

**REQUEST FOR PROPOSAL**  
**TO CONDUCT STATE BAR ELECTIONS**  
**FOR THE BOARD OF GOVERNORS AND THE CALIFORNIA YOUNG LAWYERS**  
**ASSOCIATION OF THE STATE BAR OF CALIFORNIA**

This document is a Request for Proposal ("RFP") for fulfillment of services to design, conduct and manage the 2003 State Bar of California elections for seats on its Board of Governors and California Young Lawyers Association.

Please submit **five (5) copies** of your proposal in a sealed envelope to the State Bar no later than 5:00 p.m. on **January 17, 2003**. All responses to the Request for Proposal shall be addressed to:

The Office of the Secretary  
The State Bar of California  
180 Howard Street  
San Francisco, California 94105  
Attn: Biljanna Sivanov

Any technical questions regarding the RFP may be directed, by e-mail only, to: Biljanna Sivanov, Office of the Secretary, The State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, telephone 415/538-2274, fax 415/538-2255, e-mail [Billie.Sivanov@calbar.ca.gov](mailto:Billie.Sivanov@calbar.ca.gov).

**I. INTRODUCTION**

The State Bar of California ("State Bar"), is a public corporation within the judicial branch of government. It was created in 1927 by the California Legislature and written into the state Constitution as a judicial branch agency in 1966. All California lawyers are required to be members of the State Bar. The State Bar is governed by a 23-person Board of Governors, comprised of 20 elected lawyers, and six additional members appointed by the Governor of California, the State Assembly and the State Senate. The 17 elected lawyers are selected by State Bar members in a general election from nine State Bar districts statewide.

The California Young Lawyers Association ("CYLA") was established by the State Bar of California in 1935 to represent the interests of young lawyers and new practitioners. Members of the State Bar who are in their first five years of practice, or are 36 years of age or younger, are automatically members of CYLA. CYLA is governed by a 16-person Board of Directors - 15 directors are elected from each of the State Bar's nine districts and one director is elected President from the previous year's graduating class by the Board of Directors.

The elections for both the Board of Governors and the CYLA are staggered over years, with individuals serving multiple year terms in order to provide continuity within the governing bodies.

In accordance with the State Bar's procurement policies, all contracts which may be in excess of \$50,000 are subject to formal competitive bidding. This RFP solicits proposals from vendors to design, conduct and manage the 2003 elections for the Board of Governors and the CYLA Board of Directors.

## II. GENERAL INFORMATION

Each submission should address each of the following scenarios for conducting the election:

1. A proposal for a "hybrid" election that includes both internet voting and mailed ballots, tabulation (paper ballots and internet ballot) at vendor facilities; and
2. A proposal that includes a mail only election; include costs for (a) tabulation at State Bar facilities, and as an alternative (b) tabulation at vendor facilities; and
3. A proposal that includes costs of performing an electronic recount of: (a) the entire election; (b) each particular district in the election.

After reviewing all proposals, the Bar will select the highest scored vendor, who will be awarded a contract for services. The final contract for services will be for either a "hybrid" or a mail only election. The Bar will make the ultimate determination of the type of election after evaluating the cost and practicality of each scenario.

### A. Submission Requirements

The submission requirements for the RFP are detailed herein. Please submit **five (5) copies** of your response. Any submission shall constitute an irrevocable offer for **thirty (30) days** following the deadline for its submission.

Responses to the RFP must minimally contain the following information:

1. Qualification statement of bidder (including description of similar projects).
2. History of firm, including identification and qualifications of project director and other key staff proposed to work on project, and proof

of financial solvency or stability (e.g. balance sheets and income statements for one year or more).

3. References (at least four, including contact name and phone number) from organizations which have used your services for similar projects.
4. Evidence that vendor, if a corporation, is in good standing and qualified to conduct business in California, copies of business licenses, professional certifications or other credentials applicable to the services.
5. An overall description of the techniques, approaches and methods to be used in performing the services as specified by the State Bar herein.
6. Written proposal describing the plans for accomplishing the required work, including a timeline and deadlines for all incremental tasks.
7. A bid covering all costs and compensation. The bid should provide a breakdown of costs for professional services, materials, printing and postage, and any other costs.

## **B. Rejection of Proposals**

The State Bar reserves the right to reject any or all submissions, in whole or in part, for any reason, 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 in the Request for Proposal, or if it is incomplete or contains irregularities, the proposal may be rejected. A deviation is material to the extent that a response is not in substantial accord with the requirements of the RFP.

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 RFP or excuse a vendor from full compliance with solicitation document specifications.

All bids may be rejected in any case where it is determined that the proposals are 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 sole determination, the information submitted was

intended to mislead the State Bar regarding a requirement of the RFP.

### **C. Evaluation Process and "Highest Scored Bidder"**

An evaluation team will review in detail all proposals that are received to determine the highest scored bidder, under the criteria set forth below.

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 service proposed, and cost.

During the evaluation process, the State Bar may require a vendor's representative to answer questions about the vendor's proposal. Failure of a vendor to document or substantiate the claims made in its proposal may be sufficient cause for deeming a proposal non-responsive.

The following criteria will be used in reviewing and comparing the proposals and in determining the "highest scored bidder." The weight to be assigned to each criteria appears following each item:

- Responsiveness of proposal to original specifications described in the RFP, including whether bidder has agreed to the contracting requirements set forth in Section IV of this RFP (10%);
- The quality and performance of the service to be provided by the bidder, including responsiveness and quality of customer service (20%);
- The ability, capacity, flexibility, financial stability, and skill of the bidder to perform the contract, including ability to perform within time specified, without delay (20%);
- The character, integrity, reputation, judgment, experience, and efficiency of the bidder, including the quality of the bidder's performance on previous contracts with the State Bar, if any (20%);
- Cost and compensation [required]. Costs sheets will be reviewed only if a proposal is determined to be otherwise qualified. All figures entered on the cost sheets must be clearly legible or they will not be considered (30%).

**D. Award and Execution of Contract**

The highest scored bidder will be awarded the contract.

Notice of the State Bar's intention to award the contract to the highest scored bidder will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and sent by facsimile and regular mail to all bidders on **January 24, 2003**. It is anticipated that final selection of the vendor will be made by **January 31, 2003**. The evaluation team will select a winning proposal, subject to approval by the Board of Governors. Upon selection and approval, a contract will be executed with the winning vendor in due course.

Vendors are specifically directed not to contact any State Bar personnel for meetings, conferences or discussions related to this procurement, other than those specified in this RFP. Unauthorized contact of any State Bar personnel may be cause for rejection of a vendor RFP response. Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any related matter, should be addressed, by e-mail only, to [Billie.Sivanov@calbar.ca.gov](mailto:Billie.Sivanov@calbar.ca.gov)

**E. Errors in the RFP**

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

If, prior to the date fixed for submission of proposals, a vendor submitting a proposal 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 the bidder is awarded the contract, it shall not be entitled to additional compensation or extension of deadlines by reason of the error or its later correction.

**F. Questions Regarding the RFP**

If a bidder's question relates to a proprietary aspect of its proposal or bid 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 and the bidder will be notified. The vendor shall then have the option to resubmit the question for a public answer by the Bar. No question, confidential or public, shall operate to extend any deadline set forth in this RFP.

If a vendor submitting a proposal or bid believes that one or more of the solicitation document's requirements is onerous or unfair, or that it unnecessarily precludes less costly or alternative solutions, the vendor may submit a written request that the RFP be changed. The request must set forth the recommended change and the vendor's reason for proposing the change. Any such request must be submitted to the State Bar no later than **five (5) days** after receipt of the RFP or the request will not be considered.

#### **G. Addenda**

The State Bar may modify the RFP prior to the date fixed for submission of proposals by faxing an addendum to the vendors to whom the RFP was sent. If any vendor determines that an addendum unnecessarily restricts its ability to bid, it may submit a written request that the addendum be modified. Any such request must be submitted to the State Bar, in writing, no later than **two (2) days** following the receipt of the addendum, or the request will not be considered.

#### **H. Withdrawal and Resubmission/Modification of Proposals**

A bidder may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the State Bar of its withdrawal in writing.

The notice must be signed by the bidder and must be received by the State Bar prior to the deadline for submitting proposals. The bidder may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the original deadline for submitting proposals. Modifications offered in any other manner, oral or written, or received after the deadline for submitting proposals, will not be considered.

#### **I. Protest Procedure**

A vendor submitting a proposal may protest the award if the vendor meets all the following conditions:

1. The vendor has submitted a timely proposal that it believes to be the most responsive bid, under the criteria set forth herein;
2. The vendor 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 vendor believes that the State Bar has incorrectly selected another vendor submitting a proposal for award.

A vendor submitting a proposal who is qualified to protest should contact Biljana Sivanov. If Ms. Sivanov is unable to resolve the protest to the vendor's satisfaction, the vendor must file a written protest which must be received by the State Bar within **five (5) days** of the notice of intention to award contract. Protests received after this deadline will not be considered. The written protest must state all relevant facts surrounding the reasons for protest and the reasons the vendor believes the award to be invalid. The protest must be sent by certified or registered mail or delivered personally to:

Sam Quan  
Director, Finance  
The State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

A receipt should be requested for hand-delivered mail.

Protests received by the deadline will be reviewed and decided by the State Bar's Award Protest Team within **thirty (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 the decision of the Award Protest Team.

**J. News Releases/Public Communications**

Public communications of any nature pertaining to the award of a contract may not be made without the prior written approval of the State Bar.

**K. Disposition of Materials**

All materials submitted in response to an RFP will become the sole property of the State Bar of California. If any materials are returned, they shall be returned only at the State Bar's option and at the expense of the vendor. One copy of a submitted proposal will be retained for official files

and shall become a public record. However, any confidential or proprietary material submitted by a vendor that was clearly marked as such will be returned upon request. Remaining non-confidential material in the proposal, including costs, will be maintained for the Bar's official files and will be subject to public inspection.

### III. SCOPE OF SERVICES

#### A. Introduction

The winning bidder will design, conduct and manage the State Bar's election for the Board of Governors and the Board of Directors of CYLA, in accordance with requirements and specifications issued by the State Bar. The State Bar is required by Business and Professions Code section 6010 et seq. and by Article II of the Rules and Regulations of the State Bar of California (as amended July 27, 2001), to hold an annual election among its active membership. Article II of the Rules and Regulations of the State Bar are currently in the process of being revised. It is anticipated that the Board of Governors will adopt the proposed revisions in either late December of 2002 or January of 2003. Please see Exhibit 1 for a redlined version of Article II. As of **November 7, 2002**, the State Bar had **130,152** active members in the following districts:

<u>DISTRICT</u>	<u>ALL MEMBERS</u>	<u>CYLA MEMBERS</u>
<i>District 1</i>	<i>2,511</i>	<i>431</i>
<i>District 2</i>	<i>9,667</i>	<i>2,291</i>
<i>District 3</i>	<i>20,148</i>	<i>6,627</i>
<i>District 4</i>	<i>16,089</i>	<i>5,388</i>
<i>District 5</i>	<i>6,054</i>	<i>1,324</i>
<i>District 6</i>	<i>7,838</i>	<i>1,769</i>
<i>District 7</i>	<i>43,587</i>	<i>13,198</i>
<i>District 8</i>	<i>12,344</i>	<i>3,657</i>
<i>District 9</i>	<i>11,914</i>	<i>3,679</i>

The current Board of Governors election will involve five seats, one in each of the following State Bar districts: 1, 3, 5, 7, and 9. If all five seats are contested, approximately 84,600 ballots will be mailed by the vendor, with an anticipated fifteen to twenty percent (15% - 20%) voter return. Pursuant to Business and Professions Code section 6019, an election will not be held in any district in which only one member files a nominating petition. Instead, that member is deemed

elected for that seat. The current CYLA Board of Directors election will involve five seats in the same State Bar districts. Please see Exhibit 2 for deadlines.

**B. Eligibility List (Member Name, Address, Member Number):**

The Eligibility List ("list") of active members eligible to vote in the relevant districts will be furnished to the vendor by the State Bar. The list will be in standard computer tape format or electronically transmitted and will provide the individual member's name, mailing address and the member's State Bar membership number and, where applicable, a code indicating California Young Lawyers Association (CYLA) membership.

**C. Description of Election Packet/Ballots to be Printed:**

Vendor will develop both an internet and a paper ballot system following general procedures for conducting an election in accordance with the deadlines and specifications set forth in Article II of the Rules and Regulations of the State Bar (see Exhibit 1). Vendor will mail ballot packets to all eligible voters and the ballot packets will include instructions for the voter to access an electronic ballot in lieu of completing the paper ballot, if the voter so desires.

1. Quantity: The actual number of packets to be mailed in any contested district election will be determined after the eligibility list closes (**April 21, 2003**). The State Bar shall furnish to the selected vendor the actual number of eligible voters in each district in which an election is to be held and the actual number of CYLA members in each district in which an election is to be held.
2. Packet, General: Packet materials should be printed, to the extent possible, on recycled paper and printed with environmentally safe ink. The packets shall be submitted to assigned State Bar staff for prior approval. Every effort should be made to design the packet to weigh one ounce or less. The packet must include the following:
  - a. Outgoing Envelope: Size and style to be determined by the selected vendor. Envelopes to be printed with the following statement: **"This Envelope Contains Your State Bar of California Election Ballot"** prominently displayed. Return address will be the State Bar address; however, return address to also contain **"c/o of Election Services."** Envelopes to be designed in conformity with U.S. Postal Service standards for maximum discounts for bulk rate mail.
  - b. Return Envelope: Size and style to be determined by the vendor, but shall include **"State Bar of California - 2003 Election Ballot."** Method of distinguishing districts to be

determined by the vendor. Envelopes to be designed in conformity with U.S. Postal Service standards for Courtesy Reply Mail. Voter to pay return postage.

- c. Signature of Voter: Signature line on the return envelope will be concealed under the flap. Vendor will determine design of signature line under the flap of the return envelope, along with a clear statement that:
  - i. The eligible voter must legibly print their name, address, membership number and sign, in ink, in the designated area or the ballot will not be tabulated; and
  - ii. The member attests, under penalty of perjury, that he or she is the member whose name appears on the envelope (language to be provided by State Bar).
  - iii. Internet voters: vendor will determine method and design for internet voters to comply with the above signature requirement on the electronic ballot.
- d. Ballot: Size of the ballot and method to be used to distinguish districts to be determined by the vendor. Each district ballot shall be mailed only to eligible members in that district. The paper and electronic ballots shall contain the names of the candidates listed in random order using a random alphabet list provided by the State Bar. The front of the paper or electronic ballot must be printed with the State Bar district number, office number, if needed, and the names of the candidates and the city in which the candidate's practice is located. CYLA candidates must be listed separately from Board candidates and the paper or electronic ballot must clearly indicate that CYLA candidates are running for a different office than the Board of Governors. Paper and electronic ballots shall contain instructions for voting, including a statement by vendor assuring confidentiality of the handling of ballots.
- e. Candidate Statement: Each candidate may submit a statement not exceeding 250 words, pursuant to article II, section 8 of the Rules and Regulations of the State Bar of California. Each ballot package shall contain any statements submitted by the candidates, along with the statutory language authorizing the candidate statement. The statutory language will be provided by the State Bar. The State Bar will furnish to the vendor any history of public discipline of each candidate for inclusion in the candidate statement, as well as dates of admission to practice

law. Particulars regarding the information set forth in this section to be determined by the vendor with the prior written approval of the designated State Bar representative.

**D. Services to be Provided:**

1. Telephone Inquires from the Membership: The selected vendor is expected to respond to questions concerning the conduct of the election. Inquiries outside the scope of the conduct of the election, such as questions regarding State Bar rules, will be referred to designated State Bar staff.
2. Typeset Packet Materials: All materials to be included in the packet will be typeset by the vendor and subject to prior written approval by the designated representative of the State Bar.
3. Proofs and Press Checks: Designated representatives of the State Bar will approve print proofs and may conduct press checks of the paper and electronic ballots and the packet materials.
4. State Bar Eligibility List: Member name, address, member number and CYLA membership data will be supplied by State Bar to vendor in standard computer tape or electronic format.
5. Candidate Requests for Eligibility List/Voter List Mailing Labels: Vendor will provide lists and/or labels of members eligible to vote, if requested by a candidate, after **April 21, 2003**. Vendor also will provide lists and/or labels of members eligible to vote and/or those members who have not voted, to candidates, in conformity with State Bar procedure. Lists of those voters who have voted (have not voted) as of **May 29, 2003** must be provided to the State Bar or to the candidates before **June 3, 2003**. Lists and/or labels will be timely provided by vendor to candidates at a reasonable cost and in a usable format (electronic file, disk or labels, as designated by the candidate). Candidates will be responsible for the cost of lists and/or labels requested. Vendor shall be responsible for the assessment and collection of all such costs from the candidates.
6. Insertion of Material Into Outgoing Envelope: Ballot, return envelope, and biographical statements must be placed into outgoing envelope.
7. Mail Packets Bulk Rate: Vendor will use a U.S. Post Office approved mail hygiene program that will pre-sort for the lowest available postal rate. Format outgoing envelope in conformity with current U.S. Postal Service standards for mass mailing to get maximum available discounts for bulk rate mail.

8. Duplicate Ballot Fulfillment: The vendor should design a fulfillment function to provide duplicate ballots to members on the eligibility list at the member's official address of record. Vendors should describe the proposed procedure, which must include a requirement that members requesting a duplicate ballot certify in writing that their ballot was not received or was lost or damaged. The ballot packages sent to members should include instructions to members who wish to request a duplicate ballot describing the duplicate ballot fulfillment process and should provide that duplicate ballot requests be sent to the San Francisco office of the State Bar. Vendor must not provide duplicates via fax, nor accept faxed ballots. The Vendor must describe all procedures to be used to assure that each member may cast only one vote, whether by paper ballot or electronic ballot. The Bar seeks proposals that will include a set number of duplicate ballots at no additional charge within the overall cost proposal presented as well as a per piece cost in the event that the number of requests exceed the set number.

**E. Vendor Assurance of Security and Integrity of Election Process:**

Vendor will be required to represent and warrant that the election is properly and securely held so that only members on the eligibility list may vote, that only one vote per member is recorded and that each vote is by secret ballot such that the voter is not identified.

**F. Collection, Counting, Data Entry, Canvassing of Ballots and**

**Reporting of Results:** Vendor to describe procedures for the following:

1. Collection of Data Entry and Securing Returned Ballots.

- a. Counting: Vendor to count and batch returned ballots. Returned ballots will be batched by district. Vendor to count, and also batch, the following: voided ballots and questionable ballots (if applicable). Voided ballots include, and shall be batched as follows: ballots without signature, ballots where more than one vote was cast, ballots where no vote was marked, ballots where the Vendor cannot determine which candidate was chosen and ballots with write-in candidates. Voided and questionable ballots shall be counted separately and provided to the State Bar for review by the canvassing board. Pursuant to statute, counting of ballots may occur at the Vendor's facility, or the San Francisco offices of the State Bar.
- b. Data Entry: Vendor will record the number of votes for each candidate.

2. Canvassing: Vendor will tabulate votes for each candidate. Pursuant to statutory requirements, canvassing of all votes may be performed at the Vendor's facility, or the San Francisco offices of the State Bar. Vendor to provide procedure for determining accuracy of election. Vendor will return voided or questionable ballots to the State Bar.
3. Report of Vote: Vendor will report results of canvassing and counting of the Board of Governors election and the CYLA election to the Secretary of the State Bar of California, or her designee, no later than 3:00 p.m., on **July 9, 2003**. Vendor must follow the published schedule of dates for the canvass of the election. Vendor will furnish to the State Bar a final list of the vote.
4. Data Base: The vendor will return the final voting list and election database to the State Bar within five (5) days of the date of mailing of ballots.

#### **G. TIMELINE**

Time is of the essence for all of the deadlines associated with the Board of Governors and CYLA election. Vendor must complete the tabulation of all votes and present written reports of the Board of Governors election and the CYLA election to the Secretary of the State Bar of California, or her designee, on or before the deadlines set forth in Exhibit 2.

#### **IV. CONTRACTING REQUIREMENTS**

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

The State Bar contemplates that, in addition to the terms described in this RFP, final agreement between the State Bar and the selected vendor will include, without limitation, the principal terms set forth in this section. **Vendor's agreement to contract on the terms set forth in this RFP shall be presumed, unless specifically reserved by the vendor in its submission materials:**

##### **A. Time of the Essence**

Time is of the essence with respect to vendor's performance of the services.

**B. Warranties and Representations**

Vendor would warrant and represent that, in the performance of the agreement, the materials, analyses, data, programs and procedures necessary to service the election will be accurate and of high quality and will be performed by competent personnel in a diligent and professional manner consistent with the highest standards of the industry. Vendor will further warrant that all services provided would be in conformity with the specifications provided by the State Bar. Vendor will provide designated contact persons who will be available and empowered to remedy any non-conformity with this warranty.

**C. Backup Facilities**

The chosen vendor must have sufficient backup facilities so that the services shall be completed on or before the deadline in the event that the vendor's original facility cannot complete the project as planned. In the event that use of backup facilities results in additional expense to the State Bar, the vendor must reimburse the State Bar for all such expense.

**D. Contract Modifications**

The State Bar reserves the right to make changes, modifications, additions to or deletions from the scope of services and deadlines set forth herein ("changes"), regardless of the number, frequency or magnitude. Any request for increase in compensation and/or extension of deadlines submitted by vendor as a result of such change must include a detailed statement justifying the adjustment or extension. If the State Bar determines that no cost or schedule adjustments are warranted, the parties will meet in good faith and discuss the request. No direct, indirect or consequential damages, whether for delay, disruption, interference, impact, extended overhead, lost profits or any other cause, will be paid by the State Bar as a result of any request by the vendor.

**E. Compensation**

Compensation shall constitute full payment for all of vendor's services and personnel, including subcontractors, and for all costs and expenses incurred by vendor in performing the services. Compensation shall be conditioned upon completion of services to the satisfaction of the State Bar and will be made on a schedule which provides for a down payment upon execution of the agreement, a progress payment upon mailing of ballot materials, with final payment upon submission of the election results to the State Bar. Any reimbursement to vendor for travel expenses will be made pursuant to the Bar's Business and Travel Expense policy, a copy of which

is attached as Exhibit 3.

**F. Equipment, Tools, Supplies**

The vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required to perform the services under the agreement. 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 the agreement.

**G. Indemnity Obligations**

To the fullest extent permitted by law, the vendor will agree to protect, indemnify, defend and hold the State Bar, and the State Bar's Board of Governors, officers, employees, volunteers, agents and representatives and each of their successors and assigns (the "State Bar") entirely harmless from and against any and all 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 agreement, (b) any actual or alleged negligent act, negligent error or omission, intentional misconduct of, or violation of any law by vendor, vendor's employees, subcontractors, agents, representatives or assigns in the performance or non-performance of the professional services required to be performed by the vendor under the agreement; (c) any unauthorized use of Confidential Information; (d) any third party claims of State Bar candidates arising from the need to conduct a second election; or (e) the State Bar's enforcement of its rights under the indemnity provision. Vendor will agree that its obligations under the indemnity will survive the expiration and termination of the agreement.

In the event both the State Bar and vendor are named as defendants in the same civil action, and the State Bar, in its sole discretion, determines that a conflict of interest exists between the parties, vendor shall provide, at its own cost, independent counsel for the State Bar. The State Bar may, at its option, designate its Office of General Counsel as equal participating counsel in any litigation wherein the State Bar is defended by vendor.

**H. Insurance Obligations**

Vendor will agree to provide and keep in full force and effect during the term of the 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 Four Million Dollars (\$4,000,000.00); 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 Two Million Dollars (\$2,000,000.00) 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; and
3. Printers errors and omissions coverage with a general aggregate limit of at least Two Million Dollars (\$2,000,000.00); and
4. Professional liability insurance with a limit of at least Two Million Dollars (\$2,000,000.00); and
5. 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.

Vendor should provide the State Bar with true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days following the execution of the agreement. Each such policy of insurance should name the State Bar, along with its Board of Governors, officers, employees, volunteers, agents, representatives and each of their successors and assigns, as additional insureds and should state that such policy or policies shall be primary and that any insurance carried by State Bar shall be noncontributing with respect thereto. Each such policy of insurance maintained pursuant to the agreement should provide for thirty (30) days' prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount. If vendor fails to secure and maintain insurance policies in compliance with the agreement, the State Bar may secure the appropriate insurance policies and the vendor would pay upon demand the cost of same to the State Bar or the State Bar may terminate the agreement. In addition to the insurance required to be obtained and maintained by the vendor, if the vendor assigns any portion of the duties under the agreement in accordance with the terms thereof, each subcontractor or assignee must purchase and maintain the same insurance coverage required hereunder.

Vendor should immediately notify the State Bar if the vendor's commercial general liability insurance contains restrictive endorsements applicable to the services to be provided herein and 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 will have five (5) business days to remove all such restrictions. If the vendor is unable to do so, the State Bar may, at its sole option, terminate the agreement.

## I. Termination

1. **At Will.** The agreement may be terminated by the State Bar, in its sole discretion, upon fourteen (14) days' written notice to the vendor. In the event of such termination not due to the default by the vendor under the agreement, the vendor's sole compensation will be for that portion of the services performed to the date of termination, together with reimbursable expenses, if any, then due pursuant to the agreement; provided, however, that the vendor will not be paid for any services or reimbursable expenses associated with any work or service which was not authorized by the State Bar pursuant to the agreement.
2. **Default by Vendor.** The agreement may be terminated by the State Bar immediately upon written notice to the vendor in the event the vendor is in default under any of the provisions of the agreement. In the event the 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 compensation and reimbursable expenses, if any, provided for in the 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 consequential damages caused directly or indirectly by the vendor's default.
3. **Automatic Termination.** The agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) any substantial change in the nature, ownership or control of the business of either party; (c) vendor assigns or attempts to assign the agreement or any rights or duties therein without the State Bar's prior written consent, or (d) expiration of the agreement.

## J. Ownership Of Documents

The State Bar's database of its electorate and other proprietary information owned, prepared, or developed by the State Bar, including, but not limited

to, all Confidential Information, will remain the property of the State Bar or will be irrevocably assigned by vendor to the State Bar. Vendor will refrain from disclosing any and all Confidential Information to any third party without first obtaining the written consent of the State Bar. Vendor will not use or permit a third party to use any of the work product or Confidential Information in connection with the project or any other project or for any purpose whatsoever without the written consent of the State Bar.

**K. Confidentiality And Publicity**

Vendor will retain all Confidential Information in the strictest confidence and will neither use it nor disclose it to anyone without the prior written consent of the State Bar or by court order. The term "Confidential Information" is defined as any and all membership data including, without limitation, the membership list of active members provided by the State Bar and any and all materials and work product associated with the election including, without limitation, all computer tapes provided to vendor by the State Bar. Vendor recognizes that irreparable harm can be occasioned to the State Bar by disclosure of such Confidential Information. Accordingly, the State Bar may enjoin such disclosure. Except as provided in the agreement, in no event will vendor disclose to any third party without the State Bar's prior written consent (1) the election results, or (2) any Confidential Information. Vendor will obligate its employees, subcontractors, and agents to comply with this provision and further will agree to take all steps necessary to safeguard such information and prevent its disclosure to any outside party using the same degree of care and discretion that vendor uses with respect to information relating to its own business proprietary information. Data pertaining to the State Bar's business will not be commingled with that of any other customer without the prior written consent of the State Bar.

**L. Remedies**

In the event vendor fails to meet the deadlines specified under the contract, vendor will either reimburse the State Bar its costs (including, without limitation, all direct costs, indirect costs, and consequential damages resulting from such failure) to complete the election, or re-conduct the election at no cost to the State Bar, at the State Bar's sole discretion. In the event a recount is required, due to the fault of vendor, vendor will conduct such recount at no cost to the State Bar.

**M. Nondiscrimination**

During the performance of this agreement, vendor will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Vendor

is expected to comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and applicable regulations promulgated thereunder (California Administrative Code, Title 2, section 7285.0 et seq.). Vendor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

#### **N. Assignment/Subcontracting**

- 1. Assignment.** Vendor will not assign or transfer its interest, in whole or in part, under the 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. The parties also acknowledge that the State Bar's obligations under the agreement primarily concern the financial ability to carry through the terms of payment. Therefore, the State Bar may assign or transfer part or all of its interest in the agreement, provided that such assignment shall not become effective, and the State Bar will not be released from its obligations under the agreement, until such time as the State Bar or the State Bar's assignee makes payment to the vendor of all fees and payments then due and payable to the vendor.
- 2. Subcontracting.** Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the services, subject to the prior written approval of the State Bar.

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 which will be maintained during the term of the agreement. No subcontract will be approved unless the vendor provides a written guarantee that the vendor's firm is contractually obligated for the performance of all subcontracted work and all contractual responsibilities as if such subcontracting did not occur.

#### **O. Conflict of Interest**

Vendor will immediately notify the State Bar, in writing, of any potential or actual conflicts of interest that arise or exist between or among the State Bar and any other persons and/or entities for whom Vendor provides services.

The State Bar, as a public corporation, is subject to statutorily mandated conflict of interest codes. (See Business and Professions Code section 6036; Government Code sections 82019 and 82048). Vendor will familiarize itself with the State Bar's conflict of interest codes and avoid any and all situations that could result in violation of the provisions of said codes.

**P. General Provisions**

- 1. Force Majeure.** In the event vendor or the State Bar is delayed in performing any of its respective obligations under the agreement due to an event of Force Majeure, as defined below, and only if notice of such delay is properly given, such delay will be excused and the period of such delay will be added to the time for performance of the obligation delayed. Notwithstanding the above, however, no delay will be permitted beyond **April 30, 2003** for mailing of ballots and **July 9, 2003** for counting and canvassing of ballots. In the event of any anticipated or actual delay due to Force Majeure, the affected party shall exercise due diligence to shorten, avoid and mitigate the effects of the delay. Force Majeure is defined as acts of God, war, strikes, civil disorder, domestic or international terrorism, fire, government regulation, and other emergencies which are beyond the reasonable control of a party, but do not include mechanical or computer failures.

In the event of delay due to Force Majeure, the party with knowledge must notify the other party of the cause and estimated duration. Such notice must be given at the earliest possible opportunity, but in no event more than twenty-four (24) hours after the party knows or reasonably should know of the delay. No claim for an adjustment to the schedule will be valid unless such notice is submitted within the foregoing time period.

In no event will vendor be entitled to any adjustment in compensation because of any delay due to Force Majeure. No direct, indirect or consequential damages, whether for delay, disruption, interference, impact, extended overhead, lost profits or any other cause, will be paid by the State Bar as a result of any delay due to Force Majeure.

- 2. Governing Law.** The agreement will be governed by the laws of the State of California.
- 3. Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to the agreement, the unsuccessful party in such action or proceeding will reimburse the successful party for its disbursements incurred in connection therewith and for its reasonable attorneys' fees. In addition to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit on the agreement shall be entitled to collect or enforce the judgment. This provision is separate and several and shall survive the merger of the agreement into any

judgment on the agreement.

4. **Arbitration.** The parties will agree to cooperate fully and diligently with each other to resolve any dispute within thirty (30) days of the event causing such dispute. Any dispute in excess of \$5,000 that is not resolved within said thirty (30) days period will be referred to binding arbitration. Such arbitration will take place before one (1) arbitrator in the City and County of San Francisco, and will be conducted in accordance with Part 3, Title 9 of the California Code of Civil Procedure. The arbitrator shall be bound to apply legal principles in accordance with California law, without regard to its conflict of laws principles, unless the alleged claim or dispute is otherwise pre-empted by federal law. By agreeing to this arbitration clause, neither party waives applicable defenses or immunities available to it under California law, including but not limited to California Government Code section 810 *et seq.* Any arbitration demand made under this clause must be made no later than one year from the expiration or termination of this Agreement. The cost of the arbitration will be borne equally by the parties and each party will bear its own attorneys fees and costs. Disputes of Five Thousand Dollars (\$5,000) or less will be handled in Small Claims Court in the City and County of San Francisco.

Except if the agreement is terminated, or if otherwise agreed by the parties, both parties will be required to continue to fulfill their respective obligations under this agreement during the continuance of any arbitration proceedings. The arbitrator chosen in accordance with these provisions will not have the power to alter, amend or otherwise affect the terms of these arbitration provisions or the agreement.

5. **License.** In those instances where required, the vendor will represent and warrant that the vendor holds a license, permit or other special license to perform the services pursuant to the 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.

## Exhibit 2

### 2003 BOARD OF GOVERNORS AND CALIFORNIA YOUNG LAWYERS ASSOCIATION ELECTION SCHEDULE

Five seats on the State Bar's 23 member Board of Governors are up for election during 2003, and five seats on the California Young Lawyers Association's 17 member Board of Directors are up for election during 2003.

District 1:	Butte, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mendocino, Modoc, Nevada, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yuba
District 3:	Alameda, Contra Costa, San Mateo, Santa Clara
District 5:	Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Joaquin, Santa Cruz, Stanislaus, Tulare
District 7:	Los Angeles
District 9:	Imperial, San Diego

Any active member of the State Bar who maintains his or her principal office for the practice of law within the State Bar district in which there is a vacancy is eligible to run for a seat on the board. Lawyer members are elected for three-year terms and will assume their offices at the conclusion of the 2003 Annual Meeting.

February 3	First day for furnishing nominating petitions
April 1	Last day for filing nominating petitions
April 21*	Eligibility list closes
April 30	Ballots mailed
June 30	Last day for voting
July 8–10	Canvass
September 4 – 7	Annual Meeting

\* Any active member of the State Bar, in good standing on the date the eligibility list closes (April 21, 2003), whose principal place of business is located within a county that is included within the State Bar district in which there is an election, shall be eligible to vote in the 2003 election.