

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) from agents, brokers and insurance carriers interested in underwriting, marketing and administering a voluntary, association sponsored Employment Practices Liability Insurance (“EPLI”) Program on behalf of the members of the State Bar of California.

Please submit 6 copies of your proposal no later than 5 p.m. on February 1, 2007 to:

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

Attn: Raquel Hines
Insurance Programs
415-538-2201
raquel_hines@calbar.ca.gov

I. INTRODUCTION

The State Bar of California (“ the State Bar”), created in 1927 by the Legislature and adopted into the California Constitution in 1960, is a public corporation within the judicial branch of state government. In accordance with statute and the State Bar's procurement policies, contracts of \$50,000 or more are subject to formal competitive bidding. As a governmental agency, the State Bar regularly is granted favorable governmental pricing and contract terms.

The State Bar is seeking proposals for a broker and carrier/underwriter that can assist us with creating a State Bar exclusive Employment Practices Liability Program (EPLI) for a sponsored member program.

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.

II. 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. Insurance Carriers provide current A.M. Best rating. A.M. Best ratings lower than A- will not be considered.
4. The following information about your experience and operations:
 - a. Your experience in marketing insurance products specifically in an association setting (including, if available, sample penetration rates achieved by these programs), and your experience in using target marketing to increase penetration rates.
 - b. Any special advantages or opportunities in EPLI programs that your firm offers over the competition.
 - c. For association business only, a schedule of the EPLI carriers with whom you currently work, length of relationship and rating, indicating those carriers who represent at least 5% or more of your total book of business. (Not applicable if you are a carrier responding to this RFP)
 - d. Your experience in marketing a significant volume of other insurance and financial services products to members of Bar Associations and other Professional Associations, such as AD&D Policies, Automobile, Annuities and Retirement Plans, Business Owners Policies (e.g. Fire, Theft, Premises Liability), Disability Policies, Home Owner's Policies, Long Term Care Policies,

Health Insurance and/or HMO Plans, Professional Liability (Malpractice) Coverage, and Umbrella Policies.

- e. A brief description of your Customer Relationship Management system (CRM), its specific capabilities and where resources are located, including a description of staffing, location of principal services office, systems platform, and staff experience level for all internal resources; general administration, claims administration, customer service, underwriting and applications.
 - f. A description of the Internet functionality you currently use to market EPLI or other insurance products, including the URLs of principal Web sites that you currently utilize to handle similar target markets or accounts.
 - g. Names of organizations that have used your services for similar programs that have been customers for a minimum of 12 months.
 - h. Qualifications, professional license numbers, background and experience of the proposed program director and other senior staff proposed to work on the project.
 - i. Whether you carry Professional Liability, General Liability, and Employment Practices Liability Insurance, and, if so, with what policy limits.
5. A projection, indicating a high-low range, of annual non-dues fee revenue to the State Bar expected to be generated by the Program under your administration. The proposal might be based on any or all of the following fee arrangements listed below, or such other arrangements that you believe would maximize non-dues revenue to the State Bar while continuing to provide State Bar members and their eligible family members with pricing advantages and/or other unique benefits they could not generally obtain on their own.
- a. Revenue based solely on a percentage of the brokers/administrator's total compensation resulting from the program. If so, what is the minimum first year and annual renewal level of revenue that the State Bar can expect to receive?
 - b. Compensation based on a percentage of first year and/or renewal premium for marketing services and/or an annual fee-for-service compensation for administrative services based on an appropriate measure of the work performed.

- c. Fee-for-service compensation for both marketing services and administrative services based on appropriate measures of the work performed.
- d. An initial Sponsorship fee, and
- e. Other negotiated arrangements. Please describe proposed arrangement.

For each fee arrangement, you should indicate your willingness to separately allocate charges for marketing and other services, to facilitate measurement of the success of marketing efforts based on cost per new and in force policy.

In addition to the above compensation from the broker, the State Bar expects to receive, from the sponsored carrier, a significant annual sponsorship fee that will not be chargeable against the program reserves.

- 6. Qualifications, background and experience of the project director and other staff proposed to work on the project.
- 7. References with contact information from organizations that have used bidder's services for similar projects/installations within the last 12-18 months.
- 8. A detailed proposal including sponsorship fees and other compensation to the State Bar of California. 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 proposals from them and to make an award or conduct negotiations thereafter.
- 9. A statement of your willingness to enter into a new and detailed written contract with the State Bar, setting forth the respective rights and duties of your firm, the State Bar, and the members participating in the Program, and further providing full defense and indemnification by your firm to the State Bar for any claim or action arising out of your firm's work under the contract, in whole or in part.

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 cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a 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”).

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.

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.

1. Responsiveness and creativity of the bidder, including its record of working with carriers to produce innovative products (20%).
2. Experience in successfully marketing a broad range of insurance products to members of professional associations (30%).

3. Technical Ability, including capability to use the Internet to market, sell and service insurance products (20%).
4. Compensation flowing to the State Bar for its support and oversight of the program (30%).

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

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSB will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice sent to bidders on or about April 2, 2007 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 April 9, 2007. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements sections below.

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

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

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

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

E. Errors in the RFP

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

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

F. Questions Regarding the RFP

Questions regarding the RFP may be addressed in writing to Raquel Hines at raquel_hines@calbar.ca.gov. All questions must be submitted no later than 10 days prior to the date for submission of proposals. Questions and answers regarding the RFP may be shared with all bidders known to be interested in submitting a proposal.

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

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

G. Addenda

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

H. Withdrawal and Resubmission/Modification of Proposals

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

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

I. Protest Procedure

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

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

A bidder qualified to protest should contact Andrew Conover, Procurement Supervisor, (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 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 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.

III. STATEMENT OF WORK

The State Bar is seeking proposals from agents, broker and insurance carriers for a State Bar Sponsored EPLI program. The State Bar's primary goals for this program are (1) to make available to State Bar members quality insurance that a licensed insurance agent or broker may offer to the public, to do so conveniently and at better terms than they could generally otherwise obtain on their own and (2) to generate revenue that can be used by the State Bar to cover the cost of current and expanded member services. The State Bar will insist on complete transparency in terms of transactions between the agent, broker and insurance carrier and the State Bar and its Member-insureds. Following is a description of specific services required.

A. Marketing

1. Administer the marketing and sale of Employment Practices Liability Insurance to State Bar Members (primarily to the 145,000 active members practicing law in California) and
2. Help determine, develop and secure the most appropriate Employment Practices Liability Insurance product and product features for all members at various stages of their professional settings and identifying, where appropriate, quality carriers that offer a distinct advantage.
3. Provide significant Internet functionality, enabling members to obtain complete information and make applications (subject to final underwriting) for Employment Practices Liability policies and, if practicable, to compare such policies with competitive policies online.
4. Employ multiple marketing approaches, perhaps in cooperation with other broker / administrators for other State Bar insurance programs, including the use of direct mail, appearances at and participation in

the State Bar Annual Meeting, print advertisement, advertisement in Internet resources typically used by State Bar members, and e-mail. (The State Bar does not allow unauthorized e-mail solicitation).

5. Cooperate with the State Bar, its consulting actuaries, consultants and the Sponsored Insurer(s) to promote the strength and growth of the program.

IV. CONTRACTING REQUIREMENTS

Upon selection of a broker or carrier, 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 broker or carrier (referred to as "Broker" below) 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 Broker's performance of the services. .

B. Warranties and Representations

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

C. Equipment, Tools, Supplies

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

To the fullest extent permitted by law, Broker agrees to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns entirely harmless from and against any and all claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the Agreement, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by Broker, Broker's employees, subcontractors, agents, representatives or assigns (collectively, "Broker's Agents") in the performance or non-performance of the professional services required to be performed by Broker under the Agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. Broker 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 Broker are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Broker agrees 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 Broker defends the State Bar.

E. Insurance Obligations of Broker

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

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.
3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.
4. Errors and Omissions Insurance with limits of ten million dollars (\$10,000,000.00), naming the State Bar, its Board of Governors, officers, committee members, advisors to its committees, and

employees as named insureds. The errors and omissions policy will insure the named insureds for “sponsorship, including approval or termination of approval or any activities pursuant thereto,” of the insurance program. Broker will pay the entire amount of premium and reimburse the State Bar for any sums the State Bar is required to expend to satisfy the deductible in the policy. Nothing in this section prevents the broker from obtaining reimbursement from the insurance carrier underwriting the program for any expenses broker assumes under this section.

The Broker will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Andrew Conover, Procurement Supervisor, 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 Broker’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 Broker 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 Broker 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 Broker, if the Broker 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 Broker will immediately notify the State Bar if the Broker's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If the Broker's commercial general liability insurance contains such restrictive endorsements, the Broker shall have five (5) business days to remove said restrictions. If the Broker is unable to do so, the State Bar may terminate this agreement, and will be required to give the Broker no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

F. Expense of the Insurance Program

Broker or the underwriting insurance company will assume the expense and cost of soliciting, promoting, and administering the EPLI insurance program, including but not limited to, printing and mailing costs, advertising and promotional expenses. No such costs will be paid by the State Bar.

G. Compensation

Broker will receive no compensation from the State Bar for any services performed under the agreement, but shall be entitled to receive compensation from the underwriting insurance companies in consideration of the State Bar's sponsorship of the Program and its selection of Broker. Broker will disclose to the State Bar the compensation arrangements between Broker and underwriters.

H. Termination

1. **Default by Broker.** This agreement may be terminated by the State Bar upon thirty (30) days written notice to Broker in the event Broker is in default under any of its provisions. In the event this agreement is terminated due to the default by Broker, Broker 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 Broker 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 Broker's default.
2. **State Bar's Option to Terminate.** The State Bar may immediately terminate this Agreement upon the occurrence of any of the following events: (a) bankruptcy or insolvency of Broker; (b) sale, acquisition, or other change of ownership or control of all or a substantial portion of the business of Broker to a person or organization that within the reasonable discretion of the State Bar lacks the experience, commitment, operational capability, financial strength, or, integrity to continue the Program; or (c) Broker's material failure to comply with federal, state or local laws, regulations or requirements or the terms of the Broker/Administrator Agreement. The State Bar may also terminate the Agreement on not less than ninety (90) days written notice in the event that the Broker shall fail to achieve the marketing and revenue targets set forth in the Agreement, or determined pursuant to the Agreement.

I. Ownership

All work product and instruments of the specifications ("work product") and all rights thereto in the nature of copyright, trademark, patent and rights to ideas will be assigned to, and will become 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 of any and all drawings, plans, graphs, photographs, slides, studies, schedules, budgets, estimates, layouts, and other work product and any services which have been or will be prepared or rendered by Broker, or under Broker's direction, pursuant to this agreement. The Broker covenants, warrants and represents to the State Bar that Broker has the right to assign the copyright and the work product. Broker will refrain from disclosing any and all versions of plans to any third party without first obtaining the written consent of the State Bar. Broker 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. Broker 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. Broker will be permitted to retain copies for information and reference.

Broker agrees that the State Bar's name, seal, trademarks, member lists, policyholder and policy renewal information, and the right to control the State Bar's sponsorship of the EPLI Program are and will remain the property of the State Bar.

Broker 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.

J. Membership Lists

The State Bar will make available to Broker its membership list, subject to its membership list policies, which include provisions that require the purchaser to hold harmless and defend the State Bar with respect to any and all claims, costs and liabilities arising from or related to any release, use or misuse of the membership list.

K. Confidentiality and Publicity

1. The Broker 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 Broker will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.
2. Printed or written sales material pertaining to the Sponsored Life Program must be submitted to the Committee on Group Insurance Programs ("the Committee"), or its designee, for review and

approval, and may not be used until such written approval has been granted. The Broker may not use any material bearing the name or seal of the State Bar of California or any of its Committees without the prior, written approval of the Committee. To receive approval in a timely manner, the Bar should typically receive materials from Broker at least thirty (30) days in advance of a regularly scheduled Committee meeting.

3. So long as the agreement remains in effect, the State Bar agrees to allow the Program Broker to state in its sales literature and other printed and written material that the Plan is sponsored by the State Bar; provided however, that no such material shall be published or distributed except in accordance with this Agreement,

L. Compliance with Laws

The Broker will 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.). Broker agrees to include the non-discrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

M. Assignment/Subcontracting

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

N. 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.
4. **Arbitration.** Any question, claim or dispute arising out of or in connection with this agreement in excess of Five Thousand (\$5,000.00) 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 Five Thousand Dollars (\$7,500.00) or less shall be handled in Small Claims Court in the City and County of San Francisco.

5. **Audit.** Broker 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. Broker 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. Broker 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, Broker 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.

6. **License.** In those instances where required, Broker represents and warrants that Broker 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 Broker is performing the services pursuant to the agreement.