

**REQUEST FOR QUALIFICATIONS  
For Special Deputy Receivers**

**RFQ-SDR-2021-1**

**ISSUED MARCH 11, 2021**

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## SECTION I: INTRODUCTION

### 1.1 Definitions

The definitions of the terms used in this Request for Qualifications are as follows:

"Applicant" refers to a legal entity responding to this RFQ.

"Application" refers to a completed application submitted in response to this RFQ.

"Bid Proposal" refers to a response to a Request for Proposals for an SDR.

"Bidder" refers to an Eligible Applicant submitting a Bid Proposal.

"Chapter 443" refers to Chapter 443 of the Texas Insurance Code.

"Commissioner" refers to the Commissioner of Insurance for the State of Texas.

"Commissioner's Staff" refers to the Commissioner's designated TDI staff.

"Company" refers to an insurer or other entity placed in receivership, unless otherwise stated.

"Eligible Applicant" means an Applicant approved in accordance with this RFQ.

"RFP" refers to a Request for Proposals for an SDR.

"RFQ" refers to this Request for Qualifications.

"Receiver" refers to the Commissioner in his or her capacity as Receiver under Chapter 443. The term includes the terms "Rehabilitator" or "Liquidator," as applicable.

"Receivership" refers to a receivership under Chapter 443.

"Receivership Administrator" or "RA" refers to the designated person who is primarily responsible for administering an SDR's duties.

"SDR" refers to a Special Deputy Receiver appointed under Chapter 443.

"SDR Agreement" refers to an agreement to serve as an SDR.

"Subcontractor" refers to a person or entity described in Section 8.3 of this RFQ.

"TDI" refers to the Texas Department of Insurance.

## 1.2 Purpose of RFQ

The Texas Insurance Code provides that the Commissioner of Insurance shall be appointed as Receiver of an entity placed in receivership under Chapter 443. As Receiver, the Commissioner is authorized to appoint a Special Deputy Receiver to carry out his or her duties.

The Commissioner issues this Request for Qualifications for Applicants interested in becoming eligible to serve as an SDR. An Applicant approved under this RFQ (Eligible Applicant) may be eligible to receive a Request for Proposals for an SDR issued after March 11, 2021. This RFQ replaces RFQ-SDR-2013-1 issued July 9, 2013. Eligible Applicants approved under the 2013 RFQ must be approved under this RFQ to bid on any RFP for an SDR issued after April 30, 2021.

Texas Insurance Code Section 443.0135(a) requires the Receiver to use a competitive bidding process for SDRs, except in the case of an emergency. The bid process must promote the participation of historically underutilized businesses (HUBs) certified by the Texas State Comptroller under Section 2161.061 of the Government Code. Accordingly, HUBs that meet the qualifications of this RFQ are encouraged to respond to this RFQ. Please contact the Texas State Comptroller's Office if you have any questions or need additional information regarding the HUB certification process. Information is also available on the website of the Texas State Comptroller's Office at: <https://comptroller.texas.gov/purchasing>

## 1.3 Duties of the Receiver

Chapter 443 governs receivership proceedings of entities engaged in the business of insurance. A receivership may be a rehabilitation or liquidation proceeding, in which the Receiver acts as Rehabilitator or Liquidator, respectively. An SDR appointed by the Receiver has all the Receiver's powers and responsibilities, unless limited by the Receiver. An SDR's duties will depend on the situation, including the nature of the proceeding, the entity placed in receivership, and other factors. These duties typically include, but are not limited to, the following:

- a) Securing control of the company's operations, property, and records;
- b) Evaluating, managing, collecting, and liquidating assets;
- c) Evaluating the company's work force to ensure proper staffing;
- d) Supervising litigation filed by and against the receivership estate;
- e) Operating information systems and extracting data;
- f) Investigating the liability of any parties to the company;
- g) Identifying any preferential transfers;

- h) Providing notice to policyholders, claimants, and interested parties;
- i) Handling and paying claims;
- j) Coordinating with state insurance guaranty associations; and
- k) Creating and filing financial and management reports.

#### 1.4 Term of RFQ

This RFQ will remain in effect for three years, unless extended by the Commissioner. An Applicant's approval as an Eligible Applicant under this RFQ is valid during the term of this RFQ unless the Applicant is disqualified under Section 7.4 of this RFQ. The Commissioner reserves the right to issue further RFQs for SDRs, or for any other services in connection with receiverships, at any time during the term of this RFQ.

#### 1.5 Approval of Applicants

An Applicant must be a legal entity. An individual cannot submit an application, regardless of whether the person was approved as an Eligible Applicant under the 2013 RFQ. An Applicant must designate at least one Receivership Administrator who would be responsible for administering the SDR's duties if the Applicant is appointed as an SDR. Applicants are not required to identify employees in its response to this RFQ, except for Applicant's officers, directors, managers, and RAs. This RFQ is not applicable to subcontractors. Potential subcontractors may submit an application for legal, accounting, information technology, reinsurance, and claims services in accordance with an RFQ for SDR Subcontractors. Subcontracting requirements are described in Section 8.3.

To become an Eligible Applicant, an Applicant must:

- a) meet the qualifications described in this RFQ,
- b) submit a completed Application, and
- c) be approved in accordance with the terms of this RFQ.

The Commissioner reserves the right to modify the qualification requirements and to reject any or all applications. Neither the Commissioner nor TDI will pay any costs or expenses incurred by any Applicant in submitting an Application.

#### 1.6 Issuance of RFPs

If the Commissioner determines that an SDR should be appointed during the term of this RFQ, the Commissioner's Staff will issue an RFP. Notice of the RFP will be provided to Eligible Applicants. Responses to the RFP submitted by Eligible Applicants (Bid Proposals) will be reviewed and evaluated by the Commissioner's Staff.

## SECTION II: QUALIFICATIONS

### 2.1 Minimum Qualifications of the Receivership Administrator

A Receivership Administrator must have:

- a) a bachelor's degree;
- b) at least 10 years work experience; and
- c) experience relevant to insurers, HMOs, or other entities in the insurance business in one or more of the following positions (In this section, the term "receiver" includes an SDR or equivalent position.):
  - (i) A receiver, conservator, or supervisor
  - (ii) A trustee, independent fiduciary in a proceeding involving insurance.
  - (iii) A person with responsibility in a proceeding described in (i) or (ii) above.
  - (iv) An insurance regulator involved in the management of receiverships.
  - (v) A guaranty association administrator with experience related to receiverships.

### 2.2 Relevant Experience for Appointment as SDR

The requirements listed represent the minimum standards for an Applicant to be eligible under this RFQ. Eligible Applicants approved under this RFQ may submit a Bid Proposal in response to an RFP. An RFP will contain particular requirements, such as specific experience with certain types of insurers or other entities. The following are examples of *typical* requirements in an RFP; the requisite experience for any particular RFP will depend on the circumstances.

- a) General RFP Requirements. A Bidder will generally need persons with experience in the following areas:
  - (i) Management of a receivership.
  - (ii) Understanding of the legal issues involved in insurance receiverships. A receivership is a judicial proceeding, and the SDR must be represented by an attorney licensed in Texas who has experience with insurance receiverships. One attorney must be designated as the lead counsel with responsibility for oversight of all legal matters. Any paralegals retained by an SDR must be supervised by an attorney.
  - (iii) Understanding of accounting principles and experience with financial reporting requirements and tax issues involved with insurer receiverships.

- (iv) Claims experience relevant to the policies issued by the Company. A person responsible for making claim determinations must hold any applicable required license.
- (v) Experience in managing assets typically held by insurers.
- (vi) Expertise in handling electronic data processing operations.

b) Specific RFP Requirements.

In addition to the items described in Section 2.2(a), a Bidder will need to demonstrate an understanding of the entity placed in receivership. A Bidder may need expertise in particular areas, including:

- (i) Experience with particular types of insurers or other entities, such as property and casualty insurers; life, accident and health insurers; HMOs; unauthorized insurers; title insurers; or title agents.
- (ii) An understanding of applicable Data Standards e.g. UDS.
- (iii) Actuaries qualified within their area of practice (Life, Health, P&C) and are experienced in the subject matter for which they are providing services to a particular line of business. Examples of subject matter could be pricing or reserving. Additionally, credentials as follows:
  - Actuaries for life & health issues should be either a Fellow (FSA) or Associate (ASA) of the Society of Actuaries.
  - Actuaries for P&C issues should be either a Fellow (FCAS) or Associate (ACAS) of the Society of Actuaries.
  - Actuaries that provide services related to the statutory financial statements should be a Member of the American Academy of Actuaries (MAAA).
- (iv) Experience with reinsurance, including collection, assumptions, commutations, arbitrations, and reinsurance accounting.
- (v) Experience with handling premium audits, billing and collection, and dealing with issues related to the cancellation of policies.
- (vi) Experience with handling investigations related to the cause of an entity's insolvency and investigations of fraudulent actions.
- (vii) Experience with restructuring an insurance company.
- (viii) Experience with handling title insurance or escrow account issues.

### 2.3 Continuing Education Requirements

For the duration of the SDR's appointment, the RA must attend any continuing education requirements as approved by the Commissioner's Staff.

## **SECTION III: GROUNDS FOR DISQUALIFICATION**

### 3.1 Ineligible Entities and Individuals

The following are ineligible to serve as an SDR or as an RA:

- a) An insurance company, reinsurer, reinsurance intermediary, managing general agent, title agency, insurance broker, or an affiliate of any such entity.
- b) An individual who serves as an officer, director or employee of an entity described in subsection (a).

### 3.2 Mandatory Grounds for Disqualification of Applications

The Commissioner shall disqualify Applications containing false information or a false certification, and the Applicant may not submit any further applications to this or a subsequent RFQ.

### 3.3 Discretionary Grounds for Disqualification of Applications

The Commissioner may, in his or her discretion, disqualify an Application based on any of the following circumstances that apply to the Applicant; the Applicant's proposed RAs; or any of Applicant's officers, directors, or employees who would be involved in the management of a receivership in the event of Applicant's appointment as an SDR:

#### a) Criminal Proceedings

Any conviction of or plea of guilty to:

- (i) a felony;
- (ii) a misdemeanor involving embezzlement, theft, conversion, larceny, fraud, violence, workplace misconduct, or any similar crimes;
- (iii) a violation of a securities or insurance law; or
- (iv) any other crime of moral turpitude;

b) Civil Proceedings

- (i) any finding of fraud, breach of fiduciary duty, bad faith, unfair business practices, deceptive trade practices, conversion, or any similar finding by a court or administrative law judge;
- (ii) any disciplinary proceedings by any governmental or regulatory entity;
- (iii) any action filed by a receiver, trustee, or governmental entity for a breach, failure to perform, or assessment of penalties or liquidated damages in connection with a contract;
- (iv) any entry of a civil judgment or imposition of administrative fines or penalties against the individual or a business in which such individual was an officer, director, or controlling stockholder;
- (v) any denial, revocation, or suspension of an occupational or vocational license or certification by any public or governmental licensing agency or regulatory authority, or other disciplinary actions by such a licensing entity; or
- (vi) any of the following actions with respect to an insurer, or other entity involved in the business of insurance, during the time that the person was an officer, director, or controlling stockholder of the company:
  - suspension or revocation of a certificate of authority or license;
  - administrative oversight;
  - supervision;
  - conservatorship;
  - receivership; or
  - any other finding of hazardous condition.

c) Conflicts and Potential Conflicts

For the purposes of this RFQ, an actual or potential conflict of interest includes any of the following situations, whether prior or current:

- (i) any situation that could create any appearance of impropriety in the event that an Applicant is approved; or
- (ii) any of the following situations involving the Applicant, its proposed RAs, or any of its officers, directors, or employees who would be involved in the management of a receivership:
  - making a claim or filing an action against TDI or the Commissioner;

- any action by TDI or the Commissioner against the person or entity, including, but not limited to, an action to revoke or suspend a license;
- representing or providing services to another party in connection with a claim or action by or against TDI or the Commissioner; or
- representing or providing services to another party, other than the Commissioner, the Receiver, or an SDR, regarding any proceeding under Chapters 404, 441 or 443 of the Code.

d) Contractual Matters

Any termination of a contract with a receiver, trustee or governmental entity prior to the completion the contract.

The Commissioner may take any circumstances described above, and any further information provided by Applicant under Section 4.4 into consideration in determining whether an Application is subject to disqualification. The Commissioner may, in his or her sole discretion:

- a) waive the conflict or condition and accept the Application;
- b) accept the Application and exclude the person or entity having the conflict or condition from inclusion in any SDR Agreement; or
- c) disqualify the Application.

Please note that disclosure of the items described in Section 3.3 may be required regarding a Bidder's proposed employees or subcontractors in any Bid Proposal.

## **SECTION IV: REPRESENTATIONS AND DISCLOSURES**

Applicant must provide all the representations and disclosures required by this Section. Failure to provide any required information may be a cause to disqualify an Application.

### 4.1 Representations of Minimum Qualifications

Applicant must represent that it meets all the minimum qualifications described in Section II of this RFQ.

### 4.2 Disclosure of Ownership

Applicant must identify any persons with 10% or more ownership.

### 4.3 Disclosure of Potential Grounds for Disqualification

Applicant must disclose any and all information regarding any potential grounds for disqualification described in Section 3.3 of this RFQ. Such disclosure must identify the particular matter, including any names, dates, and cause numbers, as applicable.

### 4.4 Additional Information

With respect to any disclosures of matters under Section 4.3, Applicant may include an explanation of:

- a) any extenuating circumstances, expungement, or pardon with respect to any criminal proceedings;
- b) any relevant factors with respect to any civil proceedings; or
- c) any measures Applicant will take to mitigate potential conflicts of interest.

The Commissioner reserves the right to request additional information from an Applicant as he or she deems necessary.

## **SECTION V: RFQ REQUIREMENTS**

### 5.1 Required Information

An Applicant must complete the form attached to this RFQ.

### 5.2 Optional Information

Applicant may include an electronic version of any brochures or similar marketing materials.

### 5.3 Duty to Update or Correct

Applicant must promptly notify the Commissioner in writing of any material or potentially material changes in the information contained in an Application. Examples of such changes include, but are not limited to, discovery of an actual or potential conflict of interest, loss of a professional designation, change of organization's structure, changes to a designated RA, email addresses, or contact information. The duty to update or correct continues after an Applicant is approved.

## **SECTION VI: SUBMISSION OF APPLICATION**

### 6.1 Contact and Delivery Information

Any notices or questions regarding this RFQ must be sent electronically to:

[SDRcontracting@tdi.texas.gov](mailto:SDRcontracting@tdi.texas.gov).

Note: size should not exceed 35MB. Applications may be submitted at any time during the term of the RFQ.

## **SECTION VII: APPLICATION APPROVAL PROCESS**

### 7.1 Review of Applications

Applications will be submitted to an evaluation committee of TDI employees. The evaluation committee will consider the experience, abilities, references, and/or background checks of the Applicant and the RA to determine Applicant's compliance with the RFQ requirements. Based on this information, the Commissioner may, in his or her sole discretion:

- a) approve the Application;
- b) reject the Application if it is incomplete; or
- c) disqualify the Application.

### 7.2 Incomplete Applications

If an Application is incomplete, the Applicant will be notified in writing, and will be permitted to submit a revised Application.

### 7.3 Notification to Applicants

Applicants will be notified in writing of the Commissioner's decision regarding an Application. It is anticipated that Applications will be processed within 60 days of submission.

### 7.4 Disqualification of Applications

The Commissioner, in his or her discretion, reserves the right to disqualify an Eligible Applicant under the following circumstances:

- a) If it is determined that the Eligible Applicant no longer meets with the requirements of this RFQ, or that information submitted in an Application is inaccurate or no longer accurate due to changes in circumstances.
- b) An Eligible Applicant has been appointed as an SDR and has failed to comply with the SDR Agreement.

## **SECTION VIII: BIDDING PROCESS**

### 8.1 General Requirements

- a) If an RFP is issued for a Company, Eligible Applicants will be advised of an opportunity to submit a Bid Proposal. Eligible Applicants must agree to protect the confidentiality of confidential information contained in the RFP.
- b) If there are any known grounds for disqualification of an Eligible Applicant, the Commissioner may, in his or her sole discretion, determine that the Eligible Applicant is ineligible to submit a Bid Proposal.
- c) An Eligible Applicant who receives an RFP may submit a Bid Proposal. No other entity may be substituted for an Eligible Applicant as a Bidder in a Bid Proposal.

### 8.2 Employees

A Bidder may propose using its employees to provide administrative and/or professional services, including accounting, legal, and claim services, provided that such individuals have the requisite licenses and experience; can provide services as cost effectively as a subcontractor; and are covered by insurance as required by the SDR Agreement. The use of any employees is subject to the Receiver's approval.

### 8.3 Subcontracting

A Bidder may include proposed subcontractors, who must be approved by the Receiver prior to the execution of the SDR Agreement. The RFQ for Subcontractors of SDRs and Other Professional Services is soliciting applications for legal, accounting, information technology, reinsurance, and claims services. A bidder may select proposed subcontractors from applicants who are approved in accordance with the RFQ for Subcontractors of SDRs and Other Professional Services or may select other subcontractors. A Bidder is responsible for reviewing the qualifications of any proposed subcontractors submitted in a Bid Proposal. A subcontractor may be an affiliate or a subsidiary of the SDR, subject to the Receiver's approval. Subcontractors are paid from the assets of the estate or from other funding available, and are not paid from the SDR's corporate funds.

Texas Insurance Code Section 443.0135(b) contains specific requirements regarding proposed subcontractors:

A proposal submitted in connection with a bid solicitation under Section 443.0135(a) must describe the efforts that have been made to include Historically Underutilized Businesses as subcontractors and the plan for using the Historically Underutilized Businesses in the administration of the receivership estate. A special deputy appointed under Chapter 443 shall make a good faith effort to implement the plan and shall report to the Receiver the special deputy's efforts to identify and subcontract with Historically Underutilized Businesses.

To comply with this requirement, a Bidder will provide information regarding its proposed use of HUBs.

#### 8.4 Disqualification of Bid Responses to RFPs

Any of the following that apply to a Bidder, its RA, employees, or proposed subcontractors may result in disqualification of a Bid Response:

- a) Representing the Company, or any of its affiliates
- b) Serving as a board member, officer, or director of the Company or any of its affiliates
- c) Having any financial interest in the Company, including, but not limited to, being an owner, policyholder, claimant, or other creditor.
- d) Having any relationship with:
  - (i) the Company or its owners, affiliates, officers, directors, agents, reinsurers or underwriters;
  - (ii) a party in litigation with the Company; or
  - (iii) a party that has a financial interest in the Company.
- e) Any other situation or relationship, that could create a conflict of interest or an appearance of impropriety if Applicant is selected as an SDR.
- f) Any representation prohibited by Texas Insurance Code Section 33.007.

## **SECTION IX: RIGHTS**

### 9.1 Applicant's Acknowledgements

Applicant acknowledges that the Commissioner has the discretion to accept any Applications and that this RFQ does not provide any recourse to any Applicant whose Application is not accepted.

### 9.2 Release of Applications

Applications become the property of TDI and may be subject to release under the Texas Public Information Act, Chapter 552 of the Texas Government Code.

### 9.3 Waivers

TDI does not waive any privileges, rights, defenses, remedies, or immunities available to it as an agency of the State of Texas, or any other rights available to TDI in connection with this RFQ.

### 9.4 Releases

An Applicant releases TDI, the Commissioner, his or her employees and agents from any liability, claims, and lawsuits with respect to the information submitted to or obtained by the Commissioner in connection with this RFQ.