

**REQUEST FOR PROPOSAL
FOR MEMBER SURVEY
FOR THE STATE BAR OF CALIFORNIA**

This is a Request for Proposals ("RFP") to conduct for the State Bar of California a member services and member governance survey.

Please submit five copies of your proposal in a sealed envelope no later than 5:00 p.m. on September 21, 2005. All responses to the Request for Proposal shall be submitted to:

Laila Bartlett
Office of Member Services
State Bar of California
180 Howard Street
San Francisco, California 94105-1639

Any technical questions regarding the RFP may be directed to Laila Bartlett, The State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, telephone 415/538-2232. fax 415/538-2305, email: Laila.Bartlett@calbar.ca.gov

I. INTRODUCTION

The State Bar of California ("State Bar"), created in 1927 by the California Legislature and written into the constitution as a judicial branch agency in 1960, is a public corporation within the judicial branch of state government. All attorneys licensed to practice law in California must be members of the State Bar. To date, there are nearly 200,000 members of the State Bar.

The State Bar of California's Division of Member Services (DMS) is charged with the oversight and management of all State Bar member certification programs, including Minimum Continuing Legal Education (MCLE), Legal Specialization, Multi-jurisdictional Practice (MJP), and other member programs providing registration and competence compliance for members. DMS also oversees and staffs the Lawyer Assistance Program (LAP), the Member Roll, and the State Bar sponsored Professional Liability and Group Insurance programs. The Board of Governors has directed the MSD to survey the State Bar of California members to: 1) Report on the members' accessibility to and interest in the existing member services, 2) Report on member interest in new programs and value added products, including an enhanced array of insurance products and other affinity programs, 3) Report on member support to allow out-of-state active and all inactive members to vote for and serve on the Board of Governors. All results and analysis will be presented to the Board of Governors.

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

II. GENERAL INFORMATION

A. SUBMISSION REQUIREMENTS

The submission requirements for the RFP are detailed below. **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 contain the following information:

1. Qualification statement of bidder (including description of similar projects).
2. History of firm, including identity and qualifications of project director and other staff proposed to work on project, and proof of financial solvency and stability (e.g., balance sheets or income statements from prior years).
3. References (at least four including contact name and phone number) from organizations, which have used firm for similar projects.
4. Evidence that vendor, if a corporation, is in good standing and qualified to conduct business in California, and copies of business licenses, professional certifications or other credentials.
5. Written proposal describing the plans for accomplishing the required work, including a timeline and deadlines for all tasks.
6. 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 in 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 opinion the information was intended to mislead the State Bar regarding a requirement of the RFP.

C. EVALUATION PROCESS AND "MOST RESPONSIVE BIDDER"

An evaluation team will review in detail all proposals that are received to determine the most responsive bidder.

The State Bar reserves the right to determine the suitability of proposals on the basis of a proposal's meeting administrative requirements, technical requirements, the review team's assessment of the quality and performance of the service proposed, and cost.

During the evaluation process, the State Bar may require a vendor's representative to answer questions with regard to the vendor's proposal. Failure of a vendor to demonstrate that the claims made in its proposal are in fact true 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 "most responsive bidder." The weight to be assigned to each criterion 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 technical ability, capacity, flexibility, financial stability and skill of the bidder to perform the contract, including ability to perform within time specified, without delay (25%);
- > 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 (15%);
- > Cost and Compensation required (30%). Costs sheets will be checked only if a proposal is determined to be otherwise qualified. All figures entered on the cost sheets must be clearly legible.

D. AWARD AND EXECUTION OF CONTRACT

The bidder who receives the highest score in the evaluation process as detailed in Section II.C above will be awarded the contract.

Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and sent by facsimile and regular mail to bidders on September 26, 2005, of the Bar's intention to award the contract. It is anticipated that final selection of the vendor will be made by September 30, 2005. The evaluation team will select a winning proposal subject to approvals granted by the Board of Governors. Upon selection, a contract will be executed with the winning vendor in due course.

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 proposer who submitted timely, responsive and responsible proposals to this RFP.

If, after the State Bar and the HSP 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 proposer, 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 related matter, should be put in writing and addressed to Laila Bartlett.

E. ERRORS IN THE RFP

If a vendor submitting a proposal discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, the vendor 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 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 vendor shall bid at its own risk, and if the vendor is awarded the contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

F. QUESTIONS REGARDING THE RFP

If a vendor's question relates to a proprietary aspect of its proposal or bid and the question would expose proprietary information if disclosed to competitors, the vendor may submit the question in writing, conspicuously marking it as "CONFIDENTIAL." With the question, the vendor must submit a statement

explaining why the question is sensitive. If the State Bar concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the State Bar does not concur regarding the proprietary nature of the question, the question will not be answered in this manner and the vendor will be notified.

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 **three (3) days** after receipt of the RFP.

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 must notify the State Bar no later than **two (2)** days following the receipt of the addendum.

H. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS

A vendor may withdraw its proposal 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 vendor. The vendor may thereafter submit a new or modified proposal, provided that it is received at the State Bar no later than the deadline. Modification offered in any other manner, oral or written, will not be considered. Proposals cannot be changed after the evaluation process begins.

I. PROTEST PROCEDURE

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

1. The vendor has submitted a proposal that it believes to be the highest scored proposer, under the criteria set forth in Section II.C. above;
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 Laila Bartlett, Office of Member Services. If Ms. Bartlett is unable to resolve the protest to the vendor's satisfaction, the vendor should file a written protest **within five (5) working days of the notice of intention to award contract**. The written protest must state the facts surrounding the issue 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:

Andrew Conover
Office of Finance
The State Bar of California
180 Howard Street
San Francisco, CA 94105-1639

A receipt should be requested for hand-delivered mail.

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

J. NEWS RELEASES

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

K. DISPOSITION OF MATERIALS

All materials submitted in response to an RFP will become the property of the State Bar and will be returned only at the State Bar's option and at the expense of the vendor submitting the proposal or bid. One copy of a submitted proposal will be retained for official files and 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 will be maintained for the Bar's official files and will be subject to public inspection.

III. SCOPE OF SERVICES

The winning vendor will be expected to meet with State Bar representatives to develop 40 to 60 questions pertaining to demographics, law practice, technology use, health risks, etc. Previous questions from prior marketing surveys may be used as the basis for this survey, if both parties agree.

The State Bar anticipates vendor will use a representative sample as its methodology. If so, the State Bar's computerized membership list will be made available to vendor.

The survey method selected by vendor should ensure a margin of error of no more than 2.5 percent. Vendor should explain the advantages of its method over other methods (i.e., phone, fax, or mail) and its reliability.

The State Bar anticipates that the survey will be conducted no later than November 2005 with results and analysis provided to the State Bar no later than January 15, 2006.

The results of such marketing survey should be conveyed to the State Bar in terms understandable to the average individual.

IV. 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 in this RFP, final agreement between the State Bar and the selected Vendor will include, without limitation, the principal terms listed below. Vendor's agreement to contract on these terms shall be presumed unless specifically reserved by Vendor in its proposal.

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

B. TERM

The term of this contract will be four months.

C. RIGHTS TO INTELLECTUAL PROPERTY

All right, title and interest in and to all data, graphics, and other materials and information, in every form or format, which is created by vendor in conjunction with the survey, whether created wholly or partially by Vendor ("Work and Work Product") and all right, title, and interest in copyrights, trade secrets, trademarks, and other intellectual property derived from such Work and Work Product will be assigned to, and will become the sole property of the State Bar whether or not the work is completed. In the event of termination of the agreement, or abandonment or suspension of work performed under the agreement, all Work and Work Product and all such rights thereto existing as of the date of such termination, suspension or abandonment will be assigned to, and will become the property of the State Bar as of such date. The Vendor will agree to deliver to the State Bar within five days after written request made by the State Bar, all or any portion of the Work Product, as may be set forth in the State Bar's request.

All such Work and Work Product will be deemed "works made for hire" to the extent allowed by law. Vendor will require its appropriate employees, representatives, or independent contractors/subcontractors or anyone developing

or producing Work and Work Product under this agreement to execute an assignment of same to the State Bar. Vendor will cooperate with and assist the State Bar in applying for, and in executing all assignments, releases or other documents reasonably necessary to obtain and vest in the name of the State Bar alone (unless the State Bar otherwise directs).

Further, information, data, and images provided by the State Bar under the agreement will be the property of the State Bar.

D. WARRANTIES AND REPRESENTATIONS

Vendor will warrant and represent that it possesses such expertise, experience and resources to provide the services described in the agreement in a diligent, timely and professional manner consistent with the standards of the industry. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work.

With respect solely to material or elements provided by Vendor and expressly excluding material provided by the State Bar, neither the product nor any element thereof will defame the reputation or violate the right of privacy or violate any copyright, trademark or service mark or other right (including, without limitation, any literary, dramatic or musical right) of any person, firm or corporation or violate any other applicable law.

E. BACKUP EQUIPMENT

The chosen Vendor will have sufficient backup equipment so that the State Bar's projects can be completed by deadline in the event that the Vendor's primary equipment cannot complete the project as planned. Except in the case of force majeure as described below, in the event that the use of backup equipment results in additional expense to the State Bar, Vendor will reimburse the State Bar for such expense.

F. FORCE MAJEURE

In the event Vendor or the State Bar is delayed in performing any of its respective obligations under the agreement, except payment of money, due to force majeure, 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. However, no delay will be permitted if the date, schedule or time period for performance of the obligation is expressly stated in the agreement not to be subject to extension by reason of force majeure. In the event of a delay due to force majeure, the affected party will exercise due diligence to shorten, avoid and mitigate the effects of the delay and will keep the other party advised as to the continuance of the delay.

In no event will either party be entitled to any adjustment to compensation because of any delay due to force majeure. No direct, indirect or consequential damages, whether for delay, disruption, interference, impact, extended overhead, lost profit or any other cause, will be payable by either party as a result of any delay due to force majeure.

G. EQUIPMENT, TOOLS, SUPPLIES

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

H. TERMINATION

The agreement may be terminated by the State Bar, in its sole discretion, at any time for any reason upon thirty (30) days' written notice to Vendor. In the event Vendor is in default under the agreement, the agreement may be terminated by the State Bar upon ten (10) days' written notice to Vendor. The agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of either party; (b) failure to comply with federal, state or local laws, regulations or requirements, or (c) expiration of the agreement.

Unless otherwise agreed between the parties, within thirty (30) days of the effective date of termination, Vendor will deliver to the State Bar any and all Work and Work Product completed or under production.

I. INDEMNITY OBLIGATIONS OF VENDOR

Vendor will indemnify, defend and hold the State Bar (its board of governors, employees, agents and representatives, as the same may be constituted from time to time hereafter) (the "Indemnitees"), entirely harmless with respect to any and all claims, losses, damages, liabilities and expenses (including without limitation attorneys' fees and expenses) reasonably incurred by Indemnitees in connection with or as a result of any acts, errors or omissions of Vendor, its employees, subcontractors, agents, representatives or assigns, in connection with its performance of its obligations under the agreement, including without limitation any infringement or improper appropriation or use of the U.S. copyright, trademark, patent, or trade secret or similar proprietary rights of any third party. Vendor shall further indemnify and hold Indemnitees entirely harmless with respect to any and all expenses and costs (including without limitation attorneys'

fees and expenses) reasonably incurred by Indemnitees in connection with the State Bar's enforcement of its rights under this indemnity provision.

In connection with any claim which may give rise to indemnity hereunder resulting from or arising out of any claim or legal proceeding by a person other than an Indemnatee, Vendor, at the sole cost and expense of Vendor, may, upon written notice to Indemnatee, assume the defense of any such claim or legal proceeding. If Vendor assumes the defense of any such claim or legal proceedings, Vendor shall select counsel subject to the Indemnatee's approval which shall not be unreasonably withheld, to conduct the defense of such claims or legal proceedings and, at the sole cost and expense of Vendor, shall take all steps necessary in the defense or settlement thereof. Vendor shall not consent to a settlement of, or the entry of any judgment arising from, any such claim or legal proceeding, without the prior written consent of Indemnatee (which consent shall not be unreasonably withheld or delayed). Indemnatee shall be entitled to participate in (but not control) the defense of any such action, with its own counsel and at its own expense. If Vendor does not assume the defense of any such claim or litigation resulting therefrom in accordance with the terms hereof, Indemnatee may defend against such claim or litigation in such manner as Indemnatee may deem appropriate, including, but not limited to, settling such claim or litigation, after giving notice of the same to Vendor, on such reasonable terms as Indemnatee may deem appropriate.

In the event both the Indemnatee and Vendor are named as defendants in the same civil action, and the State Bar 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 Vendor defends the State Bar.

J. INSURANCE OBLIGATIONS OF VENDOR

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 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 (\$2,000,000.00) 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 as an additional insured 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 complying with the provisions of the Agreement, the State Bar may secure the appropriate insurance policies and the Vendor would pay upon demand the cost of it 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 will 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 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 the Agreement in accordance with the Agreement, except that notwithstanding anything to the contrary, the State Bar will only be required to give the Vendor two (2) days' notice of such termination.

K. CONFLICT OF INTEREST

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

The State Bar, as a public corporation, is subject to government 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.

L. CONFIDENTIALITY AND PUBLICITY

Contractor will retain all confidential information provided by the State Bar in the strictest confidence and will neither use it nor disclose it to anyone other than employees requiring the information to perform services under the agreement entered into between the State Bar and Vendor without the prior written consent of the State Bar. The State Bar will retain the right to enjoin any unauthorized disclosure in an appropriate court of law. Contractor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

M. NONDISCRIMINATION

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

N. INDEPENDENT CONTRACTOR

It is the express intention of the parties that Vendor is an independent contractor and not an employee, agent, joint venturer or partner of the State Bar. Nothing in this agreement should be interpreted or construed as creating or establishing the relationship of employer and employee between the State Bar and Vendor or any assistant, employee or agent of Vendor. As a consequence, the State Bar will not withhold any amount for any tax or other withholdings from any sums due Vendor under the agreement Vendor will retain the right to perform services for others during the term of the agreement.

O. ARBITRATION

Any question, claim or dispute arising out of or in connection with the Agreement that is in excess of Five Thousand Dollars (\$5,000.00) will be referred to binding arbitration, except with respect to disputes regarding breaches of confidentiality. 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 III, Title 9 of the California Code of Civil Procedure. The arbitrator will be bound to apply legal principles in accordance with California law. By agreeing to this arbitration clause, neither party waives applicable defenses or immunities available to it under California law. 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, each party to pay its own 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.

P. ASSIGNMENT

Neither party may assign nor transfer its interest, in whole or in part, under the agreement, without the written consent of the other party, which consent may not be unreasonably withheld.

Q. SUBCONTRACTS

Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the Work, subject to the approval of the State Bar. Vendor will clearly describe the reason for using any subcontractors, the specific role of each subcontractor, and the relationship between Vendor and its subcontractor, which will be maintained during the term of the agreement. Any such proposed subcontract will be subject to the written approval of the State Bar, not to be unreasonably withheld, prior to award of such subcontract by Vendor. No subcontract will be approved unless Vendor provides a written guarantee that Vendor's firm will be contractually obligated to assume all responsibilities and the insurance requirements set forth above.

Vendor will be responsible for the performance, in accordance with the agreement, of all subcontracted work and Vendor will be liable to the State Bar for such performance as if such subcontracting had not occurred. Substitution or addition of subcontractors will be permitted only as authorized in writing by the State Bar.