

July 2, 2013

2013-030

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

This letter report presents the results of an audit of the State Bar of California (State Bar). Section 6145 (b) of the California Business and Professions Code requires the State Bar to contract with the California State Auditor to conduct a performance audit of the State Bar's operations every two years, but it does not specify topics that the audit should address. For this audit, we reviewed and assessed the State Bar's contracting practices, focusing on its compliance with applicable state laws and contracting requirements, and on the State Bar's procedures for obtaining the best value for its contracts. We found that although the State Bar awards contracts in compliance with contracting requirements, it could improve some contracting practices. Specifically, the State Bar could document whether costs are reasonable for contracts exempt from certain State Bar processes, thus better enabling it to ensure that it is obtaining the best value for its contracts. In addition, the State Bar could document post-contract evaluations for consulting contracts that cost more than \$5,000, which could help the State Bar avoid contracting in the future with consultants that did not meet performance or quality standards in previous contracts. The State Bar agreed with our recommendations in these areas and has already begun taking steps to implement them.

## Background

The State Bar, created by statute, is a public corporation within the State of California's judicial branch of government that provides services to protect the public and to assist California attorneys in meeting their professional obligations. A board of trustees made up of 21 members—15 lawyers and six members of the public—governs the State Bar.<sup>1</sup> State law requires that every person admitted and licensed to practice law in California belong to the State Bar unless the individual serves as a judge in a court of record. According to its Web site, as of April 2013, the State Bar had a membership of more than 242,000 attorneys. The State Bar collects an annual membership fee from each of its members to pay for most of its operations, and state law authorizes the State Bar to charge each member additional fees that fund specific programs. For the year ended December 31, 2012, the State Bar incurred \$130.3 million in operating expenses.

Located in San Francisco, Los Angeles, and Sacramento, the State Bar's various departments carry out its responsibilities, including contracting for goods or services. The State Bar Act gives the State Bar the authority to make contracts.<sup>2</sup> According to the State Bar, it entered into 1,084 contracts

<sup>1</sup> The provisions of Chapter 417, Statutes of 2011, require the State Bar to reduce the number of board members to 19 by October 31, 2014.

<sup>2</sup> The State Bar Act is Chapter 4 of Division 3 of the California Business and Professions Code.

from January 2010 through December 2012 totaling \$112.7 million. Many of these contracts involved events the State Bar sponsors, such as those to facilitate member attorneys meeting their continuing education requirements, and most of the event contracts cost less than \$50,000 each. Contracts other than event contracts include those for employee benefit programs, salaries for temporary employees, information technology (IT) projects, and contracts related to administering the bar exam.

### ***Contracting Requirements That Apply to the State Bar***

As a judicial branch entity, the State Bar generally is not subject to the statutory requirements that apply to executive branch agencies. In particular, the State Bar generally is not subject to the statutory and policy framework that applies to executive branch agencies when they contract for goods and services. That framework requires executive branch agencies to comply with various provisions of the California Government Code and the California Public Contract Code, as well as with provisions of other codes and the policies contained in the *State Contracting Manual* administered by the California Department of General Services.

Instead, the State Bar must follow the requirements for public contracting set forth in the State Bar Act and in rules the State Bar adopts for itself. The State Bar Act includes provisions that prohibit the State Bar from awarding a contract for goods, services, or both for an aggregate amount of more than \$100,000 for IT goods and services or for a total of more than \$50,000 for other goods and services unless the State Bar complies with certain standards set forth in the California Public Contract Code.<sup>3</sup> Also, the State Bar Act requires the State Bar to establish a request-for-proposals procedure according to a rule it adopted, and requires that the request-for-proposals process be conducted under the general standards established in certain specified provisions of the California Public Contract Code.

The specified provisions of the California Public Contract Code, whose standards the State Bar must follow when it contracts for goods and services, appear in Article 4 (beginning with Section 10335) of Chapter 2, Part 2, Division 2. Article 4 includes requirements pertaining to competitive bidding that state agencies must follow when contracting; the text box lists examples of these requirements. Significantly, the State Bar Act requires the State Bar to conduct

#### **Examples of Contracting Requirements in the California Public Contract Code**

- Draft invitations for bids and requests for proposals so as not to limit bidding.
- Generally secure at least three competitive bids or proposals.
- Document names and addresses of firms solicited if fewer than three bids or proposals are received.
- Omit late bids or proposals.
- Open bids publicly.
- Make bids available for public inspection.
- Include specified elements when developing a request for proposals, such as a clear description of work that the contractor will perform or services it will provide.
- Use an evaluation committee to judge proposals.
- Establish written procedures for deciding protests.
- Prepare detailed performance criteria and mandatory progress schedules for consulting contracts.

Source: [California Public Contract Code, Division 2, Part 2, Chapter 2, Article 4.](#)

<sup>3</sup> This provision of the State Bar Act was amended by Chapter 2, Statutes of 2010. Previously, the State Bar was required to comply with standards set forth in the California Public Contract Code for each contract totaling more than \$50,000. This statute raised this threshold to \$100,000 for IT goods and services, expressed a preference that the State Bar use in-house resources for IT projects, and required the State Bar to report annually to the Legislature on the effect of these changes on its contracting practices.

its contracting according to the *standards*—and not necessarily the specific requirements—contained in these California Public Contract Code provisions. For that reason, we expected that in following the standards of Article 4, the State Bar might choose not to follow all of the requirements specified in Article 4. Nonetheless, we found that the State Bar, in adopting its *General Procurement Manual* (procurement manual), has elected to adhere generally to the requirements of Article 4. Moreover, the State Bar has adopted a rule to establish a request-for-proposals procedure that follows the general standards established in Article 4. Thus, the State Bar is complying with the contracting requirements of the State Bar Act.

The State Bar's procurement manual also includes contract requirements that are not in Article 4. Specifically, even though the State Bar Act does not require the State Bar to follow the standards in Article 4 for contracts less than \$100,000 for IT goods and services and less than \$50,000 for other goods and services, it has developed its own processes for awarding such contracts. The State Bar procurement manual defines these processes, and it specifies which State Bar contracts must follow them.

### ***Contract Approval and Management***

Contract managers are responsible for managing and monitoring contract performance, and according to the State Bar's chief financial officer (financial officer), the State Bar designates a contract manager for each contract that it enters into. To help its contract managers with the contracting process, the State Bar has developed a robust request-for-proposals planning worksheet intended to standardize, automate, and expedite the drafting, distribution, and scoring of requests for proposals. According to the procurement manual, contract managers are also responsible for preparing the statements of work and the request-for-proposals planning worksheets. Further, contract managers must review contract performance, approve invoices for payment, and monitor the receipt of contracted goods and services.

The procurement manual requires that each State Bar contract receive multiple approvals, which help ensure that the State Bar contracts appropriately for goods or services. Specifically, the procurement department and either the deputy executive director or the financial officer must approve all contracts. In addition, the senior executive of the department in which a contract originates must approve contracts that total more than \$20,000 each, and the State Bar's deputy executive director must approve all sole-source contracts, which are contracts for goods or services where a single vendor or contractor is the only one that will meet the needs of the State Bar.

### **Audit Scope**

Our review included an examination of the State Bar's contracting policies and practices for compliance with state law and with applicable contracting requirements, as well as an assessment of how the State Bar achieves the best value for its contracts. We reviewed a selection of 60 contracts entered into during 2010, 2011, and 2012. These consisted of 22 contracts for amounts greater than \$50,000, five of which were IT contracts for amounts greater than \$100,000; 19 contracts for amounts less than \$50,000; and 19 sole-source contracts. Among the 60 contracts we reviewed were 10 contracts for consulting services that we assessed against the requirements specific to this type of contract. In reviewing the 60 contracts, we determined whether the State Bar had taken any actions to avoid competition in awarding the contracts, including whether any contracts had been intentionally split to avoid competitive processes.

## The State Bar Awards Its Contracts in a Manner Consistent With Its Contracting Requirements

The State Bar awards contracts according to its contracting requirements. Specifically, the State Bar has developed and follows procedures that use both competitive and informal processes to award contracts. Additionally, the State Bar awarded the consulting contracts we reviewed according to its policies, and it appears not to have split any contracts to avoid competitive processes. Finally, the State Bar followed its policy for sole-source contracts by documenting why they were necessary and by obtaining approval for them from its deputy executive director.

### *The State Bar Follows Its Contracting Requirements*

The State Bar’s procurement manual delineates the requirements that its staff must follow when contracting for goods and services. As Table 1 shows, the State Bar has developed both competitive processes and informal processes for awarding contracts. For example, its procedures require the use of an invitation for bids or a request for proposals when awarding contracts for amounts of \$100,000 or more for IT goods and services and when awarding contracts for amounts of \$50,000 or more for other goods and services.<sup>4</sup> In using its competitive processes, the State Bar is to evaluate bids or proposals and select the bid with the lowest cost or the proposal with the highest score based on predetermined criteria included in each request for proposals. Additionally, the State Bar has developed its own informal processes that require it to solicit quotes from vendors for contracts valued at between \$5,000 and \$50,000. As Table 1 indicates, the State Bar is to select the lowest quote in most cases. In comparison, state agencies generally must use requests for proposals or invitations for bids for contracts costing more than \$5,000. Thus, the State Bar’s threshold for using competitive bidding processes is higher than the threshold required for state agencies.

**Table 1**  
**State Bar of California’s Contracting Requirements**

PROCESS FOR AWARDING CONTRACT	VALUE OF CONTRACT	SOLICITATION REQUIREMENTS	SELECTION METHOD
Competitive	\$100,000 or more for an information technology contract and \$50,000 or more for a contract providing other goods or services	At least three competitive bids or proposals when the State Bar of California (State Bar) uses an invitation for bids or a request for proposals	Lowest bid or highest-scoring proposal as determined by the State Bar’s evaluation committee
Informal	\$5,000–\$14,999	Two verbal quotes	Lowest quote*
	\$15,000–\$49,999	Three written quotes	Lowest quote*

Source: The State Bar’s *General Procurement Manual* (procurement manual).

Note: The State Bar’s policies allow it to exempt contracts of any value from these requirements if certain conditions are met.

\* According to the State Bar’s procurement manual, State Bar staff should generally select the quote with the lowest cost. However, staff can choose a higher-priced vendor if the selection has written approval from a senior executive.

<sup>4</sup> The State Bar’s procurement manual indicates that the State Bar may use a competitive process for any transaction—including any contract valued at less than \$50,000—if the State Bar deems the process to be in its best interests.

The State Bar awarded the 60 contracts we reviewed in a manner consistent with its policies, and it awarded 11 of the 60 contracts using competitive processes that involved either a request for proposals or an invitation for bids. The 60 contracts we reviewed generally fell into eight categories, as shown in Table 2. For the 10 contracts awarded using a request-for-proposals process, the State Bar evaluated the proposals using an evaluation team with at least three members, and it awarded each contract to the highest-scoring vendor. Similarly, for the only contract we reviewed that the State Bar awarded using an invitation-for-bids process, the contract went to the lowest bidder. Thus, for both types of competitive processes, the State Bar followed its contracting requirements. The State Bar used its informal processes to award another eight contracts because their costs fell under the threshold at which it requires a competitive process. Again, the State Bar awarded all eight of these contracts according to its policy. Specifically, for all but one of the eight contracts, the State Bar received at least the required number of quotes and awarded the contracts to the vendors with the lowest quotes. For the one contract that it did not award to the vendor with the lowest quote, the State Bar documented its reason for selecting a vendor that submitted a higher quote, and the justification appeared sound.

**Table 2**  
**Categories and Values of State Bar of California Contracts Reviewed**

CONTRACT CATEGORY	NUMBER OF CONTRACTS	TOTAL
Employee benefits	3	\$3,591,000
Temporary workers	5	5,813,468
Information technology	12	3,248,370
Sites/events	7	481,989
Bar exam-related	8	2,443,250
Los Angeles building purchase*	7	4,180,912
Operations	9	7,361,247
Other	9	3,395,887
<b>Totals</b>	<b>60</b>	<b>\$30,516,123</b>

Source: California State Auditor's review of State Bar of California (State Bar) contracts.

Note: The State Bar entered into these contracts between January 1, 2010, and December 31, 2012.

\* The State Bar purchased an office building to house its Los Angeles operations after the expiration of the lease for its current location.

Additionally, the State Bar awarded all 10 of the consulting contracts we reviewed according to its policies for this type of contract.<sup>5</sup> These 10 contracts were a subset of the 60 contracts we reviewed and had to meet not only the requirements previously discussed, but additional requirements set forth in the State Bar's procurement manual. For example, a consulting contract must receive advance approval to ensure that the subject matter of the contract is appropriate for a consulting contract, and the contract must include a clear description of work to be completed and a time schedule for performing the work. In addition, the consultant must provide a detailed analysis of the costs to perform the services specified in the contract.

<sup>5</sup> The 10 consulting contracts encompassed contracts with values greater than \$50,000, contracts with values less than \$50,000, and sole-source contracts.

Furthermore, in our review of its contracts from 2010 through 2012, we did not find evidence that the State Bar avoided competitive processes. Of the 60 contracts we reviewed, 20 received modifications for various reasons, including unforeseen changes in scope, schedule, and cost. None of these modifications appeared to be an effort by the State Bar to avoid competitive processes. Additionally, we reviewed the contracts to determine whether the State Bar appeared to have split any contracts to intentionally avoid competitive processes, but we did not find evidence of such contract splitting.

### ***The State Bar Appears to Exempt Contracts Appropriately***

Many of the State Bar's contracts we reviewed were *exempt contracts*—agreements not subject to competitive or informal processes—but those exemptions were allowable under the provisions of the State Bar's procurement manual. Specifically, of the 60 contracts we reviewed, 19 were awarded as sole-source contracts and thus were exempt from competitive processes. In addition, 22 of the remaining 41 contracts we reviewed were exempt for various reasons. The exemptions the State Bar used most commonly in the contracts we reviewed are listed in the text box. The *State Contracting Manual* lists many of the exemptions from competition that are allowable for use by state agencies. Our review found that many of the State Bar's exemptions in its procurement manual are generally consistent with those outlined in the *State Contracting Manual*. Specifically, the State Bar has developed 24 exemptions, of which 13 are the same as or similar to exemptions in the *State Contracting Manual*.

Additionally, the State Bar awarded all of the sole-source contracts we reviewed according to State Bar policy, which requires documentation describing why a sole-source contract is necessary and approval from the State Bar's deputy executive director. All 19 sole-source contracts met these requirements. We also determined that each sole-source contract had a justification that conformed to State Bar policy.

#### **The Exemptions From Using Competitive or Informal Award Processes That the State Bar of California Most Commonly Uses**

The State Bar of California (State Bar) exempts from competitive and informal award processes contracts that provide the following goods or services:

- A good or service that the executive director determines is the only one (the *sole source*) that will properly meet the needs of the State Bar.
- Sites for events.
- The development, maintenance, administration, grading of, or use of statistical analyses in connection with attorney licensing, certification or proficiency examinations, testing accommodations, or educational standards.
- Temporary appointments of six months or less to meet a time-limited employment need.\*
- A good or service from a vendor recommended by a broker, provided that the State Bar has contracted with the broker through a formal competitive process and the broker has conducted a competitive survey of the marketplace.\*

Sources: The State Bar's *General Procurement Manual* (procurement manual) and the California State Auditor's analysis of exemptions included in the procurement manual.

\* The *State Contracting Manual* does not include these exemptions.

### **The State Bar Could Improve Its Contracting Practices**

Although it awards contracts according to its policies, the State Bar could do more to follow best practices and ensure the best value in its contracting activities. Specifically, the State Bar does not document its efforts to make sure that the costs of the contracts it exempts from its competitive and informal processes are reasonable, which is a best practice that would help ensure that it obtains the



best value. Additionally, the State Bar does not document evaluations of its contracts for consulting services, which is also a best practice that could help the State Bar decide whether to engage a contractor it has used previously.

### ***The State Bar Does Not Document Whether Costs Are Reasonable for the Contracts That It Exempts***

The State Bar cannot be certain that it is obtaining the best value for its exempt contracts because it does not require its staff to determine or to document that the costs of these contracts are reasonable. Because member attorney fees fund the State Bar, it has a responsibility to seek the best value for its contracts. The State Bar seeks to obtain the best value by using both competitive and informal processes for contracts greater than \$5,000. However, contracts that are exempt from such processes, which accounted for most of the contracts we reviewed, do not receive the same level of cost review as contracts that must follow these processes, which makes it difficult for the State Bar to determine whether it is receiving the best value for these contracts.

The *State Contracting Manual* requires that state agencies that exempt contracts from competition take steps to determine whether the costs of such contracts are reasonable. Specifically, it recommends that state agencies include in their procurement files for exempt contracts documentation to support the fair and reasonable pricing for these contracts. Although the State Bar is not required to follow this guidance, we believe such documentation is a best practice that would help ensure that the State Bar receives the best value for its exempt contracts. Although some State Bar contract managers indicated that they reviewed available information for the contracts we examined to determine whether the costs of those contracts were reasonable, State Bar policy does not require them to perform such reviews, and its contract managers rarely document the information they review. According to the financial officer, although its staff routinely check cost information, the State Bar is not required to document that contracts it awards without competition have a reasonable cost, and thus it has not developed such a policy.

In the single documented example we found among the 41 exempt contracts we reviewed, the financial officer, following guidelines in the State Bar's procurement manual, wrote a memo requesting sole-source designation for a consultant to develop a budget system for the State Bar. In the memo, the financial officer included the consultant's proposed hourly rate and a comparative range of rates from public accounting firms. By including this information in the contract file, the State Bar documented that it took steps to obtain the best value for this contract, even though it was exempt from competitive processes. However, without requiring its staff to determine and document that costs are reasonable for all exempt contracts, it is difficult for the State Bar to ensure that it is obtaining the best value. During our audit the State Bar developed draft procedures that will require its staff to determine and document that the costs of exempt contracts are reasonable. If implemented, these procedures should help the State Bar to better ensure that it obtains the best value.

### ***The State Bar Could Improve Oversight of Its Consulting Contracts***

The State Bar also has not required its contract managers to formally evaluate consulting contracts after their completion. In contrast, the California Public Contract Code requires state agencies to perform and document a post-contract evaluation for consulting services contracts totaling \$5,000 or more. As part of these evaluations, state agencies report for each contract whether the contractor completed the work or services as specified in the contract, whether the completed work met the quality standards specified in the contract, and whether any factors outside of the consultant's control caused difficulties in performance. However, the State Bar did not have documentation indicating that it performed such

post-contract evaluations for the completed consulting contracts we reviewed. Although the State Bar is not required to follow this provision of the California Public Contract Code because it is not a state agency, we believe that performing and documenting such evaluations is a best practice that could help the State Bar to avoid contracting in the future with consultants that did not meet performance or quality standards in previous contracts.

Although its contract managers for the completed consulting contracts we reviewed indicated that they evaluate consulting contracts after the contracts are completed, they could not provide evidence that they conducted or documented such evaluations, and the State Bar does not require its contract managers to do so. According to the State Bar's procurement manual, a critical stage of the contracting process is making certain that the goods or services received from the vendor are the goods or services to which the State Bar agreed. The State Bar's procurement manual indicates that contract managers should consider whether a contract evaluation is needed or required, but it does not direct contract managers to document an evaluation of its consulting contracts. According to the financial officer, the State Bar is not required to conduct a formal post-contract evaluation of its consulting contracts and thus has not developed a procedure for doing so.

The State Bar's contract managers informed us that they use several methods to monitor to ensure that the State Bar receives the goods and services for which it has contracted. The monitoring methods that contract managers cited most frequently were reviewing invoices and status reports submitted by contractors. Although we did not audit the invoice review process, we determined that State Bar policies for paying invoices require that a designated staff person approve invoices before payment. This approval process should help to ensure that the State Bar receives what it pays for because the policies require the designated staff person to verify that the State Bar received the product or service satisfactorily before he or she authorizes payment. However, neither the invoice review process nor other monitoring activities—though good business practices—will always provide the benefits derived from performing a post-contract evaluation of consulting contracts. Consequently, the State Bar is missing the opportunity to provide its staff with information to make informed decisions in the future about whether to contract with consultants it has previously used. During our audit the State Bar developed draft procedures for performing and documenting evaluations of consulting contracts which, if implemented, should provide its staff with information that will aid them in deciding whether to use contractors the State Bar used previously.

## **Recommendations**

To ensure that it seeks the best value for its contracts, the State Bar should implement its draft procedures that require its contract managers to document their efforts to determine that the costs for exempt contracts are reasonable.

To provide for informed decision making when contracting with consultants, the State Bar should implement its draft procedures that require its contract managers to perform and document a post-contract evaluation of consulting contracts with a value greater than \$5,000.



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We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: July 2, 2013

Staff: John Billington, Project Manager  
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Legal Counsel: J. Christopher Dawson

For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at (916) 445-0255.

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## THE STATE BAR OF CALIFORNIA

180 Howard Street. San Francisco, CA 94105-1639

**Senator Joseph L. Dunn, Ret.**  
*Executive Director/CEO*

Tel: (415) 538-2275  
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June 14, 2013

Elaine M. Howle, State Auditor  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Re: State Bar of California Response to State Audit Report 2013-030

Dear Ms. Howle:

Please find enclosed the response of the State Bar of California to State Audit Report 2013-030.

Consistent with your request, we have submitted this written response in the envelope provided and the entire response, including this cover letter, has been reproduced on the enclosed diskette, using a Microsoft Word file.

I wish to extend my thanks to the audit team and appreciate their hard work in preparing the report. We look forward to working with you and your staff as this process continues.

Truly yours,

A handwritten signature in cursive script that reads "Joseph L. Dunn".

Senator Joseph L. Dunn, Ret.  
Executive Director/CEO

Enclosure

**Recommendation No. 1**

To ensure that it seeks the best value for its contracts, the State Bar should implement its draft procedures that require its contract managers to document their efforts to determine that the costs for exempt contracts are reasonable.

**Response**

The State Bar agrees with this recommendation. We have undertaken steps to train staff and begin immediate implementation. We plan to have a full implementation in place before the end of the third quarter of 2013.

**Recommendation No. 2**

To provide for informed decision making when contracting with consultants, the State Bar should implement its draft procedures that require its contract managers to perform and document a post-contract evaluation of consulting contracts that cost more than \$5,000.

**Response**

The State Bar agrees with this recommendation. We have undertaken steps to train staff and begin implementation. We plan to have a full implementation in place before the end of the third quarter of 2013.

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cc: Members of the Legislature  
Office of the Lieutenant Governor  
Little Hoover Commission  
Department of Finance  
Attorney General  
State Controller  
State Treasurer  
Legislative Analyst  
Senate Office of Research  
California Research Bureau  
Capitol Press