

REQUEST FOR PROPOSAL



THE STATE BAR of CALIFORNIA

This document is a Request for Proposal (“RFP”) for development of a Project Plan and Software Functional Requirements for upgrading the case tracking system of the Office of Chief Trial Counsel of the State Bar of California.

Please submit 5 hard copies of your proposal or e-mail your proposal requesting an acknowledgement of receipt by e-mail **no later than 5 p.m. on Friday, October 31, 2003**. All responses to the Request for Proposal shall be submitted to:

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

Attn: Cathy Hamilton

Contact Information:
Phone: 415-538-2236
E-mail: Cathy.Hamilton@calbar.ca.gov
Facsimile: 415-538-2592

I. INTRODUCTION

The State Bar of California, created in 1927 by the California Legislature and written into the constitution as a judicial branch agency in 1960, is a public corporation within the judicial branch of state government.¹ Acting as the administrative arm of the California Supreme Court,

¹ General information about the State Bar of California is available at the State Bar Web site (<http://www.calbar.ca.gov>) in a document entitled, “The State Bar of California - What Does It Do, How Does It Work?” Specific information on the Office of Chief Trial Counsel is available at the Web site at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?sCategoryPath=/Home/Attorney%20Resources/Publication/s/Rules%20of%20Procedure/Title%203&sImagePath=Chief_Trial_Counsel.gif&sCatHtmlPath=html/Rules-Procedure_Title-3_Chief-Trial-Counsel.html&sFileType=HTML&sHeading=Chief%20Trial%20Counsel and in the 2002 Report of the State Bar of California Discipline System at http://www.calbar.ca.gov/calbar/pdfs/reports/2002_Annual-Discipline-Report.pdf. To avoid the trouble of retyping these and other complex Web site URLs, proposers should use the electronic version of this document available at the State Bar Web site, www.calbar.ca.gov, under Olio/Business Opportunities.

the State Bar regulates the legal profession and the practice of law. The State Bar's general duties include examining applicants for admission, formulating rules of professional conduct, disciplining members for misconduct, preventing the unlawful practice of the law, and certifying lawyers as legal specialists. To date, there are approximately 190,000 members of the State Bar. Membership is required in order to practice law in California. The organization has approximately 600 employees and an operating budget of \$53.7 million. Approximately half the State Bar's employees are in San Francisco, half are in Los Angeles, and three are in Sacramento.

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

The State Bar is seeking proposals to develop functional requirements and a high-level project plan for the design and implementation of software updating and extending the functionality of the existing case tracking system for its Office of Chief Trial Counsel.

II. GENERAL INFORMATION

A. Submission Requirements

The submission requirements for the RFP are detailed below. **Any 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.

Where any notice is required or permitted to be made in writing, the notice to the Bar must be sent by U.S. mail **and** either facsimile or e-mail.

1. A brief description of the history and organization of your firm, and of any proposed subcontractor. (Those who intend to submit a proposal in response to this RFP are addressed in the remainder of this document as "you.")
2. Copies of business licenses, professional certifications or other credentials, together with evidence that your firm, if a corporation, is in good standing and qualified to conduct business in California.
3. The most recent annual report or balance sheet and income/expense statement, including financial data and an indication of resources dedicated to research and development.
4. References for at least three clients for whom you have produced within the most recent three years comparable or substantially similar to items described in the "Statement of Work" section below. The references must include samples of work that demonstrates your ability to produce those items; identify those responsible for producing them; and indicate whether they were produced on time and within

budget. The State Bar will contact references only if you are a finalist in the evaluation process and only after notifying you.

5. Qualifications, background and experience of the project director and other staff proposed to work on the project
6. A general description of the techniques, approaches and methods to be used in completing the project
7. A concise summary of the best evidence that you are able to provide, at the highest level of quality, the services described in “Statement of Work” below.
8. A detailed cost proposal, including any travel costs and other expenses. As the State Bar may award a contract based on the initial offer, you should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those proposers falling within a competitive range, and to request revised pricing offers from them and make an award and/or conduct negotiations thereafter.
9. Disclosure of any interests that you or your company holds in companies which could foreseeably be the recommended solution, or part of the solution, for Phase 2 of this project, including but not limited to stock or other ownership interests, service contracts, OEM agreements, and remarketing agreements.

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 shall in no way modify the RFP or excuse you from full compliance with the RFP requirements.

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

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 Proposer

An evaluation team will review in detail all proposals that are received to determine the Highest Scored Proposer (“HSP”).

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 your representative to answer questions with regard to the proposal and/or require you 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 to be assigned to each criterion appears 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, and flexibility of the proposer to provide, at the highest level of quality, the services described in “Statement of Work” (see Section IV below), in a timely manner and on budget, as confirmed by the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (25%).
3. The financial viability of the proposer as evidenced by standard financial reports and by related factors such as its business plan, market position, and strategic partnerships (15%).
4. The total cost of the proposal. 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 %).

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 and written notice sent to proposers on or about December 1, 2003, of the Bar’s intention to award the contract to the HSP. It is anticipated that final selection of the HSP will be made by December 8, 2003. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected consultant 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 others who submitted timely, responsive and responsible proposals to this RFP.

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:

The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639
Attn: Cathy Hamilton

Contact Information:
E-mail: Cathy.Hamilton@calbar.ca.gov
Facsimile: 415-538-2592

E. Errors in the RFP

If you discover any ambiguity, conflict, discrepancy, omission, or other error in the RFP, you 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 proposers to whom the RFP was sent.

If prior to the date fixed for submissions, you know of or should have known of an error in the RFP but fail to notify the State Bar of the error, you shall bid at your 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 Ms. Cathy Hamilton at the State Bar (contact information above).

All questions and answers regarding the RFP may be shared with all proposers.

If a question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, you may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, you must submit a statement explaining why the question is sensitive. If the State Bar

concur 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 you will be notified.

If you believe that one or more of the RFP's requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, you 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 deadline for the State Bar to receive questions and/or requests for changes on the RFP is 5:00 p.m. on October 20, 2003. The State Bar will not respond to any question or change request received after that date.

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 proposers to whom the RFP was sent. If any proposer 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 the receipt of the addendum.

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 an appropriate official of your firm. Your firm 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 may not be modified after the evaluation process begins

I. Protest Procedure

You may protest the award if it meets all the following conditions:

1. You have submitted a proposal that you believe to be the lowest cost responsible proposal, under the criteria set forth above;
2. You believe that your 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. You believe that the State Bar has incorrectly selected another vendor.

If you are qualified to protest you should contact Bill Brauer at the State Bar of California, telephone, 415-538-2543, e-mail Bill.Brauer@calbar.ca.gov, to attempt an informal resolution. If he is unable to resolve the protest to your satisfaction, you must file a written protest within five (5) days of the notice of intention to award contract. The written protest must state the facts surrounding the issue and the reasons you believe 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: Sam Quan, Acting Chief Financial Officer

Protests will be reviewed and decided by the State Bar's Award Protest Team within thirty (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 your expense. One copy of each proposal will be retained for official files and will become a public record upon receipt by the State Bar. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. Your consent will be requested before release of such pages to non-State Bar personnel. By submitting a proposal, you agree to these terms and waive any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

L. Consulting Contracts – Prohibition on Follow-On Contracts

No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

III. BACKGROUND

A. Current Technology

Most of the systems that support essential business functions at the State Bar of California are custom-written in IBM RPG and call DB2 databases that run on the IBM AS/400. Some newer systems, such as the Hummingbird DM5 Document Management System and the inAccord system for the Lawyer Assistance Program² use MS/SQL server back-ends, as will new Finance and Human Resources systems slated for procurement in 2003.

The State Bar's strategic technology plan is to transition all systems to a Microsoft .Net architecture. The newer systems are consistent with that direction, and updates to legacy systems have been made with a .Net-compatible tool called AVR, a product of ASNA ("Amalgamated Software of North America, Inc").³ The new OCTC case tracking system that is the ultimate objective of this RFP must be supportable within the State Bar's technological environment and be consistent with the organization's .Net strategy.

The Office of Chief Trial Counsel (OCTC) tracks complaints about attorney conduct using a case tracking system custom-written in RPG in the late 1980s. The system tracks problems with attorney conduct from inception ("intake") through investigation and prosecution. Cases may be initiated in one of three ways. First, any consumer may report a problem. Second, certain organizations are obligated by law to report specific problems when an attorney's conduct has triggered a "reportable action"⁴ (see below). Third, the "Intake" unit of OCTC may itself open a case when an attorney is convicted of certain civil or criminal charges. Approximately 10,000 new cases are opened annually. OCTC's system is integrated with the State Bar Court's case tracking and the member records systems. Since the OCTC system was designed and implemented, business requirements have changed, existing modules have been enhanced, and new modules have been added.

² Information on this program is available at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?sImagePath=Attorney_Assistance_Programs.gif&sCategoryPath=/Home/Attorney%20Resources/Lawyer%20Discipline%20%26%20Complaints/Attorney%20Assistance%20Programs&sFileType=HTML&sCatHtmlPath=html/Attorney-Resources_Lawyer-Discipline_Attorney-Diversion-AMPERSAND-Assistance-Program_Discipline_attassist.html.

³ Information on AVR and ASNA is available at <http://www.asna.com/>. One of the main benefits of AVR is that its Windows interface makes data entry more efficient because it allows processes to be flexibly controlled. The new Member Billing application developed with AVR is instructive. For instance, because AVR allows use of graphical conventions like file-folder tabs, a billing analyst can click on a tab to go directly to a pertinent screen rather than be routed through a sequence of irrelevant screens. This flexibility has reduced operational steps and reduced the need for seasonal temporary employees. In addition, the AVR Windows platform allows data to be readily shared with other applications. Legacy data can be easily merged with letter or notice templates in Word or WordPerfect with the click of a mouse. Similarly, upon completion of a system-tracked event, an e-mail notice can be sent automatically to a staff member assigned to complete a related function. Another significant benefit is that insofar as AVR is .Net-compliant, the product positions the State Bar to transition AVR versions of legacy systems from the AS/400 if it elects to do so.

⁴ Reportable actions are defined in the State Bar Act, which is found in the California Business and Professions ("B&P") code at §§ 6086.1(c), 6068, 6086.7, 6086.8, and 6101. The full text of these statutes is available under California Law at www.leginfo.ca.gov.

B. Inadequacies of the Existing Software

The existing OCTC case tracking software suffers from two primary inadequacies.

First, new business requirements have overtaxed the original system design, so that it cannot efficiently support changes in business requirements. For example, the program that tracks telephone inquiries (“Intake”) follows the flow of questions a Complaint Analyst used to ask a caller. The program is very linear. The analyst could arrive at screen five only by going through screens one through four. Inquiries are no longer taken over the phone, however, and an analyst who now needs to update information on screen five only is forced to proceed through the preceding four screens one at a time. This approach forces the user through unnecessary steps and is keystroke intensive. In addition to changing the way it manages such customary responsibilities, the Office of Chief Trial Counsel has assumed responsibility for cases involving the Unauthorized Practice of Law (UPL) and Ethics school violations.⁵ Accommodation of these new case types is problematic because the original system design is not readily extensible. New software developed with contemporary technology will improve functional consistency and make ongoing adjustments less time consuming and less costly.

A second inadequacy is that the current system incompletely integrates all functions related to OCTC management of the case lifecycle. There are three units within OCTC: Intake, Investigations, and Trials. Cases begin with Intake; some cases are closed, and some are passed onto Investigations; after Investigations, cases go to Trials. However, programming was never completed to allow Investigations and Trials to fully share case data. Investigations must physically transfer some case data to prosecutors, who must then re-enter the data into their system in order to continue work on a case. Updating the software will allow Investigations simply to trigger a status change to make case data available to Trials. Re-entering data from one system to another will no longer be necessary.

C. Dual Project Approach

The State Bar of California envisions a dual project approach to update and ameliorate the inadequacies of the existing OCTC case tracking system.

The goal of the first project (“Project 1”), which is the subject of this RFP, is to develop functional requirements for new OCTC case tracking software, and produce a high-level project plan, including a timeline, for its creation and implementation.

The goal of the second project (“Project 2”), which the State Bar anticipates to be the subject of a subsequent RFP, is to create and implement customized software according to the functional requirements and project plan developed in Project 1. The State Bar anticipates that Project 2 will involve at a minimum development of a technical architecture and detailed specifications for the new software, followed by its actual design and implementation.

⁵ For information on Ethics School, search for Rule 3201 at <http://www.calbar.ca.gov/>.

This RFP is for services to complete Project 1. The State Bar expects Project 1 to be produced in no more than six months, on the assumption that a single consultant working full time will need two weeks to become familiar with existing systems; six weeks to work with business users to define functional requirements; and four weeks to create initial drafts of functional requirements and project plan.

IV. STATEMENT OF WORK

The consultant selected for this Project 1 will be expected to do the following.

A. Functional requirements.

Become generally familiar with OCTC operations and recommend which of the following described modules should be redesigned to best meet OCTC business needs within the timeframe referenced. Then develop a comprehensive description of functional requirements for this module or modules based on the recommendation.

1. Intake Inquiries, Conviction Monitoring, and Reportable Actions⁶

Issue: The programs for Intake inquiries, conviction monitoring, and reportable actions access member-specific information only by member number. In addition the programs require a linear progression through their functions, some of which may not be relevant to a particular need. Lastly, although these programs deal with related disciplinary issues, they are loosely integrated at best.

Solution: Develop functional requirements that solve the problems noted here as well as well as any others discovered during analysis.

2. Investigation Case Tracking and Job Tracking

Issue: Chief Trial Counsel is now responsible for investigation of complaints, a responsibility it did not have when the OCTC system was designed. Investigation and trial functions must now be integrated, and both must be capable of tracking subpoenas issued in disciplinary cases (“Job Tracking”).

Solution: Develop functional requirements to integrate investigations, trials, and Job Tracking and to resolve any related issues discovered during analysis.

3. Trials Case Tracking

Issue: The case tracking system does not include functions for tracking cases once they have been filed in court, nor does it reflect organizational changes made since the system was designed.

⁶ “Reportable actions” are defined in footnote 4 above.

Solution: Enable the case tracking system to track cases once they are in trial and to provide related litigation support.

4. Database for UPL Tracking

Issue: OCTC receives 200-400 complaints annually regarding the Unauthorized Practice of Law (UPL) by non-attorneys. Because these complaints are currently tracked by hand, information on UPL cases cannot readily be shared or analyzed for statistical purposes.

Solution: Create a system to manage UPL cases from inception to disposition. Such a system could also be used for other State Bar programs that track non-member activity, such as the program for *pro hac vice* attorneys⁷ or that being developed for multijurisdictional practice.

5. Database for Ethics/CTA School Tracking

Issue: A typical condition of discipline imposed on a member of the State Bar of California is attendance at Ethics School. OCTC provides Ethics School training and tracks it manually.

Solution: Create an application that tracks student participation in order to identify problems with individual participants and to generate management reports, for instance on rates of student completion and recidivism. Such information should enable management to improve programs and ensure that they are supported with adequate resources.

6. Allow Intake access to Pro Hac Vice⁸ and Foreign Legal Consultants

Issue: Intake receives complaints regarding attorneys who allegedly have qualified to practice in California as foreign legal consultants or participants in the *pro hac vice* program, but Intake analysts have no automated way of verifying whether or not such attorneys are indeed qualified participants in those programs. To evaluate and process complaints efficiently, analysts need to access to the systems used for these programs.

Solution: Allow the OCTC system to access basic information on participants in the programs for foreign legal consultants and *pro hac vice*.

B. Project plan.

⁷ Information on the *pro hac vice* program is available at the State Bar Web Site at http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?sCategoryPath=/Home/Attorney%20Resources/Special%20Services/Pro%20Hac%20Vice.

⁸ For information on the *pro hac vice* program, see footnote 7 above.

Develop a high-level project plan that accompanies the functional requirements to serve as the framework for the all other deliverables. The plan, which must evidence a comprehensive understanding of the operations of the Office of Chief Trial Counsel, will identify the major tasks of software development; estimate a schedule for completing the tasks; and specify the criteria by which the software development project will be deemed successful. This plan will serve as a preliminary plan for the technical design, development, testing, and implementation of customized software for the Office of Chief Trial Counsel Project 2. Using Microsoft Project, the project plan must identify major tasks, estimate elapsed times for completing them, and identify milestones and dependencies. It must also explain any methodology recommended for managing the project and include a strategy for converting legacy data if necessary.

C. Resources/cost estimate.

Develop a statement of all assumptions regarding resources required to complete the plan, whether provided by the State Bar, you, or third parties, and estimate not-to-exceed costs for all work necessary to deliver the new software. Costs should include any anticipated travel expenses and be otherwise comprehensive. Two separate cost assumptions must be developed, one on a fixed-price basis and another on a not-to-exceed basis.

D. Risk assessment.

Identify and produce a written report that describes significant operational and resource constraints that may impede achievement of project objectives and proposes strategies to minimize them.

E. Project glossary.

Produce a project glossary defining specialized procedural or substantive terms relevant to the projects.

F. Additional Documents

Produce any additional documents necessary for a clear and complete statement of work for an RFP to complete Project 2.

The successful Bidder must provide the State Bar with each item A-F described above. To demonstrate your ability to do so and to be responsive, your proposal must include at a minimum examples of your previous work and other material required in “Submission Requirements” above.

V. CONTRACTING REQUIREMENTS

Upon selection of a consultant, 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. If appropriate, the State Bar’s first choice is to incorporate the master

purchasing terms and conditions applicable to the State of California to the Bar's agreement with the selected consultant ("Consultant").

The State Bar contemplates that, in addition to the technical terms described above in this RFP, final agreement between the State Bar and Consultant will include, without limitation, the following terms. Consultant's agreement to contract on these terms shall be presumed unless specifically reserved by Consultant in its proposal.

A. Time of Essence

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

B. Warranties and Representations

Consultant 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. Consultant will supply at all times an adequate number of well-qualified personnel to perform the work. Consultant will provide a contact person available and authorized to remedy any non-conformity with this warranty.

Consultant warrants that its solution shall conform to and be reasonably free of error and/or defects in material and workmanship, and fit for the purpose for which it is to be used. Consultant will, at its sole cost and expense, promptly perform any and all corrections of error that occur as a result of its own, its contractors' or subcontractors' negligence, make any corrections and modifications to the solution necessary or desirable to cure any non-conformity with the specifications, and repair said system or components so as to remedy any defects in material and/or workmanship.

Consultant represents and warrants that the solution will not infringe any copyright or other proprietary right (including trade secrets) of any third party, and that Consultant has full authority to grant all rights to the State Bar hereunder.

Consultant represents and warrants that no claim, whether embodied in an action past or present, of infringement of any patent, copyright, trademark, or other intellectual property right, has been made or is pending against Consultant or any entity from which Consultant has obtained such rights relative to the proposal presented to the State Bar hereunder.

C. Equipment, Tools, Supplies

Consultant will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. Consultant 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. Financial Interests

Consultant represents that all potential conflicts of interest were disclosed in its response to the State Bar's RFP. If Consultant establishes or becomes aware of such a financial interest during the course of contract performance, Consultant must notify the State Bar in writing within ten (10) working days. If, in the State Bar's judgment, the newly established financial interest will jeopardize the objectivity of the recommendations, the State Bar will have the option of terminating the contract.

E. Indemnity Obligations of Consultant

To the fullest extent permitted by law, Consultant 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 harmless from and against any and all losses, 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 Consultant, Consultant's employees, subcontractors, agents, representatives or assigns (collectively, "Consultant's Agents") in the performance or non-performance of the professional services required to be performed by Consultant under the Agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. Consultant agrees that its obligations under this indemnity will survive the expiration and termination of this agreement.

In the event both the State Bar and Consultant are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Consultant 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 Consultant defends the State Bar.

Consultant will defend, indemnify and hold harmless State Bar (its Board of Governors, officers, agents, and employees, as the same may be constituted now and from time to time hereafter) from and against any and all liability, losses or damages or any expenses or costs whatsoever to the State Bar, including reasonable attorneys' fees and costs, as a result of any claims, demands, damages, costs or judgments against the State Bar based on allegations that, as a consequence of the services rendered hereunder, any program or software designed, developed, amended, merged or restructured, or any part thereof, alone or in combination with other programs or software, infringes on any patent or copyright or misappropriates a trade secret. If any such program or software or any part

thereof, is held to constitute an infringement or misappropriation, and use of the program or software is enjoined, Consultant will, at its own expense, either: (1) procure for the State Bar the right to continue to use the program or software or part thereof; (2) replace the program or software with a non-infringing replacement, provided that such replacement does not compromise performance and otherwise meets the State Bar's specifications; or (3) modify the program or software to make it non-infringing, provided that such modification does not compromise performance and otherwise meets the State Bar's specifications.

F. Insurance Obligations of Consultant

Consultant will provide and keep in full force and effect during the term of this agreement, at Consultant's own cost and expense, the following insurance policies for the joint benefit of Consultant 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.
4. Professional liability insurance with a general aggregate limit of Two Million Dollars (\$2,000,000.00), and an each claim limit of Two Million Dollars (\$2,000,000.00).

Consultant will deliver true and correct copies of its insurance policies required above, and certificates of such insurance to the State Bar offices at 180 Howard Street, San Francisco, CA 94105, Attn: Bill Brauer, Procurement Officer, 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 Consultant'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 Consultant fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and Consultant 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 Consultant, if Consultant 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.

Consultant will immediately notify the State Bar if Consultant's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If Consultant's commercial general liability insurance contains such restrictive endorsements, Consultant will have five (5) business days to remove said restrictions. If Consultant is unable to do so, the State Bar may terminate this agreement, and will be required to give Consultant no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

G. Termination

1. **Appropriation of Funds.** If the term of this agreement extends into fiscal years subsequent to that in which it is approved, the continuation of this agreement is subject to the appropriation of funds for such purpose by the California State Legislature. If funds to effect such continued payment are not appropriated, Consultant agrees to take back any affected equipment, products, software, or hardware furnished under this agreement, terminate any services supplied to the State Bar, and relieve the State Bar of any further obligation.
2. **Default by Consultant.** This agreement may be terminated by the State Bar upon thirty (30) days written notice to Consultant in the event Consultant is in default under any of its provisions. In the event this agreement is terminated due to the default by Consultant, Consultant 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 Consultant 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 Consultant's default.
3. **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; (d) failure of Consultant to disclose a relevant financial interest as required by this Agreement, or (e) expiration of the agreement.

H. Ownership of Documents

All work product ("work product") and all rights thereto in the nature of copyright, trademark, patent and rights to ideas are hereby assigned to the State Bar, and are the property of the State Bar whether or not the work is completed. In the event of

termination of this agreement, or abandonment or suspension of work performed hereunder, all work product and all such rights thereto existing as of the date of such termination, suspension or abandonment will be assigned to, and will become the property of the State Bar as of such date. The term "work product" shall include, without limitation, any and all versions, whether in print or electronic format, of any and all drawings, plans, graphs, photographs, slides, studies, schedules, budgets, estimates, layouts, and any other products or services that have been or will be prepared or rendered by Consultant, or under Consultant's direction, pursuant to this agreement. Consultant covenants, warrants and represents to the State Bar that Consultant has the right to assign the copyright and the work product. Consultant will refrain from disclosing any and all versions of plans to any third party without first obtaining the written consent of the State Bar. Consultant will not use or permit a third party to use any of the work product in connection with this project or any other project without the written consent of the State Bar. Consultant will agree to deliver to the State Bar within five (5) days of a written request, all or any portion of the work product set forth in the State Bar's request. Consultant will be permitted to retain copies for information and reference. Consultant will provide the State Bar with updated copies of all work product on a monthly basis either on a computer disk or other reproducible format as requested by the State Bar.

I. Confidentiality and Publicity

Consultant 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. Consultant will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

J. Nondiscrimination

During the performance of this agreement, Consultant will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Consultant will comply with the 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.). The Consultant will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

K. Assignment/Subcontracting

1. **Assignment.** The Consultant 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. The parties acknowledge that the State Bar's obligations under this agreement primarily concern the financial ability to carry through the terms of payment. Therefore, the State Bar may assign or transfer part or all of its interest in this agreement, provided that such assignment shall not become effective, and the State Bar will not be released from its obligations under this agreement, until such time as the State Bar or the State Bar's assignee makes payment to Consultant of all fees and payments then due and payable to Consultant.

2. **Subcontracting.** Consultant may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the delivery of equipment and services, subject to the written approval of the State Bar.

Consultant will clearly describe the reason for using any subcontractors, the specific role each subcontractor will play in the project, and the relationship between Consultant and its subcontractor to be maintained during the term of this agreement. Any such proposed subcontract shall be subject to the written approval of the State Bar prior to award of such subcontract by Consultant. No subcontract will be approved unless Consultant provides a written guarantee that Consultant's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

L. General Provisions

1. **Force Majeure.** In the event that the State Bar or Consultant is delayed in performing any of its respective obligations under the Agreement, except payment of money, due to force majeure (including acts of God, war, government regulation, disaster, strikes or other labor disputes, civil disorder, acts of domestic or international terrorism or other emergencies beyond the control of the parties making it illegal or impossible to perform), and only if notice of such delay is properly given, such delay will be excused and the period of such delay will be added to the time for performance of the obligation delayed. However, no delay will be permitted if the date, schedule or time period for performance of the obligation is expressly stated in this Agreement not to be subject to extension by reason of force majeure. In the event of a delay due to force majeure, the affected party will exercise due diligence to shorten, avoid and mitigate the effects of the delay and will keep the other party advised as to the continuance of the delay. In the event that force majeure makes completion of obligations under this Agreement impossible, the Agreement may be terminated by either party, by written notice, without any liability, penalty, or prejudice, whatsoever, for any of the reasons listed in the first sentence of this paragraph.
2. **Governing Law.** This agreement will be governed by the laws of the State of California.

3. **Arbitration.** Any question, claim or dispute arising out of or in connection with the Agreement or this Addendum which is in excess of Five Thousand Dollars (\$5,000.00) will be referred to binding arbitration, except with respect to disputes regarding breaches of confidentiality. 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. The arbitrator will be bound to apply legal principles in accordance with California 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. The cost of the arbitration will be borne equally by the parties, each party to pay its own fees and costs. Disputes of Five Thousand Dollars (\$5,000) or less will be handled in Small Claims Court in the City and County of San Francisco.
4. **License.** In those instances where required, Consultant represents and warrants that Consultant 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 Consultant is performing the services pursuant to this Agreement.
5. **Relationship of Parties.** Consultant is not an agent of State Bar for any purpose whatsoever, and is not granted, by the terms or execution of this Agreement, any express right of authority to assume or create any responsibility on behalf of, or in the name of State Bar, or to bind State Bar in any manner or thing whatsoever.
6. **Severability.** If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.
7. **Waiver.** Failure of either party to enforce, at any time, any provision of this Agreement shall not be construed as a waiver of such provision or of any other provisions, or of the right of such party thereafter to enforce such provision.