

The State Bar of California

# INVITATION FOR BIDS



This document is an Invitation for Bid (“IFB”) for a new three year Microsoft Enterprise Agreement (“EA”) enrollment.

The State Bar is seeking proposals for Microsoft server and desktop software licensing for the entire enterprise. Contact with State Bar personnel in connection with this IFB may not be made other than as specified in this IFB. Unauthorized contact of any State Bar personnel may be cause for rejection of a bid.

Please submit one (1) copy of your proposal electronically no later than 3 p.m. on November 26, 2012 to:

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

Attn: Michael Williams  
Information Technology  
415-538-2405  
[michael.williams@calbar.ca.gov](mailto:michael.williams@calbar.ca.gov)

## I. INTRODUCTION

The State Bar of California (“the State Bar”), created in 1927 by the Legislature and adopted into the California Constitution in 1960, is a public corporation within the judicial branch of state government. The State Bar is a unified, or integrated bar, and membership is mandatory for all attorneys who are licensed to practice law in the state. In addition to its mandated licensing and disciplinary and certification functions, the State Bar offers a number of other programs designed to assist, educate and protect its members and the public. The State Bar has offices located in Los Angeles, and San Francisco. More information about the State Bar can be found at <http://www.calbar.ca.gov/AboutUs.aspx>.

## II. LICENSING

The State Bar is seeking proposals for initiating a new three year Microsoft Enterprise Agreement (EA) enrollment necessary to keep up-to-date the software licensing on its servers and desktops for its technology infrastructure.

Bids must include true-up prices by line item, a percentage above/below cost that can be applied to items on the agreement price list (but that are not on the enrollment "at signing") and annual price for each of the three years, per individual columns in Attachment A: *Itemized Cost Proposal*.

Regarding the "System Center Standard" line item T9L-00223, the State Bar has existing SCOM enterprise and standard licenses that will convert, please contact our Microsoft rep, John Robinson at 415-894-2150 with any questions on how to price. Responses must be based on the guidelines of Microsoft's Software Cooperative Agreement (SCA) for California.

### **III. GENERAL INFORMATION**

The submission requirements for this IFB are set forth below. A proposal shall constitute an irrevocable offer for 45 business days following the deadline for its submission. Reference to a certain number of days in this IFB shall mean business days unless otherwise specified.

#### **A. Submission Requirements**

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

1. A brief description of the history and organization of the bidder's firm, and of any proposed subcontractor, including a description of why the firm is qualified to supply the licensing, including documentation of Microsoft State of California Large Account Reseller (LAR) status.
2. Copies of business licenses, professional certifications or other credentials, together with evidence that bidder, if a corporation, is in good standing and qualified to conduct business in California.
3. A firm total bid price, contained in a sealed envelope separate from the remaining portion of the bidder's response, that breaks out the costs for each of the products described in Attachment A: *Itemized Cost Proposal*, including *True-Up* pricing by line item and percentage above cost for items on the agreement not on the enrollment at signing.

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

#### **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. A proposal may be rejected if it fails to meet a material requirement of the IFB, or if it is incomplete or contains irregularities. A deviation is material to the extent that a proposal is not in substantial accord with IFB 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 shall in no way modify the IFB or excuse a bidder from full compliance with the IFB 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 IFB.

#### **C. Evaluation Process and Highest Score Bidder**

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.

This Invitation for Bid 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 to its interest in its sole discretion, and to waive minor irregularities. The State Bar further reserves the right to seek new Proposals when such procedure is considered by it to be in the best interest of the State Bar.

#### **D. Award and Execution of Contract**

Subject to the State Bar's right to reject any or all bids, the contract will ordinarily be awarded to the most responsive bidder with the lowest cost ("Lowest Cost Responsive Bidder" or "LCRB"). 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 November 27, 2012 of the Bar's intention to award the contract to the LCRB.

If the contract is not awarded to the LCRB, the LCRB must be notified of that fact at least five days before the State Bar makes the award. Notification will be made by

email and via USPS mail. The notice shall include the reason that the contract is not being awarded to the LCRB.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the IFB, or on any other matter in connection with the selection process, should be addressed in writing to Andrew Conover, Finance Manager, at [andrew.conover@calbar.ca.gov](mailto:andrew.conover@calbar.ca.gov).

Where written notice is required in this IFB, the notice must be sent by U.S. mail and either facsimile or e-mail.

**E. Errors in the IFB**

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the IFB, the bidder should immediately provide the State Bar with written notice of the problem and request that the IFB 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 IFB was sent.

If prior to the date fixed for submissions, a bidder knows of or should have known of an error in the IFB 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 IFB**

Questions regarding the IFB may be addressed in writing to Michael Williams at [michael.williams@calbar.ca.gov](mailto:michael.williams@calbar.ca.gov). All questions must be submitted no later than two (2) days prior to the date for submission of proposals. 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 IFB's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the IFB 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 five (5) days before the deadline for submitting proposals.

**G. Addenda**

The State Bar may modify the IFB 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 to be the lowest cost responsible, 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 IFB 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 pages to non-State Bar personnel. By submitting a proposal, a bidder agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

**IV. CONTRACTING REQUIREMENTS**

**A. General Terms and Conditions**

The final agreement shall be by Purchase Order and governed by The State Bar's General Terms and Conditions as set forth therein, a sample form of which is attached hereto as Attachment B. Submission of a proposal shall constitute agreement to contract on these terms. Any bid proposing alternate language will be considered a counter proposal and subject to rejection as non-responsive.

**B. Additional Terms and Conditions**

In addition to the above-referenced General Terms and Conditions, the Purchase Order shall also contain the following terms:

1. Assignment of Warranties. To the extent that third party manufacturers have provided the bidder with any warranties or made other commitments regarding the equipment, products or goods that the bidder has included in its bid to the State Bar of California, bidder will pass through and assign to the State Bar any and all such manufacturers' warranties and other commitments, and/or take such action as may be necessary to ensure that the State Bar is entitled in full to all such manufacturer's warranties and obligations.

2. Warranties. Unless otherwise specified by the bidder in its bid response, the warranties specified hereunder shall begin upon the State Bar's acceptance, in writing, of the deliverable or service in question.
  - a. Bidder warrants that the goods furnished under the Purchase Order shall conform to the requirements of the Purchase Order (including all descriptions, specifications and drawings made a part thereof) and such goods will be new, merchantable, fit for their intended purposes, and free from defects in material and workmanship.
  - b. Bidder represents and warrants that it is a duly authorized value added reseller of the equipment, software and services specified by the State Bar and that it has a value added reseller's agreement currently in force with each and every applicable company or manufacturer under which the bidder is authorized to make the commitments made in the Purchase Order.
  - c. Bidder warrants that it will arrange with the manufacturers for a direct or sublicense for any operating systems software, general utilities, or applications software included with the goods.
  - d. Bidder warrants that any and all software required hereunder will perform in accordance with its license and any accompanying documentation.
  - e. Bidder warrants that all deliverables (including software) furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or software; and (ii) will not violate any U.S. intellectual property right.
  - f. Service Warranties. In connection with installation and configuration of the Equipment, the bidder warrants and represents that it and any and all of its authorized agent(s) possess such expertise, experience and resources to perform the installation services in a diligent, timely and professional manner consistent with the highest standards of the industry. The bidder also warrants that installation and configuration of the Equipment by the bidder and any authorized agent(s) and any related components will not alter or damage the State Bar's existing computer network or systems.

g. Indemnity. To the fullest extent permitted by law, the bidder of the goods agrees to protect, indemnify, defend and hold the State Bar and the State Bar's Board of ~~Governors~~ Trustees, officers, employees, agents and representatives and each of their successors and assigns harmless from and against any and all losses, claims, actions, demands, proceedings, liabilities, damages, judgments, fines, penalties, settlements, costs and charges, including, without limitation, attorneys' fees and expenses, arising directly or indirectly from or in connection with (a) any breach of the terms of the Purchase Order, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by the bidder or its authorized agent(s), including but not limited to it or their employees, subcontractors, agents, representatives or assigns (collectively, "Bidder's Agents") in the performance or non-performance of the professional services required to be performed by the installer under the Purchase Order; or (c) the State Bar's enforcement of its rights under this indemnity provision. The bidder agrees that its obligations under this indemnity will survive the expiration and termination of the terms of the Purchase Order.

- D.** In the event of any conflict or inconsistency with the above terms and the State Bar's General Terms and Conditions, the above terms shall control.
- E.** The above terms and the State Bar's General Terms and Conditions are not negotiable.
- F.** No oral understanding or agreement shall be binding on either party. No contract or agreement, express or implied, shall exist or be binding on the State Bar before the State Bar's execution of a Purchase Order authorizing purchase of the Equipment.