

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Fee Statement Production.

Please submit 6 copies of your proposal no later than 5 p.m. on July 12, 2007, to:

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

Attn: Laila Bartlett
Office of Member Services
415-538-2232
laila.bartlett@calbar.ca.gov

I. INTRODUCTION

The State Bar of California (“ the State Bar”), created in 1927 by the Legislature and adopted into the California Constitution in 1960, is a public corporation within the judicial branch of state government. The State Bar is a unified, or integrated bar, which means that 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 approximately four (4) business locations within the state, all located within the greater Los Angeles, or Sacramento or San Francisco areas. More information about the State Bar can be found in an article entitled “*The State Bar of California – What Does It Do, How Does It Work?*” available on the State Bar’s website at http://calbar.ca.gov/state/calbar/calbar_home_generic.

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 typesetting, printing, imaging, mailing, presentation, payment online and other services with regard to the State Bar’s Year 2008, 2009, and 2010 Membership Fee Statements. The State Bar desires a contract

term for a period of 3 years, with an option to renew for two (2) additional one-year terms.

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 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.

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.
4. 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.
8. A description of the chronology for completing the work, including a time line and deadlines for each task.

9. Assurance and demonstration of security measures taken by the vendor to ensure that any member data provided by the State Bar will be handled with the utmost confidentiality.
10. A detailed cost proposal, including any travel costs and other expenses. 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 written acknowledgement of the acceptance of the Contracting Requirements set forth in section IV of this RFP. Specific terms may be reserved for future negotiation, but must be clearly identified and reasons given for the reservation.

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

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 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 of the proposal to the submission requirements set forth in the RFP (10%).
2. Agreement with the State Bar's contracting requirements (10%).
3. The technical ability, capacity, and flexibility of the bidder to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (40%).
4. The financial viability of the bidder as evidenced by standard financial reports (10%).
5. The total cost of the proposal solution. 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%).

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 August 10, 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 August 17, 2007. 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.

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

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

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

G. Addenda

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

H. Withdrawal and Resubmission/Modification of Proposals

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

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

I. Protest Procedure

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

1. The bidder has submitted a proposal that it believes is or should have been the HSB, under the criteria set forth above;

2. The bidder believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. The bidder believes that the State Bar has incorrectly selected another bidder.

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

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

Attention: Peggy Van Horn, Chief Financial Officer

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

J. News Releases

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

K. Disposition of Materials

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the bidder. One copy of each proposal will be retained for 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

A. Background

The fee statement project consists of two mailings – December 1 and March 15:

The 2008 Annual Statement will be sent to approximately 210,000 members on December 1, 2007, increasing approximately 5,000 each year for the 2009 and 2010 fee statements.

The Final Notice will be mailed to approximately 25,000 members on March 15, 2008, increasing approximately 1,000 each year for the 2009 and 2010 fee statements.

To understand the two fee statement mailings, we recommend that you request copies. Please contact Laila Bartlett at laila.bartlett@calbar.ca.gov for copies of the first and final mailings of the 2007 Fee Statement.

The State Bar will transmit membership data in electronic form to be imaged using variable formal layouts onto all individual fee statements as well as onto MCLE coupons (the MCLE coupon will be sent to approximately one-fourth of the entire membership mailing on the December 1 date, and sent to approximately 6,000 members on the March 15 final mailing date). As part of its agreement with the State Bar, the vendor must agree to hold this membership information strictly confidential and not use this information for any other purpose.

Printed fee statements will be imaged with an OCR-A scan line using medium regular, 12-point imaging font with 10 cpi placement. The typesetting, printing and imaging of the fee statements will be in accordance with Document Design Specifications of the State Bar and the State Bar's lockbox vendor Regulus/Wells Fargo. These specifications are summarized in this RFP. Additional narratives and text may be added or dropped and existing text may be changed.

Vendor will agree to meet strict time limitations including a schedule that will require vendor to present proofs to the State Bar in sufficient time to allow the State Bar to review and submit necessary changes in advance of the date for mailing. Vendor will complete electronic proofs to the satisfaction of the State Bar and will promptly change and/or revise such proofs, as needed, until the State Bar is satisfied.

B. First Fee Statement Mailing Overview

Vendor will typeset, print, perforate, image, collate and mail a First Fee Statement Package for every State Bar member named on the first State Bar-provided transmission.

The first mailing will consist of four components, with approximately one-fourth of the membership receiving a fifth component – the MCLE coupon. (Please note: While the State Bar anticipates only these components, Vendor must demonstrate flexibility

in case the bar is required to add components currently not foreseen. Additional components would, of course, be subject to negotiation.)

The five components will be outgoing envelope, Fee Statement, brochure, return envelope and MCLE coupon (approx. one-fourth of members each year)

Vendor will typeset copy on the Fee Statement and envelopes; some text on the fee statement will be imaged, and all text on the MCLE coupon will be imaged.

C. First Fee Statement Specifications

Vendor will print the First Fee Statement Package according to the following specifications:

1. Outgoing envelope – printed on 24 lb #10 non-standard window (window is larger than normal to accommodate all of the information that must appear)
2. Fee Statement page – printed on 8 ½ x 14 24 lb. Bond paper; perforated; 2-color imaged & pre-printed Text
3. Brochure – 1 page, front and back panel, brochure; 2-color – 3 ½ x 8 ½ white paper (negotiable), digital version provided
4. Return Mail Envelope – #9 Window (the printed return address will be positioned so that it can be easily read)
5. MCLE Compliance Coupon – included in approximately one-fourth of first mailing – 8 ½ x 3 3/8 – Imaged with customized member information (See Attached) the MCLE Coupon is a personalized piece. The data on the coupon (name and member number) must match up with the correct Fee Statement for insertion into the envelope. Vendor is required to describe how this match occurs and what steps are in place to ensure that an improper match is not inserted into an envelope and mailed.

D. Imaging

The State Bar will provide Vendor with membership data transmission to be printed on the individual Fee Statement Packages as noted. The State Bar requests that Vendor's response to this RFP include samples of imaged data that has been produced for other customers.

The variable format information will be imaged onto the front of the fee statement page using a minimum of Midax (300 x 300 dpi) imaging. If better quality imaging is

available, please specify and provide a sample of the image quality. The following information will be imaged:

1. The member's name and address
2. The member's State Bar membership number
3. The USPS ACS code for the member, including the member's State Bar number
4. The member's eight-digit access code (to provide secure access to the member's billing information online) if no profile has been established previously
5. Variable MCLE Group designation to drive MCLE insert selection
6. All membership fees, costs and options
7. The return mail code: AAA on the December 1 statement (the return mail code will not be provided by the State Bar but shall be entered by Vendor based on the member's status and the mailing)
8. The date, as specified by the State Bar
9. The OCR-A scan line on the coupon. The OCR-A scan line will be imaged using medium regular, 12-point imaging font with 10 cpi (characters per inch) placement. The OCR-A scan line will be positioned so that the bottom of the scan line is ¼" above the bottom edge of the coupon and the first character of the scan line is in the 11th position from the left edge of the fee statement page, leaving a clear 1" margin to the left of the scan line
10. The Member State Bar Number and Member Print Name will be imaged on to the MCLE Compliance Coupon using Midax (300x300 dpi) imaging. If better quality imaging is available, please specify and provide a sample of the image quality.

E. Test run

Vendor agrees to generate a First Fee Statement Package imaging test run immediately prior to the imaging of the full group of First Fee Statement Packages. This test run will include samples of each of the variable format statements. The results of this run shall be checked by a designee of the State Bar to verify that the imaged data is correctly placed and of a quality satisfactory and acceptable to the State Bar. This test run will utilize the actual forms to be mailed to members. The test run will be done on

a selected group of members provided by the State Bar, which includes all of the sub-groups in one program but shall not result in the printing of more than 100 packets.

Vendor is required to send sample statements to the State Bar lockbox (Regulus/Wells Fargo) for scan line verification prior to production.

Vendor will perforate the fee statement in one place on the Fee Statement – between the member's part and the remittance coupon.

Vendor will collate the first fee statement packages so that each contains the components above and that approximately one-fourth of the members will receive the MCLE coupon. The fee statement will be folded and insertions will have a neat, smooth and professional appearance. The outer envelopes will be sealed, and all completed envelopes must pass the USPS tap test.

Vendor will mail on December 1 the first fee statement packages to the State Bar members whose names appear on the transmission. Vendor will use each member's address of record as it is supplied by the State Bar, except that changes in punctuation may be made, and Zip Code extensions and bar coding will be added. Vendor may use NCOA Processing but shall not change any member's address information as a result. Any members' addresses that are rejected for reasons other than punctuation or adding a Zip Code extension will be dropped from the mail queue and sent separately to the member's address of record using full U.S. or appropriate foreign postage.

Vendor shall have the ability, including a current contract, to use the USPS ACS electronic change of address notification.

Vendor will sort the finished first fee statement packages to members having U.S. addresses to obtain the best available first-class postal rate. The sorting process shall use pre-bar code sort, pre-sort and residual piece rates.

Vendor will group together the first fee statement packages to members having addresses in foreign countries and will mail using the TNT Mailfast service, Deutsche Post or other similar service. If other than TNT or Deutsche, please supply service description and costs.

F. Final Notice Mailing

The Final Delinquent Notice Package will be mailed March 15 and will consist of the same components as the first fee statement package as well as an 8 ½ X 11 Final Delinquent Notice with exact wording provided by the State Bar. The Final Notice will contain MCLE compliance coupons (some changes in typesetting required on imaged coupon to reflect past due notice) in approximately one-fourth of the total Final Delinquent Notice mailings sent.

G. Back Up Facilities

The ability to produce the State Bar fee statement packets at a back up facility, should the need arise, will be considered a plus for the responding vendor. The State Bar requires a statement that vendor's back up facility will produce work as specified and on dates specified. Also, the name and address of the back up facility should be included.

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 each step of the services to be provided in the final agreement.

B. Warranties and Representations

Vendor represents and warrants 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 represents, warrants and covenants that all services provided will be performed according to the specifications in the Statement of Work and according to the following standards: legible, uniform ink coverage throughout the entire printing and imaging runs; printed copy and imaged data provided according to the specifications herein; proper perforation of all forms; and proper and uniform construction and mailing of all fee statement packages.

C. Equipment, Tools, Supplies

Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. 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) any unauthorized use of Confidential information; or (d) 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 Four Million Dollars (\$4,000,000.00); 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 Two Million Dollars (\$2,000,000.00) 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. Printers errors and omissions coverage with a general aggregate limit of at least One Million Dollars (\$1,000,000.00).

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.

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 fifteen (15) 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 immediately 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) any substantial change in the nature, ownership or control of the business of either party; (c) vendor assigns or attempts to assign the agreement or any rights or duties therein without the State Bar's prior written consent; or (d) failure to comply with federal, state or local laws, regulations or requirements, or (e) expiration of the agreement.
5. Upon termination Vendor will immediately return to the State Bar, all confidential data (and any copies thereof) and may not withhold such for any reason.

G. Confidentiality and Publicity

1. Vendor acknowledges and agrees that any State Bar records, data, or other materials or information which has or may come into its possession in connection with the performance of this Agreement (hereinafter "confidential information"), consists of confidential data, and any disclosure or use by third parties of such confidential information will be damaging to the State Bar or others. Vendor will therefore hold all confidential information in the strictest confidence.
2. Vendor will not make use of such confidential information other than for the performance of its obligations under this Agreement. Vendor may release such confidential information only to those of its employees requiring such information to perform under this

Agreement, and will not release or disclose any confidential information to any other party without the express written consent of the State Bar. Vendor will obligate its employees, subcontractors, and agents to comply with this Section G. Data pertaining to the State Bar's business will not be commingled with that of any other customer without the prior written consent of the State Bar.

3. Vendor recognizes that irreparable harm can be occasioned to the State Bar and third parties by disclosure of confidential information; accordingly, the State Bar may seek to enjoin such disclosure in the appropriate court of law.
4. All confidential information, including any copies thereof, which Vendor obtains in association with its performance under this Agreement will at all times remain the sole property of the State Bar.
5. Vendor will destroy any data created on production tapes for use by Vendor within thirty (30) days following completion of the stage for which the tape was created.
6. 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 thereunder (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.
4. **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.

5. **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.
6. **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.