



STATE OF TENNESSEE
TREASURY DEPARTMENT

**REQUEST FOR PROPOSALS # 30901-55723
AMENDMENT # 1
FOR CAPTIVE INSURANCE COMPANY AUDITING
SERVICES**

DATE: May 11, 2023

RFP # 30901-55723 IS AMENDED AS FOLLOWS:

- 1. This RFP Schedule of Events updates and confirms scheduled RFP dates. Any event, time, or date containing revised or new text is highlighted.**

EVENT	TIME (central time zone)	DATE
1. RFP Issued		April 24, 2023
2. Disability Accommodation Request Deadline	2:00 p.m.	April 27, 2023
3. Pre-response TeleConference	10:00 a.m.	April 28, 2023
4. Notice of Intent to Respond Deadline	2:00 p.m.	May 1, 2023
5. Written "Questions & Comments" Deadline	2:00 p.m.	May 5, 2023
6. State Response to Written "Questions & Comments"		May 11, 2023
7. Response Deadline	2:00 p.m.	May 18, 2023
8. State Completion of Technical Response Evaluations		May 25, 2023
9. State Opening & Scoring of Cost Proposals		May 30, 2023
10. Negotiations (Optional to the State)		May 31, 2023 – June 2, 2023
11. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection		June 7, 2023
12. End of Open File Period		June 14, 2023
13. State sends contract to Contractor for signature		June 15, 2023
14. Contractor Signature Deadline	2:00 p.m.	June 21, 2023

2. Delete Section A.13 of the *Pro Forma Contract (RFP Attachment 6.6)* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- A.13. Representations and Warranties. The Contractor represents and warrants that (1) it has no interest and shall not acquire any interest, direct or indirect, which **it knows or reasonably should know** would conflict in any manner or degree with the performance of services under this Contract; (2) it is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants; (3) it is independent with respect to the Captive and conforms to the standards of the Contractor's accounting profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and pronouncements of the Financial Accounting Standards Board; (4) it is on the list of approved certified public accounting firms or individual certified public accountants maintained by the Commissioner; (5) it is duly authorized to execute and deliver this Contract, and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance; (6) the person signing this Contract on its behalf is duly authorized to do so on its behalf; (7) it has obtained all authorizations of any governmental body required in connection with this Contract and the transactions hereunder and such authorizations are in full force and effect; and (8) the execution, delivery and performance of this Contract will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected.

The Contractor shall promptly notify the State in writing if any of the above representations change or cease to be true and correct in all respects.

3. Delete Section A.14 of the *Pro Forma Contract (RFP Attachment 6.6)* in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- A.14. Ownership of Materials. ~~All records, reports, documents, or other material related to this Contract and/or obtained or prepared by the Contractor~~ **The Contractor shall be the sole owner of all deliverables, Working Papers, or other work product conceived, made or created by the Contractor in connection with the performance of the services hereunder, including all intellectual property rights therein; provided, however, that the State shall not be restricted in any manner in using any or all of the foregoing that is delivered or otherwise provided to the State under this Contract, and the Contractor shall be deemed to have granted the State a non-exclusive, perpetual, royalty-free, non-transferable license to so use any or all of the foregoing shall become the property of the State and shall, upon request, be transmitted by the Contractor to the State, at the Contractor's expense, at termination or expiration of this Contract or at such earlier time as the State may request. The State acknowledges the Contractor must retain copies of the Working Papers as described and provided in Section A.8 above.**

4. Delete Section D.6 of the *Pro Forma Contract, RFP Attachment 6.6*, in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

- D.6. Termination for Cause. ~~If the Contractor a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by~~

~~virtue of any Breach Condition and the State~~ may seek other remedies allowed at law or in equity for breach of this Contract.

5. Delete Section D.19 of the *Pro Forma Contract*, RFP Attachment 6.6, in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all **third party** claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of **negligent or willful** acts, **or** omissions, ~~or negligence~~ on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

6. Delete Section D.32 of the *Pro Forma Contract*, RFP Attachment 6.6, in its entirety and insert the following in its place (any sentence or paragraph containing revised or new text is highlighted):

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All **General Liability coverage and Automobile Liability** coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to **name include** the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement **or policy wording** for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be **disclosed to approved by** the State. The deductible or SIR and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall **advise the State and allow the State to view provide** a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition"

endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance (“COI”) evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer’s National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and shall endeavor to provide it again ~~thirty (30) calendar days on before the date of~~ **thirty (30) calendar days on before the date of** renewal or replacement of coverage, **but no later than seven (7) business days after the renewal or replacement of coverage.** Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor’s policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead, Contractor shall provide a certificate of self-insurance or a letter, on Contractor’s letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. **The State reserves the right to require. The Contractor shall permit the State to review** complete copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Professional Liability Insurance

- 1) Professional liability insurance shall be written on an occurrence basis or on a claims-made basis. If this coverage is written on a claims-made basis, then:
 - i. The retroactive date must be shown, and must be on or before the earlier of the Effective Date of this Contract or the beginning of Contract work or provision of goods and services;
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) full years from the date of the final Contract payment; and
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date on or prior to the Contract Effective Date, the Contractor must purchase "extended reporting" or "tail coverage" for a minimum of five (5) full years from the date of the final Contract payment.
- 2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. ; and

7. **RFP Amendment Effective Date.** The revisions set forth herein shall be effective upon release. All other terms and conditions of this RFP not expressly amended herein shall remain in full force and effect.