

The State Bar of California

REQUEST FOR PROPOSAL



This document is a Request for Proposal (“RFP”) for Online Streaming Continuing Legal Education (“CLE”) and Customer Database Management.

Please submit 4 copies of your proposal no later than 5 p.m. on December 14, 2006 to:

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

Attn: Pam Wilson
Section Education & Meeting Services
(415) 538-2395
pam.wilson@calbar.ca.gov

I. INTRODUCTION

The State Bar of California (“ the State Bar”), created in 1927 by the Legislature and adopted into the California Constitution in 1960, is a public corporation within the judicial branch of state government. In accordance with statute and 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 is granted favorable governmental pricing and contract terms.

The State Bar is seeking proposals for a vendor to offer a broad range of services, including customer intelligence, process automation and tracking, strong targeted communication capabilities, and a single point framework that compels customers to want to go to the State Bar website for all types of CLE services. The contract term is 3 years, with an option to renew for an additional 2 years.

Contact with State Bar personnel in connection with this RFP may not be made other than as specified in this RFP. Unauthorized contact of any State Bar personnel may be cause for rejection of a bid.

II. GENERAL INFORMATION

The submission requirements for this RFP are set forth below. A proposal shall constitute an irrevocable offer for 60 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.

A. Submission Requirements

To be considered responsive, a proposal must contain the following, referenced by number and in the order below:

1. A brief description of the history and organization of the bidder's firm, and of any proposed subcontractor.
2. Copies of business licenses, professional certifications or other credentials, together with evidence that bidder, if a corporation, is in good standing and qualified to conduct business in California.
3. The most recent year's annual reports, or comparable document, including detailed current profit and loss, assets and liabilities, and other relevant financial data.
4. A description of similar projects completed by the bidder within the past three (3) years.
5. Qualifications, background and experience of the project director and other staff proposed to work on the project.
6. References from State Bars and local California Bar Associations with contact information that have used bidder's services for similar projects/installations within the last 12-18 months.
7. A general description of the techniques, approaches and methods to be used in completing the project including (see Statement of Work, page 7 for details/descriptions of a-h below):
 - a. Online streaming and video functions
 - b. Customer management
 - c. Additional requirements
 - d. Branding
 - e. Technical support
 - f. Documentation and administration
 - g. Revenue
 - h. Other options
8. A description of the chronology for completing the work, including a time line and deadlines for each task.

9. A detailed cost proposal, including any travel costs and other expenses. As the State Bar may award a contract based on the initial offer, a bidder should make its initial offer on the most favorable terms available. The State Bar reserves the right, however, to have discussions with those bidders falling within a competitive range, and to request revised pricing offers from them and to make an award or conduct negotiations thereafter.
10. A written acknowledgement of the acceptance of the Contracting Requirements set forth in section IV of this RFP. Specific terms may be reserved for future negotiation, but must be clearly identified and reasons given for the reservation.

Proposals which fail to address each of the submission requirements above may be deemed non-responsive and will not be further considered.

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 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 bidder 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 Score Bidder

An evaluation team will review in detail all proposals that are received to determine the Highest Score Bidder ("HSB").

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 bidder's representative to answer questions with regard to the proposal and/or require certain bidders to make a formal presentation to the evaluation team and/or the State Bar Senior Executive Team. The State Bar may also have discussions with those bidders falling within a competitive range, and request revised pricing offers from such bidders and make an award and/or conduct negotiations thereafter.

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

1. Responsiveness of the proposal to the submission requirements set forth in the RFP (10%).
2. Agreement with the State Bar's contracting requirements (10%).
3. The technical ability, capacity, financial viability, and flexibility of the bidder to perform the contract in a timely manner and on budget, as verified by, e.g., the quality of any demonstration, client references, demonstrated success in projects with similar requirements and any other contracts with the State Bar (30%).
4. The ability for two-way content sharing of course catalog with local Bar Associations and other State Bars., including web seminars, podcasting and other online resources (20%).
5. The projected revenue of the proposal solution. Please itemize revenue model as a percentage of gross revenues collected from course participants. Project costs and projected revenue will be evaluated only if a proposal is determined to be otherwise qualified. Proposal should be itemized by type to allow the State Bar to implement the solution over the term of the contract (30%).

If a large number of proposals are received, the State Bar reserves the right to review the proposals using a tiered evaluation system. All proposals will be evaluated based on the Submission Requirements and Cost, with the top candidates advancing as a finalist and receiving a full evaluation as outlined above.

D. Award and Execution of Contract

Subject to the State Bar's right to reject any or all proposals, the HSB 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 sent to bidders on or about January 5, 2007 of

the Bar's intention to award the contract to the HSB. It is anticipated that final selection of the HSB will be made by January 12, 2007. 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 bidder who submitted timely, responsive and responsible proposals to this RFP.

If, after the State Bar and the HSB 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 bidder, 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 other matter in connection with the selection process, should be addressed in writing to Andrew Conover, Procurement Supervisor, at andrew.conover@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 bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFP, the bidder 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 bidders to whom the RFP was sent.

If prior to the date fixed for submissions, a bidder 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, 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 at pam.wilson@calbar.ca.gov. All questions must be submitted no later than 10 days

prior to the date for submission of proposals. Questions and answers regarding the RFP may be shared with all bidders known to be interested in submitting a proposal.

If a question relates to a proprietary aspect of its proposal 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 in this manner and the bidder will be notified.

A bidder 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. The State Bar must receive any such request no later than 10 days before the deadline for submitting proposals.

G. Addenda

The State Bar may modify the RFP prior to the date fixed for submission by posting, mailing, emailing or faxing an addendum to the bidders known to be interested in submitting a proposal. If any bidder determines that an addendum unnecessarily restricts its ability to bid, it must notify the State Bar in writing no later than 5 days before the deadline for submitting proposals.

H. Withdrawal and Resubmission/Modification of Proposals

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 notice must be signed by the bidder. The bidder 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 bidder may protest the award if it meets all the following conditions:

1. The bidder has submitted a proposal that it believes is or should have been the HSB, under the criteria set forth above;

2. The bidder 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 bidder believes that the State Bar has incorrectly selected another bidder.

A bidder qualified to protest should contact Andrew Conover, Procurement Supervisor, (415) 538-2207, to attempt an informal resolution. If this contact is unable to resolve the protest to the bidder's satisfaction, the bidder must file a written protest within 5 days of the notice of intention to award the contract. The written protest must state the facts surrounding the issue and the reasons the bidder 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: Peggy Van Horn, Chief Financial Officer

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 of California and will be returned only at the State Bar's option and at the expense of the bidder. 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 bidder's consent will be requested before release of such pages to non-State Bar personnel. By submitting a proposal, a bidder 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.

III. STATEMENT OF WORK

The chosen vendor will provide all hosting and administration and will provide linkage to the State Bar's website. Vendor must have a proven application environment with an outstanding service and support history. Vendor should have demonstrated expertise in long-term web-oriented business development strategies.

A. Online Streaming and Video Functions

Vendor should discuss how the following functions will be provided:

1. Streaming Online CLE
2. Pod Casting
3. Live Webcasts
4. Telephone and Webinars
5. Mass communications
6. Opportunities for the sale of all other legal information formats such as publications
7. Customer purchase history (for both the State Bar and the customer)
8. Long-range goal for the State Bar: The ability to provide direct online registration for both in-person and online CLE offerings. One event management tool designed with State Bar of California specific input to process registrations for all in-person CLE events as well as all types of online CLE offerings.

B. Customer Management

It is important to the State Bar of California to have the ability to collect and maintain customer data including purchasing history and buying behavior in order to better market State Bar services and provide customer service. Vendor must have the capability to maintain the following customer information
Please discuss:

1. Name
2. Status
3. Licenses
4. Areas of Interest

5. Track monies paid
6. Track credits earned
7. Track members correspondence with the bar
8. Keep a historical record of all data and all changes
9. Track who changed information and when they did it

The above information must be transferable to the State Bar upon termination of the contract. Please describe in what format the information would be transferred to the State Bar.

C. Additional Requirements

Discuss how the vendors system will allow customers to:

1. Input self-study and 3rd party credits to their accounts
2. Check their credit hours and print a report including what credit amounts and types of CLE are required, what they have already obtained and their deficiencies so they can set up a plan to finish their requirements
3. Purchase various delivery methods of CLE (in-person programs and all types of online offerings)

Discuss how the vendors system will allow the State Bar of California the ability to:

4. Offer discounts and/or multiple pricing structures
5. Print a variety of usage reports
6. Offer CLE events at multiple locations
7. Track and assign speaker, bar staff, volunteers to specific locations
8. Associate sponsors and co-sponsors to an event
9. Register members and move CLE credits to their accounts
10. Generate seminar sign in lists

11. Print bar code name badges that can be scanned at seminars to report attendance.
12. Offer a central repository of CLE credits acquired via the State Bar of California that will allow customers to track all types of credits earned, not just online credits.
13. Produce online-targeted marketing of programs to provide effective marketing of online CLE to the “targeted” customers. This includes the marketing related products (ala publications) to them.
14. Combine the CLE platform with other State Bar member benefits. Please describe the ability of your solution to integrate with other technologies.

D. Branding

The State Bar has established a strong online brand in e-learning through its CLE offerings. The State Bar’s “brand” should be incorporated in all online offerings and have a similar graphic look and functionality as the State Bar of California web site. Vendor should have a demonstrable track record in brand design and development.

E. Technical Support

Vendor should have the capability to technically facilitate course offerings and related administrative considerations. Vendor should have a proven ability to host content on their servers. System performance must be guaranteed and technical maintenance must be offered on a 24-hour basis. Members and instructors must also be able to access technical support if they have a problem.

Please address the following issues:

1. Is the vendor’s system easily scalable?
2. Does vendor guarantee system performance?
3. Does vendor offer 24-hour technical maintenance of the servers?
4. What support is offered to State Bar members?
5. How many end users can vendor reliably accommodate?
6. How many end-users has vendor provided online courses to?
7. What other services are available to the State Bar?

F. Documentation and Administration

Vendor should provide online functions that offer interactive features, provides users with the ability to receive certification and course completion, and allow the Bar to track usage and users evaluations. Please address the following issues:

1. What reports does vendor's system have the capability to generate for the State Bar?
2. Can vendor provide users with certification of having completed the course? Does vendor's system allow end users to track and view course progress through scoring or other feedback mechanism?
3. Does the system allow for end users to establish individual membership accounts?
4. Does vendor's system allow for prepaid subscriptions against which end users may draw for payment of individual classes?
5. Can a member modify his/her individual account with records of other CLE units obtained from multiple CLE course providers?
6. Does vendor's system allow the State Bar to monitor, evaluate and compare the traffic patterns of course offerings?
7. Does vendor's system allow the State Bar to obtain course evaluation information provided by users?
8. Should the State Bar desire to do so in the future, can vendor provide the State Bar with the ability to view reports relating to end user progress, performance and demographics?
9. How many law firms, bar associations and State Bar clients are currently using your hosting, e-commerce, tracking and reporting services?

G. Revenue

The State Bar has the goal of structuring the online course offerings so that the online CLE project is financially profitable. Vendor proposal should discuss revenue-sharing arrangements.

H. Other Options

The State Bar is interested in supplemental user features that can offer value added benefits to its members and can potentially generate revenues. Email features such as newsletters, new course announcements and other “opt-in email” marketing strategies should also be discussed.

The State Bar would welcome a vendor that can offer additional user features such as third party advertising, legal news headlines, legal research, etc. Please address the additional user features that you would provide.

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 above in this RFP, 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 term specifically reserved in the proposal for future negotiation.

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 warrants 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 standards of the industry. Vendor will supply at all times an adequate number of well-qualified personnel to perform the work. Vendor will provide a contact person available and authorized to remedy any non-conformity with this warranty.

Vendor warrants and represents that its solution shall conform to and be reasonably free of error and/or defects in material and workmanship, and fit for the purpose for which it is to be used. Vendor will, at its sole cost and expense, promptly perform any and all corrections of error that occur as a result of its own, its contractors' or subcontractors' negligence, make any corrections and modifications to the solution necessary or desirable to cure any non-conformity with the specifications, and repair said system or components so as to remedy any defects in material and/or workmanship.

Vendor warrants and represents that the solution does not infringe any copyright or other proprietary right (including trade secrets) of any third party, and that Vendor has full authority to grant all rights to the State Bar hereunder.

Vendor warrants and represents that no claim, whether embodied in an action past or present, of infringement of any patent, copyright, trademark, or other intellectual property right, has been made or is pending against vendor or any entity from which Vendor has obtained such rights relative to the proposal presented to the State Bar.

C. 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.

D. Indemnity Obligations of Vendor

To the fullest extent permitted by law, Vendor will 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 (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 (collectively, "Vendor's Agents") in the performance or non-performance of the professional services required to be performed by Vendor under the Agreement; or (c) the State Bar's enforcement of its rights under this indemnity provision. Vendor's obligations under this indemnity will survive the expiration and termination of this agreement.

In the event both the State Bar 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 will agree to 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 Vendor defends the State Bar.

E. Insurance Obligations of Vendor

Vendor will provide and keep in full force and effect during the term of this agreement, at 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 (\$1,000,000.00) combined single limit.
4. Professional liability insurance with a general aggregate limit of Two Million Dollars (\$2,000,000) and an occurrence limit of two Million Dollars (\$2,000,000).
5. Fidelity Bond Coverage in the amount of Three Million Dollars (\$3,000,000), with riders that cover Forgery and Alteration and Computer Systems Fraud.

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. Each such policy will name the State Bar as an additional insured and will state that Vendor's policy shall be primary and that any insurance carried by the State Bar shall be noncontributing 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. 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 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 obtained and maintained by Vendor, if 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, Vendor shall have

five (5) business days to remove said restrictions. If Vendor is unable to do so, the State Bar may terminate this agreement, and will be required to give Vendor no more than two (2) days' notice of such termination, anything in this agreement to the contrary notwithstanding.

F. Termination

1. **At Will.** The agreement will be terminated by the State Bar, in its sole and complete discretion, upon thirty (30) days written notice to Vendor. In the event of termination pursuant to this section, the vendor's sole compensation will be for that portion of services performed or goods delivered up to the date of termination, together with reimbursable expenses, if any then due. Vendor will not be paid for any services, goods or reimbursable expenses associated with any work or service not specifically authorized by the State Bar.
2. **Authorization of Funds.** If the term of this agreement extends into fiscal year(s) subsequent to that in which it is signed, it is understood that the continuation of this contract is subject to the authorization of sufficient funding for such purpose by the California State Legislature. If sufficient funds are not so authorized, the parties mutually agree that the contract may be terminated or amended as appropriate in response to the reduction in funding. If the agreement is terminated, Contractor agrees to take back any affected equipment, products, software, or hardware furnished under this contract, and relieve the State Bar of any further obligation, except for the State Bar's obligation to pay for services already performed pursuant to this agreement.
3. **Default by Vendor.** This agreement may be terminated by the State Bar upon thirty (30) days written notice to Vendor in the event Vendor is in default under any of its provisions. In the event this agreement is terminated due to the default by 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 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 Vendor's default.
4. **Automatic Termination.** This agreement will automatically terminate on the occurrence of any of the following events: (a) bankruptcy or insolvency of Vendor; (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.

G. Confidentiality and Publicity

1. Vendor 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 this agreement without the prior written consent of the State Bar. The State Bar retains the right to enjoin any unauthorized disclosure in an appropriate court of law. The Vendor will not issue any public announcements concerning the State Bar without the prior written consent of the State Bar.
2. State Bar or its designee must approve, in writing, all advertising, informational and/or promotional materials before they are distributed to State Bar members. Printed or written material pertaining to the plans will be submitted to the State Bar for review at least thirty (30) days prior to the date such material is expected to be used unless otherwise agreed to by the State Bar with respect to a particular matter. Vendor agrees that the State Bar's name, the State Bar seal, the State Bar's member lists, and CLE Programs and publications are and will remain the property of the State Bar.

H. Compliance with Laws

Vendor agrees to comply with all applicable federal, state, and local laws and regulations, including but not limited to advertising laws, privacy laws, and the provisions of the Fair Employment and Housing Act (Govt. Code, § 12900 et seq.) and any applicable regulations promulgated there under (Cal. Code of Regs., tit. 2, § 72850.0 et seq.). Vendor agrees to include the provisions of this clause in any and all subcontracts to perform work under the agreement.

I. Assignment/Subcontracting

1. Assignment. Vendor will not assign or transfer its interest, in whole or in part, under this 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.
2. Subcontracting. Vendor may subcontract with other qualified firms or individuals as required to complete all, or a portion of, the delivery of equipment and services, with 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 Vendor and its subcontractor to be maintained during the term of this agreement. No subcontract will be approved unless Vendor provides a written guarantee that Vendor's firm will be contractually obligated to assume all project responsibilities and the insurance requirements set forth above.

J. Ownership of Data

1. The State Bar retains the sole and exclusive ownership of all documents, membership lists, transaction records, statistical records, computer tapes and other computer storage media, books, records, data in any form, and any other information pertaining to the CLE Programs generated or created during the term of this Agreement by either the State Bar or Vendor, or transferred to Vendor during the term of this Agreement, except confidential information submitted by individual State Bar members, which will be held in confidence by Vendor.
2. All documents, information and data in any form created/generated by Vendor or furnished by State Bar to Vendor will be made available for inspection by State Bar and/or its representatives at Vendor's principal place of business within the State of California, upon reasonable notice by the State Bar.

K. General Provisions

1. **Force Majeure.** Neither party will be deemed in default of this agreement or any provision hereunder to the extent that any delay or failure in the performance of the obligations of such party (other than the payment of money) results from any significant and material causes beyond its reasonable control and without fault or negligence by such party. Examples of such causes include, but are not limited to, (1) acts of God or public enemy, (2) acts of the government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) embargoes, (9) earthquakes, and (10) unusually severe weather.
2. **Governing Law.** The agreement will be governed by the laws of the State of California without giving effect to its principles of conflict of laws.
3. **Attorneys' Fees.** In the event either party institutes any action or proceeding against the other party relating to this 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 as fixed by the court. In addition

to the foregoing award of attorneys' fees to the successful party, the successful party in any lawsuit 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.

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, 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. Any arbitration demand made under this clause must be made no later than one year from the expiration or termination of this agreement. Each party will be solely responsible for payment of its own pro rata share of any expenses and fees incurred during the course of arbitration. In no event will the arbitrator have the power or authority to award consequential damages, indirect or special damages, lost profits, loss of goodwill, punitive, or speculative damages. Disputes of Five Thousand Dollars (\$5,000.00) or less shall be handled in Small Claims Court in the City and County of San Francisco.
4. **Audit.** Vendor agrees that the State Bar or its designee shall have the right to review and copy any financial records and supporting documentation pertaining to the performance of this Agreement. Vendor agrees to maintain such financial records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Vendor agrees to allow the State Bar or its designee access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Vendor agrees to include a similar right of the State Bar or its designee to audit records and interview staff in any subcontract related to performance of this Agreement.
5. **License.** In those instances where required, Vendor represents and warrants that 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 Vendor is performing the services pursuant to the agreement.