

# Texas Department of Insurance



## Request for Applications Three-Share Premium Assistance Program

**RFA No. 454-21-0123-26981-EM**

**Fiscal Year (FY) 2022 Rider 13 of Article VIII of Senate Bill  
No. 1 of General Appropriations Act  
July 2, 2021**

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### Anticipated Schedule of Events

<b>July 2, 2021</b>	Issuance of Solicitation
<b>July 12, 2021, 3:00 p.m., Central time</b>	Deadline for Submission of Questions
<b>July 16, 2021</b>	Release of Official Responses to Questions (or as soon thereafter as practical)
<b>August 2, 2021, 3:00 p.m., Central time</b>	Deadlines for Submission of Proposals <b>Late Proposals will not be considered</b>
<b>August 16, 2021</b>	Project proposal development and budgets complete
<b>August 23, 2021</b>	Anticipated Award Date (or as soon thereafter as practical)

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**NOTE: Any Addendum that adds new language or replaces any language within this solicitation controls over the original version. It is the responsibility of all prospective Respondents to routinely check the eGrants during the posting period for this solicitation for any Addenda that may be posted. TDI will not make any other announcements regarding Addenda after the publication of this RFA.**

## Table of Contents

I.	Summary.....	4
II.	Specifications and Grant Requirements.....	7
	A. Introduction.....	7
	B. Background.....	7
	C. Mandatory Qualifications.....	8
	D. Definitions and Acronyms.....	8
	E. Roles and Responsibilities.....	11
	F. Maximum Award.....	11
	G. Grant Period.....	12
	H. Eligible Costs.....	12
	I. Monthly Reports and Invoices.....	13
	J. Quarterly Reports and Board Minutes.....	13
	K. Contractor Performance Evaluation.....	14
	L. Other Contract Requirements.....	15
	M. Schedule of Deliverables and Milestones.....	17
III.	General Proposal Information.....	18
	A. Contract Resulting from this Solicitation.....	18
	B. Contract Term.....	18
	C. Copyrighted Proposals.....	18
	D. Unacceptable Terms in Respondent’s Proposal.....	18
	E. Authority to Bind.....	19
	F. Protest Procedures.....	19
	G. Texas Public Information Act and Exchange or Creation of Information.....	19
	H. Payment Procedures.....	20
IV.	Proposal Submission Requirements.....	21
	A. Time for Submission and TDI’s Email Address.....	21
	B. Respondent Identification.....	21
	C. No Alterations or Withdrawals of Proposal after Deadline.....	21
	D. Pre-contract Costs.....	21
	E. TDI’s Tax Exemption.....	21
	F. Attachments.....	21

G.	Evaluation Process .....	21
H.	Proposal Content and Format.....	22
V.	Terms and Conditions .....	34
A.	Clauses Required by the Texas Procurement and Contract Management Guide .....	34
B.	Additional Texas Procurement and Contract Management Guide Provisions .....	39
C.	Additional Provisions Required by TDI.....	46
D.	Clauses Required by the Texas Grant Management Standards Guide .....	49
VI.	Execution of Proposal.....	55
VII.	Conflict of Interest/Disclosure Statement .....	57
VIII.	Certification Regarding Public Nature of the Proposal.....	60
IX.	RFA Attachment A – Letter of Commitment Template .....	61
V.	Appendix A: Sample Contract .....	62

## I. Summary

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|---|---|
| <b>1. Type of Solicitation</b>                  | Request for Applications (RFA)  |
| <b>2. Issuing Office</b>                        | Texas Department of Insurance<br>Purchasing and Contract Administration<br>PO BOX 12030<br>Austin, TX 78711-2030  |
| <b>3. Mandatory Requirements/Qualifications</b> | Proposals that do not meet the following mandatory requirements will be rejected as non-responsive and disqualified:<br><ol style="list-style-type: none"><li>1) Respondent must not presently be debarred from participation in state contracts.</li><li>2) Respondent must provide current written documentation that they are directly affiliated with a local government entity and authorized to operate a Regional or Local Health Care Program under the definition of Chapter 75, Subchapter B, of the Texas Health and Safety Code.</li><li>3) Respondent must have available, immediately upon award, the required qualified personnel, skills, and organization to fulfill all the requirements under this RFA and the resulting contract.</li></ol> |
| <b>4. Responses to RFA</b>                      | Emailed Competitive Applications  |
| <b>5. HSP Courtesy Review</b>                   | Not Applicable  |
| <b>6. Deadline for Applications</b>             | Emailed to <a href="mailto:Contracts@tdi.texas.gov">Contracts@tdi.texas.gov</a> no later than:<br><b>August 2, 2021, 3:00 p.m., Central time</b>  |
| <b>7. Initial Contract Term</b>                 | 9/1/2021 – 8/31/2023  |
| <b>8. TDI Optional Terms</b>                    | Not Applicable  |
| <b>9. TDI Contact Person for this RFA</b>       | Elisabeth Monahan, CTCD, CTCM<br><a href="mailto:contracts@tdi.texas.gov">contracts@tdi.texas.gov</a>   |
| <b>10. Applications Submitted by Email</b>      | Submit to <a href="mailto:Contracts@tdi.texas.gov">Contracts@tdi.texas.gov</a><br>TDI will use the date and time stamp on TDI's Microsoft Outlook mailbox to confirm receipt by the deadline.   |
| <b>11. Applications Submitted by Mail</b>       | Not Accepted  |
| <b>12. Applications Submitted by Fax</b>        | Not Accepted  |

- 13. Pre-Proposal Conference** Not Applicable
- 14. Pre-Proposal Inspection** Not Applicable
- 15. Letters of Intent to Submit a Proposal** Not Applicable
- 16. Solicitation Addenda** Notices of changes to items directly impacting the original solicitation or Proposal process will be posted to eGrants located at <https://txapps.texas.gov/tolapp/egrants/search.htm>. TDI will post any amendment to this solicitation on eGrants as a solicitation Addendum. It is the responsibility of an interested party to periodically check eGrants for updates to the solicitation prior to submitting a Proposal. Each Respondent is solely responsible for verifying TDI's receipt of its questions, if applicable, and Proposal by the deadlines specified in this solicitation.
- 17. Questions and Answers** Questions regarding this solicitation must be in writing and must be submitted to the TDI Contact Person specified in item 9 no later than **July 12, 2021, 3:00 p.m., Central time**. Telephone inquiries will not be accepted. Questions must be submitted by email to the email address specified in Item 9. TDI intends to post on eGrants answers to those questions received by the deadline on **July 16, 2021, or as soon thereafter as practical**.
- 18. Respondent Presentations** Not Applicable
- 19. Contact with TDI Staff** Upon issuance of this solicitation, employees and representatives of TDI, other than the TDI Contact Person identified in Item 9, will not discuss the contents of this solicitation with any Respondent, Potential Respondent, or its representatives. **Failure of a Respondent or any of its representatives to observe this restriction may result in disqualification of any related Proposal.** This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

**20. Evaluation of Proposals**

<b><u>Criteria</u></b>	<b><u>Points</u></b>
Proposal is complete and meets the technical specifications described in this solicitation	10
Plans to match grant awards with local funds	10
Healthcare use and delivery of factors affecting the area's healthcare infrastructure and capacity	15
Percentage of uninsured in the applicable area	10
Strength and quality of the proposed work plan and program activities	15
Existing efforts in pursuing and/or continuing Three-Shares within the community	15
Application Budget	25
i.    The extent to which grant funds may be matched with local funds.	
ii.   Program Budget is reasonable for the program and adequately supports the program management plan and whether the accounting process is adequate to ensure appropriate fiscal management and oversight (fiscal management and internal controls).	
<b>Total</b>	<b>100</b>

## II. Specifications and Grant Requirements

### A. Introduction

The Texas Department of Insurance (TDI), an agency of the State of Texas, issues this Request for Applications (solicitation) in accordance with the Three-Share Premium Assistance Program. This document provides instructions and guidance for Respondents seeking funding from TDI under Rider 13 of Article VIII of Senate Bill No. 1 General Appropriations Act of the 87th Texas Legislature, Regular Session. Three-Share is administered through Contract agreements that spell out the program abstract, community impact, program description, schedule of deliverables, and budget for the assistance.

By submitting a Proposal in response to this solicitation, Respondents are bound to all requirements set forth in this solicitation. Failure to provide the required information with the solicitation will automatically disqualify the Proposal from consideration for award in connection with this solicitation.

### B. Background

#### 1. TDI Overview

TDI regulates the state's insurance industry, oversees the administration of the Texas workers' compensation system, performs the duties of the State Fire Marshal's Office, and provides administrative support to the Office of Injured Employee Counsel – a separate agency.

TDI's vision is to be a dynamic leader in responsible state, national, and global regulation; consumer protection; and market viability.

#### 2. Project Overview

Three-Share is an insurance or health care coverage funding program that requires coverage costs to be funded by three separate parties. Coverage costs are generally shared by an employer, an employee, and a third entity. The purpose of this funding structure is to reduce the enrollee's cost of insurance or healthcare coverage by distributing the cost among three parties rather than the employer and employee-based coverage. Chapter 75 of the Texas Health and Safety Code establishes regional and local health care programs to operate the Three-Shares.

These programs are designed to:

- improve the health of employees of small employers in Texas by improving access to health care and insurance;
- reduce reliance on state-funded programs like Medicaid;
- improve small employers' economic conditions by improving the health of employees and providing health care benefits to help attract employees; and
- encourage innovative funding and providing of health care services.

TDI is specifically seeking projects that are designed to fund projects by local government entities for research, planning, development, and continuation of "Three-Share" premium assistance programs to increase access to private healthcare coverage for uninsured and providing technical assistance to grant recipients. This Proposal must:

- Provide an overview of the uninsured population within each program's service area;

- Describe the impact its program has made or may make on local conditions with regard to the area's uninsured population;
- Describe the healthcare benefit plan and/or plans that are offered during the grant period, and provide details on covered benefits, plan limits, and any exclusions;
- Provide recent enrollment data from the two previous calendar years, and provide enrollment projections for the next five years;
- Provide program staffing and describe the management and governance structure of the proposed Three-Share; and
- Primarily be used for allowable costs directly related to providing premium assistance to low-wage workers of businesses enrolled in the Three-Share.

Respondents may submit a Proposal as a single applicant or may enter a Proposal with joint applicants (Shared Service Agreements) from multiple three-share programs and provide documentation for internal agreements for joint applicants.

### C. Mandatory Qualifications

Three-Share program grants are available to local government entities, including regional or local health care programs as defined by Chapter 75, Subchapter B, of the Texas Health and Safety Code. In addition, Chapter 75 of the Health and Safety Code provides that a Regional or Local Health Care Program may be operated by a joint council, tax-exempt nonprofit entity, or other entity under a contract with the commissioner's court(s), or an entity in which the county or counties participate(s) or that is established or designated by the commissioner's court to operate the program. Any entity not meeting the definitions of a Local Health Care Program or a Regional Health Care Program, as established under Chapter 75, Subchapter B, of the Texas Health and Safety Code is not eligible to receive Three-Share grant funds.

Respondents must have the knowledge and expertise to provide the services described in this RFA. Respondent must provide documentation in its **Executive Summary** that supports that Respondent meets the mandatory requirements. Proposals that do not meet the following mandatory requirements will be rejected as non-responsive and will be disqualified. A disqualified Proposal will receive no further consideration.

- 1) Respondent must not presently be debarred from participation in state contracts.
- 2) Respondent must provide current written documentation that they are directly affiliated with a local government entity and authorized to operate a Regional or Local Health Care Program under the definition of Chapter 75, Subchapter B, of the Texas Health and Safety Code.
- 3) Respondent must have available, immediately upon award, the required qualified personnel, skills, and organization to fulfill all of the requirements under this RFA and the resulting contract.

### D. Definitions and Acronyms

As used in this solicitation, the following capitalized terms will have the meaning specified below.

Term	Definition
Agency	The Texas Department of Insurance.



<b>Term</b>	<b>Definition</b>
Agency Primary Contact	The person designated by TDI to be the point of contact between TDI and Contractor for the purposes of monitoring Contractor performance and providing day-to-day interaction and instruction. Also referred to as "Contract Administrator."
Contract	The written agreement, if any, executed by the authorized representative of the parties and the Contractor that formalizes the terms, provisions, covenants, and obligations, including but not limited to those contained in this solicitation, of the respective parties to the arrangement for provision of Services.
Contractor, Grantee	The individual or entity qualified to provide the goods and/or services sought by TDI pursuant to this solicitation and who is ultimately selected to carry out the requirements stipulated in this solicitation and any resulting Contract. Has the same meaning as "Vendor," "Successful Respondent," and "Successful Applicant."
Contract Administrator	The person designated by TDI to be the point of contact between TDI and Contractor for the purposes of monitoring Contractor performance and providing day-to-day interaction and instruction. Also referred to "Agency Primary Contact."
Contract Award, Grant Award	TDI's notice of award to the Successful Respondent of TDI's intent to execute a contract.
Contract Execution	The date the Contract is fully executed by all Parties.
Contract Term	The complete period of service including any extensions and renewals that are executed by Contract Amendment.
Data Breach	A security incident in which sensitive, protected, or confidential data is copied, transmitted, viewed, stolen, or used by an individual or entity unauthorized to do so, whether or not the breach occurred in transit or at rest.
Days	Calendar days unless otherwise specified.
Deliverable	Unit or increment of work required by the Contract, including such items as goods, services, reports, or documents.
Egrants	The public-facing website in which applicable government entities post certain state and federal grant funding opportunities. <a href="https://txapps.texas.gov/tolapp/egrants/search.htm">https://txapps.texas.gov/tolapp/egrants/search.htm</a> .
Employee, Contractor Employee	Any individuals who, on behalf of the Contractor, will or may participate in any Contract resulting from this solicitation. The term includes all officers, personnel, replacement personnel, agents, contractors, subcontractors, subcontractor employees, and other representatives of the Contractor, regardless of how employed or contracted by Contractor.
Financial Interest	Receiving, or the right to receive, money or other valuable property or benefits under the actual or proposed Contract; holding a position in a business such as a principal, officer, director, trustee, partner, employee, or the like, or holding a position of management; holding any of the outstanding debt of a person directly involved in the proposed or resulting Contract; or owning stock or other interest in the business.
Fiscal Year (FY)	The State of Texas and TDI's fiscal year that begins September 1 and ends August 31.

Term	Definition
Governing Body	(a) The Commissioners' Courts of the counties participating in a regional health care program; (b) the Commissioners' Court of a county participating in a local health care program; or (c) the governing body of the joint council, nonprofit entity exempt from federal taxation, or other entity that operates a regional or local health care program.
Local Health Care Program	A local health care program operating in one county and established for the benefit of the employees of small employers under Subchapter B of Chapter 75 of the Texas Health and Safety Code.
Regional Health Care Program	A regional health care program operating in two or more counties and has been established for the benefit of the employees of small employers." In addition, Chapter 75 of the Health and Safety Code provides that a Regional or Local Health Care Program may be operated by a joint council, tax-exempt nonprofit entity, or other entity under a contract with the commissioner's court(s), or an entity in which the county or counties participate(s) or that is established or designated by the commissioner's court to operate the program.
Key Deliverable	A key deliverable may have a payment associated with it and will likely have an associated liquidated damage.
Mandatory	Required, compulsory, or obligatory.
Offer, Proposal, Response, or Application	The documents, including any exhibits or attachments, submitted by a prospective vendor in response to a solicitation. "Offer" has the same meaning as "Proposal," "Response," or "Application," when such terms are applicable in the solicitation document so titled as Request for Proposal (RFP), Request for Offers (RFO), an Invitation for Bid (IFB), or a Request for Application (RFA) respectively.
Party	Entity who enters into a binding agreement with one or more other contracting parties and thus accepts the benefits and obligations specified therein.
Relative	When referring to an individual, the term includes a current or former TDI employee's spouse, father, mother, brother, sister, son or stepson, daughter or stepdaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.
Respondent, Applicant	An individual or business entity submitting a Proposal in response to a solicitation, with an intent to contract with TDI.
Services	All of the requirements, duties, schedules, locations, and other items listed in the solicitation. The term includes any other services associated with Contractor's performance under any Contract resulting from this solicitation.
State Holidays	The State Agency Holiday schedule is defined on the Texas State Auditor's website at <a href="http://www.hr.sao.texas.gov/Holidays/">www.hr.sao.texas.gov/Holidays/</a> .
Successful Respondent, Successful Applicant	The individual or entity qualified to provide the goods and/or services sought by TDI pursuant to this solicitation and who is ultimately selected to carry out the requirements stipulated in this solicitation and any resulting Contract. Has the same meaning as "Vendor" and "Contractor."
TDI	The Texas Department of Insurance, the state agency responsible for the issuance of this solicitation.

Term	Definition
Vendor	The individual or entity qualified to provide the goods and/or services sought by TDI pursuant to this solicitation and who is ultimately selected to carry out the requirements stipulated in this solicitation and any resulting Contract. Has the same meaning as "Successful Respondent," "Contractor," or "Grantee."
Vendor Primary Contact	The person designated by the Contractor to be the point of contact between Contractor and Agency for purposes of scheduling, billing, contract management, and day-to-day management of Services under this solicitation.

## E. Roles and Responsibilities

### 1. Agency Responsibilities

Agency agrees to meet the following requirements during the Contract Term:

- a) Designate an Agency representative to be the Agency Primary Contact for the purposes of monitoring Contractor performance and providing day-to-day interaction and instruction. The Agency Primary Contact will also be the designated Contract Administrator.
- b) Provide subject matter experts as needed.
- c) Collaborate with Contractor to ensure success of the project.
- d) Work with Contractor on all product and performance related issues.

### 2. Contractor Responsibilities

Contractor must meet all the following requirements during the Contract Term:

- a) Designate a representative to be the Vendor Primary Contact for the purposes scheduling, billing, contract management, and day-to-day management of Services under this solicitation.
- b) Provide the necessary staff to fulfill deliverables and requirements in accordance with the agreed upon schedule or services.
- c) Collaborate with TDI to ensure successful implementation and completion of the Services.
- d) Be honest, open, courteous, respectful, and fair in all contact with TDI.
- e) Identify and communicate any risks to the Service to the Agency Primary Contact.

## F. Maximum Award

TDI anticipates funding more than one project proposal per year. The amount of the award will depend on the number of Respondents, the content and merit of the applications, and the amount of funds collected from regulated entities except for workers' compensation for fines, penalties, and sanctions and deposited to the General Revenue Fund.

The maximum amount TDI may award is \$4.5 million per biennium, to be shared among all successful Respondents. However, TDI can only award funds that have been collected by TDI at the time of Grant Award. Upon Award, TDI will notify each successful Respondent of its award amount and request a revised budget.

TDI reserves the right to implement enrollment limits for each three-share program if requests exceed the amount of available Three-Share grant funds. Budget amounts published here should not be construed as

final or guaranteed. TDI makes no guarantee as to funding under this solicitation. As a state agency, TDI is subject to actions by the Legislature and the availability of state funds; therefore, Respondents should not assume any maximum or minimum guarantee of funds at the time of publication of this solicitation, time of award, or that funds will be continued throughout the life of the resulting Contract.

TDI has the right to reject Proposals, cancel, or modify the solicitation at any point before a grant award is signed. The award of any grant is subject to the availability of funds. Final approval of a grant award is solely at the determination of TDI.

## G. Grant Period

The Grant Period will be from September 1, 2021, through August 31, 2023, for a period of two years with no renewal options.

## H. Eligible Costs

TDI will reimburse reasonable and allowable costs under state guidelines using the Texas Grant Management Standards (TGMS). TDI particularly encourages Respondents to review Appendix 7, Chapter 783 Supplement for State Grant Programs in TGMS when developing application budgets.

Contractor will request reimbursement from TDI for allowable costs for performing the Scope of Work. Requests for reimbursement may not be submitted to TDI on less than a monthly basis.

Costs incurred prior to Grant Award will be at the Contractor's own risk and may not be considered for reimbursement, including the cost of preparation of the project application. TDI provides no assurances that a project will be awarded a grant, and TDI has no liability for expenses incurred by a Respondent prior to the execution of a Contract.

Project Funding may not be moved from one budget category to another without written approval from TDI.

### 1. Budget Considerations

- a) **Indirect Costs.** Costs that include overhead, utilities, general and administrative expenses, general office supplies, and other costs not directly attributable to the grant funded work.
  - Only public entities are eligible to receive reimbursement for indirect costs.
  - Contractor must comply with all applicable cost principles from TGMS. Indirect cost requirements may be obtained by contacting the TDI Contract Administrator for the Three-Share Grant Program.
  - Respondents seeking to include indirect costs must provide appropriate documentation establishing its current Indirect Cost Rate in accordance with TGMS.
- b) **Contract Services.** For this budget category, Respondent must only include funds for work that will be paid to commercial vendors or that needs to be bid on by subcontractors.
- c) **Other.** Include any subawards under the Other budget category.

## I. Monthly Reports and Invoices

Contractor must submit to TDI a fully completed and legible Monthly Budget Report with each monthly invoice for payment. The award may be reduced or terminated at such time the Contractor fails to comply with the program objectives, grant award condition, or state reporting requirements.

### 1. Monthly Budget Report

The Monthly Budget Report will contain sufficient information concerning the budgeted expenses to allow TDI to validate the eligibility of a particular expenditure and to enable an audit or examination by TDI. The expenses will be identified with respect to the major cost categories, tasks, or objectives required by the awarded grant agreement that such expenditures support or satisfy.

Contractor will submit the Monthly Budget Report using a monthly invoice template provided by TDI. The Monthly Budget Report must be submitted each month, even if no expenses were incurred during the reporting period or month for which the report relates.

The Monthly Budget Report must be:

- in Excel format and contain an invoice of expenses for that month;
- submitted by the 15th day of the following month, or the next business day, if the 15th falls on a weekend or holiday;
- Include supporting documentation (i.e. receipts, financial ledgers, training certificates, invoices, etc.); and
- indicate for each budget category the program expenditures for the period, the cumulative expenditures (with respect to each budget category), and the balance remaining in each budget category.
- include the projected revenues year-to-date and actual revenues year-to-date and show the difference between the two. Revenues should be divided into:
  - a) TDI Grants;
  - b) other grants;
  - c) local contributions; and
  - d) other revenues.

### 2. Invoices

Invoices must include the following information:

- the original budget for TDI grant funds;
- expenses from TDI grant funds for current month;
- a total of TDI grant funds expended in previous months; and
- the amount remaining in the budget after expenses.

## J. Quarterly Reports and Board Minutes

Each three-share program must submit a Quarterly Report on Current Enrollment and a Quarterly Report on Premiums and Claims. In the case of a joint application (Shared Service Arrangement), the lead organization shall compile this information from each program that is part of the joint application. TDI will provide Contractor with a "Quarterly Report" template, upon Contract Award.

### **1. Quarterly Report on Current Enrollment**

Current enrollment numbers must include:

- the number of covered businesses enrolled;
- the number of covered employees; and
- the number of individuals receiving premium subsidies.

Contractor must ensure stable or improving enrollment numbers among all participating three-share programs. With each Quarterly Status Report on Current Enrollment, Contractor must provide TDI with a written explanation for any significant decline of total individual enrollees and must also include a detailed description of all outreach and marketing efforts in the quarter in which the decline occurred. The explanation must include information on any outside factors such as economic circumstances or major disasters that might influence enrollment.

### **2. Quarterly Report on Premiums or Premiums and Claims**

The Premiums and Claims report must include:

- average monthly premium;
- average claims per enrollee;
- total claims paid if applicable;
- premiums received; and
- administrative expenses

This report must also indicate the employer contribution, employee contribution, and subsidy contribution to the average monthly premium.

### **3. Quarterly Board-approved Minutes**

Each program must provide Board-approved Minutes for all Board meetings that occurred during the quarter along with a schedule of meetings for the next quarter. The minutes must clearly state the details of any major decisions that occurred within the meeting.

## **K. Contractor Performance Evaluation**

TDI may prepare performance evaluations of the Contractors upon completion of all reimbursements or more frequently, as deemed necessary by TDI. A copy of the performance evaluation, if applicable, will be provided to the Contractor and a copy retained in TDI's contract files.

The content of the evaluation is within the discretion of TDI. The Contractor may provide a written response to the performance evaluation, which will be incorporated into the performance evaluation. The Contractor waives any claim for damages against TDI for the evaluation. A rating of marginal or unsatisfactory performance may be used as a basis to lower or otherwise change the priority and ranking of a future application.

Specific items that may be used in a performance evaluation include:

- cost effectiveness;
- budget requirements;
- compliance with grant award terms;
- completion of project milestones; and
- final production of deliverables associated with grant activities as defined in the grant award.

## L. Other Contract Requirements

### 1. General Security Requirements

Personally Identifiable Information (PII) refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Contractor is responsible for protecting PII to the extent required by law. Examples of PII include but are not limited to:

- name, such as full name, maiden name, mother's maiden name, or alias;
- date of birth;
- personal identification numbers, such as a driver's license number;
- address information, such as a street address or email address; and
- all future additions to PII as stipulated by the laws, statutes, rules, and rulings that govern Texas data.

#### a) Security Incidents

TDI defines a "Security Incident" as the discovery or reasonable belief that there has been unauthorized use, exposure, access, disclosure, compromise, modification, or loss of PII. A Security Incident may or may not turn into a Data Breach. Contractor and any subcontractors who have a reasonable belief that a Security Incident has occurred must notify TDI immediately (within one hour) upon discovery or detection. Within 24 hours of a Security Incident, Contractor will provide a Security Incident report that includes, at a minimum:

- a detailed description of the nature of the Security Incident;
- the type of information involved;
- who may have obtained the information;
- a timeline of the exact time the Security Incident was discovered, the time of notification, and the time Contractor took measures to mitigate the negative effects of the Security Incident;
- all security, intrusion, and monitoring logs on the date of the Security Incident and the three months prior to the incident;
- what steps, protocols, or actions Contractor has taken or will take to lessen any negative effect of the Security Incident; and
- Contractor's point of contact assigned to investigate or correct the Security Incident.

### 2. Records Retention

Contractor must adhere to the records retention requirements described in the Terms and Conditions, Section V Part B Item 29 (Records Retention).

### 3. Contractor Conduct on TDI Premises

Contractor must ensure that Contractor's employees conduct themselves in a professional manner and are in appropriate business attire when on TDI's premises. In addition, Contractor must ensure that its employees comply with all guidelines established by TDI for independent contractors required to provide services on TDI's premises. These guidelines may address issues that include, but are not limited to, the following: building security, IT security, preservation of records, safety,

professional conduct, use of State property, non-disclosure of confidential information, drug-free and alcohol-free workplace rules, and other requirements for on-site independent contractors.

#### **4. Contractor Staffing**

TDI reserves the right to request Contractor to replace Contractor Employees whom TDI judges to be incompetent, careless, unsuitable, or otherwise objectionable, or whose continued use is deemed contrary to the best interests of the State and TDI. Upon receipt of a formal written request from the Agency Primary Contact, Contractor must immediately proceed with the replacement.

#### **5. Change Control**

Throughout the Contract Term, changes may become necessary. Generally, contract changes will be administrative or substantive.

- a) Administrative Changes – changes that are within the scope of the Contract and do not affect or alter the rights of the parties. Administrative changes will be communicated to the Vendor Primary Contact in writing from the Agency Primary Contact. Examples of administrative changes include:
  - changes in billing instructions or address;
  - corrections of typographical errors not affecting the substance of the contract;
  - changes as permitted by the specific contract language; and
  - changes in agency personnel assigned to the contract.
- b) Substantive Changes – contractual changes that affect the rights of both parties. Substantive changes will typically be executed via a Contract Amendment executed by both Contractor and TDI. Examples of substantive changes include a:
  - change in the grant award amount;
  - change of any terms and conditions.

TDI and Contractor will mutually evaluate the impact of each change to the Services, schedule, and costs. The Agency Primary Contact will document whether the change is approved or disapproved and initiate the process to enact the change. **All changes must be formally approved by the Agency Primary Contact in writing or by an executed Contract Amendment before the change occurs.**

#### **6. Legislative Changes**

TDI is subject to rules and regulations established by the Texas Legislature. During the Contract Term, if the legislature enacts new or changes existing statutes that impact the Services provided under the Contract, TDI will work with the Contractor and use the Change Control process (Section II Part L Item 5) to incorporate new or changed requirements.

#### **7. Confidential Information; Non-Disclosure Agreements**

Contractor and Contractor's employees must not disclose to anyone, directly or indirectly, any information designated by TDI as confidential or to information accessed as a result of the Contract resulting from this solicitation without the prior written consent of TDI. In addition, upon Contract Execution, Contractor must sign the Non-Disclosure Agreement incorporated with the Contract and



must adhere to the requirements outlined in the Non-Disclosure Agreement during the term of the Contract.

Within three (3) days of receipt, Contractor must refer to TDI any third-party requests, received directly by Contractor, for information to which Contractor has access as a result of or in the course of performance under a Contract resulting from this solicitation. The provisions of this Section survive the termination or expiration of any Contract resulting from this solicitation.

### M. Schedule of Deliverables and Milestones

The Schedule of Deliverables and Milestones will be finalized after Contract Award and included as an attachment to the Contract. Key deliverables are noted with a checkmark ("✓").

The estimated project start date is the first quarter of the state FY 2022, which begins September 1, 2021. These dates are subject to change.

Key	Deliverable Item	Solicitation Section	Due Date	Due To
	<b>Monthly Budget Reports and Invoices</b>	Section II, Part I	Monthly, 15th day of the following month	Agency Primary Contact
	<b>Quarterly Status Report</b>	Section II, Part J	Quarterly, 15th day following the quarter	Agency Primary Contact
	<b>Quarterly Board-approve minutes</b>	Section II, Part J	Quarterly, 15th day following the quarter	Agency Primary Contact

### **III. General Proposal Information**

#### **A. Contract Resulting from this Solicitation**

A response (Proposal) to this solicitation is an offer to contract based upon the terms, conditions, and specifications set forth in this solicitation. A Proposal does not become a contract with TDI unless, until, and to the extent a formal agreement is executed by authorized representatives of TDI and Contractor.

TDI reserves the right, in its sole discretion, to reject all or any part of any Proposals; waive minor technicalities; and award a contract in the best interests of TDI and the State of Texas. TDI reserves the right, in its sole discretion, to award the contract without discussion of response(s) with Respondent(s). TDI's waiver of any deviations in any Proposals will not constitute a modification of this solicitation and will not preclude TDI from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this solicitation. TDI reserves the right to make any corrections or include additional requirements in the Contract prior to issuance that are necessary for TDI's compliance, as an agency of the State of Texas, with all state and federal requirements.

Any contract resulting from this solicitation will be between TDI and Contractor who will be responsible and accountable for providing the Services. The term "Contractor" includes employees, representatives, agents, subcontractors, suppliers, and third-party service providers of Contractor regardless how employed or contracted by Contractor. Contractor will be solely responsible to TDI for all performances by Contractor's employees, representatives, agents, subcontractors, suppliers, third-party service providers, and similar entities.

TDI is not required to award any contract as a result of this solicitation. TDI may reissue or issue another solicitation for the requested items described in this solicitation or similar items at any time.

By submitting a response to this solicitation, Respondent agrees that any contract resulting from this solicitation may be executed by electronically submitted signatures or by wet signatures, and/or may be executed in multiples.

#### **B. Contract Term**

The term of any Contract resulting from this solicitation will be from September 1, 2021, to August 31, 2023.

#### **C. Copyrighted Proposals**

Copyrighted Proposals are unacceptable and are subject to disqualification as non-responsive. TDI reserves the right to disqualify any Proposal which asserts any copyright on any TDI-created form which is specifically designated by this solicitation as a form that must be completed and included in a Proposal submitted in response to this solicitation.

#### **D. Unacceptable Terms in Respondent's Proposal**

No TDI action, including, but not limited to, issuance of a Contract, will constitute an acceptance of conflicting terms, conditions, or attachments in Respondent's Proposal; however, this lack of acceptance by TDI will not apply to the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed agreement or Purchase Order resulting from this solicitation. Such negotiated terms and

conditions will take precedence over the other documents that collectively constitute the Contract as specifically provided in the formal signed agreement or Purchase Order resulting from this solicitation.

Proposed terms and conditions that may violate Texas law applicable to the specific procurement or may be unacceptable to TDI for inclusion in any formal signed agreement or Purchase Order resulting from the solicitation include the following:

- proposals that incorporate the laws of a state other than Texas;
- requirements for prepayment;
- limitations on TDI's remedies;
- requirements that TDI indemnify the Respondent;
- requirements that Respondent's documents control in case of conflicts;
- requirements that Respondent's documents control even if Respondent accepts or acknowledges the Contract or Purchase Order; and
- disclaimer of warranties.

#### **E. Authority to Bind**

Only the Commissioner of Insurance, Chief of Staff, and the Commissioner of Workers' Compensation or designee have the authority to execute a document or grant a permission on behalf of TDI with respect to this solicitation or any resulting Contract. TDI's Purchasing and Contract Administration Program has the authority to issue Purchase Orders and Purchase Order Change Notices.

#### **F. Protest Procedures**

Any actual or prospective Respondent who is aggrieved in connection with the solicitation, evaluation, or award of any Contract resulting from this solicitation may formally protest as provided in TDI's rules at [28 Texas Administrative Code Sections 1.1101 – 1.1107](#).

#### **G. Texas Public Information Act and Exchange or Creation of Information**

Notwithstanding any provisions of this solicitation to the contrary, Respondent understands that TDI will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. Information, documentation, and other material in connection with this solicitation and any resulting Contract will be subject to public disclosure pursuant to the Texas Public Information Act. All Proposals become the property of TDI and may be subject to release to any requester under the provisions of the Texas Public Information Act. After the award and execution of a Contract for a particular procurement, Proposals submitted will be presumed to be public information and subject to disclosure unless a specific exception to disclosure under the Texas Public Information Act applies. TDI advises each Respondent to consult with its legal counsel regarding disclosure issues and take the appropriate precautions to safeguard trade secrets or other proprietary information. TDI assumes no obligation or responsibility relating to the disclosure or non-disclosure of information submitted by Respondent.

If a Respondent asserts that any portion of its Proposal is confidential, then Respondent must specify the confidential portions in its Proposal. Respondent must stamp in bold red letters the term "**CONFIDENTIAL**" on that specific part or page of the Proposal which Respondent asserts to be confidential. Respondent must submit in writing specific detailed reasons, including any relevant legal authority, stating why Respondent asserts the material is confidential. TDI will consider all Proposals and

parts of Proposals that are not marked as confidential as public information after the Contract is awarded. The successful Proposal may be considered public information even though parts are marked confidential.

In the event TDI receives a request for portions of a Proposal marked as "**CONFIDENTIAL**," TDI will forward the request to the Texas Attorney General's Office for an opinion on whether TDI may withhold such information from disclosure under the Texas Public Information Act. TDI will notify the Respondent whose Proposal is the subject of the request when the information is forwarded to the Texas Attorney General's Office. TDI assumes no obligation for asserting legal arguments on behalf of a Respondent. See Section III Part C (Copyrighted Proposals) regarding possible disqualification of a Proposal due to certain copyrighted portions.

In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State of Texas pursuant to a Contract resulting from this solicitation, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Specific formats acceptable to TDI include Word, Excel, and pdf.

## **H. Payment Procedures**

TDI will reimburse for allowable costs that are restricted to costs that comply with TGMS and applicable state rules and law. Please see Section II, Part H (Eligible Costs) for information regarding eligible costs. Reimbursements will be scheduled on a monthly basis, according to the state FY of the Contract.

Contractor will be required to provide documentation in accordance with Section II Part J (Quarterly Reports and Board Minutes) to show that services have been received and the expenses incurred before each monthly reimbursement is provided by TDI. Administrative expenses may not exceed 17 percent of allowable TDI grant funds expended in each month. Along within the invoice, the Three-Share Premium Subsidy cost will be reimbursed a maximum of 100 percent. This will show up as the project's total costs as shown on each invoice.

TDI will reimburse an indirect rate up to Contractor's approved audited rate. Contractor must provide documentation of its current indirect cost rate from a cognizant agency or a state single audit coordinating agency. For entities who have never had an approved rate, they may elect to use an indirect rate of 10 percent of modified total direct costs. TDI will not reimburse for any costs incurred in preparation, submission, or clarification of the Proposal, nor for any project-related costs incurred outside of the Contract period.

Contractor must submit the invoice for payment and any required budget reports no later than the 15th day of the following month in which the invoice relates. If the 15th falls on a weekend or holiday, the Monthly invoice and Budget Report will be due on the next business day. Expenses must be reflected in the month in which they were incurred, not the month invoiced or paid.

## **IV. Proposal Submission Requirements**

### **A. Time for Submission and TDI's Email Address**

Respondents must email their Proposal to [contracts@tdi.texas.gov](mailto:contracts@tdi.texas.gov) on or before the deadline listed in Section I (Summary). The subject line of the email must include Solicitation No. 454-21-0123-26981-EM. TDI will not consider Proposals sent after the solicitation deadline or sent to the wrong email address. As a courtesy, TDI will acknowledge the receipt for Proposals sent before the submission deadline. TDI will not provide acknowledgment of receipt for Proposals sent after the submission deadline.

### **B. Respondent Identification**

Proposals must include Respondent's Texas Identification Number, which is the taxpayer number assigned and used by TDI. If this number is not known, provide the Respondent's Federal Employer's Identification Number.

### **C. No Alterations or Withdrawals of Proposal after Deadline**

Proposals cannot be altered or amended after the deadline specified in Section I (Summary) of this solicitation. Any alterations made before this deadline must be initialed by the Respondent or its authorized agent. No Proposals can be withdrawn after the specified deadline without approval by TDI's Purchasing and Contract Administration Program and based on a written, acceptable reason.

### **D. Pre-contract Costs**

Respondent is responsible for all expenses related to the preparation and submission of a Proposal. TDI will pay no costs or other amounts incurred by any entity in responding to this solicitation or incurred prior to the effective date of the Contract resulting from this solicitation.

### **E. TDI's Tax Exemption**

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. Respondents must not include taxes in Proposals.

### **F. Attachments**

TDI will not consider any terms and conditions or other documents attached to a Proposal as part of the Proposal unless the Respondent specifically and prominently refers to each of them in its Proposal. 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 Proposal.

### **G. Evaluation Process**

TDI will determine whether Proposals are compliant with the grant application conditions. TDI will not consider Proposals unless they comply with the conditions. Respondents will be notified if the application submitted is non-compliant.

TDI will review and evaluate Proposals based on the criteria listed in Section I Item 20 (Evaluation of Proposals). During the review period, TDI may ask Respondents to clarify information or respond to questions regarding their application. Information from these responses may be considered and evaluated as part of the evaluation criteria.

Additionally, TDI will consider how well the project integrates with other potential grant activities to form a dynamic group of projects that will best address the Three-Share Program. TDI is not obligated to fund a proposal from a Respondent that has demonstrated marginal or unsatisfactory performance on previous grants and contracts with TDI.

TDI will review all proposals and may approve, reject, or negotiate proposals prior to awarding grant funds.

Notification for selection of a project proposal is anticipated to be made by August 16, 2021. Any selection by TDI beyond the initial application does not guarantee full or partial funding through this solicitation.

## H. Proposal Content and Format

The Proposal must contain the information listed in this Part H. Failure to do so may result in the Proposal being excluded from consideration. Proposals will be evaluated by TDI staff to identify those projects that best address the Local and Regional Healthcare Program objectives using the criteria and the points set forth in Section I Item 20(Evaluation of Proposals).

**The Proposal must be submitted electronically via email to [Contracts@tdi.texas.gov](mailto:Contracts@tdi.texas.gov) with the Proposal content provided in Portable Document Format (PDF) file format.** If the file is encrypted, Respondent must provide the encryption key with the Proposal.

The Proposal must contain a **Title Page** and an organized, paginated **Table of Contents** corresponding to the sections and pages of the Proposal. The Title Page must contain the following:

- 1) solicitation number;
- 2) Respondent's name and address;
- 3) Respondent's State of Texas Taxpayer Identification Number or Federal Employer's Identification Number (see Section IV Part B, Respondent Identification); and
- 4) Respondent's contact name, title, signature, and date.

The Proposal must be organized using numbered Section Headings as follows.

### 1. Section 1 – Executive Summary

On company letterhead, Respondent's Proposal must include a summary of the Services proposed in response to this solicitation. The Executive Summary must be limited to no more than five (5) pages and should represent a full and concise summary of the contents of the Proposal. The Executive Summary must include, but is not limited to, the following:

1. A brief statement (1-3 paragraphs) of the Three-Share to be addressed by the project;
2. whether the program currently has enrolled members and a brief description of the members currently enrolled;
3. the amount of grant funds that are being requested for administration;
4. the per member premium subsidy amount for eligible members;
5. the number of subsidy-eligible members enrolled at the time of application; and
6. the estimated total project cost, including the subsidy costs and all costs requested for administration;
7. the projected monthly enrollment of eligible employers and subsidy-eligible members during the 2-year grant term (09/01/2021 through 08/31/2023); and
8. the counties where the project will be located.

## **2. Section 2 – Execution of Proposal**

Document required by Section VI (Execution of Proposal) must be completed, signed, and included in the Proposal. **Proposals that do not contain a completed and signed Execution of Proposal will be rejected as non-responsive and disqualified and will receive no further consideration.**

## **3. Section 3 – Respondent’s Contact Person and Identifying Information**

Respondent must submit the following in its Proposal:

- a) Respondent’s identifying information:
  - 1) Lead Organization - Provide the name of the single Respondent organization which will manage the project under the Contract with TDI, if selected. Other organizations involved should be listed in the Project Partners and Roles section.
  - 2) list of all principals;
  - 3) type of business entity (e.g., corporation, partnership);
  - 4) state of incorporation or organization; and
  - 5) principal place of business.
- b) Respondent’s contact information (i.e., name, title, email address, and phone number) for the individuals who will be TDI’s point of contact for questions regarding the Proposal and the Contract, if any, resulting from this solicitation.
- c) Name, title, and email address of Respondent’s representative(s) with authority to execute a contract on behalf of Respondent.

## **4. Section 4 - Statement of Eligibility**

Respondent must provide a brief (3-7 paragraphs) narrative description of how and why the Respondent is eligible to apply for the Three-Share funds. Respondent, including existing Three-Share grant recipients, must:

- a) Describe how its structure and governance comply with Chapter 75, Subchapter B, Texas Health and Safety Code.
- b) Clearly specify under which sections of Chapter 75 (75.102; 75.103 and/or 75.104) it has structured the health benefit plan coverage or health care services provided.
- c) Provide written documentation that shows how the program is directly affiliated with a local government entity, as defined by the Health and Safety Code Chapter 75.002.
- d) Describe its authorization to operate a Regional or Local Health Care Program, as defined in Chapter 75, in each county of the program’s service area.

Respondent must also include recently issued or renewed (within the past five (5) years) Commissioner’s Court orders and/or agreements providing approval for Respondent to operate a Three-Share in the counties within the program’s service area.

## **5. Section 5 - Applicant Qualifications**

Please use numbered sections for each of the following items. To be highly competitive, Respondents should have a positive documented history with TDI of meeting grant requirements and successfully fulfilling Contract agreements, including fiscal accountability, timeliness, and achieving project milestones.

- a) Provide a brief description of Respondent’s organization and previous experience related to the activities in the proposed project, including other state- or federally-funded projects. Cite reports and other work products produced by the Applicant/Team and attach professional references or letters of support as necessary.
- b) Identify key project staff and describe their qualifications and expertise in specific activities (technical, outreach, budgetary, and other), including work on related or similar projects.
- c) Describe Respondent’s technical and financial management capabilities and resources. Describe how Respondent ensures successful management of projects and meets performance measurements. Describe how grant funds are managed and accounted for to ensure compliance with appropriate state requirements. Also, describe how financial management is audited.

**6. Section 6 - Program Abstract**

Respondent must provide a description for joint applicants (Shared Service Agreements) from multiple three-share programs and provide documentation for internal agreements for joint applicants.

Respondents must briefly describe each of the following:

- a) An overview of the uninsured population within each program’s service area including.
  - Current number or percentage of the population without insurance.
  - Current trends and/or changes in the uninsured population in two (2) to four (4) years.
- b) Any proposed grant activities, how Respondent anticipates those activities will impact the target population, and any partners participating in the program.
- c) Respondent must describe any of the significant changes in operational structure and/or operations, including any termination or suspension of coverage since program began, and the reason(s) these changes occurred.

**7. Section 7 – Project Partners and Required Letters of Commitment**

Respondent must complete the following table, listing any project partners and describing their roles and responsibilities. Project partners must provide a letter of commitment from each Shared Service Arrangement clearly stating their roles, contributions, and responsibilities. If a participating organization plans to provide matching funds, either as cash or in-kind services, these letters must also describe the dollar amount (cash) or dollar value (in kind) of the match to be supplied. RFA Attachment A contains an example template for letters of commitment. Additionally, letters of support should be provided from entities whose approval is needed to execute the project, excluding subcontractors.

<b>Project Partners (Shared Service Arrangements)</b>	<b>Roles and Responsibilities</b>
TDI – Life and Health Division	Provide state oversight and management of all project activities and ensure coordination of activities with related projects.



<b>Project Partners (Shared Service Arrangements)</b>	<b>Roles and Responsibilities</b>
<i>In this column, list organizations other than the lead organization that will actively participate in the project. If certain project activities will be subcontracted through a competitive process, please enter "subcontractor".</i>	<i>In this column, describe the nature of the Project Partner's participation, including roles and responsibilities related to the project.</i>
<i>Repeat this row for each partner organization participating in this project.</i>	<i>In this column, describe the nature of the Project Partner's participation, including roles and responsibilities related to the project.</i>

**8. Section 8 - Community Impact**

Respondent must describe the impact its program has made or may make on local conditions with regard to the area's uninsured population. The focus must be on the targeted Three-Share population. This section must include the following:

- a) Changes in uninsured statistical data from before program began, information on the small business community, the prevalence of health insurance, and any changes in the prevalence of health insurance since the three-share program began.
- b) Availability of preventative health services for uninsured residents, and the impact of the uninsured on the local healthcare delivery system prior to and after the program began.
- c) A description of health outcomes, such as the impact on uncompensated care in the community, and impact on chronic health conditions through management of these conditions.

If any of the information above is not available, Respondents must state that the information is not available and provide an explanation as to why the information is not available.

**9. Section 9 - Program Description**

**a) Health Care Benefit Plan**

Respondent must describe the health care benefit plan and/or plans that are offered during the grant period, and must provide details on covered benefits, plan limits, and any exclusions. The description must include:

- 1) Eligibility criteria for groups and members to qualify for coverage and to qualify for the Three-Share premium subsidy.
- 2) Describe how the benefit plan fits into the health insurance market and whether the benefit plan fits into the health insurance market and whether benefits are sufficient as "minimum essential coverage" as defined under 26 CFR 1.5000A-2.
- 3) Describe examples of verbal and written communications for members that the program has provided or plans to provide information about its role in the health insurance market and the minimum essential coverage requirement.

If the health benefit plan is not “minimum essential coverage” as defined under 26 CFR 1.5000A-2, Respondent must agree to disclose to the enrolled and potential members that the coverage is not minimum essential coverage. Respondent must supply this disclosure, in writing, to all existing members and to potential members prior to enrollment in the plan no later than October 31, 2021, or upon receipt from TDI, if Contract is executed after that date.

**b) Business Plan**

Respondent must submit their most current comprehensive Business Plan that has been approved, have an executed signature, and dated by its governing board or body that outlines the approach for achieving program goals. All Business Plans must be the final versions. Draft versions of Business plans will not be accepted.

Respondent must provide TDI with any updates or changes to the approved Business Plan within 30 calendar days of finalization by its governing board or body. The approved Business Plan must include, but is not limited to, all of the following components:

- 1) A list of Respondent’s programs stated goals, objectives, and anticipated outcomes.
- 2) Provide plans or strategies with detailed steps and timelines for achieving stated goals, including, but not limited to:
  - Marketing and Outreach,
  - Financial management, and
  - Provision of health care services;
- 3) Any performance metrics to measure progress in achieving goals and outcomes.
- 4) The most recent scores for the performance metrics.

Respondent’s plan for ongoing evaluations in reaching its stated goals. Respondent must also describe the program’s:

- 1) quality of care standards,
- 2) process to assure continuity of care,
- 3) methods for evaluating health care outcomes;
- 4) methods for the ongoing monitoring of quality, and
- 5) procedures for handling customer and provider complaints.

**c) Enrollment Data**

Respondent must submit recent enrollment data from the two previous calendar years prior to the date of application, which must include the number of groups enrolled, the number of covered lives, and the number of Three-Share eligible subsidy lives.

For new Three-Share Respondents, Respondent must first outline when the program plans to begin enrollment.

For existing Three-Share Grantees, if the existing program has experienced any gaps in enrollment, such as a temporary suspension of coverage for enrolled members please describe the following:

- 1) Circumstances surrounding the gap in enrollment,
- 2) Actions taken to assist members during the gap,
- 3) Solutions to prevent future gaps in coverage, and
- 4) Corrective action taken in detailed steps to begin enrollment after a gap.

**d) Enrollment Projections**

Respondent must include enrollment projections for the next five years, beginning with the month of this Proposal. The projections must include the number of groups, covered lives, and eligible subsidy lives.

For new Three-Share Respondents, Respondent must describe its strategy for meeting its enrollment goals.

For existing Three-Share Grantees, Respondents must describe the successes and challenges in achieving enrollment goals along with approaches for overcoming the challenges for the existing members.

**e) Program History**

Respondent must state how long the program has been in existence, if operating prior to the submission of a Proposal to this solicitation. Please provide the following information:

- 1) services provided;
- 2) detailed description of identified areas of improvement and corrective action steps being taken with timelines;
- 3) evaluation of how the program has improved the existing health care delivery system and increased access to care; and
- 4) summary of local community and government support for involvement in the program.

**10. Section 10 - Program Governance**

Respondent must describe the management and governance structure of the proposed Three-Share and must include a brief description of their accounting procedures. Documentation on the organizational structure, management, and governance must include:

**a) Founding Documents**

Respondent must submit its official founding documents, court orders from county Commissioner's Courts for all counties in which Respondent is providing services, organizational charter and/or constitution, and other documentation from the previous five (5) years that describe the organization purpose, structure, methods for selecting and removing board members and appointing leaders, term limits for board members and appointed leaders, bylaws and internal procedure guidelines, authority for handling finances, and conflict of interest policies.

**b) Board and Key Staff**

Respondent must provide a list of all board members, including a biography of each member. Respondent must provide an organization chart of the company, and a list of key staff, positions held, definition of their role and annual salary (whether or not the salary is supported by TDI Three-Share grant funds).

**11. Section 11 - Grant Budget Proposal (Attachments 1-4)**

Respondent must provide budget tables in Excel format (see Attachments 1 – 4 below); Respondent will create the Excel tables using the sample tables in this Section 11 as a guide. Any Three-Share grant funds provided for the Respondent's program will primarily be used for allowable costs related to providing premium assistance to low wage workers of businesses enrolled in the Three-

Share program. Respondent must submit an itemized budget proposal clearly indicating the amount of grant funds requested for Program Administration in FY 2022 and FY 2023, and provide a narrative explanation justifying the line items and amounts requested for administration. TDI has final authority to determine the amount of any grants funds that may be awarded under this solicitation.

Respondent will provide a detailed description of how the grant funds will be managed and provide an oversight process of its internal controls for fiscal and risk management to ensure the grant funds are used appropriately and as intended. TDI will evaluate each budget proposal in its entirety to ensure that the proposed use of funds align with the primary goal of providing premium assistance.

For joint applications (Shared Service Arrangement), Respondents must include a separate itemized program Administrative Grant Budget Proposal for each program, and one for the lead organization showing only administrative expenses related to grant management. Respondents in joint applications must also provide a combined itemized Administrative Budget showing the combined total requested for administration by the participating programs and grant manager for the two (2) year grant period.

**a) Section 11 Attachment 1 – Mandatory Three-Share Subsidy Budget Information**

Respondents must provide enrollment projections for the two (2) year grant term that includes the following projected information:

- 1) number of covered businesses each month;
- 2) number of covered lives each month;
- 3) number of subsidy-eligible members each month;
- 4) monthly subsidy amount, per member, requested from grant;
- 5) total projected monthly premium subsidy amount requested from this TDI grant.

If Respondent has members enrolled in the program at the time of application, Respondent must include the per-member monthly amount of premium subsidy provided to eligible members and the count of subsidy eligible members enrolled at the time of application.

If Respondent provides varied subsidy amounts depend upon income, Respondent must provide the income range and maximum subsidy amount provided for each income range. An average per-member subsidy amount based on the projected enrollment distribution by income is acceptable for the per-member monthly subsidy amount.

If the per-member monthly subsidy amount differs from the current per-member monthly subsidy amounts, Respondent must include a justification for the change. Three-Share funds awarded to Contractor will not exceed monthly totals provided in the Three-Share Subsidy Budget Information document. If the subsidy amount is less than the per-member monthly amount, then the formula for determining the lower amount must be included.

<b>Section 11 Attachment 1 - Mandatory Three-Share Subsidy Budget Information</b>													
<b>FY 2022 Premium Subsidy Budget</b>													
<b>Budgeted Administrative Expenses Categories</b>	<b>Actual Value at Date of Application</b>	<b>Sep - 21</b>	<b>Oct - 21</b>	<b>Nov - 21</b>	<b>Dec - 21</b>	<b>Jan - 22</b>	<b>Feb - 22</b>	<b>Mar - 22</b>	<b>Apr - 22</b>	<b>May - 22</b>	<b>Jun- 22</b>	<b>Jul- 22</b>	<b>Aug- 22</b>
Covered Businesses													
Covered Lives													
Subsidy-Eligible Members													
Per-Member Subsidy Amount													
Total Monthly Subsidy													
<b>FY 2023 Premium Subsidy Budget</b>													
<b>Budgeted Administrative Expenses Categories</b>	<b>Actual Value at Date of Application</b>	<b>Sep - 22</b>	<b>Oct - 22</b>	<b>Nov - 22</b>	<b>Dec - 22</b>	<b>Jan - 23</b>	<b>Feb - 23</b>	<b>Mar - 23</b>	<b>Apr - 23</b>	<b>May - 23</b>	<b>Jun- 23</b>	<b>Jul- 23</b>	<b>Aug- 23</b>
Covered Businesses													
Covered Lives													
Subsidy-Eligible Members													
Per-Member Subsidy Amount													
Total Monthly Subsidy													

**b) Section 11 Attachment 2 – Itemized Administrative Budget Document**

Respondent must include an Itemized Administrative Budget that includes the total projected administrative expenses for the Three-Share program for each fiscal year of the grant. Respondents must provide expenses budgeted to cover with local matching funds, if matching funds are applicable. If Respondent is not requesting TDI grant funds for any portion of its administrative expenses, it may leave the “Grant Budget Request” columns blank and only complete the local matching funds columns.

Projected expenses must include a detail of the following:

- 1) Program administrative expenses attributed to Three-Share grant funds for each FY,
- 2) program budget for the two (2) year grant period, and
- 3) percentage of total expenses for the two (2) year grant period requested from Three-Share funds.

If local matching funds are included, then the program administrative expenses may be attributed to local matching funds for each fiscal year of the grant period.

In addition, the proposed budget must include projected Revenues for each year of the grant period generated from premium revenues, Three-Share grant funds, other grants, local contributions, and other revenue streams.

**NOTE:** Administrative expenses may not exceed 17 percent of allowable TDI grant funds expended in each month in FY 2022 and may not exceed 17 percent of allowable TDI grant funds expended in each month in FY 2023.

In the case of a joint application (Shared Service Arrangement), Respondents must include a separate Itemized Administrative Budget proposal for each program, and one for the lead organization showing only administrative expenses related to grant management. Respondents in a joint application must also provide a combined Itemized Administrative Budget showing the combined total requested for administration by the participating programs and grant manager for the two-year grant period.

**NOTE:** Joint applications (Share Service Arrangements) will only be reimbursed a maximum of 17 percent of the allowable expenses invoiced for FY 2022 and FY 2023. Each monthly invoice submittal must show the 17 percent that will be reimbursed from the overall total of the Budgeted Administrative Expenses in the shared arrangement.

Respondent must also complete the budget detail information document. This detailed sheet will be used for reporting actual expenses on a monthly basis. If Respondent is not requesting administrative expenses under the Three-Share grant funds, the budget detail information is not required.

<b>Section 11 Attachment 2 – Itemized Administrative Budget Document</b>					
<b>Budgeted Administrative Expenses Categories</b>	<b>FY 2022 Grant Request</b>	<b>FY 2023 Grant Request</b>	<b>Two (2) year Total Grant Request</b>	<b>FY 2022 Budget from Local Match</b>	<b>FY 2023 Budget from Local Match</b>
Personnel/Salary	\$	\$	\$	\$	\$
Fringe Benefits (%)	\$	\$	\$	\$	\$
Supplies	\$	\$	\$	\$	\$
Equipment	\$	\$	\$	\$	\$
Other Expenditures	\$	\$	\$	\$	\$
<b>Contracted Services</b>					
Actuarial	\$	\$	\$	\$	\$
Legal	\$	\$	\$	\$	\$
Claims Administration/TPA	\$	\$	\$	\$	\$
Marketing/Outreach	\$	\$	\$	\$	\$

<b>Section 11 Attachment 2 – Itemized Administrative Budget Document</b>					
<b>Budgeted Administrative Expenses Categories</b>	<b>FY 2022 Grant Request</b>	<b>FY 2023 Grant Request</b>	<b>Two (2) year Total Grant Request</b>	<b>FY 2022 Budget from Local Match</b>	<b>FY 2023 Budget from Local Match</b>
Accounting	\$	\$	\$	\$	\$
Human Resources	\$	\$	\$	\$	\$
System Administration	\$	\$	\$	\$	\$
Contract/Supply Procurement	\$	\$	\$	\$	\$
<b>Total Proposed Direct Costs</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Indirect Costs (% rate)	\$	\$	\$	\$	\$
Total Non-Passthrough Expenses	\$	\$	\$	\$	\$
Passthrough Expenses	\$	\$	\$	\$	\$
Furniture/Equipment	\$	\$	\$	\$	\$
Capitalization (Reserves) [2]	\$	\$	\$	\$	\$
Internet/Telephone	\$	\$	\$	\$	\$
Copy/Fax	\$	\$	\$	\$	\$
Postage/Shipping	\$	\$	\$	\$	\$
Office Space	\$	\$	\$	\$	\$
Other Expenses*	\$	\$	\$	\$	\$
Total Passthrough Expenses	\$	\$	\$	\$	\$
Total Proposed Administrative Budget	\$	\$	\$	\$	\$

**c) Section 11 Attachment 3 – TDI Reimbursement Project Costs**

Provide estimated TDI reimbursable costs in each budget category, the basis for the costs, and a breakdown of the costs (itemized expenses) under each budget category.

Provide adequate detail in the justification (itemized expenses) sections to account for the full cost of each category and ensure the sub-calculations in each justification are correct.

<b>Section 11 Attachment 3 – TDI Reimbursement Project Costs</b>		
<b>Category</b>	<b>Total Grant Request</b>	<b>Justification (itemized expenses)</b>
Personnel/Salary	\$	<i>Identify all staff positions by correct title, annual salary, and the percentage of time each position will be assigned to the project.</i>
Fringe Benefits (%)	\$	<i>Identify an overall rate that will not be exceeded for the Contract.</i>
Supplies	\$	<i>Provide a list of anticipated Supply costs.</i>

<b>Section 11 Attachment 3 – TDI Reimbursement Project Costs</b>		
<b>Category</b>	<b>Total Grant Request</b>	<b>Justification (itemized expenses)</b>
Equipment	\$	<i>Provide a list of anticipated Equipment costs.</i>
Other Expenditures	\$	<i>Provide a list of Other anticipated costs and any subawards. Costs may also include stipends allocable to the project.</i>
<b>Contracted Services</b>		
Actuarial	\$	<i>Provide a list of anticipated Actuarial costs.</i>
Legal	\$	<i>Provide a list of anticipated Legal costs.</i>
Claims Administration/TPA	\$	<i>Provide a list of anticipated Claims Administration/TPA costs.</i>
Marketing/Outreach	\$	<i>Provide a list of anticipated Marketing/Outreach costs.</i>
Accounting	\$	<i>Provide a list of anticipated Accounting costs.</i>
Human Resources	\$	<i>Provide a list of anticipated Human Resources costs.</i>
System Administration	\$	<i>Provide a list of anticipated of System Administration costs.</i>
Contract/Supply Procurement	\$	<i>Provide a list of anticipated Contract/Supply Procurement costs.</i>
Indirect Costs (% rate)	\$	<i>For calculating the full costs of the project, use your approved, audited Indirect Rate and applicable direct costs as the base (e.g. Modified Total Direct Cost (MTDC)). If you do not have an indirect rate, you may use a default rate of 10 percent of MTDC. State the rate and identify the base direct costs.</i>
<b>Total Proposed Admin. Budget</b>	<b>\$</b>	

**d) Section 11 Attachment 4 - Local Matching Project Costs Provided by the Contractor**

Provide the estimated matching costs in each budget category and the basis for the costs, breaking down the costs (itemized expenses) under each budget category. Matching funds may not come from TDI Three-Share Grant Funds and must be allowable costs under state regulations. These may include federal funds, state funds, local funds, in-kind contributions, or revenue streams or programs not borne by the federal or state government.

Provide adequate detail in the justification (itemized expenses) sections to account for the full cost of each category and assure the sub-calculations in each justification are correct.

<b>Attachment 4 - Local Matching Project Costs Provided by the Contractor</b>		
<b>Category</b>	<b>Total Grant Request</b>	<b>Justification (itemized expenses)</b>
Personnel/Salary	\$	<i>Identify all staff positions by correct title, annual salary, and the percentage of time each position will be assigned to the project.</i>
Fringe Benefits (%)	\$	<i>Identify an overall rate that will not be exceeded for the Contract.</i>
Supplies	\$	<i>Provide a list of anticipated Supply costs.</i>
Equipment	\$	<i>Provide a list of anticipated Equipment costs.</i>
Other Expenditures	\$	<i>Provide a list of Other anticipated costs and any subawards. Costs may also include stipends allocable to the project.</i>
<b>Contracted Services</b>		



Actuarial	\$	<i>Provide a list of anticipated Actuarial costs.</i>
Legal	\$	<i>Provide a list of anticipated Legal costs.</i>
Claims Administration/TPA	\$	<i>Provide a list of anticipated Claims Administration/TPA costs.</i>
Marketing/Outreach	\$	<i>Provide a list of anticipated Marketing/Outreach costs.</i>
Accounting	\$	<i>Provide a list of anticipated Accounting costs.</i>
Human Resources	\$	<i>Provide a list of anticipated Human Resources costs.</i>
System Administration	\$	<i>Provide a list of anticipated of System Administration costs.</i>
Contract/Supply Procurement	\$	<i>Provide a list of anticipated Contract/Supply Procurement costs.</i>
Indirect Costs (% rate)	\$	<i>For calculating the full costs of the project, use your approved, audited Indirect Rate and applicable direct costs as the base (e.g. Modified Total Direct Cost (MTDC)). If you do not have an indirect rate, you may use a default rate of 10 percent of MTDC. State the rate and identify the base direct costs.</i>
<b>Total Proposed Admin. Budget</b>	\$	

## **V. Terms and Conditions**

The following terms and conditions will apply to the extent applicable to this solicitation and resulting Contract. In some instances, the applicability is identified. The term "Contractor" in this Section V applies to Respondents during the solicitation process and to the Contractor during the resulting Contract Term. The term "Response" applies to a response to this solicitation.

### **A. Clauses Required by the Texas Procurement and Contract Management Guide**

#### **1. Antitrust**

The undersigned affirms under penalty of perjury of the laws of the State of Texas that (1) in connection with this Response, neither I nor any representative of the Contractor has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15; (2) in connection with this Response, neither I nor any representative of the Contractor have violated any federal antitrust law; and (3) neither I nor any representative of the Contractor have directly or indirectly communicated any of the contents of this Response to a competitor of the Contractor or any other company, corporation, firm, partnership, or individual engaged in the same line of business as the Contractor.

#### **2. Assignment for Services**

Contractor must not assign its rights under the Contract or delegate the performance of its duties under the Contract without prior written approval from TDI. Any attempted assignment in violation of this provision is void and without effect.

#### **3. Buy Texas**

In accordance with Section 2155.4441 of the Texas Government Code, Contractor agrees that during the performance of a contract for services it must purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

#### **4. Child Support Obligation**

Under Section 231.006 of the Family Code, the Contractor or applicant certifies that the individual or business entity named in this Contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.

#### **5. Computer Equipment Recycling**

If Contractor is submitting a Response for the purchase or lease of computer equipment, Contractor certifies its compliance with Subchapter Y, Chapter 361 of the Texas Health and Safety Code and the Texas Commission on Environmental Quality rules in 30 TAC Chapter 328.

#### **6. Contracting Information Responsibilities**

In accordance with Section 552.372 of the Texas Government Code, Contractor agrees to (1) preserve all contracting information related to the Contract as provided by the records retention requirements applicable to TDI for the duration of the contract, (2) promptly provide to TDI any

contracting information related to the Contract that is in the custody or possession of the Contractor on request of TDI, and (3) on termination or expiration of the Contract, either provide at no cost to TDI all contracting information related to the Contract that is in the custody or possession of Contractor or preserve the contracting information related to the Contract as provided the records retention requirements applicable to TDI. Except as provided by Section 552.374(c) of the Texas Government Code, the requirements of Subchapter J, Chapter 552, Government Code, may apply to the Contract and Contractor agrees that the Contract can be terminated if Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

#### **7. Cybersecurity Training**

Contractor represents and warrants that it will comply with the requirements of Section 2054.5192 of the Texas Government Code relating to cybersecurity training and required verification of completion of the training process.

#### **8. Dealings with Public Servant Affirmation**

Contractor has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Response.

#### **9. Debts and Delinquencies**

Contractor agrees that any payments due under the Contract will be applied towards any debt or delinquency that is owed to the State of Texas.

#### **10. Disaster Recovery Plan**

In accordance with 13 TAC § 6.94(a)(9), Contractor must provide to TDI the descriptions of its business continuity and disaster recovery plans.

#### **11. Disclosure of Prior State Employment (Consulting Services only)**

In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Contractor certifies that it does not employ an individual who has been employed by TDI or another agency at any time during the two years preceding the submission of the Response or, in the alternative, Contractor has disclosed in its Response the following: (i) the nature of the previous employment with TDI or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

#### **12. Dispute Resolution**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the Contract.

#### **13. Entities that Boycott Israel**

Pursuant to Section 2271.002 of the Texas Government Code, Contractor certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the contract resulting from this solicitation. Contractor shall state any facts that make it exempt from the boycott certification in its Response.

**14. E-Verify**

Contractor certifies that for contracts for services, Contractor will utilize the U.S. Department of Homeland Security's E-Verify system during the term of the Contract to determine the eligibility of:

- 1) all persons employed by Contractor to perform duties within Texas; and
- 2) all persons, including subcontractors, assigned by Contractor to perform work pursuant to the Contract within the United States of America.

**15. Excess Obligations**

The Contract must not be construed as creating a debt on behalf of TDI in violation of Article III, Section 49a of the Texas Constitution. Contractor understands that all obligations of TDI under the Contract are subject to the availability of state funds.

**16. Excluded Parties**

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "*Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism*," published by the United States Department of the Treasury, Office of Foreign Assets Control.

**17. Executive Head**

Under Section 669.003 of the Texas Government Code, Contractor certifies that it does not employ, or has disclosed its employment of, any former executive head of TDI. Contractor must provide the following information in the Response.

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Position with Contractor: \_\_\_\_\_

Date of Employment with Contractor: \_\_\_\_\_

**18. False Statements**

Contractor represents and warrants that all statements and information prepared and submitted in this document are current, complete, true, and accurate. Submitting a Response with a false statement or material misrepresentations made during the performance of a contract is a material breach of contract and may void the submitted Response and any resulting Contract.

**19. Financial Participation Prohibited Affirmation**

Under Section 2155.004(b) of the Texas Government Code, Contractor certifies that the individual or business entity named in this Response or Contract is not ineligible to receive the specified Contract and acknowledges that the Contract may be terminated and payment withheld if this certification is inaccurate.

**20. Foreign Terrorist Organizations**

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

**21. Former TDI Employees (Employment Contracts, Professional Services, or Consulting Services only)**

Contractor represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the Contract, were former employees of TDI during the 12 month period immediately prior to the date of execution of the Contract.

**22. Governing Law and Venue**

The Contract must be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TDI.

**23. Human Trafficking**

Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Response 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.

**24. Indemnification (General)**

CONTRACTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TDI, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM, ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TDI AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

**25. Indemnification (Intellectual Property only)**

CONTRACTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS TDI AND THE STATE OF TEXAS FROM AND AGAINST ANY AND ALL CLAIMS, VIOLATIONS, MISAPPROPRIATIONS, OR INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS AND/OR OTHER INTANGIBLE PROPERTY, PUBLICITY, OR PRIVACY RIGHTS, AND/OR IN CONNECTION WITH OR ARISING FROM: (1) THE PERFORMANCE OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT; (2) ANY DELIVERABLE, WORK PRODUCT, CONFIGURED SERVICE, OR OTHER SERVICE PROVIDED HEREUNDER; AND/OR (3) TDI'S AND/OR CONTRACTOR'S USE OF OR ACQUISITION OF ANY REQUESTED SERVICES OR OTHER

ITEMS PROVIDED TO TDI BY CONTRACTOR OR OTHERWISE TO WHICH TDI HAS ACCESS AS A RESULT OF CONTRACTOR'S PERFORMANCE UNDER THE CONTRACT. CONTRACTOR AND TDI AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. CONTRACTOR WILL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL (OAG) WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM OAG. IN ADDITION, CONTRACTOR 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. IF TDI DETERMINES THAT A CONFLICT EXISTS BETWEEN ITS INTERESTS AND THOSE OF CONTRACTOR OR IF TDI IS REQUIRED BY APPLICABLE LAW TO SELECT SEPARATE COUNSEL, TDI WILL BE PERMITTED TO SELECT SEPARATE COUNSEL AND CONTRACTOR WILL PAY ALL REASONABLE COSTS OF TDI'S COUNSEL.

**26. No Conflicts of Interest**

Contractor represents and warrants that the provision of goods and services or other performance under the Contract will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety.

**27. Prior Disaster Relief Contract Violation**

Under Sections 2155.006 and 2261.053 of the Texas Government Code, the Contractor certifies that the individual or business entity named in this Response 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.

**28. 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"). In accordance with Section 2252.907 of the Texas Government Code, Contractor is required to make any information created or exchanged with the State pursuant to the Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

**29. Signature Authority**

By submitting the Response, Contractor represents and warrants that the individual submitting this document and the documents made part of this Response is authorized to sign such documents on behalf of the Contractor and to bind the Contractor under any contract that may result from the submission of this Response.

**30. State Auditor's Right to Audit**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit

committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**31. Suspension and Debarment**

Contractor certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the *State of Texas Debarred Vendor List* maintained by the Texas Comptroller of Public Accounts and the *System for Award Management (SAM)* maintained by the General Services Administration.

**32. Television Equipment Recycling Program (Purchase or lease of covered television equipment only)**

Contractor certifies its compliance with Subchapter Z, Chapter 361 of the Texas Health and Safety Code, related to the Television Equipment Recycling Program.

**33. Terms and Conditions Attached to Contract (Solicitation only)**

Any terms and conditions attached to a Response will not be considered unless specifically referred to in the Response.

**34. Texas Bidder Affirmation (Solicitation only)**

Contractor certifies that if a Texas address is shown as the address of the Contractor on this Response, Contractor qualifies as a Texas Bidder as defined in Section 2155.444(c) of the Texas Government Code.

**B. Additional Texas Procurement and Contract Management Guide Provisions**

**1. Abortion Provider and Affiliate Transactions Prohibited**

Contractor represents and warrants that the Contract is not a taxpayer resource transaction prohibited by Section 2272.003 of the Texas Government Code and that payments made by TDI to Contractor and Contractor's receipt of appropriated funds under the contract are not prohibited by Article IX, Section 6.25 of the General Appropriations Act.

**2. Agency's Right to Audit**

Contractor 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 Contractor pertaining to the Contract for purposes of inspecting, monitoring, auditing, or evaluating by TDI and the State of Texas.

**3. Americans with Disabilities Act**

Contractor represents and warrants its compliance with the requirements of the Americans with Disabilities Act (ADA) and its implementing regulations, as each may be amended.

**4. Assignment for Goods**

Contractor must not assign its rights under the Contract or delegate the performance of its duties

under the Contract without prior written approval from TDI. Any attempted assignment in violation of this Section is void and without effect.

#### **5. Binding Effect**

The Contract will inure to the benefit of, be binding upon, and be enforceable against, each Party and their respective permitted successors, assigns, transferees, and delegates.

#### **6. Change in Law and Compliance with Laws**

Any alterations, additions, or deletions to the terms of the Contract that are required by changes in federal or state law or regulations are automatically incorporated into the Contract without written amendment hereto, and will become effective on the date designated by such law or by regulation.

#### **7. Damage to Government Property**

In the event of loss, destruction, or damage to any TDI or State of Texas property by Contractor or Contractor's employees, agents, subcontractors, and suppliers, Contractor will be liable to TDI and the State of Texas the full cost of repair, reconstruction, or replacement of the lost, destroyed, or damaged property. Contractor will reimburse TDI and the State of Texas for such property damage within 10 calendar days after Contractor's receipt of TDI's notice of amount due.

#### **8. Disclosure of Interested Parties**

Contractor represents and warrants that if selected for award of a contract as a result of the Solicitation, Contractor will submit to TDI a Certificate of Interested Parties prior to Contract Execution in accordance with Section 2252.908 of the Texas Government Code.

#### **9. Discounts**

If Contractor at any time during the term of the Contract provides a discount on the final Contract costs, Contractor will notify TDI in writing 10 calendar days prior to the effective date of discount. TDI will generate a Purchase Order Change Notice and send a revised Purchase Order to Contractor.

#### **10. Drug-Free Workplace**

Contractor represents and warrants that it will comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (41 U.S.C. § 701 *et seq.*) and maintain a drug-free work environment.

#### **11. Electrical Items**

All electrical items must meet all applicable OSHA standards and regulations, and bear the appropriate listing from Underwriters Laboratory (UL), Factory Mutual Resource Corporation (FMRC), or National Electrical Manufacturers Association (NEMA).

#### **12. Equal Employment Opportunity**

Contractor represents and warrants its compliance with all applicable duly enacted state and federal laws governing equal employment opportunities.

#### **13. Federal Occupational Safety and Health Law**

Contractor represents and warrants that all articles and services will meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act of



1970, as amended (29 U.S.C. Chapter 15).

#### **14. Force Majeure**

Neither Contractor nor TDI will be liable to the other for any delay in, or failure of performance, of any requirement included in the Contract caused by force majeure. The existence of such causes of delay or failure will extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome.

#### **15. Immigration**

Contractor represents and warrants that it will comply with the requirements of the Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*) and all subsequent immigration laws and amendments.

#### **16. Independent Contractor**

Contractor acknowledges and agrees that it is furnishing products and services in the capacity of an independent contractor and that Contractor and its personnel are not employees of TDI or the State of Texas.

#### **17. Legal and Regulatory Actions**

Contractor represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings, or investigations, etc., pending or threatened against Contractor or any of the individuals or entities included in the Response within the five (5) calendar years immediately preceding the submission of the Response that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TDI's consideration of the Response. If Contractor is unable to make the preceding representation and warranty, then Contractor instead represents and warrants that it has included as a detailed attachment in its Response a complete disclosure of any such court or governmental agency actions, proceedings, or investigations, etc. that would or could impair Contractor's performance under the Contract, relate to the solicited or similar goods or services, or otherwise be relevant to TDI's consideration of the Response. In addition, Contractor represents and warrants that it will notify TDI in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update TDI will constitute breach of contract and may result in immediate termination of the Contract.

#### **18. License Grant (Simple)**

Contractor hereby grants to TDI a non-exclusive, perpetual, irrevocable, worldwide, transferable, fully paid, royalty-free, right and license: (a) to reproduce, modify, distribute, store, publicly perform, publicly display, create derivative works of, and otherwise exploit the deliverables, in each case without any restrictions and without accounting to Contractor; and (b) to sublicense any or all such rights to third parties.

**19. Limitation on Authority**

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

**20. Lobbying Prohibition**

Contractor represents and warrants that TDI's payments to Contractor and Contractor's receipt of appropriated or other funds under the Contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

**21. Media Releases**

Contractor must not use TDI's name, logo, or other likeness in any press release, marketing material, or other announcement without TDI's prior written approval. TDI does not endorse any vendor, commodity, or service. Contractor is not authorized to make or participate in any media releases or public announcements pertaining to this procurement, the Response, or the services to which they relate without TDI's prior written consent, and then only in accordance with explicit written instructions from TDI.

**22. No Felony Criminal Convictions**

Contractor represents that neither Contractor nor any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, has been convicted of a felony criminal offense or that if such a conviction has occurred Contractor has fully advised TDI of the facts and circumstances surrounding the convictions.

**23. No Implied Waiver**

No provision of the 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.

**24. No Quantity Guarantees**

TDI makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the Contract.

**25. No Third-Party Beneficiaries**

Nothing contained in the Contract, either expressed or implied, is intended to confer on any person other than the Parties, or their respective permitted successors, assigns, transferees, or delegates, any interests, rights, remedies, obligations, or liabilities pursuant to, or by reason of, this Contract.

**26. Permits, Certifications, and Licenses**

Contractor represents and warrants that it has determined what licenses, certifications, and permits are required under the Contract and has acquired all applicable licenses, certifications, and permits.

**27. Prompt Payment**

Payment will be made in accordance with Chapter 2251 of the Texas Government Code, commonly known as the Texas Prompt Payment Act. Chapter 2251 of the Texas Government Code will govern remittance of payment and remedies for late payment and non-payment.

**28. Property Rights**

For purposes of the Contract, the term "Work Product" is defined as all work papers, materials, approaches, designs, specifications, systems, software, programs, source code, documentation, methodologies, concepts, intellectual property, or other property and/or results of the services that are developed, produced, generated, or provided to TDI in connection with, or as a result of, the services provided under the Contract. TDI and Contractor intend this agreement to be a contract for the services and each considers and expressly intends and agrees that the Work Product to be rendered by Contractor will be a work-made-for-hire. Contractor and Contractor's employees will have no rights in or ownership of the Work Product or any other property of TDI. Contractor acknowledges and agrees that the Work Product (and all rights therein, including without limitation all intellectual property rights) belongs to and will be the sole and exclusive property of TDI. If for any reason the Work Product would not be considered a work-made-for-hire under applicable law, Contractor does hereby irrevocably sell, assign, and transfer to TDI, its successors, and assigns, the entire right, title, and interest in and to the Work Product and any and all intellectual property rights embedded therein or associated therewith, and in and to all works based upon, derived from, or incorporating the Work Product, and in and to all income, royalties, damages, claims, and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and in and to all rights corresponding to the foregoing. Contractor agrees to execute all papers and to perform such other property rights, as TDI may deem necessary to secure for TDI or its designee the rights herein assigned. In the event that Contractor has any rights in and to the Work Product that cannot be assigned to TDI, Contractor hereby grants to TDI an exclusive, worldwide, royalty-free, irrevocable, and perpetual license to directly and indirectly reproduce, distribute, modify, create derivative works of, publicly perform, and publicly display, such rights to make, have made, use, sell, and offer for sale any products developed by practicing such rights, and to otherwise use such rights, with the right to sublicense such rights through multiple levels of sublicenses. No later than the first calendar day after the termination or expiration of the Contract or upon TDI's request, Contractor will deliver to TDI all completed, or partially completed, Work Product and any and all versions thereof. Failure to timely deliver such Work Product will be considered a material breach of the contract. Contractor will not make or retain any copies of the Work Product or any and all documentation or other products and results of the services without the prior written consent of TDI.

**29. Records Retention**

Contractor must maintain and retain all records relating to the performance of the Contract including supporting fiscal documents adequate to ensure that claims for Contract funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Contractor for a period of seven (7) years after the Contract expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

### **30. Refund**

Contractor will promptly refund or credit within 30 calendar days any funds erroneously paid by TDI which are not expressly authorized under the Contract.

### **31. Restricted Employment for Certain State Personnel**

Pursuant to Section 572.069 of the Texas Government Code, Contractor certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for TDI involving Contractor within two (2) years after the date that the Contract is signed or the procurement is terminated or withdrawn. This certification only applies to former state officers or employees whose state service or employment ceased on or after September 1, 2015.

### **32. Secure Erasure of Hard Disk Capability (Information Technology Services only)**

All equipment provided to TDI by Contractor that is equipped with hard disk drives (*i.e.*, computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) will have the capability to securely erase data written to the hard drive prior to final disposition of such equipment, either at the end of the equipment's useful life or the end of the related services agreement for such equipment, in accordance with 1 TAC Chapter 202.

### **33. Severability**

If any provision of the Contract is construed to be illegal, invalid, or unenforceable, such construction will not affect the legality, validity, or enforceability of any of its other provisions. It is the intent and agreement of the parties to this Contract that this Contract will be deemed amended by modifying such provision to the extent necessary to render it valid, legal, and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal, and enforceable and that achieves the same objective. All other provisions of this Contract will continue in full force and effect.

### **34. Sovereign Immunity**

Nothing in the Contract will be construed as a waiver of TDI's or the State's sovereign immunity. This Contract will not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to TDI or the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to TDI or the State of Texas under the Contract or under applicable law will not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. TDI does not waive any privileges, rights, defenses, or immunities available to TDI by entering into the contract or by its conduct prior to or subsequent to entering into the Contract.

### **35. Subcontractors**

Contractor may not subcontract any or all of the work and/or obligations due under the Contract without prior written approval of TDI. Subcontracts, if any, entered into by the Contractor must be in writing and be subject to the requirements of the Contract. Should Contractor subcontract any of the services required in the Contract, Contractor expressly understands and acknowledges that in entering into such subcontract(s), TDI is in no manner liable to any subcontractor(s) of Contractor.

In no event will this provision relieve Contractor of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the Contract.

**36. Survival**

Expiration or termination of the Contract for any reason does not release Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the Contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

**37. Taxes**

Purchases made for State of Texas use are exempt from the State Sales Tax and Federal Excise Tax. TDI will furnish Tax Exemption Certificates upon request. Contractor represents and warrants that it will pay all taxes or similar amounts resulting from the Contract, including, but not limited to, any federal, State, or local income, sales, or excise taxes of Contractor or its employees. TDI will not be liable for any taxes resulting from the Contract.

**38. Termination for Convenience**

TDI reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if TDI determines that such termination is in the best interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TDI will be liable for payments limited only to the portion of work TDI authorized in writing and which Contractor has completed, delivered to TDI, and which has been accepted by TDI. All such work must have been completed, in accordance with Contract requirements, prior to the effective date of termination. TDI will have no other liability, including no liability for any costs associated with the termination.

**39. Unfair Business Practices**

Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that Contractor has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit and that such officers have not been found to be liable for such practices in such proceedings.

**40. Use of State Property**

Contractor is prohibited from using State Property for any purpose other than performing Services authorized under the Contract. State Property includes, but is not limited to, TDI's office space, identification badges, TDI information technology equipment and networks (e.g., laptops, portable printers, cell phones, iPads, external hard drives, data storage devices, any TDI-issued software, and the TDI Virtual Private Network (VPN client)), and any other resources of TDI. Contractor must not

remove State Property from the continental United States. In addition, Contractor may not use any computing device to access TDI's network or e-mail while outside of the continental United States. Contractor must not perform any maintenance services on State Property unless the Contract expressly authorizes such services. During the time that State Property is in the possession of Contractor, Contractor will be responsible for (i) all repair and replacement charges incurred by TDI that are associated with loss of State Property or damage beyond normal wear and tear and (ii) all charges attributable to Contractor's use of State Property that exceeds the Contract scope. Contractor will fully reimburse such charges to TDI within 10 calendar days of Contractor's receipt of TDI's notice of amount due. Use of State Property for a purpose not authorized by contract will constitute breach of Contract and may result in termination of the Contract and the pursuit of other remedies available to TDI under Contract, at law, or in equity.

**41. Waiver of Consequential Damages**

NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY HEREIN, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, ANTICIPATED OR OTHERWISE, OR LOSS OF REVENUES IN CONNECTION WITH OR ARISING OUT OF, OR IN CONNECTION WITH, THE SUBJECT MATTER OF THIS CONTRACT.

**C. Additional Provisions Required by TDI**

**1. No TDI Indemnification**

Any requirement that TDI defend, indemnify, or hold harmless the Contractor or other entity is hereby deleted from the Proposal and Respondent documents.

**2. Outsourcing**

Contractor acknowledges that TDI may, in its sole discretion, enter into an outsourcing agreement with another provider which will perform certain services for TDI. If TDI enters into a written agreement for outsourcing, Contractor must, as consistent with the terms of the Contract resulting from this solicitation, grant the outsourcing vendor the right to use and access the services and/or equipment (*e.g.*, software, hardware) on the same terms and conditions that Contractor has granted TDI the right to use and access such Services and/or equipment provided the outsourcing vendor also agrees that it (i) will only use the Services and/or equipment for the benefit of TDI, and (ii) will enter into a confidentiality agreement with TDI, which contains confidentiality terms that are substantially no less restrictive than the confidentiality terms contained in this solicitation and the Contract resulting from this solicitation. In addition, Contractor must either fully cooperate with all transition activities regarding outsourcing or Contractor agrees that TDI will have the right to immediately terminate or assign to the outsourcing vendor, the Contract resulting from this solicitation without any liability for any amounts to Contractor.

**3. Representations and Warranties Related to Software**

If any software is provided under a Contract resulting from this solicitation, Contractor represents and warrants each of the following:

- a) Contractor has sufficient right, title, and interest in the software to grant the license required by the Contract;
- b) Contract terms and conditions included in any "clickwrap," "browsewrap," "shrinkwrap," or other license agreement ("Additional Terms") that accompanies any software, including but not limited to Software Updates, Software Patch/Fix, or Software Upgrades, provided under any Contract or Purchase Order resulting from this solicitation are void and have no effect even if those Additional Terms require an affirmative "acceptance" before access is permitted. All such Additional Terms will be of no force and effect and will be deemed rejected by TDI unless TDI specifically agrees to such licensure terms in a Contract resulting from this solicitation;
- c) if Contractor is a software publisher, Contractor has implemented processes for the protection, detection, remediation, mitigation, and timely customer notification of software vulnerabilities associated with its software;
- d) the software does not infringe upon or constitute a misuse or misappropriation of any patent, trademark, copyright, trade secret, or other proprietary right;
- e) the software and any Software Update, Software Enhancement/Release, Software Patch/Fix, and Software Upgrade does not contain viruses, malware, spyware, key logger, back door or other covert communications, or any computer code intentionally designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the computer program, or any other associated software, firmware, hardware, or computer system, (including local area or wide-area networks), in a manner not intended by its creator(s); and
- f) the software does not contain any computer code that would disable the software or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs," "time locks," or "drop dead devices") or that would permit Contractor to access the software to cause such disablement or impairment (sometimes referred to as a "trap door" or "back door").

#### **4. Scope of Work; Performance**

Contractor will provide the requested items of the quality and in the manner described in this solicitation. Contractor's failure to conform to all requirements of this solicitation may, among other things, result in TDI's withholding of acceptance and payments under the Contract, TDI's cancellation of all or part of the Contract, TDI's revocation of any prior acceptance and Contractor's refund of amounts paid prior to revocation of acceptance.

#### **5. Termination**

- a) **TDI may terminate or cancel the Contract in any one of the following circumstances:**

- 1) **Termination for Convenience**

- TDI reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if TDI determines that such termination is in the best interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in

writing, cease all work immediately upon the effective date of termination. TDI will be liable for payments limited only to the portion of work TDI authorized in writing and which Contractor has completed, delivered to TDI, and which has been accepted by TDI. All such work must have been completed, in accordance with Contract requirements, prior to the effective date of termination. TDI will have no other liability, including no liability for any costs associated with the termination. See also Section V Part B Item 38 (Termination for Convenience).

## **2) Availability of State Funds; Legislative Action; Necessity of Performance**

The Contract is subject to termination or cancellation, without penalty to TDI, either in whole or in part, subject to the availability of state funds. TDI is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TDI becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render either TDI's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this Section, TDI will not be liable to Contractor for any damages which are caused or associated with such termination or cancellation, and TDI will not be required to give prior notice. Termination under this Section will not affect TDI's right to use previously paid Licensed Software through the term of each such license, nor any maintenance or support paid prior to such termination.

## **3) Termination for Cause**

TDI may terminate the Contract immediately, in whole or in part, for cause by providing written notice to Contractor of such termination if Contractor fails to provide the contracted goods or services according to the provisions of the Contract, fails to execute the work properly, performs work in an unsatisfactory manner, or fails to comply with any of the terms or conditions of the Contract. Termination is not an exclusive remedy but is in addition to any other rights and remedies provided in equity, by law, or under this Contract. In the event of termination for cause, Contractor will be held liable for all legal fees and other costs and expenses, including but not limited to attorney's fees and court costs, costs to re-solicit the Contract, and any other damages to the State of Texas or TDI resulting from Contractor's default. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

### **b) TDI's Right to Recover**

TDI reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to TDI under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs if termination or cancellation is at Contractor's request or if TDI terminates or cancels the Contract for cause. This right is in addition to any other remedies available to TDI under the Contract or under applicable law. 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.

**c) Notice of Termination or Cancellation Delivery**

Any termination by TDI of the Contract that requires notice may be accomplished by TDI's delivery to Contractor of a written notice of termination or cancellation specifying that the Contract is terminated or canceled.

**d) Termination or Cancellation Effectiveness**

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

**e) TDI Not Liable Upon Termination**

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

**6. Travel-related Expenses; Withholding of Payments**

TDI will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for in the Contract. In that event, Contractor will invoice these costs to TDI based on actual expenses and TDI will not be liable for reimbursement of expenses that (1) were not pre-approved in writing by TDI or (2) exceed the current State of Texas Travel Regulations. Receipts are required to validate invoicing.

**7. Warranty of Performance**

Contractor represents and warrants that its performance under the Contract will be conducted conscientiously in a professional and workmanlike manner to the full extent of Contractor's talents and capabilities with due diligence, and in full compliance with the highest professional standards of practice in the industry applicable to the Services performed.

**D. Clauses Required by the Texas Grant Management Standards Guide**

In the event of a conflict, provisions in this Part D supersede provisions in Parts A, B, and C.

**1. Texas Grant Management Standards**

Contractor will comply with the Texas Grant Management Standards (TGMS), adopted by the Texas Office of the Governor, in accordance with Chapter 783, Texas Government Code.

**2. Child Support Obligation**

Respondent represents and warrants that it will include the following clause in the award documents for every subaward and subcontract and will require subrecipients and contractors to certify accordingly: "Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security

number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application.”

### **3. Contract Oversight**

Respondent represents and warrants that it will maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

### **4. Cybersecurity Training Program (Local Government System)**

Respondent represents and warrants its compliance with Section 2054.5191 of the Texas Government Code relating to the cybersecurity training program for local government employees who have access to a local government computer system or database.

### **5. Cybersecurity Training Program (State Contractor)**

If Respondent has access to any state computer system or database, Respondent shall complete cybersecurity training and verify completion of the training program to the Agency pursuant to and in accordance with Section 2054.5192 of the Government Code.

### **6. Debarment and Suspension**

Respondent certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.

### **7. Debts and Delinquencies**

Contractor agrees that any payments due under the Contract will be applied towards any debt or delinquency that is owed to the State of Texas.

### **8. Disaster Recovery Plan**

In accordance with 13 TAC § 6.94(a)(9), Contractor must provide to TDI the descriptions of its business continuity and disaster recovery plans.

### **9. Disclosure Protections for Certain Charitable Organizations, Charitable Trusts, and Private Foundations**

Respondent represents and warrants that it will comply with Section 2252.906 of the Texas Government Code relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.

### **10. Discrimination Prohibited**

In accordance with Section 2105.004 of the Texas Government Code, Respondent represents and warrants that it will not use block grant funds in a manner that discriminates on the basis of race, color, national origin, sex, or religion.

**11. Dispute Resolution**

The dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the agreement.

**12. Excluded Parties**

Contractor certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism," published by the United States Department of the Treasury, Office of Foreign Assets Control.

**13. Executive Head of a State Agency Affirmation**

Under Section 669.003 of the Texas Government Code, Contractor certifies that it does not employ, or has disclosed its employment of, any former executive head of TDI. Contractor must provide the following information in the Response.

Name of Former Executive: \_\_\_\_\_

Name of State Agency: \_\_\_\_\_

Date of Separation from State Agency: \_\_\_\_\_

Position with Contractor: \_\_\_\_\_

Date of Employment with Contractor: \_\_\_\_\_

**14. Former Agency Employees**

Respondent represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of the Agency during the twelve (12) month period immediately prior to the date of execution of the contract.

**15. Funding Limitation**

Respondent understands that all obligations of Agency under the contract or grant are subject to the availability of grant funds. The contract or grant is subject to termination or cancellation, either in whole or in part, without penalty to Agency if such funds are not appropriated or become unavailable.

**16. Governing Law and Venue**

The Contract must be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the Contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TDI.

**17. Indemnification (General)**

CONTRACTOR MUST DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TDI, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM,

ANY ACTS OR OMISSIONS OF CONTRACTOR OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE MUST BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. CONTRACTOR AND TDI AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

#### **18. Law Enforcement Agency Grant Restriction**

If Respondent is a law enforcement agency regulated by Chapter 1701 of the Texas Occupations Code, Respondent represents and warrants that it will not use appropriated money unless the law enforcement agency is in compliance with all rules adopted by the Texas Commission on Law Enforcement (TCOLE), or TCOLE certifies that it is in the process of achieving compliance with such rules.

#### **19. Legal Authority**

Respondent represents that it possesses legal authority to apply for the grant. A resolution, motion or similar action has been duly adopted or passed as an official act of the Respondent's governing body, authorizing the filing of the Response, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative, or the designee of Respondent to act in connection with the Response and to provide such additional information as may be required.

#### **20. Limitations on Grants to Units of Local Government**

Respondent acknowledges and agrees that appropriated funds may not be expended in the form of a grant to, or contract with, a unit of local government unless the terms of the grant or contract require that the funds received under the grant or contract will be expended subject to the limitations and reporting requirements similar to those provided by the following:

- Parts 2 and 3 of the Texas General Appropriations Act, Art. IX, except there is no requirement for increased salaries for local government employees;
- Sections 556.004, 556.005, and 556.006 of the Texas Government Code; and
- Sections 2113.012 and 2113.101 of the Texas Government Code.

#### **21. Lobbying Expenditure Restriction**

Respondent represents and warrants that Agency's payments to Respondent and Respondent's receipt of appropriated or other funds under the contract or grant are not prohibited by Sections 403.1067 or 556.0055 of the Texas Government Code which restrict lobbying expenditures.

#### **22. No Conflicts of Interest (State)**

Respondent represents and warrants that performance under the contract or grant will not constitute an actual or potential conflict of interest or reasonably create an appearance of impropriety. Further, Respondent represents and warrants that in the administration of the grant, it will comply with all conflict of interest prohibitions and disclosure requirements required by

applicable law, rules, and policies, including Chapter 176 of the Texas Local Government Code. If circumstances change during the course of the contract or grant, Respondent shall promptly notify Agency.

### **23. No Waiver of Sovereign Immunity**

The Parties expressly agree that no provision of the grant or contract is in any way intended to constitute a waiver by the Agency or the State of Texas of any immunities from suit or from liability that the Agency or the State of Texas may have by operation of law.

### **24. Open Meetings**

If the Respondent is a governmental entity, Respondent represents and warrants its compliance with Chapter 551 of the Texas Government Code which requires all regular, special or called meeting of a governmental body to be open to the public, except as otherwise provided by law.

### **25. Political Polling Prohibition**

Respondent represents and warrants that it does not perform political polling and acknowledges that appropriated funds may not be granted to, or expended by, any entity which performs political polling.

### **26. Texas Public Information Act**

Information, documentation, and other material in connection with this Solicitation or any resulting contract or grant may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Respondent is required to make any information created or exchanged with the State pursuant to the contract or grant, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

### **27. Reporting Compliance**

Respondent represents and warrants that it will submit timely, complete, and accurate reports in accordance with the grant and maintain appropriate backup documentation to support the reports.

### **28. Records Retention (state-grant)**

Respondent shall maintain and retain all records relating to the performance of the grant including supporting fiscal documents adequate to ensure that claims for grant funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Respondent for a period of four (4) years after the grant expiration date or until all audit, claim, and litigation matters are resolved, whichever is later. Agency reserves the right to direct a Respondent to retain documents for a longer period of time or transfer certain records to Agency custody when it is determined the records possess longer term retention value. Respondent must include the substance of this clause in all subawards and subcontracts.

### **29. Records Retention (state-procurement)**

For the time period specified in Section 441.1855 of the Texas Government Code, Respondent shall maintain and retain all records relating to the performance of the contract including supporting

fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable State of Texas requirements. Respondent must include the substance of this clause in all subcontracts.

**30. Reporting Suspected Fraud and Unlawful Conduct**

Respondent represents and warrants that it will comply with Section 321.022 of the Texas Government Code which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

**31. State Auditors Right to Audit**

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract. The acceptance of funds directly under the Contract or indirectly through a subcontract under the Contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

**32. Subaward Monitoring**

Respondent represents and warrant that it will monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with applicable statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.

## VI. Execution of Proposal

1. By signature hereon, Respondent represents and warrants that the provisions in this solicitation apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, representatives, subcontractors, subcontractor employees, independent contractors, and any other representatives who may provide Services under, who have a financial interest in, or otherwise are interested in this solicitation or any Contract resulting from it.
2. By signature hereon, Respondent represents and warrants its intent to furnish the requested goods and/or Services at the prices quoted in its Proposal.
3. By signature hereon, Respondent represents and warrants that its prices include all costs of Respondent in providing the requested items that meet all specifications of this solicitation, and that its prices will remain firm for acceptance for a minimum of 180 calendar days from deadline for submission of Proposal.
4. Check below if a preference is claimed under 34 Texas Administrative Code Section 20.306 or Chapter 2155, Subchapter H of the Texas Government Code:
  - Good/services produced in Texas or offered by Texas bidder or Texas bidder that is owned by a service-disabled veteran
  - Agricultural products grown in Texas
  - Agricultural products offered by Texas bidders
  - USA produced supplies, materials or equipment 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
  - Foods of higher nutritional value
  - Texas Vegetation Native to the Region
  - Commercial production company or advertising agency located in Texas
  - Travel agent residing in Texas
5. By signature hereon, Respondent represents and warrants that it has read and agrees to all terms and conditions in Section V (Terms and Conditions) of this solicitation which are incorporated herein, unless Respondent specifically takes an exception and offers an alternative provision in Respondent's Proposal as provided in the Executive Summary.
6. By signature hereon, Respondent represents and warrants that the individual signing this document and the documents made part of this solicitation and Proposal is authorized to sign such documents on behalf of the company and to bind the company under any Contract which may result from the submission of this Proposal.

Failure to sign the Execution of Proposal or signing it with a false statement will void the submitted Proposal or any resulting Contracts.

Authorized representative on behalf of Respondent must complete and sign the following:

_____ Signature of Authorized Representative	_____ Date Signed
_____ Printed Name and Title of Authorized Representative	
_____ Respondent Company Name	_____ Phone Number
_____ Mailing Address	_____ City, State, ZIP
_____ Email Address	



## **VII. Conflict of Interest/Disclosure Statement**

### **A. Defined Terms**

For purposes of the disclosure statements required by this solicitation, the terms below are defined as follows:

1. "Past" is defined as within the two (2) calendar years prior to the deadline for submission of Proposals in response to this solicitation.
2. "TDI" is defined as the appointed official who heads the agency as well as the agency's employees or recent former employees.
3. "Recent Former Employees" are defined as those TDI employees who have terminated agency employment within the two (2) calendar years prior to the deadline for submission of Proposals in response to this solicitation.
4. "Personal Relationship" is defined as a current or past connection other than a clearly contractual, business, financial, or similar relationship and includes family relationships or other connections outside simply providing a response to this solicitation. For this purpose, "family relationship" means a relationship within the third degree of consanguinity or second degree of affinity; see Chapter 573 of the Texas Government Code, which defines these degrees of consanguinity and affinity. Personal Relationships must be disclosed if:
  - a) a reasonable person could expect the connection to diminish Respondent's independence of judgment or effectiveness in the performance of the Respondent's responsibilities to TDI or the State of Texas under the Contract;
  - b) a reasonable person could expect the connection, within the overall context of Respondent's submission of a Proposal, possible selection as Contractor or its performance of the Contract, to create an issue for the agency's consideration relative to a potential appearance of impropriety or conflict of interest; or
  - c) the relationship is with a TDI or other State of Texas employee with authority to make decisions or recommendations on state contracting or procurement or this solicitation. For purposes of this provision, those persons with authority to make decisions or recommendations are those persons who fall within the definition of "purchasing personnel" in Section 2262.004(a)(2) of the Texas Government Code.

### **B. Disclosures**

Provide the requested information in the space provided; indicate "None" in the checkbox as appropriate. For each item, Respondent must also provide a detailed explanation of why Respondent does or does not believe such item poses a conflict of interest, potential conflict of interest, or appearance of impropriety issue relative to Respondent's submission of Proposal, possible selection as the Contractor, or its performance of the Contract.

**1. Current or Proposed Respondent Employees who are Current or Recent Former Employees of TDI.**

**If None, Check**

First and Last Name	Relationship to TDI	Period of TDI Employment
1.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	
2.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	
3.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	
4.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	
5.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	

- a) Detailed explanation of why Respondent does or does not believe the current or proposed employees listed above pose a conflict of interest, potential conflict of interest, or appearance of impropriety:

**2. Personal Relationships of the Respondent who are Current or Recent Former Employees of TDI.**

**If None, Check**

First and Last Name	Relationship to State Agency	Period of TDI Employment, If Applicable
1.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	
2.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	
3.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	
4.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	
5.	<input type="checkbox"/> Current <input type="checkbox"/> Former <input type="checkbox"/> Retiree	

- a) Detailed explanation of why Respondent does or does not believe the personal relationships listed above pose a conflict of interest, potential conflict of interest, or appearance of impropriety:

**3. Employees of Respondent who hold any license or certificate related to the insurance industry.**

**If None, Check**

First and Last Name	License(s) or Certificate(s)
1.	
2.	
3.	
4.	
5.	

- a) Detailed explanation of why Respondent does or does not believe the relatives listed above pose a conflict of interest, potential conflict of interest, or appearance of impropriety:

**C. Continuing Duty to Disclose**

If circumstances change or additional information is obtained subsequent to submission of the Proposal, Contractor’s duty to disclose under these provisions continues under the Contract Term and does not end with submission of a Proposal or receipt of Contract award.

**D. Evaluation of Disclosures**

Disclosures under these provisions are information that will be evaluated by TDI; however, all information provided will not necessarily lead to a restriction or disqualification. Issues will be considered on a case by case basis in the best interests of the State of Texas. If Respondent is in doubt about whether information should be disclosed, Respondent should consult with its legal counsel. Failure to disclose any required information under these provisions may be cause for Proposal disqualification or termination of the Contract resulting from this solicitation. TDI reserves the right, in its sole discretion, to determine if an issue should result in Proposal disqualification or termination of the Contract.

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Signature of Authorized Representative

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Date Signed

---

Printed Name and Title of Authorized Representative

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Respondent Company Name

### VIII. Certification Regarding Public Nature of the Proposal

The Texas Legislative Budget Board (LBB) has established a database of state agency contracts pursuant to Section 322.020 of the Texas Government Code. See the LBB website at [www.lbb.state.tx.us/](http://www.lbb.state.tx.us/). Following the Contract award resulting from this solicitation, TDI plans to upload to the LBB contracts database the complete Contract, except for information that is not subject to disclosure under Chapter 552 of the Texas Government Code. The complete Contract includes this solicitation and all parts of Contractor’s Proposal. Information that is not subject to disclosure under Chapter 552 of the Texas Government Code must be referenced in the table below. Absent the table noted above, the information will be subject to disclosure pursuant to a request under the Texas Public Information Act. In submitting a Proposal in response to this solicitation, Respondent acknowledges that it understands and accepts this requirement.

Respondent **must initial below EITHER Item 1 or Item 2, as appropriate. DO NOT INITIAL BOTH ITEMS.**

By signature hereon, Respondent certifies the following:

1. \_\_\_\_\_ Respondent does not assert that any portion of its Proposal is confidential.

OR

2. \_\_\_\_\_ Respondent has stamped in bold red letters the term “**CONFIDENTIAL**” on the specific part or page of the Proposal considered to be confidential by Respondent. In the table below, Respondent has identified by page number(s) the location of all information in the Proposal asserted to be confidential by Respondent as well as provided an explanation, including any relevant legal authority, for why Respondent reasonably considers the identified portion(s) of its Proposal to be confidential and exempt from public disclosure under the Texas Public Information Act, Chapter 552 of the Texas Government Code. **In the event of a request for this information under the Texas Public Information Act, Respondent will be notified of such request by TDI and Respondent will have the opportunity to submit arguments to the Office of the Texas Attorney General (OAG) regarding the confidential nature of the information. The OAG will make the final determination regarding the confidential nature of the information.**

Proposal Page Number	General description of the designated information	Explanation, including relevant legal authority, in support of the confidential treatment of the designated portion(s) of the Proposal.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name and Title of Authorized Representative

\_\_\_\_\_  
Respondent Company Name

## IX. RFA Attachment A – Letter of Commitment Template

LETTERHEAD

DATE: (Insert Date)

TO: Texas Department of Insurance, Regulatory Policy Division

FROM: (Insert name of person authorized to commit time, efforts, and/or funds)

RE: Commitment of matching funds

(Insert name of contribution organization/company) is pleased to support (insert name of project sponsor) in their efforts to implement the grant project, (insert title of project).

As a partner in this endeavor we commit to providing the following resources and services toward the project as match for a grant from the Texas Department of Insurance Regulatory Policy Division:

- (Insert bulleted list describing the cash and/or in-kind services provided as match, the source of the match, and the value associated with the match commitment)
- Cash contribution –
- Technical support –
- Actuarial
- Legal
- Claims Administration
- Marketing Outreach
- Accounting
- Human Resources
- System Administration
- Contract/Supply Procurement

The above items have a total matching contribution of (\$-insert total).

Sincerely,

(Insert name)

(Insert title)

## V. Appendix A: Sample Contract

This sample contract is provided for illustrative purposes only. This document is subject to change and is dependent upon any negotiated information with the Successful Respondent, and any required updates to be in compliance with Texas purchasing statutes, rules, policies, and procedures, including the Procurement and Contract Management Guide provided by the Texas Comptroller of Public Accounts.

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**CONTRACT FOR  
THREE-SHARE PREMIUM ASSISTANCE PROGRAM  
BETWEEN  
THE TEXAS DEPARTMENT OF INSURANCE  
AND  
VENDOR NAME**

The Texas Department of Insurance (hereinafter referred to as "TDI"), a state agency located at 333 Guadalupe St., Austin, Texas, 78701, and Vendor Name (hereinafter referred to as "Contractor"), located at street address, City, State (Initials), zip code, enter into a Contract (hereinafter referred to as the "Contract") to provide Three-Share Premium Assistance Program for TDI pursuant to Texas Government Code Chapters 2155, 2156, and 2157, as applicable, and applicable rules.

**I. CONTRACTED SERVICES/CONTRACT DOCUMENTS.**

**1.01. SERVICES.** Contractor will provide Three-Share Premium Assistance Program in accordance with TDI's Request for Application (RFA) No. 454-21-0123-26981-EM. Services will be performed in accordance with provisions contained in the following documents, which are incorporated herein in their entirety in descending order of precedence:

- (a.) This Contract - TDI Contract No. Three-Share Premium Assistance Program, Attachment 1 – Non-Disclosure Agreement, and <<list any applicable Attachments here that are made part of the Contract>> attached hereto and incorporated herein;
- (b.) Exhibit A, TDI's RFA No. 454-21-0123-26981-EM, including all Attachments, Appendices, and subsequent Addenda attached hereto and incorporated herein;
- (c.) Exhibit B-1, Contractor's Proposal response submitted on Month X, 20XX, as superseded by the following documents that are attached hereto and incorporated herein:
  - i. Exhibit B-2, Contractor's Attachment X – <<Name of Document>>, submitted on Month X, 20XX, and supersedes Contractor's original Attachment X submitted on Month X, 20XX;
  - ii. Exhibit B-3, Contractor's Attachment X— <<Name of Document>>, submitted on Month X, 20XX; and

- iii. Exhibit B-4, Attachment X – Pricing Form, submitted on Month X, 20XX, as Contractor’s Best and Final Offer (BAFO) and supersedes Contractor’s original pricing submitted on Month X, 20XX.

**1.02. CONTRACT ADMINISTRATOR.**

- (a.) TDI will designate a “Contract Administrator” for this Contract who will serve as the point of contact between TDI and Contractor. The instructions of the TDI Contract Administrator (“or designated representative”) are to be strictly and promptly followed by Contractor at all times. TDI’s Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed and as to the manner of performance and rate of progress of the work. TDI’s Contract Administrator will determine the amount of work performed which is to be paid under the Contract. Failure of the TDI Contract Administrator during the progress of the Contract to discover or reject unacceptable work or work not performed in accordance with the Contract, or to exercise any remedies will not be deemed an acceptance or a waiver of TDI’s right to full performance of the Contract. TDI’s Contract Administrator does not have any express or implied authority to vary or amend the terms of the Contract or to waive strict performance of the terms or conditions of the Contract.
- (b.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the TDI Contract Administrator. Contractor must undertake no services or enhancements except with the prior written direction of the TDI Contract Administrator. Contractor understands and agrees that services or enhancements performed without the prior written direction of the TDI Contract Administrator is work not approved by TDI and outside the scope of this Contract and will be performed exclusively at Contractor’s risk and own expense.

**II. TERM.**

**2.01. CONTRACT TERM.** The term of this Contract will be from the date of the last signature date and continue through August 31, 2023.

- (a.) At the sole option of TDI, the Contract may be extended as needed to complete work already in progress or to complete the procurement process for a subsequent contract, not to exceed a total of eleven months.
- (b.) Notwithstanding the termination or expiration of this Contract, the provisions regarding indemnification, confidentiality, dispute resolution, audit rights, and warranties will survive the termination and expiration of this Contract.

**III. CONSIDERATION.**

**3.01. CONTRACT LIMIT, FEES, AND EXPENSES.** The total amount of fees to be paid under this Contract during the initial term will not exceed XXXX (\$XXX,XXX) and will be in accordance with Contractor’s final Cost Proposal accepted by TDI.

OR <<The total amount of fees paid under this Contract during the initial term will be determined based upon XXXX and will be in accordance with Contractor’s final Cost Proposal accepted by TDI.>>

**3.02. AUTHORIZED SERVICES.** Contractor will be compensated only for services actually authorized and approved by TDI in writing and in compliance with this Contract. Contractor has no rights to compensation or any other rights or benefits except as expressly provided in this Contract. TDI will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for in this Contract. In that event, such costs will be invoiced to TDI based on actual expenses and TDI will not be liable for reimbursement of expenses that: (i) were not preapproved in writing by TDI, or (ii) exceed the current State Travel Regulations. Receipts are required to validate invoicing.

**3.03. PAYMENTS TO CONTRACTOR.**

- (a.) Payments to Contractor will be in accordance with Exhibit B-X of this Contract, submitted as Contractor's original Cost Proposal (or BAFO) on Month X, 20XX, and final approval of payment is subject to a review of source documentation to support all costs derived and charged to TDI for the services described herein.
- (b.) Payments will be made in accordance with the Texas Prompt Payment Act, Texas Government Code Chapter 2251. If this Contract is terminated early, the State will pay Contractor for products and services provided by Contractor through the date of termination, so long as TDI has accepted such products and services according to the terms of this Contract.

**IV. TERMS AND CONDITIONS.**

**4.01.** Contractor agrees to be bound by the terms and conditions in Section VI of RFP No. 454-21-0123-26981-EM, which are incorporated herein for all purposes.

**V. NOTICES.**

**5.01. NOTICES.**

- (a.) Any notice required or permitted to be delivered under this Contract will be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TDI or Contractor, as the case may be, at the address set forth below. Contractor will submit notices regarding the daily contract management activities of the Contract to the attention of the Contract Administrator. All other notices must be submitted to the Purchasing and Contract Administration Program.

For TDI  
*(Notifications regarding the daily contract management activities of the Contract)*

Texas Department of Insurance  
Program Area Division and Name  
333 Guadalupe St., P.O. Box 149104  
Austin, TX 78701  
Attention: Contract Administrator Name  
Phone: 512-676-XXX  
Email: XXXX.XXXX@tdi.texas.gov

For TDI  
*(Notification **not** pertaining to the daily contract)*

Texas Department of Insurance  
Administrative Operations – Purchasing and Contract Administration  
333 Guadalupe St., P.O. Box 149104



*management activities of the  
Contract)*

Austin, TX 78701  
Attention: xxxx  
Phone: 512-676-xxxx  
Email: Contracts@tdi.texas.gov

For Contractor

Contractor Name  
Contract Address, City, State, zip code  
Attention: Contact for Contractor  
Phone: xxx-xxx-xxxx  
Email: XXXXX@

- (b.) Notice given in any other manner will be deemed effective only if and when received by the Party to be notified. Either Party may change its address for notice by written notice to the other Party as herein provided.

## VI. TERMINATION.

**6.01. TERMINATION.** TDI may terminate or cancel the Contract in any one of the following circumstances:

- (a.) **Termination for Convenience.** TDI reserves the right to terminate the Contract at any time, in whole or in part, without cost or penalty, by providing 30 calendar days' advance written notice, if TDI determines that such termination is in the best interest of the state. In the event of such a termination, Contractor must, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TDI will be liable for payments limited only to the portion of work TDI authorized in writing and which Contractor has completed, delivered to TDI, and which has been accepted by TDI. All such work must have been completed, in accordance with Contract requirements, prior to the effective date of termination. TDI will have no other liability, including no liability for any costs associated with the termination.
- (b.) **Availability of State Funds; Legislative Action; Necessity of Performance.** The Contract is subject to termination or cancellation, without penalty to TDI, either in whole or in part, subject to the availability of state funds. TDI is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TDI becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render either TDI's or Contractor's delivery or performance under the Contract impossible or unnecessary, the Contract will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this Section, TDI will not be liable to Contractor for any damages which are caused or associated with such termination or cancellation, and TDI will not be required to give prior notice. Termination under this Section will not affect TDI's right to use previously paid Licensed Software through the term of each such license, nor any maintenance or support paid prior to such termination.

**6.02. TDI'S RIGHT TO RECOVER.** TDI reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to TDI under the Contract or under applicable law, including, but not limited to, attorneys' fees and court costs if termination or cancellation is at Contractor's request or if TDI terminates or cancels the Contract for cause. This right is in addition to any other remedies

available to TDI under the Contract or under applicable law. 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.

**6.03. NOTICE OF TERMINATION OR CANCELLATION DELIVERY.** Any termination by TDI of the Contract that requires notice may be accomplished by TDI's delivery to Contractor of a written notice of termination or cancellation specifying that the Contract is terminated or canceled.

**6.04. TERMINATION OR CANCELLATION EFFECTIVENESS.** Unless otherwise specified in this Contract, any termination or cancellation of the Contract will be effective upon the date specified in TDI's notice of termination or cancellation.

**6.05. TDI NOT LIABLE UPON TERMINATION.** If the Contract is terminated for any reason, TDI and the State of Texas will not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination.

**VII. EXECUTION SIGNATURES.**

**7.01. EXECUTION SIGNATURES.** By the signatures below, including electronically submitted signatures, each signatory represents and warrants that they have the authority to enter into this Contract on behalf of the respective Parties. The Parties agree this Contract may be executed in multiple counterparts.

**TEXAS DEPARTMENT OF INSURANCE**

**CONTRACTOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Date of Execution

## **CONTRACT ATTACHMENT 1 – NON-DISCLOSURE AGREEMENT**

Contractor agrees that all information regarding TDI or gathered, produced, collected, or derived from or related to this Contract, or provided to Contractor under this Contract, including but not limited to proprietary, privileged, confidential, or otherwise non-public information, (“Confidential Information”), must remain confidential subject to release only upon prior written approval of TDI. More specifically, Contractor agrees as follows:

1. The Confidential Information may include information collected from individuals or third-parties during the course of providing services under this Contract to which Contractor would not otherwise be entitled.
2. Contractor must obtain consent from any individual or third-party before using or selling Confidential Information for marketing, promotional, or revenue-generating purposes.
3. The Confidential Information may be used by Contractor only to assist Contractor in connection with the performance of this Contract with TDI.
4. Contractor must not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as consultant or independent contractor to TDI.
5. Unless otherwise provided in this Contract, Contractor agrees to maintain the confidentiality of all Confidential Information in the same manner that it protects the confidentiality of its own materials of like kind, but in no event less than reasonable care. Contractor must take reasonable precautions to protect the Confidential Information including, but not limited to, not disclosing Confidential Information in any manner to any person, firm, or entity, except for authorized employees, agents, or subcontractors of Contractor with a need to know who are bound by confidentiality obligations at least as stringent as those contained in this agreement prior to any disclosure of such Confidential Information. Contractor guarantees that any authorized employee, agent, or subcontractor of Contractor that will have access to Confidential Information will adhere to the requirements in this Non-Disclosure Agreement.
6. The Confidential Information may not be copied, reproduced, disclosed, distributed, or otherwise divulged without TDI’s prior written approval. As between Contractor and TDI, Confidential Information and any copies thereof will be the exclusive property of TDI, and deliverables under the Contract will be the exclusive property of TDI.
7. Contractor must not store the Confidential Information outside of the United States.
8. All Confidential Information made available to Contractor, including copies thereof, must be returned to TDI or destroyed by Contractor, as instructed, upon the first to occur of (a) expiration or termination of this Contract, or (b) request by TDI. If TDI instructs the Contractor to destroy all Confidential Information, Contractor must email notice of destruction to the TDI Primary Contact within three business days of TDI’s instruction.
9. The foregoing does not prohibit or limit Contractor’s use of the information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (a) previously known to it, provided such prior knowledge was not subject to a confidentiality obligation, (b) independently

developed by it, (c) acquired by it from a third-party under no obligation of confidentiality to TDI, (d) which is or becomes part of the public domain through no breach by Contractor of this Non-Disclosure Agreement or other contractual obligations to TDI, or (e) approved by TDI in writing for unrestricted disclosure.

10. If Contractor is required by applicable law, regulation, or legal process to disclose any Confidential Information, then Contractor must provide TDI with prompt notice of any such requirement prior to delivery of the Confidential Information to allow TDI a reasonable opportunity to seek a protective order or equivalent.
11. This Non-Disclosure Agreement will become effective as of the date Confidential Information is first made available to Contractor and will survive the expiration or termination of this Contract and be a continuing requirement.
12. Contractor, employees, and agents may be subject to criminal, civil, or administrative remedies if Contractor or an employee or agent discloses or uses Confidential Information in an unauthorized manner or in violation of this Non-Disclosure Agreement. If Confidential Information is disclosed or used in an unauthorized manner or in violation of this Non-Disclosure Agreement, Contractor (including any employee or agent) must notify TDI within 24 hours and email a detailed written description of the event to the TDI Primary Contact.
13. The breach of this Non-Disclosure Agreement by Contractor will entitle TDI to immediately terminate the Contract with Contractor upon written notice to Contractor for such breach. The parties acknowledge that the measure of damages in the event of a breach of this Non-Disclosure Agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether TDI elects to terminate this Contract with Contractor upon the breach hereof, TDI may require Contractor to pay to TDI the sum of \$5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to TDI in the event of a breach hereof by Contractor of this Non-Disclosure Agreement. TDI does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this Non-Disclosure Agreement.
14. This Non-Disclosure Agreement is governed by and construed under the laws of the State of Texas. Any and all obligations of this agreement are due in Travis County, Texas and venue is proper in only such county.

**By (Signature)** \_\_\_\_\_ **Date** \_\_\_\_\_

**Name (Printed)** \_\_\_\_\_

**Title** \_\_\_\_\_

