

OFFICE OF ADMINISTRATIVE LAW

300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6225 FAX (916) 323-6826

SUSAN LAPSLEY
Director



SUMMARY OF BIDDER'S CONFERENCE
CALIFORNIA CODE OF REGULATIONS
PUBLICATION CONTRACT

On June 10, 2010, the Office of Administrative Law (OAL) held an optional bidder's conference regarding the publication contract for the Official California Code of Regulations. The conference was attended by the following persons:

Name	Agency/Company
Bae, Rob	Lexis Nexis
Brown, Linda C.	OAL
Cornez, Debra M.	OAL
Fong, Melvin B.	OAL
Lapsley, Susan	OAL
McKay, William A.	Thomson Reuters
Nolasco, Laura	OAL
Romak, Julie	Thomson Reuters
Solomon, Katie	Lexis Nexis

The agenda for the bidder's conference set forth the following discussion items:

1. Introductions and Welcome
2. Brief History of OAL and Publication of the CCR
3. Proposal Submission Requirements
4. Key Action Dates
5. Addenda
6. Scope of Work/Required Publication Services
7. Q&A
8. Adjournment

The following questions were asked and answered during the question and answer portion of the bidder's conference.

Question 1: Has OAL employed outside counsel and/or counsel on staff of other state agencies to assist the evaluation committee in evaluating proposals submitted in response to the RFP? If so, please clarify the role of such outside counsel in reviewing, evaluating, and scoring past bids. If not, please clarify what OAL envisions to be the role of outside counsel in reviewing, evaluating and scoring the proposals.

Response: OAL previously consulted with outside copyright counsel prior to the bid process. OAL previously consulted with the Department of General Services-Office of Legal Services about a question from a potential bidder in 2005 as to whether or not a specific proposal would be responsive or non-responsive to the RFP. OAL has consulted with IT experts about wording in the 2010 RFP relating to IT issues. OAL may need to solicit similar information during the evaluation process, but only OAL staff will serve on the evaluation committee, and only the evaluation committee will have access to the proposals. OAL does not anticipate using outside counsel to evaluate or score proposals.

Question 2: Upon issuing the Notice of Intent to Award the CCR contract, what specific information will OAL release beyond identifying the awarded bidder?

Response: OAL will hold the contents of all proposals, correspondence, agenda, memoranda, working papers or any other medium that discloses any aspect of a bidder's proposal in the strictest confidence until the Notice of Intent to Award the contract has been issued. Upon issuance of the Notice of Intent to Award, all documents submitted in response to the RFP will be regarded as public records subject to the California Public Records Act (PRA). OAL notes that Government Code section 6254.15 contains an exception to the PRA for confidential proprietary information. Any documents covered by this exception are not public documents and will be kept confidential by OAL. If OAL receives a PRA request for any document marked "proprietary" or "confidential," and OAL concludes that such document is in fact not subject to the PRA exemption for confidential proprietary information (or any other PRA exemption), OAL will promptly notify the proposer of that conclusion so that the proposer may seek a protective order or other appropriate remedy prior to OAL releasing the document.

Question 3: What is OAL's policy, in terms of releasing as part of a public information request, the Evaluation Committee's work product which went into the reviewing, evaluating, and scoring of the submitted bids?

Response: OAL plans to use essentially the same process that we used in 2005. In 2005, the evaluation committee issued and released a score sheet that included consensus notes adopted by the committee for each item scored.

Question 4: In the last paragraph of page 7 of the RFP, OAL notes that "proposals containing modifications or alternatives" will be deemed counterproposals and will be rejected as non-responsive. How is this reconciled with the sections of the RFP that state "the contractor is encouraged, but not required," to suggest unspecified improvements to the Internet CCR and Notice Register?

Response: The RFP establishes clear requirements for the publications and services to be provided. Where OAL has "encouraged, but not required" the contractor to suggest improvements, such suggestions will not be rejected as non-responsive. OAL notes that the RFP "Scoring Methodology" includes two categories (Excellent and Exceptional) which allow higher scores if a bidder suggests improvements, enhancements or exceptional solutions.

Question 5: What is the extent of the current publisher's copyright to the CCR?

Response: William McKay of Barclays responded that the content of the CCR is owned solely by the state of California with the exception of the Master Index, which is created and owned by the publisher. Linda Brown of OAL noted that the publisher's weekly summary called the "Digest of New Regulations" that accompanies the CCR supplement is a document created and owned by the publisher, and is not part of the Official CCR. The publisher's filing instructions are not part of the Official CCR.

Question 6: If a new publisher is granted the publication rights to the Official CCR, may the current publisher retain their existing subscriber list and use it for commercial purposes?

Response: The current CCR contract does not prohibit the publisher from continuing to use their existing subscriber list. They cannot, however, publish any document purporting to be the Official CCR after the end of the current contract.

Question 7: Please elaborate on the meaning of the reference on page 27 to "minimal impact on existing CCR and Notice Register subscribers" as one factor OAL considers to be important in a successful partnership.

Response: OAL desires a smooth transition for subscribers, including state agencies, if a new publisher is granted publication rights to the Official CCR.

Question 8: Are state agencies required to subscribe to the CCR?

Response: No.

Question 9: The section on page 23 relating to the format required for the Internet CCR specifies that "the use of browser plugins or additional software (such as Adobe Flash, Microsoft Silverlight etc.) to view the database content is discouraged." What does this mean? Is the use of Adobe Reader prohibited or discouraged?

Response: It is not our intent to prohibit or discourage use of Adobe Reader with respect to the format of the Internet CCR. We wish to minimize unnecessary barriers to access of the Internet CCR. Our purpose in including this sentence is to minimize such barriers by discouraging bidders from proposing a solution that requires users to download browser plugins or additional software. Adobe Reader is free and very widely in use, and does not present the type of barrier to access that concerns us. There may well be other applications comparable to Adobe Reader that do not present any significant barrier to access. If a bidder proposes a format for the Internet CCR that requires the use of browser plugins or additional software, we will carefully evaluate whether such browser plugins or additional software present a barrier to access, and if so, whether the benefits of using those plugins or software outweigh our concerns about ease of access.