

The State Bar of California

INVITATION FOR BIDS



This document is an Invitation for Bid (“IFB”) for Microsoft Office 2007 Licensing.

The State Bar is seeking proposals for 600 software licenses of MS Office 2007 Professional Edition for employee use. Pricing should reflect current the State Bar of California select agreement or better.

Contact with State Bar personnel in connection with this IFB may not be made other than as specified in this IFB. Unauthorized contact of any State Bar personnel may be cause for rejection of a bid.

Please submit 4 copies of your proposal no later than 5 p.m. on August 8, 2008 to:

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

Attn: Ken Papai
Information Technology
415-538-2486
ken.papai@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, and membership is mandatory for all attorneys who are licensed to practice law in the state. In addition to its mandated licensing and disciplinary and certification functions, the State Bar offers a number of other programs designed to assist, educate and protect its members and the public. The State Bar has offices located in Los Angeles, Sacramento and San Francisco. More information about the State Bar can be found at http://calbar.ca.gov/state/calbar/calbar_home_generic.jsp?cid=10102

II. GOODS FOR PURCHASE

Microsoft Office 2007 suite, including standard MS Outlook, MS Word, MS Excel, MS Powerpoint and MS Access: 600 total licenses, no media required.

III. GENERAL INFORMATION

The submission requirements for this IFB are set forth below. A proposal shall constitute an irrevocable offer for 45 business days following the deadline for its submission. Reference to a certain number of days in this IFB 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, including a description of why the firm is qualified to supply the software licensing.
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. A firm total bid price, contained in a sealed envelope separate from the remaining portion of the bidder's response, for the product itemized in section II. above.

If a Bid fails to address each of the submission requirements above, it 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 non-responsive bids without incurring any cost or liability whatsoever. All bids will be reviewed for completeness of the submission requirements. If a bid fails to meet a material requirement of the IFB, or if it is incomplete or contains irregularities, the bid may be rejected. A deviation is material to the extent that a bid is not in substantial accord with IFB 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 bid. The State Bar's waiver of an immaterial deviation or defect shall in no way modify the IFB or excuse a bidder from full compliance with the IFB requirements.

Bids 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 IFB.

C. Evaluation Process and Highest Score Bidder

The State Bar reserves the right to determine the suitability of bids on the basis of a proposal's meeting administrative requirements, technical requirements and cost.

This IFB does not commit the State Bar to awarding a Contract. Bidders shall bear all costs incurred in the preparation of the bid and participating in the evaluation process. The State Bar reserves the right to reject all submissions and seek new Bids when such procedure is considered by it to be in the best interest of the State Bar.

D. Award and Execution of Contract

The contract will ordinarily be awarded to the most responsive bidder with the lowest cost ("Lowest Cost Responsive Bidder" or "LCRB"). 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 15, 2008 of the Bar's intention to award the contract to the LCRB.

If the contract is not awarded to the LCRB, the LCRB must be notified of that fact at least five days before the State Bar makes the award. Notification will be made by email and via USPS mail. The notice shall include the reason that the contract is not being awarded to the LCRB.

It is anticipated that final selection of the LCRB will be made by August 22, 2008. The evaluation team will select a winning proposal subject to approvals granted by the Board of Governors.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the IFB, 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 IFB, the notice must be sent by U.S. mail and either facsimile or e-mail.

E. Errors in the IFB

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the IFB, the bidder should immediately provide the State Bar with written notice of the problem and request that the IFB 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 IFB was sent.

If prior to the date fixed for submissions, a bidder knows of or should have known of an error in the IFB 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 IFB

Questions regarding the IFB may be addressed in writing to Ken Papai at ken.papai@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 IFB 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 IFB's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the IFB 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 IFB 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 Bids

A bid may be withdrawn at any time prior to the deadline for submitting bid 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 bid 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. Bids 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 bid proposal that it believes to be the lowest cost responsible, under the criteria set forth above;
2. The bidder believes that its bid proposal meets the State Bar's administrative and technical requirements and offers the lowest 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 IFB 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 bid proposal will be retained for the State Bar's official files and become a public record. Specific limited pages of a bid proposal, not

including proposed cost and compensation, may be marked as proprietary and confidential. The entire proposal cannot be deemed confidential. The bidder's consent will be requested before release of such pages to non-State Bar personnel. By submitting a bid ~~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 bid proposal.

IV. CONTRACTING REQUIREMENTS

A. General Terms and Conditions

The final agreement shall be by Purchase Order and governed by The State Bar's General Terms and Conditions as set forth therein, a sample form of which is attached hereto as Attachment A. Submission of a proposal shall constitute agreement to contract on these terms. Any bid proposing alternate language will be considered a counter proposal and subject to rejection as non-responsive.

B. Additional Terms and Conditions

In addition to the above-referenced General Terms and Conditions, the Purchase Order will also contain the following terms:

1. Assignment of Warranties. To the extent that third party manufacturers have provided the bidder with any warranties or made other commitments regarding the equipment, products or goods that the bidder has included in its bid to the State Bar of California, bidder will pass through and assign to the State Bar any and all such manufacturers' warranties and other commitments, and/or take such action as may be necessary to ensure that the State Bar is entitled in full to all such manufacturer's warranties and obligations.
2. Warranties. Unless otherwise specified by the bidder in its bid response, the warranties specified hereunder shall begin upon the State Bar's acceptance, in writing, of the deliverable or service in question.
 - a. Bidder warrants that the software licenses furnished under the Purchase Order shall conform to the requirements of the Purchase Order (including all descriptions, specifications and drawings made a part thereof) and such goods software licenses will be new, merchantable, and fit for their intended purposes.
 - b. Bidder represents and warrants that it is a duly authorized reseller of the software and software licenses specified by the State Bar.

- c. Bidder warrants that any and all software required hereunder will perform in accordance with its license and any accompanying documentation.
- d. Bidder warrants that all deliverables (including software) furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or software; and (ii) will not violate any U.S. intellectual property right.

3. Delivery and Insurance, and Title

- a. Delivery. The software licenses will be delivered to the State Bar's Office no later than five (5) days after the receipt of the State Bar's Purchase Order.

- C.** In the event of any conflict or inconsistency with the above terms and the State Bar's General Terms and Conditions, the above terms shall control.
- D.** The above terms and the State Bar's General Terms and Conditions are not negotiable.
- E.** No oral understanding or agreement shall be binding on either party. No contract or agreement, express or implied, shall exist or be binding on the State Bar before the State Bar's execution of a Purchase Order authorizing purchase of the Equipment.

TERMS AND CONDITIONS

ALL ORDERS FOR PURCHASES ("PURCHASE ORDERS") ISSUED BY STATE BAR OF CALIFORNIA, INCLUDING ORDERS APPEARING ON THE REVERSE SIDE, IF ANY, AND ANY SUBSEQUENT ORDERS, INCLUDING ORDERS COMMUNICATED VERBALLY, IN WRITING, OR TRANSMITTED ELECTRONICALLY VIA COMPUTER OR BY FACSIMILE OR BY ANY OTHER MEANS, SHALL BE GOVERNED BY THE TERMS AND CONDITIONS ("TERMS AND CONDITIONS") BELOW AS APPLICABLE FOR THE PROVISION OF GOODS OR SERVICES OR GOODS AND SERVICES (COLLECTIVELY REFERRED TO HEREINAFTER AS "GOODS AND/OR SERVICES").

1. **PURCHASE ORDER NUMBER:** PURCHASE ORDER Number assigned by State Bar must appear on all packing lists and invoices.
2. **INVOICES:** Vendor shall render separate invoices in duplicate, priced and extended, with applicable taxes separately shown, immediately following each and every shipment of goods and/or rendition of services. Invoices shall be directed to "Accounts Payable" of State Bar.
3. **SHIPMENT AND DELIVERY; PERFORMANCE OF SERVICES:** If any PURCHASE ORDER requires Vendor to ship goods, and the goods are not shipped in accordance with State Bar's direction and the instructions set out in the PURCHASE ORDER, Vendor shall pay to State Bar any excess cost resulting therefrom. In providing the goods and/or services required under this PURCHASE ORDER, time shall be of the essence.
4. **PAYMENT:** Unless otherwise agreed, invoices shall be paid within 30 days of receipt.
5. **PRICE:** If price is not stated in the PURCHASE ORDER, the goods and/or services provided shall be billed at the price last quoted, or billed at the prevailing market price, whichever is lower. In the event Vendor reduces its prices while any PURCHASE ORDER is pending, Vendor agrees to reduce the price of such pending PURCHASE ORDER correspondingly. Vendor warrants that prices shall be complete and shall include charges, if any, for shipping, taxes, insurance and installation.
6. **PATENT, SERVICE MARK, TRADEMARK AND COPYRIGHT:** Vendor expressly warrants that the goods and/or services delivered hereunder will not infringe any domestic or foreign patents, service marks, trademarks or copyright rights and agrees to indemnify and hold State Bar, its agents, employees, and officers, harmless from any expense, loss, cost, damage or liability, including attorneys' fees or costs, which may be incurred on account of infringement of such rights, and to defend, at Vendor's own expense, any action or claim in which such infringement is alleged, provided that Vendor is notified of such action or claims against State Bar. State Bar may be represented by and actively participate through its own counsel in any such suit or proceeding, if it so desires, and the cost of such representation shall be paid by Vendor. All creations resulting from Vendor's performance shall be owned exclusively by State Bar as a "work made for hire."
7. **TERMINATION:** State Bar may terminate the PURCHASE ORDER for its sole convenience, or for any other reason, in whole or in part, by verbal or written notice, including via facsimile or computer electronic transmission, at any time. If the PURCHASE ORDER is terminated for convenience, any claim of Vendor shall be settled on the basis of reasonable costs incurred in the performance of the PURCHASE ORDER. Vendor shall not be paid for any work done after receipt of notice of termination nor for any costs incurred by Vendor's suppliers or subcontractors which Vendor could have reasonably avoided.
8. **QUALITY:** Vendor expressly warrants that all goods and services furnished under any PURCHASE ORDER will conform to the specifications, drawings, samples or other description furnished or adopted by State Bar, and will be of good material and workmanship, free from defects, merchantable, fit and sufficient for the purpose intended. If the PURCHASE ORDER requires that Vendor render services, such services shall be performed with the degree of care, skill and diligence currently recognized as standard for the industry of Vendor's profession.
9. **SAFETY AND HEALTH; HAZARDOUS MATERIALS:** All goods and services, including any hazardous materials, provided by Vendor shall comply with the Occupational Safety and Health Act of 1970, and as amended, and all applicable federal, state and local laws, regulations and standards relating to health and safety.
10. **INSPECTION AND ACCEPTANCE:** State Bar may conduct an inspection at any time after receipt of goods and/or services. Vendor expressly waives any right to be relieved of its obligation to cure, correct or replace defective goods or workmanship, or to refund amounts paid by State Bar for defective goods and/or services, based upon any failure of State Bar to inspect the goods or workmanship within a reasonable period of time. Acceptance of the goods or workmanship by State Bar shall not release Vendor from any of its obligations and warranties hereunder. In no event shall payment be deemed to constitute acceptance.
11. **DEFECTIVE GOODS AND/OR SERVICES:** If any of the goods and/or services are non-conforming or fail to meet the warranties and requirements contained in Paragraphs 6, 8 or 9, Vendor, upon notice thereof from State Bar, shall promptly correct or replace the same at Vendor's expense. If Vendor shall fail to do so, State Bar may cancel any PURCHASE ORDER, including any remaining balance thereof, and Vendor shall promptly refund to State Bar any payment made by State Bar for such goods and/or services. After notice to Vendor, any goods will be held at Vendor's risk. State Bar may return such goods to Vendor at Vendor's risk, and all transportation charges, both to and from the original destination, shall be paid by Vendor. The remedies provided herein to State Bar shall be in addition to any other remedies that State Bar may have under the TERMS AND CONDITIONS or existing law.
12. **INDEMNITY:** Vendor shall indemnify, defend and hold State Bar harmless from and against all damages, liability, claims, losses and expenses, including attorneys' fees and costs, arising out of, or resulting from, any defect in the goods and/or services purchased under any PURCHASE ORDER or from any act or omission of Vendor, its agents, employees or subcontractors.
13. **INSURANCE:** All Vendors shall maintain comprehensive business automobile liability insurance, including owned, non-owned, leased and hired vehicles, with at least \$500,000 combined single limit and workers' compensation and employer's liability coverage. Vendors of goods shall maintain commercial general liability insurance with a minimum general aggregate limit of \$500,000. Vendors of services or of goods and services shall maintain commercial general liability insurance with a minimum general aggregate limit of \$1,000,000. At the discretion of State Bar as to necessity for, coverage and amount, Vendors of goods or of goods and services may be required to maintain umbrella liability coverage and Vendors of services or of goods and services may be required to maintain professional liability insurance. All insurance required shall be issued by insurance companies acceptable to State Bar. If requested by State Bar, Vendor shall submit certificates of insurance evidencing Vendor's coverage and providing for 30 days prior written notice to State Bar of any cancellation or material change in the terms of the policy.
14. **INDEPENDENT CONTRACTOR STATUS:** Vendor is, at all times, an independent contractor, and is not the agent, employee, joint venturer or partner of State Bar. Vendor undertakes sole responsibility for its employees and has exclusive liability for the payment of federal, state and local taxes and contributions therefor.
15. **CONFIDENTIALITY; ADVERTISING:** Vendor shall consider all information furnished by State Bar to be confidential and shall not disclose any such information to any person, or use such information for any purpose other than in connection with fulfilling its obligations under the PURCHASE ORDER. Vendor shall not advertise or publish the fact that State Bar has contracted with Vendor without State Bar's written consent.
16. **APPLICABLE LAWS:** Vendor shall comply with all applicable federal, state and local laws, regulations, rules and ordinances and agrees upon request, to furnish State Bar a certificate to such effect and in such form as State Bar may from time to time require.
17. **VENDOR'S ACCEPTANCE:** Acceptance by Vendor of any PURCHASE ORDER is limited to the provisions set forth therein and to the TERMS AND CONDITIONS. Any additional or non-identical provisions in Vendor's acceptance are deemed objected to and are not valid.
18. **CHANGES/MODIFICATIONS:** No changes or modifications in the TERMS AND CONDITIONS shall be valid except upon State Bar's written authority. State Bar may make changes or modifications in the provisions of any PURCHASE ORDER and such changes or modifications must be authorized by State Bar in writing, except as provided in the next sentence. State Bar reserves the right to make changes or modifications in the provisions of any PURCHASE ORDER without a written authorization provided that, such changes or modifications do not cause the price of the PURCHASE ORDER to increase or decrease in excess of \$100, or cause a change in the delivery date of the goods and/or services.
19. **NON-WAIVER; ENTIRE CONTRACT:** State Bar's failure to insist on performance of any of the TERMS AND CONDITIONS or the provisions of the PURCHASE ORDER, or to exercise any right granted thereunder, or State Bar's waiver of any breach by Vendor shall not, thereafter, be deemed a waiver of any right of State Bar. The provisions set forth in any PURCHASE ORDER, together with the TERMS AND CONDITIONS, constitute the final and entire contract, superseding all other written or oral agreements, express or implied.
20. **ASSIGNMENT:** Vendor shall not assign or transfer the PURCHASE ORDER or any interest therein or monies payable thereunder without the written consent of State Bar, and any assignment made without such consent shall be null and void.
21. **REMEDIES:** No remedy herein provided shall be deemed exclusive of any other remedy allowed by law. State Bar shall be entitled at all times to set off any amount owing at any time from State Bar to Vendor in connection with any defective or nonconforming goods, workmanship or services provided by Vendor, or any other claim against Vendor that State Bar may have under the TERMS AND CONDITIONS herein.
22. **GOVERNING LAW; SEVERABILITY:** The TERMS AND CONDITIONS and the provisions of any PURCHASE ORDER shall be construed according to the laws of the State of California. If any provision of the TERMS AND CONDITIONS or of any PURCHASE ORDER is held to be invalid or unenforceable, that provision shall be construed to have the broadest interpretation which would make it valid and enforceable. Invalidity or unenforceability of one provision shall not affect any other provision of the TERMS AND CONDITIONS or of any PURCHASE ORDER.
23. **FORCE MAJEURE:** State Bar shall not be held responsible for acceptance of all or any part of the goods and/or services tendered by Vendor in the event of government action, statute, ordinance or regulation, civil disorder, strike or other labor trouble or the probability of strike or other labor trouble, acts of God, fire or other incidents or emergencies outside of State Bar's control which shall make such acceptance impossible, illegal or impractical.
24. **ANTI-DISCRIMINATION; EQUAL OPPORTUNITY:** It is the policy of the State Bar that in connection with all purchasing of goods and/or services that there will be no discrimination against anyone engaged in providing goods and/or services because of race, color, ancestry, gender, sexual orientation, national origin, age, medical condition, disability or religious creed and, therefore, as a condition of contracting with State Bar, Vendor agrees to comply with all applicable laws relating thereto. State Bar also promotes equal opportunity for minority and women-owned businesses in its contracting and procurement.
25. **TERM:** These TERMS AND CONDITIONS shall be valid and enforceable as to any PURCHASE ORDER issued by State Bar until such TERMS AND CONDITIONS are revoked in writing by State Bar.