

The State Bar of California

# REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Professional Auditing and Accounting Services.

The State Bar of California (“the State Bar”) is seeking proposals for independent auditing services for its annual financial statements including its statement of chargeable/non-chargeable expenses for the years 2013-2017. The contract term desired is for an initial three (3) year term, not to exceed five (5) years total. By state law, the State Bar’s annual audit must be performed by an independent national or regional firm with at least five (5) years of governmental auditing experience. Regional is generally defined as auditors having multiple offices throughout the western United States.

Please submit 4 copies of your proposal no later than 4 p.m. on September 30, 2013 to:

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

Attn: Peggy Van Horn  
Finance  
415-538-2353  
peggy.vanhorn@calbar.ca.gov

## **I. INTRODUCTION**

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 243,000 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 85 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.

Beginning in 2012, SB 163 (Stats. 2011, Ch. 417) changed the governance structure of the State Bar. The State Bar's governing board, formerly known as the Board of Governors, has been renamed to the Board of Trustees. Between January 1, 2012 and October 31, 2014, the board will gradually transition from twenty-three members to nineteen members. The nineteen members will include six lawyer members elected from new State Bar Districts based on California's six appellate court districts; five lawyer members appointed by the California Supreme Court; one lawyer member appointed by the Senate Committee on Rules; one lawyer member appointed by the Speaker of the Assembly; and six public members of whom four are appointed by California's Governor, one by the State Senate Committee on Rules and one by the Speaker of the Assembly.

The State Bar's fiscal year begins on January 1 and ends on December 31. The State Bar currently has 600 authorized fulltime employees and an annual budget of approximately \$147 million. The accounting and financial reporting functions of the State Bar are centralized. It follows the "business-type" activities reporting requirements of GASB Statement No. 34 that provides a comprehensive one-line look at the Bar's financial activities. The proprietary fund model is followed, and the full accrual basis of accounting is used. See included *Attachment C: Financial Statements for the Year Ended December 31, 2012 / Independent Auditors' Report* as well as *Attachment D: The 2012 Report to the Board of Trustees* from the MGO audit firm for additional information.

Additional information regarding the State Bar can be found in this document, section IV: Organizational Structure. More information can be found on the State Bar's website at [http://calbar.ca.gov/state/calbar/calbar\\_home\\_generic](http://calbar.ca.gov/state/calbar/calbar_home_generic).

## **II. STATEMENT OF WORK**

### **A. Scope of Work to be Performed**

California Business and Professions Code § 6145 requires the State Bar to contract with an independent national or regional public accounting firm to audit its financial statements each fiscal year. The statute requires a copy of the audit and financial statement to be submitted to the State Bar's Board of Trustees and to specified public officials within 120 days of the close of the State Bar's fiscal year, which is the calendar

year. Any audit of the State Bar's financial statements must be completed no later than April 15th of each year.

## **B. Auditing Standards to Be Followed**

To meet the requirements of this request for proposals, the audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants.

## **C. Reports to Be Issued**

Following the completion of the audit of the fiscal year's financial statements, the auditor shall issue a report on the fair presentation of the financial statements in conformity with generally accepted accounting principles. The auditor shall communicate in a letter to management any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. In addition, the following conditions shall be considered reportable:

1. **Irregularities and illegal acts.** Auditors shall be required to make an immediate, written report of all irregularities and illegal acts of which they become aware to the following parties:
  - a. Executive Director
  - b. Chief Financial Officer
  - c. Audit Committee Chair
  
2. **Reporting to the audit committee.** Auditors shall assure themselves that the State Bar's audit committee is informed of each of the following:
  - a. The auditor's responsibility under generally accepted auditing standards
  - b. Significant accounting policies
  - c. Management judgments and accounting estimates
  - d. Significant audit adjustments
  - e. Other information in documents containing audited financial statements
  - f. Disagreements with management
  - g. Management consultation with other accountants
  - h. Major issues discussed with management prior to retention
  - i. Difficulties encountered in performing the audit

## **D. Special Considerations**

In addition to the audit of the State Bar's financial statements, the auditor will conduct and prepare a special financial report and audit called the *Statement of Expenditures of Mandatory Membership Fees*. This audit is required by the United States Supreme Court's decision in *Keller v. State Bar of California* (1990) 496 U.S. 1, which held that the State Bar cannot use mandatory fees paid by its members for political or ideological activities not related to regulation of the legal profession or improvement of the quality of legal services in California. Activities related to the regulation of the legal profession are described as chargeable, and all members can be compelled to support them. Activities falling outside of the regulation of the legal profession are nonchargeable. Under the Keller decision, the State Bar is required to offer those members who choose not to support nonchargeable activities an advance deduction of dues. The amount to be offered as a deduction is determined by reviewing the State Bar's last available audited financial statement. The Statement of Expenditures of Mandatory Fees is an audit of this calculation of chargeable and nonchargeable expenses based on the last available audited financial statement. A copy of the 2012 statement is included as ***Attachment E: Statement of Expenditures of Mandatory Membership Fees and Independent Auditor's Report***.

#### **E. Presentation of Audit Reports/Deliverable**

The accounting firm shall provide 25 bound copies of the auditor's report and the financial statements and schedules, 25 copies of the management letter, and 25 copies of the *Statement of Mandatory Dues* no later than April 15, 2014, 2015, 2016 (2017, 2018). The partner in charge of the audit shall be required to attend one public meeting at which the audit report will be discussed. The accounting firm shall also provide electronic copies of the auditor's report, the financial statements and schedules, the management letter, and the *Statement of Mandatory Dues* in an accessible format that complies with the Web Content Accessibility Guidelines (WCAG) 2.0.  
<http://www.w3.org/TR/WCAG20/>

#### **F. Rates for Additional Professional Services**

If it should become necessary for State Bar to request the auditor to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the State Bar and the firm. Any such additional work agreed to between State Bar and the firm shall be performed at the same rates set forth in the schedule of fees and expenses included in ***Attachment A: Itemized Cost Proposal***.

#### **G. Manner of Payment**

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the firm's dollar cost bid proposal. Interim billing shall cover a period of not less than a calendar month.

## **H. Working Paper Retention and Access to Working Papers**

All working papers and reports must be retained, at the auditor's expense, for a minimum of three (3) years, unless the firm is notified in writing by the State Bar of the need to extend the retention period. In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

## **III. ORGANIZATIONAL STRUCTURE**

### **A. Contact Persons/Organizational Chart**

The auditor's principal contact with the State Bar will be Peggy Van Horn, Chief Financial Officer, or a designated representative, who will coordinate the assistance to be provided by the State Bar to the auditor. An organizational chart with a list of key personnel with the location of their principal offices is attached as ***Appendix F: State Bar Organization Structure***. The State Bar employs approximately 600 employees of which 482 are union represented and 118 are at will positions. The Accounting Department is made up of 17 employees who are responsible for budget and planning; accounting; and procurement.

### **B. Fund Structure**

The State Bar utilizes the proprietary fund model for its annual financial report. For internal purposes, the State Bar's operations are divided into one General Fund and twenty-four restricted funds.

### **C. Budgetary Basis of Accounting**

The State Bar prepares its budgets on a basis consistent with generally accepted accounting principles. The Bar's three year adopted budget is included as ***Attachment: G: 2013-15 Budget***.

### **D. Sources of Funding**

The State Bar's primary source of funding is mandatory membership fees from attorneys licensed to practice in the state. Other significant sources of revenue include voluntary dues/donation, licensure application fees, section attorney membership fees, non-federal grants, moral character application fees and client trust account revenue. The budgeted revenue total for 2013 is \$133,791,281.

### **E. Transaction Volumes**

Typical State Bar annual transaction volume is as follows:

Bank Accounts:	15
AP Checks:	15,500
Payroll Checks:	18,500 (both check and ACH deposit transactions)
AR Invoicing:	120 (excluding member billing)
Cash Receipts:	4,100 (excluding member billing)
Member Payment transactions:	220,000
Journal transactions:	65,500 (include cash receipts)

**F. Retirement Plans**

The State Bar’s defined benefit plan provides retirement and disability benefits, annual cost of living adjustments, and death benefits to plan members and beneficiaries. The plan is part of the Public Agency portion of the California Public Employees’ Retirement System, an agent multiple-employer plan administered by CalPERS which acts as a common investment and administrative agent for participating entities within the State of California.

**G. Post-retirement Benefits**

The State Bar provides certain health care and life insurance benefits for retired executive employees attaining specific age and service requirements. The State Bar has established an irrevocable trust to administer the program. The State Bar funds the actuarially determined annual required contribution and currently has an OPEB asset on its balance sheet. In 2013, the Bar began systematic transfers of the funds maintained in the Bar’s trust to CalPers under its CERBT Investment Fund Plan .No employee contributions are made to the plan and the State Bar has the right to modify plan provisions prospectively at its discretion.

**H. Component Units**

*The State Bar has no component units.*

**I. Assistance to Be Provided**

The finance department staff and responsible management personnel will be available during the audit to assist the firm by providing information, documentation and explanations. The preparation of lead schedules and confirmations will be the responsibility of the State Bar. IT personnel will also be available to provide systems documentation and explanations. The State Bar will provide the auditor with reasonable conference room work space, tables and chairs. The auditor will also be provided with access to telephone lines, photocopying facilities and facsimile machines. Report preparation, editing and printing shall be the responsibility of the auditor.

**J. Computer Systems**

The financial software used by the State Bar is PeopleSoft Enterprise One (B9, service pack 2-L1) now a division of Oracle, Inc. Enterprise applications installed are *Workforce Management, Payroll, General Ledger, Accounts Receivable, Accounts Payables, Fixed Assets and Procurement*. The enterprise systems database is SQL Server 2000 (Enterprise Edition) and runs on a total of seven (7) servers under two (2) separate configurations. The auditor will have access to the financial system.

**K. Availability of Prior Audit Reports and Working Papers**

Interested bidders who wish to review prior years' audit reports and management letters should contact Christine Wong, Finance Director, at 180 Howard Street San Francisco CA 94105. The State Bar will use its best efforts to make prior audit reports and supporting working papers available to bidders to aid their response to this request for proposals.

**IV. GENERAL INFORMATION**

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

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

**A. Submission Requirements**

To be considered responsive, a proposal must contain the following, prefaced by a table of contents, referenced by number and in the order below. Proposals may include parts of the original RFP if answering questions asked or used in tailoring a specific response, but should not be included in full unaltered form for filler. Proposals should not direct the evaluation team to visit online sources to obtain information, or include *to be provided after award*, or *provided upon request* clauses.

1. A brief description of the history and organization of the bidder's firm, and of any proposed subcontractor.
2. Copies of business licenses, professional certifications or other credentials, together with evidence that bidder, if a corporation, is in good standing and qualified to conduct business in California.

3. The most recent year's annual reports, or comparable document. Bidders must submit ***Attachment B: Vendor History Questionnaire*** electronically in native .xlsx format per instructions below.
4. A description of at least three (3) similar projects completed by the bidder within the past three (3) years. Include personal references with contact information for each.
5. Qualifications, background and experience of the project director and other staff proposed to work on the project.
6. A general description of the techniques, approaches and methods to be used in completing the project.
7. A description of the chronology for completing the work, including a time line and deadlines for each task.
8. A detailed cost proposal, including any travel costs and other expenses. Bidders must submit ***Attachment A: Itemized Cost Proposal*** electronically in native .xlsx format per instructions below. As the State Bar may award a contract based on the initial offer, a bidder should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those bidders falling within a competitive range, and to request revised pricing offers from them and to make an award or conduct negotiations thereafter.
9. A written acknowledgement of the acceptance of the Contracting Requirements set forth in section V of this RFP. 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. Submission Requirements Format Summary**

Proposals should be prepared simply and economically, providing a straightforward and concise description of the Vendor's ability to meet the requirements of this RFP. Emphasis should be on completeness and clarity of content.

1. Deliver 4 physical hardcopies to the attention of Peggy Van Horn no later than 4 p.m. September 30, 2013.
2. Each set should include all attachments requested, including copies of the electronic attachments itemized below.
3. Deliver electronically with above (one set--CD-ROM, DVD, or USB flash drive) in native unlocked format (except as noted below):
  - a. Attachment A: Itemized Cost Proposals (.xlsx)
  - b. Attachment B: Vendor History Questionnaire (.xlsx)

**C. Rejection of Proposals**

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

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

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

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

**D. Evaluation Process and Highest Scored Bidder**

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

This Request for Proposal does not commit the State Bar to awarding a Contract. Bidders shall bear all costs incurred in the preparation of the Proposal and participating in the Proposal evaluation process. The State Bar reserves the right to reject any and all Proposals, to accept the Proposal it considers most favorable in its sole discretion, and to waive minor irregularities. The State Bar further reserves the right to seek new Proposals when such procedure is considered by it to be in the best interest of the State Bar.

1. The following criteria will be used in reviewing and comparing the proposals and in determining the HSB. The weight to be assigned to each criterion appears following each item.
  - a. Responsiveness of the proposal to the submission requirements set forth in the RFP (10%).
  - b. Agreement with the State Bar's contracting requirements (10%).
  - c. The technical ability, capacity, and flexibility of the bidder to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (45%).
  - d. 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.

**E. Award and Execution of Contract**

Subject to the State Bar's right to reject any or all proposals, the HSB will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice sent to bidders on or about October 21, 2013 of the Bar's intention to award the contract to the HSB. It is anticipated that final selection of the HSB will be made by October 28, 2013. The evaluation team will select a winning proposal subject to approval by the Board of Trustees. Upon selection, the State Bar and the selected Vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work 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](mailto:andrew.conover@calbar.ca.gov).

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

**F. Errors in the RFP**

If a bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the bidder should immediately provide the State Bar with written notice of the problem and request that the RFP be clarified or modified. Without disclosing the source of the request, the State Bar may modify the document prior to the date fixed for submission of proposals by issuing an addendum to all potential bidders to whom the RFP was sent.

If prior to the date fixed for submissions, a bidder knows of or should have known of an error in the RFP but fails to notify the State Bar of the error, the bidder shall

bid at its own risk, and if, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

**G. Questions Regarding the RFP**

Questions regarding the RFP may be addressed in writing to Peggy Van Horn at [peggy.vanhorn@calbar.ca.gov](mailto:peggy.vanhorn@calbar.ca.gov). All questions must be submitted no later than 5 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.

A bidder who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. The State Bar must receive any such request no later than 5 days before the deadline for submitting proposals.

**H. Addenda**

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

**I. Withdrawal and Resubmission/Modification of Proposals**

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

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

**J. Protest Procedure**

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

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

3. The bidder believes that the State Bar has incorrectly selected another bidder.

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

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

Attention: Peggy Van Horn, Chief Financial Officer

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

**K. News Releases**

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

**L. Disposition of Materials**

All materials submitted in response to an RFP will become the property of the State Bar of California and will be returned only at the State Bar's option and at the expense of the bidder. One copy of each proposal will be retained for the State Bar's official files and become a public record. Specific limited pages of a proposal, not including proposed cost and compensation, may be marked as proprietary and confidential. The entire proposal cannot be deemed confidential. The bidder's consent will be requested before release of such confidential pages to non-State Bar personnel. By submitting a proposal, a bidder agrees to these terms and waives any right to pursue a cause of action for damages incurred as a result of the release of any information contained in a proposal.

**V. CONTRACTING REQUIREMENTS**

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

The State Bar contemplates that, in addition to the terms described above in this RFP, final agreement between the State Bar and the selected vendor will include, without limitation, the following terms. Submission of a proposal shall constitute agreement to contract on these terms, except for any term specifically reserved in the proposal for future negotiation.

**A. Time of Essence**

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

**B. Warranties and Representations**

Vendor represents and warrants that 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.

Vendor represents and warrants that: as of the effective date of the contract, the electronic versions of the reports required by this contract, including accompanying schedules, comply with the Web Content Accessibility Guidelines (WCAG) 2.0 (<http://www.w3.org/TR/WCAG20/>) ("Accessibility Standards"), unless and to the extent the parties otherwise expressly agree in writing; and (ii) that the reports will continue to comply with such Accessibility Standards after the expiration or termination of the contract term, unless the State Bar alters the reports in a way to make them noncompliant. In the event vendor should have known, becomes aware, or is notified that the reports do not comply with the Accessibility Standards, vendor represents and warrants that it will, in a timely manner and at no cost to State Bar, perform all necessary steps to satisfy the Accessibility Standards, including but not limited to remediation or providing a suitable substitute. Vendor's representations and warranties under this subsection will survive the termination or expiration of the contract.

**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. Working Papers and Access to Working Papers**

At Vendor's expense, all Work Product relevant to services performed under this Agreement will be retained for a minimum of seven years from the end of the fiscal year to which they apply or for a different period of time if so specified in writing by the State Bar. In addition, Vendor will respond to the reasonable inquires of successor auditors and allow successor auditors to review any Work Product relating to matters of continuing accounting significance.

**F. 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 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.

#### **G. 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.

## **H. Confidentiality and Publicity**

1. All information provided to Contractor by State Bar is considered Confidential Information. Contractor will hold all Confidential Information in the strictest confidence and will not to make use of any Confidential Information other than as strictly necessary for the performance of Services. Contractor will safeguard such Confidential Information, and will take all reasonably necessary steps to protect Confidential Information from loss or accidental disclosure, subject to law, court order, subpoena, and request of professional oversight bodies. All Confidential Information obtained or maintained by Contractor, and all rights, title and interest in whatever form, is and will at all times remain the sole and exclusive property of the State Bar. Contractor will ensure that all employees performing the Services under this Agreement are

aware of their duty of confidentiality. Contractor will deliver all Confidential Information to the State Bar within 24 hours of demand, except that Contractor may retain a copy in its working papers per professional standards. The obligation of the parties with respect to the Confidential Information will terminate with respect to any particular portion of the Confidential Information if and when: (i) it is in the public domain at the time of its communication; (ii) it is developed independently by the receiving party without use of any confidential information; (iii) it enters the public domain through no fault of the receiving party subsequent to the time of the disclosing party's communication to the receiving party; (iv) it is in the receiving party's possession free of any obligation of confidence at the time of the disclosing party's communication; (v) it is communicated by the disclosing party to a third party free of any obligation of confidence; or (vi) the receiving party has the disclosing party's written permission.

2. Neither party will issue any public announcements concerning the other party without the prior written consent of the other. Contractor recognizes that irreparable harm can be occasioned to the State Bar and to third parties by disclosure of Confidential Information; accordingly, the State Bar may enjoin disclosure in an appropriate court of law.

#### **I. 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.

#### **J. 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.

## **K. General Provisions**

1. **Force Majeure.** Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure in the performance of the obligations of such party (other than the payment of money) results from any significant and material causes beyond its reasonable control and without fault or negligence by such party. Examples of such causes include, but are not limited to, (a) acts of God or public enemy, (b) acts of the government in either its sovereign or contractual capacity, (c) fires, (d) floods, (e) epidemics, (f) quarantine restrictions, (g) strikes, (h) embargoes, (i) earthquakes, and (j) unusually severe weather.
2. **Governing Law.** The agreement will be governed by the laws of the State of California without giving effect to its principles of conflict of laws.
3. **Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to this agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred and for its reasonable attorneys' fees as fixed by the court. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit will be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and will survive the merger of this provision into any judgment on this agreement.
4. **Audit.** Vendor agrees that the State Bar or its designee shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. Vendor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Vendor agrees to allow the State Bar or its designee access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Vendor agrees to include a similar right of the State Bar or its designee to audit records and interview staff in any subcontract related to performance of this Agreement.
5. **License.** In those instances where required, the Vendor represents and warrants that the Vendor holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision of the holder of such

license, permit or special license and shall keep and maintain all such licenses, permits or special licenses in good standing and in full force and effect at all times while the Vendor is performing the services pursuant to the agreement.

6. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which, together will constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email or any other reliable means will be effective for all purposes as delivery of a manually executed original counterpart. Either party may maintain a copy of this Agreement in electronic form. The parties further agree that a copy produced from the delivered counterpart or electronic form by any reliable means (for example, photocopy, facsimile or printed image) will in all respects be considered an original.