

REQUEST FOR PROPOSAL



THE STATE BAR OF CALIFORNIA

This document is a Request for Proposal ("RFP") for professional production services to include design, typesetting, printing, mailing and finishing of brochures, newsletters, postcards, and other educational and marketing materials for the Office of Section Education & Meeting Services of the State Bar of California.

Please submit five copies of your proposal in a sealed envelope no later than **5 p.m. on November 11, 2005**. All responses to the Request for Proposal shall be submitted to:

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

Attn: Pam Wilson

Contact Information:
Phone: 415-538-2395
Fax: 415-538-2368
E-mail: Pam.Wilson@calbar.ca.gov

I. INTRODUCTION

The State Bar of California ("State Bar"), created in 1927 by the Legislature and adopted into the California Constitution, is a public corporation within the judicial branch of state government. In accordance with the State Bar's procurement policies, contracts of \$50,000 or more are subject to formal competitive bidding. As a governmental agency, the State Bar regularly receives favorable governmental pricing and contract terms.

The Office of Section Education & Meeting Services of the State Bar is seeking design, typesetting, printing and mailing of its brochures, newsletters, postcards, and other educational and marketing materials for 2006 and 2007 with the option to renew for 2008.

II. STATEMENT OF WORK.

A. Vendor's Responsibilities

1. Attachment A attached hereto and incorporated herein by this reference describes each publication vendor is required to produce ("the Section Pieces").
 - a) Non-listed pieces will be bid separately and pricing of pieces will be similar to contract pieces.
 - b) If the scope of the piece changes, the individual piece has to be re-bid within the pricing parameters or standards provided in the contract.
2. Vendor must itself directly create the design, typeset, print and mail each Section Piece. This includes file creation and production of CD Roms and/or like products. No part of the process may be brokered, subcontracted or outsourced to another vendor.
3. For each Section Piece, vendor shall perform functions as described in Attachment A upon receipt of a text file from the State Bar. Functions typically include:
 - a) Agree with the State Bar on dates to submit the initial design, complete final production and mail the Section Piece.
 - b) Create a design for the Section Piece to submit to the State Bar for its review and approval.
 - c) Submit a proof of the Section Piece in PDF format to the State Bar according to the following timeframe (for a 2-4 color, 5-24 page piece, within 3 days. A 2-4color, 1-4 page flyer within one day), to permit the State Bar to edit and revise the proof to create a final product satisfactory to the State Bar."
 - d) Typeset and print the Section Piece in the design and with the text as approved by the State Bar, using the paper, ink and other materials and specifications described in Attachment A.
 - e) Mail the Section Piece to those individuals on a mailing list to be provided by the State Bar.

- f) Provide a PDF copy of the piece suitable for posting on the State Bar's website.
4. Vendor shall advance the cost of postage for each Section Piece, to be reimbursed by the State Bar.
5. Vendor shall promptly notify the State Bar of the date a Section Piece is mailed or shipped. If production of any Section Piece is delayed so that the agreed upon mailing date cannot be met, Vendor shall notify the State Bar immediately of such delay.
6. Payment Terms: Vendor shall allow 45 days from the date of invoice for payment to be received.

B. State Bar Responsibilities

1. The State Bar shall provide Vendor with a text file for each Section Piece with sufficient lead time to permit design creation and proof revision prior to the deadline date for mailing.
2. The State Bar shall provide Vendor with a separate mailing list for each Section Piece.
3. The State Bar shall timely review and edit the proofs of each Section Piece received from Vendor.

III. GENERAL INFORMATION

A. Submission Requirements

The submission requirements for the RFP are set forth below. A proposal shall constitute an irrevocable offer for thirty (30) business days following the deadline for its submission. Reference to a certain number of days in this RFP shall mean business days unless otherwise specified.

Responses to the RFP must contain the following information:

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

3. The most recent annual report or comparable statement including financial data and an indication of resources dedicated to research and development.
4. A description of similar projects completed by the vendor within the past three years.
5. Qualifications, background and experience of the project director and other staff proposed to work on the project.
6. References from at least four organizations that have used vendor's services for similar projects within the past 18 months.
7. A general description of the techniques, approaches and methods to be used in completing the project.
8. A description of the chronology of completing the work, including a time line and deadlines for each task.
9. A detailed per piece cost proposal for the items described in attachment A. As the State Bar may award a contract based on the initial offer, a vendor should make its initial offer on the most favorable terms available. To be responsive, a proposal must contain firm cost totals for 2006, 2007, and 2008.

B. Rejection of Proposals

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

Immaterial deviations may cause a proposal 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 the RFP requirements.

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

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

C. Evaluation Process and Highest Scored Proposal

An evaluation team will review in detail all proposals that are received to determine the Highest Scored Proposal ("HSP").

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

During the evaluation process, the State Bar may require a vendor's representative to answer questions with regard to the proposal and/or require certain vendor's to make a formal presentation to the evaluation team.

The following criteria will be used in reviewing and comparing the proposals and in determining the HSP. The weight to be assigned to each criterion appears following each item.

1. Responsiveness of the proposal to original specifications set forth in the RFP, including agreement with the State Bar's contracting requirements. **(15 %)**
2. The technical ability, capacity, and flexibility of the vendor to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, demonstrated success in projects with similar requirements and any other contracts with the State Bar. **(35 %)**
3. The financial viability of the vendor as evidenced by standard financial reports. **(10 %)**
4. Ability of vendor to provide law related reference list. **(10%)**
5. The total cost of the proposal solution. Costs will be evaluated only if a proposal is determined to be otherwise qualified. Costs should be itemized by section piece to allow the State Bar to implement the solution over the term of the contract. **(30 %)**

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSP will be awarded the contract. Notice will be posted at the State Bar's offices at 180 Howard Street, San Francisco, CA and written notice of the Bar's intention to award the contract to the HSP will be sent to vendors on or about **December 1, 2005**. It is anticipated that final selection of the HSP will be made by **December 16, 2005**.

The evaluation team will select a winning proposal subject to approvals granted by the Board of Governors. Upon selection, the State Bar and the selected vendor will enter into good faith negotiations on a contract containing, without limitation, the Statement of Work and Contracting Requirements sections below.

No contract or agreement, express or implied, shall exist or be binding on the State Bar before the execution of a written contract by both parties. If agreement on the terms of such a contract cannot be reached after a period deemed reasonable by the State Bar in its sole discretion, the State Bar may enter into negotiations and sign a contract with any other vendors who submitted timely, responsive and responsible proposals to this RFP.

Questions regarding the State Bar's award of any business on the basis of proposals submitted in response to the RFP, or on any other matter in connection with the selection process, should be addressed in writing to:

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

Attn: Pam Wilson
Contact Information:
Phone: 415-538-2395
Fax: 415-538-2368
E-mail: Pam.Wilson@calbar.ca.gov

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

E. Errors in the RFP

If a vendor 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 potential vendors to whom the RFP was sent.

If prior to the date fixed for submissions, a vendor 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, awarded the contract, shall not be entitled to additional compensation or time by reason of the error or its later correction.

F. Questions Regarding the RFP

Questions regarding the RFP may be addressed in writing to Pam Wilson. (See contact information above.)

All questions and answers regarding the RFP may be shared with all known vendors and posted on the State Bar Website.

If a question relates to a proprietary aspect of its proposal 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. A vendor who believes that one or more of the RFP's requirements is onerous or unfair, or unnecessarily precludes less costly or alternative solutions, may submit a written request that the RFP be changed. The request must set forth the recommended change and reason for proposing the change. Such requests must be submitted and received by the State Bar no later than five (5) days before the deadline for submitting proposals.

G. Addenda

The State Bar may modify the RFP prior to the date fixed for submission by mailing, e-mailing or faxing an addendum to vendors to whom the RFP was sent and posted on the State Bar's Web site. If any vendor determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than three (3) days following the receipt of the addendum.

H. Withdrawal and Resubmission/Modification of Proposal

A proposal may be withdrawn at any time prior to the deadline for submitting proposals by notifying the State Bar in writing of its withdrawal. The withdrawing vendor must sign the notice of withdrawal. 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 who has submitted a proposal may protest the award if it meets all the following conditions:

1. The vendor has submitted a proposal that it believes should have been the HSP, under the criteria set forth 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.

A vendor qualified to submit a protest should contact Andrew Conover, **Procurement Supervisor**, at the State Bar of California to attempt an informal resolution. If he is unable to resolve the protest to the vendor's satisfaction, the vendor must file a written protest within five (5) 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:

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

Attention: Robert Hawley, Deputy Executive Director

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

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. If appropriate, the State Bar's first choice is to incorporate the master purchasing terms and conditions applicable to the State of California to the Bar's agreement with the Vendor.

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

A. Time of Essence

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

B. Warranties and Representations

Vendor will warrant and represent that it possesses such expertise, experience and resources to perform the scope of services required in a diligent, timely and professional manner consistent with the highest standards of the industry. Vendor further warrants that all Services provided will be in conformance with the specifications provided by the State Bar including without limitation those specifications set forth in the Statement of Work, including **Attachment A**. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work. Vendor will designate a contact person to be available and authorized to remedy any non-conformity with this warranty.

C. Backup Facilities

Vendor will maintain sufficient equipments as well as multiple presses and otherwise maintain competent operational systems to ensure that the Services can be completed in accordance with the Agreement. Vendor will use its best efforts and assist the State Bar in locating and engaging the services of a third party printer to provide the Services in the event vendor is unable to perform its obligations or in the event that the vendor's facility cannot complete the projects as planned.

D. Equipment, Tools, Supplies

Vendor will supply all equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services and insurance required. Vendor is not required to purchase, rent or hire any equipment, tools, supplies, offices, transportation, personnel, insurance or instrumentalities from the State Bar. The State Bar has no obligation whatsoever to provide any equipment, tools, supplies, offices, personnel, instrumentalities, transportation, support services or insurance required to perform services under this agreement.

E. Indemnity Obligations of Vendor

To the fullest extent permitted by law, Vendor will agree to protect, indemnify, defend and hold the State Bar and the State Bar's Board of Governors, officers, employees, agents and representatives and each of their successors and assigns 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 any actual or alleged negligent act or omission, or intentional misconduct, or violation of law by Vendor, the Vendor's employees, subcontractors, agents, representatives or assigns (collectively, the "Vendor's Agents") in the performance or non-performance of the professional

services required to be performed by the Vendor under the Agreement. Vendor will agree that its obligations under this indemnity will survive the expiration and termination of this agreement.

F. Insurance Obligations of Vendor

Vendor will provide and keep in full force and effect during the term of this agreement, at the Vendor's own cost and expense, the following insurance policies for the joint benefit of Vendor and the State Bar, with an insurer reasonably acceptable to the State Bar (Best Rating of A+ or better):

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. Printer errors and omissions coverage with a general aggregate limit of at least One Million Dollars (\$1,000,000.00).

Each such policy will name the State Bar as an additional insured and will state that the Vendor's policy shall be primary and that any insurance carried by the State Bar shall be non-contributing with respect thereto. Each such policy will provide for thirty (30) days prior written notice to the State Bar in the event of cancellation or reduction in coverage or amount.

Vendor will also maintain 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.

Vendor will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105 Attn: Andrew Conover, **Procurement Supervisor**, true and correct copies of its insurance policies required above, and certificates of such insurance within seven (7) days of the execution of this agreement

If Vendor fails to secure and maintain insurance policies complying with the provisions of this agreement, the State Bar may purchase the appropriate insurance policies and the Vendor will pay upon demand the cost of it to the State Bar or the State Bar may terminate this agreement. In addition to the insurance required to be maintained by the Vendor, if the Vendor assigns any portion of the duties under this agreement in accordance with the terms, hereof, each subcontractor or assignee will purchase and maintain the same insurance coverage required hereunder.

Vendor will immediately notify the State Bar if the Vendor's commercial general liability insurance contains restrictive endorsements other than those restrictive endorsements normally included in the State of California. If Vendor's commercial general liability insurance contains such restrictive endorsements, the Vendor shall have five (5) business days to remove said restrictions. If the Vendor is unable to do so, the State Bar may terminate this agreement, and will be required to give the Vendor no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

G. Termination

1. Appropriation of Funds. If the term of the Agreement extends into fiscal years subsequent to that in which it is approved, such continuation shall be contingent upon the California State Legislature's authorization of funding at or above current levels. If sufficient funds are not authorized, Vendor agrees to terminate any services supplied to the State Bar, and relieve the State Bar of any further obligations under the Agreement.
2. Default by Vendor. The Agreement may be terminated by the State Bar upon thirty (30) days written notice to the Vendor in the event the Vendor is in default under any of its provisions. In the event the Agreement is terminated due to the default by Vendor, Vendor will not be entitled to receive any compensation for services performed or for any reimbursable expenses incurred, and the State Bar will have the right to have the services completed by other parties and the Vendor will reimburse the State Bar for the actual costs to complete the services in excess of the balance of the fee and reimbursable expenses, if any, provided for in this agreement. Any such act by the State Bar will not be deemed a waiver of any other right or remedy of the State Bar, including, without limitation, the State Bar's right to consequential damages caused directly or indirectly by the Vendor's default.
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) sale of the business of either party; (c) failure to comply with federal, state or local laws, regulations or requirements, or (d) expiration of the Agreement.

H. Ownership of Documents

All work product and instruments of the specifications ("work product") and all rights thereto in the nature of copyright, trademark, patent and rights to ideas will be assigned to, and will become the 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 hereunder, all 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 term "work product" shall include, without limitation, any and all versions of any and all drawings, plans, graphs, photographs, slides, studies, schedules, budgets, estimates, layouts, and legislative bills other work product and any services which have been or will be prepared or rendered by the Vendor, or under the Vendor's direction, pursuant to this agreement. Vendor will covenant, warrant and represent to the State Bar that the Vendor has the right to assign the copyright and the work product. Vendor will refrain from disclosing any and all versions of plans 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 in connection with this project or any other project without the written consent of the State Bar. Vendor will agree to deliver to the State Bar within five (5) days of a written request, all or any portion of the work product set forth in the State Bar's request. The Vendor will be permitted to retain copies for information and reference. The Vendor will provide the State Bar with updated copies of all work product on a monthly basis either on a computer disk or other reproducible format as requested by the State Bar.

I. Confidentiality and Publicity

Vendor will retain all confidential information, including all membership information, provided by the State Bar in the strictest confidence and will neither use it nor disclose it 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.

Vendor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.

J. Nondiscrimination

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 will comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.) and applicable

regulations promulgated there under (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 the Agreement.

K. 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 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 Vendor of all fees and payments then due and payable.
2. Subcontracting. The Vendor may not subcontract with other firms or individuals to complete all, or any portion of the Services.

L. Audit

The State Bar will have the right to review and to copy any records and supporting documentation pertaining to the performance of the Agreement. Vendor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Upon no less than forty-eight hours notice by the State Bar, the vendor agrees to allow the auditor(s) access to such records during normal business hours. Subject to reasonable notice and minimal disruption to normal business operations, Printer shall allow interviews of any employees who might reasonably have information related to such records. The above notwithstanding, the vendor may refuse the State Bar access to employees for audit interviews in the event the parties are engaged in an active material dispute.

M. Force Majeure

Neither party will be deemed in default of the Agreement or any provision hereunder to the extent that any delay or failure in the performance of its obligations, other than the payment of money, is due to force majeure (including acts of God, war, government regulation, civil disorder, fire,

flood, acts of domestic or international terrorism or other emergencies beyond the control of the affected party. 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 the event that force majeure makes completion of the obligations under the Agreement impossible, the Agreement may be terminated by either party, by written notice, without any liability, penalty, or prejudice, whatsoever, for any of the reasons listed in the first sentence of this paragraph.

N. General Provisions

1. Governing Law. This agreement will be governed by the laws of the State of California without giving effect to its principles of conflict of laws.
2. 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 reasonable attorneys' fees as fixed by the court. This provision is separate and several and shall survive the merger of the Agreement into any judgment.
3. Arbitration. Any question, claim or dispute arising out of or in connection with this agreement in excess of Five Thousand Dollars (\$5,000.00) shall be referred to binding arbitration, except with respect to disputes regarding breaches of confidentiality. Such arbitration shall take place before a single arbitrator in the City and County of San Francisco, and shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. The arbitrator shall 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 shall be borne equally by the parties, each party to pay its own fees and costs. Disputes of Five Thousand Dollars (\$5,000) or less shall be handled in Small Claims Court in the City and County of San Francisco.
4. License. In those instances where required, the Vendor represents and warrants that the Vendor holds a license, permit or special license to perform the services pursuant to this agreement, as required by law, or employs or works under the general supervision

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