

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Courtroom Audio Visual System Upgrades.

The State Bar of California is seeking proposals for the purchase, delivery, and installation of courtroom audiovisual (“AV”) system upgrades for two courtrooms located in San Francisco, California. Qualified audio visual system integrators (“bidders”) are requested to provide bids to supply the equipment and related services as outlined in this document.

Bidders shall have a minimum of five (5) years of experience in a courtroom environment including the design, engineering, assembly, installation, and support of audiovisual systems of similar or greater complexity to those identified in this Request for Proposal. Bidders shall be able to guarantee service and response time by providing onsite technical services, customer support, training, and telephone support.

The State Bar of California will host a recommended vendor pre-bid conference on Thursday July 16, 2015, at 11:00 AM in its 6th floor courtrooms at 180 Howard Street, San Francisco, California. The lead engineer and/or project manager that will be involved in the project must be the attending representatives for each bidder. Attendance is recommended, but not mandatory for all vendors intending to submit a proposal.

Contract term desired is for a period of two (2) years, with two (2) each one-year renewal options.

Please submit 5 copies of your proposal no later than 4 p.m. on July 30, 2015 to:

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

Attn: Marilyn L. Tichenor
State Bar Court
415-538-2069
marilyn.tichenor@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 purpose of the State Bar of California is to ensure that the people of California are served by the legal profession in a manner consistent with the highest standards of professional competence, care, and ethical conduct; to carry out such additional programs as may be required by law or by rule of court; and to contribute generally to the science of jurisprudence and the administration of justice. The State Bar serves 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 253,000 members, making it the largest unified state bar in the country with offices located in Los Angeles and San Francisco. 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

The State Bar handles attorney disciplinary and regulatory matters on behalf of the California Supreme Court. In the current environment, the State Bar Court conducts three kinds of events conducted in two courtrooms that depend upon flawless, user-friendly operation of teleconferencing, amplification and digital recording equipment. Teleconferences often connect two or more separate parties to the courtroom. In-person conferences and trials often involve lengthy witness testimony that must be amplified and digitally recorded within the courtroom. Oral arguments involve a panel of three judges with an attorney addressing the panel from a podium.

The State Bar Court is seeking proposals for a two-phased solution to replace and upgrade its telephone conference-amplification-recording systems in two (2) San Francisco courtrooms. The larger courtroom is approximately 1395 square feet. The smaller courtroom is approximately 1040 square feet.

The court relies heavily on telephonic conferences to conduct most of its court events. **Phase One** in 2015 will include (a) replacing and upgrading existing equipment that is

approaching the end of its life expectancy, (b) integrating the courtroom teleconferencing with the existing Cisco VOIP system, and (c) positioning the installation for **Phase Two**. **Phase One** installation is tentatively scheduled for October 19-30, 2015, with each courtroom reserved for up to 5 days of work to occur Monday-Friday. **Phase Two** in 2016 will include the installation of evidence display equipment and a transition to witness testimony via video conferencing using a Polycom HDX 7000 or similar solution as the primary platform and owner-provided PC-based web conferencing (e.g., WebEx) as the secondary alternative platform. Each phase is separately funded with funding spread over two calendar years 2015 and 2016.

A. Current Environment

Each courtroom has an existing installation that includes telephone conferencing, amplification system, and digital recording equipment using digital signal processor, telephone hybrid, remote control processor, touch screen, amplifier, transformer, and mixer. Each courtroom is equipped with a Symetrix digital signal processor, Polycom telephone hybrid, Crestron remote control processor, Crestron touch screen, QSC amplifier, Atlas Sound transformer, and M-Audio mixer. In **Phase One** of the project, the State Bar Court places the highest priority on achieving an improved telephone conference system that is user-friendly, allows for easy connections/disconnections of up to six (6) separate parties, and allows for a rapid succession of up to 30 separate telephone conference calls within a 60 minute court session.

B. Summary of Requirements

1. Integrate new installation with Cisco phone system including VOIP.
2. Upgrade and/or replace existing installations (digital processor, telephone hybrid, amplifier, etc.) and replace existing touch screens with an AMX 10.2 inch Modero X Series Tabletop Touch Panel or similar product (for statewide standardization).
3. Using existing speakers (if possible), amplify courtroom proceedings within each courtroom.
4. Build the system around digital audio recording software (currently *For the Record (FTR), version 5.1*) with capability to upgrade to *FTR 5.1 AV*.
5. In **Phase Two** Upgrade to Polycom video conferencing as the standard for witness testimony, but build the system to accommodate an alternative PC-based connection for video conferencing.
6. In **Phase One** add Assistive Listening Technology.

7. Use configurable components avoiding custom build and custom programming.
8. In **Phase Two** add Evidence Display at counsel tables to include laptop (provided by others) with VGA and HDMI connections, document camera, connections to two (2) 60-inch wall monitors; integrate the audio into the amplification and recording systems.
9. Provide **Phase One** and **Phase Two** training programs for end users (4), court technical staff (2), and IT technical (2) staff. Programs will be up to a ½ day training for each group.
10. Provide **Phase One** and **Phase Two** illustrated training materials and user guides including Quick Start guides.
11. Guaranteed service and response time for onsite technical services, customer support, and telephone or email support. Service contract.
12. Provide as-built drawings of the final configuration of all installed equipment.
13. Provide product brochures and warranty documentation.

C. Statement of Deliverables

Proposals must provide a complete turn-key solution, including purchase of all products and services contained in the RFP, and the following documentation.

1. **System Operation** must include introduction and overview to system components, their functions and locations
2. **System Documentation** must include:
 - a. Complete inventory of system components including serial numbers and location (e.g., courtroom, equipment rack, etc.) of each
 - b. Cable documentation including cable numbers, functions, originating and terminating location, and signal levels
 - c. All shop drawings correct to reflect as-built conditions
 - d. Initial tests and adjustments data
 - e. Final tests and adjustments data
 - f. CD-ROM or thumb drive that includes all utilized manufacturer's software, editable copies of all software configurations, editable copies of source code in an industry standard format, e.g., AutoCAD; this includes but is not limited to the control panel, and other source code
3. **Manufacturer's Documentation** must include:
 - a. Manufacturer's product data

- b. Operating instructions
 - c. Installation instructions
 - d. Service requirements and information
 - e. Schematic diagrams
 - f. Replacement parts list
4. **Maintenance Information** must include:
- a. Preventative maintenance schedule clearly stating target dates of six months and end-of warranty preventative maintenance inspections
 - b. Trouble-shooting information, complete with instructions for procedures should equipment fail.
 - c. Schedule for notice and installation of software updates that are necessary to keep the systems current.
5. **Warranty Information** must include all components and software covered under this RFP and must include, at a minimum, the following:
- a. A warranty period of no less than one year for all components and software covered under this RFP
 - b. Manufacturer's statement that shows the maintenance support of the proposed equipment for the period of time after the equipment is installed
 - c. Any proprietary equipment, technology, or software proposed must be clearly identified and the source code of all software developed for this project must be owned by the State Bar of California.
 - d. All systems delivered must include all tools for upgrading and monitoring the system. All systems provided and installed must be turnkey solutions.
 - e. Contractor will not be allowed to substitute system components after award of contract without the State Bar's written approval.
 - f. During performance and upon completion of work on this project, contractor must remove and legally dispose of all unused equipment and instruments of services, all excess or unsuitable materials, and trash or debris unless otherwise directed by this RFP.
 - g. Contractor shall be held responsible for any breakage or loss of State Bar/State Bar Court equipment or supplies due to contractor's negligence or negligence of contractor's employees or subcontractors while working on his project. Contractor shall be responsible for restoring or replacing any damaged equipment or damage to facility resulting from work performed under this contract. Failure or refusal to restore or replace such damaged property will be considered a breach of the contract.

III. 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 description of the history and organization of the bidder's firm, and of any proposed subcontractor.
2. Copies of business licenses, professional certifications or other credentials, together with evidence that bidder, if a corporation, is in good standing and qualified to conduct business in California.
3. The most recent year's annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data. Bidders must submit Attachment B: Vendor History Questionnaire electronically in native .xls format per instructions below.
4. A description of at least three (3) similar projects completed by the bidder within the past three (3) years. Include personal references with contact information for each. Describe the technical capabilities of the firm. Provide a statement of your firm's background and experience in performing similar projects for other organizations.
5. Qualifications, background and experience of the project director and other staff proposed to work on the project. Describe the project team structure (including any subcontractors), project monitoring procedures, oversight of work performed, and the organization of the proposed team. List all key personnel assigned to the project by level and name. Provide a resume or similar state of the qualifications of the project manager and/or lead person. Substitution of the project manager and/or lead person will not be permitted without prior written approval of the State Bar/State Bar Court.

6. List any subcontractors that may be used and specify the work to be performed by each.
7. A general description of the techniques, approaches and methods to be used in completing the project and meeting the objectives and satisfying the scope of work to be performed. Provide a detailed implementation plan for migrating from the existing system to the new system with a minimum of down time. Describe your commitment to the project. Describe warranties. Describe commitment to resolving problems that arise after implementation. Describe your commitment to assuring system reliability and guaranteed performance.
8. Provide a detailed implementation schedule and time line for completing migration from the existing to the new system.
9. A detailed cost proposal, including any travel costs and other expenses. Bidders must submit Attachment A: Itemized Cost Proposal electronically in native XL format per instructions below.
 - a. Equipment List: List all hardware, software, and all associated materials along with the quantity, manufacturer, model, accessories with their price.
 - b. Labor: List the total number of hours and the hourly billing rate for each member of the project team, including any subcontractors.
 - c. Travel Costs: List amount of travel costs and basis of estimate to include trip destination, purpose, length, airline fare or mileage expense, per diem costs, lodging and car rental.
 - d. Other Direct Costs.

Contractors' travel expenses, if any, will be reimbursed in accordance with the public [Travel and Business-Related Expense Policy](#). 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.

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.

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 completeness and clarity of content.

1. Deliver 5 physical hardcopies to the attention of Marilyn L. Tichenor, no later than 4 p.m. July 30, 2015.
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 (.xlsx)
 - b. Attachment B: Vendor History Questionnaire (.xlsx)

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 in 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 components 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.

Submittals should provide straightforward and concise information that fulfill the requirements of the RFP. Emphasis should be placed on brevity, conformity to the State Bar's instructions, and 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. 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 Scored Bidder

An evaluation team will review, in detail, all proposals received to determine the Highest Scored 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 (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 (50%).
 - d. The total cost of the proposal. 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 proposal over the term of the contract (30%).
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 August 11, 2015 of the Bar's intention to award the contract to the HSB. It is anticipated that final selection of the HSB will be made by August 18, 2015. 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 and Contracting Requirements sections below.

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

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

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing to Andrew Conover, Procurement Director 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.

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 Marilyn L. Tichenor at marilyn.tichenor@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.

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, Procurement Director, (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: 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.

IV. CONTRACTING REQUIREMENTS

Upon selection of a vendor, the terms set forth in this RFP are to be embodied in a definitive agreement containing such additional covenants and other provisions as may be mutually acceptable.

The State Bar contemplates that, in addition to the terms described above in this RFP, final agreement between the State Bar and the selected vendor will include, without limitation, the following terms. Submission of a proposal shall constitute agreement to

contract on these terms, except for any term specifically reserved in the proposal for future negotiation.

A. Time of Essence

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

B. Warranties and Representations

Vendor represents and warrants that:

1. Vendor and its Personnel assigned to the project have the expertise, experience, ability, and licenses if necessary, to perform the services in a diligent, timely and professional manner consistent with generally accepted industry standards;
2. The services will be performed in a workmanlike manner consistent with generally-accepted industry standards of practice and appropriate for the purposes contemplated by this Agreement;
3. Vendor owns all right, title, and interest in, or otherwise has full right and authority to permit the use of any Pre-Existing IP; (ii) to the best of Vendor's knowledge, the P-Existing IP does not infringe the rights of any third party, and use of the Pre-Existing IP as well as any of Vendor's intellectual property rights in connection with the applicable statement of work does not and will not violate the rights of any third parties; (iii) Vendor will comply with the terms and conditions of any licensing agreements which govern the use of third party materials; and (iv) Vendor will comply with all laws and regulations as they relate to the services and deliverables; and
4. If any deliverable fails to conform to the standard specified above, Vendor, at its sole expense, will promptly correct the defective deliverable. This remedy is cumulative of any and all other remedies to which the State Bar may be entitled pursuant to this Agreement and applicable law.
5. Inducement. The representations and warranties in this Agreement are essential inducements on which the State Bar relies in awarding and performing under this Agreement.
6. Survival of Warranties. Vendor's representations and warranties under this Agreement will survive the termination or expiration of the

Agreement and will remain in full force and effect throughout the useful life of the deliverables.

C. Independent Contractors

The relationship of the parties established under this Agreement is that of independent contractors. This Agreement will not be construed to establish a partnership, joint venture, agency, employer-employee, or other similar relationship between the parties. Neither the State Bar nor Vendor is liable for any of the obligations or liabilities the other incurs. Vendor further acknowledges and agrees:

1. The State Bar may not withhold any amount for any tax or other withholdings from any sums due Vendor under this Agreement;
2. Unless otherwise provided in this Agreement, Vendor must furnish all labor, tools, equipment and materials necessary for the performance of the Services;
3. Vendor has no rights under workers' compensation laws or to the coverage under the State Bar's workers' compensation plan as a result of any services performed. Notwithstanding the extent to which any workers' compensation rights are ever determined to exist, Vendor waives, to whatever extent possible, any and all rights Vendor has or may have under workers' compensation laws and to coverage under the State Bar's workers' compensation plan; and
4. Vendor assumes full and sole responsibility for the payment of all compensation and expenses for its employees, including workers' compensation coverage as required, all federal, state and local income taxes, unemployment and disability insurance, Social Security and other applicable withholdings.

D. Indemnity Obligations of Vendor

Indemnification by Vendor. Vendor will indemnify, defend and hold harmless the State Bar, including its Board of Trustees, directors, officers, agents, and employees (as the same may be constituted from time to time and hereinafter referred to "**State Bar Indemnified Party (or Parties)**") from and against any and all claims, demands, damages, judgments, debts, liabilities, losses, obligations, costs, expenses, liens, actions or causes of action (including but not limited to reasonable attorneys' fees, costs and expenses), whether or not litigation is actually commenced, arising out of: (a) the material breach by Vendor of any warranty, representation, term or condition made or agreed to by Vendor; (b) all products and services prepared by or for Vendor hereunder and provided to

the State Bar; (c) 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; (d) any breach by Vendor of any statutory or regulatory obligation; (e) the actual or alleged infringement by Vendor of any Intellectual Property Rights of any person or entity; and/or (f) any act or omission of Vendor, its employees, agents or subcontractors.

1. If any third party claim is commenced against any State Bar Indemnified Party entitled to indemnification under this section, notice thereof will be given to Vendor as promptly as practicable. Vendor will immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to the State Bar to handle and defend the same, at Vendor's sole cost and expense. The State Bar Indemnified Party will cooperate, at the sole cost of Vendor, in all reasonable respects with Vendor and its attorneys in the investigation, trial and defense of such claim and any appeal arising therefrom; provided, however, that the State Bar Indemnified Party may, at its own cost and expense, participate, through its attorneys (including, but not limited to, its Office of General Counsel) or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. Vendor will not enter into a settlement of any claim that involves a remedy other than the payment of money by Vendor without the prior written consent of the State Bar. If Vendor does not assume full control over the defense of a claim that Vendor is obligated to defend as provided in this section, Vendor may participate in such defense, at its sole cost and expense, and the State Bar will have the right to defend the claim in such manner as it may deem appropriate, at the sole cost and expense of Vendor.
2. If any legal work reasonably necessary to the State Bar's defense as described in this section is performed by in-house counsel for the State Bar, the State Bar will determine the value of such work at a reasonable hourly rate for comparable outside counsel and promptly paid by Vendor; provided, however, the parties hereby confirm that such fees will be recoverable with respect to legal work performed by the State Bar's in-house counsel only to the extent that such work is not duplicative of legal work performed by outside counsel paid for by Vendor and representing the State Bar in such matter.
3. Survival. Vendor's obligations under this indemnity provision will survive the expiration and termination of this Agreement.
4. Enforcement of this Provision. Vendor will be liable to the State Bar for all costs (including but not limited to reasonable attorneys' fees, costs and expenses) that may be incurred by the State Bar for the purposes of enforcing this section.

E. Rights in Work Product

1. Intellectual Property Rights Defined. For purposes of this Agreement, the term “**Intellectual Property Rights**” means know-how, inventions, patents, patent rights, and registrations and applications, renewals, continuations and extensions thereof, works of authorship and art, copyrightable materials and copyrights (including, but not limited to, titles, computer code, designs, themes, concepts, artwork, graphics and visual elements, and methods of operation, and any related documentation), copyright registrations and applications, renewals and extensions therefore, mask works, industrial rights, trademarks, service marks, trade names, logos, trademark registrations and applications, renewals and extensions therefore, derivative works, trade secrets, rights in trade dress and packaging, publicity, personality and privacy rights, rights of attribution, paternity, integrity and other similarly afforded “moral” rights, and all other forms of intellectual property and proprietary rights recognized by the U.S. laws, and other applicable foreign and international laws, treaties and conventions.

2. Work Product. Vendor recognizes and agrees that all right, title and interest, including all Intellectual Property Rights, which may be prepared, procured or produced in whole or in part in, or resulting from, the Services rendered by Vendor or Subcontractors pursuant to this Agreement, including, without limitation, any and all Deliverables, (collectively referred to as “**Work Product**”) will constitute a “work made for hire” as defined in 17 U.S.C. Section 101, that Vendor will create the Work Product within the scope of this Agreement, and that all right, title and interest in and to the Work Product will immediately vest in the State Bar. To ensure that the Work Product becomes the property of the State Bar, irrespective of its status as a “work made for hire”, in consideration of the mutual promises contained in this Agreement, Vendor hereby agrees to transfer, in perpetuity, to the State Bar all of the right, title and interest in the Work Product, in the United States of America and throughout the world, and agrees to assign any and all renewals and extensions of each such copyright that may be secured under the laws now or hereafter pertaining; and Vendor will execute at the State Bar’s expense, all documents reasonably required to perfect the foregoing rights in the State Bar. In the event Vendor fails to execute any documents, Vendor appoints the State Bar as its attorney-in-fact to execute such documents on Vendor’s behalf. Vendor hereby waives and/or transfers any and all moral rights, including without limitation any right to identification of authorship or limitation on subsequent modification that Vendor (or its employees, agents or consultants) has or may have in the Work Product or any part thereof.

3. No Transfer of Title in and to Vendor's Pre-Existing IP. Notwithstanding the foregoing, the State Bar acknowledges that independent of this Agreement, Vendor has created, acquired or otherwise has rights in and may, in connection with the performance of this Agreement, employ certain intellectual property, including, without limitation, various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques (collectively, "**Pre-Existing IP**"). The State Bar and Vendor intend that title in and to such Pre-Existing IP remain vested in Vendor, provided however, that to the extent that Deliverable incorporates any Pre-Existing IP, Vendor hereby grants to the State Bar a world-wide, non-exclusive, fully paid-up, royalty-free, perpetual, irrevocable right and license to use such Pre-Existing IP as incorporated into such Deliverable to enable the State Bar to have full use of such Deliverable as contemplated by this Agreement, including, without limitation, the right to run, execute, copy, modify, create derivative works, display, distribute and sublicense such rights.

4. Third Party Materials. As used in this Agreement, "**Third Party Materials**" means proprietary third party materials which are incorporated into the Deliverables. All Third Party Materials are the exclusive property of their respective owners. Vendor must inform the State Bar of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Deliverables. Under such circumstances Vendor will inform the State Bar of any need to license and unless otherwise provided for by the State Bar, Vendor will obtain the license(s) necessary to permit the State Bar's use of the Third Party Materials consistent with the usage rights granted herein. In the event Vendor fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of Third Party Materials, Vendor hereby indemnifies, saves and holds harmless the State Bar from any and all damages, liabilities, costs, losses or expenses (including reasonable attorney's fees and costs) arising out of any claim, demand, or action by a third party arising out of Vendor's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Deliverables.

F. Insurance Obligations of Vendor

1. Without in any way limiting Vendor's liability pursuant to the "Indemnification" Section of this Agreement, Vendor must maintain in full force and effect during the term of the Agreement at Vendor's own expense, insurance in the amounts and coverages indicated below and pursuant to the following provisions.

Vendor will provide and keep in full force and effect during the term of this Agreement, at its own cost and expense, the following insurance

policies for the joint benefit of Vendor and the State Bar: (i) **Commercial General Liability Insurance** with a general aggregate limit (other than products/completed operations) of no less than Two Million Dollars (\$2,000,000.00) and including products/completed operations coverage with a limit of no less than One Million Dollars (\$1,000,000.00); at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit; (ii) **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; (iii) **Comprehensive Automobile Liability Insurance** covering owned, leased, hired and non-owned vehicles, with a combined liability per occurrence limit of at least One Million Dollars (\$1,000,000.00); and, (iv) **Professional Liability Insurance** with a general aggregate limit of Two Million Dollars (\$2,000,000.00) and a per occurrence limit of at least Two Million Dollars (\$2,000,000.00).

2. All insurance policies required to be maintained pursuant to this section will name the State Bar, its Board of Trustees, directors, officers, and employees as additional insureds (“**Additional Insureds**”). If **Blanket Fidelity/Commercial Blanket Bond** is required, the State Bar, its Board of Trustee, directors, officers, and employees will be named as additional loss payees (“**Additional Loss Payees**”). In addition, all insurance policies will: (i) be primary and non-contributing with respect to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement; (ii) apply separately to each insured against whom a claim is made or suit is brought; (iii) include a waiver of subrogation provision or endorsement in favor of the State Bar; and (iv) be with insurance carrier(s) that have a minimum A.M Best’s insurance rating of AVIII, are authorized to do business in the State of California, and are satisfactory to the State Bar.
3. Vendor will deliver to the State Bar offices, **Attn: Risk Management, 180 Howard Street, San Francisco, CA 94105**, certificates of insurance evidencing compliance with the requirements of this section (including completed certificates and policy endorsements) no later than thirty (30) days after the execution of this Agreement. In no event will Vendor commence operations under this Agreement before furnishing to the State Bar such certificates of insurance.
4. All policies must provide thirty (30) days’ advance written notice to the State Bar of reduction or nonrenewal of coverages, material change of coverages, or cancellation of coverages for any reason. All such notice will be sent to the Risk Management Department of the State Bar as listed

in Section 3. In addition, notwithstanding any notices sent to the State Bar by the insurer, Vendor will immediately notify the State Bar when it becomes aware of any cancellation or material change in the amounts of or type of coverage of the insurance policies required.

5. Should any of the required insurance be provided under a claims-made form, Vendor will maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims will be covered by such claims-made policies.
6. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit will be double the occurrence or claims limits specified above.
7. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse will not be processed until the State Bar receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the State Bar may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance. Termination will be in addition to, any other rights or remedies that the State Bar may have under this Agreement.
8. Failure to maintain insurance will constitute a material breach of this Agreement. If Vendor fails to secure and maintain insurance policies complying with the provisions of this Agreement, the State Bar may purchase the required insurance coverage and Vendor will reimburse the State Bar for all associated costs, which will be in addition to any other rights or remedies available to the State Bar under this Agreement. Alternatively, the State Bar may terminate this Agreement. Termination will be in addition to, any other rights or remedies that the State Bar may have under this Agreement.
9. If Vendor assigns, subcontracts, or delegates any portion of the duties under this Agreement, Vendor will ensure that each assignee, subcontractor, or delegee purchases and maintains the same insurance coverage required pursuant to this Agreement, provided however, that nothing herein will be construed as permitting Vendor to assign, subcontract or delegate any portion of the duties under the Agreement without the State Bar's prior written consent.

G. Termination

1. Termination. The State Bar may terminate this Agreement, in its sole discretion, without cause and for any reason upon seven (7) days' written notice to Vendor, such termination effective upon the State Bar's delivery of such termination notice. Vendor's sole compensation shall be for that portion of the services performed to the date of termination, together with reimbursable expenses, if any, then due pursuant to the Agreement; provided, however, that the State Bar shall not be obligated to pay Vendor for any services or expenses not authorized by the State Bar pursuant to this Agreement.
2. Automatic Termination. This Agreement will terminate automatically in the event of: i) the bankruptcy or insolvency of either party; ii) the death or total incapacity of Contractor; or, iii) failure to comply with federal, state or local laws, regulations or requirements.
3. Termination in Event of Material Breach. Without limiting any of the rights specified in this section, either party may terminate this Agreement (the "Terminating Party") if the other party is in breach of a material obligation arising under this Agreement and fails to cure that breach within fifteen (15) days following the Terminating Party's written notice of its intention to exercise its rights under this section.
4. Appropriation of Funds. If the term of this Agreement extends beyond the fiscal year in effect when this Agreement was entered into by the Parties, Vendor acknowledges that continuation of this Agreement may be subject to annual funding by through the state legislative process. In such event, if funds to effect the continuation of the Term are not appropriated, Vendor shall commence and perform, with diligence, all actions necessary on the part of Vendor to effect the termination of this Agreement on the date specified by the Authorized Representative and to minimize the liability of Vendor and the State Bar to third parties as a result of termination, including, without limitation, accepting the return from the State Bar of any affected equipment, products, software or hardware furnished under this Agreement, and ceasing performance of the Services as directed by the Authorized Representative without any further obligation on the part of the State Bar.

H. Confidentiality and Publicity

1. Confidentiality Obligations. "**Confidential Information**" means all information identified in written or oral format by the State Bar as confidential, a trade secret or proprietary information, including without

limitation, membership or applicant records, data, non-public information pertaining to financial, personnel, or the activities, business or operations of the State Bar. Vendor will not disclose Confidential Information to any third party other than persons in the direct employ of Vendor or Subcontractors who have a need to have access to and knowledge of the Confidential Information solely for the purpose of carrying out Vendor's duties under this Agreement. Vendor must take appropriate measures by instruction and agreement prior to disclosure to such employees to assure against unauthorized use or disclosure. Confidential Information does not include information which: (a) Vendor can demonstrate was rightfully in possession of or known to Vendor without any obligation of confidentiality prior to receiving it from the State Bar; (b) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (c) is rightfully obtained by Vendor from a source other than the State Bar without any obligation of confidentiality; or (d) is disclosed by Vendor under a valid order created by a court or government agency, provided that Vendor provides prior written notice to the State Bar of such obligation and the opportunity to oppose such disclosure. Upon written demand of the State Bar, Vendor will cease using the Confidential Information and return the Confidential Information and all copies, notes or extracts thereof to the State Bar within ten (10) days of receipt of notice. The parties agree that this Section applies retroactively to all disclosures made by the State Bar prior to the execution of this Agreement, and that the terms and conditions herein supersede any prior non-disclosure and confidentiality agreement previously entered into by the parties.

2. Injunctive Relief. Vendor hereby acknowledges and agrees that in the event of any breach of this Agreement by Vendor, including, without limitation, the actual or threatened disclosure or unauthorized use of Confidential Information in violation of this Agreement, the State Bar will suffer an irreparable injury, such that a remedy at law will not afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, Vendor hereby agrees that the State Bar will be entitled, upon proper showing of probable risk of such injury, to seek specific performance of Vendor's obligations under this Agreement and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief will be in addition to and not in lieu of any appropriate relief in the way of monetary damages as may be granted by a court of competent jurisdiction.

3. No Publicity. Without the State Bar's prior written consent, Vendor may not issue any public announcements concerning the State Bar, including, without limitation, referencing the State Bar on Vendor's website or other publicity or promotional materials.

I. Compliance with Laws

Vendor must comply with all applicable laws, ordinances and regulations adopted or established by federal, state or local governmental bodies or agencies, including but not limited to the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and any applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.), Americans with Disabilities Act /ADA Amendments Act of 2008, and section 508 of the Rehabilitation Act. Vendor must include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

J. Assignment, Subcontracting, Delegation Transfer

1. Vendor shall not assign, subcontract, delegate or otherwise transfer any of the rights, duties or obligations of this Agreement to any third party without the prior written consent of the State Bar and compliance with the requirements set forth below.
2. Conditions Precedent for Vendor to Subcontract the Services. Vendor may retain independent contractors to furnish Services and access Confidential Information (as defined in Section ___) only in accordance with this section (hereinafter referred to as “**Subcontractors**”). All Subcontractors must be approved in advance in writing by the State Bar, such approval to be granted in the State Bar’s sole discretion. In advance of providing any Services or receiving any Confidential Information, all Subcontractors will execute a written agreement reasonably satisfactory to the State Bar: (i) sufficient to secure compliance by such Subcontractors with the obligations of confidentiality concerning Confidential Information as set forth in Section ___ of this Agreement; (ii) in accordance with Section ___ (Rights in Work Product), acknowledging such Subcontractor's work-for-hire obligation and Subcontractor’s obligation to transfer and/or assign any rights, title, and interest to all materials and Work Product in connection with performance hereunder in the event the Subcontractor’s work is not considered a work for hire; and (iii) effecting assignments of all Intellectual Property Rights concerning the Work Product, including the Deliverables to the State Bar as specified in Section ___. The State Bar, upon request, may review such agreements at any time before or after execution by such Subcontractors to ensure compliance with this Agreement.
3. Assignment of Personnel. Vendor must have control of its employees and Subcontractors (if any) (individually and collectively, “Personnel”) it assigns to the work of the Project; provided, however, that if the State Bar becomes dissatisfied with the performance of any of Vendor’s Personnel

providing Services, the State Bar may notify Vendor of the details of the unsatisfactory performance and the parties will cooperate to remedy the problem as soon as reasonably possible. If the State Bar makes such a request, Vendor will use its best efforts to reassign any Personnel who are the subject of the State Bar's dissatisfaction and instead attempt to provide Services through replacement Personnel. Services performed under the terms of this Agreement will be performed at the State Bar's offices or Vendor's offices.

4. Vendor's Project Liaison. Vendor must designate an employee of sufficient management rank to act as its representative in dealing with the State Bar ("**Vendor's Project Liaison**"). Vendor's Project Liaison must represent Vendor and have responsibility for ensuring that Vendor performs its obligations under this Agreement and for communicating with the State Bar regarding Project status and issues. Vendor must use reasonable efforts to minimize changing the person who is serving as the Vendor's Project Liaison during the Term.

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, (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. Jurisdiction. This Agreement is deemed to have been made and entered into by the parties at San Francisco, California and will be construed according to the laws of the State of California. Any litigation arising out of or in connection with the Agreement will be filed in the appropriate court in San Francisco, California.
3. Audit. The State Bar reserves the right to have an independent audit conducted of Vendor's compliance with the terms of this Agreement, if the State Bar reasonably believes such audit is necessary to ensure confidentiality and or financial or program accountability or integrity. Accordingly, Vendor agrees that the State Bar or its designated representative will have the right to review and to 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 two (2) years after final payment, unless a longer period is

stipulated. Vendor agrees 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 to audit in any subcontract related to the performance of this Agreement.