

The State Bar of California

# REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Online Legal Research.

The State Bar of California (“ the State Bar”) would like to provide a primary-law online database including cases, statutes, constitutions, rules, codes, regulations, and administrative rulings of most interest to California attorneys, together with a search engine to identify and retrieve the information over the Internet. The attorney end-user will access these services through the State Bar website: <http://calbar.ca.gov>. The State Bar seeks a one-year agreement, with 2 additional one-year options to renew, for a total maximum 36-month term.

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.

Please submit 8 copies of your proposal no later than 5 p.m. on August 8, 2008 to:

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

Attn: Pam Wilson  
Section Education & Meeting Services  
415-538-2395  
[pam.wilson@calbar.ca.gov](mailto:pam.wilson@calbar.ca.gov)

The State Bar anticipates that vendor presentations will be conducted during the weeks of August 18 and August 25. Participating bidders will need to demonstrate their legal research product(s) in a live setting before the State Bar’s evaluation team. In addition, there will be another round of end-user testing scheduled for the top candidates during the month of September.

## **I. INTRODUCTION**

The State Bar of California, 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](http://calbar.ca.gov/state/calbar/calbar_home_generic.jsp?cid=10102)

## **II. STATEMENT OF WORK**

The State Bar would like to provide (free or at a minimal cost) an electronic database, continuously updated by the Bidder, of cases, statutes, constitutions, rules, regulations, court rules, appellate cases, and administrative rulings for use by California attorneys. A single database must reside on Bidder's own website and be maintained exclusively by Bidder. Each bidder should provide a detailed description of the materials included in the service being offered including citation searching capabilities, pagination of materials within the database for citation purposes, search criteria, features, and capacities of the service.

**The successful Bidder will provide the following core services and features.** This general material listing is not intended to be all-inclusive but rather contains examples of the types of materials that should be included.

### **A. State Materials**

1. State Supreme Court
  - a. Reported opinions
  - b. Available unreported opinions
  - c. Rules of court
2. State Court of Appeals
  - a. Reported opinions
  - b. Available unreported opinions
  - c. Rules of court
3. California Code
4. California Statutes
5. California Constitution
6. California Rules of Court as posted by the Judicial Council
7. California Code of Regulations

### **B. Federal Materials**

1. U.S. Supreme Court
  - a. Reported opinions
  - b. Unreported/Per Curiam opinions
  - c. Rules of Court
2. Federal Circuit Courts of Appeal
  - a. Reported opinions

- b. Available Unreported Opinions
- c. Rules of Court

- 3. United States Constitution
- 4. Rules of Civil Procedure
- 5. Rules of Evidence
- 6. Rules of Appellate Procedure
- 7. Rules of Bankruptcy Procedure
- 8. United States Code
- 9. Code of Federal Regulations

- C. In addition, the State Bar may make additional primary law available to attorneys through an annual subscription fee paid to the State Bar. A subscription to this premium service might include California cases before 1950, California administrative decisions, law reviews, municipal codes of major California cities, the law of other states, federal materials, etc.
- D. The State Bar would like to have the resources for inserting hyperlinks from citations to primary law on an ongoing basis into electronic versions of State Bar Continuing Legal Education (CLE) articles, online CLE materials, journals and publications, so that the attorney may click on the citation and be taken to the law. Each link will consist of the necessary parameters for looking up the primary law. No hyperlinks will be required for “id.” or “supra” or similar shorthand citations.
- E. Bidders are invited to suggest resources to be included in the premium subscription with explanations about why, from the standpoint of the California lawyer, particular resources should, or should not, be included. Bidder should specify cost variations, depending on the particular resources included.
- E. A search engine that will be accessed and displayed via State Bar websites and through which attorneys will identify and retrieve the primary law. Bidder should describe its single search engine’s features, and should include, if available, any independent reviews of its efficiency.
- F. Training on the primary law research system. Bidders may be required to provide access and passwords to for up to 10 individual users for a period of four (4) weeks for State Bar user testing. The State Bar anticipates this end-users’ testing phase to begin the first week in September.
- G. Bidders should describe the source of the materials available and indicate whether the data was purchased or produced by conversion from books.
- H. Examples of additional features that the successful Bidder’s system could include are listed below. Bidder should comment on the availability of these

specific features in its systems and is invited to describe other features that it believes might be of value to lawyers in California.

1. Page numbers listed throughout cases.
2. Hyperlinked case citations throughout cases.
3. Citator functions that identify or characterize successive law that cites the source one is referring to.
4. Boolean searches with thesaurus-based expanded searches.
5. Searches that allow browsing of materials, in addition to pinpoint targeting.
6. Call-in and online technical support for State Bar webmasters.
7. Call-in and online support for lawyers using the system.
8. Attorneys available to assist lawyers with research questions.
9. Excellent credentials and relevant experience of personnel who would be assigned to the California system.

**Bidder should also discuss the following additional issues as they relate to its systems and services:**

- I. Confidentiality, security, and reliability of the data and service are important considerations for the State Bar. Bidder shall describe the measures it takes to maintain reliable systems and security, to prevent unauthorized persons from accessing the service, and to protect the confidentiality of authorized persons.
- J. As quality control is a concern of the State Bar, Bidder shall describe the technical and editorial procedures it takes to ensure the timeliness and accuracy of the legal data offered.
- K. Bidders shall describe its services as compared to the free legal research materials and tools available on the Web.
- L. The “end-user experience” is an important element in this project. Given this, the Bidder shall describe any additional services it provides, whether free or otherwise, that are outside the scope of this project and that would be available to users of the proposed system.
- M. Graphic designs, colors, menus, icons, and prompts provided by Bidder in screens that access its database should allow for modification by the State Bar in order to harmonize them with “look and feel” characteristics and navigation

tools on State Bar websites. The State Bar may desire that the services to be provided by the successful bidder primarily be presented and perceived as the State Bar's own, rather than an outside contractor's. In its response, Bidder shall specify the extent to which this will be possible.

- N. The State Bar intends to educate the lawyers of California concerning this service. In support of this, the Bidder should describe any advertising or marketing resources it will make available to the State Bar including brochures, user training manuals, or other resources along with any costs involved.

### **III. GENERAL INFORMATION**

The submission requirements for this RFP are set forth below. A proposal shall constitute an irrevocable offer for 90 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.

#### **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.
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 submit electronically a fully completed Attachment A: Business History / Financial Viability Questionnaire either with proposal or emailed separately to [andrew.conover@calbar.ca.gov](mailto:andrew.conover@calbar.ca.gov).
4. Describe the company's technical ability to provide a complex legal search in relation to cases, rules of court, statues and codes. How Bidder's qualifications and experience are suited to deliver the proposed services, as outlined in Part II: Statement of Work, above. Include a description of similar projects completed by the bidder within the past three (3) years.
5. Qualifications, background and experience of the project director and other staff proposed to work on the project.

6. References with contact information from organizations that have used bidder's services for similar projects/installations within the last 12-18 months.
7. A general description of the techniques, approaches and methods to be used in completing the project. This shall consist of detailed descriptions of all electronic and manual systems used to provide the services, and the coordination process the Bidder envisions between Bidder and the State Bar to deliver such services. In addition to providing the required services as specified, bidder may also propose additional optional services or suggested enhancements.
8. A description of the training process including course outlines and reference material to be used to train the testers and provide forum to answer additional questions that arise during this testing period.
9. A description of the chronology for completing the work, including a time line and deadlines for each task.
10. A detailed cost proposal, including:
  - a. The cost to the State Bar of the services it proposes to provide, including all setup fees, monthly maintenance fees, minimum charges, commissions and other calculated fees.
  - b. How such costs might vary depending on exactly which services proposed by Bidder are accepted by the State Bar.
  - c. Whether such costs might vary during the term of the contract.
  - d. When such costs must be paid (whether up-front development, installments, lump sum, etc.)

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.
11. A detailed description of any financial incentives offered and opportunities for revenue sharing.
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.

13. Additional Questions. Bidders should confirm that answers to the following questions are included in their proposals:
- a. What other state, federal, specialized, or other material does your service provide? Do you have any secondary materials, such as newspapers, treatises, or public records collections?
  - b. On what basis, if at all, could bar members using your product access materials from other jurisdictions or other specialized libraries and how would this opportunity be made available to them?
  - c. Is all of the case law data accessed by your service searched by the same search engine?
  - d. Does your service allow searching of multiple databases simultaneously? If so, please describe any limitations on this feature.
  - e. Does your service allow users to search by citation? If so, please describe any limitations of this feature.
  - f. Does your service allow the user to select the return of case law results in various orders? If so, please describe this feature.
  - g. Does your service provide case summaries, headnotes, or some other way of quickly finding relevant cases in a search results list? If so, please describe this feature.
  - h. Does your service have the ability to save searches and results for later updating or accessing?
  - i. Does your service have features that are customizable by the user?
  - j. Does your service allow users to input client names and print reports for billing purposes?
  - k. Does your service provide hypertext linking within the materials? If so, please describe any limitations of this feature.

- l. Does the case law provided by your service include parallel citations?
- m. What options are available for printing a document or multiple documents with your service? Do you have dual-column printing?
- n. What options are available for emailing a document or multiple documents with your service?
- o. What is the response time for return of data for customers who access your legal research databases?
- p. Does your service require the installation of any software on users' computers?
- q. What is the uptime percentage for your servers and data research facilities?
- r. What redundancy does your company provide to avoid interruption of service

Proposals which fail to address each of the submission requirements above may be deemed non-responsive and will not be further considered.

## **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 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 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 to the its interest 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 (10%).
  - c. Technical ability of the bidder to provide complex legal search in relation to cases, rules of court, statues and codes using a single data base; the capacity and flexibility of the bidder to perform the

contract in a timely manner and on budget; the quality of the in-person demonstration; client references and demonstrated success in projects with similar project requirements. (35%).

- d. The financial viability of the bidder as evidenced by standard financial reports (15%).
  - e. The total cost of the proposal solution, plus a detailed description of financial incentives offered, and enhancements suggested by the bidder that include revenue-generating opportunities. If the proposal contains itemized rates, per piece pricing, or commission-based pricing, the State Bar reserves the right to calculate total contracted cost and/or revenue 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 (30%).
2. The State Bar anticipates that all proposals received will be reviewed and initially scored for the Submission Requirements and Cost categories. Following the formal vendor presentations and system demonstrations, the participating bidders will be ranked and the top candidates will be invited to participate in the second evaluation phase: users acceptance testing. The final selection will be made based on the evaluation team's review of the written proposals, the live presentations and the reports from the end-users' testing. The State Bar reserves the right to review the proposals using this tiered evaluation system in order to concentrate the end-user testing resources on the top viable candidates.

#### **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 October 7, 2008 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 October 14, 2008. The evaluation team will select a winning proposal subject to approvals granted 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](mailto: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 in writing to Pam Wilson at [pam.wilson@calbar.ca.gov](mailto:pam.wilson@calbar.ca.gov). All questions must be submitted no later than 7 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 7 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 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 to be provided in the final agreement.

**B. Warranties and Representations**

Vendor will warrant and represent 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.

Vendor will warrant and represent that its website or portal and any other deliverables produced pursuant to this Agreement will meet both the Web accessibility standards in California Government Code 11135, which adopted the Section 508 standards issued by the United States Access Board (<http://www.access-board.gov/sec508/standards.htm>), and the Priority 1 and 2 level checkpoints of the Web Content Accessibility Guidelines 1.0 (WCAG 1.0 "AA" Conformance Level) developed by the World Wide Web Consortium (<http://www.w3.org/TR/WCAG10/>).

### **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**

To the fullest extent permitted by law, the Vendor will agree 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 (the "Indemnities") 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, the Vendor's employees, subcontractors, agents, representatives or assigns (collectively, the "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. The Vendor will agree 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 wherein the Vendor defends the State Bar.

**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. Professional liability insurance with a general aggregate limit of Two Million Dollars (\$2,000,000) and an occurrence limit of Two Million Dollars (\$2,000,000).

The Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Andrew Conover, Finance Manager, 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. In addition to the insurance required to be obtained and 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.

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 will 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 confidential 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. **Force Majeure.** Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure in the performance of the obligations of such party (other than the payment of money) results from any significant and material causes beyond its 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, (8) embargoes, (9) earthquakes, and (10) unusually severe weather.
2. **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.
3. **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. **Arbitration.** Any question, claim or dispute arising out of or in connection with this agreement in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) shall be referred to binding arbitration, except with respect to disputes regarding breaches of confidentiality. Such arbitration shall take place before a single arbitrator in the City and County of San Francisco, and shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. The arbitrator shall apply legal principles in accordance with California law, without regard to its conflict of laws principles, unless the alleged claim or dispute is otherwise pre-empted by federal law. By agreeing to this arbitration clause, neither party waives applicable defenses or immunities available to it under California law. Any arbitration demand made under this clause must be made no later than one year from the expiration or termination of this agreement. Each party will 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. Disputes of Seven Thousand Five Hundred Dollars (\$7,500.00) or less shall be handled in Small Claims Court in the City and County of San Francisco.

4. **Audit.** Vendor agrees that the State Bar or its designee shall have the right to review and copy any financial records and supporting documentation pertaining to the performance of this Agreement. Vendor agrees to maintain such financial 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.
  
5. **License.** In those instances where required, the Vendor represents and warrants that the Vendor holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and shall keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while the Vendor is performing the services pursuant to the agreement.