board of Governors, officers, director, agents, employees and volunteers, as the same may be constituted from time to time) from all claims, demands, damages, debt, liability, obligations, cost, expense, lien, action or cause of action (including but not limited to actual damages, fines and attorneys' fees, whether or not litigation is actually commenced) arising out of: (i) the material breach by Vendor of any warranty, representation, term or condition made or

agreed to by Vendor; (ii) all products and services prepared by or for Vendor hereunder and provided to State Bar; (iii) any claim or action for personal injury, death or otherwise involving alleged defects in Vendor's business or any of its products or services provided to State Bar; (iv) any breach by Vendor of any statutory or regulatory obligation; and (v) any act or omission of Vendor, its employees, agents or subcontractors.

E. Insurance Obligations of Vendor

The Vendor will provide and keep in full force and effect during the term of this agreement, at the Vendor's own cost and expense, the following insurance policies for the joint benefit of the Vendor and the State Bar, with an insurer reasonably acceptable to the State Bar:

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.
3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.

The Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Andrew Conover, true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days of the execution of this agreement. Each such policy will name the State Bar as an additional insured and will state that the Vendor's policy shall be primary and that any insurance carried by the State Bar shall be noncontributing with respect thereto. Each such policy will provide for thirty (30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If the Vendor fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and the Vendor will pay upon demand the cost of it to the State Bar or the State Bar may terminate this agreement. Additionally, if the Vendor assigns any portion of the duties under this agreement, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

The Vendor will immediately notify the State Bar if the Vendor's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If the Vendor's commercial general liability insurance contains such restrictive endorsements, the Vendor shall have

five (5) business days to remove said restrictions. If the Vendor is unable to do so, the State Bar may terminate this agreement, and will be required to give the Vendor no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

F. Termination

1. **At Will.** The agreement may be terminated by the State Bar, in its sole and complete discretion, upon thirty (30) days written notice to Vendor. In the event of termination pursuant to this section, the vendor's sole compensation will be for that portion of services performed or goods delivered up to the date of termination, together with reimbursable expenses, if any then due. Vendor will not be paid for any services, goods or reimbursable expenses associated with any work or service not specifically authorized by the State Bar.
2. **Authorization of Funds.** If the term of this agreement extends into fiscal year(s) subsequent to that in which it is signed, it is understood that the continuation of this contract is subject to the authorization of sufficient funding for such purpose by the California State Legislature. If sufficient funds are not so authorized, the parties mutually agree that the contract may be terminated or amended as appropriate in response to the reduction in funding. If the agreement is terminated, Contractor agrees to take back any affected equipment, products, software, or hardware furnished under this contract, and relieve the State Bar of any further obligation, except for the State Bar's obligation to pay for services already performed pursuant to this agreement.
3. **Default by Vendor.** This agreement may be terminated by the State Bar upon fifteen (15) days written notice to the Vendor in the event the Vendor is in default under any of its provisions. In the event this agreement is terminated due to the default by the Vendor, the Vendor will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties and the Vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in this agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by the Vendor's default.
4. **Automatic Termination.** This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of the business of either party; (c)

failure to comply with federal, state or local laws, regulations or requirements, or (d) expiration of the agreement.

G. Confidentiality and Publicity

The Vendor will retain all information provided by the State Bar in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform services under this agreement without the prior written consent of the State Bar. The State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law. The Vendor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

H. Compliance with Laws

The Vendor agrees to comply with all applicable federal, state, and local laws and regulations, including but not limited to the provisions of the Fair Employment and Housing Act (Govt. Code, § 12900 et seq.) and any applicable regulations promulgated there under (Cal. Code of Regs., tit. 2, § 72850.0 et seq.). Vendor agrees to include the non-discrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

I. Assignment/Subcontracting

1. **Assignment.** The Vendor will not assign or transfer its interest, in whole or in part, under this agreement, without the written consent of the State Bar, which consent may be granted or withheld in the sole and absolute discretion of the State Bar.
2. **Subcontracting.** The Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the delivery of equipment and services, with the prior written approval of the State Bar.

The Vendor will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between the Vendor and its subcontractor to be maintained during the term of this agreement. No subcontract will be approved unless the Vendor provides a written guarantee that the Vendor's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

J. General Provisions

1. **Governing Law.** The agreement will be governed by the laws of the State of California without giving effect to its principles of conflict of laws.

2. **Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to this agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit shall be entitled to collect or enforce the judgment. This provision is separate and several and shall survive the merger of the agreement into any judgment.

3. **Audit.** Vendor agrees that the State Bar or its designee shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Vendor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Vendor agrees to allow the State Bar or its designee access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Vendor agrees to include a similar right of the State Bar or its designee to audit records and interview staff in any subcontract related to performance of this Agreement.