

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Professional Print Production Services.

The Office of Section Education & Meeting Services of the State Bar is seeking design, typesetting, printing and mailing of its brochures, newsletters, postcards, and other educational and marketing materials for 2009 and 2010 with the option to renew for an additional 1-year term.

Please submit 7 copies of your proposal no later than 5 p.m. on December 22, 2008 to:

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

Attn: Pam Wilson
Section Education and Meeting Services
415-538-2395
pam.wilson@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. STATEMENT OF WORK

A. Vendor’s Responsibilities

1. Attachment A attached hereto and incorporated herein by this reference describes each publication vendor is required to produce (“the Section

Pieces”).

- a. Non-listed pieces will be bid separately and pricing of pieces will be similar to contract pieces.
 - b. If the scope of the piece changes, the individual piece has to be re-bid within the pricing parameters or standards provided in the contract.
2. It is preferred that vendor itself directly create the design, typeset, print and mail each Section Piece. This includes file creation and production of CD ROMs and/or like products. Subcontracting certain specific processes may be allowed, provided vendor accepts sole responsibility for managing and coordinating each component of the process with their own subcontractors. This includes movement of files, raw materials, finished pieces and mailing materials, scheduling and meeting promised deadlines. Proposal must clearly indicate which specific jobs will require subcontracting arrangements.
3. For each Section Piece, vendor will perform functions as described in Attachment A upon receipt of a text file from the State Bar. Functions typically include:
- a. Agree with the State Bar on dates to submit the initial design, complete final production and mail the Section Piece.
 - b. Create a design for the Section Piece to submit to the State Bar for its review and approval.
 - c. Vendor will submit a PDF proof within 1 day for a 2-4 color, 1-4 page flyer, or 3 days for a 2-4 color, 5-24 page publication, in order to permit the State Bar to edit and revise the proof to create a final product satisfactory to the State Bar.
 - d. Typeset and print the Section Piece in the design and with the text as approved by the State Bar, using the paper, ink and other materials and specifications described in Attachment A.
 - e. Mail the Section Piece to those individuals on a mailing list to be provided by the State Bar.
 - f. Provide a PDF copy of the piece suitable for posting on the State Bar’s website.

4. Vendor will advance the cost of postage for each Section Piece, to be reimbursed by the State Bar.
5. Vendor will promptly notify the State Bar of the date a Section Piece is mailed or shipped. If production of any Section Piece is delayed so that the agreed upon mailing date cannot be met, Vendor will notify the State Bar immediately of such delay.
6. Payment Terms: Vendor will allow 45 days from the date of invoice for payment to be received.

B. State Bar Responsibilities

1. The State Bar will provide Vendor with a text file for each Section Piece with sufficient lead time to permit design creation and proof revision prior to the deadline date for mailing.
2. The State Bar will provide Vendor with a separate mailing list for each Section Piece.
3. The State Bar will timely review and edit the proofs of each Section Piece received from Vendor.

C. Environmental Concerns

The State Bar's mission includes being environmentally responsible and therefore meeting materials and marketing pieces required by the State Bar must be produced in the most environmentally responsible way. In order to meet this sustainable commitment to the environment, contract award will be made to a printing company that is officially certified by the Forest Stewardship Council (FSC) and by the Sustainable Forestry Initiative (SFI) and can provide products produced by renewable and recyclable materials. **All subcontractors, if proposed, must adhere to this FSC chain-of-custody when processing paper and other printed work.**

III. GENERAL INFORMATION

The submission requirements for this RFP are set forth below. A proposal will constitute an irrevocable offer for 60 business days following the deadline for its submission. Reference to a certain number of days in this RFP will mean business days unless otherwise specified.

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.

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 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. Vendor must submit, electronically, a fully completed Attachment B: Vendor History/Financial Viability Questionnaire with their proposals, either on disk or via separate email to andrew.conover@calbar.ca.gov.
4. Proof of certification by both the Forest Stewardship Council (FSC) and by the Sustainable Forestry Initiative (SFI).
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. A detailed cost proposal. Bidder must submit, electronically, a fully completed Attachment A: Itemized Cost Proposal with their proposals, either on disk or via separate email to andrew.conover@calbar.ca.gov by the due date above. 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.

10. 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. Note that responses to questions must be specifically answered within the context of the submitted proposal. The State Bar's evaluation team will not refer to a designated web site, brochure, or other location for the requested information. Responses that utilize references to external materials as an answer will be considered non-responsive.

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 will in no way modify the RFP or excuse a bidder from full compliance with the RFP requirements.

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

Proposals that contain false or misleading statements may be rejected if in the State Bar's opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

C. Evaluation Process and Highest Score Bidder

An evaluation team will review, in detail, all proposals that are received to determine the Highest Score Bidder ("HSB").

Following the initial review and screening of the written Proposals, using the selection criteria described below, several bidders may be invited to participate in the final selection process, which may include participation in an oral interview and/or submission of any additional information as requested by the State Bar.

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

review team's assessment of the quality and performance of the equipment and services proposed, and cost.

During the evaluation process, the State Bar may require a bidder's representative to answer questions with regard to the proposal and/or require certain bidders to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team. The State Bar may also have discussions with those bidders falling within a competitive range, and request revised pricing offers from such bidders and make an award and/or conduct negotiations thereafter.

This Request for Proposal does not commit the State Bar to awarding a Contract. Bidders will bear all costs incurred in the preparation of the Proposal and participating in the Proposal evaluation process. The State Bar reserves the right to reject any and all Proposals, to accept the Proposal it considers most favorable to the its interest in its sole discretion, and to waive minor irregularities. The State Bar further reserves the right to seek new Proposals when such procedure is considered by it to be in the best interest of the State Bar.

1. The following criteria will be used in reviewing and comparing the proposals and in determining the HSB. The weight to be assigned to each criterion appears following each item.
 - a. Responsiveness of the proposal to the submission requirements set forth in the RFP (10%).
 - b. Agreement with the State Bar's contracting requirements (10%).
 - c. 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 (35%).
 - d. The financial viability of the bidder as evidenced by standard financial reports (10%).
 - e. The total cost of the proposal solution. If the proposal contains itemized rates, per piece pricing, or commission-based pricing, the State Bar reserves the right to calculate total contracted cost by calculating rates using either previous known usage activity or future projected volume. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the solution over the term of the contract (35%).

2. If a large number of proposals are received, the State Bar reserves the right to review the proposals using a tiered evaluation system. All qualified proposals will be evaluated based on the Submission Requirements and Cost, with the top candidates advancing as finalists 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 January 22, 2009 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 January 29, 2009. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected bidder 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, will 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 will bid at its own risk, and if, awarded the contract, will not be entitled to additional compensation or time by reason of the error or its later correction.

F. Questions Regarding the RFP

Questions regarding the RFP may be addressed in writing to Pam Wilson at pam.wilson@calbar.ca.gov. All questions must be submitted no later than 7 days prior to the date for submission of proposals. Questions and answers regarding the RFP may be shared with all bidders known to be interested in submitting a proposal.

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

A bidder who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. The State Bar must receive any such request no later than 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 the State Bar's official files and become a public record. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. The

bidder's consent will be requested before such confidential pages are released to non-State Bar personnel. However, the entire proposal cannot be deemed confidential. By submitting a proposal, a bidder agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

IV. CONTRACTING REQUIREMENTS

Upon selection of a bidder, 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 bidder will include, without limitation, the following terms. Submission of a proposal will constitute agreement to contract on these terms, except for any term specifically reserved in the proposal for future negotiation.

A. Time of Essence

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

B. Warranties and Representations

Vendor 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 highest standards of the industry. Vendor further represents and warrants that none of the services performed under this Agreement will infringe upon the rights of any third parties. If any of Vendor's work is found to be infringing, Vendor will correct the work to be non-infringing at no charge to the State Bar. 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.

C. Equipment, Tools, Supplies

The Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. The Vendor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

D. Indemnity Obligations of Vendor

To the fullest extent permitted by law, the Vendor will agree to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns (the "Indemnitees") 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; (c) the actual or alleged infringement by Vendor of any patent, copyright, trademark or other proprietary right of any person or entity; or d) the State Bar's enforcement of its rights under this indemnity provision.

The Vendor will agree that its obligations under this indemnity provision will survive the expiration and termination of this agreement.

In the event both the State Bar and Vendor are named as defendants in the same civil action, and the State Bar determines that a conflict of interest exists between the parties, Vendor will agree to provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation wherein the Vendor defends the State Bar.

E. Insurance Obligations of Vendor

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

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. 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. Printer errors and omissions coverage with a general aggregate limit of at least Two Million Dollars (\$2,000,000) and an occurrence limit of One Million Dollars (\$1,000,000).

The Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Andrew Conover, Finance Manager, true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days of the execution of this agreement. Each such policy will name the State Bar as an additional insured and will state that the Vendor's policy will be primary and that any insurance carried by the State Bar will 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. Additionally, if the Vendor assigns any portion of the duties under this agreement, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

The Vendor will immediately notify the State Bar if the Vendor's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If the Vendor's commercial general liability insurance contains such restrictive endorsements, the Vendor will 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 may be terminated by the State Bar, in its sole and complete discretion, upon thirty (30) days written notice to Vendor. In the event of termination pursuant to this section, the vendor's sole compensation will be for that portion of services performed or goods delivered up to the date of termination, together with reimbursable expenses, if any then due. Vendor will not be paid for any services, goods or reimbursable expenses associated with any work or service not specifically authorized by the State Bar.
2. **Authorization of Funds.** If the term of this agreement extends into fiscal year(s) subsequent to that in which it is signed, it is understood that the continuation of this contract is subject to the authorization of sufficient funding for such purpose by the California State Legislature. If sufficient funds are not so authorized, the parties mutually agree that

the contract may be terminated or amended as appropriate in response to the reduction in funding. If the agreement is terminated, Contractor agrees to take back any affected equipment, products, software, or hardware furnished under this contract, and relieve the State Bar of any further obligation, except for the State Bar's obligation to pay for services already performed pursuant to this agreement.

3. **Default by Vendor.** This agreement may be terminated by the State Bar upon fifteen (15) days written notice to the Vendor in the event the Vendor is in default under any of its provisions. In the event this agreement is terminated due to the default by the Vendor, the Vendor will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties and the Vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in this agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by the Vendor's default.
4. **Automatic Termination.** This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) sale of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements, or (d) expiration of the agreement.

G. Confidentiality and Publicity

The Vendor will retain all information provided by the State Bar in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform services under this agreement without the prior written consent of the State Bar. The State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law. The Vendor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

H. INTELLECTUAL PROPERTY RIGHTS

The Vendor will assign to the State Bar all rights to any Work Product, including without limitation the exclusive, worldwide, perpetual, irrevocable, and royalty-free rights to print, reprint, publish, reproduce, use, modify, create derivative works from, distribute, and sell the Work Product in its entirety or in any portion, individually or as a collective work, in print, electronic, or digital form, including but not limited to the exercise of such rights through Internet or Intranet sites, computer on-line services, and all other electronic media and distribution mechanisms now known or later

developed. Upon any request by the State Bar, Vendor will promptly and fully cooperate with the State Bar, execute and deliver any documents or other materials, and perform all such additional acts, to the satisfaction of the State Bar, that the State Bar deems necessary to secure, perfect, or substantiate the State Bar's exclusive rights and interest in any Work Product. "Work Product" for purposes of this provision includes, but is not limited to, all writings, programming code, data, artwork, graphics, reports, evaluations, and other materials, in every form or format, which have already been or which are hereafter originally created by Vendor in conjunction with this Agreement. Vendor warrants and represents that any Work Product does not infringe the rights of any third party.

I. Compliance with Laws

The Vendor agrees to comply with all applicable federal, state, and local laws and regulations, including but not limited to the provisions of the Fair Employment and Housing Act (Govt. Code, § 12900 et seq.) and any applicable regulations promulgated there under (Cal. Code of Regs., tit. 2, § 72850.0 et seq.). Vendor agrees to include the non-discrimination and compliance provisions of this clause in any and all subcontracts to perform work under the agreement.

J. 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.

K. 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 will be entitled to collect or enforce the judgment. This provision is separate and several and will survive the merger of the agreement into any judgment.
4. **Audit.** Vendor agrees that the State Bar or its designee will have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Vendor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Vendor agrees to allow the State Bar or its designee access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Vendor agrees to include a similar right of the State Bar or its designee to audit records and interview staff in any subcontract related to performance of this Agreement.
5. **License.** In those instances where required, the Vendor represents and warrants that the Vendor holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license and will 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.