

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Preconstruction Services and Construction Management at Risk Services.

The State Bar is seeking proposals for licensed general contracting firms (“vendors”) qualified to provide services in all phases of construction of a 110,000 square foot tenant improvement project in the State Bar’s newly purchased office building located at 845 South Figueroa Street in downtown Los Angeles.

Please submit eight (8) hard-copies of your proposal and one (1).pdf copy no later than 4 p.m. on February 19, 2013 to:

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

Attn: Steve Mazer
General Services
415-538-2326
steve.mazer@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 primary purpose of the State Bar is to serve as an administrative adjunct to the California Supreme Court in all matters pertaining to the admission, discipline and regulation of California lawyers. The California Constitution, the State Bar Act and California Rules of Court vest in the State Bar the duty to regulate the legal profession, formulate and elevate educational and professional standards, raise the quality of legal services, advance the science of jurisprudence, and aid in the improvement of the administration of justice.

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, 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's programs are financed by fees paid by attorneys and applicants to practice law. The State Bar has over 242,000 members, making it the largest unified state bar in the country.

The State Bar has offices in San Francisco and Los Angeles. For 20 years the State Bar's Los Angeles office has been located in leased space in the AT&T Center in the Southpark section of downtown. In November 2012 the State Bar purchased 845 S. Figueroa Street to serve as its new Los Angeles home, in anticipation of the December 2013 expiration of its lease in the AT&T Center.

For more than 80 years, The State Bar of California has shaped the development of the law, regulated the professional conduct of the state's lawyers and provided greater access to the justice system for all citizens. More information about the organization can be found at <http://www.calbar.ca.gov/AboutUs.aspx>.

II. STATEMENT OF WORK

A. Vendor Minimum Requirements for Participation in the Proposal Process

The State Bar will accept and evaluate proposals only from vendors which meet ALL of the following three (3) requirements:

1. Licensing: Valid California general contractor's license.
2. Location: Southern California office with sufficient professional, estimating and superintendent personnel currently on staff to handle minimum \$35M annual volume of construction.
3. Size/Experience: Minimum \$35M annual commercial construction volume in each of the last three years; plus a total of not less than 100,000 sf of commercial office TI projects constructed in last three years; plus experience with major TI construction within the City of Los Angeles; plus bonding capacity of not less than \$25M per project; plus General Liability insurance coverage of not less than \$5M.
4. Additional factors desirable but not required: Experience with courtroom construction; experience with government clients.

B. Building & Construction Project Description

845 South Figueroa Street is a five-story office building measuring approximately 140,000 rentable square feet (RSF) (122,000 net usable square feet). The building was constructed in 1970 and sat vacant (in "mothballed" condition) for many years. In approximately April 2012 the former owner began a full base building renovation, including: replacement of the curtain wall; upgrade of the existing post-tensioned concrete structure, including carbon fiber reinforced polymer wrap; and a complete

upgrade of all mechanical, electrical, plumbing, fire sprinkler and elevator systems. The State Bar purchased the building in November 2012, while renovations were still in progress. The renovation project is scheduled to be complete by the end of February 2013, with the building in “warm shell” condition and ready for tenant improvements.

A *Smart & Final* grocery store has leased approximately 21,000 RSF on the first floor, in addition to an exterior loading dock and patio area. Smart & Final will handle its own tenant improvements, which are scheduled to take place between approximately February and May 2013. Tenant improvements for Smart & Final are excluded from the scope of this request for proposal.

The State Bar will occupy the remainder of the building. This project will cover tenant improvements and other selected building modifications for all space occupied by the State Bar, as follows:

1. The entirety of floors 2, 3, 4 and 5 (approximately 107,000 RSF), consisting of standard office space typical of government agencies and private service organizations such as law firms and insurance companies (private offices, cubicles, conference rooms, storage and work rooms, kitchens and break rooms, etc.) and court rooms.
2. A small portion of the first floor (approximately 4,000 RSF) to serve as the State Bar’s visitor reception and security screening area. This may include installing windows in an existing nonstructural exterior concrete wall.
3. Two loading docks on the first floor, one of which may be converted to other use (such as reception or storage).
4. Exterior work such as signage, landscaping and façade improvements around the first floor entrance and loading dock areas.
5. A basement parking garage accommodating approximately 75 cars, which may require new lighting, re-striping, and installation of a secure entry/exit mechanism.

The State Bar has engaged an architect and the design process is underway.

C. Reference Documents

To assist vendors in the preparation of proposals, the following Exhibits are included for reference:

1. Stevenson Systems square footage report

2. Base building architectural drawings
3. Architect's preliminary schematic designs for tenant improvements
4. Phase 1 Environmental Assessment Report
5. ALTA Site Survey

D. Scope of Services

1. Phase 1: Preconstruction

Vendor will provide preconstruction services during the design and building permit process, including constructability review, preliminary construction schedule and periodic cost estimates. These will occur at the completion of:

- a. The final Schematic Design ("SD") in a systems estimate
- b. Design Development ("DD") in a CSI format
- c. Plancheck submittal set of Construction Documents ("CD") in a CSI format
- d. Receipt of initial City plan-check comments, prior to Notice to Proceed

2. Phase 2: Construction

Vendor will provide all construction services as a Construction Manager at Risk. The following considerations will apply:

- a. Vendor will initially be engaged on a Fee & General Conditions basis, as more fully defined in Section III below.
- b. Upon completion of construction documents vendor will generate a Guaranteed Maximum Price ("GMAX") for direct construction costs. The GMAX will be determined through bidding all work over \$100,000 to a minimum of three subcontractors.
- c. Engagement of subcontractors will be on an "open book" basis, where the State Bar is apprised of all subcontractors' bids and may participate in the evaluation/selection process, in order to ensure transparency. This will include vendor and subcontractor certification that no rebates or credits are provided to vendor except by formal change order. Vendor and subcontractors will be required to sign *Fair*

and Ethical Business Practice Affidavits substantially in the form indicated in *Attachment C*.

- d. Subcontractors must be signatories of their respective trade unions, if applicable.

E. Project Schedule

The State Bar has a requirement for the project to be complete by December 2013, based on the following tentative schedule:

Feb 15, 2013: Owner Approval of Schematic Design Documents

Mar 22, 2013: Owner Approval of Design Development Documents

Apr 26, 2013: Construction Documents complete

May 3, 2013: Building Permit and Notice to Proceed

Nov 30, 2013: Substantial Completion

Dec 31, 2013: Owner fully occupy

III. CONTRACT BID PRICING

Vendor will submit all itemized costs in ***Attachment A: Itemized Cost Proposal***, which is comprised of *Worksheet A-1: Schedule of Costs*; *Worksheet A-2: Schedule of General Conditions*; and *Worksheet A-3: Schedule of Exclusions from General Conditions and Direct Construction Costs*. As the State Bar may award a contract based on the initial offer, Vendor 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.

For the **preconstruction services** described in Section II.D.1 above, vendor will submit a ***fixed price proposal***, i.e., a fixed dollar amount. For the **construction services** described in Section II.D.2 above, vendor will submit a proposal on a ***Fee & General Conditions basis***. The proposed Fee (along with insurance and bond) will subsequently be applied to the Guaranteed Maximum Price of direct construction costs. The State Bar intends to include a contingency sharing provision in the contract with the selected vendor, allocating 25% of unused contingency to vendor.

A. Instructions for Worksheet A-1: Schedule of Costs

1. **Preconstruction Services** (as described in II.D.1). Constructability review, preliminary construction schedule, cost estimating, etc. *Quote a fixed price.*
2. **Construction Services** (as described in II.D.2)
 - a. General Conditions Vendor's costs for "overhead" including all labor, materials, equipment, etc. (Note that Worksheet A-2, Schedule of General Conditions, will itemize those costs included in General Conditions versus those included in Direct Construction Costs.) *Quote a fixed price per week and a proposed number of weeks for project, and multiply these two numbers.*
 - b. Fee. Vendor's profit. *Quote a fixed percentage of direct construction costs.*
 - c. General Liability Insurance. *Quote a fixed percentage of direct construction costs.*
 - d. Builder's Risk Insurance. *Quote a fixed percentage of direct construction costs.*
 - e. Bond. Vendor will be required to file a payment and performance bond in conformance with Civic Code Section 9550 et. seq. *Quote a fixed percentage of direct construction costs.*

B. Instructions for Worksheet A-2: Schedule of General Conditions

1. Worksheet A-2 includes items that shall be included **either** as part of vendor's General Conditions in its performance of the work, **or** as part of the direct construction costs (i.e., within particular subcontractors' costs).
2. Vendor must choose the appropriate category from the drop down menu, indicating where it will allocate its cost for each item. If vendor intends to include additional items in General Conditions, vendor shall add those items to the worksheet.

C. Instructions for Worksheet A-3: Schedule of Exclusions from General Conditions and Direct Construction Costs

The following items will be procured/financed by the State Bar, and are therefore excluded from both General Conditions and Direct Construction Costs. This information is provided to assist vendor in completing Worksheets A-1 and A-2; there is nothing to complete in Worksheet A-3.

1. Soft costs related to architectural design, engineering and third party project management
2. Assessments, taxes, finance, legal or development fees
3. Building permits and fees
4. Owner's fire and all risk insurance
5. Land, building and easement acquisition
6. Owner supplied and installed furniture, fixtures and equipment
7. Movable furniture and equipment

IV. 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.

Contact with State Bar personnel in connection with this RFP may not be made other than as specified in this RFP. Unauthorized direct or indirect contact with 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, prefaced by a table of contents, referenced by number and in the order below.

1. A brief (2-3 page) overview of bidder's organization, including history, organizational structure, market position, etc. Brochures and marketing materials may be included as a supplement, but should not take the place of a brief written response.
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. Bidders must submit ***Attachment B: Vendor History Questionnaire*** electronically in native .xls format per instructions below. If vendor requires the State Bar to sign a confidentiality and nondisclosure

agreement prior to submittal of this information, please contact Andrew Conover at Andrew.conover@calbar.ca.gov.

4. A written confirmation that bidder meets all minimum requirements for participation in the proposal process, as stated in RFP Section II.A. Please respond to each of the four requirements individually.
5. A list and description of the proposed team's past experience for providing Construction or Construction Management at Risk Services that are most related to this project within the past four (4) years. List two (2) or three (3) relevant office interior projects including the following information for each:
 - a. Project name, location, contract delivery method, and description
 - b. Color images (2 or 3 max)
 - c. Final budget and final construction cost
 - d. Number of RFIs
 - e. Final project size in gross square feet
 - f. Type of construction (new, renovation, or expansion)
 - g. The Owner's name, representative who served as the day-to-day liaison during the project, with telephone number and email
 - h. Architect/Engineer's firm name and representative contact information
6. A description of your cost estimating methods, and a sample of a cost estimate used to establish a contract amount from any one of the projects listed above.
7. A description of your cost and schedule control methods during construction and how you procure subcontracts, confirm scope, amount, and ensure proper payment.
8. The names, qualifications and resumes of the proposed project executive, project manager and project superintendent.
9. A description of how you will develop, maintain and update the project schedule, and a description of your approach to assuring timely completion of this project, including methods for schedule recovery, if necessary.
10. An example of a successful constructability program used to maintain project budgets without sacrificing quality.
11. A description of how you maintain security and safety during construction.
12. A description of your past experience dealing with congested site conditions for any project, and how you plan to access this site for construction, including anticipated changes required for access during construction.

13. A list and description of any legal actions, lawsuits, arbitrations, regulatory proceedings or formal protests or other legal actions which bidder has been involved in the last twenty-four (24) months related to the provision of services.
14. A detailed cost proposal, as more fully described in RFP Section III. Bidders must submit **Attachment A: Itemized Cost Proposal** with its proposal in hard copy and .pdf, and electronically in native .xls format per instructions below. It is unlawful for any person engaged in business within this state to sell or use any article or product as a “loss leader” as defined in [Section 17030](#) of the Business and Professions Code. 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.
15. A written acknowledgement of the acceptance of the Contracting Requirements set forth in section V of this RFP, and to the form of the Fair and Ethical Business Practice Affidavits in **Attachment C**. Specific terms may be reserved for future negotiation, but must be clearly identified and reasons given for the reservation.

B. Submission Requirements Format Summary

Proposals should be prepared simply and economically, providing a straightforward and concise description of the Vendor’s ability to meet the requirements of this RFP. Emphasis should be on conformity to the State Bar's instructions, and on completeness and clarity of content. Proposals should not include generic promotional materials and graphics that increase page count and PDF file size without addressing substantive content.

1. Deliver 8 physical hardcopies to the attention of Steve Mazer, no later than 4 p.m. February 19, 2013.
2. Each set should include all attachments requested, including copies of the electronic attachments itemized below.
3. Deliver electronically with above (one set--CD-ROM, DVD, or USB flash drive) in native unlocked format as noted below:
 - a. Attachment A: Itemized Cost Proposal (.xls)
 - b. Attachment B: Vendor History Questionnaire (.xls)

Proposals that fail to address each of the submission requirements above may be deemed non-responsive and will not be further considered. The State Bar, solely upon its own discretion, will judge vendors on their overall compliance, and may judge a vendor to be materially compliant, even if that vendor is non-compliant to a particular requirement of the RFP.

If specific submission requirements are particularly large and self-contained they may be included in a separate appendix rather than in the body of the proposal. Submittals should not direct the evaluation team to general brochures, marketing materials or websites to obtain information related to the specific submission requirements; submittals that utilize references to external materials as an answer will be considered non-responsive. Hard copy brochures and marketing materials may be included as a supplement if desired.

C. 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.

D. 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, 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 shall 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 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 (5%).
 - 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, on budget, and to the State Bar's standards of efficiency, customer service and professionalism (40%). Factors will include, but will not necessarily be limited to:
 - Content and overall quality of the proposal
 - Reputation and position in the market
 - Experience and qualifications of the proposed team
 - Demonstrated success in projects with similar requirements, including any other contracts with the State Bar
 - Client references
 - Unique tools or additional services provided
 - d. The **financial viability** of the bidder as evidenced by standard financial reports (10%).

- e. The **total cost** of the proposal solution. Because the proposal contains percentage markup pricing, the State Bar reserves the right to calculate total estimated contract price by multiplying the stated percentage costs by estimated direct construction costs, and adding total estimated general conditions costs to arrive at an estimated all-in total project cost. Costs will be evaluated only if a proposal is determined to be otherwise qualified. (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.

E. 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 March 5, 2013 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 March 12, 2013. The evaluation team will select a winning proposal subject to approval by the Board of Trustees. 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 in Section II above and Contracting Requirements in Section V 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@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.

F. 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.

G. Questions Regarding the RFP

Questions regarding the RFP may be addressed in writing to Steve Mazer at steve.mazer@calbar.ca.gov. All questions must be submitted no later than seven (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.

H. 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.

I. 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.

J. 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.

K. News Releases

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

L. 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 entire proposal cannot be deemed confidential. The bidder's consent will be requested before release of such confidential 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.

V. 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 AIA A133 2007 and AIA A201 2007 form agreements, and 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 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 standards of the industry. Vendor represents and warrants that none of its work performed under this Agreement will infringe on the rights of third parties. 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. 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.

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

Vendor will indemnify and defend the State Bar (including its Board of Trustees, officers, director, agents, employees and volunteers, as the same may be constituted from time to time) from all claims, demands, damages, debt, liability, obligations, cost, expense, lien, action or cause of action (including but not limited to actual damages, fines and attorneys' fees, whether or not litigation is actually commenced) arising out of: (i) the material breach by Vendor of any warranty, representation, term or condition made or agreed to by Vendor; (ii) all products and services prepared by or for Vendor hereunder and provided to State Bar; (iii) any claim or action for personal injury, death or otherwise involving alleged defects in Vendor's business or any of its products or services provided to State Bar; (iv) any breach by Vendor of any statutory or regulatory obligation; (v) the actual or alleged infringement by Vendor of any patent, copyright, trademark or other proprietary right of any person or entity; and/or (vi) any act or omission of Vendor, its employees, agents or subcontractors.

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 Five Million Dollars (\$5,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.

3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.
4. Professional liability insurance with a general aggregate limit of Two Million Dollars (\$2,000,000) and an occurrence limit of two Million Dollars (\$2,000,000).

The Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: General Services, 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. 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 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 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. 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.

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, (a) acts of God or public enemy, (b) acts of the government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) embargoes, (i) earthquakes, and (j) 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 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 its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and will survive the merger of this provision into any judgment on this agreement.
4. **Audit.** Vendor agrees that the State Bar or its designee shall 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 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.