

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Leasing, Property Management and Construction Management Services.

The State Bar is seeking proposals for Leasing, Property Management and Construction Management Services for 180 Howard Street, San Francisco, California, a 13-story, 207,000 square foot office building which the State Bar owns and in which it is the majority occupant, for a period of three (3) years, with an option to renew for an additional two (2) years.

The State Bar will host a vendor pre-bid conference on March 20, 2012, at 10:00 am in its Conference Room 4A at 180 Howard Street, San Francisco California to discuss this request in detail. Attendance is mandatory for all vendors intending to submit a proposal. The building is located at the corner of Howard and Main streets, 2 blocks south of Market Street and conveniently located close to BART, Muni and other public transportation. The State Bar has no parking facility at this location, only street and nearby lot parking is available.

Please submit seven (7) copies of your proposal no later than 4 p.m. on April 9 , 2012 to:

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

Attn: Steve Mazer
Operations
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

Throughout this RFP the terms "building," "property," "premises" or "site" refer to 180 Howard Street in its entirety, unless specifically noted otherwise.

A. Vendor Minimum Requirements for Participation in the Proposal Process

The State Bar will accept and evaluate proposals only from vendors which meet **ALL** of the following five (5) requirements:

1. Location: Manages San Francisco services from an office within the city of San Francisco.
2. All Services: Provides **all three** core services – leasing/brokerage; property management; and construction management – itself, not through outsourcing or subcontracting to another corporate entity. It is understood that these services may be provided by separate divisions/units within the vendor's company. Note: This requirement refers to the three core services, not to individual functions that are customarily performed by contract agencies/employees, such as engineering, janitorial or security services.
3. Leasing: Within the last **twelve (12)** months has completed a minimum of **ten (10)** landlord-side leasing transactions, of at least **5,000** rentable square feet each, for Class A or B commercial office space within the city of San Francisco.
4. Property Management: Manages a minimum of **1,500,000** rentable square feet of Class A or B commercial office space within the City of San Francisco, including at least **five (5)** office buildings of at least **150,000** rentable square feet each.

5. Construction Management: Within the last **twelve (12)** months, has provided construction management for at least **five (5)** tenant improvement build-outs of at least **5,000** rentable square feet each, AND has completed at least **three (3)** capital improvement projects (roof, elevator, HVAC systems, etc) of at least \$250,000 each.

Additionally, the State Bar would consider it a plus if vendor's management portfolio includes buildings where the owner is also a significant occupant. This is not a requirement for participation in the proposal process, but will be a factor in the Bar's evaluation.

B. 180 Howard Street Overview

The following information is provided as an overview. More detailed information about the building's measurements, occupancy, condition and other specifications are included in *Attachment C: 180 Howard Street Supplemental Information*.

Ownership

The State Bar owns, manages and is the majority occupant of 180 Howard Street, a 13-story office building in San Francisco's South Financial District submarket. Construction was completed in 1978. The Bar purchased the building in 1996 and paid off the mortgage in 2006. The building serves as the State Bar's headquarters (the Bar has another office in Los Angeles, in leased space).

Occupancy

The building has a gross measured area of approximately 223,000 square feet, and a rentable area (for leasing) of 207,000 Rentable Square Feet (RSF). The building's thirteen (13) floors are numbered Ground and 1 through 12.

On the ground floor, approximately 5,000 RSF are allocated to small retail tenants (with 3,700 RSF occupied and 1,300 RSF vacant); 4,500 RSF are occupied by the State Bar's mail room, print shop and reception area; the remaining area is floor/building common space (entry lobby/security area, outdoor perimeter courtyard, electrical and mechanical systems).

Floors 1 through 12 each contain approximately 16,500 RSF. The Bar occupies all of Floors 4 through 10 and a small portion of 3 (118,000 RSF). Floor 1 and the majority of Floor 3 are occupied by tenants. Floor 2 is vacant, in finished but outdated condition, having been built-out to the standards of a long-term tenant which vacated the space in late 2009. Floors 11 and 12 are vacant and in "warm shell" condition – outfitted with electrical and HVAC systems but without any demising walls or finishes.

Approximately 280 State Bar employees and 120 tenant employees work in the building. On average the building receives approximately 150 visitors per day, and also hosts large meetings several times a month.

The State Bar's security screening procedures for the building are more rigorous than those used in typical private sector buildings: All visitors are screened through a metal detector; bags and packages are screened through an x-ray machine; and visitors must be escorted from the lobby by a building occupant. These procedures are typical of government agencies, but could be a negative factor for some potential private sector tenants.

Of the three vacant office floors (2, 11 and 12), two will most likely be retained by the State Bar and built-out for its own use by programs that may be relocated from the State Bar's Los Angeles office, with the remaining floor leased to third-party tenants. Any change in space utilization by the Bar will not result in any leasing-related compensation to Vendor.

The State Bar intends to fund the Tenant Improvements for any vacant space leased to third-party tenants. Funds are available and will be specifically allocated in the State Bar's 2012 budget.

Leasing and Management

In past years the State Bar has retained various real estate brokers to serve as leasing agent for the building. The State Bar does not currently have an agreement with any broker.

Since purchasing the building the State Bar has used its own staff for all aspects of property management. Building services such as engineering, janitorial and security are provided by contracted vendors under the State Bar's direct supervision.

The State Bar now wishes to engage an integrated professional leasing, property management and construction management firm to attract and retain quality tenants and effectively manage tenant relationships, oversee the build-out of three currently-vacant floors and the implementation of several capital improvements, and enhance overall building operations.

C. Leasing Scope of Services

1. Services Provided: Vendor will act as the State Bar's leasing agent for third party leased premises within the building, providing services including, but not necessarily limited to, the following:
 - a) Prepare and implement a marketing plan for the building's available vacant space.

- b) Identify, solicit and recommend prospective tenants, through its own efforts and in cooperation with tenant brokers.
- c) Verify the background, suitability, financial viability and creditworthiness of prospective tenants.
- d) Negotiate lease terms and conditions with prospective tenants.
- e) Negotiate renewal terms and conditions with existing tenants.
- f) Coordinate lease preparation and execution.
- g) Provide regular reports of leasing efforts/status and relevant market conditions.
- h) Provide all other services as required in the normal course of business in managing the building's leasing program.

2. Service Considerations:

- a) The State Bar's Office of Operations will be Vendor's point of contact for all matters related to Leasing Services.
- b) Historically leases have been prepared by the State Bar's Office of General Counsel. Vendor will work with the State Bar to create new lease templates, as necessary.

3. Items to Include in Proposal: Vendor is directed to include the following items in its proposal for Leasing Services:

- a) A description of the techniques, approaches and methods vendor will use in providing leasing services, including any unique qualifications or capabilities it possesses relative to other vendors.
- b) A brief assessment – which the State Bar understands will be preliminary at this point – of the building's competitive position in the market, including estimated rental rates and examples of the most likely types of tenants.
- c) A description of the qualifications, background and experience of the account executive and/or any other key staff proposed to be assigned to the State Bar's leasing team.
- d) A list of the landlord-side commercial office lease transactions of at least 5,000 RSF, within the city of San Francisco, closed by

vendor's proposed account executive in the last two (2) years. Include building address; landlord; tenant; number of square feet; term; date closed.

- e) Samples of reports used to keep landlords informed of leasing efforts, market conditions, etc.
- f) A sample or template of a Leasing Services agreement.

D. Property Management Scope of Services

1. Services Provided: Vendor will be responsible for all aspects of building management and operations, providing services including, but not necessarily limited to, the following:
 - a) Tenant management, including lease administration/enforcement; tenant communications; rent collection; escalations/operating expense administration; and all related tenant services and issues.
 - b) Coordination of Tenant Improvements and other capital improvements (as more fully described below in Section E, Construction Management Scope of Services).
 - c) Engineering services, including the operation, maintenance, and repair of Heating, Ventilation & Air Conditioning systems; Electrical systems and lighting; Plumbing; Fire/Life Safety systems; Elevators; and all other building systems, equipment, envelope, exterior, grounds, and structural elements.
 - d) Janitorial/custodial services, including evening and day porter cleaning services; trash removal; carpet cleaning; window washing; pest control, and related services.
 - e) Security services, including administration/enforcement of access control procedures; visitor check-in/screening; response to emergency situations and safety hazards; operation and maintenance of security-related equipment and systems; and any other standard security services normally associated with protecting people and property in high-rise office buildings. Such services are to be provided by uniformed, unarmed contract security guards.
 - f) Deferred maintenance/upkeep required to bring the building up to and/or maintain the building at Class A standards. Items will include but will not necessarily be limited to paint, carpet, landscaping, etc.

- g) Procurement of all goods and services required for the management and operation of the building, using competitive bidding processes for vendor evaluation and selection.
- h) Management/administration of contracts with vendors, utility companies, and others as required.
- i) Regulatory/legal compliance, coordination and reporting with city, state and federal agencies, as required.
- j) Compliance with a budget approved by the State Bar for all goods, services and activities related to building operations and management.
- k) Complete accounting and record keeping for all expenses incurred, income and other revenue received.
- l) Submission of monthly reports detailing building operation and expenses, maintenance activities; tenant issues; new and/or expiring leases; and other information as required by the State Bar.
- m) All other services as required in the ordinary course of business in managing and operating the building.

2. Service Considerations:

- a) The State Bar's Office of Operations will be Vendor's point of contact for all matters related to Property Management, in the context of the property manager/landlord relationship.
- b) The State Bar's Office of Operations will, additionally, be Vendor's point of contact for all matters related to Property Management, in the context of the property manager/tenant relationship. In this context, Vendor will, for the most part, relate to the State Bar as a single, large tenant.
- c) Services related to the State Bar's internal operations, such as the mail room, copy center, conference room set up, and catering, (what some vendors call "facilities services") are provided by State Bar staff and are excluded from the scope of services requested from the Vendor. At the same time, engineering, janitorial and security staff are currently called upon to perform Bar-specific tasks (office moves, furniture maintenance, equipment installation, specialized cleaning, security-related tasks, etc.) which, under other circumstances, might be considered "tenant internal" services rather than "building provided" services. Such distinctions have not been necessary under the State Bar's historical (and current) system of self-managing the building. As the State Bar will

continue to require these services, Vendor will need to work with the State Bar to more precisely define the scope of service in this area.

- d) Building hours and services are currently provided as follows: Building access 24/7 with restrictions set by individual tenant policy; security staff on site Monday to Friday 6:30 a.m. to 7:00 p.m. and Saturday 9:00 a.m. to 5:00 p.m.; engineering staff on site Monday to Friday 7:00 a.m. to 5:00 p.m.; day porter janitorial staff on site Monday to Friday 9:00 a.m. to 3:00 p.m.; evening janitorial staff on site Monday to Friday 5:00 p.m. to 1:00 a.m. The State Bar expects Vendor to maintain this schedule, but will consider reasonable proposals for adjustments.
- e) It is the State Bar's intention to maintain and operate 180 Howard Street as a "Class A" building. Vendor must be capable of providing a level of service consistent with or superior to other comparable buildings in downtown San Francisco. Successful management skills will be quantified by results, such as tenant retention and new tenant development, reasonable cost containment, cooperative and effective relationships with the State Bar, building condition and cleanliness, timely and comprehensive reports, etc.
- f) Vendor will employ or contract with only those persons who by training, aptitude and demeanor are able to provide service in a competent, professional and courteous manner. The State Bar reserves the right to participate in the interview process and to approve or reject the assignment of vendor's staff or contractors to its account. The State Bar further reserves the right to remove any employee or contractor from its account, at any time and for any reason.
- g) **Excellent** oral and written communication skills are **essential requirements** for the property manager and any other employees who will have direct contact with State Bar staff or building tenants. Vendor will be required to demonstrate these skills to the State Bar's satisfaction.
- h) Vendor shall be responsible for all personnel-related matters for its employees and contractors, including compensation, labor relations, employee training and development, contract negotiation, dispute resolution, hiring or termination, job assignment and performance, and compliance with equal employment opportunity requirements.

- i) Vendor's employees and contractors must obtain security clearance before being assigned to the State Bar's account. Security clearance is obtained via an FBI and California DOJ criminal history background check. The State Bar will incur the fee for the FBI and DOJ background checks. Vendor must immediately notify the State Bar if an employee assigned to the State Bar's account is terminated.

3. Items to Include in Proposal: Vendor is directed to include the following items in its proposal for Property Management Services:

- a) A description of the techniques, approaches and methods Vendor will use in providing property management services, including, but not necessarily limited to:
 - i. Any unique qualifications or capabilities relative to other vendors.
 - ii. Experience (if any) with, and strategies for, managing properties where the owner is also a significant occupant.
 - iii. Strategies, methods and day-to-day procedures for tenant management issues, including tenant service requests; solicitation of tenant feedback; billing/tracking/monitoring of rent, operating expenses, late fees, lease expirations, renewal options, refusal rights, etc.
 - iv. Strategies, methods and day-to-day procedures for preventive and remedial maintenance, vendor management and general building operations.
 - v. Actions taken or planned to help reduce and/or control administrative and operating overhead expenses that are allocated to its managed properties.
 - vi. The standards of performance/excellence used to monitor and evaluate staff and service providers.
- b) A list of all commercial office buildings currently under management in the city of San Francisco, including building address; number of square feet; landlord; number, size and composition of tenants; date assignment began; and any other factors relevant or comparable to the State Bar or to 180 Howard Street.
- c) A staffing plan, including vendor's staff assigned on-site; vendor's staff dedicated or utilized off-site; and contract staff. Include a

description of the qualifications, background and experience of key staff proposed to be assigned to the State Bar's property management team.

- d) An implementation plan, describing the methods and steps by which vendor will assume responsibility for providing property management services. In addition to the specific tasks and milestones that would be applicable in any type of property management transition, this section must also address the unique challenges that the Vendor and the State Bar will jointly face in transitioning the property from one that was self-managed by the owner/majority occupant, to one that will now be managed by a vendor, with the owner remaining as majority occupant.
- e) A description of Vendor's procurement policies, procedures and strategies, including, but not necessarily limited to, the competitive bidding process Vendor uses for the review, analysis, and selection of goods and service providers; and, any arrangements or capabilities for volume/bulk discounts for goods and services, leveraging Vendor's purchasing power for multiple properties.
- f) A description of Vendor's finance-related policies, procedures and strategies, including, but not necessarily limited to: budget preparation and monitoring; billing and accounts receivable; invoice processing and accounts payable; internal management and audit controls; financial reporting.
- g) Samples of reports used to keep landlords informed of building operations, revenues and expenses, tenant issues, maintenance activities, new and/or expiring leases, and other related information.
- h) A sample or template of a Property Management Services agreement.

E. Construction Management Scope of Services

1. Services Provided: Vendor will be responsible for all aspects of construction management and coordination services, including supervision and direction of improvements or alterations to the building, common areas, or tenant premises.
2. Service Considerations:

- a) The build-out/renovation of vacant floors 2, 11 and 12 are known projects for which Vendor's construction management services will be required.
 - b) The capital improvements listed in *Attachment C, Section C-8* are known projects for which Vendor's construction management services may be required as a supplement to Vendor's property management services.
 - c) The State Bar may consider additional tenant improvement construction projects related to its own occupied premises, which Vendor will be asked to coordinate.
3. Items to Include in Proposal: Vendor is directed to include the following items in its proposal for Construction Management Services:
- a) A description of the techniques, approaches and methods Vendor will use in providing construction management services, including, any unique qualifications or capabilities relative to other vendors.
 - b) A list/description of the ten biggest space build-outs (by square feet) and the ten biggest capital improvement projects (by project cost) that Vendor has managed within the last two (2) years within the city of San Francisco.
 - c) A description of the qualifications, background and experience of key construction management staff members who will or may be assigned 180 Howard Street projects.
 - d) An explanation of the parameters/thresholds Vendor uses to determine which projects are handled under regular property management services (for no additional fee beyond the regular property management fee), versus those that require additional "construction/project management" services (and related fees). Minor projects, defined as less than \$50,000 in total cost, are expected to be included under the basic property management fee, and not separately charged.
 - e) A description of Vendor's procurement policies, procedures and strategies, including, but not necessarily limited to, the competitive bidding process Vendor uses for the review, analysis, and selection of goods and service providers; and, any arrangements or capabilities for volume/bulk discounts for goods and services, leveraging Vendor's purchasing power for multiple properties. [Only information that is different from the response for property management need be included.]

- f) Samples of reports, schedules, project management plans and communication vehicles used to keep landlords (and tenants) apprised of construction management projects.
- g) A sample or template of a Construction Management Services agreement.

III. CONTRACT BID PRICING

Vendor will submit all itemized costs in *Attachment A: Itemized Cost Proposal*. As the State Bar may award a contract based on the initial offer, Vendor should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those bidders falling within a competitive range, and to request revised pricing offers from them and to make an award or conduct negotiations thereafter.

Requirements for the structure and format of the cost proposal are noted below.

A. Leasing

Vendor will quote a commission rate per rentable square foot per year, with a cap, for the following types of lease transactions:

Transaction Type 1: New leases, secured with the assistance of a cooperating (tenant) broker (includes dual agency scenarios):

Vendor’s Listing Team: \$___ per RSF per year, capped at \$___; plus
 Cooperating Broker: \$___ per RSF per year, capped at \$___

Transaction Type 2: New leases, secured directly, without assistance of a cooperating broker:

Vendor’s Listing Team: \$___ per RSF per year, capped at \$___

Transaction Type 3: Lease renewals/expansions, secured with the assistance of a cooperating (tenant) broker (includes dual agency scenarios):

Vendor’s Listing Team: \$___ per RSF per year, capped at \$___; plus
 Cooperating Broker: \$___ per RSF per year, capped at \$___

Transaction Type 4: Lease renewals/expansions, secured directly, without assistance of a cooperating broker:

Vendor’s Listing Team: \$___ per RSF per year, capped at \$___

Proposed Payment Schedule for all four Transaction Types:

For the purpose of establishing a proposed contract budget, and to allow for apples-to-apples price comparisons of all proposals, Vendor is requested to apply its commission rates above to a transaction for a ten year lease of Floor 2. *The leasing price proposal is found in Attachment A-1.*

B. Property Management

Vendor may quote a fee for property management as **EITHER** a rate per rentable square foot for the entire building, **OR** a rate per rentable square foot for space occupied by the State Bar, *plus* a percentage of gross rent revenue for space occupied by tenants, with a guaranteed minimum.

The management fee is to be all-inclusive for management of the building, including salaries and benefits of the assigned property manager and any related off-site management support. It *excludes* all expenses directly related to operating the building (utilities, vendors, etc). Note: It is understood that some property management companies directly employ engineers or other trade staff, while others outsource to contractors. In order to obtain apples-to-apples price proposals from all vendors, costs for trade staff should NOT be included in the property management fee, even in cases where trade staff is directly employed by the Vendor.

The proposed cost and scope of any optional services, organizational overhead, etc, that are not included in the base property management fee should be clearly defined and described.

The property management cost proposal is found in Attachment A-2.

C. Construction Management

Vendor will quote its construction/project management fee as a percentage of project cost.

As stated above in **Section II.E.3.d.**, minor projects, defined as less than \$50,000 in total cost, are expected to be included under the basic property management fee, and not separately charged.

Project Type 1: Fixed percentage basis

Projects with a total cost of up to \$_____ are charged a fixed percentage of total cost, as follows:

Project cost from \$_____ to \$_____ @ _____%
Project cost from \$_____ to \$_____ @ _____%, etc.

Project Type 2: Progressive percentage basis

Projects with a total cost over \$_____ are charged a progressive percentage of total cost, as follows:

Project cost from \$_____ to \$_____ @ ____%

Project cost from \$_____ to \$_____ @ ____%, etc.

For the purpose of establishing a proposed contract budget, and to allow for apples-to-apples price comparisons of all proposals, Vendor is requested to apply its management rates above to the known tenant improvements (build-outs) and capital improvements that will be undertaken following commencement of the contract. See *Attachment C, Section C-8*, for a more detailed description of capital improvements.

The construction management price proposal is found in Attachment A-3

IV. GENERAL INFORMATION

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

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

A. Submission Requirements

To be considered responsive, a proposal must contain the following, referenced by **numbered tabs** and in the order below:

1. A brief (two- to three-page) overview of bidder's organization, including history, organizational structure, services, market position, strategic alliances, etc. Brochures and marketing materials may be included as a supplement, but should not take the place of a brief written response.
2. A written confirmation that bidder meets all minimum requirements for participation in the proposal process, as stated in **RFP Section II.A.1.--5**. Please respond to each of the five requirements individually.
3. Copies of business licenses, professional certifications and affiliations, or other credentials, together with evidence that bidder, if a corporation, is in good standing and qualified to conduct business in California.

4. 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 to andrew.conover@calbar.ca.gov by the due date specified on page one.
5. The most recent year's Statement on Auditing Standards (SAS) No. 70 report or equivalent report on internal controls.
6. A detailed proposal for Leasing Services, as more fully described in **RFP Section II.C.3.a--f.**
7. A detailed proposal for Property Management Services, as more fully described in **RFP Section II.D.3a.--h.**
8. A detailed proposal for Construction Management Services, as more fully described in **RFP Section II.E.3a.--g.**
9. An explanation of how the three separate teams (leasing, property management and construction management) will communicate/coordinate in order to provide an integrated solution to the State Bar. This explanation may be incorporated into the three service proposals above rather than provided separately, as long as it is *specifically* addressed.
10. References with contact information from a minimum of three clients in San Francisco who: currently use bidder's property management services for a comparable building; currently use bidder's services for leasing, or have used those services within the past eighteen (18) months; have used bidder's services for construction management within the past eighteen (18) months. It is preferable to have references from clients who use/have used **all three** services, but if this is not possible it is acceptable to include references from clients who have used only one or two services, as long as at least three references are provided for each category of service. The reference detail should be included in the body of the proposal, in *addition* to the listings noted on **Attachment B: Vendor History Questionnaire.**
11. The results of any client satisfaction surveys conducted within the last twenty-four (24) months, particularly as they relate to properties within the city of San Francisco. If no surveys were conducted, state this fact.
12. A list and description of comparable clients/properties the bidder has *added* and *lost* in the last twenty-four (24) months.
13. A list and description of any legal actions, lawsuits, arbitration or formal protests related to real estate services in which bidder has been involved in the last twenty-four (24) months.

14. A detailed cost proposal, as more fully described in **RFP Section III.A.—C.** Bidders must submit **Attachment A: Itemized Cost Proposal** with its proposal in hard copy, and electronically in native .xls format to andrew.conover@calbar.ca.gov by the due date specified on page one.
15. 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.

Proposals which fail to address each of the submission requirements above may be deemed non-responsive and will not be further considered. Note that responses to questions must be specifically answered within the context of the submitted proposal. The State Bar's evaluation team will not refer to a designated web site, brochure, or other location for the requested information. Responses that utilize references to external materials as an answer will be considered non-responsive.

B. Rejection of Proposals

The State Bar reserves the right in its sole discretion to reject any or all proposals in whole or in part, without incurring any cost or liability whatsoever. All proposals will be reviewed for completeness of the submission requirements. If a proposal fails to meet a material requirement of the RFP, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a proposal is not in substantial accord with RFP requirements.

Immaterial deviations may cause a bid to be rejected. The State Bar may or may not waive an immaterial deviation or defect in a proposal. The State Bar's waiver of an immaterial deviation or defect will in no way modify the RFP or excuse a bidder from full compliance with the RFP requirements.

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

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

C. Evaluation Process and Highest 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 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 (40%).
 - d. The financial viability of the bidder as evidenced by standard financial reports (10%).
 - e. The total cost of the proposal solution. If the proposal contains itemized rates, per piece pricing, or commission-based pricing, the State Bar reserves the right to calculate total contracted cost by calculating rates using either previous known usage activity or future projected volume. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized

by type to allow the State Bar to implement the solution over the term of the contract (35%).

2. If a large number of proposals are received, the State Bar reserves the right to review the proposals using a tiered evaluation system. All qualified proposals will be evaluated based on the Submission Requirements and Cost, with the top candidates advancing as finalists and receiving a full evaluation as outlined above.

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSB will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice sent to bidders on or about May 11, 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 May 18, 2012. 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, 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.

E. Errors in the RFP

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the bidder should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior

to the date fixed for submission of proposals by issuing an addendum to all potential bidders to whom the RFP was sent.

If prior to the date fixed for submissions, a bidder knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the bidder shall bid at its own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

F. Questions Regarding the RFP

Questions regarding the RFP may be addressed in person at the vendor pre-bid conference on March 20, 2012 at 10:00 am in the State Bar Conference Room 4A at 180 Howard Street, San Francisco. Questions after this conference 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.

G. Addenda

The State Bar may modify the RFP prior to the date fixed for submission by posting, mailing, emailing or faxing an addendum to the bidders known to be interested in submitting a proposal. If any bidder determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than 5 days before the deadline for submitting proposals.

H. Withdrawal and Resubmission/Modification of Proposals

A proposal may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The notice must be signed by the bidder. The bidder may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline.

Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed after the evaluation process begins.

I. Protest Procedure

A bidder may protest the award if it meets all the following conditions:

1. The bidder has submitted a proposal that it believes is or should have been the HSB, under the criteria set forth above;
2. The bidder believes that its proposal meets the State Bar's administrative and technical requirements, proposes services of proven quality and performance, and offers a competitive cost to the State Bar; and
3. The bidder believes that the State Bar has incorrectly selected another bidder.

A bidder qualified to protest should contact Andrew Conover, Finance Manager, (415) 538-2207, to attempt an informal resolution. If this contact is unable to resolve the protest to the bidder's satisfaction, the bidder must file a written protest within 5 days of the notice of intention to award the contract. The written protest must state the facts surrounding the issue and the reasons the bidder believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

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

Attention: Peggy Van Horn, Chief Financial Officer

Protests will be reviewed and decided by the State Bar's Award Protest Team within 30 days after the State Bar issues written acknowledgment of the protest. In the event that a protest is filed, the contract award will be postponed pending resolution of the protest.

J. News Releases

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

K. Disposition of Materials

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the bidder. One copy of each proposal will be retained for the State Bar's official files and become a public record. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. The 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 standards of the industry. Vendor represents and warrants that none of its work performed under this Agreement will infringe on the rights of third parties. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work. Vendor will provide a contact person available and authorized to remedy any non-conformity with this warranty. If any of Vendor's work is found to be infringing, Vendor will correct the work to be non-infringing at no charge to the State Bar.

C. Equipment, Tools, Supplies

The Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. The Vendor is not required to purchase, rent or hire any equipment, tools, supplies,

offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

D. Indemnity Obligations of Vendor

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

E. Insurance Obligations of Vendor

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

1. Commercial general liability insurance with a general aggregate limit (other than products/completed operations) of at least 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 Five Million Dollars (\$5,000,000) and an occurrence limit of five Million Dollars (\$5,000,000).

5. Umbrella Liability in excess of Commercial General Liability and Comprehensive Automobile Liability with a limit of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

The Vendor will deliver to the State Bar Office of Operations office at 180 Howard Street, San Francisco, CA 94105, 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.