

Texas Department of Insurance

REQUEST FOR PROPOSALS

No. 12-MVB-TWIA-01

For Provision of Organizational Analysis of TWIA and Related Services

Electronic State Business Daily Posting Date: Friday, February 17, 2012

[National Institute of Government Purchasing

(NIGP) Class and Item Code: 962-58]

**Responses to this Request for Proposals
must be received on or before
Thursday, March 15, 2012; 5:00 p.m. Central Time**

NOTE: Proposal must be time stamped in the Texas Department of Insurance Purchasing and Contract Administration Division before the hour and date specified for receipt of proposal. Late responses will not be considered under any circumstances.

Submit Responses to one of the following:

**U.S. Postal Service to:
Texas Department of Insurance
Purchasing and Contract Administration
Attn: Martin Blair
P.O. Box 149104
Austin, Texas 78714-9104**

**Hand Deliver or Express Mail to:
Texas Department of Insurance
Purchasing and Contract Administration
Attn: Martin Blair
333 Guadalupe, Tower I - Room 850
Austin, Texas 78701**

Each Response must show RFP Number, Opening Date and Time on Return Envelope.

Sealed proposals will be received until the date and time established for receipt. Proposal received later than the specified date and time, whether delivered in person or by mail, will be disqualified as untimely.

REFER INQUIRIES TO:

Martin V. Blair
Texas Department of Insurance
Purchasing and Contract
Administration
Fax 512-463-6159
email: martin.blair@tdi.state.tx.us

TABLE OF CONTENTS

1.1	Introduction	4
1.2	Purpose and Overview	4
1.3	TDI Contact Person	5
1.4	Submission Deadline	5
1.5	Schedule of Events.....	6
1.6	Proposal Evaluation and Contract Award.....	6
1.7	General Terms.....	8
1.8	Respondent Affirmations and Certifications	12
1.9	Preferences.....	15
1.10	Pre-proposal Conference	15
1.11	Historically Underutilized Businesses (HUBs).....	15
1.12	Historically Underutilized Business Subcontracting Plan	16
Part II:	Specifications.....	17
2.1	Overview	17
2.2	Description of Services.....	17
2.3	Qualifications and Expertise of Respondent.....	19
2.4	Additional Requirements.....	21
2.5	Contract Cap on Compensation.....	22
2.6	Travel Costs	22
2.7	Invoices.....	22
2.8	Proprietary Interests.....	23
Part III:	Terms and Conditions	23
3.1	Compliance with Requirements	23
3.2	Award of Contract	23
3.3	Rejection of Proposals; Open Records; Reissuance	23
3.4	Pricing	24
3.5	Additional Specifications	24
3.6	TDI’s Address.....	24
3.7	Tie Bids.....	24
3.8	Attachments	24
3.9	Unacceptable Terms in Respondent’s Response	24
3.10	Incorporation of Entire RFP	25
3.11	Agreement between TDI & Respondent.....	25
3.12	Conflicting Provisions	25
3.13	Authority to Bind TDI; Execute Documents.....	25
3.14	Specifications; Performance	25
3.15	No Prepayments	25
3.16	Refunds	25
3.17	Invoices.....	25
3.18	Termination and Cancellation Circumstances	26
3.19	Substitute Services	27
3.20	Notice of Termination or Cancellation Delivery.....	27
3.21	Termination or Cancellation Effectiveness	27
3.22	TDI Not Liable Upon Termination.....	27
3.23	Hours.....	28
3.24	Respondent Assignments	28
3.25	TDI’s Tax Exemption; Payment of Taxes by Respondent.....	28
3.26	Warranties	28
3.27	Limitation on Authority; No Other Obligations.....	28
3.28	No Other Benefits.....	28
3.29	Parties Bound	28
3.30	Assignment.....	28

3.31	Time Limits.....	29
3.32	No Waiver	29
3.33	Confidentiality of Information	29
3.34	Personal Injury; Property Damage	30
3.35	Indemnification	30
3.36	Patent, Trademark, Copyright Infringement	30
3.37	Support Documents; Inspection of Records.....	30
3.38	Notices	31
3.39	Force Majeure	31
3.40	Subcontracts	31
3.41	Title and Ownership	31
3.42	Severability	31
3.43	Change Management	31
3.44	Federal, State, and Local Requirements	32
3.45	Entire Agreement	32
3.46	Dispute Resolution	32
Part IV:	Proposal/Response Format	34
4.1	Respondent Documents.....	34
4.2	Mandatory Response Requirements.....	34

PART I: General Information

1.1 Introduction

The Texas Department of Insurance (TDI), an agency of the State of Texas, invites all qualified Respondents to submit proposals in accordance with the requirements outlined in this Request for Proposals (RFP). TDI anticipates that, based on its review and evaluation of the proposals received pursuant to this RFP, TDI will select a Respondent and execute a contract in which the Selected Respondent renders services to TDI, in accordance with terms and conditions set forth in the contract.

This RFP is being solicited pursuant to authority granted under Insurance Code, Chapter 441. This RFP contains the instructions governing the requirements for a proposal to be submitted by interested Respondents, the format in which the proposal is to be submitted and the material to be included in the proposal, the requirements that must be met to be eligible for consideration, the method of selecting a Respondent, and the Selected Respondent's duties and responsibilities.

Respondents to this RFP are expected to provide TDI with information, evidence and demonstrations that will permit awarding a contract in a manner that provides the best value to TDI. Respondents must include in their written proposal all requirements, terms or conditions they may have, and must not assume that an opportunity exists to add such matters after the proposal has been submitted. Unacceptable terms and conditions added by Respondents may cause TDI to reject the proposal, despite other factors of the evaluation.

1.2 Purpose and Overview

The purpose of this RFP is to obtain proposals from qualified Respondents for the services described in this RFP. TDI is soliciting responses from qualified contractors to assist TDI in assessing and implementing organizational changes (restructuring) of the Texas Windstorm Insurance Association (TWIA) to reduce its net exposure to loss and improve its service levels to policyholders. TDI has authority under Chapter 2210, Insurance Code, to review and oversee the business of TWIA. TWIA is currently under administrative oversight by TDI. Administrative oversight is one of the regulatory tools authorized by Chapter 441 of the Texas Insurance Code. TWIA will be responsible for paying any costs incurred under any contract resulting from this RFP under administrative oversight.

With the issuance of this RFP, TDI will select a qualified Respondent to assist TDI in a review of the restructuring of TWIA. These services are described in greater detail in Part II of this RFP. The Respondent selected by TDI (Selected Respondent) will perform services under a contract with TDI. The RFP will be incorporated for all purposes as part of any resulting contract. The basic contract is attached to this RFP as Exhibit A. The boilerplate contract provisions/terms and conditions are not negotiable. Respondents that are unable to agree to the contract provisions/terms should not submit proposals in response to this RFP.

This RFP describes the requirements that must be met by the Selected Respondent prior to receiving payment under any resulting contract with TDI. Selected Respondent will have full responsibility for addressing all issues related to meeting the objectives of this RFP and any contract resulting from this RFP. Selected Respondent is responsible for all services required

under this RFP, described in Selected Respondent's proposal, and required under any resulting contract with TDI. Selected Respondent is responsible for all costs and expenses incurred under resulting contract, if any, including payment of any and all subcontractors. TDI is under no obligation to award any contract as a result of this RFP.

1.3 TDI Contact Person

- 1.3.1. The TDI contact person identified below is the sole point of contact for this RFP. Any and all communications concerning this procurement and all proposals must be submitted to:

For U.S. Mail:

Martin Blair
Purchasing and Contract Administration
Texas Department of Insurance
P. O. Box 149104
Austin, TX 78714-9104
Fax (512) 463-6159

For overnight, courier, and hand deliveries:

Martin Blair
Purchasing and Contract Administration
Texas Department of Insurance
333 Guadalupe, Room 840
Austin, Texas 78701

- 1.3.2. Other than the above-named TDI contact person, prospective Respondents or their representatives must not contact TDI representatives and employees to discuss the contents of this RFP. Failure to observe this restriction may result in disqualification of any subsequent proposal. The restriction shall not, however, preclude discussion between affected parties for the purpose of conducting business unrelated to this procurement.
- 1.3.3. TDI Contact Person Following Award. TDI will determine and appoint a contact person for day-to-day administration of the contract upon contract award. The TDI contact person may appoint one or more delegates to assist in the day-to-day administration of the awarded contract and may notify Selected Respondent in writing of those delegates.

1.4 Submission Deadline

Responses to this RFP must be time stamped at TDI's Purchasing and Contracting Division ***before*** the hour and date specified on page 1 of this RFP. TDI will not consider late responses under any circumstances. TDI will return any late responses to Respondent unopened. TDI reserves the right to evaluate responses submitted prior to the stated deadline as they are received.

1.5 Schedule of Events

The time schedule for awarding a contract under this RFP is shown below. TDI reserves the right to amend the schedule.

Date	Event
Friday, February 17, 2012	Issuance of RFP
Wednesday, February 29, 2012; 10:00 a.m., Central Time	Submission of Written Questions
Monday, March 5, 2012	Responses to Written Questions Posted on the Electronic State Business Daily
Thursday, March 15, 2012; 5:00 p.m. Central Time (Late proposals will not be considered)	Deadline for submission of Proposals
Friday, March 30, 2012	Anticipated Contract Award

1.6 Proposal Evaluation and Contract Award

- 1.6.1. TDI will conduct a fair, comprehensive and impartial evaluation of all proposals received in response to this RFP using an evaluation committee. TDI will select individuals to serve on the evaluation committee.
- 1.6.2. The evaluators will conduct an independent review of each proposal submitted. The scores will be compiled and an average score established for each Respondent. The evaluators will score the proposal on each major criterion.
- 1.6.3. The evaluation committee may request clarification of information or representations in a proposal before completing the initial evaluation. Requests for clarification and responses to requests for clarification will be in writing and will become part of the evaluation record.
- 1.6.4. The following criteria will be considered by the evaluation committee.

Evaluation Criteria	Weight
a. <i>Experience & References</i> : Strength of skills, experience and qualifications of the specific individuals who are anticipated to perform the services described in this RFP. References shall be clear as to the type of relevant work experience performed. Quality, reliability and ability to provide the quality services detailed in this RFP. Indicators of probable Respondent’s performance under a contract (past contract performance and ability to perform).	35 points
b. <i>Clarity of proposal</i> : Clarity and content of Respondent’s proposal, including understanding of the nature of the solicitation, work plan, and communication skills.	15 points
c. <i>Operations and capacity</i> : Availability and operational capacity demonstrating the Respondent’s ability to provide the requested services.	25 points
d. <i>Cost</i> : Reasonableness of costs.	25 points
Total Points	100

1.6.5. Following the Initial Evaluation Phase and Oral Presentations (if any), TDI, in its sole discretion, may proceed in making an award, or may enter into a Best and Final Offer (BAFO). The BAFO process allows the requested Respondents’ original responses to incorporate clarifications provided during the Initial Evaluation Phase. Best and Final Offers are then re-evaluated and re-scored by the Evaluation Committee, using the criteria outlined in section 1.6.4 of this RFP.

If TDI uses a BAFO process, participating Respondents will have an established time period in which to exercise due diligence and to confirm that all RFP requirements have been identified, and to prepare their Best and Final Offer.

1.6.6. TDI, in its sole discretion, may enter into a Negotiation Phase. TDI will have the option to negotiate a Respondent’s proposal, including but not limited to price and services features. TDI reserves the right to continue to evaluate responses until such point as the best value for the State is determined.

At the conclusion of the BAFO evaluations, as described above in section 1.6.5 of this RFP, if any, TDI will determine the number of Respondents with which it may start contract negotiations. TDI may enter contract negotiations with one or more Respondents. At its discretion, TDI will terminate contract negotiations when TDI determines that the best value for the State has been obtained.

If a BAFO process is not used, TDI may re-score proposals/responses, including any clarifications by Respondents and any information detailed through the Oral

Presentation phase, according to the criteria set forth in section 1.6.4 of this RFP. TDI may proceed in making an award by formalizing any and all negotiated changes to the RFP in writing, and submitting the revised RFP to the Selected Respondent for review prior to making an award.

- 1.6.7. TDI will make the decision to award a contract if it is in the best interest of the State to do so. The decision of TDI on any award is final. All proposals and working papers pursuant to this RFP are not subject to disclosure under the Public Information Act until the contract has been executed.

TDI will award a contract to the Respondent whose response best conforms to the specifications, terms, conditions and standards of performance of this contract, and whose offer represents the best value to TDI.

1.7 General Terms

1.7.1. Term of Contract. The term of any contract resulting from this RFP shall be from the date the contract is executed until August 31, 2013. TDI has the option in its sole discretion to renew any resulting contract for up to two (2) additional one (1) year periods. In the event of such renewal, the scope of services, deliverable dates, and contract amount may be negotiated. See also section 4.2.19.2.

1.7.2. Governing Law. The RFP and any resulting contract and work orders shall be governed, construed, and interpreted in accordance with the laws of the State of Texas (but not rules governing conflicts of law issues).

1.7.3. Venue. Any action or proceeding related to this RFP and any resulting contract and work orders shall be brought as a separate action in Travis County, Texas and venue is proper in only such county.

1.7.4. Additional Terms and Conditions. Any terms and conditions attached or submitted with RFP Response will not be considered by TDI unless the Respondent specifically refers to them and requests approval by TDI of such terms and conditions. Such Respondent's terms and conditions may result in the disqualification of the RFP response. See also sections 3.9 and 3.10 of this RFP.

1.7.5. Amendments. Any resulting contract may be amended only upon the issuance of a written revision prior to the service being provided.

1.7.6. Additional Language. To the extent the laws of the State of Texas require TDI to include additional language in its contract; the Respondent agrees to amend any resulting contract and to cooperate in the execution of any revisions necessary to effectuate such state law. During the term of any resulting contract and any extensions or renewals, TDI reserves the right to request revisions or modifications as is determined to be in the best interests of TDI or the State. TDI reserves the right to add or delete similar services and to adjust Selected Respondent's compensation accordingly by issuing a revision.

1.7.7. Requirements. Respondents must comply with all rules, regulations, and statutes relating to purchasing in the State of Texas, as well as the requirements of this RFP. Respondents agree to comply with all terms and conditions shown below and as made a

part of this RFP. In submitting responses, Respondents agree to comply with all requirements of the RFP and any contract, including the provisions of the following parts of the RFP: General Information, Specifications, TDI Terms and Conditions, and Respondent Response Format. All parts of this RFP are incorporated as part of any resulting contract for all purposes.

1.7.8. Independent Contractor. Respondent shall serve as an independent contractor in providing services under any contract resulting from this RFP. Respondent and Respondent's employees shall not be employees of TDI.

1.7.9. Minimum Qualifications for Consideration of Proposals. All proposals must clearly indicate that Respondents have available the necessary qualified personnel, skills, organization and facilities to fulfill all the services required under this RFP and any resulting contract. Proposals must demonstrate familiarity and experience with the services described in this RFP.

1.7.10. No TDI Obligations for Costs. TDI accepts no obligations for costs incurred in responding to this RFP in anticipation of being awarded a contract. All of the costs and expenses incurred by any Respondent or prospective Respondent in connection with or arising out of its possible or actual response to this RFP, including without limitation the cost of developing and preparing a response, shall be entirely the responsibility of the Respondent and shall not be borne or reimbursed directly or indirectly by TDI, whether or not (a) the prospective Respondent formally submits a response; (b) such response, if submitted, is rejected by TDI; (c) the Respondent is awarded the contract; or (d) the RFP is withdrawn by TDI.

1.7.11. Selected Respondent's Obligations

1.7.11.1. Selected Respondent has the sole ultimate responsibility for all actions necessary to ensure that the project meets the requirements of the awarded contract, unless specifically designated otherwise therein. Except as explicitly provided, all costs incurred in the performance of any contract awarded pursuant to this RFP shall be borne by the Selected Respondent.

1.7.11.2. Selected Respondent will be responsible for the performance of any contractual obligations that may result from an award based on this RFP and shall not be relieved of non-performance of any or all subcontractor(s).

1.7.12. Press Releases. Press releases pertaining to this RFP and/or any resulting contract or the services to which they are related shall not be made without the prior written approval of TDI, and then only in accordance with explicit written instructions from TDI. The disclosure of the contents of proposals prior to the award of a contract under this RFP may result in disqualification.

1.7.13. All or None. Respondents must propose to provide the type of services described in this RFP. Respondents must propose all or none. Proposals for partial services will be disqualified.

1.7.14. Misunderstanding or Lack of Information

1.7.14.1. Respondents who respond to this RFP must be thoroughly informed concerning all relevant facts, data, and estimates, which are necessary for the purpose of assembling a proposal, and concerning all difficulties that may be encountered in managing or operating the project under the contract. No plea of ignorance of conditions that exist or of conditions or difficulties that may be encountered will be accepted as an excuse for any failure or omission on the part of the Selected Respondent to fulfill in every detail all of the requirements of the contract or will be accepted as a basis for any claim whatsoever for additional compensation.

1.7.14.2. By submitting a response, Respondent acknowledges and agrees that it fully understands and will abide by the terms and conditions of this RFP and it will not make any claims for, or have any rights to, cancellation or relief without penalty because of any misunderstanding or lack of information.

1.7.15. Compliance with RFP Requirements. By submitting a response, acknowledging and accepting the contract, or delivering any services under the contract, Respondent acknowledges, accepts and agrees to all terms of the contract, including, but not limited to, this RFP. A response to this RFP is an offer to contract with TDI based upon the terms, conditions and specifications contained in this RFP. Proposals and responses do not become part of a contract or agreement with TDI unless and until they are accepted and agreed to by TDI. All parts of this RFP are incorporated as part of any resulting contract for all purposes. TDI, in its sole discretion, may disqualify a proposal from consideration if TDI determines a proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

1.7.16. Binding Effect of Proposal. Unless otherwise agreed in writing and signed by TDI, each Respondent agrees to and shall be bound by the information and documentation provided with the proposal, including prices quoted for services. By submitting a proposal, the Respondent commits to providing the goods and services required at the prices set forth in its proposal. Proposals must be valid for 90 calendar days following the proposal receipt date. Proposed rates must be firm and guaranteed for the initial contract period.

1.7.17. Rejection of Proposal and Cancellation of RFP. Issuance of this RFP does not constitute a commitment on the part of TDI to award a contract. TDI is under no obligation to award any contract as a result of this RFP. TDI maintains the right to reject any or all proposals and to cancel this RFP if it considers it in the best interests of TDI to do so. TDI reserves the right to reject, in its sole discretion, any or all RFP responses and all or any part of any response and waive minor technicalities. TDI will award a contract, if any, to serve the best interests of TDI and the State of Texas. TDI's waiver of any deviations in any response will not constitute a modification of this RFP and will not preclude TDI from asserting all rights against Selected Respondent for failure to fully comply with all terms and conditions of this RFP.

1.7.18. Right to Amend, Modify, or Withdraw the RFP. TDI reserves the right to alter, amend or modify any provisions of this RFP or to rescind, revoke, or withdraw this RFP, in whole or in part, at any time prior to the award of any contract if it is determined by TDI to be in the best interest of TDI or the State to do so.

1.7.19. Written Questions and Official Response. Respondents may submit written questions addressed to the TDI contact person identified in section 1.3. All questions must be received, in writing via e-mail, by the TDI contact person no later than 10:00 a.m., Central Time, on Wednesday, February 29, 2012. The e-mail reference line must state: No. 12-MVB-TWIA-01 / Questions and Answers. Questions may also be faxed. Telephone inquiries will not be answered. It is the sole responsibility of Respondents to verify timely receipt of faxed questions. Responses to timely submitted questions that are not already addressed in the RFP will be posted on the Electronic State Business Daily (ESBD) on Monday, March 5, 2012.

1.7.20. Ambiguity, Conflict, Discrepancy, Exclusionary Specification or Omission. If a Respondent discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission or other error in this RFP, Respondent must immediately notify, in writing, the TDI contact person specified in section 1.3 of this RFP. If a Respondent fails to notify the TDI contact person of any error, ambiguity, conflict, discrepancy, exclusionary specification or omission, the Respondent submits a response at its own risk; and, if awarded a contract, the Selected Respondent is not entitled to additional compensation, relief or time by reason of the error or its later correction.

1.7.21. No Alterations or Withdrawals of Bid after Deadline. Responses cannot be altered or amended after the deadline specified on page 1 of this RFP. Any alterations made before this deadline must be initialed by Respondent or Respondent's authorized agent. No responses can be withdrawn after the deadline without approval by TDI's Purchasing and Contracting Division of Respondent's written explanation for withdrawal.

1.7.22. Facsimile Response. Facsimile responses to this RFP will not be accepted. TDI and the State shall not be responsible for failure of electronic equipment or operator error. Responses that are late, illegible, incomplete, or otherwise non-responsive will not be considered.

1.7.23. Mail Preferred; TDI Not Liable. RFPs are issued to allow sufficient time for receipt of the preferred mail response. If TDI provides facsimile service under section 1.7.22 of this RFP, it is as a convenience only. TDI is not responsible for responses received late, illegible, incomplete, or otherwise non-responsive due to failure of electronic equipment or operator error.

1.7.24. Public Information. TDI is subject to the Texas Public Information Act (TEX. GOV'T CODE Ch. 552). Respondent understands that TDI is bound by the provisions of the Texas Public Information Act and Attorney General Opinions issued under that statute. Proposals submitted to TDI in response to this RFP become the property of TDI, may be reproduced by TDI, and may be subject to release by TDI to any requestor as public information.

1.7.25. Protest Procedure. Any protest shall be governed by TDI's bid protest rules, which are set forth in 28 TEX. ADMIN. CODE §§1.1101 – 1.1107.

1.7.26. Preferences. Selected Respondent must determine if any of the preferences listed in section 1.9 of the RFP can or will be claimed.

1.8 Respondent Affirmations and Certifications

1.8.1. DTPA; Unfair Business Practices. Respondent represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit and that Respondent has not been found to be guilty of such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit and that such officers have not been found to be guilty of such practices in such proceedings.

1.8.2. Immigration. Respondent represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the contract. Respondent represents and warrants that it also will comply with the requirements of the Immigration Act of 1990.

1.8.3. Equal Opportunity. Respondent represents and warrants that it will comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.

1.8.4. Franchise Taxes; Non Residents; Foreign Corporations; Sales Taxes. Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code. In addition, if Respondent is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Respondent certifies that it holds a permit issued by the Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.

1.8.5. Economic Opportunity. Respondent represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this RFP and any resulting contract.

1.8.6. Antitrust. Respondent represents and warrants that neither Respondent nor any firm, corporation, partnership, or institution represented by Respondent, nor anyone acting for such firm, corporation or institution has violated the antitrust laws of Texas codified in section 15.01, *et. seq.* Texas Business and Commerce Code, or the federal antitrust laws, nor communicated directly or indirectly Respondent's response to any competitor or any other person engaged in such business.

1.8.7. No Conflicts. Respondent represents and warrants that Respondent has no actual or potential conflicts of interest in providing the services to TDI under any resulting contract and that Respondent's provision of services under the contract would not reasonably create an appearance of impropriety.

1.8.8. Financial Interests. Respondent represents and warrants that neither Respondent nor any person or entity that will participate financially in the contract has received compensation from TDI for participation in preparation of the RFP or other specifications for this RFP and any resulting contract.

1.8.9. ADA. Respondent represents and warrants that it will comply with the requirements of the Americans with Disabilities Act (ADA).

1.8.10. Child Support. Section 231.006 of the Texas Family Code provides that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under section 231.006 of the Texas Family Code (relating to child support), Respondent certifies that the individual or business named in this response is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and/or payment may be withheld if this representation and warranty is inaccurate.

1.8.11. Debt or Delinquent Taxes. Respondent agrees that any payments under any resulting contract will be applied toward any debt, including but not limited to delinquent taxes and/or child support that is owed to the State of Texas by Respondent until the debt is paid in full.

1.8.12. Service Contracts. Respondent represents and warrants that it will “Buy Texas” products and materials when they are available at a price and time comparable to products and materials produced outside the State of Texas.

1.8.13. Head of Agency. Respondent certifies that it is in compliance with section 669.003 of the Government Code, relating to contracting with executive head of a state agency. If section 669.003 applies, Respondent will complete the following information in order for the response to be evaluated:

Name of former Executive:

Name of State agency:

Date of separation from State
agency:

Position with Respondent:

Date of Employment with
Respondent:

1.8.14. False Statements; Breach of Representations, etc. By signature to Respondent’s Proposal or Response, Respondent makes all the representations, warranties, guarantees, certifications and affirmations included in this RFP. If

Respondent signs the Proposal or Response with a false statement or it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications or affirmations included in this RFP, Respondent will be in default under the contract.

1.8.15. Dispute of Contract. Pursuant to Chapter 2260 of the Texas Government Code, any dispute arising under a contract for goods and services for which this chapter applies must be resolved under the provisions of this chapter.

1.8.16. Indemnity Clause. The Respondent shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of respondent or any agent, employee, subcontractor, or supplier of respondent in the execution or performance of this contract.

1.8.17. Public Information Act. Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act").

1.8.18. Additional Terms and Conditions. Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on this solicitation and may result in disqualification.

1.8.19. Appropriation Availability. Any contract resulting from this solicitation is contingent upon the continued availability of lawful appropriations by the Texas Legislature.

1.8.20. Execution of Proposal. Suspension, Debarment, and Terrorism: Respondent certifies that Respondent, whether an individual or business entity, is eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.

1.8.21. Audit Clause. Respondent understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Respondent and the requirement to cooperate is included in any subcontract awards.

1.8.22. Ineligibility. Under section 2155.006, Texas Government Code, the Respondent certifies that the individual or business entity named in this bid or contract is not

ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

1.8.23. Eligibility. Under section 2261.053, Texas Government Code, the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

1.8.24. Felony Criminal Convictions. Respondent represents and warrants that the Respondent or the Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised TDI as to the facts and circumstances surrounding the conviction.

1.9 Preferences

Please indicate below if Respondent claims a preference.

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- Texas Vegetation Native to the Region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value

1.10 Pre-proposal Conference

TDI does not anticipate scheduling a pre-proposal conference.

1.11 Historically Underutilized Businesses (HUBs)

Historically Underutilized Businesses (HUBs) are strongly urged to respond to this RFP. Under State law, State agencies are required to make a good faith effort to increase the contract awards to HUBs for the purchase of goods or services that State agencies expect to make during a fiscal year. [For example, see rules promulgated at 34 Tex. Admin.

Code §§ 20.11 through 20.28.] Respondents that meet the qualifications are strongly encouraged to apply for certification as HUBs. Contact the Comptroller of Public Accounts, Texas Procurement and Support Services Division (TPASS) Director of Business Services, at 512-463-3612, or the TDI Contact Person specified in this RFP if you have any questions regarding the certification process. Respondents may also contact TPASS at 512-463-5872 for additional HUB certification information. See section 4.2.12 of this RFP.

1.12 Historically Underutilized Business Subcontracting Plan

TDI has determined that subcontracting is not probable with this RFP. Nevertheless there may be areas of subcontracting opportunity given individual Respondent business structure and internal resources. All Respondents, including Respondents who are Historically Underutilized Businesses (HUBs), Respondents who do not intend to subcontract any portion of the work, and Respondents who intend to subcontract, are encouraged to perform the good faith effort outlined in the HUB Subcontracting Plan (HSP) and Self Performance HUB Contracting Plan instructions **in this section and in Part 4, section 4.2.12, Subcontracting Information.**

Full commodity descriptions may be found on the Comptroller of Public Accounts website in the National Institute for Government Purchasing (NIGP) Commodity Book Listings at: http://www.window.state.tx.us/procurement//com_book/commall.html

If Respondent determines subcontractors are required to fulfill the services of this RFP, the Respondent is encouraged to attach a completed Historically Underutilized Business (HUB) Subcontracting Plan (HSP). The HUB Subcontracting Prime Contractor Progress Assessment Report should be submitted on a monthly basis after a contract award has been issued. To access and complete these forms, please go to:

<http://www.window.state.tx.us/procurement/prog/hub/hub-forms/>.

Part II: Specifications

2.1 Overview

Part II of this RFP provides a description of the services to be provided under an executed contract. Selected Respondent will be responsible for performing all of the services and for complying with all of the requirements of this RFP and any resulting contract.

2.2 Description of Services

By the issuance of this RFP, TDI seeks proposals from Respondents for the services described in this RFP to assist TDI in its review of options for restructuring TWIA in order to create a more viable and sustainable organization to support TWIA's objectives of reducing its net exposure and improving service to TWIA's policyholders. Selected Respondent must perform the services described below:

2.2.1. Proposed Work Plan for Restructuring.

Within 30 calendar days of the contract being awarded, Selected Respondent must prepare a work plan which details the approach used to identify and analyze restructuring options for TWIA. The broad areas to consider in such restructuring options must include, at a minimum, the items in section 2.2.4 of this RFP. The work plan must be submitted to TDI for its approval prior to proceeding to Section 2.2.3.

2.2.2. Stakeholder Participation

Selected Respondent must work with a technical advisory working group of TWIA stakeholders to be appointed by TDI. The working group will have no decision-making authority and is intended to provide important and valuable insight and perspective on the restructuring of TWIA.

2.2.3. Reports

- A. Restructuring Options Report.** Within 60 calendar days of the contract being awarded, the Selected Respondent must provide a report which shall include: a description and discussion of each option identified, evaluation of the merits of each option, including likely participation by existing member companies, potential for attracting of new insurers and/or capital to Tier 1, how each option meets TWIA's restructuring objectives, and potential challenges to implementation. This report shall include a discussion of the role of the various stakeholders. Only options that may be implemented through voluntary participation by TWIA member companies should be presented. Additionally, preference should be given to options currently authorized by the Texas Insurance Code.
- B. Operational Implementation Plan.** Selected Respondent must submit a proposed plan of implementation with 45 days, or another date as agreed to in writing by TDI, of selection of restructuring options by TDI. This plan must, at a minimum, consider TWIA's current operations and any changes that will be needed to fully implement the selected option(s) and a timeline for implementation, including options for

implementation in phases. Respondent has no responsibility for overseeing implementation under this RFP.

2.2.4. Possible Restructuring Options

TDI wishes to consider all options for reducing TWIA's net exposure and improving policyholder service, including but not limited to the following:

- A. **Reinsurance Functions.** Respondent must identify options for reducing TWIA's net risk exposure through reinsurance with member companies. The options can include both assumed and ceded reinsurance. Pricing and contracting issues, if any, should be addressed.
- B. **Servicing Carrier Functions.** Respondent must identify options for converting TWIA to a servicing carrier model whereby member companies, pursuant to a contract with TWIA and for a fee, handle all policy administration, claims handling and any other customer service functions associated with TWIA policies. Pricing and contracting issues must be addressed. Additionally, issues related to TWIA's oversight of servicing carriers must be addressed.
- C. **Incentives.** Respondent must identify methods of incentivizing member company participation in the identified restructuring options, including, but not limited to, changes to the member company assessment formula rule in Texas Administrative Code, Title 28, §5.4162, and preferred access to take-out program opportunities.
- D. **Operational Issues.** Respondent must identify opportunities and challenges associated with TWIA's current operations that could impact the viability of options identified. The items identified for this area must, at a minimum, consider the following issues: current information systems limitations, agency issues, underwriting issues, claims handling issues, accounting issues, and contracting/procurement management.
- E. **Other.** Respondent must identify any other areas or considerations that need to be addressed to achieve the purpose of the contract or that would increase the value of the outcome of the services to TDI.

2.2.5. Industry Standards. Selected Respondent must provide services in a manner consistent with industry standards and in accordance with all applicable laws, statutes, rules, and orders.

2.2.6. Amending Duties and Responsibilities. TDI and the Selected Respondent may, upon the mutual written agreement of the parties, amend the standards and services described in Part II of this RFP.

2.2.7. Report to Legislature. Selected Respondent may be required to assist TDI staff in responding, reporting, meeting, or attending hearings with the Governor and Legislature.

2.2.8. Status Reports/Confer with TDI. Selected Respondent must provide status reports to TDI in a format acceptable to TDI and in intervals as instructed by TDI.

Selected Respondent must be available to confer and to discuss by telephone or in person, at the discretion of TDI, the status of the services and other matters related to the Selected Respondent's contract with TDI.

2.2.9. Special Projects. Selected Respondent must assist TDI with other miscellaneous special projects of interest to TDI related to TWIA.

2.2.10. Request for Services. TDI will designate a contract administrator to work with the Selected Respondent. TDI will provide Selected Respondent with a scope of work for an individual project. The Selected Respondent must (1) provide the name(s) of the individuals that will provide services to TDI on the project and (2) indicate the estimated number of hours to complete the requested services. Upon written approval by TDI of the Selected Respondent's project response, TDI will authorize Selected Respondent to begin to perform the requested services.

2.3 Qualifications and Expertise of Respondent

Selected Respondent must meet or exceed the following qualifications:

2.3.1. Minimum Qualifications of Respondent

- a) A Qualified Respondent must have:
 - (i) at least 15 years of property and casualty insurance work experience with five years of extensive executive management experience in a complex property and casualty environment; and
 - (ii) meet the requirements of Subsection b) as applicable.
- b) A Qualified Respondent must have experience in at least two or more of the following positions:
 - (i) a restructuring specialist, senior executive, consultant, or similar position of an insurer or other entity in the property and casualty insurance industry involved in all aspects of property and casualty insurance operations;
 - (ii) a former senior executive from the property and casualty insurance industry with organizational and technical expertise with the ability to analyze operational components and advise restructuring efforts; or
 - (iii) a professional providing services to insurance companies or regulators related to restructuring of property and casualty insurers or groups of property and casualty insurers.
- c) A Qualified Respondent may be a firm that appoints a primary responsible person for this proposal if that person meets the qualifications contained in section 2.3.1(a) and (b).

2.3.2. Relevant Experience. The requirements listed in section 2.3.1 represent the minimum standards for Respondent to be qualified. Respondent should be knowledgeable of residual markets generally and wind pools specifically, and the unique challenges faced by those types of entities. Respondent will also need a team with

experience in the following areas, and Respondent's response should describe how this team will be assembled, i.e., staff resources, third party contractors, or other sources:

- (a) Restructuring a property and casualty insurance company, residual market or related organization.
- (b) Corporate governance and organization structures of property and casualty insurers including, at a minimum, the areas of claims, accounting, underwriting, reinsurance, legal, information technology, and administration.
- (c) Development of organizational strategy for a property and casualty insurer with skills in implementing organizational changes in support of the strategic plan of the organization.
- (d) Statutory and governmental accounting principles, and experience with financial reporting requirements involved with property and casualty insurers.
- (e) Claims service and claims experience in handling catastrophic events involving major or complex residential losses and major or complex commercial losses. Knowledge and experience with residual markets will be particularly helpful.
- (f) Property and casualty reinsurance, including contracting and pricing.
- (g) Management of a litigation and mediation claim inventory and staff; as well as all other aspects that relate to handling, evaluation, and settlement of attorney represented claims for a property and casualty insurer.
- (h) Actuarial analysis and development of windstorm rating programs. The team member must be a Member of the American Academy of Actuaries and have at least an ACAS designation.
- (i) Property insurance policy administration systems, including communications and interface capabilities.
- (j) Identification of fraud elements and requirements relating to claims and an understanding of the required responsibility and interaction with regulatory agency and law enforcement.
- (k) Collection, analysis and interpretation of appropriate data for operational, management and strategic purposes and development of appropriate systems and processes.

Respondent should also include areas of expertise not described above that it believes will be necessary to achievement of the objectives of this RFP.

2.3.3. Preferred Experience. In addition to the items in section 2.3.2, Respondent must demonstrate an understanding of TWIA. Respondent may need expertise in particular areas, including:

- (a) Experience with governmental or quasi governmental entities and the related legislative process.

- (b) Experience with restructuring a company in a conservation, rehabilitation proceeding, or bankruptcy proceeding, or handling a commercial reorganization.

2.4 Additional Requirements

In addition to the specifications otherwise included in this RFP, Respondent must provide required services to TDI under a contract in accordance with the terms of this RFP, the Selected Respondent's proposal, and the following:

2.4.1. Conflicts of Interest. TDI wishes to minimize the potential for conflict of interest. Respondents that have a current business relationship with TWIA or have had a business relationship with TWIA in the last 4 years or have received payment from TWIA in any capacity in the last 4 years will be determined to have a conflict with regards to this RFP and will not be considered for the contract. Respondents must include a description of efforts the Respondent will undertake to minimize or eliminate potential conflict of interest.

2.4.2. Standards of Performance. Respondent must meet and comply with the Standards of Performance described in this RFP, including all requirements of the contract.

2.4.3. Quality Assurance. Respondent must conduct a quality assurance review of all work performed under the contract. TDI will report any substandard work by Respondent to the appropriate licensing or governing board.

2.4.4. Trained Employees. Respondent must provide employees, which have the qualifications, education, experience, training and certifications necessary to provide all services as described in this RFP. Respondent shall dedicate a sufficient number of employees to TDI's contract to provide all services in the manner required by and within the time requirements of TDI's contract.

2.4.5. Unsatisfactory Performance. Respondent understands that all employees provided under TDI's contract are subject to removal from TDI's contract by TDI if, in the sole judgment of TDI, the individual is not performing satisfactorily. TDI shall notify the Respondent by written notice of unsatisfactory performance and removal from TDI's contract for any affected employee. Respondent must remove the affected employee within 24 hours of TDI's notice for removal. This right of removal is in addition to TDI's rights to terminate Respondent's contract under the terms and conditions of this RFP.

2.4.6. Reporting Responsibilities. Respondent must provide all status and progress reports, oral and written, as directed by TDI and as otherwise required by this RFP. Written reports on specific topics will be required according to a schedule and deadlines mutually agreed upon by TDI and Selected Respondent.

2.4.7. Requests for Services. Requests for services placed by TDI employees will not be honored by TDI unless the request has been approved by the TDI Contact Person or his or her delegate for this specific purpose. The designated TDI Contact Person or his or

her delegate may be changed by written correspondence from TDI's Purchasing and Contracting Division to Respondent.

2.4.8. TDI Resources. Respondent must indicate what assistance or resources, if any, Respondent will require from TDI in order to provide the services described in this RFP.

2.5 Contract Cap on Compensation

The contract will include a maximum dollar amount or total dollar cap that TDI determines, in its sole discretion, is the maximum amount that Respondent may invoice for services provided.

2.5.1. Monitoring of Contract Funds. Respondent must track the balance of funds remaining under the contract at all times. Respondent shall not begin any work, and must notify the TDI contact person immediately, if the contract balance does not accommodate expenses that will occur.

2.5.2. Notice to TDI. Respondent must notify the TDI contact person when the balance of funds remaining under the contract reaches 20% of the total contract.

2.6 Travel Costs

Travel costs, costs for meals, lodging or any other out-of-pocket expenses incurred in conducting the work required under any contract resulting from this RFP shall be borne entirely by the Selected Respondent. TWIA will not pay for any such costs.

2.7 Invoices

2.7.1. Plans and Reports. The Selected Respondent will submit invoices for the work plan, the restructuring options report, and the operational implementation plan produced pursuant to sections 2.2.1 and 2.2.3.A and 2.2.3.B, respectively, within five days after each of those deliverables have been accepted by TDI.

2.7.2. Advisory Services. On a monthly basis, the Selected Respondent will submit invoices on the fifth working day of the following month for services rendered and expenses incurred the previous month related to any advisory services or services.

2.7.3. Format and Payment Process. The invoices will be in a format specified by TDI, and submitted to the designated TDI contact person for approval. The invoices must be accompanied with receipts or other underlying documentation to support payment (except for meal expense reimbursements). Within five business days of receipt of a certified invoice or invoices, TDI will approve or disapprove payment of the invoices. If approved, the certified invoices will be presented to TWIA for payment, no later than 10 business days after TWIA's receipt. The Selected Respondent understands that TWIA is solely responsible for all payments and that TDI will pay no amounts to the Selected Respondent or any other entities under any resulting contract or any other agreement resulting from the RFP. TDI will certify to TWIA the amount of such invoice that TDI determines is in accordance with the resulting contract. Failure to provide monthly invoices on a timely basis may result in TDI withholding certification of invoices, or portions of invoices.

2.7.4. No Pre-Payments. TWIA will not make pre-payments to Selected Respondent under any resulting contract. See section 3.17 of Part III of this RFP for additional invoice and payment information.

2.8 Proprietary Interests

All work-papers, data, materials, testimony, information and reports developed by Respondent in draft form will remain the property of Respondent and will be subject to modifications by Respondent until delivery of the final work-papers, data, materials, information and reports required by the contract or until termination of the contract, whichever is earlier. Upon completion of services or upon termination of the contract, whichever is earlier, Respondent will provide to TDI all original work-papers, data, materials, testimony, information and reports produced by Respondent during the performance of these services, and such work-papers, data, materials, testimony, information and reports will be the sole property of TDI. Respondent retains no proprietary interest in the work-papers, data, materials, testimony, information and reports furnished by Respondent to TDI or available to TDI under the contract and such work-papers, data, materials, testimony, information and reports will be the sole property of TDI. Respondent will retain copies of its original work-papers, data, materials, testimony, information and reports delivered to TDI under the contract.

Part III: Terms and Conditions

3.1 Compliance with Requirements

In submitting a response to this RFP, all Respondents agree to comply with all requirements of this RFP and any resulting contract, including the following RFP Parts: General Information, Specifications, Terms and Conditions, and Proposal/Response Format. All parts of this RFP are incorporated as part of any resulting contract for all purposes.

3.2 Award of Contract

A response to this RFP is an offer to contract with TDI based upon the terms, conditions and specifications contained in this RFP. **Offers and RFP responses do not become part of a contract or agreement with TDI unless and until they are accepted and agreed to by TDI.** TDI reserves the right to make any corrections or include additional requirements in TDI's contract prior to execution that is necessary for TDI's compliance, as an agency of the State of Texas, with all state and federal requirements.

3.3 Rejection of Proposals; Open Records; Reissuance

TDI reserves the right to reject, in its sole discretion, any or all RFP responses and all or any part of any response and waive minor technicalities. TDI will award a contract, if any, to serve the best interests of TDI and the State of Texas. TDI's waiver of any deviations in any response will not constitute a modification of this RFP and will not preclude TDI from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFP. All RFP responses become the property of TDI and may be subject to release to any requester under the provisions of the Texas Public Information Act, Chapter 552 of the Texas Government Code, and Attorney General Opinions issued under that statute. TDI may reissue another RFP for the services as described in this RFP or similar services at any time.

3.4 Pricing

All pricing must be submitted in accordance with the Mandatory Pricing Form included in Part IV of this RFP and must comply with these requirements. Responses subject to unlimited price increases will not be considered. Responses subject to percentage price increases will not be considered, except as stated in Part IV of this RFP.

3.5 Additional Specifications

Respondents guarantee and warrant that their RFP responses will meet or exceed all specifications of this RFP. No substitutions or cancellations are permitted without prior written approval of TDI's Purchasing and Contracting Division. TDI will not be bound by any oral statements or representations contrary to the written specifications of this RFP.

3.6 TDI's Address

Responses sent by the U.S. Postal Service should use P.O. Box 149104, Austin, Texas 78714-9104. Responses sent by a delivery service, which require a street address, should use 333 Guadalupe, Tower 1, Room 850, Austin, Texas 78701.

3.7 Tie Bids

Consistent and continued tie bidding could cause rejection of responses by TDI's Purchasing and Contracting Division and/or investigation of antitrust violations. In case of tie bids, the award will be made in accordance with Title 10 of the Texas Government Code and Comptroller of Public Accounts Rules at Title 34 of the Texas Administrative Code.

3.8 Attachments

TDI will not consider any terms and conditions or other documents attached to a response as part of the RFP Response unless the Respondent specifically and prominently refers to each of them on page 1 of the RFP Response. In addition, see sections 3.2, 3.9, 3.10, 3.11, and 3.12 of this RFP regarding limitations on terms and conditions or attachments to Respondent's RFP Response. TDI reserves the right, in its sole discretion, to reject any Respondent terms and conditions or other documents or attachments as part of Respondent's RFP Response.

3.9 Unacceptable Terms in Respondent's Response

Respondent's Response to this RFP, including any attachments thereto, will be incorporated as part of the executed contract to the extent the response does not conflict with this RFP. Any terms submitted by Respondent, regardless of whether such terms conflict with this RFP and/or contract, which conflict with or are in violation of Texas law or in conflict with the rules, policies and procedures of Comptroller's Office, are void regardless of whether TDI accepts such terms or is deemed to have accepted such terms.

Unacceptable terms and conditions included in a Respondent's RFP response may result in disqualification of the response. If an award is made to such a Respondent, such terms and conditions are void and are not part of a contract between Respondent and TDI.

3.10 Incorporation of Entire RFP

This RFP will become part of the terms and conditions of all responses and any contract awarded as a result of this RFP. Any exception to the requirements of this RFP must be specifically noted in writing and explained by Respondent in its RFP response as a condition to becoming part of any subsequent contract. Any exceptions must be expressly agreed to by TDI in writing and by reference to the particular section of this RFP for which an exception is acceptable. Notwithstanding any other agreement or provision of this RFP to the contrary, any exceptions are subject to the limitations described in this RFP.

3.11 Agreement between TDI & Respondent

If TDI makes a contract award as a result of the issuance of this RFP, the entire agreement between TDI and Respondent will consist of the contract executed by TDI and Respondent. This RFP and Respondent's response, subject to the limitations described in this RFP, will be incorporated as part of the executed contract.

3.12 Conflicting Provisions

Unless expressly authorized by the executed contract by reference to this section, in the event of conflicting terms or provisions between this RFP, the contract, and Respondent's response, this RFP and the executed contract will control.

3.13 Authority to Bind TDI; Execute Documents

Unless expressly delegated by the Commissioner of Insurance or unless expressly authorized by this RFP, only the Commissioner of Insurance or her delegate has authority to execute any documents or grant any permissions on behalf of TDI with respect to agreements between Respondent and TDI.

3.14 Specifications; Performance

Respondent will provide the services described in this RFP in the manner and quality described in the requirements of this RFP. Respondent's failure to conform to all requirements of this RFP may, among other things, result in TDI's cancellation of all or part of the contract.

3.15 No Prepayments

TWIA will not prepay for any services provided to TDI by Respondent in its performance under the contract.

3.16 Refunds

Respondent will promptly refund or credit within thirty (30) calendar days any erroneously paid funds that are not expressly authorized under the contract.

3.17 Invoices

For all services that have been delivered, reviewed, and accepted by TDI, Selected Respondent will submit two (2) copies of an itemized invoice, which indicates the contract/purchase order

number on both copies, to TDI. TDI will provide contact information upon contract award. Invoices that are received by TDI which are otherwise received in non-conformance with all of the requirements of this RFP or the contract will be returned to Respondent unpaid or will be held by TDI until proper documentation is submitted.

Prior to authorizing payment to Selected Respondent, TDI will evaluate Respondent's performance in accordance with the performance standards set forth in all documents constituting this RFP and any awarded contract. TDI will forward the approved invoice to TWIA. TWIA will not make any payments under any resulting contract without the receipt of detailed, correct invoices approved by TDI.

3.18 Termination and Cancellation Circumstances

The contract may be terminated or cancelled in any one of the following circumstances:

3.18.1. Mutual Agreement. Upon the mutual written agreement of TDI and Respondent, the contract may be terminated or cancelled.

3.18.2. TDI Upon 30 days Notice. TDI may, in its sole discretion, terminate or cancel the contract with thirty (30) days written notice to Respondent. In the event of such termination, Respondent shall be paid for all services provided prior to the date of the termination.

3.18.3. Respondent's Nonperformance. If Respondent fails to comply with any requirement of the contract, including, but not limited to, this RFP, TDI may immediately terminate or cancel all or any part of the contract, may obtain substitute goods and/or services, may withhold acceptance and payments to Respondent, may revoke any prior acceptance, may require Respondent to refund amounts paid prior to revocation of acceptance and may pursue all rights and remedies against Respondent under the contract and any applicable law.

3.18.4. Breach of Material Term. Either party may, upon giving thirty (30) days written notice identifying specifically the basis for such notice, terminate the contract for breach of a material term or condition of the contract, provided the breaching party shall not have cured such breach within the thirty (30) day period. In the event of such termination, Respondent shall be paid for all services provided prior to the date of the termination.

3.18.5. Bankruptcy. Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against the Respondent, TDI may terminate the contract for cause without notice. Such termination will be effective upon the date of such filing or upon the date of such judgment.

3.18.6. Cause/Default. If the Respondent fails to provide the goods or services contracted for according to the provisions of the contract, or fails to comply with any of the terms or conditions of the contract, TDI may, upon written notice of default to the Respondent, immediately terminate all or any part of the contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the contract.

TDI may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court

action to enforce the provisions of the contract, or to recover damages for the breach of any agreement being derived from the contract. The exercise of any of the foregoing remedies will not constitute a termination of the contract unless the TDI notifies the Respondent in writing prior to the exercise of such remedy. Selected Respondent remains liable for all covenants and indemnities under the contract. Selected Respondent is liable for all costs and expenses, including court costs, incurred by the TDI with respect to the enforcement of any of the remedies listed herein.

3.18.7. Availability of State Funds; Legislative Action; Necessity of Performance. If TWIA becomes subject to a legislative change or revocation of statutory authority that would render the services to be provided by Respondent under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this section, TDI will not be liable to Respondent for any damages that are caused or associated with such termination or cancellation and TDI will not be required to give notice. In the event of such termination, Respondent shall be paid by TWIA for all services provided prior to the date of the termination.

TDI expressly reserves any and all legal remedies to which it may be entitled to collect any and all damages directly or indirectly resulting from breach of contract by Respondent or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Respondent. TDI reserves the right to pursue any and all applicable rights and remedies if the contract is terminated for any reason and TDI expressly waives no such rights or remedies.

3.19 Substitute Services

In the event TDI terminates or cancels the contract for Respondent's nonperformance or for cause, TDI may procure, upon such reasonable terms and in such manner as it deems appropriate, substitute services similar to those so terminated or cancelled and Respondent will be liable to TDI for any excess or additional costs incurred in acquiring such services plus court costs and attorneys' fees. Recovery of costs under this section is in addition to any other remedies available to TDI under the contract and/or under applicable law.

3.20 Notice of Termination or Cancellation Delivery

Any termination by TDI of the contract that requires notice may be accomplished by TDI's delivery to Respondent of a notice of termination or cancellation specifying that the contract is terminated or cancelled.

3.21 Termination or Cancellation Effectiveness

Unless otherwise specified in this RFP or the contract, any termination or cancellation of the contract will be effective upon the date specified in TDI's notice of termination or cancellation.

3.22 TDI Not Liable Upon Termination

If the contract is terminated for any reason, TDI and the State of Texas will not be liable to Respondent for any damages, claims, losses or any other amounts arising from or related to any such termination.

3.23 Hours

If requested by TDI, Respondent will provide delivery on-site at TDI five (5) days a week, Monday through Friday, 8:00 am to 5:00 pm Central Standard Time, excluding weekends and State of Texas holidays.

3.24 Respondent Assignments

Respondent hereby assigns to TDI any and all claims for overcharges associated with the contract that arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq., and that arise under the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code Ann. Section 15.01, et seq. See also section 1.10.6 of this RFP.

3.25 TDI's Tax Exemption; Payment of Taxes by Respondent

Purchases made for State use are exempt from the State Sales Tax and Federal Excise Tax. Respondents must not include taxes in their responses. Tax Exemption Certificates will be furnished by TDI on request. Respondent will be responsible for payment of all taxes, including, but not limited to, state, federal, foreign, or local taxes, including income tax, withholding tax, social security tax, pension contributions, and any other form of payroll or other taxes, for all Respondent's Employees.

3.26 Warranties

Notwithstanding any disclaimers in any RFP response or other Respondent document and notwithstanding any other provision of this RFP or the contract to the contrary, Respondent warrants and guarantees that all services shall meet all specifications of the executed contract, including but not limited to this RFP.

3.27 Limitation on Authority; No Other Obligations

Respondent will have no authority to act for or on behalf of TDI or the State of Texas except as expressly provided for in the executed contract; no other authority, power or use is granted or implied. Respondent may not incur any debt, obligation, expenses, or liability of any kind on behalf of TDI or the State of Texas.

3.28 No Other Benefits

Respondent has no exclusive rights or benefits other than those set forth herein.

3.29 Parties Bound

The contract will be binding upon and inure to the benefit of TDI and Respondent and to their respective heirs, executors, administrators, legal representatives and successors.

3.30 Assignment

Respondent may not assign this RFP and any resulting contract, in whole or in part, and may not assign any right or duty required under the RFP or awarded contract without the prior written consent of TDI. Respondent will have no right to transfer, assign, or pledge as security for a debt

all or any part of Respondent's interest in any resulting contract without the prior written consent of TDI. Any attempted assignment in violation of this section shall be void and without effect.

3.31 Time Limits

Time is of the essence in any resulting contract and accordingly all time limits will be strictly construed and rigidly enforced.

3.32 No Waiver

No provision of this RFP and/or contract will constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TDI as an agency of the State of Texas or otherwise available to TDI. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to TDI by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TDI does not waive any privileges, rights, defenses, remedies, or immunities available to TDI as an agency of the State of Texas or otherwise available to TDI.

3.33 Confidentiality of Information

Respondent will not disclose to anyone, directly or indirectly, any work-papers, data, databases, materials, information or reports in any form that are designated as confidential or that are or could be construed as confidential or subject to restrictions on disclosure under applicable law ("Confidential Information") and received from TDI or such Confidential Information to which Respondent has access as a result of or in the course of performing services under this RFP or any resulting contract without the prior written consent of TDI. This confidentiality provision does not apply to information required to be disclosed by law, legal process, and applicable professional standards or to information disclosed in connection with litigation relating to the contract or Respondent's performance. Each party will protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind. Nothing in this RFP and any resulting contract shall prohibit or limit either party's use or disclosure of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously known to it without obligation of confidence, (ii) independently developed by it, (iii) acquired by it from a third party which is not, to its knowledge, under an obligation of confidence with respect to such information, or (iv) which is or becomes publicly available through no breach of the contract. In the event either party receives a subpoena or other validly issued administrative or judicial process requesting Confidential Information, it shall provide prompt notice to the other of such receipt. The party receiving the subpoena shall thereafter be entitled to comply with such subpoena or other process to the extent permitted by law, provided, however, that the Respondent is acting as TDI's agent in providing services under the contract and will defer to TDI's decision as to compliance with and other matters related to such subpoena or other process. Notwithstanding any provisions of this RFP and the executed contract to the contrary, Respondent understands that TDI is bound by the provisions of the Texas Public Information Act and Attorney General Opinions issued under that statute. Within three (3) days of receipt, Respondent will refer to TDI any third party requests, received directly by Respondent, for information to which the Respondent has access as a result of or in the course of performing services under the contract.

3.34 Personal Injury; Property Damage

Respondent will be liable for any bodily injury or personal injury to any individual caused by any of Respondent's employees during any assignment under the terms of the contract. In the event of loss, destruction or damage to any TDI or State of Texas property by Respondent's employees, Respondent will indemnify TDI or the State of Texas and pay to TDI or the State of Texas the full cost of repair, reconstruction or replacement, at TDI's election. Respondent will reimburse TDI or the State of Texas for such property damage within thirty (30) calendar days after receipt of TDI's notice of amount due to Respondent. This provision survives the termination or expiration of any awarded contract.

3.35 Indemnification

Respondent will indemnify, save and hold harmless TDI, its officers, agents, representatives and employees, and the State of Texas, its officers, agents, representatives and employees from any and all claims, actions, suits, demands, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs, accruing or resulting from or related to Respondent's provision of services or performance under the contract. Respondent will indemnify, save and hold harmless TDI, its officers, agents, and employees, and the State of Texas, its officers, agents, and employees from any and all claims, actions, suits, demands, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from or related to acts, errors, or omissions of Respondent or Respondent's employees. TDI will not indemnify, save and hold harmless Respondent for any amounts for any purposes. This provision survives the termination or expiration of any awarded contract.

3.36 Patent, Trademark, Copyright Infringement

Respondent will defend and indemnify TDI and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringement to the extent arising from TDI's or Respondent's use of or acquisition of any services, reports, materials, information, or other items provided to TDI by Respondent or otherwise to which TDI has access as a result of Respondent's performance under the contract, provided that TDI will notify Respondent of any such claim within a reasonable time of TDI's receiving notice of any such claim. Respondent will pay all reasonable costs of TDI's counsel. If Respondent is notified of any claim subject to this section, Respondent will notify TDI of such claim within five (5) working days of such notice. If TDI determines that a conflict exists between its interests and those of Respondent or if TDI is required by applicable law to select separate counsel, TDI will be permitted to select separate counsel and the reasonable costs of such TDI counsel will be paid by Respondent. Respondent will make no settlement of any such claim without TDI's prior written approval. Respondent will reimburse TDI and the State of Texas for any claims, damages, costs, expenses or other amounts, including, but not limited to, attorneys' fees and court costs, arising from any such claim.

3.37 Support Documents; Inspection of Records

Respondent will maintain and retain required records and supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. These records and supporting fiscal documents will be maintained and retained by Respondent for a period of four (4) years after the date of submission of the final invoices or until

a resolution of all billing questions, whichever is later. Respondent will make available at reasonable times and upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Respondent pertaining to any awarded contract for purposes of inspecting, monitoring, auditing, or evaluating by TDI or the State of Texas.

3.38 Notices

Any written notices required under the contract will be by either hand delivery to Respondent's office or to TDI's Austin office, attention Director of Purchasing, Mail Code 108-1B, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104, or by U.S. Mail, certified, return receipt requested, addressed to the appropriate address listed above in this section. Notice will be effective on receipt by the affected party. TDI and Respondent agree that either party may change the designated notice address in this section by written notification to the other party.

3.39 Force Majeure

TDI may grant relief from performance of the contract if Respondent is prevented from compliance and performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of Respondent. The burden of proof for the need of force majeure relief under this section will rest upon Respondent. To obtain release based on force majeure, Respondent must file a written request with TDI.

3.40 Subcontracts

Respondent may not subcontract for any of the services required under the awarded contract without the prior written consent of TDI. See section 1.11 and 1.12 of this RFP regarding subcontracting with HUBs. Respondent expressly understands and acknowledges that, in entering into any approved subcontract, TDI or the State of Texas is not liable to any subcontractor of Respondent for any amounts. Respondent will retain responsibility for ensuring that the performances rendered under any subcontracts comply with all requirements of this procurement as if such performances were rendered by Respondent.

3.41 Title and Ownership

TDI and the State of Texas will receive and Respondent will convey to TDI and the State title, ownership and licenses, whichever is applicable to all services under the contract.

3.42 Severability

If any provision of the contract is, for any reason, held to violate any applicable law, and so much of the contract is held to be unenforceable, then the invalidity of such a specific provision will not be held to invalidate any other provisions; such other provisions will remain in full force and effect unless removal of said invalid provisions destroys the legitimate purpose of the contract, in which event the contract will be canceled.

3.43 Change Management

Respondent agrees that the key personnel assigned to any awarded contract shall remain available for the entirety of the project throughout the term of the contract as long as that individual is

employed by the Respondent or unless the TDI agrees in writing to a change in the key personnel. Any change in key personnel must be requested in writing by the selected Respondent including a résumé and the firm fixed hourly rate of such key personnel.

3.44 Federal, State, and Local Requirements

Respondent must demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard workers' compensation insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas is not liable to Respondent or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Respondent agrees to indemnify the State of Texas and to pay all costs, penalties, or losses resulting from Respondent's omission or breach of this section.

3.45 Entire Agreement

Except as expressly provided otherwise herein, the contract will represent the entire agreement by and between TDI and Respondent regarding the subject matter of this RFP. This agreement may not be changed except by TDI's written contract revision.

3.46 Dispute Resolution

3.46.1. Chapter 2260 of the Texas Government Code pertains to the resolution of breach of contract claims against the state. TDI has adopted rules under Chapter 2260, as described in that statute. To the extent that Chapter 2260 of the Texas Government Code applies to a contract resulting from this RFP, then the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by TDI and Respondent to attempt to resolve any claim for breach of contract made by the Respondent arising under the awarded contract.

3.46.2. Respondent's claim for breach of contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, the Respondent shall submit written notice, as required by subchapter B of Chapter 2260, to the attention of TDI General Counsel. The written notice shall expressly state that the provisions of Chapter 2260, subchapter B are being invoked by the Respondent. Notice also must be given to all other representative of TDI and the Respondent otherwise entitled to notice under the parties' contract. Compliance by the Respondent with Chapter 2260, subchapter B is a condition precedent to filing a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.

3.46.3. The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the Respondent's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by TDI if the parties are unable to resolve their disputes under section 3.46.2.

3.46.4. Compliance with the contested case process provided in Chapter 2260, subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of

the Civil Practices and Remedies Code. The execution of a contract by TDI or any other conduct of any representative of TDI relating to a contract shall not be considered or construed as a waiver by TDI of sovereign immunity or of any rights, privileges, defenses or immunities available to TDI as an agency of the State of Texas or as a waiver of TDI's termination rights or other termination provisions or expiration dates of the contract.

3.46.5. Neither the occurrence of an event nor the pendency of a claim for breach of contract constitutes grounds for the suspension of performance by the Respondent, in whole or in part.

3.46.6. To the extent that Chapter 2260 of the Texas Government Code does not apply to a contract resulting from this RFP, should a dispute arise out of the contract, TDI and Respondent will first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute will be mediated by a mutually acceptable third-party to be chosen by TDI and Respondent within fifteen (15) days after written notice by one of them demanding mediation under this Section. Respondent will pay all costs of the mediation unless TDI, in its sole good faith discretion, approves such or some portion of such costs. By mutual agreement, TDI and Respondent may use a non-binding form of dispute resolution other than mediation. The execution of a contract by TDI or any other conduct of any representative of TDI relating to a contract shall not be considered or construed as a waiver by TDI of sovereign immunity or of any rights, privileges, defenses or immunities available to TDI as an agency of the State of Texas or as a waiver of TDI's termination rights or other termination provisions or expiration dates of the contract. To the extent consistent with other Texas Law, including, but not limited to, the Texas Public Information Act and the Texas Open Meetings Act, any non-binding dispute resolution process conducted under the terms of this section will be confidential within the meaning of Tex. Civ. Prac. & Rem. Code Ann. §§ 154.053 and 154.073.

3.47 Drug Free Workplace

TDI is committed to maintaining a drug free workplace. Possession, use, or being under the influence of alcohol or controlled substances by vendor's employees while in the performance of any service is prohibited. Violation of this requirement shall constitute grounds for termination of any resulting contract.

3.48 Vendor Performance

TDI will track the Selected Respondent's performance of the services provided under the contract.

3.49 IRS Withholding

Certain payments by some governmental entities to contractors after December 31, 2012 are subject to a 3% federal withholding requirement. The Internal Revenue Service (IRS) has proposed regulations regarding the 3% withholding requirement. Respondents and potential contractors should review this website for more information: <http://www.irs.gov/govt/fslg/article/0,,id=239542,00.html>. If the Comptroller determines that any payments due under a resulting contract are subject to the 3% withholding requirement, the Comptroller must withhold amounts consistent with the statute. It is the Selected Respondent's

sole responsibility to assert and establish to the satisfaction of the Comptroller the availability of any applicable exemption from withholding.

3.50 Acceptance of Terms

By submitting a response, acknowledging and accepting the contract, or delivering any services under the contract, Respondent acknowledges, accepts and agrees to all terms of the contract, including, but not limited to, this RFP.

Part IV: Proposal/Response Format

4.1 Respondent Documents

All Respondent's documents that are related to the requested services, this RFP, the Bid Responses or the contract, if any, are collectively referred to in this RFP as "Respondent Documents." Responses must include copies of all Respondent documents. TDI reserves the right to reject all Respondent documents that are not included or submitted with RFP Responses. Respondent documents that are not submitted with Respondent's RFP response will not be accepted or considered part of the response or any resulting contract.

4.2 Mandatory Response Requirements

The RFP response/proposal must be responsive to all requirements set forth in this RFP and prepared according to the format described in this RFP.

4.2.1. Proposal Format. All proposals submitted must be bound, organized, and arranged to correspond directly with the numbered sections of this RFP. All pages must be numbered. Failure to arrange the proposal in the manner set forth in this RFP may result in disqualification. Conciseness and clarity of content must be emphasized. In its RFP response, Respondent must provide all information that the Respondent believes would be helpful to TDI in establishing its ability to perform the services described in this RFP and to comply with the requirements of this RFP and any resulting contract.

4.2.2. Signature; Original & Seven (7) copies. Responses must be typewritten and legible. Respondents must sign this RFP in ink. Failure to manually sign the RFP automatically disqualifies the response. The person signing Respondent's response must show title or authority to bind his or her firm in a contract. Respondents must submit an original response (with original signature) and seven (7) copies.

4.2.3. Sealed Envelope. All proposals must be submitted in a sealed envelope and include a label which reads: "**SERVICES-- RFP NO. 12-MVB-TWIA-01. TO BE OPENED ONLY BY TEAM LEAD IN THE PURCHASING AND CONTRACT ADMINISTRATION DIVISION.**"

4.2.4. Transmittal Letter. The first page of the proposal must be a Letter of Transmittal that includes the information specified below.

4.2.4.1. A commitment by the Respondent to provide the services required by TDI in this RFP.

4.2.4.2. A statement that the proposal is valid for 90 days from the day after the date that the proposals are delivered to TDI. Any proposal containing a term of less than 90 days for acceptance will be rejected by TDI as non-responsive.

4.2.4.3. A dated signature of a person(s) legally authorized to bind the Respondent to the terms and conditions contained in this RFP and to comply with the information and representations submitted in the proposal. The proposal must state that the signatory is authorized to bind the Respondent to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.

4.2.4.4. A statement certifying to the completeness, veracity, and accuracy of the information provided in the proposal.

4.2.4.5. A statement of acceptance of the terms and conditions of the contract resulting from this RFP. If any Respondent takes exception to any of the proposed terms and conditions, those exceptions must be noted in the Letter of Transmittal. Each Respondent should realize, however, that failure to accept the terms and conditions specified in this RFP may result in disqualification of the proposal.

By submitting a signed proposal, Respondent agrees that it fully understands this RFP and shall abide by the terms and conditions contained in it. Any exception to the requirements of this RFP must be specifically noted in writing and explained by Respondent in its RFP response as a condition to becoming part of any subsequent contract. Any exceptions must be expressly agreed to by TDI in writing and by reference to the particular section of this RFP for which an exception is acceptable. Unauthorized exceptions, amendments or deviations in the response may result in disqualification of the proposal. To be considered, proposals must be received in the issuing office by the RFP deadline. It is the sole responsibility of Respondents to verify timely receipt by TDI of the RFP proposal.

4.2.5. Respondent's Identifying Information. Respondent must provide the information specified below in the section of its response titled Respondent's Identifying Information.

- (a) Names, address, telephone and fax numbers of the entity submitting the proposal.
- (b) Type of business entity (i.e., corporation, partnership, trust, association, subsidiary).
- (c) The place of incorporation, if applicable.
- (d) The location(s) of all the major offices, locations and other facilities that relate to the Respondent's performance under the terms of this RFP.
- (e) An organizational chart of the Respondent. Include all parent, subsidiary and affiliate companies and explain their relationship to the Respondent.
- (f) The Respondent's Federal employer identification number and Texas tax identification/registration number (if available) with a copy of local business or Texas tax license.

- (g) Name of contact person for Respondent and title.
- (h) Length of time in business.
- (i) State whether or not Respondent is or has ever been involved in litigation against TDI or the State of Texas, and indicate whether or not Respondent has had a claim or lawsuit, as they pertain to the same or similar services described in this RFP, filed against it within the last five (5) years.

4.2.6. Description of Services to be Performed/Experience.

4.2.6.1. Respondent must demonstrate its understanding of the services set forth in Part II, Specifications, of this RFP. Respondent must provide detailed information specifically addressing and describing the Respondent's experience and approach to providing each requirement, including resumes for all staff working that will be used by Respondent to provide the services included in section 2.2 of the RFP.

4.2.6.2. Respondent may propose any additional services that it believes should be included as part of any resulting contract if, in its judgment, their inclusion is necessary to the accomplishment of project objectives or would increase the value of the outcome of the project to TDI.

4.2.6.3. Respondent must briefly state why it believes its proposed services best meet the objectives of TDI, and must describe any additional aspects or advantages of its services in any relevant area not covered elsewhere in its proposal, in five pages or less.

4.2.6.4. Respondent must submit an analysis including the aspects that must be considered for each of the areas included in section 2.2.4 of this RFP in order to identify options. At a minimum, the analysis must include a description of the methodology that will be used to assess each of the areas. If the methodology includes best practices, industry standards or the like, the analysis should disclose the sources for those benchmarks that the Respondent will use and an explanation of why these benchmarks were selected.

4.2.6.5. Respondent must provide a discussion of the availability and operational capacity of the Respondent that demonstrates the Respondent's ability to provide the requested services as described in this RFP. This analysis should include a discussion of the Respondent's operations and the resources that are available to the Respondent to provide the services discussed in section 2.2 of the RFP.

4.2.6.6. Respondent must demonstrate knowledge and understanding of TWIA by including a discussion of the challenges that TWIA is currently facing and those challenges that would be faced by TWIA in the event of a catastrophic event.

4.2.6.7. Respondent must include a discussion of the subject matter and/or technical expertise and skill sets that would be needed to evaluate the options developed by the Selected Respondent and to oversee the implementation of any selected options.

4.2.7. Contact, References, and Other Information. Unless otherwise indicated, Respondents must complete all of the following blanks and include all required attachments in its response at the time of the initial submission of the response to TDI.

4.2.7.1. Respondent's Contact Persons. Respondent must list the name, title, phone number and fax number of at least two (2) individuals who will be the contact persons for this RFP and who have the authority to respond to questions from TDI.

Name	_____
Title:	_____
Phone Number:	_____
Fax Number:	_____
Email:	_____

Name	_____
Title:	_____
Phone Number:	_____
Fax Number:	_____
Email:	_____

4.2.7.2. References.

4.2.7.2.1. Respondents must provide a separate list of at least 2 states, agencies or other entities for which Respondent within the past two (2) years has provided services similar to those requested in this RFP. Respondents must give the client organization's name and describe the services performed, the beginning and ending dates, results obtained and current status of the project. Respondents must provide the name, title, telephone number, and email address of the key contact(s) at the client organization. If none, Respondent must provide an explanation.

4.2.7.3. Cancellations. Respondents must provide a list of all contracts that Respondent executed or accepted for services similar to those requested in this RFP within the last five (5) years and that were canceled by any state agency or other entity prior to completion. For each canceled contract, include a detailed explanation for the cancellation and final resolution of the matter. Include the names and telephone numbers of each such agency's or entity's contact individual who has knowledge of the cancellation and the reasons for the cancellation. If none, Respondent must provide an explanation.

4.2.7.4. Relatives/Employees; Definition of Employee. State law imposes restrictions on certain contracts with former or retired agency employees. Respondents must provide a list of all of the following: (1) relatives of Respondent who are currently working or have worked for TDI; and (2) employees of Respondent who are current, former, or retired employees of TDI. Respondent must notify TDI of any prospective employee who is a former employee of TDI prior to employee's performance or receipt of compensation under any contract resulting from this RFP. Respondent must notify TDI of any prospective employee who is related to a TDI employee prior to placement, and must notify TDI of any prospective employee who holds any license or certificate

related to the insurance industry. As used throughout this RFP, the term “Employee” includes any individuals who, on behalf of Respondent, will or may participate in any contract resulting from this RFP. The term “Employee” includes all personnel, replacement personnel, agents, contractors and other representatives of Respondent regardless of how employed or contracted by Respondent. If none, specify none.

4.2.7.5. Names and Social Security Numbers. Responses must include names and Social Security Numbers of each person with at least 25% ownership of the business entity submitting the response. TDI may accept responses that do not include this information if TDI obtains the required information before the contract, if any, is executed.

Federal Privacy Act Notice: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under sections 231.006(c) and 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under section 231.302(e) of the Texas Family Code.

Enter name above and Social Security Number below.

□□□-□□-□□□□

Enter name above and Social Security Number below.

□□□-□□-□□□□

4.2.8. Conflicts or Potential Conflicts of Interest. Respondent must provide a statement of any conflicts or potential conflicts of interest of Respondent, Respondent’s employees, or Respondent’s affiliates, who will or may provide services under any contract resulting from this RFP. See section 2.4.1. Failure to disclose all conflicts or potential conflicts of interest may result in Respondent being disqualified and may result in cancellation of the contract. In submitting a response, Respondent certifies that, except as disclosed under the provisions of this section, Respondent possesses the necessary independence in the provision of services sought by TDI under this RFP.

4.2.9. Qualifications.

4.2.9.1. Respondent must specifically detail the names, qualifications, education, training, experience and certifications of any Employee who will or may provide services under any contract resulting from this RFP. Respondent must represent and warrant that each Employee, including replacement Employees, if any, will possess the qualifications, education, training, experience and certifications necessary to perform the services under the contract in the manner required by this RFP.

- Respondent must include résumés for each individual to be assigned to this project that includes at a minimum title, educational background, licenses,

relevant experience, and length of service with Respondent firm and professional accreditations/certifications.

- Respondent must notify TDI of any change of personnel assigned to this project. Respondent must provide all information as listed above and obtain written approval from TDI before any new personnel begins work on this contract.

4.2.10. Insurance Information. Respondent represents and warrants that it will obtain and maintain for the term of the contract all insurance coverage required to ensure proper fulfillment of the contract and its liabilities therein. Respondent must insure any of its motor vehicles used to fulfill its duties under the contract and ensure that its subcontractors do the same. Insurance must comply with Texas statutory requirements and also cover any cargo being delivered to TDI.

Respondent represents and warrants that all of the above coverage will be obtained from companies that are licensed in the state of Texas, have an “A” rating from Best, and are authorized to provide the coverage. Respondent must furnish proof of insurance upon request of TDI.

4.2.11. Legal Actions. Respondent must identify any pending or completed legal actions against Respondent during the past five (5) years related to services performed. Respondent must specifically describe any legal actions related to failure to perform contracted services, breach of contract, or general mismanagement of a contract that have been brought against Respondent or any of the individuals who will be working with TDI.

Respondent must also state whether during the last five (5) years the Respondent has been assessed any penalties or liquidated damages under any existing or past contract with any governmental entity. If so, Respondent must indicate the public jurisdiction, the reason for the penalty or liquidated damages and the penalty or liquidated damage amount of each incident.

4.2.12. Subcontractor Information. If subcontractors are used, Respondents must provide the following information.

- (a) Respondent must provide statements from subcontractors, signed by an individual authorized to legally obligate the subcontractor, attesting to the fact that it will provide the services as represented in the proposal.
- (b) Each subcontractor is required to submit ownership information as specified in section 4.2.15. Respondent must disclose at TDI’s request any information regarding subcontractors that might be cause for disqualification of the subcontractor under the requirements of the state and/or federal laws or rules.
- (c) TDI has determined that subcontracting is not a probability with this RFP. If Respondent determines that subcontractor(s) will be utilized, the Respondent is encouraged to submit a HUB subcontracting plan (HSP) with Respondent’s proposal. See sections 1.11 and 1.12 of the RFP.

4.2.14. Changes in Ownership Conditions. The proposal must include a certification to notify TDI of a change in ownership. If a Respondent experiences a substantial change in its ownership during the period prior to the award of any contract pursuant to the RFP, or if the Selected Respondent experiences a substantial change in its ownership during the term of the contract or any contract extension, TDI must be notified of the change in writing at the time the change occurs or is identified. Failure to notify TDI of such substantial change in ownership during the term of the contract or any extension will be sufficient grounds for rejecting the proposal or terminating any contract.

4.2.16. Respondent Documents. Respondents must include all vendor Documents. Respondent Documents will not be construed to limit any rights or remedies otherwise available to TDI under this RFP, any resulting contract, or any applicable law. See section 4.1 of Part IV of this RFP.

4.2.17. Other Information. Respondents may include any information that Respondent considers relevant but not solicited in this RFP.

4.2.18. Respondent Identification. Responses must include RESPONDENT ID (Vendor ID #) Number, full firm name and address of Respondent (Respondent must enter in the block provided if not printed). The Payee ID Number is the taxpayer number assigned and used by the Comptroller of Public Accounts of Texas. Respondent must enter this number in the spaces provided on page 1 of this RFP, if the number is not printed. If this number is not known, then Respondent must provide Federal Employer's Identification Number; sole owner should enter Social Security Number.

4.2.19. Mandatory Pricing Form. Respondents must provide pricing as listed below for the services described in this RFP.

4.2.19.1. Hourly Rates for Services. Respondent must bid firm fixed hourly rates for the individual who will provide services under any resulting contract. If more than one individual will provide services under the contract, firm fixed hourly rates must be bid for each individual. The hourly rates must include all costs of providing all services described in this RFP; the hourly rates must be applicable to the following specific period: Effective Date of Contract: (estimated date: from date of purchase order) through August 31, 2013 and any renewal periods.)

List names, titles and hourly rates, for each individual listed.

Respondent's Staff

Title	Name	Hrly Rate

Respondent must also provide two cost estimates: 1) the estimated total cost for all services associated with the RFP and 2) a subtotal of cost associated with implementation only.

4.2.19.2. Renewal Cost. TDI, in its sole discretion, will have the option to renew the contract for up to two (2) additional one (1) year periods at a rate not to exceed 5% over the previous year. Respondent must provide a not-to-exceed percentage rate that falls within TDI parameters. This rate will be used to calculate the renewal and will be based on the rates quoted for the initial term. If this section is left blank or "0", the renewal rate will not increase.

Proposed Renewal Period 1:

September 1, 2013 through August 31, 2014 - Not to exceed _____%

Proposed Renewal Period 2:

September 1, 2014 through August 31, 2015 - Not to exceed _____%

NOTE: TDI will pay no costs or expenses of Respondent in submitting a response to this RFP. TDI will not authorize payments for any costs incurred prior to or for periods prior to the effective date of TDI's PO, if any, resulting from this RFP.

In keeping with section 2.6 of this RFP, Respondents will be responsible for all travel expenses, as well as any other expenses incurred in conducting the work required under any contract resulting from this RFP. Therefore, Respondents shall not include any travel costs or related out-of-pocket expenses in its pricing form.

Exhibit A - Sample Contract



TEXAS DEPARTMENT OF INSURANCE

CONTRACT FOR SERVICES
between the TEXAS DEPARTMENT OF INSURANCE
and [CONTRACTOR NAME]

This contract for services (“contract”) is made by and between the TEXAS DEPARTMENT OF INSURANCE, an agency of the State of Texas, with its principal place of business located at 333 Guadalupe, Austin, Texas 78701, hereinafter referred to as “TDI,” and [CONTRACTOR NAME AND HOW CONSTITUTED], with its principal place of business located at [ADDRESS], hereinafter referred to as “Contractor.”

Recitals

Whereas, TDI issued a Request for Proposal (“RFP”) No. **12-MVB-TWIA-01** to qualified firms or entities to provide services to TDI; and

Whereas, Contractor submitted a timely proposal in response to the RFP (“Proposal”); and

Whereas, following a review and evaluation of submitted proposals, TDI awarded contract to Contractor.

In consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. Authority

The authority for this Contract can be found in Chapters 441 and 2210 of the Texas Insurance Code.

2. Services

2.01. Services. Contractor will provide to TDI all of the services and other deliverables as described in and in the manner required by the following documents: (1) this three (3) page contract; (2) Exhibit A, TDI’s Request for Proposals No. **12-MVB-TWIA-01**; and (3) Exhibit B, Contractor’s Proposal Response.

All of the above are attached to and incorporated as part of this Contract for all purposes. In the case of conflicts between this three (3) page contract and any of the exhibits, the following indicates the order of priority: (1) this three (3) page contract; (2) Exhibit A, TDI’s Request for Proposals No. **12-MVB-TWIA-01**, and (3) Exhibit B, Contractor’s Proposal Response.

2.02. General Provisions. Contractor will provide services to TDI under this Contract in accordance with the requirements set forth in this Contract and as more specifically described in the RFP. Contractor will provide all other services reasonably related to the above services.

3. Term

The initial term of this contract shall be from the date the contract is executed until August 31, 2013. TDI has the option in its sole discretion to renew this contract for up to two (2) additional one (1) year periods (September 1, 2013 through August 31, 2014 and September 1, 2014 through August 31, 2015). In the event of such renewal, the scope of services, deliverable dates, and contract amount may be negotiated. *See also* section 4.2.19.2 of the RFP.

Notwithstanding the termination or expiration of this contract, the provisions regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, tool development, limitation of distribution and warranties, shall survive the termination or expiration dates of this contract.

4. Compensation

The total amount of this contract during the initial term shall not exceed **XXXXXXXX (\$)**, unless otherwise amended. The contract amount for any renewal periods shall be specified by written contract amendment signed by both parties.

5. Certifications and Affirmations

Contractor certifies that it is in compliance with the certifications and affirmations in the RFP, Section 1.8, and agrees to such affirmations and certifications.

6. Miscellaneous

6.01. Multiple Original Contracts. The parties shall sign this contract in as many counterparts as may reasonably be necessary. Each counterpart shall contain original signatures of the parties and shall constitute an original, but together, all counterparts shall constitute only one (1) contract.

6.02. Headings. The paragraph and section headings used herein are descriptive only and shall have no legal force or effect whatsoever.

7. Sovereign Immunity

The parties agree and acknowledge that nothing contained in contractor's proposal response or this contract shall in any manner be construed as a waiver of sovereign immunity or official immunity by TDI, its employees, or the state of Texas. TDI and the state of Texas retain all legal defenses and immunities available to each. TDI does not waive any privileges, rights, defenses, remedies, or immunities, available to TDI as an agency of the State of Texas or otherwise available to TDI.

By the signatures below, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective parties.

TEXAS DEPARTMENT OF INSURANCE

[CONTRACTOR]

By _____
Karen A. Phillips
Chief of Staff

By _____
[Name]
[Title]

Date: _____

Date: _____