

REQUEST FOR PROPOSAL



THE STATE BAR OF CALIFORNIA

This document is a **Request for Proposal** (“RFP”) for **professional auditing and accounting services** for the Board of Governors of The State Bar of California.

Please submit 8 hard copies of your proposal in a sealed envelope **no later than 5 p.m. on August 5, 2005** to:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639
Attn: Peggy Van Horn, Chief Financial Officer

Alternatively, you may e-mail your proposal and all required attachments before the deadline to the following e-mail address: Peggy.VanHorn@calbar.ca.gov

I. INTRODUCTION

The State Bar of California (“ the State Bar”), created in 1927 by the California Legislature and written into the California Constitution in 1960, is a public corporation within the judicial branch of State government.¹ The State Bar serves as an administrative arm of the California Supreme Court, overseeing the regulation, admission and discipline of lawyers licensed in the State. The organization has approximately 580 employees and an operating budget of approximately \$100 million. Approximately half of the State Bar’s employees are in San Francisco, half are in Los Angeles, and several are in Sacramento.

In accordance with California law and the State Bar's procurement policies, contracts in excess of \$50,000 are subject to formal competitive bidding. As a governmental agency, the State Bar typically receives favorable governmental pricing and contract terms.

The State Bar is seeking proposals from a nationally recognized accounting firm with multi-state offices and at least \$300 million in annual net revenues to audit its financial statements, including its chargeable/non-chargeable expenses, for the years 2005-2009.

¹ General information about The State Bar of California is available on its website at <http://www.calbar.ca.gov> in a document entitled, “[The State Bar of California - What Does It Do, How Does It Work?](#)”

II. STATEMENT OF WORK

The State Bar is seeking a nationally recognized accounting firm to audit its year-end financial statements for the years 2005, 2006, 2007, 2008 and 2009. The financial software used by the State Bar is from PeopleSoft, now a division of Oracle, Inc.

California Business and Professions Code § 6145 requires the State Bar to contract with a nationally recognized accounting firm to audit its financial statements each fiscal year. The statute requires a copy of the audit and financial statement to be submitted to the State Bar's Board of Governors and to specified public officials within 120 days of the close of the State Bar's fiscal year, which is the calendar year. Any audit of the State Bar's financial statements must thus be completed no later than April 15th of each year. For purposes of this RFP, a "nationally recognized accounting firm" means an accounting firm with multi-state offices and net revenues of at least \$300 million.

The State Bar closes its books for the calendar year by the end of January. A copy of the State Bar's Financial Statements for the Year Ended December 31, 2004 and the Independent Auditors' Report are attached as Exhibit 1. The State Bar will be responsible for the completion of lead schedules and confirmation requests required by the accounting firm selected.

In addition to the audit of the State Bar's financial statements, the auditor will conduct and prepare a special financial report and audit called the Statement of Chargeable and Nonchargeable Expenses. This audit is required by the United States Supreme Court's decision in *Keller v. State Bar of California* (1990) 496 U.S. 1, which held that the State Bar cannot use mandatory fees paid by its members for political or ideological activities not related to regulation of the legal profession or improvement of the quality of legal services in California. Activities related to the regulation of the legal profession are described as chargeable, and all members can be compelled to support them. Activities falling outside of the regulation of the legal profession are nonchargeable. Under the *Keller* decision, the State Bar is required to offer those members who choose not to support nonchargeable activities an advance deduction of dues. The amount to be offered as a deduction is determined by reviewing the State Bar's last available audited financial statement. The Statement of Chargeable and Nonchargeable Expenses is an audit of this calculation of chargeable and nonchargeable expenses based on the last available audited financial statement. An example of the last Statement of Chargeable and Nonchargeable Expenses, and the related 2004 Financial Statements are attached as Exhibit 2.

Both audits must be conducted in accordance with generally accepted auditing standards. Proposals from potential vendors should include a description of the methods to be employed to complete the work required, as well as separate cost estimates for the audit of financial statements and for the Statement of Chargeable and Nonchargeable Expenses.

III. GENERAL INFORMATION

A. Submission Requirements

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 with any State Bar personnel may be cause for rejection of a bid.

To be considered responsive, a proposal must contain all of the following:

1. A brief description of the history and organization of the Vendor's firm, and of any proposed subcontractor.
2. Copies of business licenses, professional certifications or other credentials, together with evidence that Vendor, if a corporation, is in good standing and qualified to conduct business in California.
3. Vendor's most recent annual report, or comparable document, demonstrating its ability to meet the Bar's definition of a nationally recognized firm (\$300 million in annual net revenue).
4. A description of similar projects completed by the Vendor within the past three (3) years, including a concise summary of the best evidence that Vendor can provide, at the highest level of quality, the services described in the "Statement of Work" (see Section II above).
5. Qualifications, background and experience of the project director and other staff proposed to work on the project.
6. References from at least three (3) clients for whom Vendor has performed services similar to those described in the Statement of Work within the past 18 months. Note that the State Bar will only contact Vendor's references if Vendor is a finalist, and only after prior notification to Vendor.
7. A general description of the techniques, approaches and methods to be used in completing the project.
8. A description of the chronology of completing the work, including a time line and deadlines for each task.
9. A detailed cost proposal for the multi-year contract, including any travel costs and other expenses. Separate cost proposals must be included for the audit of financial

statements and the audit of chargeable and nonchargeable expenses, as described in the Statement of Work above. As the State Bar may award a contract based on the initial offer, a Vendor should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to engage in discussions with those Vendors whose proposals fall within a competitive range, to request revised pricing offers from them, and to make an award and/or conduct negotiations thereafter.

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 with respect to the submission requirements. If a proposal: (i) fails to submit a response or documentation in response to each of the submission requirements described above; or (ii) fails to meet a material requirement of the RFP; or (iii) is otherwise incomplete or contains irregularities, the proposal may be deemed non-responsive and may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with the RFP requirements.

Immaterial deviations may also 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 shall in no way modify the RFP or excuse a Vendor from full compliance with the RFP requirements.

Any proposal may be rejected where it is determined that it is not 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 Scored Responsive Proposal

An evaluation team will review in detail all proposals that are received to determine the Highest Scored Responsive Proposal ("HSP").

The State Bar reserves the right to determine the suitability and responsiveness of proposals based on whether a given proposal meets administrative requirements, technical requirements, the review team's assessment of the quality and performance of the services proposed, and cost.

During the evaluation process, the State Bar may require a Vendor's representative to answer questions with regard to the proposal and/or require certain Vendors to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team.

The following criteria will be used in reviewing and comparing the proposals and

in determining the HSP. The weight assigned to each criterion appears in parentheses following each item.

1. Responsiveness of the proposal to original specifications set forth in the RFP, including agreement with the State Bar's contracting requirements (30%).
2. The technical ability, capacity, judgment, experience, and flexibility of the Vendor to perform the services described in the Statement of Work at the highest level of quality, in a timely manner and on budget, as verified by, e.g., the quality of any formal presentation, client references, demonstrated success in projects with similar requirements, and the quality of Vendor's performance on previous contracts with the State Bar (25%).
3. The financial viability of the proposal and the Vendor as evidenced by standard financial reports and by related factors such as its business plan, market position, and strategic partnerships (10%).
4. The total cost of the proposal, with an annual cost breakdown for each of the five years of the contract. Cost 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 services over the term of the contract (35%).

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA 94025 and written notice will be sent to the address identified in the proposal on or about September 30, 2005, of the State Bar's intention to award the contract to the HSP. It is anticipated that final selection of the HSP will be made by October 7, 2005. 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 (see Section IV 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 Vendor who submitted timely, responsive and responsible proposals to this RFP. Alternatively, if, after the State Bar and the HSP 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 Vendor with the next highest scored proposal, 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

Peggy Van Horn
Chief Financial Officer
The State Bar of California
180 Howard Street
San Francisco, CA 94105
Fax: 415-538-2389
E-mail: Peggy.VanHorn@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 Vendor discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the Vendor 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 Vendors to whom the RFP was sent.

If prior to the date fixed for submissions, a Vendor knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the Vendor 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 in writing to Peggy Van Horn at the State Bar (see contact information above). All questions must be submitted no later than 15 days prior to the date for submission of proposals. All questions and answers regarding the RFP may be shared with all who submitted proposals.

If a question relates to a proprietary aspect of a Vendor's proposal and the question would expose proprietary information if disclosed to competitors, Vendor may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, Vendor must submit a statement explaining why the question is sensitive. If the State Bar concurs that 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 Vendor will be notified.

A Vendor who believes that one or more of the RFP's requirements are onerous or unfair, or unnecessarily preclude 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 and all such requests no later than 5:00 p.m. on July 29, 2005.**

G. Addenda

The State Bar may modify the RFP prior to the date fixed for submission by mailing, e-mailing or faxing an addendum to the Vendors to whom the RFP was sent. If any Vendor determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than three (3) days following receipt of the addendum.

H. Withdrawal and Resubmission/Modification of Proposals

A proposal may be withdrawn at any time prior to the submission deadline by notifying the State Bar in writing of its withdrawal. The notice must be signed by an authorized representative of the Vendor. The Vendor may thereafter submit a new or modified proposal, provided that it is received by the State Bar on or before the submission 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 Vendor may protest the award if all of the following conditions are met:

1. The Vendor has submitted a proposal that it believes is or should have been the HSP, under the criteria set forth above;
2. The Vendor 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 Vendor believes that the State Bar has incorrectly selected another Vendor.

A Vendor qualified to protest should first notify Peggy Van Horn, Chief Financial Officer via e-mail (see contact information above) to attempt an informal resolution. If the State Bar is unable to resolve the protest to the Vendor's satisfaction, the Vendor must file a formal written protest within five (5) days of the deadline for the State Bar to give notice of its intention to award the contract. The written protest must state the facts surrounding the issue and the reasons the Vendor 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: Robert Hawley, Deputy Executive Director

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 Vendor's expense. Proposals become public record once received by the State Bar. One copy of each proposal will be retained for official files and be available for public inspection. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. Vendor's consent will be requested before release of such pages to non-State Bar personnel. By submitting a proposal, a Vendor agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the disclosure or release of any information contained in a proposal.

IV. CONTRACTING REQUIREMENTS

Upon selection of a vendor, the terms set forth in this RFP will 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 by the vendor 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 this agreement.

B. Warranties and Representations

1. **Qualifications.** Vendor represents and warrants that it, or alternatively, any authorized subcontractor it retains to perform services hereunder, possess the requisite skill, expertise, experience and resources to perform the scope of services required in a diligent, timely, professional and workmanlike manner consistent with the highest standards of the industry. Vendor will at all times supply 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.
2. **Licenses.** Vendor represents and warrants that the Vendor and any authorized subcontractor acting on its behalf currently holds and maintains in good standing any and all necessary licenses, permits or other credentials to perform the services pursuant to this agreement, as required by law or other applicable regulatory authority, which shall at all times remain in full force and effect during the term of this agreement.
3. **Conflicts.** Prior to execution of this agreement, Vendor represents and warrants that it has conducted a conflict of interest check, that the State Bar has been notified in writing of any and all actual or potential conflicts, either past or present, and that in Vendor's estimation, its independence or that of any party acting on its behalf will not be impaired during performance of services under this agreement.
4. **Survival.** Vendor's representations and warranties shall survive: (i) execution and delivery of this agreement; and (ii) expiration or termination of this agreement.

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, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

D. Indemnity Obligations of Vendor

To the fullest extent permitted by law, Vendor agrees to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns entirely harmless from and against any and all claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the agreement, (b) any actual or alleged negligent act, negligent error

or omission, intentional misconduct of, or violation of any law by Vendor, Vendor's employees, subcontractors, agents, representatives or assigns (collectively, "Vendor's Agents") in the performance or non-performance of the professional services required to be performed by the Vendor under the agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. Vendor agrees that its obligations under this indemnity will survive the expiration and termination of this agreement.

In the event both the State Bar and Vendor are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Vendor will agree to provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation where the State Bar is defended by Vendor.

E. Insurance Obligations of Vendor

Vendor will provide and keep in full force and effect during the term of this agreement, at Vendor's own cost and expense, the following insurance policies for the joint benefit of 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; and 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.
4. Professional liability insurance with a general aggregate limit of Three Million Dollars (\$3,000,000) and an each occurrence limit of Three Million Dollars (\$3,000,000).

Vendor will deliver certificates of such insurance within seven (7) days of the execution of this agreement to the State Bar's offices at 180 Howard Street, San Francisco, CA 94105, Attn: Andrew Conover, Procurement Supervisor. Each certificate will name the State Bar as an additional insured, and provide that the Vendor's policy shall be primary and noncontributing with respect to any insurance carried by the State Bar. Each 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 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 Vendor will pay upon demand the cost of such insurance policies to the State Bar, or the State Bar may terminate this

agreement. In addition to the required insurance to be maintained by the Vendor, if the Vendor assigns any portion of the duties under this agreement in accordance with the terms hereof, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

Vendor will immediately notify the State Bar if Vendor's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If Vendor's commercial general liability insurance contains such restrictive endorsements, Vendor shall have five (5) business days to remove said restrictions. If 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, notwithstanding anything in this agreement to the contrary.

F. State Bar as Public Corporation

Vendor understands and agrees that the State Bar is a public corporation within the judicial branch of the State of California, and may be subject to special regulatory oversight by various branches of State government. Vendor further understands and agrees that any and all financial reports, analyses and data prepared in conjunction with this agreement may be provided at any time to any one or more of the following: the State Bar's Board of Governors, including, but not necessarily limited to, the California Supreme Court, the California State Auditor and legislative subcommittees. Vendor expressly consents to the provision of such information and agrees that it will not in any way impede or prevent the State Bar from fulfilling its reporting obligations. Vendor further waives any and all claims against, and forever releases the State Bar and its Board of Governors from any and all liability arising out of or in connection with the State Bar's disclosure of any State Bar audit information as part of its audit reporting obligations.

G. Termination

1. **At Will.** This 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, Vendor's sole compensation shall 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 shall not be paid for any services, goods or reimbursable expenses associated with any work or service not specifically authorized by the State Bar.
2. **Default by Vendor.** This agreement may be terminated by the State Bar upon thirty (30) days written notice to the Vendor in the event the Vendor is in default under any of its provisions.
3. **Remedies for Vendor's Default.** In the event this agreement is terminated due to the default by Vendor, the State Bar reserves the right to offset the reasonable cost

of all damages caused by Vendor's default against any outstanding invoices or amounts owed to Vendor, or to make a claim against the Vendor for such damages. In addition, Vendor will not be entitled to receive any further 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 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 or special 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 a substantial portion of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements, (d) Vendor's failure to disclose a relevant financial interest as required by this agreement or applicable law; or (e) expiration of the agreement.
5. **Authorization of Funds.** If the term of this agreement extends into fiscal year(s) subsequent to that in which it is signed, the continuation of this agreement 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, Vendor 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.

H. Confidentiality and Publicity

Except for Vendor's employees who reasonably need to know information to perform services under this agreement, Vendor will retain all confidential information provided by the State Bar in the strictest confidence and will neither use nor disclose it to anyone without the prior written consent of the State Bar. Without waiving any right to obtain monetary damages or other appropriate relief, the State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law or equity. Vendor will not issue or make any public announcements concerning the State Bar without the prior written consent of the State Bar.

I. Nondiscrimination; Compliance with Laws

Vendor agrees to comply with all applicable federal, state, and local laws and regulations, including but not limited to provisions of the Fair Employment and Housing Act (Government Code section 12900 *et seq.*) and applicable regulations promulgated there under (California Administrative Code, Title 2, section 7285.0 *et*

seq.). Vendor agrees to include the nondiscrimination and compliance provisions of this clause in any and all subcontracts to perform work under this agreement.

J. Assignment/Subcontracting

1. **Assignment.** Vendor will not assign or transfer its interest under this agreement,, either in whole or in part, without the prior written consent of the State Bar in its sole and absolute discretion.
2. **Subcontracting.** Vendor may subcontract with other qualified firms or individuals as may be necessary for the provision of services under this agreement with prior written approval of the State Bar in its sole and absolute discretion. Any request by Vendor to subcontract the provision of services under this agree must be submitted in writing to the State Bar, and will clearly describe: (i) the reason for using any subcontractors; (ii) the specific role each subcontractor will play in the project; and (iii) the relationship between the Vendor and subcontractor(s) during the term of this agreement. Notwithstanding approval by the State Bar or any provision in the agreement to the contrary, Vendor shall at all times remain solely and exclusively responsible for the performance of all obligations under this agreement, and shall further protect, defend, indemnify and hold the State Bar harmless from any and all claims, demands, liability, or disputes of any kind arising out of or in connection any authorized subcontractor's provisions of services under the agreement. Vendor shall provide a written guarantee that the Vendor's firm will remain so obligated under the contract, and that Vendor agrees to assume any and all necessary insurance requirements consistent with this Section J.

K. General Provisions

1. **Force Majeure.** Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure of such party to perform its obligations hereunder (other than the payment of money) results from any significant and material cause beyond the reasonable control and without fault or negligence by such party. Examples of such causes include, but are not limited to, (1) acts of God or public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes or labor disputes, (8) embargoes, (9) earthquakes, or (10) unusually severe weather.
2. **Governing Law.** This agreement will be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws provisions.
3. **Attorneys' Fees.** In the event either party institutes any court action or proceeding against the other party arising out of or in connection with any agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith, as well as 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 termination or expiration of this agreement, including the merger of this agreement into any judgment.

4. **Arbitration.** Any question, claim or dispute arising out of or in connection with any agreement, including, without limitation, any dispute concerning the scope or enforceability of this arbitration clause, unless otherwise specified in this Paragraph: (a) shall be conclusively settled by binding arbitration, and (b) must be brought no later than one (1) year from the date the alleged claim occurred. Such arbitration will take place before one (1) arbitrator in the City and County of San Francisco, and will be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Unless the subject matter of the dispute is otherwise pre-empted by federal law, the arbitrator will be bound to apply legal principles in accordance with California law, but without regard to its conflict of laws provisions. By agreeing to this arbitration clause, neither party waives any defenses or immunities available under California or other applicable laws, including but not limited to California Government Code Section 810 *et seq.* Each party shall be solely responsible for payment of its own pro rata share of any expenses and fees incurred during the course of arbitration. In no event will the arbitrator have the power or authority to award consequential damages, indirect or special damages, lost profits, loss of goodwill, punitive, or speculative damages, and any award shall be limited to actual damages. Disputes of Five Thousand Dollars (\$5,000) or less will be handled in Small Claims Court in the City and County of San Francisco under the terms and conditions of this Paragraph.
5. **Further Assurances.** Vendor shall deliver to the State Bar each of the instruments, certificates, opinions, and other documents as the State Bar may reasonably request from time to time to perfect and maintain Vendor's obligations hereunder. Vendor shall fully cooperate with the State Bar and shall further perform all such additional acts reasonably requested by State Bar to the State Bar's satisfaction to effectuate the purpose of this agreement.
6. **Benefit of this Agreement.** Nothing contained in any agreement, whether express or implied, is intended to confer any right or remedy on any person, legal or natural, as to this agreement other than the parties to this agreement or their respective successors and permitted assigns, and no action may be brought against either party by any third party claiming to be a third party beneficiary to this agreement or to the transactions contemplated by this agreement. Nothing in this agreement is intended to relieve or discharge any obligation or liability of any third party to any party to this agreement, and nothing in this agreement will give, or be deemed to give, any third party any right of subrogation or action over or against either party to this agreement.

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