The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal ("RFP") for Commercial Real Estate Brokerage Services in Los Angeles.

The State Bar of California is seeking proposals from licensed commercial real estate brokerage firms ("vendors") with experience in providing commercial real estate brokerage and advisory services to users on large-scale commercial leasing and purchase transactions. The selected vendor will be retained to represent the State Bar in its pursuit of approximately 100,000 usable square feet of Class A office space to house its southern California operations, following the January 2014 expiration of its current lease in the AT&T Center in downtown Los Angeles. The State Bar is considering both purchase and lease options. In addition, the selected vendor will represent the State Bar in the likely sale of its 117,000 square foot surface parking lot in downtown Los Angeles.

As a practical matter the brokerage services agreement will likely terminate once these particular transactions are completed. For contracting purposes, however, the initial contract will be for three (3) years, with two options to renew for additional one (1) year term each.

Please submit six (6) hard-copies of your proposal and one (1) .pdf copy, no later than 4 p.m. on May 14, 2012 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 State Bar Act and

California court rules 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 and disciplinary and certification functions, the State Bar offers a number of other programs designed to assist, educate and protect its members and the public. The State Bar's programs are financed primarily by fees paid by attorneys and applicants to practice law. The State Bar has over 230,000 members, making it the largest unified state bar in the country. The State Bar has 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

A. Vendor Minimum Requirements

The State Bar will accept and evaluate proposals only from vendors that meet <u>ALL</u> of the following four (4) requirements:

- 1. <u>Licensing:</u> All real estate professionals who will be assigned to the State Bar's account must be real estate brokers ("brokers") licensed pursuant to Business and Professions Code §10130 et seq. and in good standing in the State of California as of April 1, 2012 and throughout the term of the contract. Only one submittal will be accepted from each firm, organization or company.
- 2. <u>Vendor Profile:</u> Vendors must provide real estate brokerage services to Los Angeles area commercial clients from an office within Los Angeles County, and must have a staff of at least 25 brokers in Los Angeles County. Only one submittal will be accepted from each firm, organization or company; competing "branch" offices or competing teams from the same corporate entity may not submit separate proposals. In calendar year 2011, the total value of all leasing deals completed by vendor in Los Angeles County must have been at least \$100 million, and the total value of all purchase/sale deals completed in Los Angeles County must have been at least \$100 million.
- 3. <u>Broker Experience:</u> The account executive(s) / lead brokers who will be assigned to the State Bar's account must each have a minimum of ten (10) years experience in providing commercial real estate brokerage services to clients. Within the last two (2) years, these brokers must have represented tenants in a minimum of ten (10) completed leasing transactions of at least

10,000 RSF each for Class A or B commercial office space in the Los Angeles area. Within the last three (3) years, these brokers must have represented parties in at least three (3) completed purchase or sale transactions in the Los Angeles area, valued at a minimum of \$3 million each.

4. <u>Conflict of Interest with LBA</u>: The brokers who will be assigned to the State Bar's account must not currently have a listing engagement with the State Bar's current landlord, LBA Realty, on any of LBA's Los Angeles County buildings. Additionally, vendor must disclose its current representation of LBA anywhere in the United States by any professionals employed by the firm. Dual agency at the firm (not employee) level will not necessarily constitute an insurmountable conflict of interest, but must be fully disclosed in the proposal so that it can be evaluated.

B. Current Occupancy Information

- 1. The State Bar conducts its operations in both Northern and Southern California. While headcount is divided equally between the two regions, functions differ somewhat: the San Francisco office handles regulatory functions, as well as member services and other programs related to the administration of justice; the Los Angeles office focuses almost exclusively on regulatory functions.
- 2. In San Francisco, the State Bar is the owner and majority occupant of 180 Howard Street, a 13-story office building in the downtown financial district. This information is provided for reference only; real estate services related to San Francisco are not included in the scope of this RFP.
- 3. In Los Angeles, the State Bar is a tenant in 1149 South Hill Street in the Southpark district of downtown. The low-rise 1149 South Hill Street and the connected high-rise 1150 South Olive Street comprise a complex known as the AT&T Center, which is owned and managed by LBA Realty. The complex was formerly known as the Transamerica Center.
- 4. The State Bar's lease commenced in 1994 and currently consists of approximately 121,000 square feet of Usable Area on six floors (Floors 4, 5, 7, 8, 9 and 10). This equates to approximately 143,000 Rentable Square Feet under the BOMA standards in effect at the time of original lease execution; more recent BOMA standards would measure the rentable area at approximately 166,000 RSF.
- 5. Approximately 280 State Bar employees work in the Los Angeles office. On average the office receives approximately 75 visitors per day, and also hosts large meetings several times a month. The State Bar does not anticipate any substantial changes to its functions in the foreseeable future,

though headcount may be reduced by relocating certain programs to the San Francisco office.

- 6. The State Bar's security procedures are typical of government agencies, but are more rigorous than those used by many private sector businesses: all visitors are screened through a metal detector; bags and packages are screened through an x-ray machine; visitors must be escorted from public areas into secured State Bar space; and access to State Bar floors and individual office suites is restricted by electronic key-card. The State Bar uses its own security staff for screening at the entrance to its space, in addition to the check-in/screening procedures in place at the building entrance.
- 7. The State Bar owns a 117,000 square foot surface parking lot one block away from 1149 South Hill Street. The State Bar therefore does not make use of AT&T Center parking to which it is entitled under its lease. The parking lot property consists of 15 parcels located on the block bounded by Grand Avenue on the west, 12th Street on the north, Olive Street on the east and Pico Boulevard on the south. The block contains three additional parcels which are not owned by the State Bar. The property is bisected by a public alley owned by the City of Los Angeles. The property is located within the City Center Redevelopment Area. The eight lots that front Grand Avenue are located in the city's R5 zoning district and the seven lots that front Olive Street are located in the city's C2 zoning district.

C. Future Office Space Considerations

- 1. The State Bar's current lease expires in January 2014.
- 2. A recently completed space programming study indicates the State Bar's requirements for Usable Area could be reduced from 121,000 to approximately 100,000 square feet, using more current industry space standards. Space requirements may be further reduced to approximately 85,000 usable square feet if certain programs and staff are relocated to the San Francisco office.
- 3. This project will involve evaluating and assessing the State Bar's available market options in a wide range of conventional and non-conventional buildings able to accommodate office occupancies in the greater Downtown Los Angeles submarket, and in selected other Los Angeles submarkets, including but not necessarily limited to the LAX area and the Eastern San Fernando Valley/Burbank area.
- 4. The resulting transaction may be structured as a direct lease; a sublease with sufficient available term; a conversion of a non-office building; or an acquisition or develop-to-suit transaction. Sale of the State Bar's parking lot may be included as part of this transaction, or as a separate transaction.

D. Scope of Services to be Provided Under the Contract

- 1. The selected vendor will be responsible for providing support to the State Bar's staff and Board in analyzing, negotiating, and closing on the lease and/or purchase of suitable office space for the State Bar's southern California operations, and on the likely sale of its parking lot property.
- 2. The principal responsibilities of the selected vendor shall be to identify and qualify potential buildings; conduct due diligence on each building; solicit term sheets from selected buildings; and negotiate the selected real estate transaction to minimize the State Bar's overall occupancy costs. Additionally the selected broker may be asked to list the State Bar's parking lot parcels for sale, to respond to submitted offers, and to assist the State Bar in the potential due diligence and closing process associated with such a land sale transaction.
- 3. Specific services may include, but are not limited to, the following:
 - a. Analyze the space programming study of State Bar requirements;
 - b. Review the State Bar's geographical parameters;
 - c. Prepare a comprehensive market study of available space options, along with an interpretation and assessment of relevant market trends;
 - d. Conduct due diligence investigation of each potential site's specific suitability for the State Bar's requirements as well as ownership financial strength/liquidity;
 - e. Assist client in determining appropriate shortlist of candidate buildings;
 - f. Prepare and negotiate landlord lease and/or building purchase agreements for existing location and alternatives;
 - g. Analyze initial term sheets received both financial and nonfinancial proposed terms, as well as build-out cost and timeframe implications;
 - h. Prepare presentations comparing alternatives to client;
 - i. Assist client in selecting a primary and fallback locations;
 - j. Solicit draft transaction documents from selected landlords and/or sellers;
 - k. Assist client and legal counsel with lease and/or purchase negotiation process;
 - 1. Coordinate execution of all transaction documents, evidence of insurance, Non- Disturbance Agreements, etc.
 - m. Assist client in the valuation, listing, and sale transaction of the parking lot property.
 - n. Other services as requested.

III. CONTRACT PRICING

Compensation for the entire scope of services as indicated in this RFP, including research, marketing and any additional/specialty support services related to potential sale, purchase or lease transactions, shall be through commercial real estate brokerage commissions based on sale price, purchase price or total rental consideration, as follows:

A. Sales Commission

Should the State Bar complete a transaction for the sale of its downtown L.A. parking lot property, vendor will receive a brokerage commission paid *by the State Bar*, based on a percentage of the selling price of the property, to be paid from the proceeds of the sale at the close of escrow. Vendor will state its requested commission percentage. The proposed commission will be the total commission paid by the State Bar, and *will include any commission due to the buyer's broker* pursuant to a commission split agreement between vendor and the buyer's broker. The State Bar would expect vendor to cooperate with outside brokers in accordance with standard market practice.

B. Purchase Commission

Should the State Bar complete a transaction for the purchase of any real property, the State Bar expects that vendor will be entitled to a brokerage commission paid *by the seller of the building*, pursuant to a commission split agreement between vendor and seller's broker, in accordance with standard market practice. Vendor will warrant that this is the case, and/or state other commission scenarios for consideration, if any, that it feels may be relevant.

C. Leasing Commission

- 1. Should the State Bar complete a transaction for the lease of office space, the State Bar expects that vendor will be entitled to a brokerage commission paid by the owner/landlord of the building, pursuant to a commission split agreement between vendor and landlord's broker, in accordance with standard market practice. Vendor will warrant that this is the case, and/or state other commission scenarios for consideration, if any, that it feels may be relevant.
- 2. Vendor will warrant that brokerage commissions paid by parties as stated above are the only compensation (direct or indirect) that will be received by the individuals/firm from transactions contemplated under this RFP. In the event that no transaction occurs as a result of this engagement, vendor shall not be entitled to compensation or reimbursement.
- 3. The State Bar recognizes that an 85,000 to 100,000 square foot occupancy by a reputable, stable and creditworthy organization such as the State Bar is highly valuable in today's office market, and one of its primary goals is to extract the maximum value both in terms of reducing occupancy costs

and monetizing its transactional leverage. Please include in your proposal any creative ideas for maximizing the State Bar's financial outcomes.

IV. GENERAL INFORMATION

The submission requirements for this RFP are set forth below. Submittal of a proposal shall constitute an irrevocable offer for 120 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 submittal.

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.

- A written confirmation that Vendor meets all minimum requirements for participation in the RFP process, as stated in RFP Section II.A. Please respond to each of the four requirements individually (see *Attachment A-*2.
- 2. A brief overview of Vendor's organization, including history, organizational structure, market position, etc.
- 3. A description of the qualifications and experience of the firm, and of the techniques, approaches and methods vendor will use in providing services to the State Bar as defined in RFP Section II.D. The submittal must include, but does not have to be limited to: a description of the firm's client mix; the range of transactional support services offered by the firm; any relevant research products offered by the firm; any other unique qualifications or capabilities the firm possesses relative to other firms that could assist the State Bar in its transactional goals.
- 4. Disclosure of any known business or financial relationships between the firm and members of the State Bar's Board of Trustees <u>http://www.calbar.ca.gov/AboutUs/BoardofTrustees/Roster.aspx</u> and State Bar staff working on this project (staff listed on *Attachment A-1*). Firms with financial relationships with members of the Board or State Bar staff may be disqualified from contracting with the State Bar.
- 5. The names and qualifications of the account executive(s) / lead real estate professionals proposed to be assigned to the State Bar's account who would be working directly with State Bar staff and potential landlords/owners. Please include all relevant experience, including

experience with non-profit and/or government clients, if any, and familiarity with the L.A. submarkets specifically identified by the State Bar (downtown, LAX area, Eastern San Fernando Valley/Burbank).

- 6. A list of the tenant-side commercial office lease transactions of at least 10,000 RSF within the Los Angeles area, closed by Vendor's proposed account executive(s) in the last two (2) years. Include building address, tenant, landlord, square footage, term, date closed (see *Attachment A-3*).
- 7. A list of the purchase/sale transactions valued at a minimum of \$3 million within the Los Angeles area, closed by Vendor's proposed account executive(s)/lead brokers in the last three (3) years. Include building address, buyer, seller, square footage, price, date closed (see *Attachment A-3*).
- 8. A list of at least five (5) client references for deals completed by the account executive(s)/lead brokers, with an emphasis on government and non-profit clients, if possible. Include all relevant transaction details and the primary client contact's title, email address and phone number (see *Attachment A-3*).
- 9. A list and description of any regulatory proceedings, licensing actions, lawsuits, arbitrations, formal protests or other legal actions related to real estate services in which Vendor and its account executive(s) / brokers / real estate professionals have been involved in the last two (2) years.
- 10. The most recent year's annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data (see *Attachment A-1*).
- 11. Copies of business licenses, professional certifications or other credentials for its account executive(s)/brokers/real estate professionals, together with evidence that Vendor, if a corporation, is in good standing and qualified to conduct business in California.
- 12. A proposed schedule of commissions for transactions described in RFP Section III.
- 13. A sample or template of a brokerage services agreement.
- 14. A written acknowledgement of the acceptance of the Contracting Requirements set forth in RFP Section V. Specific terms may be reserved for future negotiation, but must be clearly identified and reasons given for the reservation.

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

submit *Attachments A1-A3* in hard copy with the proposal, and electronically in native .xls format to andrew.conover@calbar.ca.gov by the due date specified on page one.

If specific submission requirements are particularly large and self-contained (i.e., sample brokerage agreement, samples of research tools and reports, etc.) 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 be prepared simply and economically, avoiding the use of 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.

A. 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.

B. Evaluation Process and Highest Scored Bidder

An evaluation team will review, in detail, all proposals that are 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, and request revised pricing offers from such bidders and make an award and/or conduct negotiations thereafter.

This Request for Proposal does not commit the State Bar to awarding a Contract. Bidders 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 vendor to provide services effectively and to the State Bar's standards of efficiency, customer service and professionalism (55%).
 Factors will include, but will not necessarily be limited to:
 - 1. Content and overall quality of the proposal.
 - 2. Reputation and position in the market.
 - 3. Experience and qualifications of the proposed account team.
 - 4. Demonstrated success in projects with similar requirements, including any other contracts with the State Bar.
 - 5. Client references.
 - 6. Unique tools or additional services provided.

- d. The total cost of the proposal solution (commission rate charged for sale of purchase lot property). If the proposal contains itemized rates, per piece pricing, or commission-based pricing, the State Bar reserves the right to calculate total contracted cost by calculating rates using either previous known usage activity or future projected volume. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by type to allow the State Bar to implement the solution over the term of the contract (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.

C. 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 June 12, 2012 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 June 19, 2012. The evaluation team will select a winning proposal subject to approval by the Board of Governors. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements sections below.

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

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

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

D. 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.

E. 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 8 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.

F. 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.

G. 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.

H. 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.

I. News Releases

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

J. 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 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 highest 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 Governors, 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:

- Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least Two Million Dollars (\$2,000,000.00); at least One Million Dollars (\$1,000,000.00) personal and advertising injury limit; at least One Million Dollars (\$1,000,000.00) premises and operations limit; at least One Million Dollars (\$1,000,000.00) each occurrence limit;
- 2. Workers' compensation coverage as required by law, together with employer liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence.
- 3. Comprehensive automobile liability insurance covering owned, leased, hired and non-owned vehicles with at least One Million Dollars (\$1,000,000.00) combined single limit.

4. 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, (1) acts of God or public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) embargoes, (9) earthquakes, and (10) unusually severe weather.
- 2. **Governing Law.** The agreement will be governed by the laws of the State of California without giving effect to its principles of conflict of laws.
- 3. **Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to this agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit shall be entitled to collect or enforce the judgment. This provision is separate and several and shall survive the merger of the agreement into any judgment.
- 4. **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.