

EXHIBIT 1: GENERAL INFORMATION

Sealed proposals will be received until the specified date and time established for receipt of responses *above*.

Sealed proposals must be time-date stamped in the Texas Department of Insurance Purchasing and Contract Administration Division.

Proposals received later than the specified date and time for receipt of proposals, whether delivered in person or by mail, will be disqualified as **LATE** and will not be considered under any circumstances.

Submit Responses to one of the following:

<p>U.S. Postal Service to: Texas Department of Insurance Purchasing and Contract Administration Attn: Regina Durden P.O. Box 149104 Austin, Texas 78714-9104</p>	<p>Hand Deliver or Express Mail to: Texas Department of Insurance Purchasing and Contract Administration Attn: Regina Durden 333 Guadalupe, Tower I - Room 850 Austin, Texas 78701</p>
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Each Response must show RFP Number, Opening Date and Time on Return Envelope.

All Inquiries Regarding This Request for Proposals MUST Be Addressed To:

Regina Durden
Texas Department of Insurance
Purchasing and Contract Administration
Facsimile: 512-463-6159
E-mail: regina.durden@tdi.state.tx.us

1.1. Non-Mandatory Pre-Proposal Conference and Historically Underutilized Business (HUB) Presentation

A non-mandatory pre-proposal conference will be held on December 2, 2010 from 10 a.m. to noon, Central Time, Austin, Texas, in Room 225, Hobby Building, 333 Guadalupe, Austin, Texas 78701, for purposes of reviewing the RFP, responding to questions and presenting information regarding the TDI Historically Underutilized Business Program. All interested parties are urged to attend this meeting.

Neither representations made nor questions answered during the non-mandatory pre-proposal conference, shall materially affect, become incorporated into, or become any part of this RFP unless stated in a writing published on the Electronic State Business Daily as an Addendum to this RFP.

1.2. TDI Contact Person

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

For U.S. Mail:

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

For overnight, courier, and hand deliveries:

Regina Durden
Purchasing and Contract Administration
Texas Department of Insurance
333 Guadalupe, Room 840
Austin, Texas 78701

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

1.3. Schedule of Events

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

November 17, 2010	Issue RFP and post to Electronic State Business Daily (ESBD)
December 2, 2010, 10 a.m. to noon, Room 225, Hobby Building	Non-Mandatory Pre-Proposal conference and Historically Underutilized Business (HUB) Presentation
December 7, 2010; 10 a.m., Central Time	Deadline for submission of written questions. Late questions will not be answered.
Tuesday, December 14, 2010	Answers to written questions posted on the Electronic State Business Daily (ESBD)
Friday, January 7, 2011; 10 a.m. Central Time, Austin, Texas	Deadline for submission of proposals
Thursday, January 27, 2011	Expected Vendor Discussions (Presentations)
Thursday, February 10, 2011	Anticipated contract award(s)

1.4. Submission Deadline

Responses to this RFP must be time-stamped at TDI's Purchasing and Contracting Division ***before*** the hour and date specified on the Cover Page of this RFP. Late responses properly identified will be returned to Respondent unopened. Late responses will not be considered under any circumstances. TDI reserves the right to evaluate responses submitted prior to the stated deadline as they are received.

1.5. Manner of Submission

1.5.1. All proposals must be submitted in a sealed envelope, package or carton with a label that reads: **“Marketing & Advertising Services–To Be Opened By TDI Purchasing Division.”**

1.5.2. All proposals must be legible. Each Respondent must submit one (1) original proposal, exclusive of pricing information and signed in ink, six (6) copies of this signed proposal, one electronic copy provided in a PC- compatible format (DVD or flash drive) and six (6) each of any samples of work or Sample Tasks

required for purposes of evaluation and comparison with actual work produced by the Selected Respondent(s).

Required pricing information shall be submitted in one (1) original and transmitted to the TDI Contact named in Section 1.2, above, in a separate sealed envelope, package or carton, labeled in accordance with Section 1.5.1, above. The Respondent may make no other distribution of the proposal.

1.6. Proposal Evaluation and Contract Award

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

Evaluation Category	Weight
General Qualifications and Experience	30
Technical Qualifications, Experience & approach	30
Cost Proposal	40
Total	100

1.6.5. Past Performance

Respondent's past performance will be measured based on pass/fail criteria, in compliance with applicable provisions of §§ 2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, TEX. GOV'T CODE. Respondent may fail this selection criterion for any of the following conditions:

- a. A score of less than 90% in the Vendor Performance System;
- b. Currently under a Corrective Action Plan through the CPA;
- c. Having repeated negative Vendor Performance Reports for the same reason;

- d. Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.). Respondent performance information is located on the CPA website at:

http://www.cpa.state.tx.us/procurement/prog/vendor_performance/

TDI may conduct reference checks with other entities regarding past performance. In addition to evaluating performance through the Vendor Performance Tracking System (as authorized by 34 TEX. ADMIN. CODE §20.108), TDI may examine other sources of vendor performance including, but not limited to, notices of termination, cure notices, assessments of liquidated damages, litigation, audit reports, and non-renewals of contracts. Any such investigations shall be at the sole discretion of TDI, and any negative findings, as determined by TDI, may result in non-award to the Respondent.

- 1.6.6. Following the Initial Evaluation, TDI may establish a competitive range and request oral presentations from one or more Respondent determined to fall within the competitive range, or may enter into a Best and Final Offer (BAFO) process with one or more Respondents determined to fall within the competitive range. The BAFO process, if exercised, will allow the requested Respondent(s) to modify original responses, incorporating clarifications provided during the Initial Evaluation Phase. The BAFO would then be re-evaluated and re-scored by the Evaluation Committee, using the criteria outlined in this Section 1.10. If, in its sole discretion, TDI opts to require oral presentations or a BAFO, participating Respondent(s) will have an established time period during which to exercise due diligence, to confirm that all RFP requirements have been identified, and to prepare their presentations and or BAFOs.
- 1.6.7. TDI, in its sole discretion, may enter into a Negotiation Phase. TDI will have the option to negotiate a Respondent's proposal, including but not limited to price and services features. TDI reserves the right to continue to evaluate responses until such point as the best value for the State is determined.

At the conclusion of oral presentations and/or the BAFO process described in Section 1.6.6, if any, TDI shall determine the number of Respondents with which it will begin contract negotiations. TDI may enter contract negotiations with one or more Respondents. At its discretion, TDI shall terminate contract negotiations when TDI determines that the best value for the State has been obtained.

If a BAFO is not used, TDI may re-score proposal responses, including any clarifications by Respondents and any information detailed through the oral presentation phase, if any, according to the criteria set forth in Section 1.10.4 of this RFP. TDI may proceed in making an award by formalizing any and all

negotiated changes to the RFP in writing, and submitting the revised RFP to the Selected Respondent for review prior to making an award.

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

TDI will award a contract to the Respondent(s) whose response best conform(s) to the specifications, terms and conditions set forth in, and with the standards of performance indicated by, this RFP, and whose offer represents the best value to TDI and the State (see Sections 1.10.7 and 1.15 of this RFP).

1.7. Procurement Authority

This RFP and all activities leading toward the execution of a written contract pursuant to this RFP are being conducted pursuant to authority granted under TEX. GOV'T CODE Ch. 2155 and the applicable laws of the State of Texas. This RFP contains the instructions governing the requirements for a proposal to be submitted by interested Respondents, the format in which the proposal is to be submitted and the material to be included in the proposal, the requirements that must be met to be eligible for consideration, the method of selecting a Respondent, and the Selected Respondent's duties and responsibilities.

1.8. No TDI Obligations for Costs

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

1.9. Selected Respondent(s) Obligations

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

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

1.10. Press Releases

Press releases pertaining to this RFP and/or any resulting contract or the services to which they are related shall not be made without the prior written approval of TDI, and then only in accordance with explicit written instructions from TDI. The disclosure of the contents of proposals prior to the award of a contract under this RFP may result in disqualification. See also Exhibit 3, Section 3.14 of this RFP.

1.11. Purchase Order (Contract) Award.

TDI, in its sole discretion, may award to one or more vendors based on evaluation criteria set forth in the Section 1.6 of the RFP and the best interest of TDI and the state of Texas.

1.12. Misunderstanding or Lack of Information

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

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

1.13. Compliance with RFP Requirements

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

proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP. See also Exhibit 4, Section 4.17 of this RFP.

1.14. Binding Effect of Proposal

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

1.15. Rejection of Proposal and Cancellation of RFP

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

1.16. Right to Amend, Modify, or Withdraw the RFP

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

1.17. Pre Proposal Conference and HUB Presentation

During the pre-proposal conference referenced in Section 1.1 of this RFP, TDI will answer any questions regarding subcontracting and the required Historically Underutilized Business (HUB) Subcontracting Plan (HSP) described in Exhibit 3, Section 3.7 and Exhibit 4, Section 4.12 of this RFP.

1.18. Written Questions and Official Response

Respondents may submit written questions addressed to the TDI contact person identified in Section 1.2 of this RFP. All questions must be received in writing via e-mail, by the TDI Contact Person no later than December 7, 2010, at 10 a.m., Central Time. The e-mail reference line must state: "**No. 11-RD-MARKETING QUESTIONS.**" Questions may also be faxed. Telephone inquiries will not be

answered. It is the sole responsibility of Respondents to verify timely receipt of faxed questions. Responses to timely submitted questions that are not already addressed in the RFP will be posted on the Electronic State Business Daily (ESBD) by **close-of-business on Tuesday, December 14, 2010.**

1.19. Ambiguity, Conflict, Discrepancy, Exclusionary Specification or Omission

If a Respondent discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission or other error in this RFP, Respondent shall immediately notify, in writing, the TDI contact person specified in Section 1.2. If a Respondent fails to notify the TDI contact person of any error, ambiguity, conflict, discrepancy, exclusionary specification or omission, the Respondent shall submit a response at its own risk; and, if awarded a contract, the Selected Respondent shall not be entitled to additional compensation, relief or time by reason of the error or its later correction.

1.20. No Alterations or Withdrawals of Offers after Deadline

Responses cannot be altered or amended after the deadline specified on the Cover Page of this RFP. Any alterations made before this deadline must be initialed by Respondent or Respondent's authorized agent and transmitted to TDI prior to the deadline and marked: "**SUPERCEDING PROPOSAL.**" No responses can be withdrawn after the deadline without approval by TDI's Purchasing and Contracting Division of Respondent's written explanation for withdrawal.

1.21. Facsimile Response

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

1.22. Mail Preferred; TDI Not Liable

RFPs are issued to allow sufficient time for receipt of the preferred mail response. If TDI provides facsimile service under Section 1.21 of this RFP, it is as a convenience only. TDI is not responsible for responses received late, illegible, incomplete, or otherwise non-responsive due to failure of electronic equipment or of Respondent's operator error.

1.23. Public Information

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

disclosure should be clearly designated as such; such information may or may not be exempt from disclosure. Vague and general claims to confidentiality are not acceptable.

1.24. Protest Procedure

Any protest shall be governed by TDI's rules regarding Procedures for Vendor Protest of Procurements, set forth in 28 TEX. ADMIN. CODE §§1.1101 – 1.1107.

1.25. Survival

Provisions of this RFP which of their nature and effect are necessary to enable TDI to function normally and to meet all of its obligations, shall survive any termination of any contract. These provisions include, but are not limited to, all of the warranties and representations and any provision that by its terms provides for applicability beyond the contract period.

1.26. Preferences

Respondents must determine if any of the preferences listed in Exhibit 4, Section 4.20 of this RFP can or will be claimed.

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EXHIBIT 2: SPECIFICATIONS

2.1. Project Scope for Blanket Advertising and Marketing Services

The Scope of Work includes, but is not limited to, the following:

Selected Respondent shall provide the services described in Part II of this RFP. Selected Respondent shall be awarded a blanket contract to be used on an as-needed-basis for advertising and marketing services as required by TDI staff. TDI will request services as needed through a work order request form. All requests for services will be finalized with an approved work order or a contract amendment if the specific services or expenditures are not included in the contract.

2.1.1. Account Management and Support Services

1. Selected Respondent must meet or exceed the following criteria and expectations:

- a. Adds value by proposing results-oriented marketing and creative strategies.
- b. Routinely includes research in its developmental and evaluation processes.
- c. Submits clear, timely progress reports according to the project schedule.
- d. Adopts a policy which, for the purposes of this RFP, is a policy that, to the extent possible, eliminates any misinterpretation, unexpected or unplanned changes regarding the scope of work, the deliverables, the budget constraints, and other requirements outlined in this RFP for the duration of the project or campaign.
- e. Meets interim and final deadlines.
- f. Works within budget.

2. Selected Respondent must meet or exceed the following services and deliverables:

- a. Develop, propose and execute communications and/or outreach strategies most likely to reach program goals.
- b. Strategy will identify: target audience (demographic and psychographic variables); media market(s); formative-research needs; strategy rationale and justification; objectives that will be met in support of program goals; evaluation processes and measurements, among others as assigned by contracting program.
- c. Support research activities by: collaborating with contracting program and market-research firm to identify, clearly define and meet research needs and objectives; reviewing survey instruments, discussion guides or questionnaires; preparing professional concept- or story-boards to test with members of the target audience; applying research findings to overall communications and/or creative strategies, among others as assigned by the contracting program.

- d. Develop, produce and distribute/disseminate creative materials that are: audience-centered; research-driven and tested; and suited to fit the format of the selected media. All conventional and emerging media must be considered, including: television, radio, print, Internet, outdoor advertising and social networking.
- e. Develop and produce websites that attract visitors and that can be integrated into a comprehensive marketing campaign. Websites should be able to support video streaming, podcasting, online chats and other emerging technologies. Websites should be able to report statistics beyond page hits and page views.
- f. Develop a recognizable brand and protect intellectual property rights for TDI.
- g. Solicit involvement and support of partner organizations and state agencies, as appropriate.
- h. Make TDI aware of any possible media sponsorships and the cost-efficiency of such sponsorships.
- i. Plan and coordinate special events and activities.
- j. Evaluate marketing, advertising and public relations activities and campaigns for effectiveness using appropriate evaluation processes, methodologies and measurements. This may include tracking awareness, attitudes and practices of target audience(s) prior to, during and following campaigns and activities to determine effectiveness in achieving desired goals, objectives and outcomes.
 - o Shall provide a written narrative of data gathered through evaluation methods.
 - o Shall mutually agree upon frequency of reports with TDI after a specific project has been assigned.
- k. Plan and implement innovative, effective and culturally appropriate strategies, activities and campaigns for Hispanic audiences whose primary language is Spanish.
- l. Proactively and effectively address anticipated complex or controversial communication issues.
- m. Effectively address unexpected or unforeseen controversial communication issues.
- n. Submit monthly progress and budget reports per project including measurable objectives every 30 days with the invoices at a minimum.
- o. Submit a comprehensive final report at the end of each individual project or campaign to document the results of the work performed under this purchase order.

- p. Attend meetings as requested and deemed necessary by TDI to discuss the project or campaign.
- q. Maintain records.
- r. Develop project timelines.
- s. Develop and work within project budget (provide invoices on agreed upon schedule).

**2.1.2. Planning and Execution of Results-Oriented Advertising and Outreach
Selected Respondent must meet or exceed the following criteria and expectations:**

1. Strategic – Advances a program’s goals, objectives and action plan; and makes sense given the purpose, audience and budget parameters.
2. Results-oriented – Is developed and implemented to ensure effectiveness and achieve desired outcomes and will identify measurable objectives to be included in status reports and updates.
3. Highly targeted – Reflects a genuine understanding of the target audience at every step, culminating in information or messages that have meaning for that particular target audience and which is disseminated/distributed through channels used by that audience.
4. Creative – Seeks to appeal to the target audience as it motivates the desired change in attitude or behavior.
5. Budget management – Will assist the contracting program in managing the project’s budget and will be responsible for notifying the program if and when a project is in jeopardy of cost overruns not agreed to in the project scope of work.

2.1.3. Placement of Purchased or Donated Media

Selected Respondent must meet or exceed the following criteria and expectations:

1. Media buys aimed at target audience(s).
2. Media “flights” aimed at target audience(s).
3. Donated airtime aimed at target audience(s). Selected Respondent(s) shall attempt to negotiate bonus spots from all radio and TV stations included in any TDI buy. Any bonus spots provided by participating stations shall be identified in the summary of any media buy and the value of the bonus spots shall be calculated as a savings to TDI. Selected Respondent(s) shall establish a goal for bonus spots subject to TDI approval, based on estimated spending over each contract year.

4. Donated airtime to be monitored and verified by independent monitoring service.
5. Selected Respondent(s) will negotiate media purchases and will make TDI aware of any savings that might be achieved through long-term commitment or other specialized programs.
6. Media purchases and/or placements are confirmed via mutually agreed upon verification methods. Selected Respondent(s) will provide, at no cost to TDI, affidavits, tear sheets or any other placement verification requested by TDI. Placement verification documents shall indicate the run dates and/or times and the circulation or ratings achieved.
7. Selected Respondent(s) shall store all past and current film and placement verification associated with TDI. The Selected Respondent(s) shall store all film and placement verification in a manner consistent with industry standards. Selected Respondent(s) shall aid in any transition of film and placement verification to any new arrangement and provider, if applicable.

2.1.4. Deliverables

Selected Respondent(s) will be required to meet all deliverables, including timelines, expectations and milestones outlined in the project scope of work approved by TDI.

2.1.5. TDI Responsibilities

TDI will:

1. Identify specific marketing and public relations initiatives and projects.
2. Provide overall budget for specific marketing and public relations initiatives and projects.
3. Seek competitive proposals for specific projects using a work order request form. The form will be sent to the Selected Respondent(s) under the resulting contract or purchase order(s). If a contract is awarded to multiple contractors, responses to work orders will be evaluated and awarded to the contractor with the best value.
4. Provide management supervision, technical assistance and written approval of all finished products prior to release, implementation or payment of any material developed.
5. Provide written response to the contractor's work order request form and pricing proposal within twenty (20) state working days of receipt.
6. Conduct periodic meetings with vendor to monitor progress of work.
7. Provide any necessary report formats and forms as mutually agreed upon by the vendor and TDI.

2.2. Description of Required Services for the Healthy Texas Program

In addition to the general requirements and services described above in Section 2.1 of this RFP, Selected Respondent must provide specific services in connection with the Healthy Texas Program marketing initiative (the “initiative”). The Selected Respondent must provide the services as described in this section. TDI reserves the right to expand or restrict the list as needed.

2.2.1. Healthy Texas Program Marketing and Advertising Objectives

The Healthy Texas Marketing and Advertising program will be a statewide marketing initiative focusing primarily on developing and implementing an outreach and communication strategy for the Healthy Texas program. Ultimately, the objectives are to increase program awareness among the target audience, maximize enrollment for eligible small employers and their employees and continue to generate interest and involvement in and support of the program among stakeholders.

Because the Healthy Texas target audience is small employers and their employees who have not had insurance in the past, the outreach and communication strategy should specifically describe how Selected Respondent proposes to design and implement effective outreach and messaging for this group. In addition, Selected Respondent must explicitly describe its plan to create and implement innovative, effective and culturally appropriate strategies, activities, and campaigns for Hispanic audiences whose primary language is Spanish.

2.2.2. Description of Required Services

Subject to TDI final approval, the Selected Respondent shall:

1. Develop and propose an outreach and communication plan which includes, but is not limited to the following elements:

a. Outreach and Communication Strategy

As defined in section 1508.001(a) of the Texas Insurance Code, the purposes of the Healthy Texas program, which are also considered the overarching program goals, are to:

- Provide access to quality small employer health benefit plans at an affordable price;
- Encourage small employers to offer health benefit plan coverage to employees and the dependents of employees; and
- Maximize reliance on proven managed care strategies and procedures.

The objectives related to outreach and communication are to:

- Increase program awareness among the target audience;
- Maximize enrollment for eligible small employers and their employees; and
- Continue to provide key stakeholders (e.g., legislators, health insurance industry representatives, consumer advocates, 3-Share programs, providers) with necessary information for their continued interest and involvement in and support of Healthy Texas.

Using key program goals and objectives defined above, Selected Respondent must identify, for TDI's review and approval, specific outreach and communications strategies for meeting these goals and objectives. Strategies identified must be:

- plans or approaches that are clearly connected to the goals and objectives identified;
- measurable and actionable;
- reflect a thorough understanding of the small group market and the uninsured population in Texas, including history and demographics;
- focused specifically on the Healthy Texas target audience: small employers and their employees who have not had health insurance in the past; and
- include effective and culturally appropriate approaches for Hispanic audiences whose primary language is Spanish.

b. Outreach and Communication Outcomes

Based on outreach and communications strategies defined in Section 2.2.2.1(a) of this RFP, Respondent must define outreach and communication outcomes that are planned for the Healthy Texas marketing initiative.

c. Market Research

Selected Respondent must collaborate with TDI to identify and meet research needs, including reviewing survey instruments, discussion guides, and other research tools, preparing concepts or storyboards to test with members of the target audience(s) and applying research findings to the overall marketing and communication plan. Selected Respondent must coordinate with participating carriers and 3-Share programs as necessary.

d. Key Messaging

Selected Respondent must develop key messaging for Healthy Texas' targeted audiences. This messaging should be research-based and designed for the target audiences(s) and appropriate selected venues.

Multiple creative options should be presented to TDI as choices in a preliminary presentation. TDI may request up to three (3) revisions at no additional charge.

e. Event Planning

TDI plans to hold Healthy Texas outreach and information meetings for target audience(s) throughout Texas. Cities currently being considered:

- | | |
|------------------|--------------------------|
| - Austin | - Fort Worth |
| - Amarillo | - Houston |
| - Brownsville | - Lubbock |
| - Corpus Christi | - San Antonio |
| - Dallas | - Other cities as needed |
| - El Paso | |

TDI will conduct the primary event planning for these outreach and information meetings, but Respondent must propose an approach for their involvement in these meetings that is consistent with the overall outreach and communication plan being recommended. Respondent must attend these events if requested to do so by TDI. Respondent may propose additional outreach events and must include a proposed approach and timeline. Respondent must propose an approach for attendance recruitment for these events that specifically targets potentially eligible small employers.

f. Marketing Collateral and Advertising

Selected Respondent must develop, produce and distribute creative materials for print, radio, outdoor, television, Internet and other appropriate venues. These materials should be research-based, designed for the target audience(s), and appropriate selected venues. Multiple options should be presented to TDI as choices in a preliminary presentation. TDI may request up to three (3) revisions at no additional charge.

Selected Respondent must solicit free media time and space for public service announcements, as appropriate, and shall purchase media time and space for programs and messages appropriate to the identified target audiences(s). Advertising media may include, but are not limited to:

- Print, television, and radio advertisements;
- Outdoor (billboards);
- Public service announcements (including closed caption);
- Audio files;
- Educational materials and promotional items;

- Internet-based marketing or public relations projects; and
- Others, as may be appropriate to the outreach and communication plan approved by TDI.

Respondent must develop logo and branding graphics for in-house marketing material and website creation/usage. Any logo and branding graphics developed for website creation/usage must be optimized for the website.

Respondent must develop a press kit and must also provide input on design and materials for communication with legislative staff, as requested.

Selected Respondent must maintain records of all vendor-assisted and non-assisted placements, including all print, broadcast, and Internet publicity. In doing so, Selected Respondent(s) shall use a standard method, approved by TDI, to calculate and report advertising equivalency value for all publicity generated, providing reports on the types and amount of complimentary promotional assistance provided. The frequency and types of reports shall be determined by TDI and agreed upon by TDI and the Selected Respondent prior to contract execution.

g. Evaluation Processes and Measurements

Selected Respondent must develop strategies for measuring effectiveness of the proposed activities toward the achievement of program goals. Selected Respondent must evaluate marketing, advertising and public relations activities and campaigns for effectiveness using appropriate evaluation processes, methodologies and measurements. This task may include tracking awareness, attitudes, and practices of target audience(s) prior to, during and following campaigns and activities to determine effectiveness in achieving desired goals, objectives and outcomes.

Selected Respondent must provide a written narrative of data gathered through evaluation methods that includes data collection and evaluation methodologies as well as a summary of the findings.

h. Web Design

Respondent must advise on website design to effectively allow for Healthy Texas outreach and communication. Materials or website design components must include:

- Efficient, well-structured, logically marked-up code using CSS for the presentation style.

- A commitment to work with TDI's PIO web team and Healthy Texas team (including Web Administrator) on design approval.
- All developed code must meet accessibility standards (Section 508 of the US Rehabilitation Act).
- All developed code must be well-formed and validated XHTML using XHTML 1.0 Transitional document type standard.
- Cross-browser compatibility to provide a better experience for the greatest number of users.
- Compliance with specifications for Healthy Texas server and software environment (See Appendix 1 of this RFP).

See also Exhibit 3, Section 3.35 of this RFP.

i. Complex or Controversial Communication Issues

Respondent must proactively and effectively identify and address anticipated complex or controversial communication issues.

j. Others as Assigned by Healthy Texas Program

Respondent must provide additional services that may be requested by TDI.

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EXHIBIT 3: TDI CONTRACTUAL TERMS AND CONDITIONS

3.1. Introduction

This Exhibit 3 of the RFP describes the terms and conditions that apply to the procurement process and that will become part of any contract executed pursuant to this RFP. Any conflict between these terms and conditions and those set forth in Parts A and B of this RFP, shall be resolved in favor of Parts A and B.

3.2. Contract Documents

3.2.1 Any Purchase Order/contract between TDI and Selected Respondent will follow the format specified by TDI. TDI reserves the right to negotiate provisions in addition to those set forth in this RFP. The contents of this RFP, as modified by any addendum and the Selected Respondent's proposal, will be incorporated into the contract. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence:

- a. the written contract (Purchase Order);
- b. the RFP; and
- c. the Selected Respondent's successful proposal.

Specific exceptions to this general rule may be noted in the Purchase Order.

3.2.2 Terms and conditions listed within this section are not negotiable. Individuals or firms that are unable to agree to these terms and conditions should not submit proposals in response to this RFP.

3.3 Amendments & Additional Language

Selected Respondent and TDI, by mutual agreement, may modify the term, scope, personnel and parties set forth in this RFP or any resulting contract. The amendment must be in writing and signed by all parties. To the extent the laws of Texas require TDI to include additional language in its contract; the Selected Respondent agrees to amend any resulting contract and to cooperate in the execution of any amendment necessary to effectuate such state law. During the term of a resulting contract, if any, and any extensions or renewals, TDI reserves the right to request amendments as is determined to be in the best interests of TDI or the state. TDI reserves the right to add or delete similar services and to adjust Selected Respondent's compensation accordingly by issuing a contract amendment.

3.4. TDI's Contracting Authority

TDI issues this RFP pursuant to TEX. GOV'T CODE Ch. 2155 and the Commissioner of Insurance or the Commissioner's designee has the full right, power and authority to

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

3.5. Relationship of the Parties

Selected Respondent and TDI agree and understand that the Selected Respondent will render services under any resulting contract as an independent contractor and nothing contained in the contract will be construed to create or imply a joint venture, partnership, principal/agent or any other relationship between the parties. The employees of the Selected Respondent will not be considered employees of TDI within the meaning of any federal, state or local law, ordinance or regulation including, but not limited to, laws, ordinances or regulations concerning unemployment insurance, social security benefits, workers' compensation or withholding requirements. Selected Respondent will be responsible for complying with any such laws, ordinances or regulations, and will indemnify and hold harmless TDI from any costs or damages sustained by TDI resulting from the Selected Respondent's breach of its obligations under this section.

3.6. Subcontracting

3.6.1. Selected Respondent may not subcontract for any of the services required under the awarded contract without the prior written consent of TDI. If any part of the contract between TDI and the Selected Respondent is to be subcontracted, the subcontractor must comply with all applicable requirements of this RFP. Selected Respondent is prohibited from subletting, conveying, assigning or otherwise disposing of any contract resulting from this RFP, its rights, title or interest therein, or its power to execute such agreement to any other company, corporation or entity without the previous consent and written approval of TDI.

3.6.2. In the event TDI approves of the use of subcontractors in performance of this contract, Selected Respondent is not relieved of its responsibility and obligation to meet all the requirements of this RFP.

3.6.3. Selected Respondent expressly understands and acknowledges that, in entering into any approved subcontract, TDI or the state of Texas is not liable to any subcontractor of Selected Respondent for any amounts. Selected Respondent will retain responsibility for ensuring that the performances rendered under any subcontracts comply with all requirements of this procurement as if such performances were rendered by Selected Respondent. As a result of any such subcontracts, TDI will incur no additional obligations nor will the obligations of the Selected Respondent be reduced.

- 3.6.4. Selected Respondent agrees to hold TDI harmless from any of the claims of its subcontractors. Respondent will not disclose any information to which it is privy under this contract without the prior consent of the agency. Selected Respondent agrees to indemnify and hold harmless the state of Texas, its officers and employees, and TDI, its officers and employees for any claims or damages that arise from the disclosure by Respondent or its subcontractors of information held by the state of Texas.
- 3.6.5. Selected Respondent must provide TDI with a copy of any subcontractor agreements entered into as a result of this RFP upon execution of the subcontract agreement.

3.7. Subcontracting with Historically Underutilized Businesses (HUBs).

Historically Underutilized Businesses (HUBs) are strongly urged to respond to this RFP. Under state law, state agencies are required to make a good faith effort to increase the contract awards to HUBs for the purchase of goods or services that State agencies expect to make during a fiscal year. [For example, see rules promulgated at 34 TEX. ADMIN. CODE §§ 20.11 through 20.28.] Respondents that meet the qualifications are strongly encouraged to apply for certification as HUBs. Please contact Texas Procurement and Support Services (TPASS) Director of Business Services, at (512) 463-3612, or the TDI Contact Person specified in this RFP if you have any questions regarding the certification process. Respondents may also contact TPASS at (512) 463-5872 for additional HUB certification information.

With the prior written approval of TDI, Respondents may subcontract for a portion of the work to be provided under the contract. If the expected value of the contract is in excess of \$100,000.00 and TDI has determined that subcontracting is a probability, then the Respondents submitting a response to the RFP are required to include a HUB subcontracting plan. Where a subcontracting plan is required, the bid must contain a subcontracting plan to be considered responsive. Failure to submit a subcontracting plan will disqualify the bid. [See Texas Comptroller of Public Accounts (CPA) rules applicable to certain subcontracts at 34 TEX. ADMIN. CODE § 20.14.]

TDI has determined that subcontracting is probable with this RFP. Proposers who intend to subcontract in any of the areas indicated in the following HUB Subcontracting Tables must perform the good faith effort outlined in the HUB Subcontracting Plan (HSP) and Self Performance HUB Contracting Plan instructions in this section and in Exhibit 4, Section 4.12 of this RFP. Full commodity descriptions listed in the tables may be found on the Comptroller of Public Accounts website in the National Institute for Government Purchasing (NIGP) Commodity Book Listings at:

http://www.window.state.tx.us/procurement//com_book/commall.html

The HUB Subcontracting Plan and Self Performance HUB Contracting Plan must be submitted with the RFP response to be considered responsive. The HUB

Subcontracting Prime Contractor Progress Assessment Report must be submitted on a monthly basis after a contract award has been issued. All HUB forms can be obtained from the Comptroller of Public Accounts website:

<http://www.cpa.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/>

HUB SUBCONTRACTING TABLES

CLASS 915: Communications and Media Related Services	
Item Number	Commodity Description
915-01	Advertising Agency Services
915-04	Advertising, Outdoor Billboard, etc.
915-06	Audio Production
915-08	Audio Media Duplicating Services (Incl. Dubs, Tapes, etc.)
915-14	Broadcasting Services, Radio
915-15	Broadcasting Services, Television
915-27	Editorial Services
915-48	Graphic Arts Services (Not Printing)
915-58	Mailing Services (Incl. Addressing, Collating, Packaging, Sorting and Delivery)
915-59	Mail Services, Express
915-72	Photography
915-74	Radio Commercial Production
915-82	Video Production
915-90	Video Media Duplicating and Production Services (Including CD, Tapes, etc.)
915-96	Web Page Design and/or Management Services
CLASS 961: Miscellaneous Services (Not Otherwise Classified)	
Item Number	Commodity Description
961-53	Marketing Services (Incl. Distribution, Research, Sales Promotions, etc.)
961-75	Translation Services
CLASS: 962: Miscellaneous Services No. 2 (Not Otherwise Classified)	
Item Number	Commodity Description
962-24	Courier/Delivery Services (Including Air Courier Services)
962-34	Event Planning Services
CLASS: 965: Printing Preparations: etching, photoengraving, and preparation of mats, negatives and plates	
Item Number	Commodity Description
965-15	Artwork, Camera Ready
965-46	Graphic Design Services for Printing
965-70	Pre-press: Color Separations, Composite Film, Stripping, Chromo line

	or Match-Print Proof, etc.
CLASS: 966: Printing and Typesetting Services	
Item Number	Commodity Description
966-57	Offset Printing, General, Small Press Work (Qty. Up to 25,000), etc.
966-60	Printing, Large Production Runs (Qty. Up to 100,000), etc.
966-84	Silk Screen Printing
966-86	Specialty Printing: Die Cutting, Laser, Plastic, etc.

3.8. Staffing

Selected Respondent shall not employ or contract with or permit the employment of unfit or unqualified persons or persons not skilled in the tasks assigned to them. Selected Respondent shall at all time employ sufficient labor for completing work in the manner and time prescribed by any contract awarded pursuant to this RFP. Selected Respondent must maintain throughout the period of any awarded contract the ability to support its assigned staff with the required resources and ensure project continuity by replacing project staff, if necessary, with persons having the requisite skills and experience. Selected Respondent may replace key contract administration personnel, such as an Account Manager, only with prior written approval from TDI. Selected Respondent must provide TDI with a minimum five-day notification in writing of proposed changes to key contract personnel, such as an Account Manager, including the name(s) of proposed replacement staff and the details of their requisite skills, experience and other qualifications.

Selected Respondent shall be responsible to TDI for the acts and omissions of the Selected Respondent's employees, agents, representatives, and subcontractors and the Selected Respondent shall enforce strict discipline among the Selected Respondent's employees, agents, representatives, and subcontractors performing the services under any resulting contract. Any person employed by the Selected Respondent shall, at the written request of TDI and within TDI's sole discretion, be removed by the Selected Respondent from work relating to the contract.

3.9. Non-Discrimination

Each Respondent agrees to comply with all federal and state laws, rules and regulations involving non-discrimination on the basis of race, color, religion, national origin, age, sex and disability.

3.10. Contract Term

3.10.1. The term of any contract resulting from this RFP shall commence on execution by the parties and continue through August 31, 2012. TDI, at its sole option and in its sole discretion may extend any contract resulting from this RFP for up to four (4) additional one (1) year periods. In the event of such renewal, the scope of services, deliverable dates, and contract amount may be negotiated. In

addition, certain provisions, including but not limited to the indemnification provisions, will survive the termination or expiration of the contract.

- 3.10.2. At the end of the contract term or the termination of the contract for any reason, the Selected Respondent shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and contractor, if applicable.

3.11. Termination and Cancellation

TDI reserves the right to terminate this contract, in whole or in part, upon the following conditions.

- 3.11.1. Upon the mutual written agreement of both TDI and the Selected Respondent, the contract can be terminated at any time with forty-five (45) calendar day's written notice except in the case of nonperformance or for cause.
- 3.11.2. TDI may, in its sole discretion, terminate or cancel the contract with thirty (30) days written notice to Respondent. In the event of such termination, Respondent shall be paid for all services provided prior to the date of the termination.
- 3.11.3. In the case of nonperformance or for cause, TDI may terminate the contract with thirty (30) calendar days' notice.
- 3.11.4. If, in the opinion of TDI, there is a danger to the interest of the insurance industry or to the citizens of this state, or Selected Respondent has violated any state laws or rules of TDI, then TDI shall have the right to permanently terminate the contract or to temporarily suspend it.
- 3.11.5. Upon the filing of a petition for bankruptcy, or upon the judgment of bankruptcy or insolvency by or against the Selected Respondent, TDI may terminate this contract for cause without notice.
- 3.11.6. Any resulting 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 that would render the services to be provided by Selected Respondent under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this section, TDI will not be liable to the Selected Respondent for any damages that are caused or associated with such termination or cancellation and TDI will not be required to give notice.

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

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

3.12. TDI Not Liable Upon Termination.

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

3.13. Force Majeure

Except as otherwise provided, neither the Selected Respondent nor TDI shall be liable to the other for any delay in, or failure of performance of, any requirement contained in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. Force majeure is defined as those causes generally recognized under Texas law as constituting impossible conditions. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

3.14. News Releases

Selected Respondent shall not issue any news releases or publish information to the public pertaining to this procurement process or the performance of any contract awarded by TDI without prior written approval of the TDI, and then only in cooperation with TDI. For any required disclosure or any public release of information of any kind, including a non-required disclosure, that is under a deadline imposed by any statutory or regulatory authority, the Selected Respondent shall seek approval from TDI no less than two (2) business days prior to the deadline for the release of the information. In any case in which a deadline for a release of information exists, approval of the release by TDI shall neither be construed as an endorsement of the release, as assent to the content of the release, as an indication of the accuracy of the information in the release, nor as any admission of any kind regarding any subject covered in the release. See also Exhibit 1, Section 1.10 of this RFP.

3.15. Advertising

Selected Respondent agrees not to use TDI's name, logos, images, nor any data or results arising from this procurement process or the contract awarded pursuant to this RFP as a part of any commercial advertising, or to promote the Selected Respondent in another jurisdiction's procurement process or in any other procurement process whether of another jurisdiction or the private sector, without prior written approval by TDI.

3.16. Payment of Taxes

TDI shall have no responsibility whatsoever for the payment of any federal, state or local taxes that become payable by the Selected Respondent or its subcontractors, or their agents, officers or employees, by reason of the contract. The Selected Respondent shall pay and discharge when due all such taxes, license fees, levies and other obligations or charges of every nature.

3.17. Accounting Records

Selected Respondent and its subcontractors are required to maintain their financial and accounting books, records and other evidence pertaining to the contract in accordance with generally accepted accounting principles and other procedures specified by TDI. These records must be made available to TDI, its internal auditor or external auditors (and other designees) and the Texas State Auditor at all times during the contract period and for a minimum of five (5) full years after (i) the expiration or termination date of any contract awarded pursuant to this RFP or (ii) the final payment under any contract awarded pursuant to this RFP, whichever is later.

3.18. Patents, Copyrights, Trademarks and Trade Secrets

Selected Respondent hereby represents and warrants that no program, process, compositions, writing, equipment, appliance or device, or any trademark, service mark, logo, idea, or combination of ideas, or any other work or invention of any nature or any other tangible, intangible or intellectual or conceptual property whatsoever developed, provided or used by the Selected Respondent in connection with its performance under this contract, infringes or will infringe any patent, copyright, trademark, logo, or service mark of any other person, or is or will be a trade secret of any other person. On request, Selected Respondent shall provide TDI with documentation indicating a third party's written approval for the Selected Respondent to use the third party's trademark or trade secret.

3.19. Copyright Liability

3.19.1. Selected Respondent shall indemnify and hold harmless the state of Texas, TDI, its directors, agents, and employees and their respective successors, heirs,

representatives, administrators, and assigns from liability of any nature or kind arising out of a claim or suit for or on account of the use of any copyrighted or non-copyrighted composition, trademark, service mark, secure process, patented invention, article or appliance furnished or used in the performance of any contract resulting from this RFP. The Selected Respondent agrees to cooperate fully with the state's Attorney General or any other legal counsel of TDI in the defense of any and all such suits and pay the costs and expenses incidental thereto, subject to the right of the Selected Respondent to provide additional legal counsel at the Selected Respondent's own expense.

3.19.2. If items furnished in the course of the contract become the subject of a lawsuit or claim of infringement, or the Selected Respondent becomes aware that such items are likely to become the subject of a lawsuit or claim of infringement, the Selected Respondent may exercise one (1) of the following two (2) options in order to provide TDI with continued uninterrupted use of the items for the purposes of and as contemplated by the contract:

- a. obtain for TDI the right to continue the use of the alleged infringing item at no additional cost to TDI; or
- b. substitute for the alleged infringing item other equivalent or better items deemed satisfactory to TDI in its sole discretion at no additional cost to TDI.

3.20. Successors and Assigns

3.20.1. Subject to the limitations on assignment contained herein, the contract shall inure to the benefit of, and be binding upon, the successors and assigns of the Selected Respondent and TDI.

3.20.2. No right or obligation of the Selected Respondent under any contract may be assigned by the Selected Respondent without the prior written approval of TDI, and in the event of any such approval, the terms and conditions hereof shall apply to and bind the party or parties to whom the contract is assigned as fully and completely as the Selected Respondent is hereunder bound and obligated. No assignment, if any, shall operate to release the Selected Respondent from its liability for the prompt and effective performance of its obligations hereunder.

3.21. Indemnification

Selected Respondent will indemnify, save and hold harmless TDI, its officers, agents, representatives and employees, and the state of Texas, its officers, agents, representatives and employees from any and all claims, actions, suits, demands, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs, accruing or resulting from or related to

Selected Respondent's provision of services or performance under the contract. Selected Respondent will indemnify, save and hold harmless TDI, its officers, agents, and employees, and the state of Texas, its officers, agents, and employees from any and all claims, actions, suits, demands, damages, losses, costs, expenses, judgments, or any other amounts, including, but not limited to, attorneys' fees and court costs, arising from or related to acts, errors, or omissions of the Selected Respondent or the Selected Respondent's employees, independent contractors, subcontractors, and/or agents. TDI will not indemnify, save or hold harmless the Selected Respondent for any amounts for any purposes. The Selected Respondent agrees to cooperate fully with the state's Attorney General or any other legal counsel of TDI in the defense of any and all suits arising on account of the Selected Respondent's negligence and pay the costs and expenses incidental thereto, subject to the right of the Selected Respondent to provide additional legal counsel at the Selected Respondent's own expense. This provision survives the termination or expiration of any contract resulting from this RFP.

3.22. Warranties

Selected Respondent hereby represents and warrants that all services provided by it under any resulting contract shall be performed in a prompt, competent and workmanlike manner by properly trained individuals in accordance with appropriate standards of the Selected Respondent's industry.

3.23. Bonds and Insurance

Within five (5) business days of executing any contract related to this RFP, Selected Respondent must furnish to TDI proof of certain insurance as outlined below.

The required bonds and insurance must meet the following requirements:

- 3.23.1. All required bonds and insurance must be issued by companies that are rated excellent or better by A.M. Best Company, and duly licensed, admitted, and authorized to do business in the state of Texas.
- 3.23.2. All required bonds and insurance must remain in effect during the term of the contract, and any extensions thereof, unless a different period is specifically required. TDI shall consider a lapse of any coverage a material breach by Selected Respondent and grounds under which TDI may immediately terminate any contract resulting from this RFP.
- 3.23.3. Each policy of insurance shall contain a provision whereby TDI will receive thirty (30) calendar days' advance written notice of cancellation, termination, or failure to renew any policy. If the Selected Respondent's carrier cancels any policies, the Selected Respondent shall obtain a replacement policy prior to the expiration of the thirty (30) day warning period.

- 3.23.4. If a material change is made in any policy or bond, Selected Respondent must notify TDI in writing not later than the second day after the material change takes effect.
- 3.23.5. All certificates of insurance shall name TDI as additional insured. The performance bond shall be in favor of TDI as obligee. The bond must be in a form approved by TDI.
- 3.23.6. All required bonds and certificates of insurance evidencing Selected Respondent's compliance must be submitted to TDI within fifteen (15) calendar days following the contract execution, and any renewals.
- 3.23.7. TDI reserves the right to withhold payments to Selected Respondent in the event of non-compliance with the bond and insurance requirements outlined in this RFP until such time as the Selected Respondent comes into compliance with such provisions.

3.24. Dishonesty Bonding

Selected Respondent must maintain dishonesty bonding under a commercial crime policy or business services bonding in the minimum amount of One Hundred Thousand Dollars (\$100,000.00).

3.25. Workers' Compensation Insurance

Selected Respondent must maintain standard workers' compensation insurance covering any employee, independent contractor, subcontractor and/or agent who is to perform services under any resulting contract.

3.26. Commercial General Liability Insurance

Selected Respondent must maintain general liability insurance coverage with Five Hundred Thousand Dollars (\$500,000) minimum for each occurrence limit and One Million Dollars (\$1,000,000) minimum aggregate limit.

3.27. Professional Liability (Errors and Omissions) Insurance

Selected Respondent must maintain professional liability errors and omissions insurance of not less than Five Million Dollars (\$5,000,000) to be in force and effect during the term of the contract. The professional liability policy deductible shall not be more than Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence. The policy shall cover actual damages and reasonable expenses incidental to such liabilities. Coverage must indemnify TDI for direct loss due to any computer error, machine error, system down time, communication problems or errors, and any error or

omission caused by the Selected Respondent, and/or its officers, employees, agents, or subcontractors regardless of negligence.

3.28. Liquidated Damages

3.28.1. It is agreed by TDI and the Selected Respondent that:

- a. If the Selected Respondent does not provide or perform the requirements referred to or listed in this RFP or fulfill the obligations of the contract, damage to TDI will result;
- b. Establishing the precise measure of damages in the event of default by the Selected Respondent may be (i) costly, (ii) time consuming, or (iii) difficult or impossible to calculate;
- c. The liquidated damage assessments contained herein represent good faith efforts to quantify the damages that could reasonably be anticipated at the time of execution of the contract;
- d. The damages set forth herein are just and reasonable;
- e. Nothing contained in this section shall be construed as relieving the Selected Respondent from performing all contract requirements whether or not said requirements are set forth herein; and
- f. TDI may, therefore, in its sole discretion, deduct damages from the compensation otherwise due to the Selected Respondent. All assessments of damages shall be within the sole discretion of TDI.

3.28.2. Liquidated Damages Assessment

- a. If Selected Respondent fails to deliver or perform services within the time specified in the awarded contract, specifically those identified in the table below (“deadline”), TDI may require Selected Respondent to pay to TDI as fixed, agreed, and liquidated damages, the sum set forth in (e) below.
- b. Alternatively, if, in the opinion of TDI, delivery or performance is inexcusably delayed or repeatedly not met by Selected Respondent, TDI may terminate the awarded contract in whole or in part as provided by Exhibit 3, Section 3.11 of the RFP and/or assess fixed, agreed, and liquidated damages accruing until the time TDI may reasonably obtain delivery. The liquidated damages may be assessed at the option of TDI, and if assessed, shall be in addition to any other remedy or damages available to TDI.

- c. The amount of liquidated damages provided in this RFP and any resulting contract is neither a penalty nor a forfeiture and shall compensate TDI solely for the inability to use or benefit from the services and is not intended to, and does not include: (i) any damages, additional costs or extended costs incurred by TDI for extended administration of the awarded contract, (ii) any increases in financing costs resulting from the delay, or (iii) any additional services relating to, or arising as a result of, the delay. TDI shall be entitled to a claim against Selected Respondent for its actual damages and amounts not specifically included within the liquidated damages as set forth herein. Such costs shall be computed separately. Together with liquidated damages, they shall be either deducted from any monies due to Selected Respondent under the awarded contract or paid to TDI within 30 days of notice of the imposition of such damages.
- d. Selected Respondent shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of Selected Respondent.
- e. The amount of such liquidated damages as referred to herein shall be up to and including the amount specified in the table below for each business or calendar day beyond the deadline that Selected Respondent fails or refuses to meet its obligations under any contract resulting from this RFP.

Liquidated Damages Table

Item	Requirement	Liquidated Damage Amount
Required goods and services must be provided by Respondent by the due dates mutually agreed upon in writing by all parties.	Within 10 days of deadline	\$250 per business day
	Within 11-30 days of deadline	\$500 per business day
	More than 30 days past deadline	\$1000 per business day

- f. Once TDI has determined that liquidated damages are to be assessed, TDI shall notify the Selected Respondent of the assessment. Failure to notify does not impact TDI's assessment of damage and is not a condition precedent thereto. TDI will withhold liquidated damages from payments to the Selected Respondent, or, if no payments have been made, TDI will make demand of payment of liquidated damages. The Selected Respondent must make payment within thirty (30) calendar days of written notification by TDI. In the event that the Selected Respondent fails to pay within the thirty (30) day period, TDI will make a claim for payment against the performance bond, if any, with or without notice to the Selected

Respondent. Notwithstanding TDI's claim for payment against the performance bond, if any, such action by TDI shall not be considered or construed as a waiver by TDI of any rights, privileges, defenses or immunities available to TDI as an agency of the state of Texas or as a waiver of TDI's termination rights or other termination provisions or expiration dates of the contract nor shall such action relieve the Selected Respondent of the obligations of continued performance.

3.28.3. Failure to Assess Liquidated Damages

The failure of TDI to assess liquidated damages in any instance where TDI is entitled to liquidated damages pursuant to the provisions, terms and conditions of this RFP and any resulting contract, shall not constitute a waiver in any fashion of TDI's rights to assessment of liquidated damages.

3.28.4. Severability of Individual Liquidated Damages Clauses

If any portion of this liquidated damages provision is determined to be unenforceable the other portions of this provision shall remain in full force and effect.

3.29. Non-Disclosure; Use of Information

Selected Respondent, its partners, principals, employees, agents, representatives, and subcontractors shall not, without the prior written approval of TDI, disclose to anyone, directly or indirectly, any information to which Selected Respondent has access under the terms of any awarded contract except the information that the Selected Respondent is required or allowed to disclose or distribute in order to fulfill the duties described in this RFP.

Notwithstanding any provisions of this RFP and the executed contract to the contrary, the Selected Respondent understands that TDI is bound by the provisions of the Texas Public Information Act (TEX. GOV'T CODE Ch. 552) and Attorney General Opinions issued under that statute. In the event of a third-party request for information submitted to Selected Respondent, Selected Respondent shall notify TDI of the request within three (3) business days of receipt and shall follow TDI's instruction with regard to disclosure, upon which instructions Selected Respondent shall be entitled to rely.

3.30. Governing Law and Venue

The procurement process, the award procedure, and any contract resulting from this RFP shall be governed by, construed and interpreted in accordance with the laws of the state of Texas. Any action or proceeding related to this RFP and any resulting contract shall be brought in Travis County, Texas, and venue is proper only in such county.

3.31. Compliance with Laws

Selected Respondent agrees to comply and to cause its officers, directors, employees, agents, subcontractors and affiliates to comply with all applicable federal, state and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are incorporated by reference.

3.32. Certifications and Affirmations

Signing this proposal with a false statement is a material breach of contract and shall void the submitted proposal or any resulting contracts, and the Selected Respondent shall be removed from all bid lists. By signature on this proposal document, Respondent hereby certifies that:

- 3.32.1. Favors. Respondent 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 bid.
- 3.32.2. Franchise Taxes. Respondent is not currently delinquent in the payment of any franchise tax owed the state of Texas.
- 3.32.3. Antitrust. Neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such firm, corporation or institution has violated the antitrust laws of Texas or federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. Respondent hereby assigns to TDI any and all claims for overcharges associated with any resulting contract that arise under the antitrust laws of the United States 15 U.S.C.A. Section 1, et seq., and that arise under the antitrust laws of the state of Texas, TEX. BUS. & COMM. CODE ANN. Section 15.01, et seq.
- 3.32.4. Financial Interests. Respondent has not received compensation for participation in the preparation of the specifications for the RFP.
- 3.32.5. Child Support. Pursuant to section 231.006(d) of the Texas Family Code regarding child support, the Respondent certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.
- 3.32.6. Sales Taxes; Non Residents; Foreign Corporations. Pursuant to section 2155.004 of the Texas Government Code regarding collection of state and local sales and use taxes, the Respondent certifies that the individual or business entity named in this bid is not ineligible to receive the specified

contract and acknowledges that this contract may be terminated and/or payment withheld if this certification is inaccurate. In addition, if Respondent is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies: Respondent certifies that it holds a permit issued by the Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.

- 3.32.7. Indemnification. Respondent shall defend, indemnify, and hold harmless the state of Texas, and all of its officers, agents, and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Respondent or any agent, employee, subcontractor, or supplier of this Respondent in the execution or performance of this contract.
- 3.32.8. Debt or Delinquent Taxes. Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support that is owed to the state of Texas until the debt is paid in full.
- 3.32.9. Contracting with Executive Head of a State Agency. Respondent certifies that it is in compliance with section 669.003 of the Texas Government Code relating to contracting with executive head of a state agency. If section 669.003 applies, Respondent will complete and submit the following information in order for the response to be evaluated:

Name of former Executive:	
Name of State agency:	
Date of separation from State agency:	
Position with Respondent:	
Date of Employment with Respondent:	

- 3.32.10. Buy Texas; Recycled, Remanufactured, or Environmentally Sensitive Products. Respondent agrees to comply with section 2155.4441 of the Texas Government Code pertaining to service contract use of products produced in Texas. Respondent represents and warrants that it will "Buy Texas" products and materials when they are available at a price and time comparable to products and materials produced outside Texas. Respondent represents and warrants that it will use recycled, remanufactured or environmentally sensitive products and materials when they meet state specifications regarding quantity and quality.
- 3.32.11. Child Support. Pursuant to section 231.006(c) of the Texas Family Code, bid must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the bid. Respondents that

have pre-registered this information on the CPA Centralized Master Bidders List have satisfied this requirement. If not pre-registered, submit name and social security numbers for each person.

- 3.32.12. Note to Respondent. Any terms and conditions attached to a bid response form will not be considered by TDI unless specifically referred to by Respondent on the bid response form and may result in disqualification of the bid.
- 3.32.13. Dispute Resolution. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TDI and the Respondent to attempt to resolve all disputes arising under a contract. See also Exhibit 3, Sections 3.30 and 3.33 of this RFP.
- 3.32.14. DTPA; Unfair Business Practices. Respondent represents and warrants that it has not been the subject of a Deceptive Trade Practices Act or any unfair business practice administrative hearing or court suit and that Respondent has not been found to be guilty of such practices in such proceedings. Respondent certifies that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business administrative hearing or court suit and that such officers have not been found to be guilty of such practices in such proceedings.
- 3.32.15. Immigration. Respondent represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the awarded contract. Respondent represents and warrants that it also will comply with the requirements of the Immigration Act of 1990 and any other applicable federal immigration law.
- 3.32.16. Equal Opportunity. Respondent represents and warrants that it will comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.
- 3.32.17. No Conflicts. Respondent represents and warrants that Respondent has no actual or potential conflicts of interest in providing goods and/or services to TDI under the awarded contract and that Respondent's provision of goods and/or services under the awarded contract would not reasonably create an appearance of impropriety.
- 3.32.18. ADA. Respondent represents and warrants that it will comply with the requirements of the Americans with Disabilities Act (ADA).

- 3.32.19. False Statements; Breach of Representations, etcetera. By signature to Respondent's proposal, Respondent makes all the representations, warranties, guarantees, certifications and affirmations included in this RFP. If Respondent signs the RFP with a false statement or it is subsequently determined that Respondent has violated any of the representations, warranties, guarantees, certifications or affirmations included in this RFP, Respondent will be in default under the awarded contract.
- 3.32.20. Execution of Proposal. Suspension, Debarment, and Terrorism: Respondent certifies that the responding entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Respondent is in compliance with the state of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>.
- 3.32.21. Ineligibility. Under sections 2155.006 and 2261.053, Government Code, the Respondent certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
- 3.32.22. Legislative Authority. Any contract resulting from this RFP is contingent on the continued availability of lawful appropriations by the Texas Legislature.
- 3.32.23. Audit Clause. Respondent understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Respondent further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Respondent will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Respondent and the requirement to cooperate is included in any subcontract awards.

3.33. Dispute Resolution

- 3.33.1. Chapter 2260 of the Texas Government Code pertains to the resolution of breach of contract claims against the state. TDI has adopted rules under Chapter 2260, as described in that statute. See 28 TEX. ADMIN. CODE §§1.1801 – 1.1823. To the extent that Chapter 2260 of the Texas Government Code applies to a contract resulting from this RFP, then the dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by TDI and Selected Respondent to attempt

to resolve any claim for breach of contract made by Selected Respondent arising under the awarded contract.

- 3.33.2. Selected Respondent's claim for breach of contract that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Government Code. To initiate the process, Selected Respondent shall submit written notice, as required by subchapter B of Chapter 2260, to the attention of TDI General Counsel. The written notice shall expressly state that the provisions of Chapter 2260, subchapter B, are being invoked by Selected Respondent. Said notice must also be given to all other representatives of TDI and Selected Respondent otherwise entitled to notice under the parties' contract. Compliance by Selected Respondent with Chapter 2260, subchapter B, is a condition precedent to filing a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.
- 3.33.3. The contested case process provided in Chapter 2260, subchapter C, of the Government Code is Selected Respondent's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by TDI if the parties are unable to resolve their disputes under section 3.33.2.
- 3.33.4. Compliance with the contested case process provided in Chapter 2260, subchapter C, is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. The execution of a contract by TDI or any other conduct of any representative of TDI relating to a contract shall not be considered or construed as a waiver by TDI of sovereign immunity or of any rights, privileges, defenses or immunities available to TDI as an agency of the state of Texas or as a waiver of TDI's termination rights or other termination provisions or expiration dates of the contract.
- 3.33.5. Neither the occurrence of an event nor the pendency of a claim for breach of contract constitutes grounds for the suspension of performance by Selected Respondent, in whole or in part.
- 3.33.6. To the extent that Chapter 2260 of the Texas Government Code does not apply to a contract resulting from this RFP, should a dispute arise out of the contract, TDI and Selected Respondent will first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute will be mediated by a mutually acceptable third-party to be chosen by TDI and Selected Respondent within fifteen (15) calendar days after written notice by one of them demanding mediation under this section. Selected Respondent will pay all costs of the mediation unless TDI, in its sole good faith discretion, agrees to pay such or some portion of such costs. By mutual agreement, TDI and Selected Respondent may use a non-binding form of dispute resolution other

than mediation. The execution of a contract by TDI or any other conduct of any representative of TDI relating to a contract shall not be considered or construed as a waiver by TDI of sovereign immunity or of any rights, privileges, defenses or immunities available to TDI as an agency of the state of Texas or as a waiver of TDI's termination rights or other termination provisions or expiration dates of the contract. To the extent consistent with other Texas law, including, but not limited to, the Texas Public Information Act (Chapter 552, Government Code) and the Texas Open Meetings Act (Chapter 551, Government Code), any non-binding dispute resolution process conducted under the terms of this section will be confidential within the meaning of TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.053 and 154.073.

3.34. Substitute Services

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

3.35. Web-based Components

For any web-based components, Respondent must meet all state of Texas accessibility requirements. These requirements were changed to comply with the provisions of House Bill 2819 (79th Regular Session), and aligns the state requirements with the federal accessibility standards (Section 508). State of Texas accessibility requirements can be found in the Texas Administrative Code, Title 1, Administration, Part 10, Department of Information Resources, Chapter 206, State Web Sites and is available at the following URL:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=206.](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=10&ch=206)

3.36. Notice to Respondent About Certain Information Laws and Practices

With few exceptions, you are entitled to be informed about the information that TDI collects about you. Under sections 552.022 and 552.023 of the Texas Government Code, you have a right to review or receive copies of information about yourself, including private information. However, TDI may withhold information for reasons other than to protect your right to privacy. Under section 559.004 of the Texas Government Code, you are entitled to request that TDI correct information that TDI has about you that is incorrect. For more information about the procedure and costs for obtaining information from TDI or about the procedure for correcting information kept by TDI, please contact the Agency Counsel Section of TDI's Legal Services and

Regulatory Affairs Division at AgencyCounsel@tdi.state.tx.us or visit the Corrections Procedure section of TDI's web page at www.tdi.state.tx.us.

3.37. Title and Ownership

All participating programs and related information and documents are the sole property of TDI. Selected Respondent does not have any rights in or to the TDI participating programs or to the information, documents, and materials prepared or created by Selected Respondent pursuant to this RFP and any awarded contract. The participating programs and all related information and documents may not be used without the express written permission of TDI.

TDI and the state of Texas will receive and Selected Respondent will convey to TDI and the state title, ownership and licenses, methodologies, logic and program code, whichever is applicable, to all goods and/or services provided under the awarded contract. Within five (5) calendar days of the completion, termination or cancellation of any resulting contract, Selected Respondent shall deliver all information, documents, and materials to TDI in a form acceptable to TDI.

With regard to work performed by Selected Respondent's subcontractor(s) under any awarded contract, Selected Respondent must require that all agreements with subcontractor(s) provide for the irrevocable assignment to TDI of all information, documents, and materials and all rights thereto, prepared or created by subcontractor(s) for this RFP and any awarded contract.

This section survives the termination of any awarded contract pursuant to this RFP.

3.38. No Waiver

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

3.39. Confidentiality of Information

Selected Respondent will not disclose to anyone, directly or indirectly, any work-papers, data, databases, materials, information or reports in any form that are designated as confidential or that are or could be construed as confidential or subject to restrictions on disclosure under applicable law ("confidential information") and received from TDI or such confidential information to which Selected Respondent has

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

3.40. Personal Injury; Property Damage

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

3.41. Contract Administration

Upon contract award, TDI will assign a Contract Administrator to work with the Selected Respondent to ensure all requirements of the contract are met throughout the term of the contract. If a contract issue arises at any time during the term of the contract, the TDI Contract Administrator will work with TDI's Purchasing and

Contract Administration Division and the Selected Respondent to resolve the matter promptly. In addition, TDI will notify and work with the Selected Respondent regarding any issues of non-performance and/or non-compliance with terms of the contract.

3.42. Authority to Bind TDI; Execute Documents

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

3.43. Invoices

Selected Respondent shall submit two (2) copies of an itemized invoice for all delivered goods and completed and accepted services. The invoice must include, at minimum, the contract number, the date(s) of service and/or the dates that the items were delivered and accepted, and a full description of the items or services.

All invoices must be sent to TDI, Accounting, MC 108-3A, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104, to the attention of the TDI Contract Administrator. Invoices that are received by TDI's Accounting division which are otherwise received in non-conformance with all of the requirements of this RFP or the contract will be returned to Selected Respondent unpaid or will be held by TDI until proper documentation is submitted. Selected Respondent may bill upon completion of services.

Prior to authorizing payment to Selected Respondent, TDI will evaluate Respondent's performance using the performance standards set forth in all documents constituting any resulting contract. No payment whatsoever shall be made under any resulting contract without the prior submission of detailed, correct invoices. Subject to the foregoing, TDI must make all payments in accordance with the Texas Prompt Payment Act, Government Code, Chapter 2251. Payments under any resulting contract are subject to the availability of appropriated funds. Respondent acknowledges and agrees that payments for services provided under any resulting contract are contingent upon TDI's receipt of funds appropriated by the Texas Legislature and applicable federal grant funds.

3.44. Fees and Travel Expenses

3.44.1. Selected Respondent's sole compensation under any resulting shall not exceed the fees, expenses, and/or hourly rates indicated by Respondent in the pricing form submitted with Respondent's response to this RFP. TDI will not make or authorize prepayment under any resulting contract to Selected Respondent.

- 3.44.2. Selected Respondent has no rights to compensation or any other rights or benefits except as expressly provided in any resulting contract. Selected Respondent shall be responsible for all costs and expenses incurred under resulting contract, if any, including payment of any and all subcontractors.
- 3.44.3. Any additional fees or expenses must be approved by TDI before such expenses are incurred. Unilateral fee increases will not be accepted or approved. All proposed fee increases must be submitted in writing to TDI for approval with justification for the fee increase.
- 3.44.4. Travel expenses are reimbursable when contemplated by or provided in the proposal. In each instance, receipts must accompany charges for travel and lodging. All travel and out-of-pocket related expenses, whether for in-state or out-of-state travel shall be claimed (i.e., reported for reimbursement) at the same rates allowed by the state of Texas for its employees. All travel and out-of-pocket expenses for which reimbursement is claimed must be in connection with work performed under any resulting contract and Selected Respondent shall submit receipts for all requested reimbursable expenses. The rules of the Comptroller's Office regarding travel require state agencies to use contract airlines and rental car companies. Respondents are not allowed to use the state contract carriers; therefore, Selected Respondent will be reimbursed for airfare at the lowest rate available, but not to exceed coach rates for that airline. No travel expenses shall be eligible for reimbursement unless such travel has been approved ahead of time, in writing, by TDI. All travel and out-of-pocket expenses not contemplated by or provided in the proposal must be approved in writing by TDI in advance and reimbursement for such approved travel and out-of-pocket expenses shall be limited as specified herein. Travel costs specifically exclude charges for time spent in travel; these services or hours may not be billed. Under no circumstances will Selected Respondent be compensated for off-duty hours/time spent traveling.

3.44 Travel and Out-of-Pocket Expenses

Pricing for services provided pursuant to this RFP and any resulting contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Selected Respondent shall not exceed the amounts authorized by the current State Travel Regulations for Employees, provided below. Travel time may not be included as part of the amounts payable by Selected Respondent for any services rendered under this Contract. Anticipated travel expenses must be pre-approved in writing by TDI.

State Travel Regulations for Employees Fiscal Year 2010

In-State Meals and Lodging	Refer to the federal FY2010 Domestic Per Diem Rates (DPDR) at: http://www.gsa.gov/graphics/ogp/FY10_Per_Diem_File.xls For areas not listed in the FY2010 DPDR, the rates are: <ul style="list-style-type: none">• Lodging In-State: up to \$85• Meals In-State: up to \$35
Out-of-State Meals and Lodging	Refer to the federal FY2010 Domestic Per Diem Rates (DPDR) at: http://www.gsa.gov/graphics/ogp/FY10_Per_Diem_File.xls For areas not listed in the federal FY2010 DPDR, use the rate for the nearest city or county.
Non-overnight Meals	Not to exceed \$36
Automobile Mileage	\$0.55 per mile

3.45. No Prepayments

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

3.46. Refunds

Selected Respondent will promptly repay, refund or credit within thirty (30) calendar days any funds paid to it which are not authorized under the terms of the awarded contract.

3.47. Limitation on Authority; No Other Obligations

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

3.48. Default

If Selected Respondent is found to be in default under any provision of any resulting contract, TDI may cancel the contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. In the event of abandonment or default, Selected Respondent will be responsible for paying damages to TDI, including but not limited to re-procurement costs, and any consequential damages to the state of Texas or TDI resulting from Selected Respondent's non-performance. The defaulting Selected Respondent will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

3.49. Agreement between TDI & Selected Respondent

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

3.50. Acceptance of Terms

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

3.51. Entire Agreement

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

3.52. Compliance with Applicable Federal Laws and Regulations.

With regard to the Healthy Texas program, TDI has received grant funds from the federal State Health Access Program (SHAP) administered by the U.S. Department of Health and Human Services Health Resources and Services Administration (HRSA). In some circumstances, services that may result from this RFP may be funded with a portion of federal funds granted to TDI under the State Health Access Program. Where applicable, Selected Respondent agrees to comply with the requirements that are applicable to the receipt of federal grant funds. See <http://dhhs.gov/asfr/ogapa/grantinformation/hhsgps107.pdf>.

3.53. Drug Free Workplace

Respondent shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and

maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free workplace (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the Respondent shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

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EXHIBIT 4: Required Information

4.1. Introduction

Each Respondent's response must include all information listed in this Exhibit 4, in the order they are shown here. All responses must provide sufficient information to enable the review committee to evaluate the Respondent's ability to provide the services described in Exhibit 2, Specifications, and to comply with any other contractual provisions described in this RFP.

4.2. Proposal Format

All Responses must be typewritten and legible, and the Respondent must sign the original copy of the Letter of Transmittal in ink. Failure to manually sign the RFP automatically disqualifies the response. The person signing the response must demonstrate the title or authority to bind his or her firm in a contract.

All proposals submitted must be bound, organized, and arranged to correspond directly with the numbered sections of this RFP. All pages must be numbered. Failure to arrange the proposal in the manner set forth in this RFP may result in disqualification.

Conciseness and clarity of content must be emphasized. In responding, the Respondent shall provide all information that the Respondent believes would be helpful to TDI in establishing its ability to perform the services described in this RFP and to comply with the requirements of this RFP and any resulting contract.

4.2.1 Proposal Submission

Each proposal must consist of the following Parts: Part 1 – Business Proposal; and Part 2 – Pricing Proposal.

1. Number of Copies

The Respondent's Business Proposal and Pricing Proposal must be placed in separate, sealed packages, as follows:

a. Business Proposal

- The Respondent must submit one (1) original and five (5) copies of its Business Proposal, and must sign the original copy of the Letter of Transmittal in ink. The Respondent must also submit five (5) electronic copies of its Business Proposal on compact discs, compatible with Microsoft Office XP.
- The Respondent's Business Proposal must be placed in a sealed package, and include a label which reads: **“BUSINESS**

**PROPOSAL RESPONSE FOR MARKETING SERVICES
RFP: No: 11-RD-MARKETINGSVCS – TO BE OPENED BY
TDI PURCHASING AND CONTRACT ADMINISTRATION.”**

b. PRICING Rate Proposal

- The Respondent must submit one (1) original and two (2) copies of its Pricing Rate Proposal. The Respondent must also submit three (3) electronic copies of its Pricing Rate Proposal on compact discs, compatible with Microsoft Office XP.

- The Respondent’s Pricing Rate Proposal must be placed in a separate sealed package, and include a label which reads: **“TDI MARKETING SERVICES PROPOSAL RESPONSE FOR RFP 11-RD-MARKETINGSVCS--TO BE OPENED BY TDI PURCHASING AND CONTRACT ADMINISTRATION.”**

2. Delivery Address

The Respondent must submit all copies of the Business Proposal and Pricing Proposals to TDI’s Purchasing and Contract Administration Division no later than **Friday, January 7, 2011, 10 a.m. Central Time, Austin, Texas**. Responses to this RFP must be time-and date-stamped at TDI’s Purchasing and Contracting Division before the hour and date specified on Page One (1) of this RFP. Late responses properly identified will be returned to Respondent unopened. Late responses will not be considered under any circumstances. All proposals become the property of TDI after submission.

Address for delivery by U.S. Mail:

Texas Department of Insurance
Purchasing and Contract Administration
Attn: Regina Durden
P.O. Box 149104
Austin, Texas 78714-9104

Address for overnight, courier, or hand delivery:

Texas Department of Insurance
Purchasing and Contract Administration
Regina Durden
333 Guadalupe, Tower I - Room 850
Austin, Texas 78701

3. The Respondent’s Business Proposal must be arranged as follows:

- a. Letter of Transmittal (4.3)
- b. Tab 1 – Executive Summary (4.4)
- c. Tab 2 – Respondent’s Contact Person, Identifying Information, Experience and Capabilities (4.5, 4.6, 4.7)
- d. Tab 3 – Description of Services to be Performed (4.8.1)
- e. Tab 4 – Work Products and Attachments (4.8.2)
- f. Tab 5 – Healthy Texas Comprehensive Marketing Plan (4.9)
- g. Tab 6 – Legal Actions, Relatives/Employees, Conflict of Interests, Financial Soundness, Data Security/Integrity and Disaster Recovery, Changes in Ownership, Preferences (4.10, 4.11, 4.13, 4.14, 4.15, 4.16, 4.20)
- h. Tab 7 – Subcontractor Information (4.12)
- i. Tab 8 – Exceptions to RFP Terms and Conditions (if applicable); Attachments, (4.17, 4.18, 4.19)
- j. Tab 8 – Additional Information (if applicable)

4.3. Letter of Transmittal

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

- (a) A commitment by the Respondent to provide the services required by TDI in this RFP.
- (b) A statement that the proposal is valid for 90 calendar days from the day after the date that the proposals are delivered to TDI. Any proposal containing a term of less than 90 calendar days for acceptance will be rejected by TDI as non-responsive.
- (c) A dated signature of a person(s) legally authorized to bind the Respondent to the terms and conditions contained in this RFP and to compliance with the information and representations submitted in the proposal. The proposal must state that the signatory is authorized to bind the Respondent to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.
- (d) A statement certifying to the completeness, veracity and accuracy of the information provided in the proposal.
- (e) A statement of acceptance of the terms and conditions of the contract resulting from this RFP. If any Respondent takes exception to any of the proposed terms and conditions, those exceptions must be noted in the Letter of Transmittal. Each Respondent should realize, however, that failure to accept the terms and conditions specified in this RFP may result in disqualification of the proposal.

- (f) A statement certifying that, if a Texas address is shown as the address of the Respondent, the Respondent qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

4.4. Executive Summary

Each Respondent must submit an Executive Summary of the response, excluding cost information, which asserts that the Respondent is providing in its response all of the requirements of this RFP. If Respondent is providing services beyond those specifically requested, those services must be identified. If Respondent is offering services that do not meet the specific requirements of this RFP, but in the opinion of the Respondent are equivalent or superior to those specifically requested, any such differences must be noted in the Executive Summary. Each Respondent should realize, however, that failure to provide the services specifically required may result in disqualification. The Executive Summary must not exceed three (3) pages and should represent a full and concise summary of the contents of the proposal.

4.5. Respondent's Contact Person

A senior-level contact must be assigned to the TDI account. Each Respondent shall provide the name, address, telephone number, facsimile number and email address of its senior-level contact person.

4.6. Respondent's Identifying Information

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

- (a) Name, address, telephone and fax numbers of the entity submitting the proposal.
- (b) Type of business entity (i.e., corporation, partnership, trust, association, subsidiary).
- (c) The place of incorporation, if applicable.
- (d) The location(s) of all the major offices, locations and other facilities that relate to the Respondent's performance under the terms of this RFP.
- (e) An organizational chart of the Respondent. Include all parent, subsidiary and affiliate companies and explain their relationship to the Respondent.
- (f) The Respondent's federal employer identification number and Texas tax identification/registration number with a copy of local business or Texas tax license.
- (g) The full name (last, first, middle), date of birth and social security number for each person who owns twenty-five percent (25%) or more of the stock in the Respondent, if a corporation.

4.7. Respondent's Experience and Capability

- 4.7.1. Respondent must confirm that they are currently engaged in providing the services required to clients. In addition, Respondent must list all engagements of comparable complexity and sensitivity to the requirements of this RFP that have been conducted within the past five (5) years that are similar to the services described in this RFP, or which, though different, required the same general types of resources and skills. Each description should be as detailed as necessary to enable TDI to reasonably assess the relevance and usefulness of such experience to the project and the quality of the Respondent's performance. Respondent must give the client organization's name and describe the service performed; the service's beginning and ending dates, results obtained and current status of the project. Respondent must provide the name, title, telephone number and e-mail address of the key contact(s) at the client organization. These individuals may be contacted at the discretion of TDI. The provision of the name of a contact person by Respondent will constitute a release to contact the individual for pertinent information.
- 4.7.2. Respondent must list all contracts or purchase orders that Respondent executed or accepted within the last five (5) years and that were canceled, in whole or in part, by any state agency or other entity prior to completion. For each canceled contract, include a detailed explanation for the cancellation and final resolution of the matter. Include the names and telephone numbers of each such agency's or entity's contact individual who has knowledge of the cancellation and the reason for the cancellation. The provision of the name of a contact person by Respondent will constitute a release to contact the individual for pertinent information. If none, specify none.
- 4.7.3. Respondent must provide either: (a) copies of at least two (2) Respondent evaluation forms or (b) copies of at least two (2) Respondent evaluation letters from at least two governmental clients. The forms or letters must have been prepared by state agencies or other governmental entities in the past one (1) year. Respondent must have actually provided the requested or similar services to the client that prepared the evaluation form or evaluation letter. The evaluation forms or evaluation letters must include the client's specific and independent evaluation of the Respondent's actual performance in delivering services under a completed contract according to specifications. If none, specify none.
- 4.7.4. Respondent must specifically list all employees who will provide services under any resulting contract and their education, training, experience and certifications. Respondent must certify that each employee, including replacement employees, if any, will possess the qualifications, education, training, experience and certifications necessary to perform the services under the contract in the manner required by this RFP. If Respondent includes information on employees who will not provide services under any resulting contract, the Respondent must specifically identify such employees as "not assigned to the contract."

4.8. Description of Services to be Performed

4.8.1. Respondent must demonstrate its understanding of the services requested in this RFP by providing the following.

1. An overview of the services the Respondent will provide.
2. A description of how the Respondent will provide the services listed in Exhibit 2, Section 2.1 of this RFP.
3. Documentation of Experience and Capability. Respondent shall provide a brief narrative description of eight projects, to include: three marketing or advertising campaigns; three public relations initiatives or campaigns; and two projects involving controversial or complex communications issues, at least one of which required an immediate response. All projects shall have been completed within the last five (5) years. (Limit response to twelve (12) pages.)
 - a. The three marketing or advertising campaigns shall be clearly labeled Example 1, Example 2 and Example 3.
 - b. The three public relations campaigns shall be clearly labeled Example 4, Example 5 and Example 6.
 - c. The two issues management projects shall be clearly labeled Example 7 and Example 8.
 - d. Respondents may use a single project in more than one category. Projects used in more than one category must be duplicated and properly labeled.
 - e. Each project described in the narrative shall include:
 - Goals and objectives of the project, campaign or initiative.
 - Description of the target audience(s).
 - Start and end dates.
 - Initial and final budget totals.
 - Brief overview of project results and how Respondent met client goals, objectives and desired outcomes.
 - f. Within the narrative describing the eight projects, Respondent shall provide for each project evidence of experience and ability to:
 - Recommend, develop and implement innovative and effective marketing and public relations strategies to achieve the desired outcome.
 - Plan and implement innovative and effective marketing and public relations strategies for a state agency or other organization involving a large bureaucracy, multiple partner organizations and complex issues.

- Recommend, plan and implement proactive strategies to assist in managing complex or controversial communication issues, including strategies requiring an immediate response.
- Work quickly and effectively under compressed time frames with tight deadlines and limited budget.
- Plan and implement innovative and effective special events and activities that include engaging the public in meaningful ways and achieving desired results.
- Develop, produce and disseminate well-designed, innovative and effective creative materials that are research-based, designed for the target audience(s) and appropriate for selected venues.
- Purchase media time and space appropriate for the target audience(s).
- Plan and implement innovative, effective and culturally appropriate marketing and public relations strategies, activities and campaigns for Hispanic audiences whose dominant language is Spanish.
- Use appropriate processes, methodologies and measurements to evaluate the effectiveness of marketing and public relations programs, materials and activities in meeting client goals, objectives and desired outcomes.

4.8.2. Work Products and Attachments.

Respondent shall provide an original set and five duplicate sets of exactly eight work products as described in Section 4.8.1.3. The narrative shall describe how the work product was developed, produced and distributed as part of a coordinated, integrated campaign or initiative. In addition, the narrative shall describe how the product helped to achieve the desired outcome. Work products shall be clearly labeled Example 1-8, corresponding to the campaign or activity in the narrative for which they were designed, and may include, but are not limited to, publications, billboards, speeches, letters, photographs, news releases, presentations, storyboards, video or audio advertisements or public service announcements, manuals, Internet material or other work products developed by respondent. Work products not specifically related to the eight projects described in the narrative will not be considered. Submitting more than one work product per example may result in disqualification of the response.

- a. Work products shall be submitted in plastic sleeves and included in the three-ring binders marked "ORIGINAL" and "COPY" Any work products that do not fit into plastic sleeves should be photographed printed on 8 ½ x 11 inch paper and submitted in plastic sleeves, or attached in secure manner in the binder. Work products not specifically related to the eight products described in the narrative will not be accepted and may result in disqualification of the response.

- b. Audio and visual submissions shall include an original and five (5) copies and shall be clearly marked “ORIGINAL” and “COPY”.
 - o Each video or radio program ad, PSA, spot, or clip will count as one work product.
 - o All video and audio work products shall be compiled and provided in VHS, CD or DVD format.
 - o The combined audio and visual work samples for the eight projects shall not exceed five minutes in length.
 - o Audio or video work products not specifically related to the eight projects described in the narrative will not be accepted and may result in the disqualification of the response.

4.8.3 Respondent may propose that alternatives, options, and/or additional services be included in the contract if, in its judgment, their inclusion is necessary to the accomplishment of contract objectives or would increase the value of the outcome of the contract to TDI.

4.8.4 Respondent must briefly state why it believes its proposed services best meet the objectives of TDI, and must describe any additional aspects or advantages of its services in any relevant area not covered elsewhere in its proposal, in five (5) pages or less.

4.9. Development of a Healthy Texas Comprehensive Marketing Plan

Selected Respondent shall create a comprehensive and innovative marketing and public service media plan that includes the goals, strategies and a line item budget for the proposed activities within 30 days from the start of the contract. At a minimum, the marketing plan must include all of the following:

- 4.9.1. The plan shall include a recommended creative design and production, mass media public service advertising, strategic partnerships, grassroots outreach and marketing support services. In addition, Respondent shall include but is not limited to the following areas as defined in Exhibit 2, Section 2.2.2 of this RFP.
 - a. Outreach and Communication Strategy
 - b. Outreach and Communication Outcomes
 - c. Market Research
 - d. Key Messaging
 - e. Event Planning
 - f. Marketing Collateral and Advertising
 - g. Evaluation Processes and Measurements

h. Web Design

- 4.9.2. The plan shall include strategies to build a brand for the Healthy Texas program.
- 4.9.3. The plan shall include strategies to support consistent communication related to the Healthy Texas Program by TDI's program partners (including participating carriers and 3-Share programs).
- 4.9.4. The plan shall include cost projections for each proposed activity, using approved cost rates described in Section 4.21 and estimated out-of-pocket production costs. The mix of creative and production costs will be based on strategic goals identified in the Marketing Plan.

4.10. Legal Actions

- 4.10.1. Respondent must identify any pending or completed legal actions against Respondent and any legal actions initiated by the Respondent during the past five (5) years related to services contracts or services performed. Respondent must specifically describe any legal actions related to failure to perform contracted services, breach of contract, or general mismanagement of a contract that have been brought against Respondent or any of the individuals who will be working with TDI.
- 4.10.2. Respondent must state whether during the last five (5) years the Respondent has been assessed any penalties or liquidated damages under any existing or past contract with any governmental entity. If so, Respondent must indicate the public jurisdiction, the reason for the penalty or liquidated damages and the penalty or liquidated damage amount of each incident.

4.11. Relatives/Employees; Definition of Employee

State law imposes restrictions on certain contracts with former or retired agency employees. Respondent must list all of the following: (1) relatives of Respondent who are currently working or have worked for TDI; and (2) employees of Respondent who are current, former or retired employees of TDI. Selected Respondent must notify TDI of any prospective employee who is a former employee of TDI prior to employee's performance or receipt of compensation under any contract resulting from this RFP. Selected Respondent must notify TDI of any prospective employee who is related to a TDI employee prior to placement, and must notify TDI of any prospective employee who holds any license or certificate related to the insurance industry. As used throughout this RFP, the term "employee" includes any individuals who, on behalf of Respondent, will or may participate in any contract resulting from this RFP. The term "employee" includes all personnel, replacement personnel, agents, Respondents and other representatives of Respondent regardless of how employed or contracted by Respondent. If none, specify none.

4.12. Subcontractor Information

- 4.12.1. Respondent must provide statements from subcontractors, signed by an individual authorized to legally obligate the subcontractor, attesting to the fact that it will provide the services as represented in the proposal.
- 4.12.2. Each subcontractor is required to submit ownership information. See also Exhibit 3, Sections 3.6 and 3.7 of this RFP. Respondent must disclose at TDI's request any information regarding subcontractors that might be cause for disqualification of the subcontractor under the requirements of the state and/or federal laws or rules.
- 4.12.3. As more fully addressed in Exhibit 3, Section 3.7 of this RFP, TDI has determined that subcontracting is a probability with this RFP. As such, Respondent must submit a subcontracting plan with Respondent's proposal to be considered responsive. Failure to submit a subcontracting plan will disqualify the response.

The HUB Subcontracting Plan and Self Performance HUB Contracting Plan, if applicable, must be submitted with the RFP response to be considered responsive. Respondents must go to the websites listed below for instructions and forms.

HUB Subcontracting Plan	http://www.cpa.state.tx.us/procurement/prog/hub/hub-subcontracting-plan/
HUB Subcontracting Prime Respondent Progress Assessment Report	http://www.cpa.state.tx.us/procurement/prog/hub/hub-forms/ProgressAssessmentReportForm.xls
Texas Comptroller of Public Accounts (CPA) - Texas Procurement and Support Services (TPASS) - HUB Website	<p>http://www.cpa.state.tx.us/procurement/prog/hub/</p> <p>In addition to the websites listed above, the TPASS link will provide Respondents a link to the following sources:</p> <ul style="list-style-type: none"> The Centralized Masters Bidders List The HUB Directory Minority & Women Organization Links

- 4.12.4. TDI defines a subcontractor as any person or a company paid by an awarded Respondent to perform any part of the work required in the established contract. This definition excludes employees of the Selected Respondent.

4.13. Conflict of Interest

Respondent must disclose any potential or perceived conflict of interest relative to the performance of the requirements of this RFP. Any personal or business relationship between the Respondent, the principals, or any affiliate or subcontractor with any employee or representative of TDI or its vendors must be disclosed. Failure to disclose any such relationship may be a cause for contract termination or disqualification of the proposal.

4.14. Financial Soundness

4.14.1. Respondent must provide evidence of financial responsibility and stability for performance of the services for which a proposal is submitted. The Respondent must demonstrate the ability to finance the project described by the Respondent's submission. In addition, the Respondent must disclose the source of any outside financial resources that will be utilized by the Respondent to enable it to perform any contract awarded pursuant to this RFP.

4.14.2. At the request of TDI, Selected Respondent must provide copies of documents to show the financial capability, to demonstrate financial solvency, and to verify the capacity to fulfill the requirements of this RFP. The documents may include but are not limited to the Respondent's most recent audited financial statement and Dun and Bradstreet report.

4.14.3. TDI reserves the right to require any additional information necessary to determine the financial integrity and responsibility of a Respondent and to reject a response on the grounds of the Respondent's financial capability.

4.15. Respondent's Data Security/Integrity and Disaster/Business Recovery

4.15.1. Where appropriate to the services described in Part II of this RFP, Respondent must provide an explanation of how the Respondent will ensure data security and integrity.

4.15.2. Where appropriate to the services described in Part II of this RFP, Respondent must provide a description of its disaster recovery/business recovery plan.

4.16. Changes in Ownership Conditions

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

4.17. Respondent's Understanding of RFP

By submitting a signed proposal, a Respondent agrees that it fully understands this RFP and shall abide by the terms and conditions contained in it. Any exception to the requirements of this RFP must be specifically noted in writing and explained by Respondent in its Executive Summary as a condition to consideration for inclusion in any subsequent contract. Any exceptions must be expressly agreed to by TDI in writing and by reference to the particular section of this RFP for which an exception is acceptable. Unauthorized exceptions, amendments or deviations in the response may result in disqualification of the proposal. See also Section 4.4 of this RFP.

4.18. Unacceptable Terms in Respondent's Response

Respondent's Response to this RFP, including any attachments thereto, will be incorporated as part of the executed contract to the extent the response does not conflict with this RFP. Any terms submitted by Respondent, regardless of whether such terms conflict with this RFP and/or contract, which conflict with or are in violation of Texas law or in conflict with the rules, policies and procedures of the Texas Comptroller of Public Accounts, are void regardless of whether TDI accepts such terms or is deemed to have accepted such terms. Unacceptable terms and conditions included in a Respondent's RFP response may result in disqualification of the response. If an award is made to such a Respondent, such terms and conditions are void and are not part of a contract between Selected Respondent and TDI.

4.19. Attachments

TDI will not consider any terms and conditions or other documents attached to a response as part of the RFP Response unless the Respondent specifically and prominently refers to each of them in its Executive Summary. TDI reserves the right, in its sole discretion, to reject any Respondent's terms and conditions or other documents or attachments as part of Respondent's RFP Response.

4.20. Preferences.

Please indicate below if Respondent claims a preference.

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran

- Texas vegetation native to the region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy efficient products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or reused computer equipment of other manufacturers
- Foods of higher nutritional value

4.21. Cost Proposal.

Instructions: Respondent may revise titles or descriptions to better fit staffing requirements; however, they may not delete or omit positions. For each staff person listed, respondents must bid a realistic hourly rate and must not bid \$0. **TDI in its sole discretion will utilize the marketing services on an as-needed basis. TDI will request and accept all services in writing.**

4.21.1 Hourly Rates.

Respondent must provide hourly rate for each staff position listed, respondents must bid a realistic hourly rate and must not bid \$0. The Respondent must list all additional positions that the agency should consider as a part of any resulting contract.

Marketing and Public Relations Services		
Title	Description	Hourly Rate
1. Director of Account Services	Head of Account Services	
2. Project Manager/Account Supervisor/Director	Direct supervisor of client account; point of contact	
3. Account Manager/Executive	Day-to-day management of client's business	
4. Account Assistant	Day-to-day support of account manager/executive	
5. Public Relations Director	Oversees public relations projects	
6. Media Buyer/Planner	Handles all media negotiating and buying	
7. Accounting/Billing Director	Invoices clients with Account	

Marketing and Public Relations Services		
Title	Description	Hourly Rate
	Supervisor approval	
8. Administrative Assistants	Administrative duties to creative and account services	
9. Creative Director	Leads specific staff within creative department	
10. Executive Producer	Senior producer for agency; produces/edits radio/TV/PSAs; writes scripts, music and lyrics	
11. Senior Writer(s)	Writes scripts, jingles	
12. Copywriters	Works on day-to-day scripts, revisions; sometimes contacts talent	
13. Art Director	Directs all artwork of a particular group of staff	
14. Print Production Manager	In charge of all print estimates, setting up vendors (color separations, printers)	
15. Creative Coordinator or Broadcast Manager	Assistant to producers; manages talent, costs, studios for radio/TV production	
16. Production Artist	Perform actual art mechanical; order type; produce layouts per art director	
17. Traffic Manager	Routes all creative jobs, print or broadcast, between creative and account services	
18. Word Processors	Inputs all copy, script for broadcast jobs	
19.		
20.		
21.		
22.		

Marketing and Public Relations Services		
Title	Description	Hourly Rate
23.		

4.21.2 Healthy Texas Pricing.

For the Healthy Texas project, Respondent must provide each of the following:

- a. Provide a list of staff persons recommended to be involved for each of the activities required in Exhibit 2, Section 2.2 of this RFP along with an estimate of the number of hours (by staff person) required to complete the activity. Healthy Texas activities are as follows:
 - Outreach and Communication Strategy
 - Outreach and Communication Outcomes
 - Market Research
 - Key Messaging
 - Event Planning
 - Marketing Collateral and Advertising
- b. Respondent must complete the following chart. Under each activity, identify all recommended deliverables and provide a complete cost per deliverable. The Total Proposed Cost for Activity column should include a sum of the estimated costs of all recommended deliverables.

Activity	Deliverable	Estimated Cost per Deliverable	Total Proposed Cost for Activity
Outreach and Communication Strategy	1. 2. 3.		
Outreach and Communication Outcomes			
Market Research			
Key Messaging			
Event Planning			
Marketing Collateral and Advertising			

- c. For the Marketing Collateral and Advertising activity, Respondent must provide a sample catalog (with prices) that includes possible educational materials and promotional items.

4.22.3. Renewal Options

The term of any contract resulting from this RFP shall commence on execution of the contract by the parties and continue through August 31, 2012. TDI, at its sole option and in its sole

discretion may extend any contract resulting from this RFP for up to four (4) additional one (1) year periods.

The Respondent is to provide the maximum percentage increase from the previous year. If left blank, the agency will interpret that as a zero percent (0%) increase.

Renewal Year 1 – September 1, 2012 to August 31, 2013

Maximum percentage increase from initial term: _____%

Renewal Year 2 – September 1, 2013 to August 31, 2014

Maximum percentage increase from Renewal Year 1 _____%

Renewal Year 3 – September 1, 2014 to August 31, 2015

Maximum percentage increase from Renewal Year 1 _____%

Renewal Year 4 – September 1, 2015 to August 31, 2016

Maximum percentage increase from Renewal Year 1 _____%

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APPENDIX 1: TDI TECHNICAL ENVIRONMENT

The following section details the technical environment within which the programming service is required to operate.

TDI's Technical Environment

The following section details the technical environment within which the programming service is required to operate.

TDI Hardware Resources

TDI has an integrated distributed platform that ultimately forms a seamless systems resource for the user. The agency consists of a broad computing environment, hosted by Team for Texas, which provides the following services: web-based, utility, database, file/application, disaster recovery, and servers for processing backups. In FY 2011, TDI continues transforming the server hardware environment from TDI's data centers into Team for Texas' (T4T) State Datacenters. As TDI servers transform, they become virtual servers on hardware maintained by the State data center. Some servers will physically remain on-site at TDI data centers including two Biscom Fax utility servers.

At the user end of the enterprise, TDI has installed approximately 2000 desktop PCs and 345 laptops. The agency, through an outsourced services contract, has 155 Xerox multi-function devices, which provide print, copy, fax, and scan functionality to agency staff. Approximately 200 desktop printers are installed for individual use.

The switched Ethernet LAN is attached to the TDI Wide Area Network (WAN) to enable agency-wide communications and file sharing. All network attached workstations and laptops are connected through a Microsoft Active Directory domain.

(Add section on Scanner Specs)

TDI Major System Software

Operating System Software

Windows XP/Vista/7/2003 R2/2008 R2 - Windows is a stand-alone or networked interactive computing environment that efficiently supports large numbers of interactive users. Windows also has computer network operating system developed by Microsoft®, Inc. It is a suite of applications designed to connect, manage and maintain a network and its services. A Windows network uses the OS software to enable the intercommunication of devices and sharing of resources. Some of these software components run only on the Windows 2003 R2/ 2008 R2 32-bit or 64-bit servers, while others run only on XP workstations. While some telecommuters use Windows XP, Vista, and 7, the agency desktop standard is Windows XP, but plans to upgrade some clients to Windows 7 with the next desktop purchase. The most significant features of XP/2003 R2 are the following:

- has an easy-to-use graphical user interface;
- provides full support for application development and personal computing;

- provides a large number of vendor pre-made applications;
- has an easy to configure file system with compression, security and RAID settings.

Novell NetWare. Novell NetWare is a computer network operating system developed by Novell®, Inc. It is a suite of applications designed to connect, manage and maintain a network and its services. A NetWare network uses the NetWare software to enable the intercommunication of devices and sharing of resources. Some of these software components run only on the NetWare server while others run only on workstations. Novell systems are applied in the TDI environment for email and messaging services.

UNIX (AIX 5.3 or higher) AIX is a computer operating system widely used for the backend of the Workers Compensation System. The AIX operating system is applied in the TDI environment to host the Agency applications TXComp eClaims and TXComp Provider systems. Both TXComp EClaims and Provider run on Websphere 5.1 and 4.0 respectively.

Communications Software

- TCP/IP. Transmission Control Protocol/Internet Protocol is a set of networking protocols being used throughout the industry to provide multi-vendor connectivity and interoperability.
- SQL*Net. SQL*Net is a software layer that cooperates with various protocols to provide a distributed processing environment for the Oracle RDBMS.

Office Automation Software

- Novell GroupWise 7.04. Novell GroupWise is used for electronic mail (notes and documents), calendars, scheduling meetings, etc. All MAPI interfaces must be compatible with GroupWise
- Biscom FaxCom. Biscom FaxCom is used for electronic faxes.
- Microsoft Office 2007 for Windows. The Microsoft suite of software is used to address agency needs such as word processing, spreadsheets, project planning, presentations and small databases.

Remote Access Software

- Citrix Presentation Server 4.5 RP6. Citrix is remote access software, which provides a virtual desktop environment and delivers applications over the network and Internet to field office and remote staff.
- Microsoft ISA VPN. Microsoft ISA server is used to provide VPN connectivity for TDI remote staff through built-in Windows XP networking.

Programming Languages

- PC SAS 9.x. Statistical Analysis System for the PC enables users to access, manage, analyze, and present their data. SAS can access raw data files and data in external databases. SAS is a powerful programming language and a collection of ready-to-use procedures.
- PERL 5.6 and 5.8. PERL acts as a command interpreter that includes a programming language, which can be used to create small and large programs.

Reporting Tools

- PC SAS 9.1.3 sp4

- Crystal Reports
- Oracle*Reports. A reporting tool for developing and executing reports. This product is not being used for new development.
- Discoverer
- Pentaho

Relational Database/Development Tools

The Agency prefers to stay with the later versions of 10G R2 or 11G but would consider earlier versions based on the technical specifications.

- Oracle RDBMS. Oracle Relational Database Management Systems includes the database manager and several features that assist users and database administrators (DBAs) in maintaining, monitoring, and manipulating data on various platforms. The Oracle RDBMS includes a complete implementation of SQL, the ISO- and ANSI-standard language for RDBMS.
- Oracle*Forms. Oracle Forms allow users to access data in an Oracle database using forms-based applications in a fully graphical user interface.
- SQL*Plus. A tool to execute ad hoc SQL and PL/SQL statements
- Oracle 10GR2 Application Server. Allows Web applications to access Oracle databases.
- Oracle Enterprise Manager with Diagnostic Pack, Tuning Pack & Change Management Pack. Allows DBAs to manage Oracle Databases.

Microsoft SQL Standard 2008 64-bit or Higher

- MS SQL Standard Edition. SQL Server Standard edition includes the core database engine, along with the stand-alone services. It differs from Enterprise edition in that it supports fewer active instances (number of nodes in a cluster) and does not include some high-availability functions such as hot-add memory (allowing memory to be added while the server is still running), and parallel indexes. This is product is only used for third party applications and utility rules and storage that will not run under Oracle. No development or end-user data is stored here.

Telecommunications Infrastructure for Data Processing

Description The TDI network is made of switched Ethernet, which is connected together using a combination of 3Com and Cisco Switches, as well as Cisco Routers. A Symantec Enterprise Firewall and a 35 Megabit Ethernet connection tied into a fiber optic communication network to CapNet connects the agency to the outside world, including DIR and other State agencies. TDI exchanges information with other entities via FTP, SFTP, WEB application services, E-mail and inter/intranet Web sites. All TDI offices connect internally with Ethernet switches and connect to the State data center through a DIR managed MPLS WAN network using Cisco routers.

Local Offices TDI has several locations in Austin:

- The Hobby building with Novell NetWare E-Mail, Microsoft Windows 2003 R2 file and application servers, and Microsoft XP Workstations.
- The Metro building with Unix Application Servers, Microsoft Windows 2003 R2 file and application servers, and Microsoft XP Workstations.

- The Cameron Road Warehouse, Retention Center, and Austin Field Office housing various Agency staff with Microsoft XP workstations.

Remote Offices TDI has several field office locations across the State, which houses various Agency staff with Microsoft XP Workstations.

Protocols used by TDI

- Microsoft TCPIP and Microsoft TCP/IP stack between workstations and the file servers.
- TCP/IP between workstations and the Oracle database.
- TCPI/IP between workstations and Novell NetWare GroupWise.

Interagency Network Participation

- TDI can exchange e-mail with any organization (government or private) using the TCP/IP protocol.
- TDI has the capability of reaching any site on the Internet via FTP, Telnet, or Web.
- TDI hosts various Web Applications.
- TDI participates in the Texas Online Web portal.
- National Association of Insurance Commissioners (NAIC) - TDI accesses NAIC's mainframe (SQL/DS) via a secure web portal.
- TDI's Fraud division accesses the National Insurance Crime Bureau (NICB) to research insurance agents and companies.
- The Office of Attorney General connects to TDI's Compass via Citrix.
- TDI connects to the Comptroller's Office via Virtual Private Networking to access accounting and payroll systems.

File Transfer Program (FTP) TDI receives the following information via FTP through CapNet over a VPN tunnel

- USAS Reports from the Texas Comptroller of Public Accounts (CPA)
- LOCKBOX from the Cash System from the Texas Comptroller of Public Accounts(CPA)
- P72REF (non-tax payer) from the Texas Comptroller of Public Accounts (CPA)

Secure File Transfer Protocol (SFTP) TDI provides secure file transfer communications with over 300 Workers Compensation partners via two **SFTP sites. One Test Site is used to establish the proper method that data will be accepted. Once the communication method is established the Production site is used for the transfer of Medical Data, Claims and Payment Data.**

Through Desktops and Other Servers

- "Phone Call Details" from the Texas Facilities Commission
- Agent License Online Addresses from NIC USA

CapNet. TDI sends the following information to agencies via FTP through CapNet through a VPN tunnel:

- TDICMPY (list of company quarterly) to the Texas Comptroller of Public Accounts (CPA)
- Licensed Agents (quarterly) to the Office of Attorney General (OAG)

Through Desktops and Other Servers

- "Texas Registry Updates" to Secretary of State (SOS)
- "USAS Refunds" to the Department of Information Resources (DIR)

Telnet. TDI accesses the following agencies via Telnet through CapNet and has programmed special keyboard mappings:

- The Texas Comptroller of Public Accounts (CPA) to access the USAS, USPS, and SPA systems.
- The Texas Legislative Council (TLC) for ABEST which is associated with the Legislative Budget Board.
- The University of Texas (UT) library system.
- The Texas Workforce Commission (TWC) to access the state job listings system.

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APPENDIX 2: SAMPLE CONTRACT

Sample Contract for MARKETING SERVICES between the TEXAS DEPARTMENT OF INSURANCE and [RESPONDENT]

This Agreement (“Agreement”) is made by and between the Texas Department of Insurance, an agency of the State of Texas, hereinafter referred to as “TDI,” and [RESPONDENT], [address], hereinafter referred to as “Respondent.”

Recitals

Whereas, on Thursday, November 18, 2010, TDI issued Request for Proposals No. 11-RB-MARKETING (the “RFP”) from qualified firms or entities to provide services to TDI pursuant to Section 1508.262 of the Texas Insurance Code; and

Whereas, Respondent submitted a Proposal in response to the RFP on _____, 2011; and

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

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

1. Authority

The authority for this Agreement is Chapter 2155 of the Texas Government Code.

2. Services

2.01. Services. Respondent will provide to TDI all of the services and other deliverables as described in and in the manner required by the following documents: (1) this _____ (pp) page document; (2) Exhibit A – TDI’s RFP; (3) Exhibit B – Respondent’s Proposal Response; and (4) Exhibit C – Pricing Schedule.

All of the above are attached to and incorporated as part of this Contract for all purposes. In the case of conflicts between this ___ (pp) page document and any of the exhibits, the following indicates the order of priority: (1) this ___(pp) page document; (2) Exhibit A – TDI’s RFP; (3) Exhibit B – Respondent’s Proposal Response; and (4) Exhibit C – Schedule of Fees.

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

3. Compensation

The total amount of this Contract shall not exceed *XXX DOLLARS AND XXX CENTS (\$XXX.XX)*.

4. Term

The initial term of this Agreement shall begin on execution of the contract continue through August 31, 2012. TDI, at its sole option, may extend this Agreement for four (4) additional one (1) year periods.

5. Affirmations and Certifications

Respondent certifies that it is in compliance with the certifications and affirmations in Section 2.34 of the RFP and agrees to such certifications and affirmations.

6. Miscellaneous

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

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

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

Texas Department of Insurance

RESPONDENT

By _____
Karen A. Phillips
Chief of Staff

By _____
Name
Title

Date: _____

Date: _____

