



Ofc of Injured Employee Counsl
Purchase Order # 44800 16-0030

Payment Terms: NET30 Freight Terms: FOB Destination Ship Via: VNDR PCC: S Date: 09/17/15 PO Method: DG Dispatch: Dispatch Via Print Rev Dt:

PLEASE NOTE: ADDITIONAL TERMS AND CONDITIONS ARE LISTED AT THE END OF THE PURCHASE ORDER.

Vendor: MCCONNELL & JONES LLP
4828 LOOP CENTRAL DRIVE SUTIE 1000
USA
HOUSTON TX 77081
United States

Ship To: 2M0003
No Physical Shipment
United States

Vendor ID: 1760488832

Purchaser: Denise Walch
Phone: 512/676-6153
Fax: 512/463-6159
Email: denise.walch@tdi.texas.gov

Bill To: Attn: Acctng - Mail Code 108-3A
P.O. 149104
Austin TX 78714-9104
United States

Fax:
Email: Invoices@tdi.texas.gov

PO Information:

The Purchase Order (PO) is subject to termination or cancellation, without penalty to OIEC, either in whole or in part, subject to the availability of state funds. OIEC is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If OIEC becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render the vendor's delivery or performance under the PO impossible or unnecessary, the PO will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this Section, OIEC will not be liable to the vendor for any damages that are caused or associated with such termination or cancellation and OIEC will not be required to give notice.

The State of Texas has adopted a policy and process encouraging the use of negotiation and mediation to resolve contract claims against the state. All contract claims made against the Office of Injured Employee Counsel must adhere to the process under Texas Government Code, Chapter 2260, Resolution of Certain Contract Claims Against the State.

09/17/15-PO is issued for FY16 pursuant to Contract #44800-15-0952-19; Contract executed on 07/14/15 for Internal Audit Services for the Office of Injured Employee Counsel, with the initial term ending on 08/31/16. Contract provides for up to three (3) one year periods, with price escalation allowed for each renewal year, capped at a total of 3% for the life of the contract.

First Renewal Option: 09/01/16--08/31/17
Second Renewal Option: 09/01/17--08/31/18
Third Renewal Option: 09/01/18--08/31/19

Price Escalation allowed for First Renewal Option is: 1%, for a contract amount of \$39,452.64
Price Escalation allowed for Second Renewal Option is: 1% for a contract amount of \$39,452.64
Price Escalation allowed for Third Renewal Option is: 1% for a contract amount of \$39,452.64

In order of precedence, the Contract, RFP 448-15-0995 and the vendors' response are incorporated into this PO.

Invoicing: All invoices must be sent electronically to: invoices@tdi.texas.gov

To ensure prompt payment, the vendor must include the following information on all invoices: (1). the above-referenced PO Number; (2). the above-referenced Vendor ID Number; and (3). any other relevant information that will confirm purchase. Failure to comply may delay payment process or cause invoice to be returned.

Certification: The terms of the contract are considered complete and payment can be made when the terms and conditions of the order have been met and the goods/services have been certified.

Authorized Signature

[Handwritten Signature]

09/18/2015



**Ofc of Injured Employee Counsl**  
**Purchase Order # 44800 16-0030**

Line-Sch	Line Description	Class/Item	Quantity	UOM	Unit Price	Extended Amt	Due Date
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1- 1	FY16 - Internal Audit Service. Contract attached to line 1.	918/04	1.0000	EA	39517.14000	39517.14	09/17/2015
						<b>Schedule Total</b>	<input type="text" value="39517.14"/>
				<u>ReqID:</u>			
				0000001130			
Vendor: McConnell Jones, LLP.							
Contract attached to line 1.							
						<b>Item Total for Line # 1</b>	<input type="text" value="39517.14"/>

**Total PO Amount**

All Shipments, Shipping papers, invoices and correspondence must be identified with our Purchase Order Number. Overshipments will not be accepted unless authorized by Buyer prior to Shipment.

**Terms and Conditions:**  
 The Purchase Order Terms and Conditions can be found at:  
<http://www.tdi.texas.gov/general/aspurch.html>

**Authorized Signature**  
  
 09/18/2015



**Office of Injured Employee Counsel  
7551 Metro Center Drive, Suite 100  
Austin, Texas 78744**

**REQUEST FOR PROPOSALS**

**INTERNAL AUDIT SERVICES**

**RFP #448-15-0995**

**Dated: April 29, 2015**

**Deadline for Submission:  
May 20, 2015 at 3:00 PM Central Time**

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**DEFINITIONS.** For purposes of this RFP, the following definitions apply:

**Audit** means (a) a financial audit described by Section 321.0131 of the Texas Government Code, Chapter 2102; (b) a compliance audit described by Section 321.0132 Texas Government Code, Chapter 2102; an economy and efficiency audit described by Section 321.0133; (d) an effectiveness audit described by Section 321.0134 of the Texas Government Code, Chapter 2102; or (e) an investigation described by Section 321.0136, of the Texas Government Code, Chapter 2102.

**Contract** means the written agreement, if any, executed by the authorized representative of the parties and the Respondent that formalizes the terms, provisions, covenants, and obligations, including but not limited to those contained in this RFP, of the respective parties to the arrangement for provision of services.

**Contractor** means the individual or entity qualified to provide the goods and/or services sought by OIEC pursuant to this RFP and who is ultimately be selected to carry out the requirements stipulated in this RFP and any resulting contract.

**Generally Accepted Government Auditing Standards (GAGAS)** is also known as the "Yellow Book", provide a framework for conducting high quality audits with competence, integrity, objectivity, and independence. The Yellow Book is for use by auditors of government entities, entities that receive government awards, and other audit organizations performing Yellow Book audits.

**Internal Auditing** is defined as an independent, objective assurance and consulting activity designed to add value and to improve an organization's operations, per the Texas Government Code, Chapter 2102.

**OIEC** means the Office of Injured Employee Counsel and the state agency responsible for the issuance of this RFP

**Request for Proposal (RFP)** means the document so titled and exhibits, attachments, and appendices thereto which are incorporated by reference as set forth in full in this RFP.

**Respondent** means an individual or entity qualified to provide the goods and/or services sought by OIEC pursuant to this RFP and who may ultimately be selected to carry out the requirements stipulated in this RFP and any resulting contract.

**Respondent's Employee(s)/Respondent's Personnel** means any and/or all of the following, without limitation to: employees, leased employees, agents, officers, directors, staff, independent contractors, contractors, or subcontractors, or any individuals furnished, referred, or provided by the Respondent for the purposes arising out of or related to this RFP, the Respondent's Proposal, and the contract, if any, that results from the award made by OIEC to the Respondent.

**TDI** means the Texas Department of Insurance. OIEC is administratively attached to TDI which assists in providing services such as budget, accounting, purchasing, human resources, facilities and information technology services. TDI will be seen throughout this Proposal as part of that role.

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## 1. PART I. GENERAL INFORMATION

### 1.1. Introduction and Scope.

The Office of Injured Employee Counsel (OIEC) seeks sealed proposals from qualified individuals or entities to provide internal auditing services. Chapter 2102 of the Texas Government Code directs OIEC to employ an internal auditor to provide services to facilitate agency oversight. OIEC desires services which represent the best combination of price and quality.

All Respondent services, supplies and materials needed for successful delivery of the resulting contracted services shall be included in the cost proposal, identified as the Mandatory Pricing sheet (**Attachment 2**)

This RFP describes the requirements that must be met by the selected Respondent prior to receiving payment under any resulting OIEC contract. Respondents are cautioned to carefully read the RFP in its entirety. Award will be based on Respondent's responses to the Statement of Work (SOW) outlined in Part II of this RFP. Failure to provide the mandatory required information with the Proposal will automatically disqualify the Proposal from consideration for award in connection with this RFP. See Texas Government Code §2156.008

#### 1.1.1. Purchasing Authority.

This purchase is in accordance with Texas Government Code, Chapters 2155 and/or 2156 as applicable.

#### 1.1.2. OIEC Background.

The major functions and responsibilities of OIEC are to:

- Provide assistance to unrepresented injured employees;
- Advocate on behalf of injured employees as a class in workers' compensation rulemaking efforts;
- Assist injured employees with contacting appropriate licensing boards for complaints against a health care provider;
- Assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that OIEC considers appropriate;
- Monitor the performance and operation of the workers' compensation system with a focus on the system's effect on the return to work of injured employees;
- Assist injured employees, through the Ombudsman Program, with the resolution of complaints pending at the Texas Department of Insurance, Division of Workers' Compensation (DWC);
- Assist injured employees, through the Ombudsman Program, in DWC's administrative dispute resolution system; and
- Advocate in OIEC's name positions determined to be most advantageous to a substantial number of injured employees.

For the 2016-2017 biennium, the full time equivalent (FTE) employee maximum for OIEC is 175 for each year and total proposed appropriations are \$8,445,239 and \$8,445,239 for fiscal years 2016 and 2017 respectively.

#### 1.1.3. Minimum Qualifications for Respondents.

Respondents submitting a Proposal in response to this RFP must meet the following minimum requirements.

- 1.1.3.1. Respondents must be either Certified Public Accountants (CPA) or Certified Internal Auditors, with at least three (3) years of auditing experience. Preferred certifications are Certified Information System Auditors (CISA) or Certified Fraud Examiners (CFE). This information shall be submitted as Respondent's **Exhibit 1**, in response to this RFP. Required licenses (i.e. CPA) shall be on file with the Texas State Board of Public Accountancy. Failure to submit this required information may render the Respondents' proposal as nonresponsive.
- 1.1.3.2. Respondents must have an established continuing education program for the professional development of their internal staff that complies with the yellow book CPE requirements (General Standard 3.6). Respondents must comply with the Government Accounting Standards outlined in the Government Accounting Office (GAO) Publication GAO-12-331g, "Government Auditing Standards 2011 Revision". If Respondent is a CPA firm, Respondent firm must have an established continuing education program for the professional development of their internal staff that complies with Government Accounting Standards (yellow book) Continuing Professional Education (CPE) requirements. The updated guide can be found at: <http://www.gao.gov/assets/590/587281.pdf>.
- 1.1.3.3. If Respondent is a CPA firm, Respondent must specify the individual CPA(s) in the group who will handle the work under this proposal.
- 1.1.3.4. The three (3) year requirement of auditing experience shall have been done with a state agency or other governmental entity, as evidenced by the Respondent's submission of résumés and copies of engagement letters for services rendered at the applicable state agency or other governmental entity. (Refer to Section 3.5.5. which directs Respondent to submit résumés as **Attachment 5**).
- 1.1.3.5. Respondent must be a vendor who is registered to do business in the state of Texas, as evidenced by registration certificate from the Secretary of State. This information shall be submitted as Respondent's **Exhibit 2**, in response to this RFP.

## 1.2. **Period of Performance and Contract Term.**

The initial term of the contract will be from date of award, or the last signature date, whichever is later, through August 31, 2016.

- 1.2.1. Notwithstanding the termination or expiration of this Agreement, the provisions regarding indemnification, confidentiality, dispute resolution, audit rights, and warranties shall survive the termination and expiration dates of this Agreement.

## 1.3. **Renewal Options.**

- 1.3.1. OEIC, at its sole discretion, has the option to extend the term of the contract for up to three (3) one-year periods, at the same terms and conditions.

## 1.4. **Texas State Agency Holiday Schedule and OIEC Official Business Hours.**

The resulting contract will be issued in State Fiscal Year (FY) 2015. The State FY begins September 1st, and ends on August 31<sup>st</sup>. There are official State holidays recognized by Texas State agencies. On these days, the Texas Department of Insurance may not be officially opened for business or may be closed. Respondents submitting Proposals in response to this RFP should refer to the Texas State Auditor's website at the following link, for a .pdf of the FY2015 State Agency Holiday schedule, which provides additional

information on state agency closures: <http://www.hr.sao.state.tx.us/compensation/Holidays2015.pdf>. This Holiday schedule is updated each State FY by the Texas State Auditor's Office.

For the purposes of this RFP, the official business hours of the Agency are Monday through Friday, 8:00 AM to 5:00 PM.

**1.5. Protest Procedure.**

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

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## 2. PART II. STATEMENT OF WORK

### 2.1. **General Overview.**

Under this RFP, the selected Respondent(s) shall perform internal auditing services for OIEC to comply with the Texas Internal Auditing Act, Tex. Gov't Code Ann., §2102.001 *et. seq.* (the Act) which details internal auditing responsibilities, and the related Texas Attorney General's Opinion No. JM-1183 regarding the applicability of the provisions of the Act. Key requirements of the Act, minimum requirements of the Internal Auditor, and the scope of procedures of the Internal Auditor are as follows:

- a. The Act requires that an audit program conform with the:
  - Standards for the Professional Practice of Internal Auditing,
  - Generally Accepted Government Auditing Standards,
  - Certified Internal Auditor Code of Professional Ethics, and
  - Statement of Responsibilities of Internal Auditing, of the Institute of Internal Auditors.

This Statement of Work describes services to be provided under this RFP. Successful Respondent shall meet or exceed the performance requirements contained herein.

### 2.2. **Internal Auditor Performance.**

The services to be performed by the selected Respondent include the following activities.

#### 2.2.1. The Internal Auditor shall:

- Establish a methodology for assigning risk factors and weights that cover all of OIEC's major control systems, to develop an Audit Plan that includes a prioritized audit work schedule;
- Perform a Risk Assessment using techniques to identify risk factors that affect OIEC's major systems and internal controls, including but not limited to management and administration, finance and accounting, human resources, information services, purchasing\*, Ombudsman Services, Customer Services and Legal Services. NOTE\* OIEC's Purchasing activities are done by TDI, as an administrative support function to OIEC, and thus to this extent, any Risk Assessment and the resulting Audit Plan should note this;
- Prepare and implement an annual Audit Plan to be approved by the Public Counsel or Authorized Designee, based upon the Risk Assessment;
- Identify and recommend priorities and time frames for individual audits to be conducted during the year;
- Conduct audits, based upon and specified in the Audit Plan and ensure that all deviations from the Audit Plan are documented and approved by the Public Counsel or Authorized Designee;
- prepare audit reports to be reviewed by the Public Counsel or Authorized Designee;
- Complete an annual internal audit report based on guidelines established by the state auditor's office;
- Perform additional audits, outside the scope of the approved Audit Plan, as directed by the Public Counsel or Authorized Designee. Compensation for these additional audits would be paid at an agreed upon additional hourly fee, and
- Provide appropriate notice of completed audits to all State oversight bodies as required by State law.

In the performance of the work under this RFP, the selected Respondent shall have direct access to the Public Counsel or her Authorized Designee, and is expected to allow time in the work schedule for scheduled meetings, as deemed necessary with the Public Counsel or her Authorized Designee. The selected

Respondent shall assume no operational or management activities in the performance of any work under the resulting contract.

### **2.3. Audit Plan Deliverables and Milestones.**

#### Fiscal Year 2015 Deliverables

- 2.3.1. An assessment of OIEC's Fiscal Year (FY) 2015 Audit cycle;
- 2.3.2. Preparation of OIEC's Annual Audit Report for FY 2015;
- 2.3.3. Presentation of the FY2015 Preliminary Annual Audit Report to OIEC Public Counsel or Authorized Designee, by Thursday, October 15, 2015;
- 2.3.4. Submission of the Final Annual Audit Report for FY2015, to the OIEC Public Counsel or Authorized Designee, by Friday, October 23, 2015, after the incorporation of any requested changes or necessary edits;
- 2.3.5. Submission of the OIEC-approved Final Audit Report for FY2015, to the Governor, the Legislative Budget Board, the Sunset Advisory Commission, and to the State Auditor's Office by Friday, October 30, 2015.
- 2.3.6. attendance as necessary at project-related meetings.

#### Fiscal Year 2016 Deliverables

- 2.3.7. For FY2016 conduct a Risk Assessment analysis, which reviews all major systems and controls, including taking into account previous audits of OIEC, conducted by the State Auditor's Office.
  - 2.3.7.1. The Risk Assessment shall consist of:
    - 2.3.7.1.1. An Executive Management review of agency functions, activities, and processes;
    - 2.3.7.1.2. Evaluate the probability of occurrence and the likely effect of financial, managerial, and compliance risks and of risks related to the use of information technology; and
    - 2.3.7.1.3. rank risks according to the probability of occurrence and likely effect of the risks evaluated.
- 2.3.8. Prepare and present a Preliminary Internal Audit Plan to OIEC Management finalized for submission to the Governor, the Legislative Budget Board, the Sunset Advisory Commission, and the State Auditor's Office by October 31, 2015.
  - 2.3.8.1. The Audit Plan shall include the following:
    - 2.3.8.1.1. preparation of an Annual Audit Report;
    - 2.3.8.1.2. billable hours for preparation of the Annual Audit Report;
    - 2.3.8.1.3. any necessary audit follow-up review and report(s);
    - 2.3.8.1.4. development of the risk assessment;
    - 2.3.8.1.5. development of the Annual Internal Audit Plan, and
    - 2.3.8.1.6. attendance as necessary at Quarterly OIEC Executive Meetings or project-related meetings.
- 2.3.9. Conduct two (2) audits, in priority order, based on the Audit Plan and determined by OIEC Public Counsel or Authorized Designee, to be conducted and completed by an agreed upon schedule.
- 2.3.10. Prepare and present a Preliminary Annual Audit Report to the OIEC Public Counsel or Authorized Designee by Friday, October 14, 2016.

- 2.3.11. Submission of the Final Annual Audit Report for FY2016, to the OIEC Public Counsel or Authorized Designee, by Friday, October 21, 2016, after the incorporation of any requested changes or necessary edits.
- 2.3.12. Submission of the OIEC-approved Final Annual Audit Report for FY2016, to the State Auditor's Office, the Governor, the Legislative Budget Board, the Sunset Advisory Commission, and by Friday, October 28, 2016.
- 2.3.13. Responses to this RFP should also include key tasks, procedures, estimated work schedule, and estimated costs. All estimated costs shall be identified in the Mandatory Pricing Form, **Attachment 2**, which can be found on in Bid Package 2, on the Electronic State Business Daily (ESBD).
  - 2.3.13.1. Description(s) of the standard process used by the Respondent to conduct an audit. Since the hours for this task will be dependent on each audit, the estimated costs should simply include an hourly rate for audits to be conducted in connection with the Respondent's proposal.
  - 2.3.13.2. The audit reports, including the Annual Audit Report shall conform to the standards for the Professional Practice of Internal Auditing, the Code of Ethics contained in the Professional Practices Framework as promulgated by the Institute of Internal Auditors, and Generally Accepted Government Accounting Standards (GAGAS) as required or referenced by the Texas Internal Auditing Act (Texas Government Code, Chapter 2102).
  - 2.3.13.3. The Audit Report shall include, but is not limited to, the following:
    - 2.3.13.3.1. A copy of the annual Audit Plan;
    - 2.3.13.3.2. A list of audits completed;
    - 2.3.13.3.3. An explanation of any deviation from the approved annual Audit Plan;
    - 2.3.13.3.4. A narrative description of the most significant findings and recommendations for each audit including a description of material weaknesses found in the internal control system;
    - 2.3.13.3.5. A description of the management actions taken in response to the audit findings and recommendations;
    - 2.3.13.3.6. A listing of the audit recommendations from the previous fiscal year's report and an explanation of the status of each recommendation;
    - 2.3.13.3.7. Distribution of all audits to applicable state agencies as required by statute;
    - 2.3.13.3.8. A statement of the last date on which an external peer review of the Respondents internal audit program was conducted;
    - 2.3.13.3.9. A statement that the audit was made in accordance with generally accepted governmental auditing standards; and
    - 2.3.13.3.10. A statement as to whether any pertinent information has been omitted because it is deemed privileged or confidential by law, and why.
- 2.3.14. Complete quality assurance reviews in accordance with professional standards and periodically take part in an external peer review conducted in accordance with the Standards for the Professional Practice of Internal Auditing and generally accepted governmental auditing standards.
- 2.3.15. If budget constraints require OIEC to reduce the scope of the engagement, the revised scope will include only those things necessary to meet the minimum requirements of the Texas Internal Auditing Act.
- 2.3.16. The Respondent shall provide a description of the processes to be used to conduct an audit. Since the hours for this task will be dependent on each audit, the estimated costs should simply include an hourly rate for audits to be conducted in connection with the Respondent's proposal

#### **2.4. Billable Audit Hours and Costs.**

It is estimated that the total billable audit hours would be **approximately 60 Billable hours** for FY2015 (June 1 through August 31). **For FY2016 we estimate 300 Billable hours.** Some travel may be necessary for Audits involving field operations. Proposals should reflect estimated travel costs. No reimbursement shall be made by OIEC for any costs incurred by Respondent for the preparation of its Proposal in response to this RFP. All such costs and expenses for providing internal audit services must be included the **Mandatory Pricing Form (Attachment 2)**. This document can be found in Bid Package 2 on the ESBD posting.

Additionally, the Respondent is requested to provide an hourly fee for any additional work such as investigations and management advisory services that may be desired by OIEC for the duration of the contract that would not be included in the total contracted price.

#### **2.5. Communication with OIEC.**

The Respondent's work schedule must allow for regularly scheduled meetings with the Audit Committee of OIEC, and/or the Public Counsel or Authorized Designee.

#### **2.6. Qualifications/Competencies of Respondent.**

The Respondent and services provided must meet the requirements of the Internal Audit Act, any other applicable statute, and all the requirements of this RFP. In responding to this RFP, the Proposal must contain the following information as part of the Respondent's experience and qualifications at minimum. This information shall be explained in the Business Proposal (See Section 3.5.2, Proposal elements).

- 2.6.1. How the Respondent will prepare and implement OIEC's Risk Assessment and Audit Plan, including a time frame for completion;
- 2.6.2. Respondent's qualifications and ability to deliver the services required, including two examples of prior audit reports completed by the Respondent.

#### **2.7. Audit Plan/Work Schedule.**

The Respondent's estimated work hours by job title(s) for accomplishing the work, the related hourly fee, and the total anticipated hours for completion of the:

- 2.7.1. Risk Assessment
- 2.7.2. Audit Plan Proposal
- 2.7.3. Audits to be Performed
- 2.7.4. Annual Report for FY15 and FY16
- 2.7.5. Annual update of the Risk Assessment

#### **2.8. Proprietary Interests.**

All work-papers, data, materials, testimony, information, and reports developed by Respondent in draft form will remain the property of Respondent and will be subject to modifications by Respondent until delivery of the final work-papers, data, materials, information, and reports required by the contract or until termination of the contract, whichever is earlier. Upon completion of services or upon termination of the contract, whichever is earlier, Respondent will provide to OIEC all original work-papers, data, materials, testimony, information and reports produced by Respondent during the performance of these services.

Respondent retains no proprietary interest in the work-papers, data, materials, testimony, information and reports furnished by Respondent to OIEC or available to OIEC under the contract and such work-papers, data, materials, testimony, information, and reports will be the sole property of OIEC. Respondent will retain copies of its original work-papers, data, materials, testimony, information, and reports delivered to OIEC under the contract.

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**3. Part III. GENERAL PROPOSAL INFORMATION AND MANDATORY RESPONSE REQUIREMENTS.**

**3.1. Schedule of Events.**

The schedule of RFP events is indicated in Table 1 below. OIEC reserves the right to amend the schedule.

<b>TABLE 1—RFP Schedule of Events</b>	
<b>Date</b>	<b>Event</b>
Wednesday, April 29, 2015	RFP issued; published on the Electronic State Business Daily (ESBD)
Wednesday, May 6, 2015, at 3 p.m., Central Time	Deadline for submission of written questions
Monday, May 11, 2015	Responses to written questions posted on ESBD
Wednesday, May 20, 2015, 3 p.m., Central Time	Deadline for submission of Proposals
Monday, June 15, 2015	Anticipated contract award

**3.2. Revisions to Schedule.**

The Office of Injured Employee Counsel reserves the right to change the dates in the schedule of events above as written notification to prospective Respondents through a posting on the ESBD as an Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a Proposal. The Respondent's failure to periodically check the ESBD will in no way release the Respondent from the requirements of "addenda or additional information" nor will Respondent be allowed to add any additional costs to the Mandatory Pricing form, in order to meet any additional requirements imposed from subsequent addenda or the request for additional information, in response to the RFP.

**3.3. Historically Underutilized Businesses (HUB) Requirements.**

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 Texas Administrative Code §§20.11 through 20.28). Respondents that meet the qualifications are strongly encouraged to apply for certification as HUBs. Please contact the Texas Procurement and Support Services (TPASS) Director of Business Services, at 512-463-3612, or the TDI contact person identified below if you have any questions regarding the certification process. Respondents may also contact TPASS at 512-463-5872 for additional HUB certification information.

**3.3.1. HUB Subcontracting Plan.**

3.3.1.1. OIEC has determined subcontracting opportunities are probable with this RFP. **Table 2** below lists potential areas of subcontracting opportunities. Respondent must perform the good faith effort outlined in the HUB Subcontracting Plan (HSP) (found in Bid Package 3 on the ESBD posting).

3.3.1.1.1. The HUB Subcontracting Plan Form, **Attachment 3**, must be submitted with the RFP Response to be considered responsive. Failure to submit this document will result in disqualification of submitted Proposal.

3.3.1.1.2. The HUB Subcontracting Prime Contractor Progress Assessment Report (PAR), **Attachment 4**, must be submitted on a monthly basis after a contract award has been issued.

3.3.1.2. Full commodity descriptions may be found on the Comptroller of Public Accounts website in the National Institute for Government Purchasing (NIGP) Commodity Book Listings at: <http://comptroller.texas.gov/procurement/tools/comm-book/>

**3.3.2. Probable HUB Subcontracting Opportunities.**

Table 2 below lists the NIGP Class-Item and Commodity Descriptions for the services required under this RFP.

TABLE 2—NIGP Class-Item Code and Commodity Description		
Class	Item No.	Commodity Description
918	04	Auditing Consulting Services
946	20	Auditing Services

**3.4. Proposal Instructions.**

**3.4.1. Respondent Documents.**

All Respondent's documents submitted in response to this RFP, including all required documents, the Acknowledgements of any posted Addenda, and any warranty documents, are collectively referred to as "Respondent Documents". Respondent Proposal must include copies of ALL applicable Respondent documents. Additional documents that Respondent feels would be helpful in supporting its Proposal, but were not requested under this RFP, yet submitted with Respondent's Proposal, shall not be given additional consideration for evaluation.

**3.4.2. Submission of Written Questions.**

Respondents are strongly encouraged to submit written questions, during the official question and answer period, regarding any term or condition of this RFP and whether OIEC may negotiate that provision under this particular RFP.

**3.4.3. Questions and RFP Point of Contact.**

All questions shall be submitted in writing to the **Point of Contact**, Ms. Chastity Marion, via email at: [chastity.marion@tdi.texas.gov](mailto:chastity.marion@tdi.texas.gov) by **Wednesday, May 6, 2015, 3 p.m.**, Central time, Austin, Texas, which is the date listed as the deadline for submission of questions as specified in **Table 1** of Section 3.1 above.

3.4.3.1. All questions will result in written responses with copies posted to the Electronic State Business Daily, available at <http://esbd.cpa.state.tx.us>

3.4.3.2. If a Respondent does not have Internet access, a copy of all written responses may be obtained through the point of contact listed above.

3.4.3.3. Except as otherwise provided in this Section, upon issuance of this RFP, other employees and representatives of OIEC will not answer questions or otherwise discuss the contents of

the RFP with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions unrelated to this RFP.

**3.4.4. Delivery of Responses.**

Respondent must submit all copies of its Proposal to TDI's Purchasing and Contract Administration no later than **Wednesday, May 20, 2015, 3 p.m.**, Central time in Austin, Texas. Responses to this RFP must be time-date stamped before 3 p.m. Central Time, at TDI's Service Center in Austin, Texas, before 3 p.m. Central time **Wednesday, May 20, 2015**.

- 3.4.4.1. Late responses will not be considered under any circumstance.
- 3.4.4.2. Late responses properly identified will be returned to the Respondent unopened.
- 3.4.4.3. All responses become the property of OIEC after submission.
- 3.4.4.4. Responses shall be submitted to TDI by one of the following methods:

<u>U.S. Postal Service to:</u>	<u>By Overnight or Hand Delivery:</u>
<p>Texas Department of Insurance Purchasing and Contract Administration Attn: Ms. Chastity Marion, CTCM, CTPM PO Box 149104 Austin, TX 78714-9104</p> <p>RFP NO. 448-15-0995</p>	<p>Texas Department of Insurance Service Center/Purchasing and Contract Administration Attn: Ms. Chastity Marion, CTCM, CTPM 333 Guadalupe Street, Tower 1-Room 103 Austin, TX 78701</p> <p>RFP NO. 448-15-0995</p>

**3.4.5. Response Deadline.**

All responses shall be received and time stamped at TDI prior to **Wednesday, May 20, 2015**, at 3 p.m. Central time, Austin, Texas, as specified above in Section 3.1, Schedule of Events.

**3.4.6. Response Submittal.**

Responses shall be placed in a separate envelope or package from the Mandatory Pricing Form, and correctly identified with the RFP number and submittal deadline/RFP opening date and time. It is the Respondent's responsibility to appropriately mark and arrange for delivery the Response to TDI by the specified date and time via U.S. Postal Service, other delivery service, or hand-delivery.

**The Proposal packaging must clearly have the RFP No. 448-15-0995 listed on the outside of the packaging.**

- 3.4.6.1. Respondent must submit one (1) original and three (3) copies of its **Proposal**, and must sign the original copy in ink. Respondent must also submit one (1) electronic copy of its Proposal on compact disc or flash drive, which at the minimum is compatible with Microsoft Office 2010 or later. Compact discs or flash drives must be labeled with the company's name, and un-encrypted. If Respondent feels it is necessary to encrypt the disc or flash drive, Respondent must immediately provide TDI's Purchasing and Contract Administration contact person listed in Section 3.4.3, with the encryption code, upon request.

- 3.4.6.2. Respondent must submit one (1) original and three (3) copies of the **Mandatory Pricing Form**. Respondent must also submit one (1) electronic copy of the Mandatory Pricing Form on compact disc, compatible with Microsoft Office 2010 or later.
- 3.4.6.3. A U.S. Postal Service (USPS) postmark or validation stamp; a mail receipt with the date of mailing, stamped by the USPS; a dated shipping label, invoice, or receipt from a commercial carrier; or any other documentation in lieu of the on-site time stamp from TDI will not be accepted.
- 3.4.6.4. Emailed and facsimile proposals will not be accepted.
- 3.4.6.5. Receipt of all addenda to this RFP must be acknowledged by Respondent through the return of a signed copy of each addendum, with the submission of the Respondent's Proposal, in accordance with the Proposal Submission Checklist, in Section 3.8.1 of this RFP.
- 3.4.7. **Exception to Provisions.**  
If Respondent takes any exceptions to any provisions of this RFP, these exceptions must be specifically and clearly identified by Section in Respondent's Proposal in response to this RFP and provided in the Letter of Transmittal addressed in RFP Section 3.5.1. Respondent cannot take a blanket exception to this entire RFP. If any Respondent takes a blanket exception to this entire RFP or does not provide proposed alternative language, the Respondent's Proposal may be disqualified from further consideration. Any exception may result in a contract not being awarded to the Respondent.
- 3.4.8. **Responsive Information.**  
The Respondent's Proposal must be responsive to all requirements set forth in this RFP and prepared according to the format described in this RFP. All Proposals must provide sufficient information to enable the review committee to evaluate the Respondent's ability to provide the services described in Part II, Statement of Work, and to comply with any other contractual provisions described in this RFP.
- 3.4.9. **Legible Responses.**  
All Proposals must be typewritten and legible, and the Respondent must sign the original copies of the Proposal in ink. Failure to manually sign the required, applicable Proposal documents, may lead to a disqualification of the Proposal.
- 3.4.10. **Authority to Bind in a Contract.**  
The person signing the Proposal must indicate the title or authority to bind the Respondent in a contract.
- 3.4.11. **Organization of Proposal.**  
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. The Respondent must provide all information that the Respondent believes would be helpful to OIEC in establishing Respondent's ability to perform the services described in this RFP, and to comply with the requirements of this RFP and any resulting contract.

**3.4.12. Title Page.**

The Title Page must include the following information:

- (a) RFP ID Number;
- (b) Respondent's Name and Address;
- (c) Respondent's State of Texas Taxpayer Number and Federal Employer's Identification Number, and
- (d) Respondent's Printed Name, Signature, Title, and Date signed.

**3.4.13. Table of Contents.**

The Proposal must be submitted with a Table of Contents that clearly identifies and denotes the location of each section and sub-section of the Proposal. Additionally, the Table of Contents must clearly identify and denote the location of all enclosures and attachments to the Proposal including relevant page numbers.

**3.5. Letter of Transmittal and Proposal Instructions.**

**3.5.1. Letter of Transmittal.**

The Respondent's Proposal must be introduced by a Letter of Transmittal that includes the information specified below. The Transmittal letter must be submitted, in accordance with the Proposal Submission Checklist in Section 3.8.1, **Table 3**. At a minimum, the letter must contain the following information and representations:

- 3.5.1.1. A statement of the Respondent's commitment to provide the services required by OIEC as set forth in this RFP.
- 3.5.1.2. A statement that the Proposal is valid for one hundred eighty (180) calendar days from the day after the date that the Proposal is delivered to TDI. Any Proposal containing a term of less than 180 calendar days for acceptance, will be rejected by TDI as non-responsive.
- 3.5.1.3. A statement that the Respondent acknowledges and agrees to comply with the requirements described in Part II, Statement of Work and the Terms and Conditions contained in this RFP and those of any resulting contract. **If any Respondent takes exception to any of the requirements of the Statement of Work or RFP Terms and Conditions, those exceptions must be noted in the Letter of Transmittal.** Each Respondent should realize, however, that failure to accept the requirements of the Statement of Work or Terms and Conditions, specified in this RFP may result in disqualification of the Proposal.
- 3.5.1.4. 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 Title 34, Part 1, Chapter 20 of the Texas Administrative Code.
- 3.5.1.5. A statement acknowledging review and acceptance of the Affirmations and Certifications contained in Part IV, Section 4.1, Respondent Affirmations and Certifications, of this RFP and indicate where each documented Affirmation and Certification is located in the Proposal.

- 3.5.1.6. A statement certifying the completeness, veracity, and accuracy of the information provided in the Proposal.
- 3.5.1.7. A statement that the Transmittal letter is signed and dated by a person legally authorized to bind the Respondent to the requirements, provisions, terms, and conditions contained in this RFP. The signature block must indicate the Signatory's printed name, title, address, telephone, facsimile, and email address.
- 3.5.1.8. A statement regarding any additional requirements, Terms and Conditions, or any documentation unaddressed in the RFP that the Respondent has attached in the Response as a material submission to the RFP.

**3.5.2. Proposal Elements.**

Each Proposal must consist of the following parts: Part 1 – Business Proposal, and Part 2 – Mandatory Pricing Form.

3.5.2.1. **Business Proposal.** Respondent must submit a Business Proposal that includes and addresses the requirements outlined in Part II, Statement of Work, and includes all required responsive documents listed in **Table 3** of Section 3.8.1. The Respondent's Business Proposal must be submitted in a binder with tabs labeled in order, using the Proposal Submission Checklist as a guide, including Proposal Elements outlined in this Section. Respondents may add tabs if providing additional information.

3.5.2.2. **Mandatory Pricing Form.** Respondents must submit a Mandatory Pricing Form as described in Section 4.2.56 and indicated as **Attachment 2** of the RFP. The pricing information submitted by Respondent shall be in accordance with the instructions given in the form, and shall be in response to the Statement of Work requirements set forth in Section II of this RFP.

3.5.2.2.1. Price Escalation. Price escalation is permitted for subsequent renewal option years, but shall be limited to a maximum of one percent (1%) for any one renewal option (if exercised). Total price escalation shall not exceed a total of three percent (3%) over the entire life of the resulting contract. Price escalations are subject to negotiation, and OIEC reserves the right to reject any or all price escalations.

**3.5.3. Executive Summary.**

Each Respondent must provide an executive summary of the Proposal, excluding cost information that asserts that the Respondent is providing, in its Proposal/response, all of the service requirements of this RFP. If Respondent is providing services beyond those specifically requested, those services must be identified. If Respondent is proposing 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 five (5) pages and should represent a full and concise summary of the contents of the Proposal.

The summary should include, at a minimum, but not limited to, the following:

- (a) a brief description of the Respondent's qualifications (licenses/certifications);

- (b) a description of the Respondent's experience with providing audit services, and
- (c) a description of the Respondent's understanding of the requirements as outlined in Part II, Statement of Work, of this RFP.

**3.5.4. Background.**

This Section details the Respondent's background and experience, including past performance, as it relates to projects similar in scope to the services described in this RFP. The Respondent must demonstrate its ability to perform the services described in the RFP by providing, at a minimum, the following information:

**1) Experience.**

- a) Respondent must list **all** engagements of comparable complexity and sensitivity to the requirements of this RFP that have been conducted within the last two (2) years that were similar to the services described in this RFP, or which, though different, require the same general types of resources and skills. Each description should be as detailed as necessary to enable OIEC to reasonably assess the relevance and usefulness of such experience. Respondent must give the client organization's name and describe the service performed, the service beginning and ending dates, results obtained, and current status of the project. Experience provided should be that which was provided to state governmental agencies.

**2) Qualifications.**

- a) To be entitled for consideration, Respondent must have available the required qualified personnel, knowledge, skills, abilities, organization, facilities, materials, supplies and equipment, to fulfill all requirements under this RFP and any resulting Contract.

**3) Respondent Key Staff.**

- a) Respondent must specifically detail the qualifications, education, training, experience and certifications of the key staff that will provide services under any contract resulting from this RFP.
- b) Respondent must include résumés for each key staff member to be assigned to this project that includes at a minimum title, educational background, licenses, relevant experience, and length of service with the Respondent's firm, and professional accreditations/certifications.
- c) Selected Respondent(s) must notify OIEC of any change in key staff, within ten (10) calendar days of such change, particularly if the key staff is assigned to the resulting contract. The Respondent must provide all information as listed above and obtain written approval from OIEC before any new personnel begins work on the resulting contract.

**3.5.5. References.**

Respondent must provide three (3) references in its Proposal, from clients for whom the Respondent has performed comparable services. Respondent must provide the name, title, telephone number, and email address of the key contact(s) at the client organization. These individuals may be contacted at the discretion of OIEC, for verification of past experience or performance. Providing the name of a contact person by the Respondent will constitute a release to contact the individual for pertinent information. The Reference list must be submitted as **Attachment 5**, in accordance with the Proposal Submission Checklist in Section 3.8.1, **Table 3**.

3.5.6. **Texas Child Support Requirement for Names and Social Security Numbers.**

Responses must include names and Social Security Numbers of each person, with at least twenty-five percent (25%) ownership of the business entity submitting the response. OIEC may accept responses that do not include this information, if OIEC obtains the required information before the contract is executed. Respondent shall submit this information with its' Proposal, on the Execution of Proposal form, identified as **Attachment 1 (included in this RFP)**, in accordance with the Proposal Submission Checklist in **Table 3** of Section 3.8.1.

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

3.5.7. **General Respondent Information and Disclosures.**

Respondent must submit the following information as a part of its response to the RFP, as part of **Exhibit 3, identified as Tab #A**, in accordance with the Proposal Submission Checklist in Section 3.8.1, in **Table 3**. Separate the following listed items in the same numerical order as numerated below.

- 1) Name, address, telephone, and fax numbers of the entity submitting the proposal.
- 2) Type of business entity (i.e., corporation, partnership, trust, association, subsidiary).
- 3) The place of incorporation, if applicable.
- 4) The location(s) of all the major offices, locations, and other facilities that relate to the Respondent's performance under the Terms and Conditions of this RFP.
- 5) Length of time in business.
- 6) The Respondent's Federal Employer Identification Number and Texas Tax Identification/Registration Number (if available) with a copy of local business or Texas tax license.
- 7) Respondent must list all contracts or purchase orders that Respondent executed or accepted within the last three (3) years 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 who has knowledge of the cancellation and the reason for the cancellation. Providing the name of a contact person by the Respondent will constitute a release to contact the individual for pertinent information. If this item #7 does not apply to the respondent, specify "none" to #7" on **Exhibit 3, Tab A**.
- 8) Respondent must list all contracts or purchase orders that Respondent executed or accepted within the last three (3) years with any Texas State agency. If none, specify "none to #8" on **Exhibit 3, Tab A**.

**3.5.8. Conflicts or Potential Conflicts of Interest.**

Respondent must provide a statement of any conflicts or potential conflicts of interest for the Respondent or the Respondent's employees, who will or may provide services under any contract resulting from this RFP. Failure to disclose all conflicts or potential conflicts of interest may result in the Respondent being disqualified and/or may result in cancellation of the resulting contract, whichever is applicable.

In submitting a response, the Respondent certifies that, except as disclosed under the provisions of this Section, the Respondent possesses the required independence in the provision of services sought by OIEC under this RFP.

Respondent must submit this statement as part of **Exhibit 3, identified as Tab #B**, in accordance with the Proposal Submission Checklist in Section 3.8.1, in **Table 3**.

**3.5.9. Changes in Ownership Conditions.**

The Proposal must include a certification to notify OIEC 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 Respondent experiences a substantial change in ownership during the term of the contract or any extension thereof, OIEC must be notified of the change in writing, at the time the change occurs or is identified. Failure to notify OIEC 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, whichever is applicable. Respondent must submit this statement as part of **Exhibit 3, identified as Tab #C**, in accordance with the Proposal Submission Checklist in Section 3.8.1, in **Table 3**.

**3.5.10. Legal Actions.**

Respondent must identify any pending or completed legal actions against the Respondent during the past five (5) years related to services performed. Respondent must submit this statement as part of **Exhibit 3, identified as Tab #D**, in accordance with the Proposal Submission Checklist in Section 3.8.1, in **Table 3**.

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

**3.5.11. Relatives/Employees, Definitions of Employee.** State law imposes restrictions on certain contracts with former or retired employees. Respondent must provide a list of all of the following, on the "Respondent Identification of Relatives & Employees Form, submitted as **Attachment 6**, with its Proposal, in accordance with the Proposal Submission Checklist in **Table 3** of Section 3.8.1.

- 1) Relatives of the Respondent who are currently working or have worked for OIEC.
- 2) Employees of the Respondent who are current, former, or retired employees of OIEC. Respondent must notify OIEC of any prospective employee who is a former employee of OIEC,

prior to prospective employee's performance or receipt of compensation under any contract resulting from this RFP.

- 3) Respondent must notify OIEC of any prospective employee who is related to an OIEC employee, prior to placement, and must notify OIEC of any prospective employee who holds any license or certificate related to the Insurance Industry.
- 4) As used throughout this RFP, the term "Employee" includes any individuals who, on behalf of the Respondent, will or may participate in any contract resulting from this RFP. The term "Employee" includes all personnel, replacement personnel, agents, contractors, and other representatives of the Respondent, regardless of how employed or contracted by Respondent.

**3.5.12. OIEC Contact(s) Following Award.**

The OIEC contact(s) for day-to-day administration of the contract will be determined following contract award. These individuals may appoint one or more delegates to assist in the day-to-day administration of the contract and may notify the Respondent in writing of those delegates.

**3.5.13. Reservation of Rights.**

In addition to any other rights specified elsewhere in this RFP, OIEC reserves the following rights:

- 1) OIEC is under no legal requirement to execute a contract on the basis of this RFP.
- 2) OIEC reserves the right to reject a Proposal or response submitted that does not fully comply with the instructions and criteria outlined in this RFP.
- 3) OIEC reserves the right to reject any or all Proposals and call for new Proposals or responses, if deemed by OIEC to be in the best interests of OIEC or the State of Texas.
- 4) OIEC reserves the right to vary all provisions set forth at any time prior to execution of a contract, where OIEC deems it to be in the best interest of OIEC or the State of Texas.
- 5) OIEC reserves the right to select none, one, or more than one Respondent when it is determined that such action would be in the best interest of OIEC and the State of Texas.

**3.6. Right to Audit.**

The Respondent understands that acceptance of state funds under the resulting contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The Respondent further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The Respondent shall ensure that this clause, concerning the authority to audit state funds received indirectly by subcontractors through the Respondent, and the requirement to cooperate, is included in any subcontract it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Contractor relating to the resulting contract.

**3.7. OIEC Acceptance and Payment.**

OIEC payments to the Respondent will be made at the completion of each phase of the project as defined under the Audit Plan/Work Schedule Section 2.7. Payments shall be made within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by OIEC/TDI.

Contractor will be paid for completion of work accepted and approved by OIEC's Contract Administrator or his/her designated representative.

**3.8. Proposal Submission Checklist and Required Responsive Documents.**

The following checklist is provided to help the Respondent ensure that a proper Proposal is submitted in the required format.

**3.8.1. Proposal Submission Checklist.**

<b>TABLE 3-Proposal Submission Checklist</b>		
<b>Item No.</b>	<b>Required Proposal Component</b>	<b>Mandatory (Y/N)</b>
1	Title Page	Y
2	Table of Contents	Y
3	Letter of Transmittal	Y
4	Proposal Elements a) Business Proposal b) Mandatory Pricing Form	Y
5	a) Executive Summary i. Background ii. Qualifications iii. Respondent Key Staff	Y
<b>Respondent Exhibits</b>		
6	<b>Exhibit 1:</b> Respondent Licenses and Certifications	Y
7	<b>Exhibit 2:</b> Proof of Registration with Secretary of State	Y
8	<b>Exhibit 3:</b> <u>General Respondent Information and Disclosures</u> —RFP Section 3.5.7 a) General Respondent Information and Disclosures (Tab A) b) Conflicts or Potential Conflicts of Interest (Tab B) c) Changes in Ownership Conditions (Tab C) d) Legal Actions (Tab D)	Y
9	<b>Exhibit 5:</b> Acknowledgement of Addenda (in order issued, if applicable)	Y
<b>Attachments</b>		
10	<b>Attachment 1:</b> Execution of Proposal (Mandatory)	Y
11	<b>Attachment 2:</b> Pricing Form (Mandatory)	Y
12	<b>Attachment 3:</b> HUB Subcontracting Plan Form (Mandatory)	Y
13	<b>Attachment 4:</b> HUB Prime Contractor Progress Assessment Report	N/A- Reference Only
14	<b>Attachment 5:</b> Respondent References	Y
15	<b>Attachment 6:</b> Identification of Respondent Relatives and Employees	Y
16	<b>Attachment 7:</b> Anti-Lobbying Affidavit	Y
17	<b>Attachment 8:</b> OIEC Sample Contract	N/A- Reference Only

**3.9. Proposal Evaluation and Contract Award.**

**3.9.1. Evaluation Criteria.**

In selecting an Internal Auditor, OIEC will base its choice, as required by Tex. Gov't Code Ann., §2254.027(1), on "demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee." In addition, all other factors being equal, OIEC will award the contract to a Respondent whose "principal place of business is in the state or who will manage the consulting contract wholly from an office in the state" as required by Tex. Gov't Code Ann., §2254.027(2).

3.9.1.1. Scoring by Evaluation Committee. The Technical Evaluation Committee (committee) will evaluate and score Proposals using Evaluation Criteria outlined in Table 4 below. The relative weight of each criterion is indicated by the maximum possible number of points indicated in the right hand column.

3.9.1.2. **Table 4** below lists the evaluation criteria for which proposals will be evaluated.

<b>TABLE 4-Evaluation Criteria</b>	
<b>Evaluation Criteria</b>	<b>Maximum Possible Score</b>
<b>(1). Respondent Experience and Qualifications:</b>	30 points
<b>(2). References</b>	10 points
<b>(3). Financial Stability of Respondent</b> (based upon an analysis of the short-term and long-term health of organization)	20 points
<b>(4). Cost</b>	40 points
<b>Total Points</b>	<b>100 points</b>

**3.9.2. RFP Review Process.**

OIEC 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 OIEC and will be conducted as follows:

**3.9.2.1. Review of Proposals for Minimum Requirements Compliance.**

Proposals will be reviewed by Purchasing and Contract Administration to ensure the Respondents met the minimum requirements required for submission, as outlined in the RFP, and to ensure the required documents are properly organized and submitted.

**3.9.2.2. Review and Initial Evaluation by the Evaluation Committee.**

(a) Each member of the Evaluation committee will conduct an independent review of each Proposal submitted and will score each Proposal in accordance with the Evaluation Criteria provided in **Table 4**, of Section 3.10.2. The relative weight of each criterion is indicated by the maximum possible score (number of points) indicated in the right-hand column.

1) Each Proposal will be evaluated both individually and relative to the Proposals submitted by other Respondents. Purchasing and Contract Administration will compile the scores of the entire committee and determine a final average score for each Respondent.

(b) The committee may request clarification of information or representations made in a Proposal or in all Proposals before completing its initial evaluation. Requests for clarification and

responses to requests for clarification will be made in writing and become a part of the evaluation record.

- (c) The Purchasing and Contract Administration Unit will establish a competitive range based upon the scoring of Proposals.

#### 3.9.2.3. **Respondent Oral Presentations.**

If offered, one or more Respondents may be required to deliver an Oral presentation(s) before the Evaluation committee. The Oral presentation provides the Respondent the opportunity to highlight its strengths and unique aspects of its approach as provided in its RFP response, as well as to address any questions from the Evaluation committee. Respondent Oral presentations are not guaranteed.

- 1) Demonstrations of product functionality are recommended when appropriate, such as Information Technology and solution-based procurements.
- 2) If Respondent Oral presentations are held, OIEC reserves the right to limit the time on presentations, and may provide Respondent with an outline of information desired for the presentation.
- 3) Respondents must be prepared to answer follow-up questions, including complex technical questions, and should have skilled technical staff available during the presentations to address any questions the Evaluation committee may have.
- 4) Respondents will not be allowed to ask any additional questions during the RFO, subsequent contract, or negotiate any terms during the allotted presentation time.
- 5) Upon conclusion of Respondent Oral presentations, the Evaluation committee, in its sole discretion, may make recommendation(s) for award to the Purchasing and Contract Administration, which will either accept the recommendation(s) for award or provide the committee with an explanation for the rejection thereof.

#### 3.9.2.4. **Best and Final Offer (BAFO).**

Following the initial scoring of Proposals according to the Evaluation Criteria outlined in **Table 4**, of Section 3.10.2, and Respondent Oral presentations, if any, OIEC, in its sole discretion, may proceed in making a contract award(s), or may proceed to request a Best and Final Offer (BAFO) from one or more Respondents whose scores are, in the Evaluation committee's determination, sufficient to qualify them for further consideration and negotiation. If utilized, the BAFO process will allow the requested Respondents to modify its original pricing. BAFOs would then be re-evaluated by Purchasing and Contract Administration.

Should OIEC determine that a BAFO process is beneficial to OIEC's interests, participating Respondents will have an established time period in which to exercise due diligence to confirm that all RFP requirements have been identified, and to prepare their BAFO. At the conclusion of the BAFO evaluations, if any, OIEC will determine the number of Respondents with which it will commence contract negotiations.

**3.9.2.5. Contract Negotiations.**

OIEC will have the option to negotiate with one or more Respondents, including but not limited to pricing, services, provisions, terms, and conditions. OIEC reserves the right to continue to negotiate until the point where the best value for OIEC and the State has been determined as achieved.

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#### 4. Part IV. GENERAL TERMS AND CONDITIONS AND RESPONDENT AFFIRMATIONS AND CERTIFICATIONS<sup>1</sup>

This Section contains the standard terms and conditions and shall be incorporated for all purposes into this RFP and any contract awarded. Subcontractors are also obliged to comply with the provisions as shown in this Section. These general terms governing the Request for Proposal survive the RFP and become part of any resulting contract unless provision for their exclusion, in whole or part, is specifically made in the contract.

##### 4.1. Respondent Affirmations and Certifications.

- 4.1.1. **Deceptive Trade Practices; Unfair Business Practices.** Respondent represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under the Texas Business and Commerce Code, Chapter 17, or allegations of any unfair business practice in any administrative hearing or court suit, and that Respondent has not been found to be liable for 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 allegations of Deceptive Trade Practice violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.
- 4.1.2. **Equal Opportunity.** Respondent represents and warrants that it shall not discriminate against any person on the basis of race, color, national origin, creed, religion, political belief, sex, sexual orientation, age, and disability in the performance of any contract resulting from this RFP.
- 4.1.3. **Franchise Taxes, Non-Residents, Foreign Corporations, Sales Taxes.** Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed to the State of Texas under Chapter 171, Texas Tax Code. In addition, if Respondent is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the following certification applies. Respondent certifies that it holds a permit issued by the Comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas, or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.
- 4.1.4. **Eligibility.** Pursuant to Texas Government Code Section 2155.004(b), Respondent certifies that the individual or business entity named in this 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.
- 4.1.5. **Prior Employment.** Pursuant to Texas Government Code Chapter 573 and Section 2254.032, Respondent certifies that it knows no officer or employee of OIEC, or any relative within the second degree of consanguinity or affinity of an officer or employee of OIEC that has a financial interest in Respondent's company or corporation. Respondent further certifies that no partner, corporation, or unincorporated association which employs, retains, or contracts with, or which may employ, retain, or contract with any of the above, has a financial interest in any entity with which Respondent will be dealing on behalf of OIEC. Furthermore, Respondent certifies that if it employs any former employee of OIEC, such employee will perform no work in connection with this Contract during the twelve (12) month period immediately following the employee's last date of employment at OIEC.

Contractor shall disclose any current or former employees or subcontractors who are current or former employees of the State of Texas, and shall disclose their role or position relative to the

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<sup>1</sup> General Terms and Conditions and Respondent Affirmations and Certifications as of January 26, 2015

provision of services under the Contract, as well as their hire or contract date. Contractor shall also disclose any proposed personnel who are related by marriage or within the second degree of consanguinity to any current or former employees of the State. Failure to fully disclose the information required under this paragraph may result in disqualification of a Contractor's bid or termination of the Contract after award.

- 4.1.6. Family Code.** Pursuant to the requirements of Texas Family Code Section 231.006, regarding delinquent child support, the undersigned signatory certifies that the individual or business entity named in this Contract is not ineligible to receive payment under this Contract and, if applicable, Respondent has provided the name and SSN of each person (sole proprietors, firm owners, partners, or shareholders) with at least 25 percent (25%) ownership of the business entity entering into this Contract prior to its execution. Respondent acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate.
- 4.1.7. Financial Interests/Gifts.** Pursuant to Texas Government Code Sections 572.051 and 2255.001 and Texas Penal Code Section 36.09, Respondent certifies that it 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 this Contract.
- 4.1.8. Debts or Delinquencies to the State.** Pursuant to Texas Government Code Section 403.055, Respondent understands and agrees that any payment due under this Contract may be applied toward payment of any debt that is owed to the State of Texas including, but not limited to, delinquent taxes and child support.
- 4.1.9. Agency Executive Head.** Under Texas Government Code Section 669.003 relating to contracting with an executive of a state agency, Respondent represents that no person who, in the past four (4) years, served as an executive of OIEC or any other state agency, was involved with or has any interest in this Contract or any contract resulting from this Respondent. If Respondent employs or has used the services of a former executive head of OIEC or any other state agency, then Respondent shall provide the following information: the name of the former executive, the name of the state agency, the date of separation from the state agency, the position held with Respondent, and the date of employment with Respondent .
- 4.1.10. Liability for Taxes.** Respondent represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, state, or local income, sales, or excise taxes of Respondent or its employees. OIEC shall not be liable for any taxes resulting from this Contract.
- 4.1.11. No Conflicts.** Respondent represents and warrants that Respondent has no actual or potential conflicts of interest in providing services to the State of Texas under this Contract and that Respondent's provision of services under this Contract would not reasonably create an appearance of impropriety.
- 4.1.12. Prohibition of Certain Bids and Contracts.** Under Texas Government Code, Section 2155.006, relating to the prohibition of certain bids and contracts, Respondent certifies that the individual or business entity responding to the RFP or any subsequent contract is not ineligible to receive the specified contract and acknowledges that any resulting contract may be terminated and payment withheld if this certification is inaccurate. Respondent represents and warrants that during the five (5) year period preceding the publication date of the RFP or the date of any resulting contract,

Respondent has not been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005, or (ii) assessed a penalty in a federal, civil, or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Texas Utilities Code, Section 39.459, Hurricane Katrina, or any other disaster occurring after September 24, 2005.

- 4.1.13. Felony Criminal Convictions.** Respondent represents and warrants that Respondent and Respondent's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Respondent has fully advised OIEC as to the facts and circumstances surrounding the conviction.
- 4.1.14. Immigration Reform.** Respondent represents and warrants that it will comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 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 any resulting PO/Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) enacted on September 30, 1996. Respondent shall not place any employee of Respondent at a worksite, nor shall Respondent permit any employees, nor any employee of its subcontractor to perform any work on behalf of, or for the benefit of, OIEC without first ensuring said employee's authorization to lawfully work in the United States.
- 4.1.15. Warranties.** Notwithstanding any disclaimers in any RFP response or other Respondent document, and notwithstanding any other provision of this RFP or the contract to the contrary, Respondent warrants and guarantees that all services will meet all specifications of the executed contract, including but not limited to this RFP.
- 4.1.16. False Statements, Breach of Representations.** If Respondent signs the RFP with a false statement or it is subsequently determined that the Respondent has violated any of the representations, warranties, guarantees, certifications, and affirmations included in this RFP and any resulting contract, the Respondent shall be in default under this RFP and any resulting contract, and OIEC may terminate or void the contract for cause and pursue other remedies available to OIEC under this contract and applicable law.

**The remainder of this page intentionally left blank.**

## 4.2. General Terms and Conditions<sup>2</sup>

- 4.2.1. **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. The final rule, government-wide requirements for drug free work place (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.
- 4.2.2. **Contract Award, Copyright, Reissuance.** A response to an RFP is a Proposal to contract with the State based upon the specifications, terms, and conditions contained in the RFP. Proposals do not become contracts with OIEC unless, until and to the extent, a duly authorized representative of OIEC issues a valid OIEC Contract. OIEC reserves the right to reject, in its sole discretion, all or any part of any Proposals, waives minor technicalities, and reserves the right to negotiate price and other provisions with all Respondents or no Respondents, and award a contract in the best interests of OIEC and the State. OIEC's waiver of any deviations in any Proposals will not constitute a modification of this RFP and will not preclude OIEC from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFP. Copyrighted Proposals are unacceptable and are subject to disqualification as non-responsive. OIEC reserves the right to make any corrections or include additional requirements in the contract prior to issuance, which are required for OIEC's compliance, as an agency of the State of Texas, with all state and federal requirements. OIEC reserves the right to disqualify any Proposal that asserts any copyright on any OIEC-created form that is specifically designated by this RFP to be a form that must be completed and included in a Proposal submitted in response to this RFP. OIEC may reissue or issue another RFP for the requested items described in this RFP or similar items at any time.
- 4.2.3. **Indemnification.**
- 4.2.3.1. **Acts or Omissions:** Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES arising out of, or resulting from any acts or omissions of the Vendor or its agents, employees, subcontractors, Order Fulfillers, or suppliers of subcontractors in the execution or performance of the Contract and any Purchase Orders issued under the Contract. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.
- 4.2.3.2. **Infringements.**
- a. Vendor shall indemnify and hold harmless the State of Texas and Customers, AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES from any and all third party claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the PERFORMANCES OR ACTIONS OF VENDOR PURSUANT TO THIS CONTRACT. VENDOR AND THE

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<sup>2</sup> General Terms and Conditions as of January 26, 2015

CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL.

- b. Vendor shall have no liability under this section if the alleged infringement is caused in whole or in part by: (i) use of the product or service for a purpose or in a manner for which the product or service was not designed, (ii) any modification made to the product without Vendor's written approval, (iii), any modifications made to the product by the Vendor pursuant to Customer's specific instructions, (iv) any intellectual property right owned by or licensed to Customer, or (v) any use of the product or service by Customer that is not in conformity with the terms of any applicable license agreement.
- c. If Vendor becomes aware of an actual or potential claim, or Customer provides Vendor with notice of an actual or potential claim, Vendor may (or in the case of an injunction against Customer, shall), at Vendor's sole option and expense; (i) procure for the Customer the right to continue to use the affected portion of the product or service, or (ii) modify or replace the affected portion of the product or service with functionally equivalent or superior product or service so that Customer's use is non-infringing.

**4.2.3.3. Texas/Workers' Compensation/Unemployment Insurance – Including Indemnity.**

- 1) VENDOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, VENDOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF VENDOR'S AND VENDOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. VENDOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE CUSTOMER AND/OR THE STATE SHALL NOT BE LIABLE TO THE VENDOR, ITS EMPLOYEES, AGENTS, OR OTHERS FOR THE PAYMENT OF TAXES OR THE PROVISION OF UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION OR ANY BENEFIT AVAILABLE TO A STATE EMPLOYEE OR EMPLOYEE OF ANOTHER GOVERNMENTAL ENTITY CUSTOMER.
- 2) VENDOR AGREES TO INDEMNIFY AND HOLD HARMLESS CUSTOMERS, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, AND/OR ASSIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES, RELATING TO TAX LIABILITY, UNEMPLOYMENT INSURANCE AND/OR WORKERS' COMPENSATION IN ITS PERFORMANCE UNDER THIS CONTRACT. VENDOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY VENDOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND VENDOR MAY NOT

AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. VENDOR AND THE CUSTOMER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

- 4.2.4. **Respondent Identification.** Proposals must include Respondent's Texas Identification Number, which is the taxpayer number assigned by The Comptroller of Public Account (CPA) and used by OIEC. If this number is not known, provide the Respondent's Federal Employer's Identification Number, if any, or for sole proprietors that do not have a Texas Identification Number or Federal Employer's Identification Number, provide Respondent's Social Security Number.
- 4.2.5. **No Alterations or Withdrawals of Proposal After Deadline.** Proposals cannot be altered or amended after the deadline specified in Section 3 of this RFP. Any alterations made before this deadline must be initialed by the Respondent or its authorized employee. No Proposals can be withdrawn after this deadline without approval by TDI's Purchasing and Contract Administration, based on a written acceptable reason.
- 4.2.6. **Tie Proposals.** Consistent and continued tie Proposals could cause rejection of Proposals by TDI's Purchasing and Contract Administration.
- 4.2.7. **Limitation on Authority, No Other Obligations.** Respondent will have no authority to act for or on behalf of OIEC or the State of Texas except as expressly provided for in the executed contract; no other authority, power, or use is granted or implied. Respondent may not incur any debt, obligation, expenses, or liability of any kind on behalf of OIEC or the State of Texas.
- 4.2.8. **No Other Benefits.** Respondent has no exclusive rights or benefits other than those set forth herein.
- 4.2.9. **Attachments.** OIEC will not consider any terms and conditions or other documents attached to a Proposal as part of the Proposal unless the Respondent specifically and prominently refers to each of them in the Transmittal Letter with its Proposal. OIEC reserves the right, in its sole discretion, to reject any Respondent terms and conditions or other documents or attachments as part of Respondent's Proposal.
- 4.2.10. **Incorporation of Entire RFP.** Except as otherwise provided in the negotiated terms and conditions, if any that are expressly identified as such in the formal signed agreement or contract resulting from this RFP, this entire RFP applies to and becomes part of any such agreement or contract.
- 4.2.11. **Amendments and Agreement between OIEC and Respondent.** Any resulting Contract may be amended only upon the written agreement between OIEC and Successful Respondent; however, the contract may not be amended so as to conflict with the laws of the State of Texas. To the extent the laws of the State of Texas require OIEC to include additional language in its contracts, the Respondent agrees to amend any resulting contract and to cooperate in the execution of any contract amendments necessary to effectuate such state law. During the term of a resulting contract, if any, and any extensions or renewals, OIEC reserves the right to request contract amendments or modifications as is determined to be in the best interests of OIEC or the State and for compliance with all applicable state and federal laws, regulations, requirements and guidelines. Except as otherwise provided in the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed contract resulting from this RFP, the entire agreement between OIEC and

Respondent shall consist of the following documents: the Contract, Purchase Order, Change Notices, if any, the RFP, and Respondent's Proposal.

- 4.2.12. **Conflicting Provisions.** In the event of conflicting terms or provisions between this RFP, except as otherwise provided in the negotiated terms and conditions, if any, that are identified as such in the resulting Contract, this RFP, the Contract; any Addenda, if issued, and Respondent's Proposal will control in this order of precedence.
- 4.2.13. **Unacceptable Terms in Respondent's Proposal.** No OIEC action, including, but not limited to, issuance of a Contract, will constitute an acceptance of conflicting terms, conditions, or attachments in Respondent's Proposal; however, this lack of acceptance by OIEC shall not apply to the negotiated terms and conditions, if any, that are expressly identified as such in the formal signed agreement or contract resulting from this RFP. Such negotiated terms and conditions shall take precedence over the other documents that collectively constitute the contract as specifically provided in the formal signed agreement or contract resulting from this RFP.
- (a) Proposed terms and conditions that may violate Texas law applicable to the specific procurement or may be unacceptable to OIEC for inclusion in any formal signed agreement or contract resulting from the RFP include:
- 1) proposals that incorporate the laws of a state other than Texas, requirements for prepayment
  - 2) limitations on OIEC's remedies
  - 3) requirements that OIEC indemnify the Respondent
  - 4) requirements that Respondent's documents control in case of conflicts
  - 5) requirements that Respondent's documents control even if Respondent accepts or acknowledges the contract, and
  - 6) disclaimer of warranties.
- 4.2.14. **Statement of Work, Performance.** Respondent will provide the requested services in the manner described in this RFP. Respondent's failure to conform to all requirements of this RFP may, among other things, result in OIEC's withholding of acceptance and payments under the contract, OIEC's cancellation of all or part of the contract, OIEC's revocation of any prior acceptance and Respondent's refund of amounts paid prior to revocation of acceptance.
- 4.2.15. **Respondent Costs.** Respondent will bear all costs and expenses for the provision of the requested items required by this RFP and the contract. All such costs and expenses are included in the prices detailed in the contract. No other amounts will be paid.
- 4.2.16. **Assignments.** Respondent may not assign this RFP and any resulting contract, in whole or in part, and may not assign any right or duty required under this RFP or awarded contract without the prior written consent of OIEC. Respondent will have no right to transfer, assign, or pledge as security for a debt all or any part of Respondent's interest in any resulting contract without the prior written consent of OIEC. Any attempted assignment in violation of this Section is void and without effect.
- 4.2.17. **Time Limits.** Time is of the essence in any resulting contract and accordingly, all time limits will be strictly construed and rigidly enforced.
- 4.2.18. **No Waiver.** No provision of this RFP and/or resulting Contract shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to OIEC as an

agency of the State of Texas or otherwise available to OIEC. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in this RFP and the resulting Contract or otherwise available to OIEC by law, shall not constitute a waiver of said privileges, rights, defenses, remedies, or immunities available to OIEC, or be considered as a basis for estoppel. OIEC does not waive any privileges, rights, defenses, remedies, or immunities available to OIEC as an agency of the State of Texas or otherwise available to OIEC, by entering into a resulting Contract with selected Respondent or by its conduct prior to, or subsequent to, entering into a Contract.

- 4.2.19. **No Prepayments.** OIEC will not prepay for any services provided to OIEC by Respondent in its performance under the contract. Likewise, OIEC will not make down payments, deposits, nor pay advances, advance deposits, or any other payments that are not made specifically for properly documented completed services approved for payment by, and satisfactorily provided to OIEC.
- 4.2.20. **Refunds.** Respondent shall promptly refund or credit within thirty (30) calendar days any funds erroneously paid by OIEC which are not expressly authorized under the contract.
- 4.2.21. **Invoicing.** Respondent shall submit an electronic copy via email of an itemized invoice showing the Contract number to the OIEC point of contact or their designee for all requested items, which have been delivered, inspected, tested, evaluated, and accepted by OIEC. To expedite processing, additional recipients may be included on the email; Respondent must provide the required documentation for the invoiced service.
- (a) **Invoice Requirements.** The Respondent may request a sample of the invoice format from OIEC. Submitted invoice must include the following information:
- 1) respondent name
  - 2) respondent address
  - 3) bill to information
  - 4) remit payment to information
  - 5) invoice date
  - 6) invoice number
  - 7) OIEC Contract number
  - 8) vendor Texas Identification Number (TIN), as assigned by the Texas Comptroller of Public Accounts
  - 9) date and time of services
  - 10) description of services, and
  - 11) signature or certification by an authorized representative.
- (b) **Missing Invoice Requirements.** Invoices that are received by OIEC which are otherwise received in non-conformance with all of the requirements of this RFP or the contract will be returned to Respondent unpaid or will be held by OIEC until proper documentation is submitted.
- (c) **Correct Invoicing.** Prior to authorizing payment to Respondent, OIEC shall evaluate Respondent's performance in accordance with the requirements of any resulting contract. No payment whatsoever will be made under any resulting contract without the prior submission of detailed, correct invoices. Subject to foregoing, OIEC must make all payments in accordance with the Texas Prompt Pay Act, Texas Government Code, Chapter 2251.
- (d) **Non-Reimbursable Items.** OIEC will not reimburse for travel, meals, lodging, or other related expenses unless specifically provided for in the agreement. In that event, such costs will be

invoiced to OIEC based on actual expenses and OIEC shall not be liable for reimbursement of expenses that (i) were not preapproved in writing by OIEC or (ii) exceed the current State Travel Regulations. Receipts are required to validate invoicing.

**4.2.22. Termination and Cancellation.**

The contract may be terminated, canceled, or cancellation of services may occur, in whole or in part, in any one of the following circumstances:

4.2.22.1. **Mutual Agreement.** Upon the mutual written agreement of OIEC and Respondent, the contract may be terminated or canceled.

4.2.22.2. **OIEC Cancel upon Thirty (30) Days' Notice.** OIEC may, in its sole discretion, terminate, cancel the contract, or cancel specific services of the contract with thirty (30) calendar day's written notice to Respondent.

(a) No additional charges or fees will be assessed to OIEC for the termination or cancellation.

(b) Upon termination or cancellation under this provision, Respondent shall refund to OIEC any amounts attributable to the terminated or canceled months within thirty (30) days of the termination or cancellation. If OIEC does not receive the refund within thirty (30) calendar days, the contract amount and monthly invoice will be reduced during the next billing cycle based on the services canceled.

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

4.2.22.4. **Respondent Nonperformance.** If Respondent fails to comply with any requirement of the Contract or fails to provide goods or services as required, including, but not limited to, this RFP, OIEC may immediately terminate or cancel all or any part of the contract.

(a) Upon written notice of default or cause to Respondent, OIEC may immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but shall be in addition to any other rights and remedies provided in equity, by law or under the contract.

(b) OIEC may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law, or may proceed by appropriate court action to enforce the provisions of this contract. The exercise of foregoing remedies will not constitute a termination of the contract unless OIEC notifies Respondent in writing prior to the exercise of such remedy.

(c) OIEC may obtain substitute requested items, may withhold acceptance and payments to Respondent, may revoke any prior acceptance, may require Respondent to refund amounts paid prior to revocation of acceptance, and may

pursue all rights and remedies against the Respondent under the contract and any applicable law.

- (d) The Respondent remains liable for all covenants and indemnities under the contract.
- (e) The Respondent is liable for all costs and expenses, including court costs, incurred by OIEC with respect to the enforcement of any remedies listed herein.

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

4.2.22.6. **Availability of State Funds, Legislative Action, Necessity of Performance.** The contract is subject to termination or cancellation, without penalty to OIEC, in either whole or in part, subject to the availability of state funds. OIEC is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If OIEC becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds which would render either OIEC's or Respondent's delivery or performance under the contract impossible or unnecessary, the Contract will be terminated or canceled and be deemed null and void. In the event of a termination or cancellation under this Part, OIEC will not be liable to Respondent for any damages which are caused or associated with such termination or cancellation, and OIEC will not be required to give prior notice.

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

4.2.24. **Recovery of Funds.** OIEC reserves the right to recover reasonable costs, fees, expenses, and other amounts or damages available to OIEC under the contract or under applicable law, including, but not limited to, attorneys' fees and court costs, if termination or cancellation is at Respondent's request or if termination or cancellation is for cause. This right is in addition to any other remedies available to OIEC under the contract or under applicable law. OIEC reserves the right to pursue any and all applicable rights and remedies if the contract is terminated for any reason, and OIEC expressly waives no such rights or remedies.

4.2.25. **Notice of Termination or Cancellation Delivery.** Any termination by OIEC of the contract, which requires written notice, may be accomplished by OIEC's delivery to Respondent of a notice of termination or cancellation specifying that the contract is terminated or canceled.

4.2.26. **Substitute of Services.** In the event OIEC terminates or cancels the contract for Respondent's nonperformance or for cause, OIEC may procure, upon such reasonable terms and in such manner as it deems appropriate, substitute services similar to those so terminated or canceled. Respondent shall be liable to OIEC for any excess or additional costs incurred by OIEC in acquiring

such services plus court costs and attorneys' fees. OIEC's recovery of costs under this Section is in addition to any other remedies available to OIEC under the contract and/or under applicable law.

- 4.2.27. **Legal Obligations.** Respondent shall procure and maintain for the duration of this RFP and any resulting contract, any state, county, city, or federal license, authorization, insurance, waiver, permit, qualification, or certification required by statute, ordinance, law, or regulation to be held by Respondent to provide the goods or services required by this RFP or any resulting contract. Respondent will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Respondent agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this resulting contract.
- 4.2.28. **Assignments and Subcontractors.** Respondent shall neither assign, transfer, nor delegate any rights, obligations, or duties under this RFP or resulting contract without the prior written consent of OIEC.
- (a) Notwithstanding this provision, it is mutually understood and agreed that Respondent may subcontract with others for some or all of the services to be performed.
- 1) OIEC shall approve in writing, all subcontractors.
  - 2) Subcontractors providing service under the resulting contract shall meet the same requirements and level of experience as required of the Respondent.
  - 3) No subcontract under the resulting contract shall relieve the Respondent of responsibility for the service. If Respondent uses a subcontractor for any or all of the work required, the following conditions shall apply under the listed circumstances:
    - i. Respondents planning to subcontract all or a portion of the work to be performed under this Contract shall identify the proposed subcontractor on Attachment 3, HUB Subcontracting Plan Form.
    - ii. Subcontracting shall be at the Respondent's expense.
    - iii. OIEC retains the right to check any subcontractor's background and make the determination to approve or reject the use of submitted subcontractors.
    - iv. Respondent shall be the only contract for OIEC and subcontractors. Respondent shall list a designated point of contact for all OIEC and subcontractor inquiries.
- 4.2.29. **Historically Underutilized Businesses (HUBS).** In accordance with State law, it is OIEC's policy to assist HUBs, whether minority or women-owned, whenever possible, to participate in providing goods and services to the agency. OIEC encourages those parties with whom it contracts for the provision of goods and services to adhere to this same philosophy in selecting subcontractors to assist in fulfilling Respondent's obligations with OIEC. If Respondent subcontracts with others for some or all of the services to be performed under a resulting contract, Respondent shall comply with all HUB requirements pursuant to Texas Government Code, Chapter 2161 and file with TDI a HUB Subcontracting Plan. In addition to information required by Section 4.2.28 above, Respondent shall provide TDI's Purchasing and Contract Administration with pertinent details of any participation by a HUB in fulfilling the duties and obligations arising hereunder on the HUB Subcontracting Plan (HSP) Progress Assessment Report attached hereto and incorporated herein for all purposes as Attachment 4 - HSP Progress Assessment Report.
- 4.2.30. **Federal, State, and Local Requirements.** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue

Act of 1978, dealing with issuance of Form W-2s to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation Insurance coverage. Respondent shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Respondent or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Respondent shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

- 4.2.31. **Relationship of the Parties.** Respondent is associated with OIEC only for the purposes and to the extent specified in this Contract, and with respect to performance of the contracted services pursuant to this Contract, Respondent is and shall be an independent contractor. Subject only to the terms of this Contract, Respondent shall have the sole right to supervise, manage, operate, control, and direct performance of its duties under this Contract. Nothing contained in the resulting contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for OIEC whatsoever with respect to the indebtedness, liabilities, and obligations of Respondent or any other party. Respondent shall be solely responsible for, and OIEC shall have no obligation with respect to:
- (a) withholding of income taxes, FICA, or any other taxes or fees;
  - (b) industrial worker's compensation insurance coverage;
  - (c) participation in any group insurance plans available to employees of the State of Texas;
  - (d) participation or contributions by State of Texas to the State Employees Retirement System;
  - (e) accumulation of vacation leave or sick leave, or
  - (f) unemployment compensation coverage provided by the State.

- 4.2.32. **Compliance With Other Laws.** In the execution of this RFP and any resulting contract, Respondent shall comply with all applicable federal, state, and local laws, including laws governing labor, equal employment opportunity, safety, and environmental protection. Respondent shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this Contract.

- 4.2.33. **Notices.** Any notice required or permitted to be delivered under this RFP and any resulting contract, shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to OIEC or Respondent.

Notice given in any other manner shall be deemed effective only if and when received by the party to be notified. Either party may change its address for notice by written notice to the other party as herein provided.

- 4.2.34. **Governing Law and Venue.** This RFP and any resulting contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this RFP on any resulting contract shall be in a court of competent jurisdiction in Travis County, Texas. Respondent irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non convenience, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this RFP and any resulting contract or any document related hereto. Nothing in this Section shall be construed as a waiver of sovereign immunity by OIEC.

- 4.2.35. **Severability.** If any provision contained in this RFP and any resulting contract is held to be unenforceable by a court of law or equity, this RFP and any resulting contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.
- 4.2.36. **Force Majeure.** Any delays in or failure of performance by either party, except in respect of the obligation of payments under this RFP or resulting contract, shall not constitute default hereunder if and to the extent such delays or failure of performance are caused by occurrence(s) beyond the reasonable control of the party affected, and which by the exercise of due diligence such party is unable to prevent, herein called "Force Majeure," including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents breakdowns, floods, earthquakes, hurricanes or any other natural disaster or governmental actions. In any such event, the party claiming Force Majeure shall promptly notify the other party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, OIEC may terminate the resulting contract immediately upon written notification to the Respondent.
- 4.2.37. **Labor Activity.** If any strike, boycott, picketing, work stoppage, slowdown, or other labor activity is directed against the Respondent at OIEC's facility, which results in the curtailment or discontinuation of services performed herein, OIEC shall have the right during said period to employ any means legally permissible to have the work performed.
- 4.2.38. **Dispute Resolution.** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the parties to attempt to resolve all disputes arising under this Contract. OIEC has adopted rules under Chapter 2260, codified at 28 Texas Administrative Code §§ 1.1801-1.1823. OIEC may adopt revisions to these rules throughout the term of any awarded contract including any extensions. Respondent must comply with such rules. 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 must be used, as further described herein, by OIEC and Respondent to attempt to resolve any claim for breach of contract made by the Respondent arising under the awarded contract.
- (a) The Respondent's claim for breach of contract that the parties cannot resolve in the ordinary course of business must be submitted to the negotiation process provided in Chapter 2260, subchapter B, of the Texas Government Code. To initiate the process, the Respondent must submit written notice, as required by Subchapter B of Chapter 2260, to the attention of OIEC's Public Counsel or Authorized Designee. The written notice must expressly state that the provisions of Chapter 2260, Subchapter B are being invoked by the Respondent. Said notice must also be given to all other representatives of OIEC and the Respondent otherwise entitled to notice under the parties' contract. Compliance by the Respondent with Chapter 2260, Subchapter B is a condition precedent to filing a contested case proceeding under Chapter 2260, Subchapter C, of the Texas Government Code.
- (b) The contested case process provided in Chapter 2260, Subchapter C, of the Texas Government Code is the Respondent's sole and exclusive process for seeking a remedy for

any and all alleged breaches of contract by OIEC if the parties are unable to resolve their disputes under this Section.

- (c) Neither the occurrence of an event nor the pendency of a claim for breach of contract constitutes grounds for the suspension of performance by the Respondent, in whole or in part.
- (d) 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, OIEC and Respondent will first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiation fail, the dispute will be mediated by a mutually acceptable third-party to be chosen by OIEC and Respondent within fifteen (15) business days after written notice by one of them demanding mediation under this Section. Respondent will pay all costs of the mediation unless OIEC, in its sole good faith discretion, approves such or some portion of such costs. By mutual agreement, OIEC and Respondent may use a non-binding form of dispute resolution other than mediation. The execution of a contract by OIEC or any other conduct of any representative of OIEC relating to a Contract must not be considered or construed as a waiver by OIEC of sovereign immunity or of any rights, privileges, defenses, or immunities available to OIEC as an agency of the State of Texas or as a waiver of OIEC's termination rights or other termination provisions or expiration dates of the contract. To the extent consistent with other Texas Law, including, but not limited to, the Texas Public Information Act and the Texas Open Meetings Act, any non-binding dispute resolution process conducted under the terms of this Section will be confidential within the meaning of Texas Civil Practices and Remedies Code Ann. §§154.073.

- 4.2.39. **Counterparts.** Any contract issued pursuant to this RFP may be executed in any number of counterparts, each of which shall be an original, and each such counterpart shall together constitute but one and the same agreement.
- 4.2.40. **Entire Contract and Modification.** The resulting Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to the RFP and resulting Contract specifically displays a mutual intent to amend a particular part of this RFP and resulting Contract, general conflicts in language between any such attachment and this RFP and resulting Contract shall be construed consistently with the terms of this RFP and resulting contract. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension, or amendment to this RFP and resulting contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
- 4.2.41. **Ownership of Pre-existing Materials.** OIEC and Respondent will continue to own their respective proprietary technologies developed before entering into the Agreement. Any equipment bought through the Respondent by OIEC, and paid for by OIEC will be owned by OIEC. Any software licensed through the Respondent and sold to OIEC, will be licensed directly to OIEC.

- 4.2.42. **Waiver of Moral Rights.** Respondent hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Respondent may now have or which may accrue to Respondent's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Respondent acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights. The term "Moral Rights" means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation, or use of the Work Product, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.2.43. **Confidentiality of Information.** Respondent shall not use, share, or sell any OIEC information to any other entity or person, for any reason, unless otherwise required by law and with prior written permission of OIEC.
- 4.2.43.1. Materials forwarded to selected Respondent by OIEC, for use in and preparation of the Work Product or the provision of services under this RFP, are confidential.
- 4.2.43.2. Selected Respondent shall 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, and received from OIEC, or any such confidential information to which selected Respondent has access as a result of or in the course of performing services under this RFP and any awarded contract without the prior written consent of OIEC.
- 4.2.43.3. This confidentiality provision does not apply to information required to be disclosed by law, legal process, and applicable professional standards or to information disclosed in connection with litigation relating to the contract or Respondent's performance.
- 4.2.43.4. Each party shall 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.
- 4.2.43.5. Nothing in this RFP and any awarded 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):
- 4.2.43.5.1. previously known to it without obligation of confidence;
  - 4.2.43.5.2. independently developed by it;
  - 4.2.43.5.3. acquired by it from a third party which is not, to its knowledge, under any obligation of confidence, with respect to such information, or
  - 4.2.43.5.4. which is, or becomes publicly available through no breach of the contract.
- 4.2.43.6. In the event either party receives a subpoena or other validly issued administrative or judicial notice requesting Confidential Information, it will provide prompt notice to the other of such receipt. The party receiving the subpoena will thereafter be entitled to comply with such subpoena or other notice to the extent permitted by law, provided, however, that the Respondent is acting as OIEC's agent in providing services under the

contract and will defer to OIEC's decision as to compliance with and other matters related to such subpoena or other validly issued notice.

- 4.2.43.7. Notwithstanding any provisions of this RFP and the executed contract to the contrary, Respondent understands that OIEC is bound by the provisions of the Texas Public Information Act and Attorney General Opinions issued under that statute. Within three (3) business days of receipt, Respondent will refer to OIEC any third-party requests, received directly by Respondent, for information to which the Respondent has access as a result of or in the course of performing services under the contract.
- 4.2.44. **Agreements with Subcontractors.** Respondent agrees that it must have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors, or subcontractors providing Services or Work Product pursuant to any contract issued pursuant to this RFP, prior to their providing such Services or Work Product, and that it must maintain such written agreements at all times during performance of any contract issued pursuant to this RFP, which are sufficient to support all performance and grants of rights by Respondent. Copies of such agreements must be provided to OIEC promptly upon request.
- 4.2.45. **Personal Injury, Property Damage.** Respondent will be liable for any bodily injury or personal injury to any individual caused by any of Respondent's employees during any assignment under the terms of the contract. In the event of loss, destruction, or damage to any OIEC or State of Texas property by Respondent's employees, Respondent will indemnify OIEC or the State of Texas and pay to OIEC or the State of Texas the full cost of repair, reconstruction, or replacement at OIEC's election. Respondent will reimburse OIEC or the State of Texas for such property damage within thirty (30) calendar days after receipt of OIEC's notice of amount due to Respondent. This provision survives the termination or expiration of any awarded contract.
- 4.2.46. **No OIEC Obligations for Costs.** OIEC accepts no obligations for costs incurred in responding to this RFP in anticipation of being awarded a contract. All of the costs and expenses incurred by any Respondent or prospective Respondent in connection with or arising out of its possible or actual response to this RFP, including without limitation to the cost of developing and preparing a response, making presentations before the evaluation committee, and any travel and travel-related expenses therefore, are entirely the responsibility of the Respondent and must not be borne or reimbursed directly or indirectly by OIEC, whether or not: (i) the prospective Respondent formally submits a response, (ii) such response, if submitted, is rejected by OIEC, (iii) the Respondent is awarded the contract, or (iv) the RFP is withdrawn by OIEC.
- 4.2.47. **Misunderstanding or Lack of Information.** Respondents who respond to this RFP must be thoroughly informed concerning all relevant facts, data, and estimates, which are required for the purpose of assembling a Proposal, and concerning all difficulties that may be encountered in managing or operating the project under the contract.
- (a) 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 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.

- (b) 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 that it will not make any claims for, or has any rights to, cancellation or relief without consequences because of any misunderstanding or lack of information.
- 4.2.48. **Insurance/Bonds.** Respondent must acknowledge that, if selected, it will provide the following bonds and insurance within the prescribed time periods.
- (a) Within ten (10) business days of executing any contract related to this RFP, Respondent(s) must furnish to OIEC proof of the insurance coverages outlined below.
- 1) *Dishonesty Bonding.* Respondent(s) must maintain dishonesty bonding under a commercial crime policy or business services bonding in the minimum amount of ten thousand dollars (\$10,000).
  - 2) *Workers' Compensation Insurance & Employers' Liability.* Respondent(s) must maintain Workers' Compensation insurance coverage in accordance with statutory limits for any employee and/or independent contractor, subcontractor, or agent who is to perform services under any resulting contract:
    - a. Employer's Liability: Each Accident \$1,000,000;
    - b. Disease-Each Employee \$1,000,000; Disease Policy Limit \$1,000,000.
  - 3) *Commercial General Liability Insurance.* This coverage is occurrence based:
    - a. Bodily Injury and Property Damage: Each occurrence limit \$1,000,000; Aggregate limit: \$2,000,000;
    - b. Medical Expense each person: \$5,000;
    - c. Personal Injury and Advertising Liability: \$1,000,000;
    - d. Products/Completed Operations Aggregate Limit: \$2,000,000;
    - e. Damage to Premises Rented to Respondent: \$50,000.
- (b) The dishonesty bonding and insurance coverages outlined above must meet the following requirements:
- 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.
  - 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. OIEC will consider a lapse of any coverages a material breach by Respondent and OIEC may immediately terminate any agreement.
  - 3) Each policy of insurance must contain a provision whereby OIEC will receive thirty (30) calendar days advance written notice of cancellation, termination, or failure to renew any policy. If the Respondent's carrier cancels any policies, the Respondent must immediately obtain a replacement policy prior to the expiration of the thirty (30) calendar day warning period.
  - 4) If a material change is made in any policy or bond, Respondent must notify OIEC in writing not later than the second (2nd) day after the material change takes effect.

- 5) All certificates of insurance must name OIEC as additional insured.
  - 6) All required bonds and certificates of insurance evidencing Respondent's compliance must be submitted to OIEC within fifteen (15) calendar days following the contract execution and any renewals.
  - 7) OIEC reserves the right to withhold payments to Respondent(s) in the event of non-compliance with the bond and insurance requirements outlined in this RFP until such time as the Respondent comes into compliance with such provisions.
- 4.2.49. **Compliance with RFP and Contract.** By submitting a response, acknowledging and accepting the Contract, or delivering any services under the Contract, Respondent acknowledges, accepts, and agrees to all terms, conditions, specifications, provisions, statements, and guidelines of the contract, including, but not limited to, this RFP. A response to this RFP is a Proposal to contract with OIEC based upon the terms, conditions, and specifications contained in this RFP. Proposals and responses do not become part of a contract or agreement with OIEC unless and until they are accepted and agreed to by OIEC. All parts of this RFP are incorporated as part of any resulting contract for all purposes. OIEC, at its sole discretion, may disqualify a Proposal from consideration if OIEC determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.
- 4.2.50. **Binding Effect of Proposal.** Unless otherwise agreed in writing and signed by OIEC, each Respondent agrees to and is bound by the information and documentation provided with the Proposal, including prices quoted for services. By submitting a Proposal or response, the Respondent commits to providing the goods and services required at the prices set forth in its' Proposal. Proposals must be valid for 180 calendar days following the Proposal/response receipt date. Proposed rates must be firm and guaranteed for the entire contract period.
- 4.2.51. **Rejection of Proposal and Cancellation of RFP.** Issuance of this RFP does not constitute a commitment on the part of OIEC to award a contract. OIEC is under no obligation to award any contract as a result of this RFP. OIEC maintains the right to reject any or all Proposals and to cancel this RFP if it considers it in the best interests of OIEC to do so. OIEC 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. OIEC will award a contract, if any, to serve the best interests of OIEC and the State of Texas. OIEC's waiver of any deviations in any response will not constitute a modification of this RFP and will not preclude OIEC from asserting all rights against Respondent for failure to fully comply with all terms and conditions of this RFP.
- 4.2.52. **Ambiguity, Conflict, Exclusionary Specification, or Omission.** If a Respondent discovers any ambiguity, conflict, discrepancy, exclusionary specifications, omission, or other error in this RFP, Respondent must immediately notify, in writing, the OIEC contact person identified above. If a Respondent fails to notify the OIEC contact person of any error, ambiguity, conflict, discrepancy, exclusionary specification, or omission, the Respondent must submit a response at its own risk; and, if awarded a contract, the Respondent is not entitled to additional compensation, relief, or time by reason of the error or its later correction.
- 4.2.53. **Right to Amend, Modify, or Withdraw the RFP.** OIEC 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 OIEC to be in the best interest of OIEC or the State to do so.

- 4.2.54. **Accessibility of Public Information.** Pursuant to S.B. 1368 of the 83rd Texas Legislature, Regular Session, Contractor is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Each State government entity should supplement the provision set forth in Subsection A, above, with the additional terms agreed upon by the parties regarding the specific format by which the Contractor is required to make the information accessible by the public.
- 4.2.55. **Vendor Reporting Requirements.** Vendor shall comply with Subtitle C, Title 5, Business & Commerce Code, Chapter 109 as added by HB 2539 of the 83rd Texas Legislature, Regular Session, requiring computer technicians to report images of child pornography.
- 4.2.56. **Pricing Form (Mandatory).** Respondents must complete and attach the Mandatory Pricing Form, which is included as **Attachment 2** to this RFP. Each Response should provide pricing that is all-inclusive of all costs associated with providing the goods and/or services required as outlined in this RFP.
- 4.2.57. **Vendor Performance.** State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

Past Performance: A Respondent's past performance will be measured based upon pass/fail criteria, in compliance with applicable provisions of §2155.074, 2155.075, 2156.007, 2157.003, and 2157.125, Gov't Code. Respondents may fail this selection criterion for any of the following conditions:

- 1) A score of less than 90% in the Vendor Performance System,
- 2) Currently under a Corrective Action Plan through the CPA,
- 3) Having repeated negative Vendor Performance Reports for the same reason,
- 4) Having purchase orders that have been cancelled in the previous 12 months for non-performance (i.e. late delivery, etc.).

Contractor performance information is located on the CPA web site at:  
[http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

- 4.3. **Public Disclosure.** No public disclosures or news releases pertaining to this contract shall be made without prior written approval of OIEC.
- 4.4. **Execution of Proposal.** Respondents must sign and return the Execution of Proposal form, attached hereto as Attachment 1, which will become part of any resulting contract. This document is mandatory, and failure to return to return this document shall automatically render the Respondent's proposal as nonresponsive.

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## **ATTACHMENTS**

**ATTACHMENT 1:**

**EXECUTION OF PROPOSAL**

**(Mandatory: Must Sign and Return with Proposal)**

## EXECUTION OF PROPOSAL

1. By signature hereon, Respondent represents and warrants that the provisions in this Request for Proposal (RFP) apply to Respondent and all of Respondent's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFP or any contract resulting from it.
2. By signature hereon, Respondent represents and warrants its intent to furnish the requested goods and/or services at the prices quoted in its Proposal.
3. By signature hereon, Respondent represents and warrants that its prices include all costs of Respondent in providing the requested items that meet all specifications of this RFP, and that its prices will remain firm for acceptance for a minimum of one hundred eighty (180) days from deadline for submission of Proposal.
4. By signature hereon, Respondent represents and warrants that each employee, including replacement employees hired in the future, will possess the qualifications, education, training, experience and certifications required to perform the services in the manner required by this RFP.
5. By signature hereon, Respondent represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to OIEC under the RFP and any resulting contract, if any, and that Respondent's provision of the requested items under the RFP and any resulting contract, if any, would not reasonably create an appearance of impropriety.
6. By signature hereon, Respondent represents and warrants that, pursuant to Section 2155.003, Texas Government Code, it has not given, 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 Proposal.
7. By signature hereon, Respondent represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Texas Tax Code.
8. By signature hereon, Respondent hereby represents and warrants that, pursuant to 15 U.S.C. Section 1, et seq. and Texas Business and Commerce Code Section 15.01, et seq., neither Respondent nor the firm, corporation, partnership, or institution represented by Respondent, or anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the Proposal made to any competitor or any other person engaged in such line of business.
9. By signature hereon, Respondent represents and warrants that all statements and information prepared and submitted in response to this RFP are current, complete and accurate.
10. By signature hereon, Respondent represents and warrants that the individual signing this document and the documents made part of this RFP and Proposal is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this Proposal.
11. By signature hereon, Respondent represents and warrants that if a Texas address is shown as the address of the Respondent, Respondent qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).

12. Check below if preference claimed under 34 Texas Administrative Code §20.38:
- Supplies, materials or equipment produced in TX or offered by TX bidder or TX bidder that is owned by a service disabled veteran \*
  - Agricultural products produced or grown in TX
  - Agricultural products and services offered by TX bidders\*
  - 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
  - Foods of Higher Nutritional Value

13. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Respondent certifies that the individual or business named in the Proposal is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Respondent subject to Section 231.006, Texas Family Code, must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Proposal. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

NAME:	SSN:
NAME:	SSN:
NAME:	SSN:

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

14. By signature hereon, Respondent certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency. Respondent must complete the following, marking "N/A" if not applicable:

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

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

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

Position with Respondent: \_\_\_\_\_

Date of Employment with Respondent: \_\_\_\_\_

15. By signature hereon, pursuant to Section 2155.004(a), Texas Government Code Respondent represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFP has received compensation for participation in the preparation of specifications for this RFP. In addition, under Section 2155.004, Texas Government Code, Respondent certifies that the individual or business entity named in this Proposal or any contract resulting from this RFP is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
16. By signature hereon, in accordance with Section 2155.4441, Texas Government Code, Respondent agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
17. By signature hereon, Respondent represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, disbarment, 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.sam.gov>.
18. Sections 2155.006 and 2261.053, Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004, Texas Government Code, occurring after September 24, 2005. Under Section 2155.006, Texas Government Code, Respondent certifies that the individual or business entity named in its Proposal is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFP may be terminated and payment withheld if this certification is inaccurate.
19. By signature hereon, if Respondent is submitting a Proposal for the purchase or lease of computer equipment, then Respondent hereby certifies its compliance with Subchapter Y, Chapter 361, Texas Health and Safety Code and the Texas Commission on Environmental Quality rules, 30 Texas Administrative Code Chapter 328.
20. By signature hereon, Respondent represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Respondent, within the five (5) calendar years immediately preceding the submission of Respondent's Proposal in response to this RFP that would or could impair Respondent's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to OIEC's consideration of Respondent's Proposal. If Respondent is unable to make the preceding representation and warranty, then Respondent instead represents and warrants that it has included as a detailed attachment in its Proposal a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc. that would or could impair Respondent's performance under any contract resulting from this RFP, relate to the solicited or similar goods or services, or otherwise be relevant to OIEC's consideration of Respondent's Proposal. In addition, Respondent represents and warrants that it shall notify OIEC in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update OIEC shall constitute breach of contract and may result in immediate termination of any agreement resulting from this RFP.
21. By signature hereon, Respondent represents and warrants to OIEC that it and each of its subcontractors have the requisite resources, qualifications and independence to conduct the services free from outside direction, control, or influence, and subject only to the accomplishment of OIEC's objectives.

22. By signature hereon, Respondent represents that neither Respondent or any of its employees, agents, or representatives, including any subcontractors and employees, agents, or representative of such subcontractors, proposed in the Proposal has been convicted of a felony criminal offense, or that if such a conviction has occurred Respondent has fully advised OIEC of the facts and circumstances in its Proposal.
23. By signature hereon, Respondent represents and warrants that it has read and agrees to all terms and conditions of this RFP, unless Respondent specifically takes an exception and offers an alternative provision in Respondent's Proposal as provided in the Letter of Transmittal (See Section 3.5.1).
24. By signature hereon, Respondent certifies and affirms that it utilizes and will continue to utilize, for the term of any resulting contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:
  - a) All persons employed to perform duties within Texas, during the term of the resulting contract; and
  - b) All persons (including subcontractors) assigned by the Respondent to perform work pursuant to the resulting Contract, within the United States of America.

The Respondent shall provide, upon request of OIEC, an electronic or hard copy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by the Respondent, and Respondent's subcontractors, as proof that this provision is being followed.

If this certification is falsely made, the resulting contract may be immediately terminated, at the discretion of the State and at no fault to the State, with no prior notification. The Contractor shall also be responsible for the costs of any re-solicitation that the State must undertake to replace the terminated contract.

25. By signature hereon, pursuant to Texas Government Code Section 2262.003, Contractor understands that acceptance of funds under a resulting contract acts as acceptance of the authority of the State Auditor's Office, agency or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor 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. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through the Contractor and the requirements to cooperate is included in any subcontract it awards.
26. By signature hereon, Respondent agrees that any payments or other amounts due under any resulting contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full and agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

**The remainder of this page intentionally left blank.**

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

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

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

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

\_\_\_\_\_  
**Printed Name & Title of Authorized Representative**

\_\_\_\_\_  
**Phone Number**

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Fax Number**

\_\_\_\_\_  
**Federal Employer Identification Number**

\_\_\_\_\_  
**Email Address**

\_\_\_\_\_  
**Mailing Address**

\_\_\_\_\_  
**City, State, Zip Code**

**ATTACHMENT 2:**

**PRICING FORM**

**(Mandatory: Must Submit with Proposal)**

**IMPORTANT NOTE:**

**Respondents must use an electronic version of Attachment 2 to respond.**

**(Available as an MS Excel download with the RFP materials)**

**The following Mandatory Pricing Instructions and Sheet are Screen shots only.**

## Attachment 2: Mandatory Pricing Sheet

<b>INTERNAL AUDITING SERVICES RFP 448-15-0995</b>											
<b>MANDATORY PRICING SHEET INSTRUCTIONS</b>											
<b>Fee Estimate Assumptions:</b> Your fee estimate should incorporate the following assumptions:											
(1). The FY2015 billable hours estimated by OIEC are sixty (60). Total hours should not exceed this amount.											
(2). The FY2016 billable hours estimated by OIEC are three hundred (300). Total hours should not exceed this amount.											
(3). Fees should include the cost, plus any estimated expenses.											
(4). Five (5) position spaces have been allotted per fiscal year for the resulting contract.											
(A). Enter the position title for each person that will be assigned to the resulting contract. Leave any remaining position fields blank.											
(B). Provide the Unit cost (per hour) for each position that will be assigned to the resulting contract.											
(C). Provide the billable hours, by task and per position, for each Fiscal year, at an amount not to exceed that stated for each Fiscal year.											
<b>Price Escalation:</b>											
Per Section 3.5.2.2.1 of the RFP, Price Escalation is allowed, but limited to no more than three (3%) over the life of the contract. The renewal options shall be up to three (3) additional one-year periods, at OIEC's sole discretion to exercise. Price escalations are subject to negotiation and OIEC reserves the right to reject any or all price escalations.											
<b>RENEWAL OPTIONS (With Price Escalation- STARTING AT FY17. NO Price Escalation may be applied to FY16, as the initial contract term is anticipated to be 14.5-months (June 15, 2015 thru August 31, 2016) and is a BASE Term.</b>											

**MANDATORY PRICING SHEET-INTERNAL AUDITING SERVICES RFP 448-15-0995**

Respondent to Fill in All YELLOW highlighted areas. FY15 Billable Hours should not exceed the sixty (60) hours that OIEC has estimated.

FY 2015 Tasks						
Job Title	Risk Assessment	FY15 Audit Report	Meetings	Total Hours	Hourly Rate	Total Fees
				0		\$ -
				0		\$ -
				0		\$ -
				0		\$ -
				0		\$ -
<b>TOTAL</b>	0	0	0	0		\$ -

FY16 is considered a "Base Year" as it is a full fiscal year. Billable Hours should not exceed the three hundred (300) hours that OIEC has estimated. Billable hours for all renewal option years shall be considered to remain constant at 300 hours per fiscal year.

FY 2016 Tasks								
Job Title	Risk Assessment	FY16 Audit Plan	Two (2) Audits	FY16 Audit Report	Meetings	Total Hours	Hourly Rate	Total Fees
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
<b>TOTAL</b>	0	0	0	0	0	0.00		\$ -

**TOTAL FEES -BASE Term (F15 + FY16)** \$ -

Renewal Option Year 1 FY 2017 Tasks								
Job Title	Risk Assessment	FY17 Audit Plan	Two (2) Audits	FY17 Audit Report	Meetings	Total Hours	Hourly Rate	Total Fees
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
<b>TOTAL</b>	0	0	0	0	0	0.00		\$ -

Renewal Option Year 2 FY 2018 Tasks								
Job Title	Risk Assessment	FY18 Audit Plan	Two (2) Audits	FY18 Audit Report	Meetings	Total Hours	Hourly Rate	Total Fees
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
<b>TOTAL</b>	0	0	0	0	0	0.00		\$ -

Renewal Option Year 3 FY 2019 Tasks								
Job Title	Risk Assessment	FY19 Audit Plan	Two (2) Audits	FY19 Audit Report	Meetings	Total Hours	Hourly Rate	Total Fees
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
						0.00		\$ -
<b>TOTAL</b>	0	0	0	0	0	0.00		\$ -

**RENEWAL OPTIONS (With Price Escalation- STARTING AT FY17. NO Price Escalation may be applied to FY16, as the initial contract term is anticipated to be 14.5-months (June 15, 2015 thru August 31, 2016.)**

Fiscal Year	Extended Pricing	Percentage Increase	Extended Pricing
16	\$ -	0%	\$ -
17	\$ -	1%	\$ -
18	\$ -	1%	\$ -
19	\$ -	1%	\$ -

**ATTACHMENT 3:**  
**HUB SUBCONTRACTING PLAN FORM**

**IMPORTANT NOTE:**  
**Respondents must use an electronic version of Attachment 3 to respond.**  
**(Available as a .PDF file download with the RFP materials)**

**ATTACHMENT 4:  
HUB PROGRESS ASSESSMENT REPORT FORM**

**IMPORTANT NOTE:  
Included for Reference Only  
(Available as an MS Excel file download with the RFP materials)**

**ATTACHMENT 5:**  
**RESPONDENT REFERENCES**

**(Respondent to submit with Proposal)**

## RESPONDENT REFERENCES

In Response to this RFP **448-15-0995**, Respondent must provide a minimum of three (3) references for OIEC to contact to verify Respondent's experience with projects of similar size, value, and nature and performance. References may be the same as those associated with the projects described in the Respondent's Business Proposal under "Experience". Providing the name and telephone number of a Reference constitutes permission to contact Reference

<b>1.</b>	<b>REFERENCE</b> ----- Check Box if Project Reference is/was with a Governmental State Agency- <input type="checkbox"/>	
a	Company/Governmental Entity Name	
b	Company Address (city, state, and zip code)	
c	Name of Project	
d	Start & End Date of Project	
e	Contact Name and Title (Person who can discuss Respondent's Performance on Project)	
f	Contact telephone	
g	Email Address	
<b>2.</b>	<b>REFERENCE</b> ----- Check Box if Project Reference is/was with a Governmental State Agency- <input type="checkbox"/>	
a	Company/Governmental Entity Name	
b	Company Address (city, state, and zip code)	
c	Name of Project	
d	Start & End Date of Project	
e	Contact Name (Person who can discuss Project)	
f	Office Telephone	
g	Email Address	
<b>3.</b>	<b>REFERENCE</b> ----- Check Box if Project Reference is/was with a Governmental State Agency- <input type="checkbox"/>	
a	Company/Governmental Entity Name	
b	Company Address (city, state, and zip code)	
c	Name of Project	
d	Start & End Date of Project	
e	Contact Name (Person who can discuss Project)	
f	Office Telephone	
g	Email Address	

\_\_\_\_\_  
Signature of person completing form

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title

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

**ATTACHMENT 6:**

**IDENTIFICATION OF RESPONDENT RELATIVES & EMPLOYEES**

**(Must complete and return with Proposal)**

**RESPONDENT IDENTIFICATION OF RELATIVES/EMPLOYEES**  
**FOR RFP 448-15-0995**

State law imposes restrictions on certain contracts with former or retired employees. Respondent must provide a list of all of the following, on this **Attachment 6**, in accordance with the Proposal Submission Checklist in **Table 3** of Section 3.8.1:

- (a) Relatives of the Respondent who are currently working or have worked for OIEC.
- (b) Employees of the Respondent who are current, former, or retired employees of OIEC. Respondent must notify OIEC of any prospective employee who is a former employee of OIEC, prior to prospective employee's performance or receipt of compensation under any contract resulting from this RFP.
- (c) Respondent must notify OIEC of any prospective employee who is related to an OIEC employee, prior to placement, and must notify OIEC of any prospective employee who holds any license or certificate related to the Insurance Industry.

If none, specify by marking an "X" in the "None" box for each category. Failure to complete this form will cause Respondent to be non-responsive.

1.	Relatives of Respondent (current or former OIEC employees)	
	None- <input type="checkbox"/>	
	Name (First and Last)	Relationship to OIEC
a		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
b		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
c		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
d		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
e		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>

2.	Non-relative Employees of Respondent (current or former OIEC employees), including retired	
	None- <input type="checkbox"/>	
	Name (First and Last)	Relationship to OIEC
a		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
b		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
c		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
d		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>
e		current- <input type="checkbox"/> former- <input type="checkbox"/> retiree- <input type="checkbox"/>

Use the additional lines below, as necessary for additional employees not listed above.

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\_\_\_\_\_  
 Signature of person completing form

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Name and Title

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

**ATTACHMENT 7:**

**OFFICE OF INJURED EMPLOYEE COUNSEL  
ANTI-LOBBYING AFFIDAVIT**

**(Must sign and return with Proposal)**

**Office of Injured Employee Counsel  
ANTI-LOBBYING AFFIDAVIT**

**Anti-Lobbying Affidavit**

On behalf of the entity named below, I, an official with authority to bind such entity, execute this Affidavit as a part of the entity's Proposal to:

**Request for Proposal No. 448-15-0995**

By executing this Affidavit, the entity agrees to the following terms and conditions of this requisition.

From and after the posting of this RFP for the above-noted requisition, the entity, its employees, officials, agents and subcontractors, may not communicate or attempt to communicate about this requisition and the entity's Proposal, with Office of Injured Employee Counsel (OIEC) personnel, the evaluation committee members and the other OIEC officials involved in making recommendations or decisions for award of contracts arising from this requisition; provided, however, entity, its employees, officials, agents and subcontractors will be allowed to participate in the OIEC-sponsored evaluation process, in the form authorized.

Further, the entity may not, through indirect means of unpaid associates, volunteers or other persons, communicate or attempt to communicate about the entity's Proposal to any OIEC personnel, the evaluation committee members or other OIEC officials involved in making recommendations or decisions for award of contracts arising from this requisition. The entity understands and agrees that violation of this Affidavit may result in rejection of its Proposal, as a violation of the terms and conditions of the procurement process.

\_\_\_\_\_  
**Signature**

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

\_\_\_\_\_  
**Company Name**

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

\_\_\_\_\_  
**Date**

**ATTACHMENT 8:**  
**OFFICE OF INJURED EMPLOYEE COUNSEL**  
**SAMPLE CONTRACT**

**CONTRACT  
FOR  
Internal Auditing Services  
BETWEEN  
Office of Injured Employee Counsel  
AND  
CONTRACTOR**

The Office of Injured Employee Counsel (hereinafter referred to as "OIEC"), a state agency located at 7551 Metro Center Drive, Suite 100, Austin, Texas 78744 and \_\_\_\_\_ (hereinafter referred to as "Contractor"), located at \_\_\_\_\_ enter into a contract agreement (hereinafter referred to as the "Contract") for a \_\_\_\_\_ (hereinafter referred to as "\_\_\_\_\_") pursuant to TEX. GOV'T CODE Chapters 2155 and 2156.

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

**1.01. SERVICE REQUIREMENTS.** Contractor shall provide Internal Auditing services, as further described in RFP #448-15-0995 and subsequently negotiated under this contract. Services shall be performed in accordance with the following documents:

- (a.) Service Contract - OIEC Contract No. 15-\_\_\_\_\_;
- (b.) Exhibit A, OIEC's Request for Proposal No. 448-15-0995 thereto including all attachments, appendices and subsequent addenda;
- (c.) Exhibit B, Contractor's Proposal response submitted as modified by responses to Contractor Questions and Best and Final Offer, if any;
- (d.) Exhibit C, Contractor's approved HUB Subcontracting Plan (HSP) (if applicable); and
- (e.) Exhibit C-1, Contractor's HUB Progress Assessment Report (PAR) Template (if applicable).

**1.02. INCORPORATED BY REFERENCE.** All elements listed in 1.01.(b) through (e) are attached and hereby incorporated by reference and become part of the contract as if fully set forth.

**1.03. ORDER OF PRECEDENCE.** (a.) In interpreting this Contract and resolving any ambiguities, this Service Contract - OIEC Contract No. 15-\_\_\_\_\_ shall take precedence over the Additional Documents (section 1.01, b-e above), and any inconsistency among the documents shall be resolved in the order in which they are listed below:

- (b.) Executed Service Contract – Contract No. 15-\_\_\_\_\_
- (c.) Exhibit A, OIEC's Request for Proposal No. 448-15-0995 (including all associated Attachments, Appendices, and Addenda);
- (d.) Exhibit B, Contractor's Proposal response submitted as modified by responses to Contractor Questions and Best and Final Offer, if any.

**1.04. CONTRACT ADMINISTRATOR.** (a.) OIEC shall designate a "Contract Administrator" for this Contract who will serve as the point of contact between OIEC and the Contractor. The instructions of the OIEC Contract Administrator

("or designated representative") are to be strictly and promptly followed by Contractor at all times. OIEC's Contract Administrator will decide any and all questions that may arise as to the quality and acceptability of work performed and as to the manner of performance and rate of progress of the work. OIEC's Contract Administrator will determine the amount of work performed which are to be paid under the Contract. Failure of the OIEC Contract Administrator during the progress of the Contract to discover or reject unacceptable work or work not performed in accordance with the Contract, or to exercise any remedies shall not be deemed an acceptance or a waiver of OIEC's right to full performance of the Contract. OIEC's Contract Administrator does not have any express or implied authority to vary or amend the terms of the Contract or to waive strict performance of the terms or conditions of the Contract.

(b.) Contractor agrees to conduct all of its services under this Contract by and through appropriate communications with the OIEC Contract Administrator. No services shall be undertaken by Contractor except with the prior written direction of the OIEC Contract Administrator. Contractor understands and agrees that services performed without the prior written direction of the TDI Contract Administrator is work outside the scope of this Contract and shall be performed exclusively at Contractor's risk and own expense.

## II. TERM.

**2.01. CONTRACT AWARD.** (a.) This Contract shall be effective as of the date executed by the parties and shall continue through August 31, 2016 unless extended by the parties by amendment to this Contract or terminated earlier, as provided in Section 2.02 set forth below or in Section 4.2.22 of the RFP.

(b.) OIEC has the option in its sole discretion to renew this Contract for up to three (3) one-year periods. In the event of such renewal, the scope of services, deliverable dates, and contract amount may be negotiated.

(c.) Notwithstanding the termination or expiration of this contract, the provisions (if applicable) regarding indemnification, confidentiality, dispute resolution, intellectual property rights, audit rights, limitation of liability, tool development, limitation of distribution and warranties, will survive the termination or expiration dates of this Contract.

**2.02. TERMINATION.** (a.) Termination with Default. OIEC may terminate this Contract immediately for default by providing written notice to Contractor of such termination if the Contractor fails to execute the work properly, performs work in an unsatisfactory manner, or fails to perform any provision of the Contract. In the event of abandonment or default, Contractor will be responsible for paying damages to OIEC, including but not limited to, the cost to re-solicit this Contract and any consequential damages to the State of Texas or OIEC resulting from Contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the scope of work is significantly changed.

(b.) Termination without Default. OIEC may, at its sole option and discretion, terminate this Contract at any time, for any reason whatsoever, in whole or in part, by giving written notice (the "Notice of Termination") to Contractor at least thirty (30) days prior to the effective date of termination or reduction in the scope of work. In the event of termination by OIEC under this subsection, Contractor shall be governed by the terms and conditions, and shall perform the acts outlined in the following Section 2.02(c).

(c.) Implementation of Termination. Contractor shall terminate all work under the Contract to the extent and on the date specified in the Notice of Termination and until such date shall, to the extent stated in the Notice of Termination, do such work as may be necessary and be compensated only for such work as may be necessary, as determined by OIEC's Contract Administrator or his/her designated representative to preserve the work in progress. In the event of termination by OIEC, OIEC shall pay Contractor for all work satisfactorily performed up to the effective date of termination.

**2.03. NO LIABILITY UPON TERMINATION.** If this Contract is terminated for any reason, OIEC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.

### III. CONSIDERATION.

**3.01. CONTRACT LIMIT AND FEES AND EXPENSES.** (a.) The total amount of fees to be paid under this Contract during the initial term must not exceed \_\_\_\_\_ (\$\_\_\_\_\_).

(b.) The total amount of fees to be paid under this Contract shall be in accordance with Attachment 2 – Mandatory Pricing Form, attached hereto and incorporated herein for all purposes. Any changes to the fees set forth in Attachment 2 – Compensation and Fees shall be submitted to OIEC for review and shall be approved by amendment to this Contract.

(c.) At any time, OIEC may adjust the Contract, in whole or in part, with thirty (30) days' notice to Contractor. Adjustments shall be in accordance with the unit prices quoted in Attachment 2 – Mandatory Pricing Form and shall be documented by amendment to this Contract.

(d.) The contract amount for any renewal periods will be specified by written contract amendment signed by both parties.

**3.02. PAYMENTS TO CONTRACTOR.** (a.) Payments to Contractor will be made at the completion of a project under a Delivery Release Change Notice and within thirty (30) days from receipt of a correct invoice or billing statement in accordance with the Texas Government Code, Chapter 2251, Texas Prompt Payment Act. An invoice is considered received on the date it is date stamped by OIEC/TDI. Contractor will be paid for completion of work accepted and approved by OIEC's Contract Administrator or his/her designated representative.

(b.) Contractor shall invoice OIEC for work performed by vendor identification number, building, and purchase order number. Invoices must include the purchase order number and contract number. Address for submission is: Texas Department of Insurance, Accounting – Mail Code 108-3A, P.O. Box 149104, Austin, Texas 78714-9104; or by email: [invoices@tdi.texas.gov](mailto:invoices@tdi.texas.gov).

### IV. STATE FUNDING.

**4.01. STATE FUNDING.** It is understood that all obligations of OIEC hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests accrued up to the date of termination.

### V. CONTRACTOR PERSONNEL.

**5.01. REQUIRED QUALIFICATIONS.** At all times during the term of the Contract, Contractor shall have available, under direct employment and supervision, the required qualified personnel to properly fulfill all the terms and conditions of this Contract.

## VI. NOTICES.

**6.01. NOTICES.** (a.) Any notice required or permitted to be delivered under this Contract shall be deemed delivered when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to TDI or Contractor, as the case may be, at the address set forth below:

**For TDI:** Texas Department of Insurance  
On Behalf of the Office of Injured Employee Counsel  
Purchasing and Contract Administration  
333 Guadalupe St., PO Box \_\_\_\_\_  
Austin, TX 78701  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**For Contractor:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

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

## VII. MISCELLANEOUS PROVISIONS.

**7.01. GOVERNING LAW AND VENUE.** This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Contractor irrevocably waives any objection, including any objection to personal jurisdiction or proper venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the filing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **Nothing in this Section shall be construed as a waiver of sovereign immunity by OIEC.**

**7.02. SEVERABILITY.** If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**7.03. PROPER AUTHORITY.** The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges Contract is effective for the period specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

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

**7.05. FALSE STATEMENTS; BREACH OF REPRESENTATIONS.** By signature to this Contract, Contractor makes all the representations, warranties, guarantees, certifications and affirmations included in this Contract. If Contractor signs this Contract with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, guarantees, certifications or affirmations included in this Contract, Contractor shall be in default under this Contract, and OIEC may terminate or void this Contract for cause and pursue other remedies available to OIEC under this Contract and applicable law.

**7.06. ENTIRE CONTRACT & MODIFICATION.** This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Contract, no modification, renewal, extension or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

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

**OFFICE OF INJURED EMPLOYEE COUNSEL**

By \_\_\_\_\_

Jessica Corna  
Public Counsel

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

**CONTRACTOR**

By \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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